

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, Peter S. Davis

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

MOTION TO VACATE ORDER RE:
PETITION NO. 142

(Assigned to the Honorable John Hannah)

Peter S. Davis, as the court appointed Receiver of DenSco Investment Corporation (“Receiver”), respectfully requests this Court to enter an order vacating *Order re: Petition No. 142*.

On October 4, 2023, the Receiver filed his Petition No. 142 seeking authority to approve a fifth interim distribution to the approved creditors of DenSco Investment Corporation. As set forth in Petition No. 142, the Receiver recommended that the Court approve a fifth interim distribution of \$699,999.99 to the DenSco creditors.

1 On November 20, 2023, the Maricopa County Superior Court in *Davis vs US Bank et*
2 *al (CV-20190-011499)* issued its *Under Advisement Ruling on Motions for Summary*
3 *Judgment* which granted Summary Judgment to Defendant Chase Bank on all of DenSco's
4 claims. Additionally, the Court in *Davis vs US Bank et al (CV-20190-011499)* directed Chase
5 Bank to file its application for attorney fees and costs on or before December 12, 2023.

6 On November 21, 2023, this Court entered its *Order Re: Petition No. 142* which
7 authorized the Receiver to pay a fifth interim distribution of \$699,999.99 to the approved
8 creditors of DenSco.

9 On December 12, 2023, Defendant Chase Bank filed an application for attorney fees
10 and costs, requesting an award of \$1,338,232.19 in attorney fees and \$30,731.82 in costs in
11 *Davis vs US Bank et al (CV-20190-011499)*. Moreover, in support of its application,
12 Defendant Chase Bank cites to the Receiver's Petition No. 142 in support of the award of
13 attorney fees and costs citing that the Receivership estate has sufficient funds to pay the
14 attorney fees and costs.

15 Pursuant to Ariz.R.Civ.P. 60, upon a motion and "just terms", the Court may relieve
16 a party from an order for a series of reasons including, "mistake" or "surprise" (Ariz.R.Civ.P.
17 60 (b) (1)); "newly discovered evidence" (Ariz.R.Civ.P. 60 (b) (2)); or "any other reason
18 justifying relief" " (Ariz.R.Civ.P. 60 (b) (6). The Court's ruling granting the motion for
19 summary judgment and the motion for attorneys' fees was unanticipated, and constitute a
20 significant change in circumstances.

21 In light of the Court's summary judgment ruling and the application for fees, the
22 Receiver has instructed counsel to prepare a response to the application for fees. The

1 Receiver is also meeting with counsel to discuss an appeal and communicating with the
2 investor claimants.

3 The Receiver and Special Counsel in *Davis vs US Bank et al (CV-20190-011499)*
4 were not expecting this adverse ruling. The Receiver needs time to analyze these new issues
5 and assess the likelihood and consequences of a potential award of fees. The Receiver has
6 reserved sufficient funds for expected remaining obligations of the Receivership estate, but
7 the Receiver is not able to determine the potential extent of an attorney fees award against
8 the Receivership estate and the outcome of expected litigation which will occur in this Court
9 to establish the priority of repayment of any awarded attorney fees in relation to the approved
10 DenSco creditor claims.

11 Under these circumstances the Receiver believes that he must seek to vacate Order re:
12 Petition 142 until there is more certainty about the financial ramifications of the ruling in
13 *Davis vs US Bank et al (CV-20190-011499)*, and what is in the best interests of the on-going
14 Receivership.

15 Based on the foregoing, the Receiver contends that these developments establish a
16 sufficient basis under Ariz.R.Civ.P. 60 for this Court to enter an Order vacating Order re:
17 Petition 142.

18 Respectfully submitted this 18th day of December, 2023.

19
20 GUTTILLA MURPHY ANDERSON, P.C.

21 /s/ Ryan W. Anderson
22 Ryan W. Anderson
Attorneys for the Receiver

1 Original of the foregoing and proposed
2 Order were e-filed this 18th day of December, 2023
3 with the Clerk of the Maricopa County Superior Court.

3 Copy of the foregoing and proposed Order
4 mailed and/or emailed
5 this 18th day of December 2023 to:

5 The Honorable John Hannah
6 Maricopa County Superior Court
7 East Court Building
8 101 West Jefferson, Room 811
9 Phoenix, Arizona 85003

8 Wendy L. Coy, Director of Enforcement
9 Securities Division
10 Arizona Corporation Commission
11 1300 West Washington
12 Phoenix, AZ 85007-2929
13 wcoy@azcc.gov

11 *Attorney for Plaintiffs*

12 Peter S. Davis, Receiver
13 Densco Receivership
14 Simon Consulting, LLC
15 3101 North Central Avenue, Suite 670
16 Phoenix, Arizona 85012
17 pdavis@jsheld.com

15 *Receiver*

16 Steven D. Nemecek
17 Steve Brown & Associates
18 1414 East Indian School
19 Suite 200
20 Phoenix, Arizona 85014
21 snemecek@sibrownlaw.com

19 *Attorney for Chapter 7 Trustee Jill H. Ford*

20 Quarles & Brady, LLP
21 One S. Church Avenue, Suite 1700
22 Tucson, Arizona 85701
Attorney for Claimants

1 Yomtov Scott Menaged
USP-Tucson/Satellite Camp
2 Inmate 74322-408
P.O. Box 24549
3 Tucson, AZ 85734

4 Daniel J. Goulding
General Counsel
5 Quality Loan Service Corp.
2763 Camino Del Rio S
6 San Diego, CA 92108-3708
dgoulding@qualityloan.com
7 *Counsel for Quality Loan Service Corp.*

8 All DenSco Investors who appear on the DenSco Claimant Mailing List in the DenSco
9 Receivership.

10 By: /s/ Stacy Gonzales

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12 2359-001(514528)