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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

REPLY TO OBJECTION TO PETITION
NO. 41

(Assigned to the Honorable Teresa
Sanders)

Peter S. Davis, as the court appointed Receiver, respectfully replies to the Objection to
Petition No. 41 filed by the Chittick Family Trust as follows:

Petition No. 41 seeks to approve a first interim distribution of \$4,500,000.03 to one
hundred and thirteen (113) approved creditors of DenSco Investor Corporation ("DenSco").
The Receiver's first proposed interim distribution seeks to pay each of the DenSco approved
creditors specific amounts which are equal to approximately 14.3% of each of the approved
DenSco creditors claim. The Chittick Family Trust, an approved DenSco Creditor, has

1 objected to the proposed interim distributions to two (2) approved creditors of DenSco, the
2 Brinkman Family Trust and Nihad Hafiz.

3 Based on the following, the Receiver recommends that the Court approve the first
4 interim distribution to the DenSco creditors but specifically direct that the Receiver shall not
5 deliver any funds to the Brinkman Family Trust or Nihad Hafiz until they have exhausted
6 their efforts to recover funds relating to their investments in DenSco.

7 I. OVERVIEW OF DENSCO CLAIMS PROCESS

8 On August 18, 2016, this Court entered its *Order Appointing Receiver*, which
9 appointed Peter S. Davis as Receiver of DenSco Investment Corporation (“Receivership
10 Order”).

11 On March 28, 2017, the Court entered its *Order Re: Petition No. 19 – Order*
12 *Establishing Procedures for the Adjudication of Claims* (“Claims Order”) which, among
13 other things, established the procedures for the solicitation and adjudication of creditor claims
14 against DenSco. Pursuant to the Claims Order, the Court established the claims bar date of
15 June 30, 2017 (“Bar Date”), and certain requirements for the notification of the DenSco
16 claims process to potential DenSco claimants. In furtherance of the Claims Order, on April
17 18, 2017, the Receiver caused to be mailed to all potential DenSco claimants a copy of the
18 Claims Order, a proof of claim form and a notice describing the DenSco claims process.

19 The Brinkman Family Trust filed a timely claim with the Receiver seeking payment of
20 \$382,113.38. Nihad Hafiz filed a timely claim with the Receiver seeking payment of
21 \$290,000.00.

1 On August 1, 2017, in accordance with paragraph 7.2 of the Claims Order, the
2 Receiver prepared and filed with the Court his *Receiver's Claims Report and*
3 *Recommendations* ("Claims Report"). As set forth in the Claims Report, the Receiver
4 recommended that the Court approve the claim of Nihad Hafiz as submitted in the amount of
5 \$290,000.00. In the Claims Report, the Receiver objected to the claim submitted by the
6 Brinkman Family Trust on the basis that the Brinkman Family Trust did not account for
7 \$137,668.93 that the Brinkman Family Trust received from DenSco between 2002 and 2012.
8 As detailed in the Claims Report, the Receiver recommended to the Court that the claim of
9 the Brinkman Family Trust be approved in the amount of \$244,444.45.

10 Thereafter, in accordance with paragraphs 7.3 and 7.4 of the Claims Order, the
11 Receiver caused a copy of the Claims Report to be posted on the receivership website located
12 at www.denscoinvestment.com and mailed a copy of the Claims Report to each claimant. The
13 Claims Report was also served on all persons on the Master Service List in the DenSco
14 Receivership. Pursuant to paragraph 7.6 of the Claims Order, any objections to the Claims
15 Report were to be submitted, in writing, to the Receiver on or before August 30, 2017. The
16 Brinkman Family Trust did not object to the Receiver's recommendation that the claim of the
17 Brinkman Family Trust be approved in the amount of \$244,444.45. Nihad Hafiz did not
18 object to the Receiver's recommendation that the claim of the Nihad Hafiz be approved in the
19 amount of \$290,000.00.

20 On September 28, 2017, the Receiver filed his *Petition No. 37* seeking approval of the
21 Receiver's final recommendations regarding the approved claims against DenSco. The

1 Brinkman Family Trust did not object to *Petition No. 37* or the Receiver's recommendation
2 that the Brinkman Family Trust should have an approved in the amount of \$244,444.45.
3 Nihad Hafiz did not object to *Petition No. 37* or the Receiver's recommendation that the
4 claim of the Nihad Hafiz be approved in the amount of \$290,000.00.

5 On October 27, 2017, the Court entered its *Order Re: Petition No. 37*, which approved
6 one hundred and thirteen (113) creditor claims in a collective total amount of \$31,446,001.79
7 and approved individual claim amounts for each of the DenSco Creditors, including the claim
8 of the Brinkman Family Trust in the amount of \$244,444.45 and the claim of the Nihad Hafiz
9 in the amount of \$290,000.00.

10 Pursuant to Petition No. 41, the Receiver sought to approve the payment of an interim
11 distribution of \$4,500,000.03 to all 113 approved DenSco creditors with the Brinkman
12 Family Trust to receive an interim distribution of **\$34,980.60** and Nihad Hafiz to receive an
13 interim distribution of **\$41,499.71**.

14 II. CONFLICTING CLAIMS IN PROBATE PROCEEDING WHICH REMAIN 15 UNRESOLVED

16 On August 24, 2016, the Brinkman Family Trust filed a *Claim Against the Estate*
17 *A.R.S. §14-3804* ("Brinkman Probate Claim") in the Matter of the Estate of Denny J. Chittick,
18 PB2016-051754 ("Probate Proceeding"). The Brinkman Probate Claim sought approval of a
19 claim of \$372,259.36, plus interest from June 30, 2016. The Brinkman Probate Claim arises
20 from the Brinkman Family Trust's investment in DenSco.
21

1 On September 15, 2016, Nihad Hafiz filed a *Claim Against the Estate A.R.S. §14-3804*
2 (“Hafiz Probate Claim”) in the Probate Proceeding. The Hafiz Probate Claim sought
3 approval of a claim of \$500,000.00, plus interest from June 15, 2016. The Hafiz Probate
4 Claim arises from Nihad Hafiz’s investment in DenSco.

5 On September 7, 2016, the Estate of Chittick filed a notice of disallowance of the
6 Brinkman Probate Claim. On October 10, 2016, the Estate of Chittick filed a notice of
7 disallowance of the Hafiz Probate Claim.

8 On November 3, 2016, the Brinkman Family Trust filed its Petition for Allowance of
9 Claims of Brinkman Family Trust. On November 3, 2016, the Nihad Hafiz filed his Petition
10 for Allowance of Claims of Nihad Hafiz.

11 Between November 23, 2016 and December 14, 2016, the Estate of Chittick answered
12 and objected to the petitions filed by the Brinkman Family Trust and Nihad Hafiz.
13 Apparently, after a hearing in the Probate Proceeding on the Brinkman Family Trust petition,
14 the Estate of Chittick and counsel for the Brinkman Family Trust and Nihad Hafiz entered
15 into a stipulation and agreed that no further action should be taken to advance the petitions of
16 the Brinkman Family Trust and Nihad Hafiz seeking approved claims in the Probate
17 Proceeding.

18 A review of the docket in the Probate Proceeding indicates that nothing has been done,
19 since December of 2016, by the Brinkman Family Trust or Nihad Hafiz to advance their
20 petitions or to become approved claimants in the Probate Proceeding.

1 **III. RECOVERIES FROM THIRD PARTIES AND ITS POTENTIAL EFFECT ON THE**
2 **DENSCO CLAIMS PROCESS**

3 A material element of the DenSco Claims process is that the Receiver shall reduce and
4 offset against any claim, the amount of funds received by a claimant from any third party
5 arising out of Claimant's investments with DenSco [See Order re: Petition 18 ¶6]. The
6 purpose of this provision of the DenSco claims process is to ensure integrity in the Receiver's
7 attempts to distribute recovered funds to DenSco creditors on an equal pro-rata percentage
8 basis among all approved DenSco creditors. The requirement that a DenSco creditors claim
9 is reduced by any amount received from third parties is so material to the DenSco claims
10 process, that the proof of claim form contains a box which must be "checked" that the
11 claimant has not received monies from a third party.

12 The Brinkman Family Trust and Nihad Hafiz identified in their proof of claim forms
13 filed with the Receiver that they had not received any funds from third parties. However, the
14 Brinkman Family Trust and Nihad Hafiz failed to advise that they had advanced claims in the
15 Probate Proceeding and had elected to take no action to litigate their claims, indefinitely.

16 **IV. RECEIVER'S RECOMMENDATION TO DEFER PAYMENT OF INTERIM**
17 **DISTRIBUTION TO BRINKMAN FAMILY TRUST AND NIHAD HAFIZ**

18 The Chittick Family Trust has objected to the Receiver's proposed interim
19 distributions to the Brinkman Family Trust and Nihad Hafiz. The Chittick Family Trust has
20 argued that the Brinkman Family Trust and Nihad Hafiz need to pick a venue to receive
21 payment for damages arising from their investments in DenSco and that no interim
distributions in the Receivership proceeding should be made to Brinkman Family Trust and

1 Nihad Hafiz because allowing an interim distribution to these two creditors would allow them
2 the opportunity to “double dip” and receive funds from both the Probate Proceeding and the
3 Receivership.

4 The Receiver agrees with the Chittick Family Trust and recommends that payment of
5 any interim distribution to the Brinkman Family Trust and Nihad Hafiz be deferred
6 indefinitely until Brinkman Family Trust and Nihad Hafiz have completed all efforts to
7 recover funds from the Estate of Chittick in the Probate Proceeding.

8 The Receiver’s recommendation to defer payment of any interim distribution to the
9 Brinkman Family Trust and Nihad Hafiz is for the following reasons: First, there is no reason
10 that the other DenSco investors should have to wait for the payment of an interim distribution
11 from the Receiver until the Brinkman Family Trust and Nihad Hafiz complete their efforts to
12 recover funds in the Probate Proceeding, especially when Brinkman Family Trust and Nihad
13 Hafiz have done nothing in nearly a year to advance their purported claims. Second, the
14 Brinkman Family Trust and Nihad Hafiz are not prejudiced by having their interim
15 distributions in the Receivership proceeding approved, but not immediately paid. The
16 Receiver can simply hold back any approved distributions until the Receiver has determined
17 that the Brinkman Family Trust and Nihad Hafiz have exhausted or abandoned their efforts to
18 receive payment in the Probate Proceeding. Third, it is unclear what amounts that the
19 Brinkman Family Trust and Nihad Hafiz are seeking as compensation from their injuries
20 from DenSco in the Probate Proceeding. While Brinkman Family Trust and Nihad Hafiz have
21 not contested the Court’s determination of their respective creditor claims in the

Receivership, the Brinkman Family Trust and Nihad Hafiz have advanced much larger and potentially unsubstantiated claims in the Probate Proceeding. Finally, to allow the payment of an interim distribution to the Brinkman Family Trust and Nihad Hafiz with the possibility that the Brinkman Family Trust and Nihad Hafiz may recover anything in the Probate Proceeding could cause an excess distribution to the Brinkman Family Trust and Nihad Hafiz, obligating the Receiver in later stages of the administration of the Receivership case to seek to claw back a previously paid interim distribution to the Brinkman Family Trust and Nihad Hafiz to ensure that these two DenSco creditors are not unjustly enriched to the detriment of the other 111 creditors.

WHEREFORE, the Receiver respectfully requests that the Court enter the amended Order re: Petition No. 41 lodged herewith approving an interim distribution in the amounts set forth in Petition No. 41 the DenSco Creditors, but directing that no funds shall be paid by the Receiver to the Brinkman Family Trust and Nihad Hafiz until further order of this Court.

Respectfully submitted this 29th day of November, 2017.

GUTTILLA MURPHY ANDERSON, P.C.

/s/Ryan W. Anderson

Ryan W. Anderson

Attorneys for the Receiver