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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. 3

PETITION TO APPROVE RECEIVER'S
PRELIMINARY REPORT AND
RECOMMENDATIONS

(Assigned to the Honorable Lori Horn
Bustamante)

Peter S. Davis, as the court appointed Receiver, respectfully petitions the Court for an Order approving the Preliminary Report of Peter S. Davis, as Receiver of DenSco Investment Corporation and recommendation of the Receiver to not file a bankruptcy of DenSco Investment Corporation as follows:

1. On August 18, 2016, this Court entered its *Order Appointing Receiver* ("Receivership Order"), which appointed Peter S. Davis as Receiver of DenSco Investment Corporation ("DenSco").

2. The Receivership Order directs the Receiver to file with this Court, within 30 days after entry of this Order, a preliminary report setting out the identity, location and value

1 of the Receivership Assets, and any liabilities pertaining thereto. Further, at the time the
2 Receiver makes such report, he is directed to recommend to the Court whether, in his opinion
3 and based on his initial investigation, claims against DenSco, should be adjudicated in a
4 bankruptcy Court.

5 3. Pursuant to the Receivership Order, after providing the parties an opportunity to
6 be heard, this Court will determine whether to accept the Receiver recommendations and, if
7 appropriate, issue an order authorizing the Receiver to commence a bankruptcy proceeding.

8 4. Attached hereto as Exhibit "A" is the *Preliminary Report of Peter S. Davis, as*
9 *Receiver of DenSco Investment Corporation* ("Receiver's Report").

10 5. Since his appointment, the Receiver or his counsel, has met with numerous
11 parties in an effort to familiarize himself with the relevant facts and to identify Receivership
12 Assets and Receivership Records of DenSco in order to secure those assets and records, and
13 where possible to take possession and control of same.

14 6. As set forth in more detail in the Receiver's Report, upon being appointed as
15 Receiver, DenSco had assets with a purported value of \$50,843,908.00. These assets
16 primarily consisted of cash of \$1,380,654.00 and \$49,463,254.00 in a portfolio of purported
17 real estate loans. The DenSco records indicated that there were a total of 138 loans with 91
18 loans to a single borrower, Yomtov Scott Menaged. As of September 19, 2016, the
19 Receivership assets consisted of cash of \$3,892,270.00 and \$47,536,191.00 in a portfolio of
20 purported real estate loans.
21

1 7. Based on the information located in DenSco's records, DenSco's liabilities as
2 of August 18, 2016, or the inception of the Receivership, consist of investor payables totaling
3 \$51,867,387.00. The Receiver has not yet verified this amount.

4 8. As set forth in more detail in the Receiver's Report, the Receiver has taken
5 custody of approximately 65 storage boxes of documents, but they do not contain standard
6 books of original entry and similar accounting records reflecting the financial transactions of
7 DenSco. However, the Receiver has located certain electronic records, including DenSco's
8 QuickBooks data, which will be critical to the Receiver's ongoing investigation into DenSco.
9 The Receiver's review and initial analysis of these DenSco records is ongoing. However the
10 Receiver anticipates that it will be necessary to subpoena records from various banks in order
11 to reconstruct the financial transactions of the DenSco.

12 9. As set forth in more detail in the Receiver's Report, the Receiver recommends
13 against filing petitions in bankruptcy for DenSco at this time. The reasons for this
14 recommendation include the lack of significant potential preferences, i.e. transfers made prior
15 to a bankruptcy filing to a creditor by a debtor to the exclusion or detriment of its other
16 creditors; the absence of the need to reorganize DenSco; and the concern that certain legal
17 defenses, only applicable to a bankruptcy trustee would significantly alter the ability of the a
18 bankruptcy Trustee to recover funds for the investors of DenSco.

19 WHEREFORE, the Receiver respectfully requests that the Court enter an order:
20
21

1. Approving the Preliminary Report of Peter S. Davis, as Receiver of DenSco
Investment Corporation; and

1 2. Continuing the Court’s previous injunction enjoining all persons from
2 commencing any proceeding under the United States Bankruptcy Code for DenSco
3 Investment Corporation.

4 Respectfully submitted this 19th day of September, 2016.

6 Guttilla Murphy Anderson

7 /s/Ryan W. Anderson

8 Ryan W. Anderson

9 Attorneys for Receiver

10 2359-001(259257)



Arizona Corporation Commission
v.
DenSco Investment Corporation
(Case No. CV 2016-014142)

Preliminary Report
of
Peter S. Davis, as Receiver of DenSco Investment Corporation

September 19, 2016

TABLE OF CONTENTS

1. Background and Appointment of the Receiver	1
2. Receivership Activities	2
2.1. Recovery of DenSco Records	2
2.2. Receivership Assets	3
2.2.1. Administration of DenSco Loan Portfolio	3
2.2.2. Menaged Bankruptcy	5
2.2.3. Menaged Forbearance Agreement/Receivership of Furniture King	5
2.3. Receivership Liabilities	6
2.3.1. Investor Communications	6
3. Receivership Accounting	7
3.1. Collections to Date.....	8
3.1.1. Funds Collected from Pre-Receivership Account at FirstBank	8
3.1.2. Cash Collected from the Chittick Estate	8
3.1.3. Loan Proceeds	9
3.2. Disbursements to Date	9
4. Analyses Completed to Date.....	10
4.1. Analysis of Chittick's DenSco Investment	10
4.2. Preliminary Analysis of Pre-Receivership Bank Account Activity.....	11
4.2.1. The 90-Day Window.....	11
4.2.2. The Insider Window	12
5. Receiver's Recommendation Regarding Bankruptcy	12

LIST OF EXHIBITS

Exhibit 1 Outstanding Loans as of August 18, 2016

1. Background and Appointment of the Receiver

DenSco Investment Corporation (“DenSco”) is an Arizona corporation formed by Denny Chittick (“Chittick”) in April 2001.¹ Since at least 2009, DenSco was engaged primarily in funding the purchase of real estate secured by deeds of trust using money raised from investors.² DenSco issued Confidential Private Offering Memoranda (“POM”) to investors before or at the time of their investments.³ DenSco represented to investors that DenSco would maintain a maximum loan-to-value ratio (“LTV”) of 70%, and that all loans would be secured by first position deeds of trust.⁴

Chittick passed away on July 28, 2016. The Estate of Denny J. Chittick (“Estate of Chittick”) is represented by attorney James Polese (“Polese”) of Gammage & Burnham, PLC. Prior to the appointment of the Receiver, DenSco was represented by attorney David Beauchamp (“Beauchamp”) of Clark Hill, PLC. Prior to his death, Chittick prepared a letter to Robert Koehler (“Koehler”) containing detailed instructions for servicing the DenSco loans. Chittick’s letter instructed Koehler to contact Beauchamp, who previously served as DenSco’s attorney, for assistance as needed.

On August 17, 2016, the Arizona Corporation Commission (“ACC”) filed a Verified Complaint (“Complaint”) alleging that DenSco had violated various Arizona securities laws. Despite DenSco’s representations to investors, certain borrowers received loans at or exceeding 100% LTV.⁵ In addition, in or before 2013, DenSco began providing investor funds to a particular borrower without obtaining a first position deed of trust on the underlying real property.⁶

In its Complaint, the ACC requested that the Court (1) appoint a Receiver to marshal and preserve DenSco’s assets for the benefit of DenSco’s investors; and (2) issue a preliminary injunction restraining DenSco from removing, encumbering, or otherwise disposing of its assets.⁷

On August 18, 2016, Peter Davis (“Receiver”) was appointed Receiver for the assets of DenSco by the Honorable Lori Horn Bustamante of the Maricopa County Superior Court.

Pursuant to the Order Appointing Receiver (“Receivership Order”), the Receiver obtained a bond in the amount of \$100,000, which was filed with the Court on August 19, 2016. On the same date, Guttilla Murphy Anderson, PC (“GMA”) filed a Notice of Appearance as counsel for the Receiver.

¹ Arizona Corporation Commission report for file no. 09874884.

² CV 2016-014142; Verified Complaint; page 2, paragraph 6.

³ CV 2016-014142; Verified Complaint; page 2, paragraph 7.

⁴ CV 2016-014142; Verified Complaint; page 2, paragraphs 8-10.

⁵ CV 2016-014142; Verified Complaint; page 2, paragraph 11.

⁶ CV 2016-014142; Verified Complaint; page 3, paragraph 12.

⁷ CV 2016-014142; Verified Complaint; pages 5-6, paragraphs 1-2.

Among other things, the Receivership Order directed the Receiver to take exclusive control, possession, and custody of all Receivership Assets (as defined therein);⁸ receive and collect any and all sums due or owing to DenSco;⁹ liquidate Receivership Assets; and engage professionals to assist the Receiver in carrying out his duties and obligations.¹⁰

On September 2, 2016, the Court entered an order approving Receiver's Petition No. 1, which established the Receiver's billing rate, authorized the engagement of the Receiver's firm, Simon Consulting, LLC, to provide professional support services to the Receiver, and appointed GMA as general legal counsel to the Receiver.¹¹

On September 2, 2016, the Court entered an Order approving Receiver's Petition No. 2, which clarified important procedural and administrative aspects of the DenSco receivership proceeding. Among other things, Order re: Petition No. 2 established that relief in the Court relating to the administration of the Receivership would come in the form of pleadings called "Petitions"; Each petition shall be consecutively numbered; Clarified that the receivership case would remain on the active calendar until terminated by order of the Receivership Court; Established procedures for service and for the maintenance and use of service lists regarding the receivership; Authorized the filing of *ex parte* petitions by the Receiver for certain limited matters; Established an interim claims procedure for persons who wish to assert a claim against the receivership estate; Authorized the Receiver's use of discovery to obtain information concerning the Receivership's assets or causes of action; and established a procedure for filing petitions for the payment of the Receiver's fees and the fees of all professionals engaged by the Receiver.

2. Receivership Activities

2.1. Recovery of DenSco Records

The Receivership Order directed all persons to promptly surrender to the Receiver all books and records pertaining or belonging to DenSco.¹² After Chittick's death, but before the appointment of the Receiver, representatives of the Chittick Estate removed sixty-five (65) boxes of DenSco records from Chittick's home. Upon the establishment of the Receivership, the DenSco records were located in three distinct locations. As of the date of this report, the Receiver has possession of all sixty-five (65) boxes of records, including four (4) boxes recovered from the ACC, thirteen (13) boxes recovered from Beauchamp, and forty-eight (48) boxes recovered from the Chittick Estate. In addition the Chittick Estate has produced to the Receiver numerous selected electronic records extracted from Chittick's laptop computer, including DenSco's QuickBooks data, Chittick's daily logs, loan documents, and other items. The Receiver's initial analysis of these DenSco records is ongoing.

⁸ CV 2016-014142; Order Appointing Receiver; pages 1-2, paragraphs 1-2.

⁹ CV 2016-014142; Order Appointing Receiver; page 6, paragraph 17.

¹⁰ CV 2016-014142; Order Appointing Receiver; page 6, paragraph 18.

¹¹ CV 2016-014142; Order Re: Petition No. 1.

¹² CV 2016-014142; Order Appointing Receiver; page 2, paragraph 3.

2.2. Receivership Assets

Based on the information provided, DenSco's assets as of August 18, 2016, or the inception of the Receivership, and as of the date of this report are summarized as follows:

Table 1:
DenSco Receivership Assets¹³

Asset	As of Aug 18, 2016			As of Sep 19, 2016		
	No. of Loans	Book Value	% of Loans	No. of Loans	Book Value	% of Loans
Cash in Bank		\$ 1,380,654			\$ 3,892,270	
Portfolio of Loans						
Yomtov Scott Menaged, et al. - 91 Loans	91	43,947,820	89%	91	43,947,820	92%
Other Borrowers - 47 Loans	47	5,515,434	11%	35	3,588,371	8%
Total Loans	138	49,463,254	100%	126	47,536,191	100%
Total Assets		\$ 50,843,908			\$ 51,428,461	

As summarized above and discussed in detail in **Section 3.1.3** below, twelve (12) loans have been paid off since the inception of the receivership.

See **Exhibit 1** for a detailed list of the loans referenced in **Table 1** above. As shown above, approximately 92% of DenSco's current loans receivable are due from a single borrower, Yomtov Scott Menaged ("Menaged") or his related companies. For the purposes of this analysis, the Menaged loans include eighty-seven (87) loans to Arizona Home Foreclosures, LLC ("AHF"), two (2) loans to Easy Investments, LLC ("Easy"), one (1) loan to Menaged's mother, Michelle Menaged, and one (1) loan to Menaged's brother, Jess Menaged. According to public records, Menaged is the sole member and manager of AHF and Easy.¹⁴

2.2.1. Administration of DenSco Loan Portfolio

DenSco's primary business was as a "hard money lender" funding the purchase of real estate secured by deeds of trust.

Upon the establishment of the Receivership, DenSco appeared to have a portfolio of loans. Upon the establishment of the Receivership, the Receiver learned that prior to his death, Chittick prepared a letter to Koehler containing detailed instructions for servicing the DenSco loans and a spreadsheet listing the DenSco loans with information regarding the status of each loan. Chittick's letter instructed Koehler to contact Beauchamp, who previously served as DenSco's attorney, for assistance as needed.

¹³ The Receivership records referenced 139 loans totaling \$49,572,254; however, Chittick had previously issued a payoff statement for Loan 8115, the proceeds of which were wired to DenSco's FirstBank account on 07/29/16. Accordingly, this loan is not included in **Table 1** above.

¹⁴ Arizona Corporation Commission report for file nos. L14182824 and L13962668.

In the interim period between Chittick's death and the establishment of the Receivership, Koehler and Beauchamp were facilitating certain operational aspects of DenSco's loan portfolio, including preparing and providing borrowers with payoff statements and facilitating the release and reconveyance of liens that were paid off. Apparently, Chittick prepared and retained executed releases and reconveyances in the various DenSco loan files. It appears that all proceeds payable to DenSco during the interim period before the appointment of the Receivership were deposited into DenSco's bank account.

Upon the establishment of the Receivership, the administration of the loan portfolio was transitioned to the Receiver. As set forth in more detail below, The Receiver has received numerous requests for payoff statements from various DenSco borrowers. From the inception of the receivership through the date of this report, twelve (12) loans have been paid off. The Receiver has recovered a total of \$1,952,247 in loan payoff proceeds, including \$1,927,063 in principal and \$25,183 in interest payments and fees.

Among other things, letters have been sent to all DenSco borrowers requesting that loan payments be directed to the Receiver and that requests for payoff statements be submitted to GMA. The Receiver and GMA has been working directly with borrowers who have contacted the Receiver with requests to pay off their loans to provide borrowers with timely information and payoff statements.

The Receiver has received approximately ten (10) additional requests for payoff statements, which are in progress as of the date of this report. The total principal balance of these pending payoffs is \$1,199,900.

Based on communications with several borrowers, the Receiver has concluded that Chittick was essentially servicing the DenSco loan portfolio by himself and was very relaxed with regard to enforcing the terms of the DenSco loan documents. For example, many borrowers have indicated that DenSco did not enforce the maturity date stated in the promissory note and allowed borrowers to continue to make monthly interest payments at the stated interest rate. Pursuant to the loan documents, a borrower's failure to pay the principal amount of the loan at the date of maturity constituted a default, which would increase the interest rate under the note to the default rate of 29%. However, borrowers have reported that DenSco did not declare the note in default and did not charge default interest, despite having authority to do so pursuant to the loan documents. One borrower claimed that Chittick accepted less than the stated monthly interest payment if the monthly payment was paid in cash.¹⁵ As a result of Chittick's historically lenient enforcement of the DenSco loan terms, many borrowers are surprised when they were provided with payoff statements from the Receiver that precisely follow the terms of the loan documents.

Accordingly, for any borrower who has continued to make monthly interest payments after the maturity date, the Receiver intends to not declare the loan in default as long as the interest

¹⁵ This claim appears to be correct, as hand written notations in the loan file indicate that Chittick gave a \$100.00 discount for monthly interest payments paid in cash.

payments are made. This practice will continue until further notice while the Receiver attempts to obtain a payoff of the loan or a modification of the loan establishing a new maturity date. For borrowers that stopped making the monthly interest payments following expiration of the maturity date, and in the absence of other mitigating circumstances, the Receiver intends to declare the note in default and proceed with the enforcement of DenSco's rights under the note and deed of trust. In addition, it appears that DenSco did not assess late charges (10% of the payment amount) for payments that were made after the grace period. If borrowers made the required monthly interest payments prior to the appointment of the Receiver and a late fee was not charged by DenSco, the Receiver does not intend to assess late charges for late payments. However, for any payments due prior to the appointment of the Receiver and not paid within the grace period, the Receiver will assess late charges.

2.2.2. Menaged Bankruptcy

Menaged filed personal Chapter 7 bankruptcy on April 20, 2016. Jill H. Ford was appointed as the Chapter 7 Trustee ("Trustee"). Initially, Menaged did not list DenSco as a creditor on his bankruptcy schedules, nor did he reference his ownership interests in AHF, Easy or any of the other business entities that are registered in his name.

On August 22, 2016, GMA filed a Notice of Appearance on behalf of the Receiver in Menaged's bankruptcy case, requesting written notice of all proceedings and copies of all documents and pleadings filed in the bankruptcy case. On the same date, GMA filed a motion for a Rule 2004 examination [a deposition] of Menaged and seeking a production of documents related to Menaged's business relationships with DenSco.

On August 25, 2016, Menaged filed amended bankruptcy schedules, which disclosed that DenSco was both a secured and unsecured creditor of Menaged. Specifically, Menaged disclosed that DenSco was a secured creditor as to real estate located at 1506 West Winter Drive, an unsecured creditor as to a real property located at 9555 East Raintree Drive, and an unsecured creditor in an unknown amount pursuant to what Menaged described as "Personal Guaranty on Line of Credit for Arizona Home Foreclosures; Forbearance Agreement."

Despite filing bankruptcy in April of 2016, Menaged's initial meeting of creditors did not occur until August 26, 2016. GMA attended the 341 hearing and asked Menaged a series of questions regarding his business relationship with the DenSco. The Receiver intends to conduct a deposition of Menaged to explore the issues surrounding the lending relationship between Menaged and DenSco. Currently, the Receiver's deposition of Menaged is set for September 22, 2016. However, it is expected that the deposition of Menaged will be continued and conducted at a mutually convenient date in the future.

2.2.3. Menaged Forbearance Agreement/Receivership of Furniture King

On April 16, 2014, DenSco entered into a Forbearance Agreement with AHF, Easy, Menaged, and Furniture King, LLC, in which Furniture King, LLC agreed to guarantee \$35,639,881 in

loans due from AHF and Easy. Pursuant to the Forbearance Agreement, AHF and Easy's obligations to DenSco were secured by a lien against all of Furniture King LLC's assets.¹⁶ Menaged is the sole member and manager of Furniture King, LLC.¹⁷ In addition, DenSco filed a UCC Financing Statement with the Arizona Secretary of State on May 8, 2014, documenting DenSco's interest in Furniture King, LLC's inventory and other assets.¹⁸

After conducting an investigation into the priority of DenSco's secured position as to Furniture King, LLC, the Receiver determined DenSco has a secured interest in all of Furniture King, LLC's accounts, assets, and equipment, and DenSco is in a priority position to receive the overwhelming majority of funds from the liquidation of the assets of Furniture King, LLC. Furthermore, According to the Trustee's investigation, Furniture & Electronic King, LLC is a continuation or successor of Furniture King, LLC, and Scott's Fine Furniture, LLC is a continuation or successor of Furniture & Electronic King, LLC. Given that Furniture & Electronic King, LLC and Scott's Fine Furniture, LLC are the continuation of Furniture King, LLC (collectively, "Furniture King"), the Receiver contends he is a secured creditor of all assets of Furniture King.

The Receiver and the Trustee have entered into a settlement agreement ("Settlement Agreement") whereby the Trustee agreed to stipulate to an order placing Furniture King in receivership in exchange for the Receiver's agreement to distribute 10% of DenSco's portion of the net recoveries from Furniture King's assets to the Trustee for the benefit of Menaged's creditors. On September 14, 2016, both the Settlement Agreement and the Stipulation were filed with the respective Courts. Today, the Receivership Court has entered its Order placing Furniture King into Receivership. Accordingly, the Receiver has begun to locate and secure the assets of Furniture King. Eventually, the Receiver will liquidate the assets of Furniture King for the benefit of Furniture King's creditors, including DenSco.

2.3. Receivership Liabilities

Based on the information located in DenSco's records, DenSco's liabilities as of August 18, 2016, or the inception of the Receivership, consist of investor payables totaling \$51,867,387. The Receiver has not yet verified this amount.

2.3.1. Investor Communications

On August 19, 2016, the Receiver sent an email to all investors pursuant to a list of investor email addresses provided by the ACC. In this email, the Receiver provided investors with a copy of the Receivership Order and described the tasks completed to date and the Receiver's plan going forward. The Receiver also advised investors that GMA would be hosting an investor conference call on August 22, 2016 in order to address investor questions.

¹⁶ Forbearance Agreement dated 04/16/14; page 5, section 6(D).

¹⁷ Arizona Corporation Commission report for file no. L17038449.

¹⁸ UCC Financing Statement (file no. 2014-001-5063-0).

As promised, GMA hosted an investor conference call on August 22, 2016. Unfortunately, unanticipated limitations on the telephone conference line prevented several investors from participating. However, one investor took detailed notes during the call and sent an email to all investors containing a list of the investors' questions and the corresponding responses.

The Receiver sent an additional email update to all investors on September 13, 2016. In this email, the Receiver described the primary tasks completed to date as well as tasks in progress. The Receiver informed investors of a plan to hold an in-person meeting with investors tentatively scheduled for October 21, 2016 at 1:30 p.m. in order to provide a more comprehensive update of the DenSco Receivership.

In addition to the investor communications discussed above, the Receiver has established a receivership website at denscoreceiver1.godaddysites.com. Visitors to DenSco's original website (denscoinvestment.com) are automatically redirected to the Receivership website. The Receivership website is regularly updated to include links to both historical and recent Court filings in the Receivership proceeding, the Chittick probate proceeding, and the Menaged bankruptcy proceeding.

3. Receivership Accounting

To ensure that the Receivership Estate's cash is fully FDIC insured, the Receiver has opened bank accounts at three (3) different financial institutions, including Wells Fargo Bank, the National Bank of Arizona, and Arizona Business Bank. The majority of the Receivership Estate's cash is held at Arizona Business Bank, which offers an Insured Cash Sweep service that includes multi-million-dollar FDIC insurance by sweeping cash to other banks. The Receiver intends to use the Wells Fargo account as the primary operating account from which funds will be transferred to and from the Arizona Business Bank account as necessary.

As of the date of this report, the Receiver has collected a total of \$3,899,796 and has disbursed a total of \$2,395, resulting in a current balance of \$3,897,400, which is held at the following financial institutions:

Table 2:
Summary of Current Cash Balances
As of September 19, 2016

Financial Institution	Balance
Wells Fargo Bank - Account 6124	\$ 1,257,400
National Bank of Arizona - Account 3910	240,000
Arizona Business Bank - Account 9290	2,400,000
Total Cash Balance	\$ 3,897,400

Details of the cash collections and disbursements to date are provided below in **Section 3.1** and **Section 3.2** respectively.

3.1. Collections to Date

The Receiver has collected a total of \$3,899,796 on behalf of the DenSco Receivership Estate as of the date of this report, summarized as follows and discussed in detail below:

**Table 3:
Summary of Cash Collections
As of September 19, 2016**

Description	Amount
FirstBank Account Balance as of 08/18/16	\$ 1,380,654
Cash Collected from the Chittick Estate	551,140
Loan Proceeds	
Payoff Proceeds - Principal	1,927,063
Payoff Proceeds - Interest & Fees	25,183
Additional Loan Interest	15,755
Subtotal Loan Proceeds	1,968,002
Total Cash Collected	\$ 3,899,796

3.1.1. Funds Collected from Pre-Receivership Account at FirstBank

As shown in **Table 1** of **Section 2.2** above, DenSco's pre-receivership bank account at FirstBank held a balance of \$1,380,654 as of the inception of the Receivership, or August 18, 2016. By the time FirstBank agreed to turn over the funds to the Receiver, the account balance had increased to \$1,551,706 as a result of borrower payments deposited to the account. Thus, the Receiver recovered \$1,551,706 from DenSco's pre-receivership bank account, including \$171,053 in borrower payments made during the receivership. These borrower payments are included in the loan proceeds discussed in **Section 3.1.3** below.

3.1.2. Cash Collected from the Chittick Estate

In the initial days after the establishment of the Receivership, the Receiver was informed that a large amount of cash was discovered [but not seized] by the Chandler Police Department ("Chandler PD"), who conducted an investigation into the death of Chittick. The Receiver was provided a copy of the Chandler PD's police report which indicates that a series of notes, left by Chittick, apparently lead the Chandler PD to a cardboard box in a dryer at the residence of Chittick's parents. Apparently, the box contained a large amount of cash and instructions to the Personal Representative of Chittick's Estate. Upon his appointment, the Receiver contacted the Personal Representative of Chittick's Estate to determine the disposition of the cash. The Personal Representative informed the Receiver that the cash was being held in a vault at a jewelry store in Tempe, Arizona. On August 25, 2016, the Receiver and the Personal Representative retrieved the box from the jewelry store, and the box and its contents were transported to Wells Fargo Bank. The contents were counted and deposited into a Receivership bank account. The total amount of cash recovered was \$551,140.

The precise source of the cash is unknown. The Receiver is in the process of analyzing the transactions reflected in DenSco's pre-receivership bank from the date the account was opened (October 2014) through the date of the Receivership, but has not identified any cash withdrawals

that would explain the source of the cash. However, as mentioned in **Section 2.1.1** above, at least one borrower claimed that Chittick accepted less than the stated monthly interest payment if such payments were paid in cash. The Receiver has not yet determined whether any other borrowers made cash payments. However, interest payments received from this particular borrower were not recorded in DenSco's QuickBooks file, nor were they deposited into DenSco's bank account.

3.1.3. Loan Proceeds

The Receiver has received numerous requests for payoff statements from various DenSco borrowers. From the inception of the receivership through the date of this report, twelve (12) loans have been paid off. The Receiver has recovered a total of \$1,952,247 in loan payoff proceeds, including \$1,927,063 in principal and \$25,183 in interest and fees.

The Receiver has also collected additional DenSco loan interest payments totaling \$15,755.

3.1.3.1 Resolution of MWM-AZ, PLLC Loans

As of the inception of the Receivership, borrower MWM-AZ, PLLC ("MWM") had six (6) outstanding DenSco loans totaling \$946,440. MWM offered to repay the full principal balance plus interest at the non-default rate of 18% from September 1, 2016 through the date payment was tendered. Historically, MWM made interest payments to DenSco in cash, so MWM's interest payments were not reflected in DenSco's pre-receivership bank account, but the loan files and spreadsheets maintained by Chittick indicate that the required monthly payments were received through July 2016. The Receiver was unable to confirm that MWM's August 2016 interest payments had been received, but did identify an email from MWM's principal, Victor Gojcay ("Gojcay") dated August 2, 2016 in which Gojcay informed Chittick that the money was in the "box".¹⁹ In addition, Gojcay signed a declaration confirming that he had placed \$13,596 in Chittick's mailbox in payment of the interest on all six (6) loans in early August 2016. The Receiver is working to determine what happened to the cash placed in Chittick's mailbox.

In resolution of these loans, the Receiver agreed to accept MWM's offer and received a total of \$950,699, including principal and interest, in full repayment of MWM's six (6) outstanding loans on September 9, 2016. This amount is included in the loan proceeds discussed in **Section 3.1.3** above.

3.2. Disbursements to Date

The Receiver has disbursed a total of \$2,395 on behalf of the DenSco Receivership Estate as of the date of this report, summarized as follows:

¹⁹ Email from Victor Gojcay to Denny Chittick dated 08/02/16, stating, "\$ in box."

Table 4:
Summary of Cash Disbursements
As of September 19, 2016

Payee	Purpose	Amount
Bondwriter Southwest, Inc.	Receivership Bond Premium	\$ 500
Wells Fargo Bank	Cash Deposited Fee	1,631
Wells Fargo Bank	Incoming Wire Fees	150
Wells Fargo Bank	Check Order	71
FirstBank	Bank Records Requested	44
Total Cash Disbursed		\$ 2,395

4. Analyses Completed to Date

4.1. Analysis of Chittick's Investment in DenSco²⁰

Chittick was a DenSco investor with a total balance of \$3,625,313 as of December 23, 2014; however, Chittick's investor balance was eliminated on approximately December 31, 2014 as follows:

Table 5:
Summary of Chittick Investments in DenSco

Date	Investor Name	Balance
12/30/14	Chittick, Denny	\$ 1,448,460
12/30/14	Chittick, Denny - 401k	359,609
12/23/14	Chittick, Denny - DB Plan	1,817,243
	Total Balance	3,625,313
12/31/14	Converted to DenSco Capital Stock	(1,448,460)
12/31/14	Check to Vanguard Group	(359,609)
12/24/14	Check to Denny Chittick	(1,817,243)
	Total Withdrawals	(3,625,313)
	Net Investor Balance	\$ -

As a result of his investments in DenSco, Chittick received interest payments totaling \$2,105,669. Of this, Chittick received \$1,617,632 in cash from 2001 through 2014. A total of \$354,504 was accrued from 2006 through 2014, which was eventually transferred to another account in the name of Chittick's Defined Benefit Plan ("DBP"). The remaining \$133,533 was accrued from 2006 through 2014 and was eventually transferred to Chittick's 401(k) account at Vanguard Group.

The sources of the reported investor balance of Chittick's DBP as of December 23, 2014 are as follows:

²⁰ The information and terminology used in this section is directly from the DenSco's books and records. To date, the information and transactions reflected above have not been independently verified and confirmed.

Table 6:
Summary of Chittick DBP Investor Balance
As of December 23, 2014

Source	Amount
Cash Deposit	\$ 77,009
DenSco Benefit for 2006	82,592
DenSco Benefit for 2007	55,000
DenSco Benefit for 2008	5,862
DenSco Benefit for 2010	30,000
DenSco Benefit for 2011	54,948
DenSco Benefit for 2012	290,039
DenSco Benefit for 2013	867,289
Accrued Interest	354,504
Total	\$ 1,817,243

The Receiver located a copy of the 2015 tax return for DenSco's Defined Benefit Pension Plan, of which Chittick was the only participant, in the electronic files extracted from Chittick's computer. As of 2015, the plan had a balance of \$1,824,729, which is nearly equivalent to the amount summarized in Table 6 above and transferred from DenSco to a third party administrator in December 2014.

4.2. Preliminary Analysis of Pre-Receivership Bank Account Activity

The Receivership Order directed the Receiver to recommend to the Court, based on the Receiver's initial investigation, if the claims against DenSco should be adjudged in the Bankruptcy Court. Among other things, the Receiver analyzed DenSco's financial records to determine if DenSco made any transfers that would be generally considered as preferences, i.e. transfers made prior to a bankruptcy filing to a creditor by a debtor to the exclusion or detriment of its other creditors. The Receiver focused his analysis on payments made to creditors in the ninety (90) days before a bankruptcy filing and payments to insiders of DenSco or Chittick in the last year. For the purposes of this analysis, the Receiver analyzed the 90-day period from June 1, 2016 through August 31, 2016 (the "90-Day Window"), and the one-year period from September 1, 2015 through August 31, 2016 (the "Insider Window").

4.2.1. The 90-Day Window

Based on the Receiver's analysis of the transactions that occurred during the 90-Day Window, the Receiver found as follows:

- None of the DenSco investors withdrew any principal during the 90-day window.
- DenSco disbursed approximately \$438,614 in regular interest payments to investors.
 - For the most part, DenSco paid investors interest in a consistent manner. The information provided does not indicate that any investors received preferential treatment with regard to interest disbursements.
- DenSco paid \$2,070 to Clark Hill, PLC for professional fees.

- DenSco did not make any transfers to or from Yomtov Scott Menaged during the 90-Day Window.
- DenSco transferred funds to and from other third-party borrowers, but the transfers appear to be consistent with DenSco's historical lending practices.

4.2.2. The Insider Window

Alleged insiders include Chittick, Chittick's father, Chittick's uncle, and Chittick's former father-in-law. Based on the Receiver's analysis of the transactions that occurred during the Insider Window, the Receiver found as follows:

- Denny Chittick:
 - Chittick had three (3) investor accounts (personal, 401k, defined benefit plan), all of which were withdrawn in December 2014, prior to the Insider Window.
- Chittick's father:
 - DenSco has not distributed any principal to Chittick's father since 2006.
 - Chittick's father received regular monthly interest payments of \$5,750 during eleven (11) of the twelve (12) months in the insider window for a total of \$63,250. No interest was paid in August 2016.
- Chittick's uncle:
 - DenSco has not distributed any principal to Chittick's uncle.
 - Chittick's uncle received regular quarterly interest payments of \$12,104.42, paid on September 30, 2015; December 31, 2015; and March 31, 2016; for a total of \$36,313. The Receiver's analysis indicates that DenSco did not issue a June 30, 2016 interest payment to Chittick's uncle.
- Chittick's former father-in-law:
 - DenSco has not disbursed any principal to Chittick's former father-in-law.
 - Chittick's former father-in-law received regular monthly interest payments of \$800 during eleven (11) of the twelve (12) months in the insider window for a total of \$8,800. No interest was paid out in August 2016.

5. Receiver's Recommendation Regarding Bankruptcy

I do not recommend filing a petition in bankruptcy for DenSco at this time. The reasons for this recommendation are as follows:

First, DenSco's principal purpose appears to be the facilitation of real estate investment as a "hard money" lender. As such, the corporate defendant does not need to be reorganized. Instead, the assets of DenSco need to be recovered by the Receiver and distributed to the DenSco investors.²¹

²¹ See *Commodities Future Trading Com'n v. FITC, Inc.*, 52 B.R. 935, 938 (N.D. Cal. 1985) (Defendant corporation was nothing more than a "front for a large and elaborate commodities fraud").

Second, given the limited information available to the Receiver, it is possible that it may be determined that the assets of DenSco were obtained through potentially fraudulent means, and because of the possible overlapping criminal activities and regulatory violations of DenSco, the panoply of legal issues will exceed the limited jurisdiction of a bankruptcy court.²²

Third, another factor that strongly weighs in favor of not filing bankruptcy for DenSco is that a bankruptcy Trustee is subject to the in pari delicto defense to any legal or equitable claims while a Receiver is not. Specifically, although any bankruptcy trustee of DenSco would be afforded expansive powers, 11 U.S.C. § 541(a) clearly states that the bankruptcy estate is comprised of all legal or equitable interests of the debtor [DenSco] as of the commencement of the case. As such, any bankruptcy trustee steps in the Debtor's shoes. This exposes the bankruptcy trustee to the well-settled in pari delicto defense, which bars a bankruptcy trustee from benefitting from any legal claims if DenSco was equally, if not more, at fault. Fortunately, the in pari delicto defense does not apply to a receiver. As a result, in bringing an action on behalf of receivership entities, a receiver can establish that he is not bound by, nor is his right to sue on behalf of the receivership entities, tainted by the improper actions of the corporate owners and officers who may have engineered or participated in a fraudulent scheme.²³

The inapplicability to a receiver to in pari delicto prohibitions is another reason that a receivership frequently is a more effective strategy for protecting the victims of fraud than a bankruptcy.²⁴

Fourth, the most common premise for considering a bankruptcy filing is the determination that DenSco made a series of transfers that would be generally considered as preferences, i.e. transfers made prior to a bankruptcy filing to a creditor by a debtor to the exclusion or detriment of its other creditors. While the law surrounding preferences is well settled, generally a bankruptcy Trustee explores the recovery of payments made to creditors in the ninety (90) days before a bankruptcy filing and payments to insiders of the debtor in the last year. As set forth in **Section 4.2** above, my analysis of the financial activity of DenSco indicates that at best there are \$110,433 in possible preference claims. However, all of the payments totaling \$110,433 are regular interest payments and legal fees that were made in the ordinary course of DenSco's business operations and may be subject to a complete defense to a preference claim.

Therefore, based on the foregoing, the interests of judicial economy, and the protection of the interests of the DenSco investors, I strongly believe that a receivership in the Maricopa County

²² See *Federal Trade Com'n v. R.A. Walker & Assoc., Inc.*, 37 B.R. 608 (D.D.C. 1983) (holding that funds obtained through fraudulent means would not be considered property of the estate in a bankruptcy court and not within the jurisdiction of a bankruptcy court).

²³ See *Scholes*, 56 F.3d 750; *Donell v. Kowell*, 533 F.3d 762 (9th Cir. 2008); *Eberhard*, 530 F.3d 122; *World Harvest Church*, 2006 WL 870310, at **5-6; *Quilling v. Cristell*, CIV.A. 304CV252, 2006 WL 316981 (W.D.N.C. Feb. 9, 2006); *Jones v. Wells Fargo Bank, N.A.*, 666 F.3d 955, 967 (5th Cir. 2012).

²⁴ See *Official Comm. of Unsecured Creditors v. R.F. Lafferty & Co. Inc.*, 267 F.3d 340 (3d Cir. 2001); *In re Hedged-Invs. Assocs.*, 84 F.3d 1281, 1284-86 (10th Cir. 1996); *Hirsch v. Arthur Andersen & Co.*, 72 F.3d 1085, 1093-94 (2d Cir. 1995); *Global Crossing Estate Representative v. Winnick*, 04 CIV.2558(GEL), 2006 WL 2212776, at *16, n.21 (S.D.N.Y. Aug. 3, 2006); *In re Derivium Capital LLC*, 716 F.3d 355, 367 (4th Cir. 2013).

Superior Court is preferable to a bankruptcy court proceeding. In making my recommendation, I have carefully considered the most significant advantages to a bankruptcy proceeding—the avoidance powers provided under the bankruptcy code and the mechanisms established for the protection of creditors. Neither of these advantages, in my opinion, outweighs the benefits to a receivership as set forth above. With respect to the avoidance powers provided under bankruptcy, I intend to rely on the Receivership Order empowering me to recover assets using the fraudulent transfer statutes and other statutes. To the extent that any of the assets of DenSco were used to purchase property prior to the institution of the receivership, I will seek to obtain possession of such property, and pursuant to this Court's orders, liquidate the property so that it may be used to distribute to the investors of DenSco. In order to provide protection to the creditors of DenSco and, in particular, the innocent investors, I intend to apply for a formal Order that establishes a mechanism for the filing and adjudication of claims against DenSco.



Peter S. Davis, Receiver
Simon Consulting, LLC

September 19, 2016

Date

Simon Consulting, LLC
Arizona Corporation Commission v. DenSco Investment Corporation

DenSco Investment Corporation

Outstanding Loans as of August 18, 2016

Exhibit 1

Borrower	No. of Loans	Total Loan Amount
Yomtov Scott Menaged Loans		
Arizona Home Foreclosures, LLC	87	42,841,640
Easy Investments, LLC	3	706,180
Michelle Menaged	1	400,000
Subtotal	91	43,947,820
Other Borrower Loans		
Aboveboard Marketing, LLC	1	115,000
AKS, LLC	1	150,000
AZ Home Buyer, LLC	2	342,508
Black Forrest, LLC	3	552,115
Blue Water Capital, LLC	1	85,000
Chevron Group, Inc	2	100,000
Chopper Construction, LLC	1	75,000
CNT Real Estate Investments	1	30,900
Colby Holdings 1, LLC	2	115,000
Daniel Smith	2	395,000
Emma Holdings I, LLC	1	115,476
Empire Legacy Investments	1	120,000
Equiworth, LLC	2	421,400
Global Qwest, Inc	1	75,000
J and J Marketing, LLC	1	50,000
Justin Moore	1	32,000
KAJU, LLC	1	29,000
Kenneth Nguyen	1	120,000
Maryvale Properties 1, LLC	4	235,000
Michael Tetreault	1	128,000
Miller 401k Profit Sharing	1	160,000
MWM-AZ, PLLC	6	946,440
Omega Prop Invest, LLC	1	100,000
Opreinvest, LLC	1	210,000
Peak Equity, LLC	1	120,096
Rimovsky Investments, LLC	1	230,000
Robert Humburg	1	25,000
Sanjel Krum Investments	2	67,500
Stone Capital Invest, LLC	1	260,000
Wesmore Rentals 1, LLC	2	110,000
Subtotal	47	5,515,434
Grand Total	138	49,463,254

Sources:

QuickBooks company file for DenSco Investment Corporation.

DenSco spreadsheet containing loan information.

Bank statement for FirstBank account ending in 5264 for July 2016.

Payoff statement for Loan 8115.