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10 *Attorneys for Defendants Fischer Family*  
11 *Holdings, LLC; Nesta Capital, Inc.; Kirk*  
12 *J. Fischer; Lorien L. Fischer; and Ellen*  
13 *Fischer*

14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
15 **IN AND FOR THE COUNTY OF MARICOPA**

16 PETER S. DAVIS AS COURT  
17 APPOINTED RECEIVER OF DENSCO  
18 INVESTMENT CORPORATION,

19 Plaintiff,

20 vs.

21 FISCHER FAMILY HOLDINGS, LLC;  
22 NESTA CAPITAL, INC.; KIRK J.  
23 FISCHER; LORIEN L. FISCHER; ELLEN  
24 FISCHER; JOHN DOES I-X; AND ABC  
25 CORPORATIONS I-X,

26 Defendants.

**No. CV2018-052830**

**ANSWER**

(Assigned to Hon. Theodore  
Campagnolo)

**(Jury Trial Demanded)**

27 Defendants, Fischer Family Holdings, LLC, Nesta Capital, Inc., Kirk J. Fischer,  
28 Lorien L. Fischer, and Ellen Fischer (together "Defendants"), by and through  
undersigned counsel, for their Answer to the Complaint filed on July 20, 2018 (the  
"Complaint"), do hereby deny each and every allegation of the Complaint except as  
specifically admitted or qualified herein.

1           1. Defendants are without sufficient knowledge and information to either  
2 admit or deny the allegations of paragraph 1 of the Complaint, and therefore deny the  
3 same.

4           2. Defendants admit the allegations of paragraph 2 of the Complaint.

5           3. Defendants deny the allegations of paragraph 3 of the Complaint.

6           4. Answering the allegations of paragraph 4 of the Complaint, Defendants  
7 admit that Fischer Family Holdings, LLC is an Arizona limited liability company.  
8 Defendants are without sufficient knowledge and information to either admit or deny the  
9 remaining allegations of paragraph 4 of the Complaint, and therefore deny the same.

10          5. Answering the allegations of paragraph 5 of the Complaint, Defendants  
11 admit that Nesta Capital, Inc. is an Arizona corporation and that Kirk Fischer has always  
12 been its president. Defendants are without sufficient knowledge and information to either  
13 admit or deny the remaining allegations of paragraph 5 of the Complaint, and therefore  
14 deny the same.

15          6. Defendants are without sufficient knowledge and information to either  
16 admit or deny the allegations of paragraph 6 of the Complaint, and therefore deny the  
17 same.

18          7. Defendants are without sufficient knowledge and information to either  
19 admit or deny the allegations of paragraph 7 of the Complaint, and therefore deny the  
20 same.

21          8. Defendants are without sufficient knowledge and information to either  
22 admit or deny the allegations of paragraph 8 of the Complaint, and therefore deny the  
23 same.

24          9. Defendants are without sufficient knowledge and information to either  
25 admit or deny the allegations of paragraph 9 of the Complaint, and therefore deny the  
26 same.

1           10. Defendants are without sufficient knowledge and information to either  
2 admit or deny the allegations of paragraph 10 of the Complaint, and therefore deny the  
3 same.

4           11. Defendants are without sufficient knowledge and information to either  
5 admit or deny the allegations of paragraph 11 of the Complaint, and therefore deny the  
6 same.

7           12. Defendants are without sufficient knowledge and information to either  
8 admit or deny the allegations of paragraph 12 of the Complaint, and therefore deny the  
9 same.

10          13. Defendants are without sufficient knowledge and information to either  
11 admit or deny the allegations of paragraph 13 of the Complaint, and therefore deny the  
12 same.

13          14. Defendants are without sufficient knowledge and information to either  
14 admit or deny the allegations of paragraph 14 of the Complaint, and therefore deny the  
15 same.

16          15. Defendants are without sufficient knowledge and information to either  
17 admit or deny the allegations of paragraph 15 of the Complaint, and therefore deny the  
18 same.

19          16. Defendants are without sufficient knowledge and information to either  
20 admit or deny the allegations of paragraph 16 of the Complaint, and therefore deny the  
21 same.

22          17. Defendants are without sufficient knowledge and information to either  
23 admit or deny the allegations of paragraph 17 of the Complaint, and therefore deny the  
24 same.

25          18. Defendants are without sufficient knowledge and information to either  
26 admit or deny the allegations of paragraph 18 of the Complaint, and therefore deny the  
27 same.

28          19. Defendants incorporate their responses to the preceding allegations.

20. Defendants are without sufficient knowledge and information to either admit or deny the allegations of paragraph 20 of the Complaint, and therefore deny the same.

21. Defendants deny the allegations of paragraph 21 of the Complaint.

22. Defendants deny the allegations of paragraph 22 of the Complaint.

23. Defendants incorporate their responses to the preceding allegations.

24. Defendants are without sufficient knowledge and information to either admit or deny the allegations of paragraph 24 of the Complaint, and therefore deny the same.

25. Defendants deny the allegations of paragraph 25 of the Complaint.

26. Defendants are without sufficient knowledge and information to either admit or deny the allegations of paragraph 26 of the Complaint, and therefore deny the same.

27. Defendants deny the allegations of paragraph 27 of the Complaint.

28. Defendants deny the allegations of paragraph 28 of the Complaint.

29. Defendants incorporate their responses to the preceding allegations.

30. Defendants are without sufficient knowledge and information to either admit or deny the allegations of paragraph 30 of the Complaint, and therefore deny the same.

31. Defendants deny the allegations of paragraph 31 of the Complaint.

32. Defendants deny the allegations of paragraph 32 of the Complaint.

33. Defendants deny each and every allegation of the Complaint not expressly admitted or qualified herein.

#### **AFFIRMATIVE DEFENSES**

As and for their affirmative defenses, Defendants allege as follows:

1. Plaintiff's claims are barred, in whole or in part, by his failure to state a claim upon which relief may be granted.

2. Plaintiff's claims are barred, in whole or in part, by his lack of standing.

1           3. Plaintiff's claims are barred, in whole or in part, by *in pari delicto*.

2           4. Plaintiff's claims are barred, in whole or in part, to the extent some Defendants  
3 received transfers from DenSco in good faith and for a reasonably equivalent value.

4           5. Plaintiff's claims are barred, in whole or in part, to the extent some Defendants  
5 were subsequent transferees.

6           6. Plaintiff's claims are barred, in whole or in part, by estoppel.

7           7. Plaintiff's claims are barred, in whole or in part, by waiver.

8           8. Plaintiff's claims are barred, in whole or in part, by the statute of limitations.

9           9. Plaintiff's claims are barred, in whole or in part, by laches.

10          10. Plaintiff's claims are barred, in whole or in part, by unclean hands.

11          11. Plaintiff's claims are barred, in whole or in part, by mistake.

12          12. Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to  
13 mitigate his damages.

14          13. As discovery may prove applicable to the defense of this matter, Defendants  
15 allege and incorporate each and every other defense set forth under Rule 8 of the Arizona  
16 Rules of Civil Procedure. To the extent necessary, Defendants will seek leave of Court to  
17 amend this Answer to state any additional defenses as they become known.

18          14. Defendants demand a jury trial on all issues so triable.

19          15. Defendants request an award of their costs and attorneys' fees incurred herein  
20 pursuant to A.R.S. §§ 12-341, 12-341.01, 12-349, or any other applicable law, rule, or  
21 contract provision.

22                 WHEREFORE, having fully answered the Complaint, Defendants  
23 respectfully demand judgment in their favor as follows:

24           A. That the Complaint be dismissed with prejudice, and that Plaintiff take nothing  
25 thereby;

26           B. That Defendants be awarded their costs and attorneys' fees incurred herein  
27 pursuant to A.R.S. §§ 12-341, 12-341.01, 12-349, or any other applicable law,  
28 rule, or contract provision;

1 C. That Defendants be awarded post-judgment interest on the foregoing amounts  
2 at the maximum rate allowed by law; and

3 D. That Defendants be awarded any such additional relief that the Court deems  
4 just and proper.

5 Dated this 28th day of August, 2018.

6  
7 WARNER ANGLE HALLAM JACKSON  
8 & FORMANEK PLC

9 By: /s/ Peter J. Foster  
10 James Valletta  
11 Peter J. Foster  
12 2555 East Camelback Road, Suite 800  
13 Phoenix, Arizona 85016  
14 *Attorneys for Defendants*

15 ORIGINAL e-filed and COPY mailed  
16 and e-mailed this 28th day of August,  
17 2018 to:

18 Patrick M. Murphy  
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24 By: /s/ Teresa Monarski

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