

CHRIS DEROSE  
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----- CASE# CV2018-052830 -----  
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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, )

Cause No. CV2018-052830

Plaintiff,

COMPLAINT

vs.

FISCHER FAMILY HOLDINGS, )  
L.L.C.; NESTA CAPITAL, INC.; KIRK )  
J. FISCHER; LORIEN L. FISCHER; )  
ELLEN FISCHER; JOHN DOES I-X; )  
AND ABC CORPORATIONS I-X, )

Defendants. )

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

1           2.       Defendant Kirk J. Fischer ("Kirk Fischer") is a resident of Maricopa County.  
2 Defendant Lorien L. Fischer ("Lorien Fischer") is a resident of Maricopa County. Upon  
3 information and belief Defendants Kirk Fischer and Lori Fischer were at all relevant times  
4 married to each other and the acts of both Defendants alleged herein were for the benefit of  
5 their marital community.

6           3.       Defendant Ellen Fischer ("Ellen Fischer") is a resident of Maricopa County.

7           4.       The Defendant Fischer Family Holdings, LLC is an Arizona limited liability  
8 company ("Fischer Holdings"). Defendant Ellen Fischer was at all relevant times a member  
9 of Fischer Holdings.

10          5.       Defendant Nesta Capital, Inc. is an Arizona corporation ("Nesta"). Defendant  
11 Kirk Fischer was at all relevant times the president of Nesta. Defendants Kirk Fischer and  
12 Ellen Fischer were at all relevant times the officers, directors and the sole shareholders of  
13 Nesta.

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

## 17                   II. THE PONZI SCHEME

18          7.       DenSco operated a Ponzi investment scheme in which it solicited over \$85  
19 million from no fewer than 113 investors. DenSco's business consisted primarily of making  
20 loans to fund the purchase of real estate using funds raised from DenSco's investors. As part  
21 of the Ponzi scheme, DenSco falsely represented to investors that DenSco would use funds

1 from investors to make loans with a maximum loan-to-value ratio ("LTV") of 70%, and that  
2 all loans would be secured by first position deeds of trust on Arizona real property. The  
3 investment opportunity offered by DenSco was not registered with the Arizona Corporation  
4 Commission or the Securities and Exchange Commission as required by law.

5 8. From time to time, DenSco would make payments to its investors as  
6 "investment returns" in an effort to make it appear that the investment scheme was  
7 successful. However, the scheme was unsuccessful and not later than December 31, 2012,  
8 DenSco became insolvent and continued to be insolvent thereafter. DenSco's insolvency rose  
9 to over \$38 million by June 30, 2016. After 2012, the ability of DenSco to make these  
10 payments to investors was dependent on the investment of new funds by new and existing  
11 investors.

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

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

### 18 III. TRANSFERS TO THE DEFENDANTS

19 11. From and after December 31, 2012, the following transfers were made by  
20 DenSco to Defendant Kirk Fischer ("Kirk Fischer Transfers"):  
21

Date	Amount
07/28/14	\$16,000.00
08/26/14	\$16,000.00
09/25/14	\$12,500.00
10/28/14	\$10,000.00
12/05/14	\$100,166.00
12/12/14	\$250,000.00
01/21/15	\$201,400.00
	<hr/>
	\$606,066.00

12. Upon information and belief, subsequent to the receipt of the Kirk Fischer Transfers, Defendant Kirk Fischer transferred some or all of the funds to Defendants Ellen Fischer, Lorien Fischer, Fischer Holdings, John Does I-X, or ABC Corporations I-X, in amounts unknown to the Plaintiff at this time.

13. From and after December 31, 2012, the following transfers were made by DenSco to Defendant Lorien Fischer ("Lorien Fischer Transfers"):

Date	Amount
09/17/14	\$201,200.00
09/26/14	\$250,000.00
10/29/14	\$300,000.00
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	\$751,200.00

14. Upon information and belief, subsequent to the receipt of the Lorien Fischer Transfers, Defendant Lorien Fischer transferred some or all of the funds to Defendants Kirk Fischer, Ellen Fischer, Fischer Holdings, John Does I-X, or ABC Corporations I-X, in amounts unknown to the Plaintiff at this time.

15. From and after December 31, 2012, the following transfers were made by  
DenSco to Defendant Fischer Holdings or for its benefit ("Fischer Holdings Transfers"):

<u>Date</u>	<u>Amount</u>
01/14/13	\$200,000.00
01/28/13	\$5,500.00
02/25/13	\$8,000.00
03/26/13	\$8,000.00
04/24/13	\$8,000.00
05/24/13	\$8,500.00
06/25/13	\$11,349.97
07/25/13	\$12,266.67
08/26/13	\$12,500.00
09/23/13	\$12,500.00
10/02/13	\$100,000.00
10/28/13	\$11,500.00
11/25/13	\$11,500.00
12/06/13	\$150,000.00
12/23/13	\$10,300.00
01/27/14	\$10,000.00
02/24/14	\$16,606.00
03/24/14	\$16,000.00
04/25/14	\$16,000.00
05/27/14	\$16,000.00
06/23/14	\$16,000.00
09/04/14	\$150,200.00
11/24/14	\$7,000.00
12/29/14	\$4,500.00
01/21/15	\$150,000.00
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	\$972,222.64

1           16.    Upon information and belief, subsequent to the receipt of the Fischer Holdings  
2 Transfers, Defendant Fischer Holdings transferred some or all of the funds to Defendants  
3 Kirk Fischer, Lorien Fischer, Ellen Fischer, John Does I-X, or ABC Corporations I-X, in  
4 amounts unknown to the Plaintiff at this time.

5           17.    From and after December 31, 2012, the following transfers were made by  
6 DenSco to Defendant Nesta ("Nesta Transfers"):

Date	Amount
01/28/13	\$1,000.00
02/25/13	\$1,500.00
03/26/13	\$1,500.00
04/24/13	\$1,500.00
05/24/13	\$1,500.00
06/25/13	\$1,500.00
07/25/13	\$1,500.00
08/26/13	\$1,500.00
09/23/13	\$2,341.40
10/28/13	\$2,200.00
11/25/13	\$2,200.00
12/23/13	\$2,546.00
01/27/14	\$3,000.00
02/24/14	\$3,000.00
03/24/14	\$3,000.00
04/25/14	\$3,000.00
05/27/14	\$3,000.00
06/02/14	\$150,000.00
06/23/14	\$1,500.00
07/25/14	<u>\$151,250.00</u>
	\$338,537.40

18. Upon information and belief, subsequent to the receipt of the Nesta Transfers, Defendant Nesta transferred some or all of the funds to Defendants Kirk Fischer, Lorien Fischer, Ellen Fischer, Fischer Holdings, John Does I-X, or ABC Corporations I-X, in amounts unknown to the Plaintiff at this time.

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

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

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

21. 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 Kirk Fischer in the amount of \$606,066.00;
- b. Defendant Lorien Fischer in the amount of \$751,200.00;
- c. Defendant Fischer Holdings in the amount of \$972,222.64; and
- d. Defendant Nesta in the amount of \$338,537.40.

22. Upon information and belief, Plaintiff is also entitled to judgment under this Count One against Defendants Kirk Fischer, Lorien Fischer, Ellen Fischer, John Does I-X,

1 and ABC Corporations I-X, as subsequent transferees in amounts unknown to the Plaintiff at  
2 this time.

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

6 23. Plaintiff realleges and incorporates herein all preceding allegations of this  
7 Complaint.

8 24. As of December 31, 2012, according to the records of DenSco, Defendant  
9 Fischer Holdings had a net investment balance with DenSco of \$700,000. Thereafter, Fischer  
10 Holdings invested an additional \$1,350,000 and DenSco paid to Fischer Holdings, or to other  
11 Defendants for the benefit of Fischer Holdings, a total of \$2,329,488.64, resulting in a  
12 “fictitious profit” to Fischer Holdings of \$279,488.64.

13 25. Accordingly, the transfers of fictitious profits to Defendant Fischer Holdings  
14 alleged in this Count Two are avoidable under A.R.S. §44-1004(A)(1), and Plaintiff is  
15 entitled to judgment as a matter of law against Defendant Fischer Holdings in the amount of  
16 \$279,488.64.

17 26. As of December 31, 2012, according to the records of DenSco, Defendant  
18 Nesta had a net investment balance with DenSco of \$100,000. Thereafter, Nesta invested an  
19 additional \$200,000 and DenSco paid to Nesta a total of \$338,537.40, resulting in a “fictitious  
20 profit” to Nesta of \$38,537.40.  
21



1           27.     Accordingly, the transfers of fictitious profits to Defendant Nesta alleged in this  
2 Count Two are avoidable under A.R.S. §44-1004(A)(1), and Plaintiff is entitled to judgment  
3 as a matter of law against Defendant Nesta in the amount of \$38,537.40.

4           28.     Upon information and belief, Plaintiff is also entitled to judgment under this  
5 Count Two against Defendants Kirk Fischer, Lorien Fischer, Ellen Fischer, John Does I-X,  
6 and ABC Corporations I-X, as subsequent transferees in amounts unknown to the Plaintiff at  
7 this time.

8                               **COUNT THREE**  
9                               **AVOIDANCE OF TRANSFERS**  
10                              **PURSUANT TO A.R.S. §§44-1004(A)(2) and 44-1005**

11           29.     Plaintiff realleges and incorporates herein all preceding allegations of this  
12 Complaint.

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

21           31.     Accordingly, the transfers alleged in this Count Three are avoidable under  
A.R.S. §§44-1004(A)(2) and 44-1005, and Plaintiffs entitled to judgment against

Defendants for such transfers as follows:

- a. Defendant Kirk Fischer in the amount of \$606,066.00;
- b. Defendant Lorien Fischer in the amount of \$751,200.00;
- c. Defendant Fischer Holdings in the amount of \$279,488.64; and
- d. Defendant Nesta in the amount of \$38,537.40.

32. Upon information and belief, Plaintiff is also entitled to judgment under this Count Three against Defendants Kirk Fischer, Lorien Fischer, Ellen Fischer, 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 Kirk Fischer, Lorien Fischer and Ellen Fischer, in the amount of the respective transfers to each Defendant;
- C. For judgment against Defendants Fischer Holdings and Nesta 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 20<sup>th</sup> day of July, 2018.

GUTTILLA MURPHY ANDERSON, P.C.  
/s/Patrick M. Murphy  
Patrick M. Murphy  
Attorneys for the Plaintiff