

1 **ARIZONA CORPORATION COMMISSION**

2 Wendy Coy, #013195
1300 West Washington, 3rd Floor
3 Phoenix, Arizona 85007
Attorney for Plaintiff
4 Telephone: (602) 542-0633
wcoy@azcc.gov

5 **STATE OF ARIZONA**

6 **MARICOPA COUNTY SUPERIOR COURT**

7
8 ARIZONA CORPORATION COMMISSION)

9 Plaintiff)

10 v.)

11 DENSCO INVESTMENT CORPORATION, an)
12 Arizona corporation)

13 Defendant.)
14)
15)

No. CV 2016-014142

**ORDER GRANTING MOTION FOR
EXPEDITED HEARING ON
APPLICATION FOR PRELIMINARY
INJUNCTION AND APPLICATION FOR
THE APPOINTMENT OF A RECEIVER
AND SETTING HEARING DATE**

16 Order granting the Plaintiff, the Arizona Corporation Commission's ("ACC"), Motion for
17 an Expedited Hearing, and the ACC, having filed a Verified Complaint and an Application for
18 Preliminary Injunction and Appointment of a Receiver, the Court sets this matter for hearing on

19 18th day of August, 2016, at 10:00 am, EC B. 101 W. Jefferson St.
20 Ste. 811 Phx AZ 85003

DATED this 17th day of August, 2016.

21 

22 Honorable Lori Horn Bustamante
23 Judge of the Superior Court
24
25
26

COPY

AUG 17 2016



MARK K. DEANS, CLERK
JUL 27 2016
BIRMINGHAM, AL

1 ARIZONA CORPORATION COMMISSION
2 Wendy Coy, #013195
3 1300 West Washington, 3rd Floor
4 Phoenix, Arizona 85007
5 Attorney for Plaintiff
6 Telephone: (602) 542-0633
7 wcoy@azcc.gov

8 STATE OF ARIZONA

9 MARICOPA COUNTY SUPERIOR COURT

10 ARIZONA CORPORATION COMMISSION) No. CV ~~CV 2016-044142~~
11 Plaintiff) VERIFIED COMPLAINT
12 v.)
13 DENSCO INVESTMENT CORPORATION, an)
14 Arizona corporation)
15 Defendant.)

16 For its Complaint against Defendant, Plaintiff, the Arizona Corporation Commission,
17 pleads as follows:

- 18 1. Plaintiff, the Arizona Corporation Commission ("ACC"), is a governmental entity
- 19 charged with enforcing the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").
- 20 2. Defendant DenSco Investment Corporation ("DenSco"), is incorporated in the state
- 21 of Arizona since April of 2001.
- 22 3. DenSco resided in and/or conducted business within or from Maricopa County,
- 23 Arizona at all relevant times.
- 24 4. The ACC brings this action pursuant to A.R.S. § 44-2032.
- 25 5. Venue is proper in this County pursuant to A.R.S. §§ 44-2031(B) and 44-2032(4).

1 6. Since at least 2009, DenSco "has been . . . engaged primarily in funding the
2 purchase of houses through preforeclosure process, foreclosure sales and funding and purchasing
3 construction loans, all of which will be secured by real estate deeds of trusts." To fund the
4 purchase of the real estate, DenSco raised money from investors.

5 7. Since at least 2009, investors received a Confidential Private Offering
6 Memorandum ("offering document") from DenSco before or at the time of investment.

7 8. DenSco's offering documents gave individuals the opportunity to invest in
8 General Obligation Notes ("Notes") of DenSco. The Notes were to be "secured by a general
9 pledge of all assets owned by or later acquired by the Company." DenSco's largest assets would
10 be in Trust Deeds. DenSco was to maintain a loan-to-value ratio at 70% percent or below in the
11 aggregate for all loans in the loan portfolio. The Notes will receive interest only payments during
12 the term and principal paid at maturity. Interest may be paid monthly, quarterly or at maturity.

13 9. According to the DenSco website, "DenSco will target the funding of Trust Deeds
14 on Real Estate that is highly marketable, has sufficient equity, and the borrower is competent in
15 fulfilling the obligation of the note; while providing investors a constant rate of return on their
16 investment backed by a diversity of these properties with a strong loan-to-value ratio. Most of
17 these loans will be to Residential and Commercial Foreclosure Specialists that will renovate and
18 then flip the properties in a relatively short period of time."

19 10. The Lending Guidelines listed on DenSco's website specifically state "First
20 Position ONLY!" The Lending Guidelines further stated that DenSco would lend up to 60% to
21 70% of the value of the property. DenSco represented to investors that borrowers were required
22 to put at least 20% down on the home purchase and DenSco would have a first position security
23 interest in the real estate. Therefore the investors are protected even if the borrower defaults.

24 11. Although, the offering document specifically states that "Trust Deeds have a loan-
25 to-value ratios, no greater than 70 percent but with an objective goal of 50 percent to 60 percent,"
26 at least one borrower received loans totaling 100 percent of the loan-to-value.

1 12. Upon information and belief, starting in about 2013, Densco started providing
2 investor funds to a borrower without obtaining a first position deed of trust on the real property.
3 This activity involved about 80 loans totaling at least \$28 million. This is contrary to what was
4 explained to investors and contrary to the description in the offering documents and website.
5 Further, the same borrower obtained an unsecured loan of over \$14 million from DenSco.

6 13. Also in about 2013, DenSco stopped accepting new investors and accepting new
7 investments from current investors.

8 14. Upon information and belief, prior to October 2015, DenSco and the borrower
9 described above reached a forbearance agreement. In about October of 2015, the borrower failed
10 to make its payments and then filed for protection under Chapter 7 of the U.S. Bankruptcy Code.

11 15. After October of 2015, upon information and belief, DenSco began accepting
12 investor funds again. Upon information and belief, no disclosure was made to those investors that
13 DenSco entered into a forbearance agreement with a large borrower, a borrower had failed to
14 make payments on previous loans and a borrower was provided a large unsecured loan. Further,
15 DenSco failed to inform investors that it was not in a first position on many deeds of trust.

16 16. According to company records, as of about July 28, 2016, DenSco had 138 loans
17 outstanding. DenSco's assets are as follows¹:

- 18 • 50 of the loans appear to be secured with first position deeds of trust and will be
19 liquidated within 60 days. The value is about \$4.9 million.
- 20 • 5 of the loans appear to be secured with first position deeds of trust but will
21 require foreclosure or collection. The value is about \$1.9 million.
- 22 • 83 of the loans appear to be unsecured and to one borrower. The value of these
23 loans is about \$28 million.
- 24 • There is a loan of over \$14 million that is unsecured from the same borrower.

25
26 ¹ The above figures are based upon company records and have not been independently verified.

- The bank account of DenSco contains approximately \$1.0 million.
- As of June 2016, the investor balance was over \$51 million.

17. Since at least 2009, DenSco, directly or indirectly, raised at least \$50 million through at least 103 investors.

18. The notes offered and sold by DenSco are securities as defined under A.R.S. §44-1801(26).

COUNT ONE

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

19. The ACC incorporates by reference all allegations set forth in paragraphs 1 through 18 of the Complaint.

20. In connection with the offer or sale of securities within or from Arizona, DenSco directly or indirectly, made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. DenSco's conduct includes, but is not limited to, the following:

- a. Upon information and belief, since at least 2009, misrepresenting to investors that DenSco would provide loans up to 70% of the value of the property, when in fact, with at least one borrower DenSco made \$28 million in loans at 100 percent of the value of the property.
- b. Upon information and belief, since at least 2009, failing to disclose to investors that many loans were not secured with a first position deed of trust.

1 c. Failing to disclose to investors after October 2015, that at least one
2 borrower had failed to make payments on over \$28 million in loans.

3 d. Upon information and belief, failing to disclose to investors that
4 DenSco provided a borrower an unsecured loan valued at over a \$14
5 million.

6 21. This conduct violates A.R.S. § 44-1991.

7 COUNT TWO

8 (Appointment of Receiver and/or Conservator)

9 22. The ACC incorporates by reference all allegations set forth in paragraphs 1 through
10 21 of the Complaint.

11 23. Pursuant to A.R.S. §§ 44-2032(4) and 44-2011 *et seq.*, the ACC requests this Court
12 appoint a Receiver on an interim basis to take control of the assets of DenSco and to marshal and
13 preserve its assets for the benefit of its defrauded investors.

14 COUNT THREE

15 (Injunctive Relief)

16 24. The ACC incorporates by reference all allegations set forth in paragraphs 1 through
17 23 of the Complaint.

18 25. Pursuant to A.R.S. §§ 44-2032(2) and 44-2013(A), the ACC requests this Court to
19 issue a preliminary injunction restraining DenSco, and its officers, agents, servants, employees,
20 attorneys, and all persons in active concert or participation with it, from removing, encumbering or
21 otherwise disposing of its assets located within this State.

22 WHEREFORE, the ACC prays for judgment as follows:

23 1. Appoint a Receiver on an interim basis to take control of the assets of the DenSco,
24 and to marshal and preserve its assets for the benefit of DenSco's defrauded investors;
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

2. Issue a preliminary injunction restraining the DenSco, and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with it from removing, encumbering or otherwise disposing of its assets located within this State.

3. Order DenSco to take affirmative action to correct the conditions resulting from its acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

4. Order DenSco to pay the state of Arizona civil penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, as the court considers to be just and proper, pursuant to A.R.S. § 44-2037; and

5. Order any other relief that the Court deems appropriate.

Dated this ____ day of _____, 2016.

ARIZONA CORPORATION COMMISSION

By _____
Wendy Coy
Attorney for the Arizona Corporation Commission

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

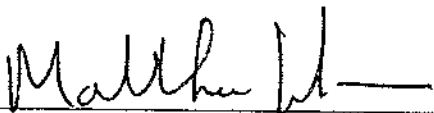
VERIFICATION

Matthew J. Neubert, being first duly sworn, does depose and say:

1. I am the Director of Securities. I make this Verification based upon behalf of the Arizona Corporation Commission


2. I have read the Complaint and to the best of my knowledge, and based upon the records and information gathered by the Securities Division, believe the allegations contained therein to be true and correct.

FURTHER AFFIANT SAITH NOT


Matthew J. Neubert
Director of Securities

STATE OF ARIZONA)
County of Maricopa)

SUBSCRIBED AND SWORN to before me on this 17 day of August, 2016.



My Commission Expires

10-06-19



COPY

AUG 17 2016



MICHAEL K. JAMES, CLERK
J. LEWIS
DEPUTY CLERK

1 ARIZONA CORPORATION COMMISSION
2 Wendy Coy, #013195
3 1300 West Washington, 3rd Floor
4 Phoenix, Arizona 85007
5 Attorney for Plaintiff
6 Telephone: (602) 542-0633
7 wcoy@azcc.gov

STATE OF ARIZONA

MARICOPA COUNTY SUPERIOR COURT

8	ARIZONA CORPORATION COMMISSION)	No. CV <u>CV 2016-014142</u>
9	Plaintiff)	CERTIFICATE OF COMPULSORY
10	v.)	ARBITRATION
11	DENSCO INVESTMENT CORPORATION, an)	
12	Arizona corporation)	
13	Defendant)	

15 The undersigned certifies that the largest award sought by the complainant, including
16 punitive damages, but excluding interest, attorneys' fees and costs, does exceed limits set by the
17 Local Rule for compulsory arbitration. This case is not subject to the Uniform Rules of Procedure
18 for Arbitration.

19 Dated this 17th day of August, 2016.

20 ARIZONA CORPORATION COMMISSION

21 By

Wendy Coy
22 Wendy Coy
23 Attorney for the Arizona Corporation
24 Commission
25
26

COPY

1 **ARIZONA CORPORATION COMMISSION**
2 Wendy Coy, #013195
3 1300 West Washington, 3rd Floor
4 Phoenix, Arizona 85007
5 Attorney for Plaintiff
6 Telephone: (602) 542-0633
7 wcoy@azcc.gov

AUG 17 2016



MICHAEL K. JEANES, CLERK
J. LEVINS
DEPUTY CLERK

8 **STATE OF ARIZONA**

9 **MARICOPA COUNTY SUPERIOR COURT**

10 ARIZONA CORPORATION COMMISSION)
11 Plaintiff)
12 v.)
13 DENSCO INVESTMENT CORPORATION, an)
14 Arizona corporation)
15 Defendant.)

No. CV CV 2016-014142

**APPLICATION FOR PRELIMINARY
INJUNCTION AND APPOINTMENT OF
RECEIVER**

16 Plaintiff, the Arizona Corporation Commission ("ACC"), pursuant to A.R.S. § 44-2032(2)
17 & (4) and A.R.S. *set seq.*, and in accordance with Arizona Rule of Civil Procedure 65, moves this
18 Court to appoint a Receiver for the Defendant ("Receivership Defendant"), with the power to
19 marshal, conserve and, where necessary, operate its assets. The ACC further requests, that this
20 Court issue a preliminary injunction enjoining the Defendant from the following:

- 21 • Transferring, secreting, dissipating, altering, selling, pledging, assigning, encumbering,
22 expending, concealing, conveying, liquidating, or otherwise disposing of any assets,
23 funds or property owned by the Receivership Defendant.

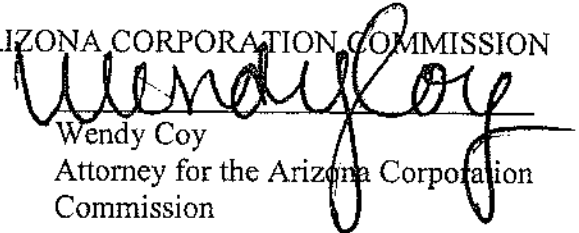
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

This Application for Preliminary Injunction and Appointment of Receiver is based on the ACC's Verified Complaint, supporting memorandum, affidavit, and the argument of counsel.

Dated this 17th day of August, 2016.

ARIZONA CORPORATION COMMISSION

By



Wendy Coy
Attorney for the Arizona Corporation
Commission

COPY

AUG 17 2016



MICHAEL K. JEANES, CLERK
J. LEWIS
DEPUTY CLERK

1 **ARIZONA CORPORATION COMMISSION**
Wendy Coy, #013195
2 1300 West Washington, 3rd Floor
Phoenix, Arizona 85007
3 Attorney for Plaintiff
Telephone: (602) 542-0633
4 wcoy@azcc.gov

5
6 **STATE OF ARIZONA**
7 **MARICOPA COUNTY SUPERIOR COURT**

8
9 ARIZONA CORPORATION COMMISSION) No. CV CV 2016-014142
Plaintiff)
10 v.) **MEMORANDUM OF POINTS AND**
11) **AUTHORITIES IN SUPPORT OF**
DENSCO INVESTMENT CORPORATION, an) **APPLICATION FOR PRELIMINARY**
12 Arizona corporation) **INJUNCTION AND APPOINTMENT OF**
13 Defendant.) **RECEIVER**
14)
15)

16 **I. INTRODUCTION.**

17 Plaintiff, the Arizona Corporation Commission (the "ACC"), submits this Memorandum of
18 Points and Authorities In Support of its Application for Preliminary Injunction and Appointment of
19 Receiver to protect its ability to recover investor funds from Defendant. This matter involves
20 violations of the Arizona Securities Act in which Defendant raised at least \$50 million dollars from
21 over 100 investors through the offer and sale of securities in the form of notes within or from
22 Arizona.

23 **II. FACTS**

24
25 Based upon the investigation conducted by the ACC, the Defendant appears to have raised
26 over \$50 million from at least 100 investors. Unfortunately, the sole officer/director/shareholder of

1 the Defendant passed away suddenly and there is no one in charge of the Defendant to handle
2 business matters and preserve assets.

3 Defendant offered to individuals the opportunity to invest in General Obligation Notes
4 ("Notes") of DenSco. The Notes were to be "secured by a general pledge of all assets owned by
5 or later acquired by the Company." DenSco's largest assets would be in Trust Deeds. DenSco
6 was to maintain a loan-to-value ratio at 70% percent or below in the aggregate for all loans in the
7 loan portfolio.

8 Based upon information and belief, since at least 2009, DenSco "has been . . . engaged
9 primarily in funding purchases of houses through preforeclosure process, foreclosure sales and
10 funding and purchasing construction loans, all of which will be secured by real estate deeds of
11 trusts." The Notes received interest only payments during the term and principal paid at maturity.
12 Interest may be paid monthly, quarterly or at maturity.

13 According to the Defendant's website, "DenSco will target the funding of Trust Deeds on
14 Real Estate that is highly marketable, has sufficient equity, and the borrower is competent in
15 fulfilling the obligation of the note; while providing investors a constant rate of return on their
16 investment backed by a diversity of these properties with a strong loan-to-value ratio. Most of
17 these loans will be to Residential and Commercial Foreclosure Specialists that will renovate and
18 then flip the properties in a relatively short period of time."

19 The offering document specifically states that "Trust Deeds have a loan-to-value ratios,
20 no greater than 70 percent but with an objective goal of 50 percent to 60 percent." At least one
21 borrower received loans totaling 100 percent of the loan-to-value.

22 The Lending Guidelines listed on Defendant's website specifically state "First Position
23 ONLY!" The Lending Guidelines further stated that DenSco would lend up to 60% to 70% of the
24 value of the property. According to the investors, DenSco requires borrowers to put at least 20%
25 down on the home purchase and DenSco has a first position security interest in the real estate.
26 Therefore the investors are protected even if the borrower defaults.

1 Between 2013 and September of 2015, DenSco stopped accepting new investors and new
2 money from current investors.

3 Upon information and belief, starting in about 2013, Densco started providing investor
4 funds to a borrower without obtaining a first position deed of trust on the real property. This
5 activity involved about 80 loans and at least \$28 million. This is contrary to what was explained
6 to investors and contrary to the description in the offering documents and website. Further, the
7 same borrower obtained an apparent unsecured loan of over \$14 million.

8 At some point, DenSco and the borrower described above reached a forbearance
9 agreement. In about October of 2015, the borrower failed to make its payments. This borrower
10 sought protection under Chapter 7 of the U. S. Bankruptcy Code.

11 After September of 2015, upon information and belief, DenSco began accepting investor
12 funds again. Upon information and belief, no disclosure was made to those investors that a large
13 borrower had failed to make payments on previous loans. Nor were investors told that DenSco
14 was not in a first position on many deeds of trust.

15 Since at least 2009, the Defendant, directly or indirectly, raised at least \$50 million
16 through at least 103 investors.

17 Upon information and belief, there appears to be a total of 138 outstanding loans¹ in
18 Defendant's portfolio. Only 50 of those loans appear to be performing as represented to
19 investors. The estimated value of the 50 loans is about \$4.9 million. Another five of the loans
20 will require collection or foreclosure and are secured with a first deed of trust. The estimated
21 value of the five loans is about \$2.5 million. At least 83 of the loans, to the same borrower, do
22 not appear to be performing. In addition, it appears that the loans are unsecured. The value of the
23 83 loans is about \$28 million. It appears that Defendant provided an unsecured note to the
24 borrower of the 83 loans mentioned above in an amount about \$14 million. Defendant does have
25 liquid assets in the amount of about \$1.5 million.

26

¹ These figures are based upon company records and have not been independently verified.

1
2 **III. LEGAL ANALYSIS.**

3 A. The Investments Offered By The Defendant Are Securities.

4 1. The Promissory Notes are "Securities."

5 Defendant issued promissory notes to individual investors as evidence of the investments.
6 The Notes are securities because they are promissory. The Securities Act defines a security as an
7 "note." A.R.S. § 44-1801(26). While a promissory note is presumed to be a security, the Supreme
8 Court has identified certain types of notes that are excluded from the definition of security. *See*
9 *Reves v. Ernst & Young*, 494 U.S. 56, 65 (1990); *MacCollum v. Perkinson*, 185 Ariz. 179, 913 P.2d
10 1097 (App. 1996)(adopting the *Reves*' test in Arizona.). In *Reves*, the Supreme Court held that
11 every promissory note is a security unless it bears a strong "family resemblance" to a judicially
12 crafted list of non-securities. *Reves*, 494 U.S. at 65. The parties may rebut the presumption by
13 examining a note transaction in light of four factors. *Id.* at 66-67: Instruments do not have a
14 familial resemblance to one of the excluded categories and, thus, are considered to be securities if
15 (1) the seller's motivation is to raise money or finance investments and the buyer's purpose is to
16 make a profit; (2) there is common trading of the instrument for speculation or investment; (3) the
17 public expects that the instrument is a security; and (4) there is no other regulatory scheme to
18 significantly reduce the risk of the instrument, thereby rendering the application of the securities
19 laws unnecessary. *Id.* Applying the "familial resemblance" test, the Notes do not bear a family
20 resemblance to any of the categories listed in *Reves*, and thus are securities.
21
22

23 B. The Defendant violated the Antifraud Provisions of the Arizona Securities Act.

24 Under A.R.S. § 44-1991, it is a fraudulent practice and unlawful for a person, in connection
25 with a transaction or transactions within or from this state involving an offer to sell or buy
26 securities, or a sale or purchase of securities, to directly or indirectly do any of the following: make

1 untrue statements of material fact, or omit to state any material fact necessary in order to make the
2 statements made, in the light of the circumstances in which they were made, not misleading; or
3 engage in any transaction, practice or course of business which operates or would operate as a
4 fraud or deceit. A.R.S. § 44-1991(A)(2)(3). Securities fraud may be proven by any one of these
5 acts. *Hernandez v. Superior Court*, 179 Ariz. 515, 880 P.2d 735 (App. 1994).

6 In the context of these provisions, "materiality" requires a showing of substantial likelihood
7 that, under all the circumstances, the misstated or omitted fact would have assumed actual significance
8 in the deliberations of a reasonable buyer. *Trimble v. American Sav. Life Ins. Co.*, 152 Ariz. 548, 553,
9 733 P.2d 1131 (1986). Under this objective test, there is no need to investigate whether an omission
10 or misstatement was actually significant to a particular buyer. Additionally, the affirmative duty not to
11 mislead potential investors in any way places a heavy burden on the offeror and removes the burden of
12 investigation from the investor. *Trimble*, 152 Ariz. at 553. A misrepresentation or omission of a
13 material fact in the offer and sale of a security is actionable even though it may be unintended or the
14 falsity or misleading character of the statement may be unknown. In other words, scienter or guilty
15 knowledge is not an element of a violation of A.R.S. § 44-1991(2). See e.g., *State v. Gunnison*, 127
16 Ariz. 110, 113, 618 P.2d 604 (1980). Stated differently, a seller of securities is strictly liable for any
17 of the misrepresentations or omissions he makes. *Rose v. Dobras*, 128 Ariz. at 214. Additionally,
18 there is no requirement to show that investors relied on the misrepresentations or omissions, *Rose*, 128
19 Ariz. at 214, or that the misrepresentations or omissions caused injury to the investors. *Trimble*, 152
20 Ariz. at 553. A primary violation of A.R.S. § 44-1991 can be either direct or indirect. It is now well-
21 settled in Arizona that *indirectly* violating A.R.S. § 44-1991 is not to be narrowly interpreted. *Barnes*
22 *v. Vozack*, 113 Ariz. 269, 550 P.2d 1070 (1976)(Officers of company could be liable under A.R.S. §
23 44-1991 for the fraudulent statements of a salesman of the security.)
24
25
26

1 As set forth in the Verified Complaint and supported by the attached Affidavit of Gary
2 Clapper, the Defendants have violated A.R.S. §44-1991 by: (1) misrepresenting to investors that
3 DenSco would loan up to 70% of the value of the property, when in fact, with at least one borrower,
4 DenSco provided \$28 million in loans at 100 percent of the value of the property; (2) failing to
5 disclose to investors that many loans were not secured with a first position deed of trust; (3) failing to
6 disclose to investors after October 2015, that at least one borrower had failed to make payments on
7 over \$28 million in loans; and (4) failing to disclose to investors that DenSco provided over a \$14
8 million unsecured loan. Any *one* of these actions would violate the Securities Act.

9 10 **IV. REQUESTED RELIEF**

11 **A. Preliminary Injunctions are Appropriate.**

12 A.R.S. § 44-2032(2) authorizes the ACC to seek injunctive relief when it appears that a
13 person has engaged in, is engaging in or is about to engage in act, practice or transaction in
14 violation of the Securities Act. A.R.S. § 44-2013(A) provides that the ACC may request that the
15 Superior Court issue a preliminary injunction restraining the Defendant from removing,
16 encumbering or otherwise disposing of the property located within this state.

17 Preliminary injunctive relief against Defendant is appropriate. The Defendant has no
18 officer/director/shareholder to wind-up the affairs of the entity. Based upon the information
19 contained in the Clapper affidavit attached, there are substantial assets including real estate that
20 need to be managed for the protection of the investors. In addition, there are many claims the
21 Defendant may be able to assert to protect the investors funds.

22 **B. Appointment of a Receiver is Appropriate**

23 As set forth above, pursuant to the Securities Act, courts may order appointment of a
24 Receiver to preserve Defendant's assets and to ensure that investors are protected from unlawful
25 conduct. A.R.S. § 44-2013. The ACC requests the appointment of a receiver to preserve the assets
26

1 in the possession of, or under the control of the Defendant. As is shown by the Affidavit of Gary
2 Clapper, there are substantial real property assets that need to be liquidated and liquid assets that
3 need to be preserved for the benefit of the investors. It would be impossible to make the investors
4 whole without all of the funds and/or assets. As stated herein, a receiver is necessary to safeguard
5 funds and preserve assets for the benefit of the investors. A receiver is necessary here to marshal,
6 liquidate and distribute assets.

7 **VI. CONCLUSION**

8 Based on the foregoing facts and for the reasons set forth above, the ACC respectfully
9 requests that the Count enter the attached order.

10 Dated this 17th day of August, 2016.

11
12 ARIZONA CORPORATION COMMISSION
13 By Wendy Coy
14 Wendy Coy
15 Attorney for the Arizona Corporation
16 Commission
17
18
19
20
21
22
23
24
25
26

1 STATE OF ARIZONA)

2 County of Maricopa)

AFFIDAVIT OF GARY CLAPPER

3
4 I, Gary Clapper, being duly sworn, say as follows:

5 1. I am a resident of Maricopa County, Arizona and am over the age of eighteen (18).

6 2. I have personal knowledge of the matters stated in this affidavit and am competent
7 to testify to them.

8 3. I understand that this affidavit may be used in a court of law.

9 4. I am the Chief Investigator for the Securities Division of the Arizona
10 Corporation Commission ("Commission").

11 5. I am assigned to assist in the investigation involving DenSco Investment
12 Corporation ("DenSco").

13 6. According to the Arizona Corporation Commission, Corporations Division
14 website, DenSco is incorporated in Arizona. DenSco was formed April 30, 2001, and has an
15 address within Maricopa County.

16 7. I obtained a copy of the DenSco 2009 Private Placement Offering Memorandum
17 ("offering document"). A number of investors have stated that the offering documents were
18 provided to them prior to making an investment in DenSco.

19 8. According to the offering document obtained from an investor, DenSco intended
20 to offer general obligations notes ("Notes") to investors. The investors' funds were to be used
21 to lend money to "Foreclosure Specialists" for the purchase of foreclosed/distressed properties,
22 both residential and commercial. This information was confirmed during interviews with
23 investors.

24 9. The Notes offered to investors were to be secured through the assets of DenSco
25 which mainly consisted of first lien positions Deeds of Trust. This information was confirmed
26 during investor interviews, a review of the offering document and DenSco's website.

1 10. The Notes issued to the investors directed monthly or quarterly interest
2 payments with the principle being paid at maturity. This information was confirmed during
3 investor interviews and a review of the offering document.

4 11. DenSco would loan money to borrowers. The property loan to value was to be
5 no greater than 70% of the property value. This information came from investor interviews, a
6 review of the offering document and DenSco's website.

7 12. According to investor interviews, in about 2013, DenSco stopped accepting new
8 investor money. Since September of 2015, DenSco began accepting new investors and
9 additional investments from current investors.

10 13. During the course of the investigation, it was discovered that DenSco had lent
11 money to at least one borrower without DenSco secured in the first position on the Deeds of
12 Trusts. This activity involved about 80 of the 138 properties currently with outstanding loans
13 and totaled about \$28 million. This borrower stopped making payments in about October of
14 2015.

15 14. This same borrower also received an unsecured loan from DenSco for \$14
16 million and has defaulted on that loan.

17 15. According to information obtained during the investigation, DenSco raised
18 approximately \$50 million from about 103 investors.

19 16. Information provided to investors disclosed the following;

- 20 a. \$1 million in DenSco bank accounts
- 21 b. \$4,981,736 in Notes that are believed to be secured by deeds of trust and
22 should be liquidated in the near future.
- 23 c. \$2,533,000 Notes that are secured but need collection.
- 24 d. \$28,178,600 Notes that appear to unsecured.
- 25 e. \$14,339,339 in an unsecured Note.

26 17. Based upon information obtained in the investigation, the sole
officer/director/shareholder of DenSco is deceased. To my knowledge there are no employees

1 or other officers of DenSco. The Personal Representative of the individual's estate is not
2 interested in operating DenSco. The Personal Representative resides outside of Arizona.

3 Lucy R. Clay

4 (Signature)

5
6 SUBSCRIBED AND SWORN TO BEFORE me this 17th day of August, 2016.

7 [Signature]
8 NOTARY PUBLIC

9
10 My Commission Expires:

11 10-06-19



COPY

AUG 17 2016



MICHAEL K. BAWB, CLERK
J. DEAN
DEPUTY CLERK

1 **ARIZONA CORPORATION COMMISSION**
2 Wendy Coy, #013195
3 1300 West Washington, 3rd Floor
4 Phoenix, Arizona 85007
5 Attorney for Plaintiff
6 Telephone: (602) 542-0633
7 wcoy@azcc.gov

8 **STATE OF ARIZONA**

9 **MARICOPA COUNTY SUPERIOR COURT**

10	ARIZONA CORPORATION COMMISSION)	No. CV <u>CV 2016-014142</u>
11	Plaintiff)	MOTION FOR EXPEDITED HEARING FOR PRELIMINARY INJUNCTION AND APPOINTMENT OF RECEIVER
12	v.)	
13	DENSCO INVESTMENT CORPORATION, an Arizona corporation)	
14	Defendant.)	

15
16 Plaintiff, the Arizona Corporation Commission ("ACC") requests that the Court expedite
17 time setting the hearing for the Preliminary Injunction and Appointment of a Receiver in this
18 matter for the following reasons:

19 DenSco Investment Company ("DenSco") was an active entity until the unexpected death
20 of its sole officer/director/shareholder. DenSco was in the business of funding loans to Foreclosure
21 Specialists to purchase real estate in Arizona. Upon information and belief, DenSco has 138 loans
22 outstanding and raised \$50 million from 103 investors.

23 Based upon the most recent information received by the ACC, was that there 138 loans
24 outstanding. A number of those borrowers continue to make payments and need title documents
25 upon payoff. There is no one in position to handle these matters. Further, a large number of loans
26 need to be foreclosed and/or collected to protect the assets of DenSco. There is no one in place to

1 handle these matters. Further, at least one borrower filed for protection under Chapter 7 of the U.S.
2 Bankruptcy Code. There is no one available to protect DenSco's interests and claims.

3 The sooner a receiver is able to be appointed the better protected the DenSco's investors
4 will be protected and the borrowers can obtain necessary paperwork.

5 The ACC has been working with DenSco's corporate attorney and the attorneys for the
6 Personal Representative for the officer/director/shareholder's estate who agree that a receiver
7 should be appointed.

8 Dated this 17th day of August, 2016.

9
10 ARIZONA CORPORATION COMMISSION
11 By Wendy Coy
12 Wendy Coy
13 Attorney for the Arizona Corporation
14 Commission
15
16
17
18
19
20
21
22
23
24
25
26