

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Case No. 1:21-cv-01314-RBJ-NRN

GARY SCHWARTZ,  
Court-Appointed Receiver for Mark Ray,  
Custom Consulting & Product Services, LLC,  
MR Cattle Production Services, LLC,  
Universal Herbs, LLC,  
DBC Limited, LLC,  
RM Farm & Livestock, LLC,  
Sunshine Enterprises,  
and real property/equipment/inventory at 12700 East Lone Chimney Road, Glencoe, OK 74032,

Plaintiff,

v.

RONALD THROGMARTIN,

Defendant.

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**SCHEDULING ORDER**

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**1. DATE OF CONFERENCE AND APPEARANCES OF COUNSEL** Although pandemic restrictions have been lifted to some extent, this Court is not yet holding in-person Scheduling Conferences. The Court has reviewed the proposed order and issues this Scheduling Order with its modifications and comments noted in Track Changes for easier reference.

Date of the conference: N/A

The Parties are represented by the following attorneys:

**Plaintiff GARY SCHWARTZ**, in his capacity as Court-Appointed Receiver for Mark Ray, Custom Consulting & Product Services, LLC, MR Cattle Production Services, LLC, Universal Herbs, LLC, DBC Limited, LLC, RM Farm &

John A. Chanin  
Katherine Roush  
Jason M. Spitalnick  
FOSTER GRAHAM MILSTEIN & CALISHER, LLP  
360 South Garfield Street, 6th Floor  
Denver, Colorado 80209

Livestock, LLC, Sunshine Enterprises,  
and real property/equipment/inventory at  
12700 East Lone Chimney Road, Glencoe,  
OK 74032.

[jchanin@fostergraham.com](mailto:jchanin@fostergraham.com)  
[kroush@fostergraham.com](mailto:kroush@fostergraham.com)  
[jspitalnick@fostergraham.com](mailto:jspitalnick@fostergraham.com)  
Phone: 303-333-9810  
Facsimile: 303-333-9786

**Defendant RONALD THROGMARTIN** Michael J. Mullen  
9850 Nicholas Street, Suite 305  
Omaha, NE 68114  
T: 402-558-5000  
F: 402-558-1100  
E: [mike@mjmlawyer.com](mailto:mike@mjmlawyer.com)

## 2. STATEMENT OF JURISDICTION

This Court has jurisdiction in this case pursuant to 28 U.S.C. §§ 1332(a).

## 3. STATEMENT OF CLAIMS AND DEFENSES

### *Plaintiff:*

Pursuant to orders dated September 30, 2019 and November 4, 2019, issued in Denver County District Court case no. 19CV33770 (“Colorado Suit”), Plaintiff is the court-appointed receiver of an estate including all assets of the following individual and entities: Mark Ray (individually), Custom Consulting & Product Services, LLC, MR Cattle Production Services, LLC, Universal Herbs, LLC, DBC Limited, LLC, RM Farm & Livestock, LLC, Sunshine Enterprises, as well as all real property, equipment, and inventory at 12700 East Lone Chimney Road, Glencoe, OK 74032 (the “Estate”).

In the Colorado Suit, the plaintiff, David Cheval, then-Acting Securities Commissioner for the State of Colorado, alleged that from 2014 to March 2019, individual defendants Mark Ray and Reva Stachniw, with the assistance of defendant Throgmartin, operated a Ponzi scheme that defrauded investors of tens of millions of dollars (the “Ponzi scheme”). Defendant Throgmartin, via his alter ego Phoenix Consulting Enterprises, received \$2,343,932 in Ponzi scheme-related funds.

Pursuant to the orders appointing receiver in the Colorado Suit, Plaintiff is bringing this lawsuit against Defendant to recover the Ponzi scheme-related funds transferred to Throgmartin via Phoenix Consulting, and asserts claims under the Colorado Fraudulent Transfer Act (CUFTA), C.R.S. § 38-8-105, unjust enrichment, and civil theft, pursuant to C.R.S. 18-4-405.

### *Defendant:*

Defendant denies all claims and liability. Affirmative defenses may be raised as discovery continues.

#### **4. UNDISPUTED FACTS**

*The following facts are undisputed:*

1. On February 20, 2020, Mark Ray was charged with one count of criminal Information against Ray alleging conspiracy to commit wire fraud and bank fraud, in violation of 18 USC § 1344.
2. Mr. Ray pleaded guilty to the Information on February 20, 2020.

#### **5. COMPUTATION OF DAMAGES**

*Plaintiff:*

Plaintiff seeks economic damages of \$2,343,932, the amount of funds Throgmartin transferred out of the Ponzi scheme. Plaintiff also seeks to avoid and set aside each payment of the transferred funds, as well as all available statutory penalties, under CUFTA and the civil theft statute, C.R.S. § 18-4-405, including treble damages, pre- and post-judgment interest, and attorneys fees and costs.

*Defendant:*

No counterclaims have been asserted.

#### **6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED. R. CIV. P. 26(f)**

*a. Date of Rule 26(f) meeting:*

July 22, 2021.

*b. Names of participants and party they represent:*

Katherine Roush and Jason Spitalnick represented Plaintiff.

Michael Mullen represented Defendant.

*c. Statement as to when Rule 26(a)(1) disclosures were made or will be made:*

The parties will make their initial disclosures on August 5, 2021, 14 days after the Rule 26(f) meeting.

*d. Proposed changes, if any, in timing or requirement of disclosures under Fed. R. Civ. P.*

*26(a)(1):*

None.

*e. Statement concerning any agreements to conduct informal discovery:*

There have been no agreements regarding informal discovery.

*f. Statement concerning any other agreements or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system:*

The parties have agreed to cooperate in order to reduce the costs of litigation and expedite the just disposition of the case, including the use of a unified exhibit numbering system.

*g. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form:*

There will not be a significant amount of electronically stored information.

*h. Statement summarizing the parties' discussions regarding the possibilities for promptly settling or resolving the case:*

The parties agree to explore opportunities for early resolution.

## **7. CONSENT**

All parties have not consented to the exercise of jurisdiction of a magistrate judge.

## **8. DISCOVERY LIMITATIONS**

*a. Modifications which any party proposes to the presumptive numbers of depositions or interrogatories contained in the Federal Rules:*

None.

*b. Limitations which any party proposes on the length of depositions:*

Each deposition will be limited to seven (7) hours.

*c. Limitations which any party proposes on the number of requests for production of documents and/or requests for admissions:*

The parties agree that each may serve 25 requests for production. The parties agree no requests for admission are needed.

*d. Deadline for service of Interrogatories, Requests for Production of Documents and/or Admissions:*

The parties will serve their Interrogatories, Requests for Production of Documents and/or Admissions on or before **December 1, 2021**, to allow timely responses before the discovery cutoff.

*e. Other Planning or Discovery Orders:*

. The parties will not file motions or responses concerning discovery disputes. Rather, after counsel have conferred by telephone or in person, they will contact Chambers and set a telephonic hearing. If the dispute concerns responses to paper discovery (interrogatories, etc.), please provide the Court with the disputed question and responses before the hearing.

## **9. CASE PLAN AND SCHEDULE**

*a. Deadline for Joinder of Parties and Amendment of Pleadings: **January 18, 2022***

*b. Discovery Cut-off: **March 15, 2022***

*c. Dispositive Motions Deadline: **May 20, 2022.***

*d. Expert Witness Disclosure*

1. The parties shall identify anticipated fields of expert testimony, if any.
  - a) Plaintiff: forensic accounting and fraudulent financial schemes.
  - b) Defendant: forensic accounting and fraudulent financial schemes
2. Limitations which the parties propose on the use or number of expert witnesses.

The parties agree on two experts per party without leave of court.

3. The parties shall designate all experts and provide opposing counsel and any pro se parties with all information specified in Fed. R. Civ. P. 26(a)(2) on or before **April 5, 2022**.

4. The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before **May 3, 2022**.

*e. Identification of Persons to be Deposed:*

Plaintiff: Mark Ray, Reva Stachniw, experts designated by Defendant.

Defendant: Gary Schwartz, experts designated by Plaintiff, Myron Stachniw.

#### **10. DATES FOR FURTHER CONFERENCES**

*a.* Status conferences will be held in this case at the following dates and times:

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A final pretrial order is not required. The Court will conduct a Trial Preparation Conference and resolve any remaining disputes concerning trial witnesses, trial exhibits, in limine issues, and jury instructions. Proposed jury instructions should be emailed to Chambers one week before the TPC, with disputed versions of instructions paired. **Please jointly contact Chambers at**

**[jackson\\_chambers@cod.uscourts.gov](mailto:jackson_chambers@cod.uscourts.gov) within 14 days to select TPC and Trial dates from the following options:**

b. Proposed 5-day jury trial dates: 10/24/2022; 10/31/2022; 11/7/2022.

c. Proposed trial preparation conference dates: 10/7/2022 at 9:00; 10/14/2022 at 9:00; 10/19/2022 at 1:30.

d.

#### **11. OTHER SCHEDULING MATTERS**

*a. A statement of those discovery or scheduling issues, if any, on which counsel after a good-faith effort, were unable to reach an agreement:*

None.

*b. Anticipated length of trial and whether trial is to the court or jury:*

A five day jury trial.

*c. Identify pretrial proceedings, if any, that the parties believe may be more efficiently or economically conducted in the District Court's facilities at 212 N. Wahsatch Street, Colorado Springs, Colorado 80903-3476; Wayne Aspinall U.S. Courthouse/Federal Building, 402 Rood Avenue, Grand Junction, Colorado 81501-2520; or the U.S. Courthouse/Federal Building, LaPlata County Courthouse 1060 E. 2<sup>nd</sup> Avenue, Suite 150, Durango Colorado 81301:*

None.

## **12. NOTICE TO COUNSEL AND PRO SE PARTIES**

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1(c) by serving the motion contemporaneously upon the moving attorney's client.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1(a).

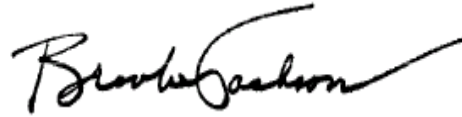
Counsel and unrepresented parties are reminded that any change of contact information must be reported and filed with the Court pursuant to the applicable local rule.

## **13. AMENDMENTS TO SCHEDULING ORDER**

The Scheduling Order may be altered or amended only upon a showing of good cause.

Dated this 20<sup>th</sup> day of August, 2021.

By the Court



United States District Court Judge

Respectfully submitted this 16<sup>th</sup> day of August, 2021.

/s/ Katherine Roush

John A. Chanin

Katherine Roush

Jason M. Spitalnick

FOSTER GRAHAM MILSTEIN & CALISHER, LLP

360 South Garfield Street, 6<sup>th</sup> Floor

Denver, Colorado 80209

[jchanin@fostergraham.com](mailto:jchanin@fostergraham.com)

[kroush@fostergraham.com](mailto:kroush@fostergraham.com)

[jspitalnick@fostergraham.com](mailto:jspitalnick@fostergraham.com)

Phone: 303-333-9810

Facsimile: 303-333-9786

*Attorneys for Gary Schwartz in his capacity as Court-Appointed Receiver for Mark Ray, Custom Consulting & Product Services, LLC, MR Cattle Production Services, LLC, Universal Herbs, LLC, DBC Limited, LLC, RM Farm & Livestock, LLC, Sunshine Enterprises, and real property/equipment/inventory at 12700 East Lone Chimney Road, Glencoe, OK 74032.*



**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of August, 2021., I electronically filed the foregoing **PROPOSED SCHEDULING ORDER** with the Clerk of the Court using the ECF system, and served via electronic mail to the following:

Michael J. Mullen  
9850 Nicholas Street, Suite 305  
Omaha, NE 68114  
T: 402-558-5000  
F: 402-558-1100  
E: [mike@mjmlawyer.com](mailto:mike@mjmlawyer.com)  
*Attorney for Defendant Ronald Throgmartin*

/s/ Lucas Wiggins  
Lucas Wiggins