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*Attorneys for the Chittick Family Trust*

**SUPERIOR COURT OF ARIZONA**  
**MARICOPA COUNTY**

ARIZONA CORPORATION  
COMMISSION,

Plaintiff,

vs.

DENSCO INVESTMENT  
CORPORATION, an Arizona  
corporation,

Defendant.

No. CV2016-014142

**OBJECTION TO PETITION NO. 41**

(Assigned to the Honorable  
Teresa Sanders)

(Peter S. Davis – Appointed Receiver)

The Chittick Family Trust (the “Chittick Trust”) hereby objects to the Receiver’s Petition No. 41, which seeks the Court’s authority to make an interim distribution to the Receivership’s creditors. Specifically, the Chittick Trust objects to any interim distribution of funds to the Brinkman Family Trust (“Brinkman”) and Nihad Hafiz (“Hafiz”). This Objection is supported by the Declaration of Shawna C. Heuer, attached as Exhibit 1 hereto.

Brinkman and Hafiz are former investors in DenSco Investment Corporation (“DenSco”). Like many of DenSco’s former investors, Brinkman and Hafiz asserted claims against both the Receivership and the Estate of Denny Chittick (the “Estate”) in

1 proceedings pending in Probate Court. The claims against the Receivership and the  
2 Estate are substantively identical.

3 All of the other investors, however, had either foregone, abandoned or assigned  
4 their claims against the Estate to the Receiver and agreed to look exclusively to the  
5 Receivership for recovery. The other investors did so in order to allow the Receiver to  
6 negotiate a global settlement with the Estate on their behalf, thereby allowing for a quick  
7 and orderly disposition of their claims. This strategy was successful: the Receiver has  
8 agreed to a settlement of its claims against the Estate, including the claims it received by  
9 assignment from DenSco's investors. This settlement is the subject of the Receiver's  
10 Petition No. 43.

11 Petition No. 41 errs by proposing to make an interim distribution to Brinkman and  
12 Hafiz, even though Brinkman and Hafiz did not either abandon their claims against the  
13 Estate or assign them to the Receiver. Under the Court's Claims Order of March 28,  
14 2017, the Receiver must reduce or offset an investor's claim against the Receivership by  
15 the amount an investor receives from a third party, such as the Estate. *Order Re: Petition*  
16 *No. 19* at 6 (Mar. 28, 2017). Certainly, this means that Brinkman and Hafiz would not be  
17 entitled to any distributions from the Receivership to the extent that they already had  
18 received payment on their claims from the Estate or any other source. The converse is  
19 also true: Brinkman and Hafiz may not pursue their claims against the Estate while they  
20 receive payments from the Receivership. Otherwise, Brinkman and Hafiz could "double  
21 dip" by simultaneously obtaining distributions from the Receivership *and* pursuing their  
22 claims against the Estate, without any required offset. In short Brinkman and Hafiz  
23 cannot be allowed to do indirectly what they are proscribed from doing directly.

24 For exactly this reason, the Chittick Estate and the other DenSco investors  
25 believed that they would have to make an election to either pursue the Estate or the  
26 Receivership. No rational investor would have assigned its claim against the Estate to the

1 Receiver if it could share in interim distributions from the Receivership *and* pursue its  
2 claims against the Estate. Indeed, the situation here is even more unfair—approving a  
3 distribution to Brinkman and Hafiz would allow them to use funds from the Receivership  
4 Estate to finance the litigation of their claims against the Estate. This was certainly not  
5 the outcome contemplated by the Receiver or any other DenSco investor.

6 The only fair and reasonable outcome is that all of DenSco’s investors, including  
7 Brinkman and Hafiz, must elect to either press their claims against the Estate or accept  
8 distributions from the Receivership Estate. To do otherwise would improperly allow  
9 Brinkman and Hafiz to gain an impermissible advantage over the equitable treatment  
10 intended for all investors by the Receivership proceeding.

11 The Chittick Trust thus objects to the Receiver’s Petition No. 41 to the extent that  
12 it seeks to distribute funds to Brinkman and Hafiz. The Chittick Trust will withdraw this  
13 objection if the Receiver amends its petition to remove Brinkman and Hafiz from the list  
14 of individuals that would receive an interim distribution from the Receivership.  
15 Otherwise, the Chittick Trust requests that the Court deny Petition No. 41 as to Brinkman  
16 and Hafiz only.

17 RESPECTFULLY SUBMITTED this 20th day of November, 2017.

18  
19 GAMMAGE & BURNHAM, P.L.C.

20 By: /s/ Christopher L. Hering

21 James F. Polese

22 Christopher L. Hering

23 Two N. Central Avenue, 15th Floor

24 Phoenix, Arizona 85004

25 *Attorneys for the Chittick Family Trust*  
26

1 ELECTRONICALLY FILED with  
2 the Court and mailed this  
3 20th day of November, 2017, to:

4 Honorable Teresa Sanders  
5 Maricopa County Superior Court  
6 101 West Jefferson, ECB-811  
7 Phoenix Arizona 85003-2243

8 And to all persons listed on the  
9 attached Master Service List

10 /s/ Joy A. Acree  
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## MASTER SERVICE LIST

*Arizona Corporation Commission vs. DenSco Investment Corporation*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

CV2016-014142

(Revised August 8, 2017)

Honorable Teresa Sanders  
Maricopa County Superior Court  
101 West Jefferson, ECB-811  
Phoenix, Arizona 85003-2243

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# **EXHIBIT 1**

**Declaration of Shawna C. Heuer**

I, Shawna C. Heuer, make the following declaration under penalty of perjury:

1. I am the current sole trustee of the Chittick Family Trust dated December 26, 1996 created by Eldon V. Chittick and Carlene G. Chittick (hereafter referred to as the "Chittick Trust").

2. I am also the personal representative of the Estate of Denny Chittick deceased (hereafter referred to as the "Chittick Estate").

3. The Chittick Trust is one of the investors in DenSco Investment Corporation.

4. Pursuant to Petition No. 37 filed by the Receiver, the Chittick Trust was granted an approved claim of \$489,184.

5. The Chittick Trust is among the proposed distributees entitled to a first interim distribution from the Receivership Estate as set for in Petition No. 41 and proposed order filed by the Receiver.

6. The Chittick Trust had previously forgone making any demand against the Chittick Estate.

7. I am aware that numerous investors assigned their claims against the Chittick Estate to the Receiver. Claims against the Chittick Estate are substantially the same claims as investors have against the Receivership Estate. It was my understanding that the abandonment or assignment of claims against the Chittick Estate to the Receiver was done to allow for the orderly liquidation and payment of those claims, as well as the negotiation between the Receiver and the Chittick Estate of any issues between them.

8. It was further my understanding, based upon comments made to me by the Receiver and/or his representative during the negotiation of a settlement agreement between the

Chittick Estate and the Receiver, that the Receiver and his counsel believed investor claims should properly be resolved through the Receivership proceeding, with its various protections to ensure that all investors receive fair and even handed treatment.

9. I have now been informed two investors who are also listed as distributees to receive monies pursuant to Petition No. 41 are the Brinkman Family Trust (hereafter referred to as "Brinkman") and Nihad Hafiz (hereafter referred to as "Hafiz").

10. Brinkman has a pending claim of \$372,259 against the Chittick Estate, while its approved claim in the Receivership, pursuant the Order in Petition No.37, is only \$244,444.45.

11. Hafiz has a pending claim for \$500,000 against the Chittick Estate, while its approved claim in the Receivership, pursuant the Order in Petition No.37, is only \$290,000.


12. The Chittick Trust would not have forgone pursuing its claims against the Chittick Estate and other investors would not have foregone, abandoned or assigned claims to the Receiver if it were understood that an investor could not only press simultaneous claims in both the probate court and still receive distributions from the Receivership Estate but that the cost of probate litigation would or could be funded with interim distributions from the Receivership Estate.

13. It is clear that the Receiver never intended to allow an investor to double dip: obtain full recovery on their approved claim and then seek to obtain the same amount or more through a probate claim.

14. Accordingly, the only fair and reasonable thing to do is to require all investors, including Brinkman and Hafiz, to make an election to either press their claims in the probate or to agree to accept their recovery in the Receivership Estate, but in no event both. To do otherwise would allow some investors to avoid the equitable treatment of all investors intended by the Receivership proceeding.

DATED this 20th day of November, 2017.



  
Shawna C. Heuer