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CLERK OF THE SUPERIOR COURT  
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Attorneys for the Receiver

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PETER S. DAVIS AS COURT )  
APPOINTED RECEIVER OF DENSCO )  
INVESTMENT CORPORATION, )

Plaintiff, )

vs. )

THOMAS P. SMITH; DEANNA )  
SMITH; FOUR FUTURES )  
CORPORATION; CARSYN P. SMITH )  
TRUST; MCKENNA MARIE SMITH )  
TRUST; JOHN DOES I-X; AND ABC )  
CORPORATIONS I-X, )

Defendants. )

Cause No. CV 2019-057398

COMPLAINT

Plaintiff Peter S. Davis, the duly appointed Receiver of DenSco Investment Corporation ("Plaintiff"), alleges as follows:

### I. PARTIES

1. The Plaintiff was appointed as an equity receiver of DenSco Investment Corporation ("DenSco") and the assets thereof by order of the Arizona Superior Court for

1 Maricopa County entered on August 18, 2016, in the action entitled *Ariz. Corp. Comm'n v.*  
2 *DenSco Investment Corp.*, cause number CV2016-014142 ("ACC Action").

3 2. Defendant Thomas P. Smith ("Thomas Smith") is a resident of Maricopa  
4 County. Defendant Deanna M. Smith ("Deanna Smith") is a resident of Maricopa County.  
5 Upon information and belief Defendants Thomas Smith and Deanna Smith were at all  
6 relevant times married to each other and the acts of both Defendants alleged herein were for  
7 the benefit of their marital community.

8 3. Defendant Four Futures Corp. ("Four Futures") is an Oregon corporation.  
9 Defendant Thomas Smith incorporated Four Futures in 2003 and upon information and belief  
10 is the principal officer and owner of the corporation. Upon information and belief Four  
11 Futures is the alter ego of Defendants Thomas Smith and Deanna Smith who have  
12 disregarded the separate legal status of Four Futures and commingled the assets of Four  
13 Futures with their own.

14 4. Defendant Carsyn P. Smith Trust purports to be a trust doing business in  
15 Arizona ("Carsyn Smith Trust"). Upon information and belief Defendant Deanna Smith is  
16 the Trustee and Defendant Carsyn Smith is the sole beneficiary of the Carsyn Smith Trust.  
17 Upon information and belief, Carsyn Smith Trust is the alter ego of Defendants Thomas  
18 Smith and Deanna Smith who have disregarded the separate legal status of Carsyn Smith  
19 Trust and commingled the assets of Carsyn Smith Trust with their own.

20 5. Defendant McKenna M. Smith Trust purports to be a trust doing business in  
21 Arizona ("McKenna Smith Trust"). Upon information and belief Defendant Deanna Smith is

1 the Trustee and Defendant McKenna Smith is the sole beneficiary of the McKenna Smith  
2 Trust. Upon information and belief, McKenna Smith Trust is the alter ego of Defendants  
3 Thomas Smith and Deanna Smith who have disregarded the separate legal status of McKenna  
4 Smith Trust and commingled the assets of McKenna Smith Trust with their own.

5 6. Defendants John Does I-X and ABC Corporations I-X are persons whose  
6 identities are not presently known who received transfers of the funds that are the subject of  
7 this lawsuit, either directly or indirectly from DenSco or the named Defendants.

## 8 II. THE PONZI SCHEME

9 7. DenSco operated a Ponzi investment scheme in which it solicited over \$85  
10 million from no fewer than 113 investors. DenSco's business consisted primarily of making  
11 loans to fund the purchase of real estate using funds raised from DenSco's investors. As part  
12 of the Ponzi scheme, DenSco falsely represented to investors that DenSco would use funds  
13 from investors to make loans with a maximum loan-to-value ratio ("LTV") of 70%, and that  
14 all loans would be secured by first position deeds of trust on Arizona real property. The  
15 investment opportunity offered by DenSco was not registered with the Arizona Corporation  
16 Commission or the Securities and Exchange Commission as required by law.

17 8. From time to time, DenSco would make payments to its investors as  
18 "investment returns" in an effort to make it appear that the investment scheme was  
19 successful. However, the scheme was unsuccessful and not later than December 31, 2012,  
20 DenSco became insolvent and continued to be insolvent thereafter. DenSco's insolvency rose  
21 to over \$38 million by June 30, 2016. After 2012, the ability of DenSco to make these

1 payments to investors was dependent on the investment of new funds by new and existing  
2 investors.

3 9. On August 17, 2016, the Arizona Corporation Commission commenced the  
4 ACC Action against DenSco for violations of Arizona securities laws, including securities  
5 fraud under A.R.S. §44-1991 which resulted in, among other things, the appointment of  
6 Plaintiff as Receiver of DenSco.

7 10. As a result of the fraud committed by DenSco, the investors in DenSco have  
8 claims against DenSco.

### 9 III. TRANSFERS TO THE DEFENDANTS

10 11. From and after December 31, 2012, DenSco made 73 transfers to Defendant  
11 Four Futures totaling \$8,916,626.98 ("Four Futures Transfers"). During this same period  
12 Defendant Four Futures returned to DenSco a total of \$5,150,000.00, resulting in a net total  
13 of \$3,766,626.98 transferred to Defendant Four Futures from and after December 31, 2012.

14 12. Upon information and belief, subsequent to the receipt of the Four Futures  
15 Transfers, Defendant Four Futures transferred some or all the funds to or for the benefit of  
16 one of more of the other Defendants in amounts unknown to the Plaintiff at this time.

17 13. From and after December 31, 2012, DenSco made two (2) transfers to or for the  
18 benefit of Defendant Carsyn Smith Trust totaling \$211,542.44 ("Carsyn Smith Trust  
19 Transfers"). During this same period Defendant Carsyn Smith Trust returned to DenSco a  
20 total of \$8,000.00, resulting in a net total of \$203,542.44 transferred to Defendant Carsyn  
21 Smith Trust from and after December 31, 2012.

1           14.    Upon information and belief, subsequent to the receipt of the Carsyn Smith  
2 Trust Transfers, The Carsyn Smith Trust transferred some or all the funds to or for the benefit  
3 of one of more of the other Defendants in amounts unknown to the Plaintiff at this time.

4           15.    From and after December 31, 2012, DenSco made two (2) transfers to or for the  
5 benefit of Defendant McKenna Smith Trust totaling \$212,000.54 ("McKenna Smith Trust  
6 Transfers"). During this same period Defendant McKenna Smith Trust returned to DenSco a  
7 total of \$8,000.00, resulting in a net total of \$204,000.54 transferred to Defendant McKenna  
8 Smith Trust from and after December 31, 2012.

9           16.    Upon information and belief, subsequent to the receipt of the McKenna Smith  
10 Trust Transfers, Defendant McKenna Smith Trust transferred some or all the funds to or for  
11 the benefit of one of more of the other Defendants in amounts unknown to the Plaintiff at this  
12 time.

13                           **COUNT ONE**  
14                           **AVOIDANCE OF TRANSFERS**  
                          **PURSUANT TO A.R.S. §44-1004(A)(1)**

15           17.    Plaintiff realleges and incorporates herein all preceding allegations of this  
16 Complaint.

17           18.    Each of the transfers received by the Defendants as set forth in paragraphs 11  
18 through 16 were made by DenSco with the actual intent to hinder, delay or defraud creditors  
19 of DenSco for the reason that, among other things, the transfers were made in furtherance of a  
20 Ponzi investment scheme.  
21

19. Accordingly, the transfers alleged in this Count One are avoidable under A.R.S. §44-1004(A)(1), and Plaintiff is entitled to judgment against Defendants for all such transfers as follows:

- a. Defendant Four Futures in the amount of \$3,766,626.98;
- b. Defendant Carsyn Smith Trust in the amount of \$203,542.44; and
- c. Defendant McKenna Smith Trust in the amount of \$204,000.54.

20. Upon information and belief, Plaintiff is also entitled to judgment under this Count One against Defendants Thomas Smith, John Does I-X, and ABC Corporations I-X, as subsequent transferees in amounts unknown to the Plaintiff at this time.

**COUNT TWO**  
**AVOIDANCE OF TRANSFERS AS FICTITIOUS PROFITS**  
**PURSUANT TO A.R.S. §§44-1004(A)(1)**

21. Plaintiff realleges and incorporates herein all preceding allegations of this Complaint.

22. As of December 31, 2012, according to the records of DenSco, Defendant Four Futures had a net investment balance with DenSco of \$2,550,000.00. Thereafter, Defendant Four Futures invested an additional \$5,150,000.00 and DenSco paid to Defendant Four Futures, a total of \$8,916,626.98, resulting in a "fictitious profit" to Defendant Four Futures of \$1,216,626.98.

23. Accordingly, the transfers of fictitious profits to Defendant Four Futures alleged in this Count Two are avoidable under A.R.S. §44-1004(A)(1), and Plaintiff is

entitled to judgment as a matter of law against Defendant Four Futures in the amount of \$1,216,626.98.

24. As of December 31, 2012, according to the records of DenSco, Defendant Carsyn Smith Trust had a net investment balance with DenSco of \$143,777.52. Thereafter, Defendant Carsyn Smith Trust invested an additional \$8,000.00 and DenSco paid to Defendant Carsyn Smith Trust a total of \$211,542.44, resulting in a "fictitious profit" to Defendant Carsyn Smith Trust of \$59,764.92.

25. Accordingly, the transfers of fictitious profits to Defendant Carsyn Smith Trust alleged in this Count Two are avoidable under A.R.S. §44-1004(A)(1), and Plaintiff is entitled to judgment as a matter of law against Defendant Carsyn Smith Trust in the amount of \$59,764.92.

26. As of December 31, 2012, according to the records of DenSco, Defendant McKenna Smith Trust had a net investment balance with DenSco of \$143,748.06. Thereafter, Defendant McKenna Smith Trust invested an additional \$8,000.00 and DenSco paid to Defendant McKenna Smith Trust a total of \$212,000.54, resulting in a "fictitious profit" to Defendant McKenna Smith Trust of \$60,252.48.

27. Accordingly, the transfers of fictitious profits to Defendant McKenna Smith Trust alleged in this Count Two are avoidable under A.R.S. §44-1004(A)(1), and Plaintiff is entitled to judgment as a matter of law against Defendant McKenna Smith Trust in the amount of \$60,252.48.

1           28.    Upon information and belief, Plaintiff is also entitled to judgment under this  
2 Count Two against Defendants Thomas Smith, Four Futures, Carsyn Smith Trust, Mckenna  
3 Smith Trust, John Does I-X, and ABC Corporations I-X, as subsequent transferees in  
4 amounts unknown to the Plaintiff at this time.

5                                   **COUNT THREE**  
6                                   **AVOIDANCE OF TRANSFERS**  
7                                   **PURSUANT TO A.R.S. §§44-1004(A)(2) and 44-1005**

8           29.    Plaintiff realleges and incorporates herein all preceding allegations of this  
9 Complaint.

10           30.   Each transfer received by the Defendants from DenSco, to the extent the  
11 transfer exceeded the amount invested by the Defendant in DenSco, was made without  
12 DenSco receiving a reasonable equivalent value in exchange for the transfer at a time when  
13 (a) DenSco was insolvent or became insolvent as a result of the transfer, (b) DenSco was  
14 engaged in a business or transaction for which the remaining assets of DenSco were  
15 unreasonably small in relation to the business or transaction, or (c) DenSco intended to incur  
16 or believed that it would incur debts that would be beyond DenSco's ability to pay as such  
17 debts matured.

18           31.   Accordingly, the transfers alleged in this Count Three are avoidable under  
19 A.R.S. §§44-1004(A)(2) and 44-1005, and Plaintiffs entitled to judgment against  
20 Defendants for such transfers as follows:

- 21           a.    Defendant Four Futures in the amount of \$1,216,626.98;  
              b.   Defendant Carsyn Smith Trust in the amount of \$59,764.92; and



c. Defendant McKenna Smith Trust in the amount of \$60,252.48.

32. Upon information and belief, Plaintiff is also entitled to judgment under this Count Three against Defendants Thomas Smith, Four Futures, Carsyn Smith Trust, McKenna Smith Trust, John Does I-X, and ABC Corporations I-X, as subsequent transferees in amounts unknown to the Plaintiff at this time.

WHEREFORE, Plaintiff respectfully requests judgment as follows:

A. For the avoidance of each of the transfers to the Defendants;

B. For judgment against Defendants Thomas Smith, Four Futures, Carsyn Smith Trust, McKenna Smith Trust, John Does I-X, and ABC Corporations I-X, in the amount of the respective transfers to each Defendant;

C. For judgment against Defendants Thomas Smith, Four Futures, Carsyn Smith Trust, McKenna Smith Trust, John Does I-X, and ABC Corporations I-X, in the amount of the respective transfers to each Defendant or, alternatively, in the amount of the fictitious profit paid to each Defendant;

D. For pre-judgment interest from and after the date of the transfer; and

E. For such other and further relief as the Court deems just and proper.

Dated this 27<sup>th</sup> day of December, 2019.

GUTTILLA MURPHY ANDERSON, P.C.

Patrick M. Murphy  
Attorneys for the Plaintiff

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