

1 **GUTTILLA MURPHY ANDERSON**

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Attorneys for the Receiver

6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

7 IN AND FOR MARICOPA COUNTY

8 ARIZONA CORPORATION)
COMMISSION,)

9 Plaintiff,)

10 v.)

11 DENSCO INVESTMENT)
CORPORATION, an Arizona corporation,)

12 Defendant.)

Cause No. CV2016-014142

PETITION NO. 7

PETITION FOR ORDER APPROVING FEES
AND COSTS INCURRED BY THE
GAMMAGE & BURNHAM, P.L.C. FROM
AUGUST 12, 2016 THROUGH NOVEMBER
2, 2016

(Assigned to Judge Lori Horn Bustamante)

15 Peter S. Davis, as the court appointed Receiver, respectfully petitions the Court as follows:

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

18 2. Ten days earlier, on August 8, 2016, the Arizona Corporation Commission (the
19 “ACC”) issued a subpoena duces tecum to DenSco Investment Corporation (the “Subpoena”). The
20 Subpoena sought eighteen categories of corporate records covering the time period of January 1,
21 2007 to the present (the “Subpoena”). The Subpoena required DenSco Investment Corporation
 (“DenSco”) to produce the records to the ACC by August 10, 2016.

1 3. DenSco’s sole shareholder, Denny J. Chittick (“Chittick”), died in late July 2016. At
2 the time of his death, Chittick was the sole director, sole officer, and sole employee of DenSco.
3 Chittick’s sister, Shawna Heuer (“Heuer”), was appointed as personal representative of the Estate of
4 Denny Chittick (the “Estate”).

5 4. At the time of Chittick’s death, Gammage & Burnham, PLC (“Gammage &
6 Burnham”) did not represent DenSco, as DenSco was represented by David Beauchamp
7 (“Beauchamp”) at Clark Hill, PLC. Soon after Mr. Chittick’s death, the Estate learned that
8 Beauchamp not only represented DenSco at times, but also represented Chittick in matters that may
9 have been unrelated to DenSco.

10 5. As detailed below, DenSco’s records are voluminous, and those records could not be
11 produced to the ACC before being reviewed for materials protected by the attorney-client privilege or
12 other privileges. Beauchamp believed that Gammage & Burnham was best positioned to promptly
13 review DenSco’s records for privileged materials before their production to the ACC, and Gammage
14 & Burnham agreed to be responsible for this review.

15 6. The Estate and Heuer retained Gammage & Burnham, PLC (“Gammage & Burnham”) on
16 August 12, 2016. The Estate and Heuer agreed to pay Gammage & Burnham compensation at
17 agreed hourly rates for the services of the firm, along with reasonable costs and expenses incurred on
18 behalf of the Estate and Heuer. Gammage & Burnham does not represent DenSco.

19 7. Before the Court entered the Receivership Order, Gammage & Burnham worked with
20 the ACC to extend DenSco’s deadline for producing the documents requested by the Subpoena.
21 Gammage & Burnham then reviewed DenSco’s paper records, consisting of 28 or more Bankers
Boxes of documents, for communications and other documents protected by the attorney-client or
other privileges. Gammage & Burnham worked with the Estate and an outside computer consultant,

1 D4, LLC, to recover electronic records of DenSco from various computers, mobile devices, email
2 accounts, and cloud storage accounts, including Dropbox, and to review those records for materials
3 protected by the attorney-client or other privileges. Gammage & Burnham prepared privilege logs
4 listing documents and files protected by the attorney-client privilege or other privileges. Gammage &
5 Burnham turned over DenSco's records to the Receiver, pursuant to the Receivership Order, on a
6 rolling basis as it completed its review of the records for privileged materials. The Receiver then
7 complied with the Subpoena by producing responsive documents to the ACC while withholding
8 those documents that Gammage & Burnham designated as privileged.

8 8. Gammage & Burnham's work benefitted the Receivership in two ways. First, the
9 firm's work was necessary to ensure that DenSco complied with the Subpoena. The Subpoena's
10 return date was eight days *before* the court entered the Receivership Order, requiring Gammage &
11 Burnham to begin its work before the Receiver was appointed by the Court. Following the entry of
12 the Receivership Order, the Receiver determined that Gammage & Burnham should continue its
13 review of DenSco's records for privileged materials to ensure that the critical documents were
14 quickly and efficiently reviewed. Second, Gammage & Burnham's work preserved attorney-client
15 and other privileges that belong to DenSco and ensured that DenSco did not inadvertently waive
16 these privileges in responding to the Subpoena¹. The work performed by Gammage & Burnham
17 would have been performed by the Receiver and/or the Receiver's counsel but for the Estate retaining
18 Gammage & Burnham prior to the Receivership, and the parties agreeing it was more efficient for
19 Gammage & Burnham to complete the work in progress.

20 9. Gammage & Burnham has submitted an itemized statement for services rendered to

21 ¹ The Receivership Order specifically does not allow the Receiver to waive the attorney client privilege between Chittick and Beauchamp without the express consent of the Estate. Given that Beauchamp represented that he performed legal services for Chittick and DenSco, there was concerns about the inadvertent waiver of attorney client privilege between Chittick and Beauchamp and Beauchamp and DenSco.

1 the Receivership and for reimbursable costs incurred or paid during the period August 12, 2016
2 through November 2, 2016. The total amount requested for payment by Gammage & Burnham is
3 \$42,302.25. The Receiver believes that this amount is reasonable and should be paid from the
4 Receivership Assets and has therefore approved this statement for payment.

5 10. Pursuant to the Court's *Order Re: Petition No. 2*, the Receiver is authorized to file this
6 fee petition without including as exhibits the itemization of services rendered to, and costs incurred or
7 expended on behalf of, the Receivership, provided that the fee petition includes a statement that
8 anyone desiring additional information concerning the services and costs to be paid under the fee
9 petition may obtain redacted information from the Receiver by delivering to the Receiver and the
10 Receiver's counsel, Guttilla Murphy Anderson, P.C., a written request specifying the additional
11 information requested at least three (3) days prior to the date set for any hearing on the fee petition.
12 The Court's *Order Re: Petition No. 2* further provides that upon request of the Court, the Receiver
13 shall make available for *in camera* review by the Court the itemized statements and supporting
14 documentation for the services and costs to be paid under the fee petition.

15 WHEREFORE, the Receiver respectfully requests that the Court enter an order authorizing the
16 Receiver to pay from Receivership Assets the amount of \$42,302.25 to Gammage & Burnham, PLC,
17 for services rendered and costs incurred or paid during the period August 12, 2016 through
18 November 2, 2016.

19 RESPECTFULLY SUBMITTED this 14TH of November, 2016.

20 GUTTILLA MURPHY ANDERSON, P.C.

21 /S/RYAN W. ANDERSON

Ryan W. Anderson

Attorneys for Receiver

1 Original of the foregoing and original
2 proposed *Order Re: Petition No. 7* were
3 ELECTRONICALLY FILED with
4 the court and copies mailed this
5 14th day of November, 2016, to:

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