

1 **GUTTILLA MURPHY ANDERSON**

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Attorneys for the Receiver

5 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

6 IN AND FOR MARICOPA COUNTY

7 ARIZONA CORPORATION)
8 COMMISSION,)

Plaintiff,)

9 v.)

10 DENSCO INVESTMENT)
CORPORATION, an Arizona)
11 corporation,)

Defendant.)

Cause No. CV 2016-014142

PETITION NO. 19

PETITION FOR ORDER
ESTABLISHING CLAIMS
PROCEDURES

(Assigned to the Honorable Lori Horn
Bustamante)

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

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

18 2. Since his appointment, the Receiver has made substantial progress in collecting
19 and recovering the assets of DenSco and identifying the various potential claimed interests of
20 DenSco’s investors and others potential creditors. More specifically and with respect to asset
21 collection, as detailed in the *Status Report of Peter S. Davis as Receiver of DenSco*

1 *Investment Corporation* dated December 23, 2016¹, as of the end of 2016, the Receiver has
2 collected \$6,050,642.36 of assets and continues to collect assets of DenSco.

3 3. In addition to the recovery of assets, the Receiver has made significant progress
4 in identifying potential claimants against DenSco. These claimants include approximately one
5 hundred and fifteen (115) persons that have loaned funds to DenSco under Confidential
6 Private Offering Memoranda (“POM”) and other general unsecured creditors that did
7 business with or may have claims against DenSco.

8 4. Moreover, after a partial financial reconstruction of DenSco, the Receiver has
9 determined that as of December 31, 2012, DenSco became insolvent and essentially became a
10 Ponzi Scheme as DenSco’s assets were insufficient to pay the necessary interest and principal
11 payments to DenSco’s investors. The Receiver has determined that DenSco’s insolvency
12 forced DenSco to rely on operating income and new DenSco investor deposits to make
13 principal and interest payments to existing DenSco investors.

14 5. Finally, with the amount of funds already collected and the expected financial
15 losses from the claimants, the Receiver hopes to be able to make a series of interim
16 distributions to creditors from the assets of the DenSco Estate.

17 6. Accordingly, despite that this Receivership proceeding is only approximately
18 six (6) months old, the Receiver recommends that the Court at this time approve a procedure
19 for the solicitation and adjudication of all claims against DenSco and the receivership assets².

20 _____
¹ The Receiver’s Status report was filed as Receiver’s Petition No. 15.

21 ² On September 19, 2016 this Court placed Furniture King, LLC, Scott’s Fine Furniture, LLC and Furniture and
Electronic King, LLC into Receivership. As contemplated in the Court’s Order, the assets of these entities, once
liquidated, will be adjudicated in a separate claims process. This Petition is not intended to address issues with respect to

1 7. In order to accomplish the foregoing, the Receiver recommends that the Court
2 enter the proposed order lodged herewith which will establish a fair and reasonable claims
3 procedure. The Court and all persons served with a copy of this Petition are being provided
4 with a copy of the proposed order which best describes the procedures being recommended
5 by the Receiver. As an aid to the Court and the parties, some but not all, of the terms and
6 procedures contained in the proposed order are described or explained below.

7 8. The proposed order establishes a claims bar date of **June 30, 2017**.

8 9. The Claims Adjudication process requires all persons asserting claims against
9 any of the Receivership Entities, the Receiver, or any Receivership Assets or other property
10 in the possession of the Receiver, to file with the Receiver a Proof of Claim on a form
11 provided by the Receiver on or before the Claims Bar Date set forth above. Initial drafts of
12 the various forms of the Proof of Claim prepared by the Receiver are attached as part of
13 Exhibit "A" to this Petition. The Receiver anticipates however that these forms may be
14 revised and modified further based on input provided by the interested parties or further
15 research by the Receiver. At the present time the Receiver anticipates and has attached hereto
16 drafts of the following types of proof of claim forms:

<u>Exhibit</u>	<u>Title</u>	<u>Description</u>
A-1	General Proof of Claim Form	For use by claimants where a specific proof of claim form is not available

21 the anticipated and separate claims process for the assets of Furniture King, LLC, Scott's Fine Furniture, LLC and Furniture and Electronic King, LLC.

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A-2	DenSco Investor Proof of Claim	For use by a DenSco Investor to make a claim under a DenSco POM
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10. In addition, under the proposed order, the Receiver will provide notice to potential claimants of the claims procedures as follows:

a. The Receiver is required to mail a written notice in the form attached as Exhibit “B-1” of the right to file a claim to all potential claimants whose identity and whereabouts is known to the Receiver; and

b. The Receiver is required to publish a notice in the form attached hereto as Exhibit “B-2” at least once in a publication with national circulation and at least four times in consecutive weeks in a publication of statewide circulation within the state of Arizona.

11. Although there are several legal issues that the Court will likely need to resolve in this claims process, the Receiver believes that there are only two that should be resolved at this stage of the DenSco claims process as they will affect the time and resources that will need to be devoted to preparing and adjudicating the proofs of claim that are submitted to the Receiver. Those two issues are addressed below and relate to the right to post-receivership interest and the right of claimants to object to the creditor claims of other claimants.

PAYMENT OF POST-RECEIVERSHIP INTEREST

12. For the reasons discussed below, the proposed claims procedure (see ¶5 of the Proposed Order) provides that any claim for post-receivership interest shall be disallowed.

1 The general rule applicable to bankruptcies and receiverships is that creditors are only
2 entitled to interest pursuant to an agreement and only that amount that has accrued as of the
3 date the entity is placed in bankruptcy or receivership:

4 As a general rule, after property of an insolvent passes into the hands of a
5 receiver or of an assignee in insolvency, interest is not allowed on the claims
6 against the funds. The delay in distribution is the act of the law; it is a
7 necessary incident to the settlement of the estate.

8 *Vanston Bondholders Protective Committee v. Green*, 329 U.S. 156, 163, 67 S. Ct. 237
9 (1946). See also, *In re Inland Gas Corp.*, 241 F.2d 374, 379 (6th Cir. 1957); *Gamble v.*
10 *Wimberly*, 44 F.2d 329, 331 (4th Cir. 1930); *McGinnis v. Corporation Funding & Finance*
11 *Co.*, 8 F.2d 532 (M.D. Pa. 1925). This rule exists because, once a receivership begins, any
12 delay in the distribution of the estate to creditors is the fault of the law. *McGinnis*, 8 F.2d at
13 541. Interest is a penalty for a delay in payment. *Inland*, 241 F.2d at 379. Where the
14 power to pay is suspended by law, interest may not accrue during that time. *Id.* During this
15 suspension of the entity's power to pay, creditors should not be disadvantaged by one
16 another through legal delays attributable to time consuming procedures that are inherent in
17 the administration of a receivership. *In re New York, New Haven and Hartford Railroad*
18 *Co.*, 4 B.R. 758, 798 (D. Conn. 1980) (addressing bankruptcy filing). Because interest stops
19 accruing once an entity is placed in receivership, courts are better able to preserve and
20 protect the estate for the benefit of all. *Inland*, 241 F.2d at 379.

21 Interest is also generally not allowed because assets are usually insufficient to pay all
debts in full. *Gamble*, 44 F.2d at 331. Equitable distribution therefore requires that interest

1 stop accruing in order to allow all creditors to receive the maximum full amount of their
2 claims with interest until the date of insolvency. *Id.* at 333. The Receiver has concluded that
3 in this case the general unsecured creditors will only receive a pro-rata distribution of their
4 claim amount.

5 “[I]nterest on secured, as well as unsecured debts, stops as of the date of the filing of
6 the petition” *Gamble*, 44 F.2d at 333. This is consistent with the policy discussed
7 above. Post-receivership interest is not allowed because interest is a penalty that should not
8 be imposed when the power to pay is suspended by law. Therefore, the debts must remain in
9 status quo and one cannot accrue interest while the others do not. *McGinnis*, 8 F.2d at 541.

10 “The touchstone of each decision in bankruptcy, receivership and reorganization has
11 been a balance of equities between creditor and creditor or between creditors and the debtor.”
12 *Vanston*, 329 U.S. at 165, 67 S. Ct. at 241. To allow interest to some creditors and not to
13 others, or at different rates to different creditors, would result in an inequitable distribution
14 among creditors of the assets. *Emerald Inv. Co. v. A.J. Harwi Hardware Co.*, 64 P.2d 16, 17
15 (Kan. 1937). Allowing the interest would also complicate the procedure, tend to increase the
16 expense, and delay closing the proceedings. *Id.* Thus, “courts of equity in such cases quite
17 uniformly decline to allow interest pending the insolvency proceedings.” *Id.*

18 Based on the foregoing, the Receiver’s proposed claims procedure provides that any
19 claim for post-receivership interest shall be disallowed³.

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³ “Post-Receivership” means any interest that is deemed to have accrued after August 18, 2016.

PROOF OF CLAIM

DenSco Investment Corporation Receivership

Case No. CV 2016-014142

Peter S. Davis, Receiver

This claim is being solicited pursuant to Petition No. 19. A claimant is a person entitled to assert a right of payment or claim against DenSco Investment Corporation or against any Receivership Asset. For additional information, please access the Receiver's website at denscoreceiver1.godaddysites.com or denscoinvestment.com, or contact the Receiver in writing at the address below.

Check here if this Claim: Replaces
 Amends
 Supplements

A previously filed claim dated: _____

Claimant Information:

Name: _____
Address: _____
Email: _____
Telephone: _____

*** URGENT MATTER ***
CLAIM FORM MUST BE PROVIDED
TO THE RECEIVER ON OR BEFORE
JUNE 30, 2017

NON-INVESTOR CLAIM

A Non-Investor Claim is a claim that does NOT arise from the placement or loan of the Claimant's own funds with DenSco Investment Corporation pursuant to Confidential Private Offering Memoranda.

Basis for Your Claim:

Administrative Claim related to costs or expenses incurred on or after August 18, 2016 on behalf of the Receiver or DenSco Investment Corporation (other than Administrative Claims of the Receiver or the Receiver's agents)

Goods Purchased
 Services Performed
 Money Loaned
 Wages, Salaries, and Compensation
 Other Form of Contract
 Other Type of Claim

Details of Your Claim:

Relevant Dates: From: _____ To: _____

Is Your Claim Secured? A Secured Claim is secured by a property perfected lien on Receivership Assets. An Unsecured Claim is a Claim against DenSco Investment Corporation or a Receivership Asset other than an Investor Claim.

I have a Secured Claim (Attach Evidence of Security).

Secured Claim Amount: \$ _____

I have an Unsecured Claim.

Unsecured Claim Amount: \$ _____

Description: Please provide below all relevant details regarding the basis for your claim, such as the type of goods purchased or services performed, the purpose of the loan, the nature of the contract, etc.:

Documentation of Your Claim:

Please attach copies of all documents in support of this claim, such as invoices, statements, contracts, notes, guarantees, judgments, evidence of security, or any other documents establishing the indebtedness of DenSco Investment Corporation or the Receivership Estate to you. Do not file original documents with your Claim. If a supporting document is not available, you must attach an explanation as to why the document is not available.

CLAIMANT OATH

I have personal knowledge of the facts set forth above and I declare, under the penalty of perjury, that the above information is true and correct.

Name (Print): _____ Signature: _____ Date: _____

Name (Print): _____ Signature: _____ Date: _____

Provide your completed and signed Proof of Claim and copies of all documents supporting your claim to the Receiver on or before June 30, 2017.

PLEASE MAIL TO: DenSco Receiver
Simon Consulting, LLC
3200 North Central Avenue, Suite 2460
Phoenix, Arizona 85012

Exhibit "A-1"

PROOF OF CLAIM

DenSco Investment Corporation Receivership

Case No. CV 2016-014142

Peter S. Davis, Receiver

This claim is being solicited pursuant to Petition No. 19. A claimant is a person entitled to assert a right of payment or claim against DenSco Investment Corporation or against any Receivership Asset. For additional information, please access the Receiver's website at denscoreceiver1.godaddysites.com or denscoinvestment.com, or contact the Receiver in writing at the address below.

Check here if this Claim: Replaces
 Amends
 Supplements

A previously filed claim dated: _____

Claimant Information:

Name: _____
Address: _____
Email: _____
Telephone: _____

*** URGENT MATTER ***
CLAIM FORM MUST BE PROVIDED
TO THE RECEIVER ON OR BEFORE
JUNE 30, 2017

INVESTOR CLAIM

An Investor Claim is a claim arising from a the placement or loan of the Claimant's own funds with DenSco Investment Corporation pursuant to Confidential Private Offering Memoranda.

Calculation of Your Claim:

A. Total Combined Principal Invested:	\$ _____
B. PLUS Interest Accrued but not Paid through December 31, 2012:	\$ _____
C. MINUS Total Principal Withdrawn:	(\$ _____)
D. MINUS Total Cash Interest Payments from January 1, 2013 forward:	(\$ _____)
E. MINUS Third Party Recoveries:	(\$ _____)
F. NET CLAIM AMOUNT (A + B - C - D - E)	\$ _____

Third Party Recoveries:

- I have not recovered monies from a third party.
 I recovered part or all of my investment from a third party as described below:

Name of Third Party: _____ Amount Recovered: \$ _____

Documentation of Your Claim:

Please attach copies of all documents in support of this claim, such as Private Offering Memoranda, statements, cancelled checks, or any other documents establishing the indebtedness of DenSco Investment Corporation or the Receivership Estate to you. Do not file original documents with your Claim. If a supporting document is not available, you must attach an explanation as to why the document is not available.

CLAIMANT OATH

I have personal knowledge of the facts set forth above and I declare, under the penalty of perjury, that the above information is true and correct.

Name (Print): _____ Signature: _____ Date: _____

Name (Print): _____ Signature: _____ Date: _____

Provide your completed and signed Proof of Claim and copies of all documents supporting your claim to the Receiver on or before June 30, 2017.

PLEASE MAIL TO:

DenSco Receiver
Simon Consulting, LLC
3200 North Central Avenue, Suite 2460
Phoenix, Arizona 85012

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. CV 2016-014142

**NOTICE OF RIGHT TO FILE
PROOF OF CLAIM**

TO: All Persons who have claims against the receivership entities or receivership assets or other property in the possession of the Receiver in the above case, including those who borrowed from or loaned money to DenSco Investment Corporation

Notice is hereby given that any person who has a claim against DenSco Investment Corporation or the receivership assets or other property in the possession or control of the Receiver in the above case, shall on or before June 30, 2017, file a Proof of Claim with the court appointed receiver in the above action, on a form provided by the Receiver.

Any claim not filed by the above date shall be barred forever. A proof of claim form is enclosed with this notice. Additional copies of any of the proof of claim forms and answers to questions may be obtained by going to the Receivership website at denscoreceiver1@godaddysites.com or denscoinvestment.com or you may send a written request to the Receiver at DenSco Receiver, 3200 North Central Avenue, Suite 2460, Phoenix, Arizona 85012.

DO NOT CONTACT THE COURT OR THE CLERK OF THE COURT.

Dated _____
Lori Horn Bustamante, Judge of the Arizona Superior Court

Proofs of Claim Must be Filed With the Receiver Not Later Than June 30, 2017.

Arizona Corporation Commission v. DenSco Investment Corporation
IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR MARICOPA
COUNTY

Cause No. CV 2016-014142

NOTICE OF RIGHT TO FILE PROOF OF CLAIM

Notice is hereby given that any person who has a claim against the receivership entities or receivership assets or other property in the possession of the Receiver in the above case, including those who borrowed from or loaned money to DenSco Investment Corporation shall on or before June 30, 2017, file a Proof of Claim with the court appointed receiver in the above action, on a form provided by the Receiver. Any claim not filed by the above date shall be barred forever. The appropriate proof of claim form and answers to questions regarding the claims procedure can be obtained by going to the Receivership website at denscoreceiver1@godaddysites.com or denscoinvestment.com or you may send a written request to the Receiver at DenSco Receiver, 3200 North Central Avenue, Suite 2460, Phoenix, Arizona 85012. DO NOT CONTACT THE COURT OR THE CLERK OF THE COURT.

Dated _____, 2017.
Lori Horn Bustamante,
Judge of the Arizona
Superior Court

Exhibit B-2