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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In the Matter of the Estate of

DENNY J. CHITTICK,

Deceased.

Cause No. PB 2016-051754

NOTICE OF CLAIM AGAINST ESTATE OF  
DENNY J. CHITTICK

(Assigned to Commissioner Andrew  
Russell)

1. The Claimant is Peter S. Davis in his capacity as court appointed Receiver of DenSco Investment Corporation ("DenSco") in *Arizona Corporation Commission v. DenSco Investment Corporation, an Arizona corporation*, Maricopa County Superior Court, case No. CV2016-014142 ("Receiver").

2. The Estate of Denny J. Chittick is indebted to the Receiver in the amount of \$46,811,635.54 as detailed in paragraph 3 below.

3. The Receiver's claims against Estate of Denny J. Chittick are as follows:

A. At all material times, Chittick was the sole owner, officer, employee and shareholder of DenSco. From and after November 27, 2013, Chittick was aware that DenSco had

been defrauded. At that point DenSco was insolvent, or would soon be insolvent, or was, or would

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1 become, unable to pay its debts as they became due. On or about December 31, 2014, Chittick  
2 transferred all of the funds in his DenSco 401(k) Plan (\$359,609.00) and transferred it to a new  
3 account at Vanguard. Likewise, on or about December 31, 2014, Chittick transferred all of the funds  
4 from the DenSco Defined Benefit Plan (\$1,817,243.03) to a certificate of deposit at an FDIC insured  
5 bank. Additionally, on or about December 31, 2014, Chittick's caused DenSco to convert  
6 \$1,448,460.49 from his personal investment in DenSco, into DenSco stock in Chittick's name, as a  
7 book entry.

8 I. CHITTICK'S PERSONAL INVESTMENT ACCOUNT

9 On December 31, 2014, Chittick converted \$1,448,460.49 from his personal investment in  
10 DenSco into DenSco stock. Between January 29, 2015 and June 28, 2016, Chittick caused DenSco to  
11 make "distributions" to Chittick, in the total sum of \$555,000.00 (cash), which were funded by a  
12 corresponding liquidation of Chittick's shares of DenSco stock. In other words, Chittick caused  
13 DenSco to redeem Chittick's shares of DenSco stock for a total amount of \$555,000.00, during a time  
14 period when the true value of the shares of stock would have been worthless, or nearly worthless,  
15 given that DenSco had been defrauded out of millions of dollars and was insolvent or would soon be  
16 insolvent, or was, or would become, unable to pay its debts as they became due.

17 Additionally, Chittick caused DenSco to transfer \$120,000 (cash) as "distributions," to  
18 Chittick, between January 31, 2014 and December 26, 2014. These "distributions" were in addition to  
19 the annual wages Chittick was paid by DenSco and were made at a time that DenSco was insolvent,  
20 or would soon be insolvent, or was, or would become, unable to pay its debts as they became due.

21 Last, Chittick caused DenSco to transfer \$11,963.90 as "wages" to Chittick's minor children.  
These funds may have been deposited into an IRA account for the benefit of the children.

1                   II. CHITTICK'S 401(K) PLAN.

2           On or about December 31, 2014, Chittick caused, or directed, the transfer of all funds in his  
3 401(k) Plan from DenSco into a 401(k) plan at Vanguard in Chittick's name. At this time, the funds  
4 in the 401(k) Plan had been invested in DenSco, so the true value of the 401(k) investment was  
5 worthless or nearly worthless. Still, Chittick transferred \$359,609.00 as "funds of the plan" to the  
6 new account at Vanguard. Even if the value of the 401(k) plan was worth \$359,609.00 at the time of  
7 its transfer, \$121,799.71 belonged to DenSco. These funds include \$84,800.00 from transfers made to  
8 the 401(k) plan which Chittick characterized as "wages," but in reality were a type of distribution  
9 from DenSco to Chittick, from and after December 23, 2013. Additionally, the \$121,799.71 includes  
10 \$36,999.71 in interest that accrued on the 401(k) Plan's investor balance after November 27, 2013, on  
11 the date that Chittick became aware of the fraud committed against DenSco by Menaged. These  
12 transfers left DenSco with even less money to pay its creditors, at a time when it already was  
13 insolvent, or would soon be insolvent, or was, or would become, unable to pay its debts as they  
14 became due.

15                   III. CHITTICK'S DEFINED BENEFIT PLAN

16           Chittick participated in a Defined Benefit Pension Plan at DenSco. All of the funds in this  
17 account were invested in DenSco. On or about December 24, 2014, Chittick caused the liquidation of  
18 all "funds" in the Defined Benefit Pension Plan at DenSco and directed the transfer of the liquidated  
19 funds to a secure investment in the form of a certificate of deposit at an FDIC insured bank. The  
20 actual value of the investment in the Defined Benefit Pension Plan was worthless, or nearly  
21 worthless. Still, Chittick transferred \$1,817,243.03 out of the Defined Benefit Plan into the  
certificate of deposit. Even if the value of the investment in the Defined Benefit Plan was

1 because \$867,289.00 was transferred to the Defined Benefit Plan as a type of distribution for Chittick  
2 over and above his annual wages, plus \$9,405.49 in interest that accrued on the Defined Benefit  
3 Pension Plan's investor balance, after November 27, 2013, or the date that Chittick became aware of  
4 the fraud committed against DenSco by Menaged. The \$1,817,243.03 is funds belonging to DenSco.  
5 Even if the value of the Defined Benefit Pension Plan was truly worth \$1,817,243.03 on the date of  
6 its transfer, at least \$876,694.49 of those funds belongs to DenSco. These transfers left DenSco with  
7 even less money to pay its creditors, at a time when it already was insolvent, or would soon be  
8 insolvent, or was, or would become, unable to pay its debts as they became due.

9 Claims: As a result of the foregoing actions by Chittick, the Receiver has the  
10 following claims against Chittick: Conversion, common law fraud, breach of fiduciary duty as  
11 director and officer of DenSco, fraudulent transfer (both actual and constructive) pursuant to A.R.S.  
12 §§ 44-1004 et seq., unjust enrichment, or, alternatively, gross negligence or negligence as an officer  
13 or director of DenSco.

14 B. Chittick was the sole owner, officer, employee and shareholder of DenSco. Chittick  
15 transferred funds in the form of purported secured loans from DenSco to Yomtov Scott Menaged or  
16 his related entities as an investment of the cash assets of DenSco. Menaged was to sign a Promissory  
17 Note for the monies loaned to him from DenSco, purchase real property with the lent funds, and sign  
18 a first position Deed of Trust, or mortgage, with DenSco as a beneficiary on the real property  
19 purchased by Menaged or his related entities. All DenSco monies loaned to Menaged were to be  
20 repaid by Menaged with interest. If a default occurred, DenSco's first priority secured interest in the  
21 real property purchased by Menaged was intended to protect DenSco's loans. However, Menaged  
defrauded DenSco by taking advantage of DenSco's lending practices and in numerous instances,

1 DenSco's loans to Menaged or his related entities were not secured with a first position deed of trust  
2 or Menaged failed to even purchase any real property the proceeds of the DenSco loans to Menaged.

3 To date, the Receiver has identified 91 remaining DenSco loans to Menaged, or his related  
4 entities, totaling \$43,947,819.61. From these 91 loans, it appears that only 6 real properties were  
5 actually purchased by Menaged or his related entities, however, these properties are not secured by a  
6 1<sup>st</sup> position lien in favor of DenSco. The Receiver has determined that of the \$43,947,819.61 that was  
7 lent to Menaged or his related entities, \$14,339,339.79 was advanced to Menaged under a  
8 forbearance agreement to purportedly ensure DenSco had first position liens on property previously  
9 purchased by Menaged with previous DenSco loans, and \$28,122,300.00 appears to represent  
10 unsecured loans to Menaged. It is not yet known what Menaged has done with the \$28,122,300.00  
11 of DenSco funds. Menaged filed for Chapter 7 bankruptcy relief on April 20, 2016.

12 Chittick failed to institute or follow proper management and control of DenSco's business  
13 operations which enabled and contributed to the fraud committed against DenSco by Menaged.  
14 Chittick was aware of the fraud committed against DenSco, by Menaged, at least by November 27,  
15 2013. Despite his actual knowledge of the fraud by Menaged, Chittick continued to accept monies  
16 for investors into DenSco, and continued to make loans to Menaged and his related entities, adding to  
17 the liabilities of DenSco which could not be met. Chittick's failure to provide proper management  
18 and control of DenSco's operations also included the preparation of false, or inaccurate financial  
19 records of DenSco, upon which the tax liability of DenSco was based, resulting in artificially inflated  
20 tax liabilities of DenSco. The tax liability of DenSco was borne by Chittick since DenSco was  
21 treated as an S corp for tax purposes. However, DenSco presumably would reimburse Chittick for the  
tax liability he paid related to DenSco's income in the form of draws and/or payroll. Therefore, to

1 artificially inflated tax liability of DenSco, DenSco was harmed in an amount to be determined, in  
2 addition to the loss of the \$43,947,819.61, earlier discussed.

3 **Claims:** As a result of the foregoing actions by Chittick, the Receiver has the following  
4 claims against Chittick: common law fraud, misrepresentation, breach of fiduciary duty as director  
5 and officer of DenSco, fraudulent transfer (both actual and constructive) pursuant to A.R.S. §§ 44-  
6 1004 et seq., aiding and abetting Yomtov Scott Menaged in his torts against DenSco, unjust  
7 enrichment, or, alternatively, gross negligence or negligence as an officer or director of DenSco.

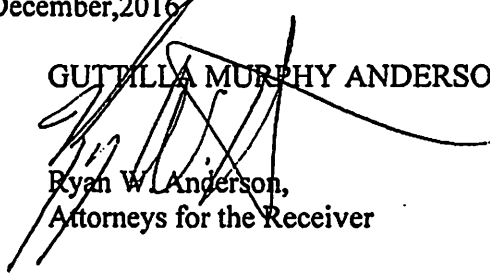
8 4. Given the complexity of the issues surrounding DenSco and the Receiver's ongoing  
9 investigations into DenSco and its business operations, the Receiver believes further discovery into  
10 the actions or omissions of Chittick may expose additional potential claims and/or monetary damages  
11 against Estate of Denny J. Chittick. Accordingly, the Receiver may amend this Notice of Claim if and  
12 when new information is discovered.

13 5. The Receiver's claims against the Estate of Denny J. Chittick are unsecured.

14 6. The Receiver shall mail a copy of the Notice of Claim against Estate of Denny J.  
15 Chittick to the Personal Representative.

16 **DATED** this 9th day of December, 2016

17 GUTILLA MURPHY ANDERSON, P.C.

18   
19 Ryan W. Anderson,  
Attorneys for the Receiver

20 Original of the foregoing filed  
21 this 9th day of December, 2016, with:

Clerk of the Maricopa County Superior Court

1 Copy of the foregoing hand-delivered this  
2 9th day of December, 2016 to:

3 Commissioner Andrew Russell  
4 Maricopa County Superior Court  
5 Northeast Regional Center  
6 18380 N. 40<sup>th</sup> Street  
7 Phoenix, Arizona 85032

8 Copy of the foregoing mailed this  
9 this 9th day of December, 2016 to:

10 Clark Hill, PLC  
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12 Michelle M. Tran  
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By: 