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8 Attorneys for the Receiver

9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

10 IN AND FOR MARICOPA COUNTY

11 ARIZONA CORPORATION
12 COMMISSION,

13 Plaintiff,

14 v.

15 DENSCO INVESTMENT
16 CORPORATION, an Arizona
17 corporation,

18 Defendant.

Cause No. CV2016-014142

PETITION NO. 107

PETITION FOR ORDER APPROVING
SETTLEMENT AGREEMENT
BETWEEN THE RECEIVER AND
ACTIVE FUNDING GROUP, LLC

(Assigned to the Honorable John Hanna)

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

21 **I. Background**

1. On August 18, 2016, this Court entered its *Order Appointing Receiver*, which
appointed Peter S. Davis as Receiver of DenSco Investment Corporation (“DenSco”).

2. During the Receiver’s initial investigation into DenSco, the Receiver
determined that Active Funding, LLC (“Active Funding”) may have been working in concert
with Yomtov Scott Menaged (“Menaged”) and been aware that Menaged was seeking to

1 obtain two hard money loans on real property purchased at foreclosure auctions and
2 defrauding DenSco in the process. Accordingly, the Receiver determined that if Active
3 Funding, a hard-money lender like DenSco, was aware of Menaged's fraudulent schemes
4 against DenSco, DenSco may hold claims against Active Funding.

5 3. The Receiver employed the law firm of Ajamie, LLP to assist the Receiver in
6 his ongoing investigation of these potential claims against Active Funding. *See* Order re:
7 Petition No. 45, filed on January 4, 2018 approving the employment of Ajamie, LLP.

8 4. The Receiver's continued investigation indicated that after Active Funding
9 uncovered Menaged's scheme to defraud it and DenSco, Active Funding may have taken
10 actions to protect its historical loans with Menaged and at the same time worked
11 cooperatively with Menaged to enable him to continue to defraud DenSco.

12 5. On or around April 10, 2019, the Receiver and Active Funding entered into a
13 Tolling Agreement concerning potential claims against Active Funding (the "Tolling
14 Agreement"). The Tolling Agreement was last extended on or around December 9, 2020 to
15 be tolled until April 30, 2021.

16 6. During the course of the DenSco Receivership, the Receiver has asserted that
17 in 2011, Menaged began requesting loans from DenSco for properties for which Menaged
18 had already solicited loans from other lenders. In an effort to deceive both lenders, Menaged
19 essentially obtained two loans on hundreds of real properties with both lenders believing that
20 their respective loan was in first position. The scheme perpetrated by Menaged has been
21 coined by the Receiver as the "First Fraud."

1 7. During the Receiver’s investigation into these issues, the Receiver conducted a
2 comprehensive analysis of the timing of hard money loans solicited by Menaged and
3 researched the recording of liens and encumbrances against hundreds of properties that were
4 a part of the First Fraud. Additionally, the Receiver has conducted depositions of Menaged,
5 attended depositions of Active Funding and participated in an interview of the principal of
6 Active Funding.

7 8. Active Funding has denied any knowledge, participation in or responsibility
8 for any action taken by Menaged to perpetrate the First Fraud or any other elicit, unlawful or
9 fraudulent activities including, but not limited to, other frauds or misconduct the Receiver
10 has determined that Menaged engaged in.

11 9. Without admitting the truth or validity of any claim or defense, the Receiver
12 and Active Funding (collectively, the “Parties”) desire to settle all claims that the Receiver
13 may be entitled to assert against Active Funding.

14 10. The Parties have entered into a Settlement Agreement, a copy of which is
15 attached hereto as Exhibit A (the “Settlement Agreement”), to resolve any claims that
16 DenSco may hold against Active Funding.

17 11. Under the terms of the Settlement Agreement, Active Funding shall pay to the
18 Receiver the total sum of \$75,000.00 within five (5) days of the Court’s approval of the
19 Settlement Agreement.

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13. The Receiver recommends that the Court approve the Settlement Agreement with Active Funding for the following reasons: First, while the Receiver believes he could prove DenSco's claims against Active Funding, the facts that support the Receiver's claims are effectively circumstantial evidence. Simply put, the only direct evidence that the Receiver may have to support his claims is the testimony of Menaged, who is currently in Federal prison for his role in the fraudulent schemes against DenSco and others. Second, the Receiver has determined that Active Funding does not have any insurance to defend or eventually pay any economic damages that may be awarded to the Receiver. Third, Active Funding vehemently denies it was acting in concert with Menaged, and much of the evidence uncovered by the Receiver can be used to bolster Active Funding's defenses.

WHEREFORE, the Receiver respectfully requests that the Court enter an order approving the Settlement Agreement between Peter S. Davis, as Receiver of DenSco Investment Corporation, and Active Funding Group, LLC.

Respectfully submitted this 15th day of March 2021.

GUTTILLA MURPHY ANDERSON, P.C.

/s/ Ryan W. Anderson
Ryan W. Anderson
Attorneys for the Receiver

EXHIBIT A

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 Active Funding Group, LLC ("Active Funding"). 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 (hereinafter "DenSco"), an Arizona corporation (herein after the ("Receivership Action"));

Whereas the Receiver has conducted an investigation into the business operations of DenSco and initially determined that DenSco may hold claims against Active Funding for its participation in activities undertaken by Yomtov Scott Menaged ("Menaged") against DenSco;

Whereas the Receiver has asserted that in 2011, Menaged began requesting loans from DenSco for properties for which Menaged had already solicited loans from other lenders. In an effort to deceive both lenders, Menaged essentially obtained two loans on hundreds of real properties with both lenders believing that their respective loan was in first position. The scheme perpetrated by Menaged has been coined by the Receiver as the "First Fraud";

Whereas the Receiver has conducted extensive investigation into these issues, including conducting a comprehensive analysis of the timing of the loans solicited by Menaged and conducting depositions of Menaged and interviews of the principal of Active Funding;

Whereas Active Funding has denied any knowledge, participation in or responsibility for any action taken by Menaged to perpetrate the First Fraud or any other elicit, unlawful or fraudulent activities including, but not limited to, other frauds or misconduct the Receiver has determined that Menaged engaged in.

Active Funding's sole and exclusive business reasoning for entering into this settlement agreement with the Receiver is weighing the economic cost and time consumption required to defend protracted litigation versus the cost of settlement at this time.

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 Active Funding.

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. Active Funding shall pay to the Receiver the total sum of \$75,000.00 ("Settlement Funds"). Active Funding shall pay the Settlement Funds to the Receiver within five (5) days of the approval of this Settlement Agreement as set forth below. The Settlement Funds paid to the Receiver shall be made in the form of a certified check or money order made payable to "Peter S. Davis, Receiver of DenSco" and delivered to counsel for the Receiver.

2. Upon execution of this Agreement, 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 expiration of all appeal times with respect thereto with no such appeals occurring and the Agreement shall not become effective until and unless so approved (and the appeal periods expiring as set forth herein).

3. The Parties have entered into *Tolling Agreement #5*, which allows any claims held by DenSco or its Receiver against Active Funding to be tolled until April 30, 2021. In the unlikely event that this Settlement Agreement is not, despite diligent efforts, approved before April 30, 2021, the Parties agree to extend the Tolling Agreement on a month to month basis until this Settlement Agreement is approved and subject to ongoing diligent efforts to obtain such approval.

4. The Receiver hereby, on his own behalf and on behalf of his attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, releases and forever discharges Active Funding and its attorneys, employees, agents, predecessors, successors, members together with their spouses, managers together with their spouses, affiliated entities, assigns, assignors, executors, administrators, and legal representatives from any and all claims of any kind that were made or could have been made against Active Funding in the Receivership Action.

5. Active Funding hereby, on its own behalf and on behalf of its attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, releases and forever discharges the Receiver and his attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives from any and all claims of any kind that were made or could have been made against DenSco or the Receiver and arising out of the allegations in the Receivership Action.

6. 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.

7. 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.

A handwritten signature in blue ink, appearing to be "P. S. Davis", is located in the bottom right corner of the page.

8. 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.

9. 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.

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

11. 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 Receivership Action.

12. 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.

13. 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.

14. 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.

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

[SIGNATURES ON THE FOLLOWING PAGE]

A handwritten signature in blue ink, consisting of a stylized 'G' followed by a flourish.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year written below.

PETER S. DAVIS, as Receiver of DenSco
Investment Corporation in Cause No. CV2016-
014142



Dated: 03/11/2021

Peter S. Davis, as Receiver in CV2016-014142

Active Funding, LLC

Dated: 3/10/2021

by 

Its Authorized Signer