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4 Attorneys for the Receiver

5 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
6 IN AND FOR MARICOPA COUNTY

7	ARIZONA CORPORATION)	Cause No. CV2016-014142
8	COMMISSION,)	
	Plaintiff,)	PETITION NO. 96
9	v.)	PETITION FOR ORDER APPROVING
10	DENSCO INVESTMENT)	SETTLEMENT AGREEMENT
	CORPORATION, an Arizona)	BETWEEN THE RECEIVER AND THE
11	corporation,)	SMITH DEFENDANTS
	Defendant.)	(Assigned to the Honorable John Hannah)
12)	
13)	
14)	

15 Peter S. Davis, as the court appointed Receiver, respectfully petitions the Court as
16 follows:

- 17 1. On August 18, 2016, this Court entered its *Order Appointing Receiver*, which
- 18 appointed Peter S. Davis as Receiver of DenSco Investment Corporation (“Receivership
- 19 Order”).
- 20 2. The Receivership Order empowers the Receiver to investigate, and if necessary,
- 21 litigate claims of DenSco Investment Corporation (“DenSco”).

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

16 5. The Receiver has conducted an analysis of all DenSco investors who were
17 fortunate to have recovered their entire principal investment from DenSco after December
18 2012 and before DenSco’s collapse in 2016. Three of the investors who received a return of
19 both their entire principal investment and a fictitious profit are Four Futures Corporation
20 (“Four Futures”), Carsyn P. Smith Trust (“Carsyn Smith Trust”), and McKenna Marie Smith
21

1 Trust (McKenna Smith Trust”). These entities were beneficially owned or controlled by
2 Thomas P. Smith (“Thomas Smith”) and Deanna Smith (“Deanna Smith”).

3 6. On December 27, 2019, the Receiver filed suit against Four Futures, Carsyn
4 Smith Trust, McKenna Smith Trust, Thomas Smith, and Deanna Smith (collectively referred
5 to hereafter as the “Smith Defendants”) in the Arizona Superior Court for Maricopa County,
6 titled *Davis v. Smith, et al.*, cause number CV 2019-057398 (“Smith Action”), in which the
7 Receiver sought to recover “fictitious profits” received by the defendants from DenSco after
8 December 31, 2012. In the Smith Action the Receiver sought to recover, among other things,
9 fictitious profits totaling \$1,336,644.38.

10 7. Shortly after filing the Smith Action, counsel for the Smith Defendants
11 contacted counsel for the Receiver and agreed to have his clients waive service of process and
12 the parties entered into settlement negotiations. On January 21, 2020, counsel for the Smith
13 Defendants filed a Notice of Appearance.

14 8. Since 2018 the Smith Defendants have maintained that they do not have the
15 financial resources to satisfy the claims of the Receiver. Accordingly, the Receiver requested
16 and was provided under a confidentiality agreement financial statements under oath for the
17 Smith Defendants and various supporting documentation, including copies of federal tax
18 returns for the years 2014 through 2018. As a result of the financial information provided,
19 the Receiver has determined that although litigating to judgment the claims asserted against
20 the Smith Defendants would be successful, the likelihood of collecting a significant portion of
21 the judgment would be doubtful.

1 9. Accordingly, the Receiver determined that it is in the best interest of the
2 receivership estate to settle the Receiver’s claims against the Smith Defendants for an amount
3 that was commensurate with the Defendants ability to pay. A copy of the Settlement
4 Agreement that was reached as a result of the negotiations is attached hereto as **Exhibit “A”**.

5 10. Based on extensive financial information provided under a confidentiality
6 agreement to the Receiver by the Smith Defendants under oath, the Receiver has determined
7 that the defendants do not have the financial resources to satisfy a judgment for the full
8 amount of the liability claimed by the Receiver. In addition, any judgment that might be
9 obtained by the Receiver would be dischargeable in bankruptcy. Accordingly, in recognition
10 of these facts and in order to minimize further litigation expenses and avoid the inherent
11 litigation risks associated with the Smith Action, the Receiver has agreed to accept \$100,000
12 in full satisfaction of the Receiver’s claims in the Smith Action. *See* the Settlement
13 Agreement attached as **Exhibit “A”**.

14 11. Under the terms of the Settlement Agreement, the Smith Defendants agree to
15 settle the Receiver’s claims for \$260,000.00; provided that if the defendants make the
16 scheduled payments to the Receiver totaling \$100,000 over a period of approximately 3.5
17 years, the Receiver will release the defendants from the balance due under the Settlement
18 Agreement. This structure is designed to provide a financial incentive for the Smith
19 Defendants to timely make the scheduled payments to the Receiver as set forth in the
20 Settlement Agreement. Specifically, the Smith Defendants are required to make an initial
21

1 cash payment of \$5,000.00¹, a second payment on or before August 3, 2020 of \$45,000.00,
2 and monthly payments starting on August 18, 2020. In 2020 the required monthly payments
3 are \$500.00 per month, increasing to \$1,000.00 per month in 2021 and to \$1,500.00 per
4 month in 2022 and 2023. If the Smith Defendants fail to comply with these terms and timely
5 cure their default, the Receiver will be able to pursue collection of the unpaid portion of the
6 settlement amount of \$260,000, together with default interest at the rate of 8% per annum.
7 As security for the obligation the Smiths have turned over to the Receiver a luxury watch (the
8 only significant tangible asset of the defendants).

9 12. For all the foregoing reasons, the Receiver is of the opinion that the Settlement
10 Agreement attached as **Exhibit “A”** is in the best interests of the receivership estate and
11 should be approved by the Court.

12 WHEREFORE, the Receiver respectfully requests that the Court enter an order:

- 13 1. Approving the Settlement Agreement attached as **Exhibit “A”**;
- 14 2. Granting such further relief as the Court deems appropriate.

15 Respectfully submitted this 10th day of July, 2020.

16 GUTTILLA MURPHY ANDERSON, P.C.

17 /s/Patrick M. Murphy
18 Patrick M. Murphy
Attorneys for the Receiver

19
20 2359-014.02 (396722)

21 ¹ The initial payment of \$5,000.00 was received by the Receiver on June 24, 2020.

SETTLEMENT AGREEMENT

This settlement agreement (the "Agreement") dated effective the 19th day of June, 2020, 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 Thomas P. Smith, Deanna Smith, Four Futures Corporation, Carsyn P. Smith Trust, and McKenna Marie Smith Trust (collectively referred to as the "Defendants"). 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 ("DenSco"), an Arizona corporation (herein after the ("Receivership Action"));

Whereas the Receiver has determined from a comprehensive analysis of the books and records of DenSco that, on or before December 31, 2012, DenSco became insolvent. The Receiver has determined that by not later than the end of 2012, DenSco became insolvent and lacked sufficient financial resources to pay DenSco's obligations to its investors and creditors, and after that date DenSco continued to raise new money from investors using 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 a Ponzi investment scheme. ("DenSco Ponzi Scheme");

Whereas the Receiver has filed suit against the Defendants in the Arizona Superior Court for Maricopa County, titled *Davis v. Smith, et al.*, cause number CV 2019-057398 ("Smith Action"), in which the Receiver seeks to recover "fictitious profits" and other amounts received by the Defendants from DenSco after December 31, 2012;

Whereas the Defendants assert that they had no involvement in the management or operation of DenSco and had no knowledge of the DenSco Ponzi Scheme;

Whereas as part of ongoing settlement negotiations between the Parties, commencing February 18, 2020, the Defendants provided to the Receiver under an agreement of confidentiality certain sworn financial information concerning the Defendants, including personal financial statements, tax returns, financial documents and explanations thereof ("Financial Information"); 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 against the Defendants 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. The Defendants agree to pay to the Receiver the sum of \$260,000.00 (“Settlement Amount”) as provided herein in full satisfaction of all claims by the Receiver against the Defendants arising out of the DenSco Ponzi Scheme.

2. Within thirty (30) days following the date of this Agreement the Defendants shall deliver to the Receiver:

a. The sum of \$5,000.00 as the initial payment (“Initial Payment”) of the Settlement Amount required herein. The Initial Payment to the Receiver shall be in the form of a certified check made payable to “Peter S. Davis, Receiver” and delivered to counsel for the Receiver.

b. Possession of the Patek Philippe watch identified in the Financial Information as an asset owned by Defendant Thomas P. Smith (“Watch”).

c. Such documents as are reasonably required by the Receiver to grant the Receiver a security interest in the Watch for the purpose of securing in favor of the Receiver the performance of all the obligations of Defendants under this Agreement.

3. It is understood and agreed that if the Financial Information provided to the Receiver contains material false statements or omissions of material facts the Receiver may elect in his sole discretion to terminate this Agreement and proceed with the prosecution of the Smith Action, or if the Smith Action has been dismissed, reinstitute the action in which case any applicable statute of limitation shall be deemed to have been tolled from the date the Smith Action was filed through the date of reinstating the action.

4. Within ten (10) days after receipt of the Initial Payment, 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.

5. Within forty-five (45) days of the date of this Agreement the Defendants shall pay to the Receiver \$45,000.00.

6. On the sixtieth (60th) day following the date of this Agreement and on the same day of each month thereafter, Defendants shall pay to the Receiver the following amounts:

a. For each month in 2020, the amount of \$500.00 per month;

b. For each month in 2021, the amount of \$1,000.00 per month; and

c. For each month commencing on January 1, 2022, the amount of \$1,500.00 per month until the Settlement Amount has been paid in full.

7. In the event the Receiver receives a total of \$100,000.00 from timely payments by the Defendants in accordance with the foregoing provisions of this Agreement, the Receiver shall execute a waiver of the balance of the Settlement Amount and return the Watch to the Defendants.

8. In the event the Defendants fail to make any payment required herein on or before the date such payment is due, the Receiver may provide a written notice of default to the Defendants as provided below. The Defendants shall have thirty (30) days to cure such default and in the event they fail to cure such default, the Receiver shall be entitled to default interest at the rate of 8% per annum from the date of the default, may proceed to liquidate the Watch, and

may proceed to file suit to obtain judgment for the Settlement Amount together with default interest less any payments received from the Defendants.

9. Upon payment in full of the Settlement Amount, the Receiver, on his own behalf and on behalf of his attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, releases and forever discharges the Defendants and their 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 Smith Action.

10. Upon payment in full of the Settlement Amount, the Defendants, on their own behalf and on behalf of their attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, release and forever discharge 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 Smith Action or the Receivership Action.

11. Within ten (10) days following the approval of this Agreement by the Receivership Court, the Parties shall execute and file with the court in the Smith Action a stipulation to dismiss the Smith Action without prejudice.

12. Any notice required or permitted to be given under this Agreement shall be sent to the Parties and their respective legal counsel at the following addresses by first class mail and by email:

To the Receiver:

Peter S. Davis, Receiver
Simon Consulting, LLC
3101 North Central Avenue, Suite 670
Phoenix, Arizona 85012
Email: pdavis@simonconsulting.net

Guttilla Murphy Anderson, PC
c/o Patrick M. Murphy
5415 E. High Street, Suite 200
Phoenix, Arizona 85054
Email: pmurphy@gamlaw.com

To the Defendants:

Thomas and Deanna Smith
10115 E. Paradise Drive
Scottsdale, Arizona 85260
Email: tpsmith99@me.com

Polsinelli PC
c/o Paul J. Roshka, Jr.
One East Washington, Suite 1200
Phoenix, Arizona 85004
Email: proshka@polsinelli.com

13. 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.

14. 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.

15. 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.

16. 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.

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

18. 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.

19. 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.

20. 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.

21. 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.

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

PETER S. DAVIS, as Receiver of DenSco
Investment Corporation

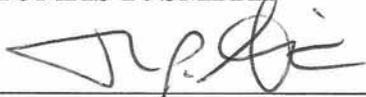
Dated: June 19, 2020



Peter S. Davis, Receiver

THOMAS P. SMITH

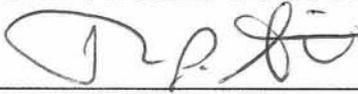
Dated: June 19, 2020



Thomas P. Smith, individually

FOUR FUTURES CORPORATION

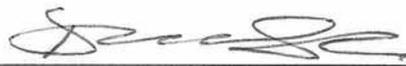
Dated: June 19, 2020



Thomas P. Smith, President

DEANNA SMITH

Dated: 6/19/2020



Deanna Smith, individually

CARSYN P. SMITH TRUST

Dated: 6/19/2020



Deanna Smith, Trustee

[Signatures continued on the next page]

MCKENNA MARIE SMITH TRUST

Dated: 6/19/2020



Deanna Smith, Trustee

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