

**GUTTILLA MURPHY ANDERSON**

**Ryan W. Anderson** (Ariz. No. 020974)

5415 E. High St., Suite 200

Phoenix, Arizona 85054

Email: randerson@gamlaw.com

Phone: (480) 304-8300

Fax: (480) 304-8301

Attorneys for the Receiver

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR MARICOPA COUNTY

ARIZONA CORPORATION  
COMMISSION,

Plaintiff,

v.

DENSCO INVESTMENT  
CORPORATION, an Arizona corporation,  
Defendant.

Cause No. CV2016-014142

PETITION NO.147

PETITION FOR ORDER APPROVING  
SETTLEMENT AGREEMENT  
BETWEEN RECEIVER, JPMORGAN  
CHASE BANK NATIONAL  
ASSOCIATION, SAMANTHA AND  
KRISTOFER NELSON, VIKRAM  
DADLANI AND ROBYN HOWARD

(Assigned to the Honorable John Hanna)

Peter S. Davis, as the court appointed Receiver of DenSco Investment Corporation, respectfully petitions the Court for an Order approving a settlement agreement between the Receiver, JPMorgan Chase Bank, N.A. ("Chase Bank"), Samantha and Kristofer Nelson ("Nelson"), Vikram Dadlani and Robyn Howard ("Dadlani") (collectively, the "Chase Bank Defendants"), as follows:

## I. Background

1. On August 18, 2016, this Court entered its *Order Appointing Receiver*, which appointed Peter S. Davis as Receiver of DenSco Investment Corporation (“DenSco”). DenSco is an Arizona Corporation formed by Denny J. Chittick in April of 2001.

2. The Receiver initially determined that DenSco held significant claims against financial institutions including Chase Bank and U.S. Bank N.A. (“U.S. Bank”) for their participation in a scheme to defraud DenSco. Specifically, the Receiver determined that Chase Bank and U.S. Bank were instrumental in allowing Yomtov Scott Menaged (“Menaged”) to operate a massive fraudulent loan scheme upon DenSco. The Receiver learned that starting in January 2014, as part of DenSco’s underwriting requirements, Menaged was required to provide DenSco with a copy of each specific cashier’s check, issued by Menaged’s financial institution, to the respective foreclosure trustee for the purchase of a property by Menaged at a foreclosure trustee’s auction/sale. The Receiver’s investigation determined that Menaged was able to procure at least 1,383 legitimate cashier’s checks from Chase Bank and U.S. Bank in a period of two years for a collective face value of at least \$319,292,828.

3. However, the cashier’s checks from Chase Bank and U.S. Bank were used by Menaged to make it appear that Menaged was using DenSco loan proceeds to purchase property from a foreclosure trustee, when in fact, Menaged obtained the cashier’s check for the sole purpose of photographing the cashier’s check. Moreover, the Receiver learned that after Menaged took a picture of the cashier’s check to send to DenSco, Menaged returned the cashier’s check to Chase Bank and U.S. Bank to be cancelled and the funds redeposited,

1 typically minutes after the cashier's check was issued. The sheer volume of issued and then  
2 immediately cancelled and redeposited cashier's checks was staggering.

3 4. On September 19, 2017, the Receiver filed *Petition No. 36* seeking approval of  
4 the engagement of the law firm of Bergin, Frakes, Smalley & Oberholtzer, PLLC to serve as  
5 Special Counsel to the Receiver to investigate DenSco's potential claims against Chase Bank  
6 and U.S. Bank. On October 18, 2017, the Court approved the engagement of Bergin, Frakes,  
7 Smalley & Oberholtzer, PLLC pursuant to *Order Re Petition No. 36*.

8 5. On August 28, 2019, the Receiver filed Petition No. 80, an ex-parte petition  
9 seeking approval to file a civil complaint against U.S. Bank., Hilda H. Chavez, Chase Bank,  
10 Samantha Nelson f/k/a Samantha Kumbaleck, Kristofer Nelson, and Vikram Dadlani ("Bank  
11 Litigation Defendants"). On September 17, 2019, the Court, approved the filing of a complaint  
12 against the Bank Litigation Defendants pursuant to *Order Re Petition No. 80*.

13 6. Accordingly, the Receiver caused a Complaint to be filed in the Maricopa County  
14 Superior Court against the Bank Litigation Defendants in the Superior Court of the State of  
15 Arizona for the County of Maricopa, captioned *Peter S. Davis, as Receiver of DenSco*  
16 *Investment Corporation v. U.S. Bank, N.A., et al.*, Case No. CV2019-011499 (the "Lawsuit").

17 7. Thereafter, the Receiver determined that the prosecution of the Lawsuit would  
18 benefit from the expertise of the lawyers (and other professionals) at Osborn Maledon, P.A.,  
19 who have significant experience in the area of civil litigation and previously served as the  
20 Receiver's Special Counsel in the DenSco receivership. The Receiver then determined that  
21

1 Osborn Maledon, P.A. should substitute for Bergin Frakes Smalley & Oberholtzer, PLLC as  
2 his counsel in the Lawsuit and prosecute the Lawsuit to conclusion.

3 8. On October 21, 2020, the Receiver filed *Petition No. 102* seeking approval of the  
4 engagement of the law firm of Osborn Maledon, P.A. (“Special Counsel”) as his counsel in the  
5 Lawsuit and to prosecute the Lawsuit to conclusion. On December 4, 2020, the Court approved  
6 the engagement of Special Counsel pursuant to *Order Re Petition No. 102*.

## 7 **II. DenSco Claims against Chase Bank Defendants**

8 9. The Receiver alleged in his Third Amended Complaint that the Chase Bank  
9 Defendants committed a series of wrongful acts. Specifically, the Receiver alleged that the  
10 Chase Bank Defendants, with knowledge that DenSco had wire-transferred funds to a Chase  
11 Bank account for Arizona Home Foreclosures, LLC (“AHF”) that were intended to be used by  
12 AHF to acquire specific properties, assisted Menaged in defrauding DenSco by: (i) providing  
13 Menaged with hundreds of cashier’s checks payable to foreclosure trustees with references to  
14 DenSco and specific property addresses; (ii) observing Menaged photograph the checks as  
15 confirmation that they had been issued; (iii) receiving the checks from Menaged, often within  
16 a few minutes, for return because they had not been used for their intended purpose; and (iv)  
17 assisting Menaged in redepositing the funds into AHF’s account.

18 10. In his Third Amended Complaint, the Receiver sought an award of compensatory  
19 damages against the Chase Bank Defendants for aiding and abetting fraud and against Nelson  
20 and Dadlani for civil racketeering.

11. The Chase Bank Defendants vigorously refuted the allegations made by the Receiver in his Third Amended Complaint and denied any wrongdoing.

## II. Recent Developments and Settlement

12. On November 20, 2023, the Maricopa County Superior Court in *Davis vs US Bank et al (CV-2019-011499)* issued its *Under Advisement Ruling on Motions for Summary Judgment*, which granted Summary Judgment to the Chase Bank Defendants on all of DenSco's claims. Additionally, the Court in *Davis vs US Bank et al (CV-2019-011499)* directed the Chase Bank Defendants to file an application for attorney fees and costs on or before December 12, 2023.

13. On December 12, 2023, the Chase Bank Defendants filed an application for attorney fees and costs, requesting an award of \$1,338,232.19 in attorney fees and \$30,731.82 in costs in *Davis vs US Bank et al (CV-2019-011499)*.

14. On or about February 8, 2024, the Chase Bank Defendants and the Receiver entered into a Settlement Agreement to resolve all claims between the Receiver and the Chase Bank Defendants. A copy of the Settlement Agreement is attached hereto as Exhibit "A".

15. Under the terms of the Settlement Agreement, the Receiver and the Chase Bank Defendants agree to resolve all issues in *Davis vs US Bank et al (CV-2019-011499)* and to mutually release any and all claims between and among each other. Upon approval of the Settlement Agreement, *Davis vs US Bank et al (CV-2019-011499)* will be dismissed with prejudice. Importantly, under the terms of the Settlement Agreement, the Chase Bank

1 Defendants have agreed to waive all attorney fees and costs. Therefore, the litigation will be  
2 resolved without payment of any attorney fees or costs to the Chase Bank Defendants.

3       16. The Receiver recommends that the Court approve the Settlement Agreement with  
4 the Chase Bank Defendants for a series of reasons. First, while the Receiver disagrees with the  
5 adverse ruling in *Davis vs US Bank et al (CV-2019-011499)* and contends the ruling raises a  
6 series of potential issues upon appeal, continuing the litigation against the Chase Bank  
7 Defendants is unpredictable. Second, this compromise will end the last litigation matter in the  
8 Receivership, allowing the Receiver to focus on terminating the Receivership and making final  
9 distributions to the DenSco victims. Third, although the Receiver's Special Counsel agreed to  
10 prosecute this matter on a contingency, there are substantial costs associated with advancing  
11 an appeal. Fourth, the Chase Bank Defendants sought an award of \$1,338,232.19 in attorney  
12 fees and \$30,731.82 in costs, which if approved and paid, would have greatly diminished the  
13 available funds to pay to the DenSco victims. This compromise eliminates the Chase Bank  
14 Defendants' request for attorney fees and costs and ends the Receiver's use of Receivership  
15 assets to advance his claims. Accordingly, the Receiver believes this compromise is in the  
16 best interest of the DenSco Receivership Estate.

17       WHEREFORE, the Receiver respectfully requests that the Court enter an order  
18 approving the Settlement Agreement between the Receiver and the Chase Bank Defendants.

19 ///

20 ///

Respectfully submitted this 16<sup>th</sup> day of February, 2024.

GUTTILLA MURPHY ANDERSON, P.C.

/s/ Ryan W. Anderson

Ryan W. Anderson

Attorneys for the Receiver

P2359-001(291942)