

1 **Guttilla Murphy Anderson**
2 **Ryan W. Anderson** (Ariz. No. 020974)
3 5415 E. High St., Suite 200
4 Phoenix, Arizona 85054
5 Email: randerson@gamlaw.com
6 Phone: (480) 304-8300
7 Fax: (480) 304-8301

8 Attorneys for Receiver

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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

**STIPULATED CONSENT TO ORDER
PLACING FURNITURE KING, LLC,
SCOTT'S FINE FURNITURE, LLC
AND FURNITURE & ELECTRONIC
KING, LLC IN RECEIVERSHIP**

(Assigned to Judge Lori Horn Bustamante)

Peter S. Davis, as the Receiver of DenSco Investment Corporation, and Jill Ford as the duly appointed Chapter 7 Trustee of the bankruptcy estate of Yomtov S. Menaged, hereby stipulate to an Order placing Furniture King, LLC, Scott's Fine Furniture, LLC and Furniture & Electronic King LLC into Receivership and agree as follows:

1. Peter S. Davis (the "Receiver") was appointed by this Court pursuant to its *Order Appointing Receiver* as the Receiver of DenSco Investment Corporation ("DenSco"), an Arizona corporation, on August 18, 2016.

1 2. Jill Ford was appointed as Chapter 7 Trustee (“Trustee”) of the bankruptcy
2 estate of Yomtov S. Menaged (“Debtor”) in the United States Bankruptcy Court for the
3 District of Arizona in Case No. 2:16-bk-04268-PS on April 20, 2016.

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5 3. The Receiver and the Trustee have concluded that the Debtor is the sole
6 Manager and Member of Furniture King, LLC, an Arizona limited liability company formed
7 on August 26, 2011, Furniture & Electronic King LLC, (“FEK”) an Arizona limited liability
8 company formed on December 4, 2015, and Scott's Fine Furniture, LLC, ("SFF") an Arizona
9 limited liability company formed on March 23, 2016.

10 4. According to the Debtor, FEK is a continuation or successor of Furniture King,
11 LLC, and SFF is a continuation or successor of FEK, and thus Furniture King, LLC, FEK,
12 and SFF are sometimes referred to herein as "Furniture King". It is the position of the parties
13 that all rights, title and interests of Furniture King are an asset of the Debtor’s Bankruptcy
14 Estate and under the exclusive control of the Trustee.
15

16 5. Pursuant to relevant case law and the Federal Bankruptcy Code, the Debtor’s
17 membership/management interests in Furniture King, LLC, Scott's Fine Furniture, LLC and
18 Furniture & Electronic King LLC are property of the Debtor’s bankruptcy estate, under the
19 control of the Trustee. Accordingly, the Trustee, pursuant to the Federal Bankruptcy Code
20 and applicable case law, has the exclusive legal authority, to act on behalf of Furniture King,
21 LLC, Scott's Fine Furniture, LLC and Furniture & Electronic King LLC and therefore has
22 the authority to consent to the appointment of a Receiver over Furniture King, LLC, Scott's
23 Fine Furniture, LLC and Furniture & Electronic King LLC.
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1 6. The Receiver, during his investigation into the assets of DenSco has
2 determined that, pursuant to a Forbearance Agreement dated April 16, 2014 between DenSco
3 and the Debtor, DenSco is a secured creditor of Furniture King. Pursuant to the terms of
4 perfected security agreement and a UCC-1 Financing Statement [Recorded at 2014-001-
5 5063-0], DenSco has a secured interest in all of Furniture King's accounts, assets, equipment
6 and the proceeds thereof. Given that FEK and SFF are the continuation of Furniture King,
7 LLC, the Receiver contends he is a secured creditor of all assets of Furniture King¹;
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10 7. The Receiver has determined that under the Forbearance Agreement between
11 the Debtor and DenSco, a total of at least \$35,639,880.71 is owed by the Debtor to DenSco.
12 The Receiver's reviews of records of DenSco indicate that the balance owed to DenSco, by
13 the Debtor may have increased to over \$40,000,000.00.
14

15 8. The Receiver has also determined that Furniture King may have other
16 creditors, but based on independent investigation of the priority of the other potential secured
17 creditors, the Receiver is confident that DenSco is in a priority position to receive the
18 overwhelming majority of funds from the liquidation of the assets of Furniture King.
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20 9. The Trustee has investigated the assets of Furniture King and has determined
21 that Furniture King owns and controls a significant amount of new and used furniture that is
22 currently located in a series of different locations across Maricopa County, Arizona. The
23 Trustee believes that the assets of Furniture King probably have a liquidation value of
24 approximately \$100,000.00.
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¹ The Receiver is unaware of any other secured creditors of Scott's Fine Furniture, LLC and Furniture & Electronic King LLC.

1 10. As a result of his initial investigation, the Receiver has reason to believe that
2 assets and funds of DenSco have been improperly comingled, diverted and transferred to
3 Furniture King by the Debtor.
4

5 11. The Trustee has concluded that the Receiver is better positioned as the secured
6 creditor of Furniture King and as another independent court-appointed fiduciary to most
7 effectively and efficiently collect and liquidate assets of Furniture King to protect the
8 interests of all potential creditors of Furniture King.
9

10 12. The Receiver and Trustee have entered into a settlement agreement in the
11 Bankruptcy Case to resolve any issues between the Trustee and the Receiver with respect to
12 the assets of Furniture King and the authority to liquidate the assets of Furniture King.
13 Pursuant to the Settlement Agreement², the Trustee and the Receiver have agreed as follows:
14


- 15 • The Trustee and Receiver have executed the foregoing Stipulation that
16 memorializes the Trustee’s consent to place Furniture King, LLC, Scott's Fine
17 Furniture, LLC and Furniture & Electronic King LLC in Receivership, subject
18 to the provisions of the Order Appointing Receiver.
- 19 • Receiver and Trustee have agreed that 10% of the net recoveries from
20 DenSco’s portion of the liquidation proceeds from the furniture assets of
21 Furniture King will be distributed by the Receiver to the Trustee for eventual
22 distribution to the creditors of the Debtor in the Bankruptcy Case.
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² A true and correct copy of the Settlement Agreement is attached hereto as Exhibit “A”.

- 1 • The Receiver will notify all other creditors of Furniture King of its inclusion
2 into the Receivership and, after the assets of Furniture King are liquidated, if
3 it is determined that there are other creditors who may have a claim that is
4 senior to that of the Receiver, the Receiver will see that these secured
5 creditors are paid in the order of priority and to the extent funds permit.
6
- 7 • The proceeds from the liquidation of the assets of Furniture King will be
8 retained by the Receiver in a segregated interest bearing bank account of the
9 Receivership Estate until this Court determines that after notice to all creditors
10 of Furniture King, any remaining proceeds can be paid to DenSco in partial
11 satisfaction of its secured claim.
12
- 13 • The Receiver upon filing the Settlement Agreement in the Bankruptcy Court
14 and the entry of an Order approving this Stipulation, the Receiver will have
15 the exclusive access and control of the assets of Furniture King. If for any
16 reason the Bankruptcy Court fails to approve the compromise between the
17 Receiver and the Bankruptcy Estate, the Receiver will return control of the
18 assets of Furniture King to the Trustee.
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21 Based upon the stipulation and agreement of the parties, Peter Davis, as Receiver of
22 DenSco Investment Corporation, and Jill Ford, as Chapter 7 Trustee of Yomtov S. Menaged
23 Chapter 7 bankruptcy estate, requests that this Court enter an Order placing Furniture King,
24 LLC, Scott's Fine Furniture, LLC and Furniture & Electronic King LLC into Receivership
25 under the provisions set forth above.
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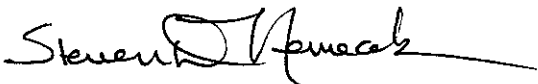
1 Dated this ^{14th} day of September, 2016

2
3 By: 
4 Peter S. Davis, Receiver
5 Simon Consulting, LLC
6 The Great American Tower
7 3200 North Central, Suite 2460
8 Phoenix, Arizona 85012
9 Receiver of DenSco Receivership

8 Accepted and Agreed by:

9 By: /s/ Ryan W. Anderson
10 Ryan W. Anderson
11 Guttilla Murphy Anderson, P.C.
12 5415 E. High Street, Suite 200
13 Phoenix, AZ 85054
14 Attorney for Receiver


Attorney in fact for
By: Jill Ford, Chapter 7 Trustee
Jill Ford, Chapter 7 Trustee
P. O. Box 5845
Carefree, AZ 85377
Chapter 7 Trustee in *In re: Yomov S. Menaged*,
Case No. 2:16-bk-04628-PS


By: /s/ Steven D. Nemecek (with permission)
Steven D. Nemecek
Steven Brown & Associates, LLC
1414 E. Indian School Road, Suite 200
Phoenix, AZ 85014
Attorney for Chapter 7 Trustee, Jill Ford,
In re: Yomov S. Menaged, Case No. 2:16-
bk-04628-PS

1 Original of the foregoing and proposed Order
2 e-filed this 14th day of September, 2016, with:

3 Clerk of the Maricopa County Superior Court
4 201 West Jefferson
5 Phoenix, Arizona 85003

6 Copies of the foregoing mailed or emailed this
7 14th day of September, 2016, to the following:

8 Wendy L. Coy
9 Arizona Corporation Commission
10 1300 West Washington
11 Phoenix, AZ 85007-2929
12 Attorney for Plaintiffs

13 Peter S. Davis, Receiver
14 Densco Receivership
15 Simon Consulting, LLC
16 The Great American Tower
17 3200 North Central, Suite 2460
18 Phoenix, Arizona 85012

19 James F. Polese
20 Christopher L. Hering
21 Gammage & Burnham, P.L.C.
22 Two North Central Avenue, 15th Floor
23 Phoenix, Arizona 85004
24 Attorney for the Estate of Denny Chittick and Densco Investment Corporation

25 Cody J. Jess
26 Schian Walker, P.L.C.
1850 North Central Avenue, #900
Phoenix, AZ 85004
Attorneys for Debtor

Jennifer Gaiamo
Office of the U.S. Trustee
230 North First Avenue, Suite 204
Phoenix, AZ 85003-1706
jennifer.a.gaiamo@usdoj.gov

Cynthia L. Johnson
Law Office of Cynthia L. Johnson
11640 East Caron Street
Scottsdale, AZ 85259
Attorneys for Sell Wholesale Funding, LLC

1 David L. Knapper
Law Offices of David L. Knapper
2 1599 East Orangewood Avenue, Suite 125
Phoenix, AZ 85020
3 david.knapper@azbar.org
Attorney for AZBEN Limited, L.L.C.

4 Kevin J. Blakley
5 Gammage & Burnham P.L.C.
Two North Central Avenue, 15th Floor
6 Phoenix, Arizona 85004
kblakley@gblaw.com
7 Attorneys for Shawna C. Heuer, personal
representative of the Estate of Denny J. Chittick

8 Perry L. Goorman
9 16427 North Scottsdale Road, Suite 410
Scottsdale, AZ 85254-7102
10 plg@goormanlaw.com
Attorney for Phoenix Newspapers, Inc.

11 Timothy H. Barnes
12 Timothy H. Barnes, P.C.
428 East Thunderbird Road, #150
13 Phoenix, Arizona 85022
tim@thbpc.com
14 Attorney for Redi Carpet, LLC

15 James E. Shively
Ball Santin & McLeran PLC
16 2999 N 44th St Ste 500
Phoenix, AZ 85018-7252
17 shively@bsmplc.com
Attorneys for BMW Financial Services, NA, LLC

18 Janet Marie Spears
19 Aldridge Pite
2 North Central Avenue, Suite 1135
20 Phoenix, AZ 85004
jspears@aldridgepite.com
21 Attorneys for US Bank National Association

22 Andrew Q. Everroad
Bonnett Fairbourn Friedman & Balint PC
23 2325 East Camelback Road, Suite 300
Phoenix, AZ 85016-3422
24 aeverroad@bffb.com

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Nancy K. Swift
Buchalter Nemer
16435 N Scottsdale Rd Ste 440
Scottsdale, AZ 85254-1754
nswift@buchalter.com

Jason Tamashiro
Tamashiro Law Office
21515 Hawthorne Blvd Ste 650
Torrance, CA 90503
jason@tamashirolaw.com

By: /s/Cynthia Ambrozic

SETTLEMENT AGREEMENT

This settlement agreement (the "Agreement") is made by and between Jill Ford, as Chapter 7 Trustee of the bankruptcy estate of In re: Yomtov S. Menaged, Case No. 2:16-bk-04268-PS (the "Trustee") and Peter S. Davis, as Receiver of DenSco Investment Corporation (the "Receiver"). The parties hereto are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

1. On or about April 20, 2016 ("Petition Date"), Yomtov S. Menaged (the "Debtor") filed for relief under Chapter 7 of the United States Bankruptcy Code. Soon thereafter the Trustee was appointed;

2. On or about August 18, 2016, Peter S. Davis was appointed by the Maricopa County Superior Court pursuant to an *Order Appointing Receiver* in Cause No. CV2016-014142 as the Receiver of DenSco Investment Corporation (hereinafter "DenSco"), an Arizona corporation;

3. The Debtor has stated that he is the sole member and manager of Furniture King, LLC, an Arizona limited liability company formed on August 26, 2011, according to public records;

4. The Debtor also has stated that he is the sole member and manager of Furniture & Electronic King LLC, an Arizona limited liability company formed on December 4, 2015 ("FEK"), and Scott's Fine Furniture, LLC, an Arizona limited liability company formed on March 23, 2016 ("SFF"). According to the Debtor, FEK is a continuation or successor of Furniture King, LLC, and SFF is a continuation or successor of FEK, and thus Furniture King, LLC, FEK, and SFF are sometimes referred to herein as "Furniture King";

5. Accordingly, the Debtor's membership interests in Furniture King are property of the Bankruptcy Estate under the sole control of the Trustee;

6. The Receiver, during his investigation into the assets of DenSco has determined that pursuant to a Forbearance Agreement dated April 16, 2014 between DenSco and the Debtor, DenSco is a secured creditor of Furniture King, LLC and pursuant to the terms of a UCC-1 Financing Statement [Recorded at 2014-001-5063-0] DenSco has a secured interest in all of Furniture King LLC's accounts, assets, equipment and proceeds thereof. Given that FEK and SFF are the continuation of Furniture King, LLC, the Receiver contends he is a secured creditor of all assets of Furniture King;

7. According to the Forbearance Agreement between the Debtor and DenSco, a total of at least \$35,639,880.71 was owed to DenSco as of the date of the Forbearance Agreement. Based on the Receiver's review of records of DenSco, the Receiver believes that the balance owed to DenSco by the Debtor may have increased to over \$40,000,000.00;

8. Prior to the Debtor closing Furniture King in or around late August 2016, the Trustee conducted an inspection and initial valuation of the furniture assets in the Furniture

King stores and warehouse and concluded that those furniture assets probably have a liquidation value in excess of \$100,000.00;

9. The Receiver has also determined that Furniture King, LLC has other secured creditors¹, but based on independent investigation of the priority of the other secured creditors, the Receiver is confident that DenSco is in a priority position to receive the overwhelming majority of funds from the liquidation of the assets of Furniture King²;

10. The Parties agree that the assets of Furniture King, which include furniture located in stores and a warehouse, need to be liquidated and that it is critical that the Receiver be granted immediate access to the assets of Furniture King and the authority to begin the process of liquidating those assets;

11. The Parties agree that with DenSco as the likely first position secured creditor of Furniture King and the Receiver of DenSco another independent, court-supervised fiduciary, that the Receiver shall be the single fiduciary that should take control of Furniture King and facilitate the orderly liquidation of its assets;

AGREEMENT

In consideration of the above Recitals and the mutual promises contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

A. Stipulation for the Appointment of the Receiver. The Trustee and the Receiver agree to execute a *Stipulated Consent to Order Placing Furniture King in Receivership* (The "Stipulation") which shall effectively result in placing Furniture King immediately into the Receivership proceeding currently pending in Maricopa County Superior Court Cause No. CV2016-014142 under the terms of the current Order Appointing Receiver. A copy of the executed Stipulation is attached hereto as Exhibit "A".

B. Payment to Trustee. In an effort to resolve any disputes, the Receiver and Trustee agree that 10% of the net recovery³ from DenSco's portion from the Receiver's liquidation of the assets of Furniture King will be distributed by the Receiver to the Trustee for eventual distribution to the creditors of the Debtor.

C. Resolution of other secured claims and Priority. While the Receiver has determined that DenSco is a secured creditor with the most senior priority as to the assets of Furniture King, the Receiver shall notify all other creditors of Furniture King of its inclusion into the Receivership and, after the assets of Furniture King are liquidated, if it is determined that

¹ The Receiver is unaware of any other secured creditors of Scott's Fine Furniture, LLC and Furniture & Electronic King LLC.

² The Receiver believes that there may be a secured creditor of Furniture King, LLC in priority to the Receiver, but this creditor may be owed less than \$8,500.00.

³ The net recovery will be the funds payable to DenSco's Receiver, after the Receiver's actual costs and expenses of the liquidation of the Furniture King furniture assets are paid.

there are other creditors who may have a claim that is senior to that of the Receiver, the Receiver shall see that these secured creditors are paid in the order of priority and to the extent the funds permit.

D. Proceeds from Furniture King to remain segregated. The proceeds from the liquidation of the assets of Furniture King shall be retained by the Receiver in a segregated bank account of the Receivership Estate until the Receivership Court in Maricopa County Superior Court Cause No. CV2016-014142 determines that after notice to all creditors of Furniture King any remaining proceeds can be paid to DenSco in partial satisfaction of its secured claim.

E. Stipulation to be Effective Immediately. Upon execution of this Agreement and the Stipulation, the Receiver shall file the Stipulation with the Receivership Court in Maricopa County Superior Court Cause No. CV2016-014142 and upon the entry of an Order have the immediate exclusive access and control of the assets of Furniture King. If for any reason the Superior Court fails to enter an Order placing Furniture King, LLC, Furniture & Electronic King LLC, and Scott's Fine Furniture, LLC into Receivership or the Bankruptcy Court fails to approve the compromise between the Receiver and the Trustee, the Receiver shall return control of the assets of Furniture King to the Trustee.

F. Approval of Agreement. This Agreement is conditioned on the approval of the Bankruptcy Court. If such approval is not obtained, this Agreement shall be considered null and void and the Receiver shall return control of the assets of Furniture King to the Trustee. With the understanding that the value of the assets of Furniture King will dissipate over time, the Trustee agrees to seek expedited approval of this Agreement.

G. Rule 9019 Motion. Upon execution of this Agreement, Trustee shall file a motion for approval of this Agreement with the Bankruptcy Court pursuant to Bankruptcy Rule 9019, and shall provide appropriate notice of the same as required by the Bankruptcy Rules and local rules of bankruptcy procedure, and shall actively seek the Bankruptcy Court's approval of the same.

H. Attorneys' Fees. Each Party hereto shall be responsible for the payment of its own costs, attorneys' fees and all other expenses incurred in connection with the each party's investigation and this Agreement. If any Party commences an action against the other Party to enforce or interpret any of the terms hereof, the losing or defaulting Party shall pay to the prevailing Party as determined by the Bankruptcy Court all costs and expenses, including reasonable attorneys' fees and disbursements, incurred in connection with the prosecution or defense of such action.

I. Further Assurances. The Parties to this Agreement shall execute any further or additional instruments, and they shall perform any acts which may become necessary, in order to effectuate and carry out the purposes hereof.

J. Entire Agreement. This Agreement contains the entire agreement and understanding among the Parties concerning the subject hereof and supersedes and replaces all prior negotiations, agreements and proposed agreements, written or oral, relating thereto. Each of the Parties hereto acknowledges that no other Party, nor any agent or attorney of any Party,

has made any promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce it to execute this Agreement and acknowledges that this Agreement has not been executed in reliance on any promise, representation or warranty not contained herein. This Agreement shall not be amended, modified or supplemented at any time unless by a writing executed by the Parties hereto.

K. Opportunity to Consult with Counsel. The Parties acknowledge that they have had the opportunity to consult with and obtain the advice of counsel prior to entering this Agreement, and have entered this Agreement voluntarily and free from coercion, duress or undue influence.

L. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Arizona applicable to contracts executed and intended to be performed entirely within the state of Arizona by residents of the state of Arizona. Any action at law, suit in equity or judicial proceeding for the enforcement or interpretation of this Agreement or any provision therefore shall be instituted only in the Bankruptcy Court.

M. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

N. Representation of Authority. The signatories to this Agreement represent and warrant that they have full authority to execute this Agreement and to bind the Party on whose behalf they are signing to the provisions hereof.

O. Severability. Should any portion of this Agreement be ruled unenforceable or invalid, such ruling shall not affect the enforceability or validity of the remaining portions of this Agreement.

P. Headings. Article and section headings are inserted herein solely for convenience and the same shall not by themselves alter, modify, limit, expand or otherwise affect the meaning of any provision of this Agreement.

Q. Assignment and Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that nothing herein shall relieve any Party of any obligation under this Agreement, except upon the express written consent of the other Party.

R. Interpretation. This Agreement shall be interpreted fairly in light of the intentions of the Parties as set forth in this Agreement. The Parties each hereby waive the benefit of any rule or law or statute requiring that ambiguities be interpreted against the Party preparing the Agreement or causing the ambiguity.

S. No Admissions. The execution of this Agreement is not to be construed as an admission of liability by either Party, or an acknowledgement by either Party that the other Party's claims have any basis, but is a compromise and settlement of disputed claims.

