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8 Attorneys for the Receiver

9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

10 IN AND FOR MARICOPA COUNTY

11 ARIZONA CORPORATION )

12 COMMISSION, )

13 Plaintiff, )

14 v. )

15 DENSCO INVESTMENT )  
16 CORPORATION, an Arizona )  
17 corporation, )

18 Defendant. )

Cause No. CV2016-014142

PETITION NO.137

PETITION FOR ORDER APPROVING  
SETTLEMENT AGREEMENT OF  
RECEIVER, U.S. BANK NATIONAL  
ASSOCIATION AND HILDA CHAVEZ

(Assigned to the Honorable John Hanna)

19 Peter S. Davis, as the court appointed Receiver of DenSco Investment Corporation,  
20 respectfully petitions the Court for an Order approving a settlement agreement between the  
21 Receiver, U.S. Bank National Association (“U.S. Bank”) and Hilda Chavez (“Chavez”)  
(collectively, the “U.S. Bank Defendants”), as follows:

**I. Background**

1. On August 18, 2016, this Court entered its *Order Appointing Receiver*, which  
appointed Peter S. Davis as Receiver of DenSco Investment Corporation (“DenSco”). DenSco  
is an Arizona Corporation formed by Denny J. Chittick in April of 2001.

1           2.       The Receiver has initially determined that DenSco may hold significant claims  
2 against financial institutions including JP Morgan Chase Bank, N.A. and U.S. Bank N.A. for  
3 their participation in a scheme to defraud DenSco. The Receiver has determined that JP  
4 Morgan Chase Bank, N.A. and U.S. Bank N.A. were instrumental in allowing Yomtov Scott  
5 Menaged (“Menaged”) to operate a massive fraudulent loan scheme upon DenSco. The  
6 Receiver has learned that starting in January 2014, as part of the DenSco’s underwriting  
7 requirements, Menaged was required to provide DenSco with a copy of each specific cashier’s  
8 check, issued by Menaged’s financial institution, to the respective foreclosure trustee for the  
9 purchase of a property by Menaged at a foreclosure trustee’s auction/sale. The Receiver’s  
10 investigation has determined that Menaged was able to procure at least 1,383 legitimate  
11 cashier’s checks from JP Morgan Chase Bank, N.A. and U.S. Bank N.A. in a period of two  
12 years for a collective face value of at least \$319,292,828.

13           3.       However, the cashier’s checks from JP Morgan Chase Bank, N.A. and U.S. Bank  
14 N.A. were used by Menaged to make it appear that Menaged was actually using DenSco loan  
15 proceeds to purchase property from a foreclosure trustee, when in fact, Menaged obtained the  
16 cashier’s check for the sole purpose of simply taking a picture of the cashier’s check to send to  
17 DenSco to make it appear that the DenSco funds were being used to purchase real property.  
18 Moreover, the Receiver has learned that after Menaged took a picture of the cashier’s check to  
19 send to DenSco he returned the cashier’s check to the Defendants to be cancelled and the funds  
20 redeposited, typically minutes or a few hours after the cashier’s check was issued. The sheer  
21 volume of issued and then immediately cancelled cashier’s checks by Menaged was staggering.

1           4.       On September, 2017, the Receiver filed *Petition No. 36* seeking approval of the  
2 engagement of the law firm of Bergin, Frakes, Smalley & Oberholtzer, PLLC to serve as  
3 Special Counsel to the Receiver to investigate DenSco’s potential claims against JP Morgan  
4 Chase Bank, N.A. and U.S. Bank N.A. On October 18, 2017, the Court, pursuant to *Order Re*  
5 *Petition No. 36* approved the engagement of Bergin, Frakes, Smalley & Oberholtzer, PLLC.

6           5.       In August of 2019, the Receiver filed Petition No. 80, an ex-parte petition seeking  
7 approval to file a civil complaint against U.S. Bank, N.A., Hilda H. Chavez, JP Morgan Chase  
8 Bank, N.A., Samantha Nelson f/k/a Samantha Kumbaleck, Kristofer Nelson and Vikram  
9 Dadlani (“Bank Litigation Defendants”). On September 17, 2019, the Court, pursuant to *Order*  
10 *Re Petition No. 80* approved the filing of a complaint against the Bank Litigation Defendants.

11           6.       Accordingly, the Receiver caused a Complaint to be filed in the Maricopa County  
12 Superior Court against the Bank Litigation Defendants in the Superior Court of the State of  
13 Arizona for the County of Maricopa, captioned *Peter S. Davis, as Receiver of DenSco*  
14 *Investment Corporation v. U.S. Bank, N.A., et al.*, Case No. CV2019-011499 (the “Lawsuit”).

15           7.       Thereafter, the Receiver determined that the prosecution of the Lawsuit would  
16 benefit from the expertise of the lawyers (and other professionals) at Osborn Maledon, P.A.,  
17 who have significant experience in the area of civil litigation and previously served as the  
18 Receiver’s Special Counsel in the DenSco receivership. The Receiver then determined that  
19 Osborn Maledon, P.A. should substitute for Bergin Frakes Smalley & Oberholtzer, PLLC as  
20 his counsel in the Lawsuit and prosecute the Lawsuit to conclusion.

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1           8.       On October 21, 2020, the Receiver filed *Petition No. 102* seeking approval of the  
2 engagement of the law firm of Osborn Maledon, P.A. (“Special Counsel”) as his counsel in the  
3 Lawsuit and prosecute the Lawsuit to conclusion. On December 4, 2020, the Court, pursuant  
4 to *Order Re Petition No. 102* approved the engagement of Special Counsel.

5           **II.     DenSco Claims Against U.S. Bank Defendants**

6           9.       The Receiver alleged in his Third Amended Complaint that between January and  
7 April 2014, the U.S. Bank Defendants committed a series of wrongful acts. The Receiver  
8 alleges that the U.S. Bank Defendants, with knowledge that DenSco had wire-transferred funds  
9 to a U.S. Bank account for Arizona Home Foreclosures, LLC that were intended to be used by  
10 Arizona Home Foreclosures, LLC to acquire specific properties, assisted Menaged and/or  
11 Veronica Castro (“Castro”) in defrauding DenSco by: (i) providing them with 40 cashier’s  
12 checks payable to DenSco that identified specific properties; (ii) observing Menaged or Castro  
13 photograph the checks as confirmation that they had been issued; (iii) receiving the checks  
14 from Menaged or Castro, often within a few minutes, for return because they had not been used  
15 for their intended purpose; and (iv) assisting Menaged or Castro in redepositing the funds into  
16 the Arizona Home Foreclosures account.

17          10.     As the case developed, the Receiver further argued that on 20 occasions the U.S.  
18 Bank Defendants issued cashier’s checks to Menaged or Castro, which Menaged or Castro  
19 photographed and immediately returned to the U.S. Bank Defendants, for which U.S. Bank  
20 does not have any records, either because they were not created at the time the checks were  
21 issued or which U.S. Bank has destroyed. The Receiver alleges the U.S. Bank Defendants

1 provided these checks to Menaged or Castro and then destroyed them after they had been  
2 photographed because there were not sufficient funds in the EZ Home Foreclosures account.

3 11. In his Third Amended Complaint, the Receiver seeks an award of compensatory  
4 damages against the U.S. Bank Defendants for aiding and abetting fraud and against Hilda  
5 Chavez for civil racketeering.

6 12. The U.S. Bank Defendants have vigorously refuted the allegations made by the  
7 Receiver in his Third Amended Complaint and denied any wrongdoing by the U.S. Bank  
8 Defendants.

9 **II. Settlement and Recent Developments**

10 13. After participating in a mediation on April 20, 2023, the Receiver and U.S. Bank  
11 reached a settlement, the terms of which are set forth in a Settlement Agreement that was  
12 executed on June 5, 2023.

13 14. A material provision of the Settlement Agreement is that its material terms,  
14 specifically the amount of consideration being paid by the U.S. Bank Defendants is  
15 confidential, yet the Settlement Agreement is conditioned on the approval of the Receivership  
16 Court. Accordingly, a copy of the Settlement Agreement shall be reflected as Exhibit “A” and  
17 will be filed with this Court under seal. The Settlement Agreement contains a provision that  
18 allows a DenSco investor to view the Settlement Agreement if they executed an agreement as  
19 set forth in Exhibit “B” which serves to bind any DenSco investor to maintain the strict  
20 confidentiality of the material terms of the Settlement Agreement.

1           15.     Under the terms of the Settlement Agreement, U.S. Bank Defendants shall pay a  
2 confidential sum of money to the Receiver and the U.S. Bank Defendants deny all liability or  
3 wrongdoing. Importantly, the Settlement Agreement calls for the Receiver and the U.S. Bank  
4 Defendants to mutually release any and all claims between and among each other.

5           16.     The Receiver recommends that the Court approve the Settlement Agreement with  
6 U.S. Bank Defendants for a series of reasons. First, the amount of the consideration being paid  
7 by U.S. Bank Defendants is reasonable and will allow another distribution to DenSco investors.  
8 Second, the Receiver is aware that litigation is unpredictable. While the Receiver has the utmost  
9 confidence in his claims and that a jury would render a verdict for the Receiver, the thrust of  
10 the defense of U.S. Bank Defendants is that other individuals and organizations should share  
11 responsibility and financial liability, therefore potentially undercutting how much money that  
12 the Receiver may be award against U.S. Bank Defendants. Third, while the Receiver's Special  
13 Counsel agreed to prosecute this matter on a contingency, there are substantial costs associated  
14 with taking this matter to trial, including the costs of various experts engaged by the Receiver.  
15 Accordingly, the Receiver believes this compromise is in the best interest of the DenSco  
16 Receivership Estate. Finally, this compromise is only a compromise against the U.S. Bank  
17 Defendants and not Defendants J.P. Morgan Chase Bank, N.A. and its employees, Samantha  
18 Nelson, and Vikram Didlani. US Bank only issued 60 cashier's checks, more or less, between  
19 January 2014 and April 2014. The Receiver has determined that the number of fraudulent  
20 cashier's checks issued by Chase Bank, N.A. between April 2014 and July 2015 is over 1300  
21 checks.

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WHEREFORE, the Receiver respectfully requests that the Court enter an order approving the Settlement Agreement between the Receiver and the U.S. Bank Defendants.

Respectfully submitted this 15<sup>TH</sup> day of June, 2023.

GUTTILLA MURPHY ANDERSON, P.C.

/s/ Ryan W. Anderson

Ryan W. Anderson

Attorneys for the Receiver

P2359-001(291942)

## INVESTOR CONFIDENTIALITY AGREEMENT

Peter Davis as Receiver for DenSco (“Plaintiff”), U.S. Bank National Association and Hilda Chavez (“Defendants”) have entered into a Settlement Agreement to resolve the claims Plaintiff asserted against Defendants in Maricopa County Superior Court Case No. CV 2019-011499 (collectively, “the Parties”). The Settlement Agreement says that its material terms are to be kept confidential except as the Agreement allows. The Settlement Agreement allows DenSco’s investors to review the Settlement Agreement if they “request in writing to review the Settlement Agreement and . . . execute a confidentiality agreement.”

\_\_\_\_\_ (“Investor”) is a DenSco investor who has asked in writing to review the Settlement Agreement.

Upon receipt of a signed copy of this Investor Confidentiality Agreement, the Receiver will either (1) allow the Investor to review the Settlement Agreement at the Receiver’s offices or (2) if the Investor is not able to travel to the Receiver’s office, send the Investor a copy of the Settlement Agreement.

By signing this Agreement, the Investor agrees to (1) keep the terms of the Settlement Agreement confidential and (2) if they have received a copy of the Settlement Agreement, to destroy that copy after reviewing it and not make or retain any copy of the Settlement Agreement.

If the Investor believes the Investor is required to disclose the terms of the Settlement Agreement to anyone, the Investor will first give written notice to the Receiver. The Receiver will have 60 days from the receipt of such notice to address the request with the Investor, notify the Defendants of the request, and if appropriate, seek relief from the Receivership Court. During that 60-day period, the Investor agrees not to disclose the terms of the Settlement Agreement and to abide by any Court order regarding disclosure that should be issued.

If the Investor believes that the Investor is required to address the terms of the Settlement with the Receivership Court and the Investor is not able to prepare a filing without disclosing the material terms of the Settlement, any filing which details any of the material terms of the Settlement must be filed with the Receivership Court under seal.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Investor