

1 **GUTTILLA MURPHY ANDERSON**

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5 Attorneys for the Receiver, Peter S. Davis

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

MOTION TO VACATE ORDER RE:  
PETITION NO. 142

(Assigned to the Honorable John Hannah)

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15 Peter S. Davis, as the court appointed Receiver of DenSco Investment Corporation  
16 (“Receiver”), respectfully requests this Court to enter an order vacating *Order re: Petition*  
17 *No. 142*.

18 On October 4, 2023, the Receiver filed his Petition No. 142 seeking authority to  
19 approve a fifth interim distribution to the approved creditors of DenSco Investment  
20 Corporation. As set forth in Petition No. 142, the Receiver recommended that the Court  
21 approve a fifth interim distribution of \$699,999.99 to the DenSco creditors.  
22

1 On November 20, 2023, the Maricopa County Superior Court in *Davis vs US Bank et*  
2 *al (CV-20190-011499)* issued its *Under Advisement Ruling on Motions for Summary*  
3 *Judgment* which granted Summary Judgment to Defendant Chase Bank on all of DenSco's  
4 claims. Additionally, the Court in *Davis vs US Bank et al (CV-20190-011499)* directed Chase  
5 Bank to file its application for attorney fees and costs on or before December 12, 2023.

6 On November 21, 2023, this Court entered its *Order Re: Petition No. 142* which  
7 authorized the Receiver to pay a fifth interim distribution of \$699,999.99 to the approved  
8 creditors of DenSco.

9 On December 12, 2023, Defendant Chase Bank filed an application for attorney fees  
10 and costs, requesting an award of \$1,338,232.19 in attorney fees and \$30,731.82 in costs in  
11 *Davis vs US Bank et al (CV-20190-011499)*. Moreover, in support of its application,  
12 Defendant Chase Bank cites to the Receiver's Petition No. 142 in support of the award of  
13 attorney fees and costs citing that the Receivership estate has sufficient funds to pay the  
14 attorney fees and costs.

15 Pursuant to Ariz.R.Civ.P. 60, upon a motion and "just terms", the Court may relieve  
16 a party from an order for a series of reasons including, "mistake" or "surprise" (Ariz.R.Civ.P.  
17 60 (b) (1)); "newly discovered evidence" (Ariz.R.Civ.P. 60 (b) (2)); or "any other reason  
18 justifying relief" (Ariz.R.Civ.P. 60 (b) (6)). The Court's ruling granting the motion for  
19 summary judgment and the motion for attorneys' fees was unanticipated, and constitute a  
20 significant change in circumstances.

21 In light of the Court's summary judgment ruling and the application for fees, the  
22 Receiver has instructed counsel to prepare a response to the application for fees. The

1 Receiver is also meeting with counsel to discuss an appeal and communicating with the  
2 investor claimants.

3 The Receiver and Special Counsel in *Davis vs US Bank et al (CV-20190-011499)*  
4 were not expecting this adverse ruling. The Receiver needs time to analyze these new issues  
5 and assess the likelihood and consequences of a potential award of fees. The Receiver has  
6 reserved sufficient funds for expected remaining obligations of the Receivership estate, but  
7 the Receiver is not able to determine the potential extent of an attorney fees award against  
8 the Receivership estate and the outcome of expected litigation which will occur in this Court  
9 to establish the priority of repayment of any awarded attorney fees in relation to the approved  
10 DenSco creditor claims.

11 Under these circumstances the Receiver believes that he must seek to vacate Order re:  
12 Petition 142 until there is more certainty about the financial ramifications of the ruling in  
13 *Davis vs US Bank et al (CV-20190-011499)*, and what is in the best interests of the on-going  
14 Receivership.

15 Based on the foregoing, the Receiver contends that these developments establish a  
16 sufficient basis under Ariz.R.Civ.P. 60 for this Court to enter an Order vacating Order re:  
17 Petition 142.

18 Respectfully submitted this 18th day of December, 2023.

19  
20 GUTTILLA MURPHY ANDERSON, P.C.

21 /s/ Ryan W. Anderson  
22 Ryan W. Anderson  
Attorneys for the Receiver

1 Original of the foregoing and proposed  
Order were e-filed this 18th day of December, 2023  
2 with the Clerk of the Maricopa County Superior Court.

3 Copy of the foregoing and proposed Order  
mailed and/or emailed  
4 this 18th day of December 2023 to:

5 The Honorable John Hannah  
Maricopa County Superior Court  
6 East Court Building  
101 West Jefferson, Room 811  
7 Phoenix, Arizona 85003

8 Wendy L. Coy, Director of Enforcement  
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9 Arizona Corporation Commission  
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7 *Counsel for Quality Loan Service Corp.*

8 All DenSco Investors who appear on the DenSco Claimant Mailing List in the DenSco  
Receivership.

9  
10 By: /s/ Stacy Gonzales

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12 2359-001(514528)

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