

1 **GUTTILLA MURPHY ANDERSON**

Ryan W. Anderson (Ariz. No. 020974)

2 5415 E. High St., Suite 200

Phoenix, Arizona 85054

3 Email: randerson@gamlaw.com

Phone: (480) 304-8300

Fax: (480) 304-8301

4 Attorneys for the Receiver

5 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

6 IN AND FOR MARICOPA COUNTY

7 ARIZONA CORPORATION
8 COMMISSION,

Plaintiff,

9 v.

10 DENSCO INVESTMENT
11 CORPORATION, an Arizona
corporation,

Defendant.

Cause No. CV2016-014142

PETITION NO. 46

PETITION TO APPROVE THE
SETTLEMENT AGREEMENT
BETWEEN RECEIVER AND
SUNDANCE DEBT PARTNERS, LLC

(Assigned to the Honorable Teresa
Sanders)

12
13
14 Peter S. Davis, as the court appointed Receiver of DenSco Investment Corporation
15 (“Receiver”), respectfully petitions the Court to approve the Settlement Agreement between
16 the Receiver and Sundance Partners, LLC (“Sundance”) as follows:

17 1. On August 18, 2016, the Receiver was appointed by the Maricopa County
18 Superior Court over DenSco Investment Corporation (“DenSco”) pursuant to the Court’s
19 *Order Appointing Receiver* (“Receivership Order”).

20 2. The Receivership Order empowers the Receiver to investigate, and if necessary,
21 litigate claims of DenSco resulting from the Receiver’s investigation into the financial
activity of DenSco.

1 3. During the Receiver’s review of the historical financial activity of DenSco, the
2 Receiver determined that as of December 31, 2012, DenSco was insolvent. More specifically,
3 at the end of 2012, the Receiver has determined that DenSco did not have sufficient financial
4 resources to pay DenSco’s obligations to its investors. However, despite being insolvent,
5 DenSco knowingly continued to raise new money from new investors which DenSco utilized
6 to pay DenSco’s obligations to its existing investors. With a clear pattern of DenSco raising
7 and utilizing new investor money to pay older DenSco investors, the Receiver determined
8 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.*] and other legal theories, can seek to recover funds
11 representing an investor’s fictitious “profit” from a Ponzi scheme. The Receiver contends
12 that well established case law allows a receiver to recover all funds received by an investor in
13 a Ponzi scheme which represents a recovery of any funds in excess of that investor’s principal
14 investment, as the “profit” received by these fortunate investors represents a fictitious profit
15 from the Ponzi scheme. In fact, the funds that are the “profit” are essentially the principal
16 investment of other unfortunate investors in the Ponzi 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. One of the entities who received a return of both
20 their entire principal investment and a fictitious profit is Sundance.

1 **I. SETTLEMENT BETWEEN THE RECEIVER AND SUNDANCE**

2 6. The Receiver has determined that long after DenSco was insolvent at the end of
3 2012, Sundance, in January of 2014, invested a total of \$2,500,000.00 with DenSco. On
4 April 1, 2014, long after DenSco was operating as a Ponzi scheme, Sundance withdrew its
5 entire investment from DenSco and was paid \$2,588,402.33 by DenSco. Accordingly, the
6 Receiver has determined that Sundance received a fictional profit of \$88,402.33 from its
7 investment with DenSco.

8 7. Sundance had no involvement in the operations of DenSco or had any
9 knowledge that DenSco, at the time which it made or received the return of its investment,
10 was insolvent.

11 8. Sundance is a limited liability company located in Utah. Sundance is an affiliate
12 of Sundance Capital Group which is a real estate investment firm that specializes in distressed
13 real estate investing and lending. The members of Sundance have changed substantially since
14 2014 with over a quarter of the members of Sundance withdrawing and approximately 145
15 new members added since 2014. Sundance has advised that it distributed the fictional profits
16 of \$88,402.33 to its members in 2014 and the majority of the current members of Sundance
17 did not receive any funds from Sundance's investment with DenSco.

18 9. Sundance has entered into a written settlement agreement ("Settlement
19 Agreement") with the Receiver to resolve the Receiver's claims against Sundance relating to
20 its investment into DenSco. A copy of the Settlement Agreement is attached as Exhibit "A".
21 Pursuant to the terms of the Settlement Agreement, Sundance shall pay to the Receiver the

1 total sum of \$50,000.00 (“Settlement Funds”) representing approximately 57% of the
2 \$88,402.33 which Sundance received as an alleged “profit” or as “interest” from the
3 operations of the DenSco Ponzi Scheme. Sundance shall pay the Settlement Funds by
4 making five (5) consecutive monthly payments of \$10,000.00 directly to the Receiver, via
5 certified funds, commencing on the 10th day of the month, and beginning on the month after
6 the Settlement Agreement is approved.

7 **II. RECEIVER RECOMMENDS THE COURT APPROVE THE SETTLEMENT**

8 10. The Receiver recommends that the Court approve the settlement with
9 Sundance. The Receiver is confident that if it were necessary to litigate fraudulent transfer
10 claims against Sundance, the Receiver would prevail, however, the Receiver is aware that to
11 prevail in this type of litigation would require the Receiver to incur significant legal fees, as
12 the issues would likely need to be resolved by motions for summary judgment. This
13 protracted litigation would cause the Receivership Estate to expend its financial resources and
14 even if the Receiver were successful in obtaining judgments against Sundance, it is expected
15 that collection efforts against Sundance would cost the Receivership Estate additional
16 financial resources. Specifically, Sundance has represented that the Ponzi proceeds of
17 \$88,402.33 which was paid to Sundance in 2014 were distributed to Sundance’s members in
18 2014. Accordingly, while the Receiver is aware that tracing fictions are available to seek to
19 recover these funds from the former members of Sundance, it would be extremely time
20 consuming and expensive to do so. Accordingly, the Receiver believes that it is in the best
21 interest of the Receivership Estate and the investors of DenSco to resolve the claims against

1 Sundance and recover a total of \$50,000.00 for the DenSco Receivership Estate without
2 incurring additional legal and other professional fees, in litigation and recovery efforts.

3 WHEREFORE, the Receiver respectfully requests that the Court enter an order
4 approving the Settlement Agreement between the Receiver and Sundance as lodged herewith.

5 Respectfully submitted this 8th day of December, 2017.

6 GUTTILLA MURPHY ANDERSON, P.C.

7 /s/ Ryan W. Anderson
8 Ryan W. Anderson
9 Attorneys for the Receiver

10 2359-001(307412)

11
12
13
14
15
16
17
18
19
20
21

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 Sundance Debt Partners, LLC ("Sundance") 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 determined from a comprehensive review of the books and records of DenSco that on December 31, 2012, DenSco was insolvent. The Receiver has determined that at the end of 2012, DenSco did not have sufficient financial resources to pay DenSco's obligations to its current investors. However, despite being insolvent, DenSco continued to raise new money and utilized 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 asserted that Sundance was an investor in DenSco who between January 30, 2014 and April 1, 2014, made an unsecured investment in DenSco in the principal amount of \$2,500,000.00;

Whereas by July 30, 2014, DenSco had repaid Sundance its entire principal investment of \$2,500,000.00 and paid Sundance an additional \$88,402.33 representing an alleged "profit" or accrued "interest" from Sundance's investment in DenSco;

Whereas other investors in the DenSco Ponzi Scheme were not as fortunate as Sundance, the Receiver has determined that as of the date of the establishment of the Receivership, other DenSco investors were collectively owed \$31,446,001.79.

Whereas Sundance had no involvement in the operations of DenSco, had no knowledge of the DenSco Ponzi Scheme and was nothing more than a passive DenSco investor who was repaid his entire principal investment and interest payments by DenSco

Whereas Sundance is a limited liability company whose membership has changed significantly since July of 2014. Moreover, Sundance has represented that it distributed the proceeds that it received from DenSco to its members long ago and that many of those members have since withdrawn from the partnership; 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 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. Sundance shall pay to the Receiver the total sum of \$50,000.00 (“Settlement Funds”) representing approximately 57% of the \$88,402.33 which Sundance received as an alleged “profit” or as “interest” from the operations of the DenSco Ponzi Scheme. Sundance shall pay the Settlement Funds by making five (5) consecutive monthly payments of \$10,000.00 commencing on the 10th day of the month, and beginning in the month after the Settlement Agreement is approved as set forth below. The Settlement Funds shall be 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 Agreement shall not become effective until and unless so approved.

3. 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 Sundance and its 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 Receivership Action.

4. Sundance 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 or nature arising out of the DenSco Ponzi Scheme, including without limitation any claims that were made or could have been made in the Receivership Action.

5. 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.

6. 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.

7. 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.

8. 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.

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

10. 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.

11. 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.

12. 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.

13. 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.

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

[SIGNATURES ON THE FOLLOWING PAGE]

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

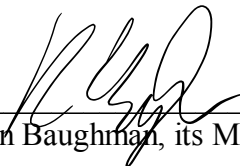
Dated: 11/27/17



Peter S. Davis, as Receiver in CV2016-014142

SUNDANCE DEBT PARTNERS, LLC

Dated: 11/27/17



Ryan Baughman, its Managing Director