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Attorneys for the Receiver

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR MARICOPA COUNTY

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| ARIZONA CORPORATION     | ) | Cause No. CV2016-014142           |
| COMMISSION,             | ) |                                   |
| Plaintiff,              | ) | PETITION NO. 73                   |
| v.                      | ) | PETITION FOR ORDER APPROVING      |
| DENSCO INVESTMENT       | ) | SETTLEMENT AGREEMENT              |
| CORPORATION, an Arizona | ) | BETWEEN THE RECEIVER AND THE      |
| corporation,            | ) | FISCHER DEFENDANTS                |
| Defendant.              | ) | (Assigned to the Honorable Teresa |
|                         | ) | Sanders)                          |
|                         | ) |                                   |
|                         | ) |                                   |
|                         | ) |                                   |
|                         | ) |                                   |

Peter S. Davis, as the court appointed Receiver, respectfully petitions the Court as follows:

- On August 18, 2016, this Court entered its *Order Appointing Receiver*, which appointed Peter S. Davis as Receiver of DenSco Investment Corporation (“Receivership Order”).
- The Receivership Order empowers the Receiver to investigate, and if necessary, litigate claims of DenSco Investment Corporation (“DenSco”).

1           3.       During the Receiver's review of the historical financial activity of DenSco, the  
2 Receiver determined that not later than December 31, 2012, DenSco was insolvent. More  
3 specifically, at the end of 2012, the Receiver has determined that DenSco did not have  
4 sufficient financial resources to pay DenSco's obligations to its investors. However, despite  
5 being insolvent, DenSco knowingly continued to raise new money from investors which was  
6 utilized to pay DenSco's obligations to its existing investors. With a clear pattern of DenSco  
7 raising and utilizing new investor money to pay older DenSco investors, the Receiver  
8 determined that after December 31, 2012, DenSco operated as a Ponzi investment scheme.

9           4.       A court appointed Receiver, under the provisions of the Uniform Fraudulent  
10 Transfer Act, A.R.S. §44-1001 *et. seq.*, can seek to recover funds representing an investor's  
11 fictitious "profit" from a Ponzi scheme. Established case law allows a receiver to recover all  
12 funds received by an investor in a Ponzi scheme which represents a recovery of any funds in  
13 excess of that investor's principal investment, as the "profit" received by these fortunate  
14 investors represents a fictitious profit from the Ponzi scheme. In fact, the funds that are the  
15 "profit" are essentially the principal investment of other unfortunate investors in the Ponzi  
16 scheme.

17           5.       The Receiver has conducted an analysis of all DenSco investors who were  
18 fortunate to have recovered their entire principal investment from DenSco after December  
19 2012 and before DenSco's collapse in 2016. Two of the investors who received a return of  
20 both their entire principal investment and a fictitious profit are Fischer Family Holdings, LLC  
21 ("Fischer Holdings") and Nesta Capital, Inc. ("Nesta"). These entities were beneficially

1 owned or controlled by Kirk J. Fischer (“Kirk Fischer”), Lorien L. Fisher (“Lorien Fischer”)  
2 and Ellen Fischer (“Ellen Fischer”).

3 6. On July 20, 2018, after unsuccessful efforts by the Receiver to resolve his  
4 claims without litigation, the Receiver filed suit against Fischer Holdings, Nesta, Kirk  
5 Fischer, Lorien Fischer and Ellen Fischer (collectively referred to hereafter as the “Fischer  
6 Defendants”) to recover fraudulent transfers to or for the benefit of these defendants. This  
7 action was filed in the Arizona Superior Court for Maricopa County and is entitled *Davis v.*  
8 *Fischer Family Holdings, LLC, et al.*, cause number CV 2018-052830 (“Fischer Action”). In  
9 the Fischer Action the Receiver sought to recover, among other things, fictitious profits  
10 totaling \$318,026.04.

11 7. The Fischer Defendants filed an answer denying liability and following  
12 disclosures by the parties and limited discovery the parties have entered into an agreement in  
13 settlement of the claims that have been or could be asserted in the Fischer Action. A copy of  
14 the Settlement Agreement is attached hereto as **Exhibit “A”**.

15 8. Based on extensive financial disclosures provided to the Receiver by the  
16 Fischer Defendants under oath, the Receiver has determined that Fischer Defendants do not  
17 have the financial resources to satisfy a judgment for the full amount of the liability claimed  
18 by the Receiver. In addition, any judgment that might be obtained by the Receiver would be  
19 dischargeable in bankruptcy. Accordingly, in recognition of these facts and in order to  
20 minimize further litigation expenses and avoid the inherent litigation risks associated with the  
21 Fischer Action, the Receiver has agreed to accept a payment of \$50,000 in full satisfaction of

1 the Receiver's claims in the Fischer Action. *See* the Settlement Agreement attached as  
2 **Exhibit "A"**,

3 9. For all of the foregoing reasons, the Receiver is of the opinion that the  
4 Settlement Agreement attached as **Exhibit "A"** is in the best interests of the receivership  
5 estate and should be approved by the Court.

6 WHEREFORE, the Receiver respectfully requests that the Court enter an order:

- 7 1. Approving the Settlement Agreement attached as **Exhibit "A"**;  
8 2. Granting such further relief as the Court deems appropriate.

9 Respectfully submitted this 4<sup>th</sup> day of April, 2019.

10 GUTTILLA MURPHY ANDERSON, P.C.

11 /s/Patrick M .Murphy  
12 Patrick M. Murphy  
13 Attorneys for the Receiver

14 2359-001(362887)

## SETTLEMENT AGREEMENT

This settlement agreement (the "Agreement") is made by and between Peter S. Davis, as Receiver of DenSco Investment Corporation in Maricopa County Superior Court Cause No. CV2016-014142 (the "Receiver") and Kirk J. Fischer; Lorien L. Fischer; Ellen Fischer; Fischer Family Holdings, L.L.C.; and Nesta Capital, Inc. (collectively referred to as the "Defendants") The parties hereto are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

### RECITALS

Whereas on August 18, 2016, Peter S. Davis was appointed by the Maricopa County Superior Court pursuant to an *Order Appointing Receiver* in Cause No. CV2016-014142 as the Receiver of DenSco Investment Corporation ("DenSco"), an Arizona corporation (herein after the ("Receivership Action");

Whereas the Receiver has determined from a comprehensive review of the books and records of DenSco that, on or before December 31, 2012, DenSco became insolvent. The Receiver has determined that not later than the end of 2012, DenSco became insolvent and lacked sufficient financial resources to pay DenSco's obligations to its investors and creditors, and after that date DenSco continued to raise new money from investors using these new investor funds to pay DenSco's obligations to its current investors. Accordingly, the Receiver has determined that after December 31, 2012 DenSco operated as Ponzi investment scheme. ("DenSco Ponzi Scheme");

Whereas the Receiver has filed suit against the Defendants in the Arizona Superior Court for Maricopa County, entitled *Davis v. Fischer Family Holdings, L.L.C.*, cause number CV 2018-052830 ("Fischer Action"), in which the Receiver seeks to recover "fictitious profits" and other amounts received by the Defendants from DenSco after December 31, 2012;

Whereas the Defendants assert that they had no involvement in the management or operation of DenSco and had no knowledge of the DenSco Ponzi Scheme;

Whereas as part of ongoing settlement negotiations between the Parties, on January 15, 2019, the Defendants provided to the Receiver certain unsworn financial information concerning the Defendants ("Unsworn Financial Information"); and

Whereas without admitting the truth or validity of any claim or defense, the Parties desire to settle all claims that the Receiver may be entitled to assert against the Defendants in connection with the DenSco Ponzi Scheme.

### TERMS

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement hereby agree as follows:

1. The Defendants agree to pay to the Receiver the sum of \$50,000.00 ("Settlement Amount") in full satisfaction of all claims by the Receiver against the Defendants arising out of

the DenSco Ponzi Scheme or that have been or could have been brought in the Fischer Action or the Receivership Action.

2. Within ten (10) days after the execution of this Agreement:

a. The Defendants shall deliver to the Receiver the sum of \$5,000 as the initial payment ("Initial Payment") of the Settlement Amount required herein;

b. Kirk J. Fischer; Lorian L. Fischer shall deliver to the Receiver a personal financial statement on the form attached hereto as Exhibit A and sworn to by Defendants;

c. Ellen Fischer shall deliver to the Receiver a personal financial statement in the form of Exhibit A and sworn to by Defendant;

d. Fischer Family Holdings, L.L.C. shall deliver to the Receiver a financial statement in the form of Exhibit A sworn to by an officer or other authorized representative of the Defendant; and

e. Nesta Capital, Inc. shall deliver to the Receiver a financial statement in the form of Exhibit A sworn to by an officer or other authorized representative of the Defendant.

3. It is understood and agreed that if the sworn financial statements required under paragraph 2 contain material false statements or omissions of material facts or are materially different from the Unsworn Financial Information previously provided to the Receiver, the Receiver may elect to terminate this Agreement and proceed with the prosecution of the Fischer Action, or if the Fischer Action has been dismissed, reinstitute the action. In the event the Receiver elects to terminate this Agreement and proceed with the prosecution of the Fischer Action, the financial statement provided herein will be returned to Defendants and all copies made by Receiver will be destroyed and Receiver may make no use of such statements in the Fischer Action.

4. Within ten (10) days after receipt all of the sworn financial statements required under paragraph 2, the Receiver shall file a petition in the Receivership Action seeking the approval of this Agreement, and the provisions contained therein are conditioned upon the approval of the Agreement by the Court in the Receivership Action and the Agreement shall not become effective until and unless so approved.

5. Within ten (10) days after the approval of this Agreement by the Receivership Court, Defendants shall pay to the Receiver the total sum of \$45,000.00 which shall constitute the balance of the Settlement Amount. The payment to the Receiver required under this paragraph shall be in the form of a certified check made payable to "Peter S. Davis, Receiver" and delivered to counsel for the Receiver. In the event that the Receivership Court declines to approve this Agreement, within ten (10) days thereof the Receiver shall return to the Defendants the Initial Payment.

6. Upon payment in full of Settlement Amount, the Receiver, on his own behalf and on behalf of his attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, releases and forever discharges the Defendants and their attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives from any and all claims of any kind or nature arising out



of the DenSco Ponzi Scheme, including without limitation any claims that were made or could have been made in the Fischer Action or the Receivership Action.

7. Upon payment in full of the Settlement Amount, the Defendants, on their own behalf and on behalf of their attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, release and forever discharge the Receiver and his attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives from any and all claims of any kind or nature arising out of the DenSco Ponzi Scheme, including without limitation any claims that were made or could have been made in the Fischer Action or the Receivership Action.

8. Within ten (10) days of the payment in full of the Settlement Amount, the Parties shall execute and file with the court in the Fischer Action a stipulation to dismiss the Fischer Action.

9. The parties hereto acknowledge that this Agreement is being made by each party of its own free choice, without any inducement offered in any way other than the express agreements contained in this Agreement. The Parties further state that in entering into this Agreement, each party has had the opportunity to consult with an attorney of that party's own choice regarding the benefits and detriments of entering into this Agreement.

10. This Agreement contains the full and complete agreement of the Parties hereto, and all prior negotiations and agreements pertaining to the subject matter hereof are merged into this Agreement. No amendment, waiver, or discharge in any provision of all or any part of the Agreement shall be valid unless such amendment, waiver or discharge is in writing and duly executed by all parties to this Agreement, or their authorized agents.

11. This Agreement may not be amended or modified except in writing, signed by the party to be bound thereby, or if signed by the respective parties' attorneys of record, which writing has been approved by the Court in the Receivership Action.

12. The parties hereto warrant and represent that none of them has sold, assigned, granted, or otherwise transferred to anyone not a party hereto, any right, privilege, or cause of action, or any part thereof, arising out of or otherwise connected with the subject matter or terms of this Agreement.

13. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.

14. This Agreement is entered into in the State of Arizona, and shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Arizona. Any dispute concerning the interpretation of this Agreement shall be submitted to and decided exclusively in the Superior Court, in and for Maricopa County, Arizona.

15. The person signing this Agreement on behalf of any party to this Agreement, hereby warrants and represents that the person is authorized to sign this Agreement and make the promises and grant the releases contained herein on behalf of the respective entity and that such person has the power to bind the respective entity.

16. This Agreement may be executed in counterparts by one or more of the undersigned, and all such counterparts so executed shall together be deemed to constitute one final Agreement, as if one document had been signed by all parties hereto. Each such

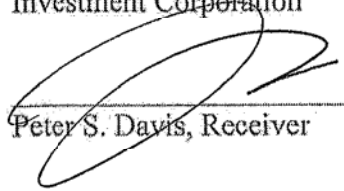
counterpart shall be deemed to be an original, binding the parties subscribed thereto, and multiple signature pages affixed to a single copy of the Agreement shall be deemed to be a fully executed original Agreement.

17. In the event of any future litigation between the parties to this Agreement in which the enforcement of this Agreement is sought, the prevailing party or parties with respect to issues relating to the Agreement shall be entitled to recover their reasonable attorneys' fees and costs from the other party or parties.

18. All parties to this Agreement have read this Agreement and fully understand and comprehend its meaning and binding effect.


**PETER S. DAVIS**, as Receiver of DenSco  
Investment Corporation

Dated: 3/27/19

  
Peter S. Davis, Receiver

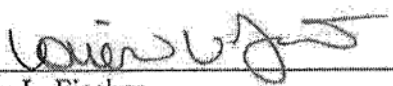
**KIRK J. FISCHER**

Dated: 3-18-19

  
Kirk J. Fischer


**LORIEN L. FISCHER**

Dated: 3/18/19

  
Lorien L. Fischer


**ELLEN FISCHER**

Dated: 3/18/19

  
Ellen Fischer

**FISCHER FAMILY HOLDINGS, L.L.C**

Dated: 3-18-19

  
Kirk J. Fischer, Manager

[Signatures continued on the next page]



NESTA CAPITAL, INC.

~~Dated:~~ \_\_\_\_\_

N/A  
~~Kirk J. Fischer, Member~~

~~Dated:~~ \_\_\_\_\_

N/A  
~~Lorien L. Fischer, Member~~

Dated: 3-18-19

Ellen Fischer  
Ellen Fischer, ~~Member~~ VP

2359-014.01 (359824)

