

ILENE J. LASHINSKY (AZ #3073)  
United States Trustee  
District of Arizona

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re:	) Chapter 7
	)
YOMTOV SCOTT MENAGED,	) Case No. 2:16-bk-04268-PS
	)
Debtor.	) Adversary Case No. 2-16-ap-00589-PS
	)
ILENE J. LASHINSKY, UNITED STATES TRUSTEE,	) UNITED STATES TRUSTEE'S
	) COMPLAINT TO DENY DISCHARGE
	) UNDER 11 U.S.C. § 727
Plaintiff,	)
v.	)
	)
YOMTOV SCOTT MENAGED,	)
	)
Defendant.	)
	)

Plaintiff, the United States Trustee ("UST" or "Plaintiff"), by and through the undersigned counsel, files this Complaint to Deny Discharge Under 11 U.S.C. § 727 and alleges as follows:

1. This is a complaint to deny the Debtor, Yomtov Scott Menaged ("Defendant"), a discharge in bankruptcy pursuant to 11 U.S.C. § 727(a)(2), (a)(3), and (a)(4).

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2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§

4. Venue is proper in the District of Arizona under 28 U.S.C. § 1409.

5. Plaintiff, Ilene J. Lashinsky, is the United States Trustee for the  
ct of Arizona.

6. Plaintiff's responsibilities include supervising the administration of

## PROCEDURAL BACKGROUND

8. Defendant filed his voluntary Chapter 7 bankruptcy petition in this

9. The case was dismissed and then reinstated by order dated June 2,

10. The first date set for the meeting of creditors after reinstatement of the

1           11. By orders dated September 21, 2016 and November 14, 2016, the Court  
2 extended the deadline for the UST to file a complaint objecting to the Debtor's  
3 discharge pursuant to 11 U.S.C. § 727 until December 15, 2016. *See* Administrative  
4 Docket #138 and #203.

5  
6           12. This complaint is being timely filed before the expiration of the Court-  
7 ordered deadline for the UST to file a complaint under 11 U.S.C. § 727.

8           13. Defendant filed his original Petition, Schedules, Statement of  
9 Financial Affairs (hereinafter "SOFA"), and Statement of Current Monthly Income  
10 (hereinafter "CMI") on April 20, 2016. *See* Administrative Docket #1, #9 and #10.  
11 Defendant signed the original Petition, Schedules, SOFA, and CMI under oath and  
12 subject to penalty of perjury.  
13

14           14. After the case was reinstated, Defendant filed amended pleadings in  
15 the administrative case as follows:  
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- 17           a. Amended Petition filed at Administrative Docket #88 on August 25,  
18 2016;  
19  
20           b. Amended Schedules filed at Administrative Docket #89 on August 25,  
21 2016;  
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23           c. Amended SOFA filed at Administrative Docket #90 on August 25,  
24 2016;  
25           d. Amended CMI filed at Administrative Docket #92 on August 25, 2016;  
26           e. Amended Schedules filed at Administrative Docket #94 on August 25,  
27 2016;  
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1 f. Amended Schedules filed at Administrative Docket #98 on August 26,  
2 2016;

3 g. Amended Schedules filed at Administrative Docket #102 on August 29,  
4 2016; and

5 h. Amended Schedules filed at Docket #135 on September 20, 2016.

6 All of the foregoing pleadings, identified in subparagraphs (a) through (h)  
7 were filed under oath and subject to penalty of perjury.  
8

9 15. Defendant appeared and testified under oath at a meeting of creditors  
10 held pursuant to 11 U.S.C. § 341 on August 26, 2016 (hereinafter the “341  
11 Meeting”).  
12

13 16. Defendant appeared and testified under oath at a deposition conducted  
14 by counsel for the Receiver of Densco Investment Corporation in this case on  
15 October 20, 2016 (hereinafter the “October 2016 Deposition”)  
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17 17. Defendant appeared and testified under oath at a deposition conducted  
18 by counsel for the UST in this case on November 3, 2016 (hereinafter the  
19 “November 2016 Deposition”).  
20

21 **FACTUAL BACKGROUND**

22 18. From at least 2008 through the Petition Date, the Defendant has  
23 earned his income through a number of solely-owned companies that he created and  
24 managed to engage in a variety of business ventures.  
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1           19.    Among the businesses created and managed by the Defendant before  
2 the Petition Date were Easy Investments, LLC (hereinafter “Easy Investments”)  
3 and Arizona Home Foreclosures, LLC (hereinafter “AHF”).

4           20.    Easy Investments was formed by the Defendant in Arizona in  
5 September 2007. Defendant became the sole member of Easy Investments in  
6 February 2008 and remained the sole owner of that entity from February 2008  
7 through the Petition Date.  
8

9           21.    AHF was formed by the Defendant in December 2007. Defendant was  
10 and remained the sole owner of AHF from its inception through the Petition Date.  
11

12           22.    Both Easy Investments and AHF were created to purchase foreclosed  
13 properties for resale. On occasion, both Easy Investments and AHF would also  
14 collect rental income from properties that had been temporarily rented out to  
15 tenants instead of being resold.  
16

17           23.    Other entities under the exclusive ownership and control of Defendant  
18 within the one year period before the Petition Date were Furniture King, LLC,  
19 Furniture & Electronic King, LLC, and Scott’s Fine Furniture, LLC (hereinafter  
20 “the Furniture Entities”), and Auto King, LLC (“AK”).  
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1                   **USE OF CORPORATE ENTITIES AS ALTER EGOS/NOMINEES**

2           24.     During the two-year period preceding the Petition Date, Defendant  
3 was the sole and exclusive decision maker with respect to the financial management  
4 of Easy Investments, AHF, the Furniture Entities, and AK (collectively “the  
5 Entities”).  
6

7           25.     During the two-year period preceding the Petition Date, Defendant  
8 was the person solely responsible for authorizing the payment of bills and allocation  
9 of funds on behalf of the Entities.  
10

11          26.     During the two-year period preceding the Petition Date, Defendant  
12 had complete and unfettered access to and signatory authority over bank accounts  
13 held in the name of the Entities.  
14

15          27.     During the two-year period preceding the Petition Date, Defendant  
16 was the beneficial owner and equitable owner of numerous bank accounts held in  
17 the name of the Entities (hereinafter “Corporate Bank Accounts”).  
18

19          28.     During the two year period preceding the Petition Date, the Defendant  
20 disregarded corporate formalities in handling the Entities’ financial affairs and in  
21 separating his personal finances from his corporate Entities’ finances. During that  
22 time, the Defendant commingled funds between himself and his Entities and freely  
23 transferred money between the various Entities and himself without regard to  
24 corporate formalities.  
25

26          29.     During the two-year period preceding the Petition Date, the Defendant  
27 failed to maintain regular corporate books and records on behalf of the Entities,  
28

1 including financial statements such as balance sheets, income statements or profit  
2 and loss statements, and equity statements.

3         30. During at least the one-year period preceding the Petition Date, Easy  
4 Investments and AHF were grossly undercapitalized. The Defendant was aware of  
5 such undercapitalization but continued to commingle funds between himself and  
6 the Entities and to disregard corporate formalities.

7  
8         31. Based on Defendant's conduct, the Entities were and are Defendant's  
9 alter egos.

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11         32. Based on Defendant's conduct, the Corporate Bank Accounts were held  
12 in the name of the Entities as mere nominees for the Defendant and constituted  
13 property of the Defendant before the Petition Date and property of the Defendant's  
14 estate after the Petition Date.

15  
16         33. Within one year before the Petition Date, the Defendant, acting with  
17 intent to hinder, delay, and defraud his creditors, made fraudulent transfers of over  
18 a million dollars from the Corporate Bank Accounts and intentionally depleted his  
19 personal account and the Corporate Bank Accounts of funds by, among other things,  
20 transferring large sums of money to family members and by using large sums of  
21 money for lavish personal expenditures for, among things, gambling, luxury  
22 vehicles, payment of private school expenses that included catered lunches for his  
23 thirteen-year old son, and the purchase of a 5,700 square foot residence with its own  
24 lazy river.  
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**THE DENSCO FRAUD**

34. In about 2003, the Defendant began engaging in the real estate investment business by seeking to purchase distressed residential real properties that were being auctioned for sale pursuant to notices of trustee sales filed with the Maricopa County, Arizona Recorder's Office by foreclosure trustees. Typically, Defendant would locate properties that were being noticed for trustee sale, bid on the properties at the trustee's auction, and, if he succeeded in becoming the winning bidder, obtain hard money loans to purchase the property.

35. A hard money loan is a type of asset-based loan financing through which a borrower receives funds secured by real property. Hard money loans are typically issued by private investors or companies on a short-term basis at interest rates higher than the prevailing interest rates on ordinary mortgages.

36. Upon obtaining the hard money loan, the Defendant would purchase the distressed property and then either immediately resell it at a profit or rehabilitate the property for resale. On some occasions, if the property was not resold, the Defendant would rent the property out and collect rental income until such time as he decided to resell the property at a profit.

37. Defendant's experience in bidding on foreclosed properties led to the Defendant becoming a cast member on a reality television program called "Property Wars" in about 2011 or 2012.

38. From about 2007 or 2008, Defendant engaged in the business of purchasing distressed properties through his alter ego entities Easy Investments



1 and AHF ( (hereinafter jointly the “Alter Ego Real Estate Entities”). Easy  
2 Investments and AHF were treated by the Defendant as being one in the same  
3 entity and funds were freely transferred between accounts held in the names of  
4 each of those entities.

5  
6 39. In about 2007 or 2008, Defendant began conducting business with a  
7 company called Densco Investment Corporation (“Densco”) of which the owner and  
8 President was Denny J. Chittick (“DJC”). Densco was a hard money lender from  
9 whom Defendant sought hard money loans to purchase distressed properties in the  
10 name of his Alter Ego Real Estate Entities.  
11

12 40. In about 2014, Defendant and his Alter Ego Real Estate Entities had  
13 defaulted on the repayment of over \$35 million of hard money loans from Densco.  
14 The Defendant was personally liable on those loans by virtue of a guaranty he  
15 provided Densco on behalf of the Alter Ego Real Estate Entities.  
16

17 41. In an effort to prevent Densco from pursuing its legal remedies for the  
18 default, Defendant requested that Densco execute a forbearance agreement. As a  
19 result, in April 2014, Defendant on behalf of himself and his Alter Ego Real Estate  
20 Entities entered into an agreement titled “Forbearance Agreement.” Through that  
21 agreement, Defendant acknowledged that the outstanding balance of loans payable  
22 by Defendant and his Alter Ego Real Estate Entities to Densco was over \$35  
23 million.  
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26 42. After the execution of the Forbearance Agreement, the Defendant  
27 continued to receive hard money loans from Densco for the purchase of distressed  
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1 properties in the name of his Alter Ego Real Estate Entities. Pursuant to the  
2 business arrangement between Defendant and Densco after execution of the  
3 Forbearance Agreement, Defendant would obtain hard money loans for purchasing  
4 distressed properties at trustee sales by using the following protocol:

- 5 a. Defendant would bid on a property at foreclosure auction;
- 6 b. Upon becoming the successful bidder, Defendant would notify DJC of  
7 the purchase price and the necessary hard money loan amount for  
8 completing the purchase;
- 9 c. DJC would then wire funds from Densco to an account held in the  
10 name of one of Defendant's Alter Ego Real Estate Entities; and
- 11 d. Defendant would utilize the hard money loan funds received from  
12 Densco to obtain a cashier's check payable to the trustee noticing the  
13 sale and then purchase the property.

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17 43. On various occasions, Defendant would take photographs of the  
18 cashier's checks payable to trustees from whom the Defendant was purchasing  
19 distressed properties pursuant to hard money loans received from Densco. The  
20 Defendant sent photographs of such cashier's checks to DJC by email in order to  
21 show DJC that the hard money loan funds were in fact used to purchase the  
22 distressed properties identified in the corresponding hard money loan request sent  
23 by Defendant to DJC.

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26 44. On various occasions, the Defendant also transmitted to DJC  
27 photographed copies of receipts purportedly evidencing the trustee's actual receipt  
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1 of the funds to purchase the property identified in the corresponding hard money  
2 loan request sent by Defendant to DJC (hereinafter referred to as “the Trustee  
3 Receipts”).

4       45. During the one year period before the Petition Date, the Defendant,  
5 with intent to hinder, delay, and defraud his creditors, including specifically  
6 Densco, falsely represented to DJC that the Defendant had completed purchases of  
7 specific distressed properties using hard money loans received from Densco for the  
8 purchase of such specific properties. During that same period, Defendant  
9 misrepresented to DJC that certain funds were used to purchase distressed  
10 properties, when such funds had not in fact been used for that purpose, by  
11 photographing and sending, via email or other electronic transmission, copies of  
12 cashier’s checks and forged Trustee Receipts indicating that the funds had been  
13 paid to the foreclosure trustee.  
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17       46. During the one year period before the Petition Date, on numerous  
18 occasions, the Defendant obtained cashier’s checks payable to the specific trustee  
19 from whom specific property was to be purchased, photographed that cashier’s  
20 check and sent it to DJC to evidence that Defendant had actually completed the  
21 purchase of the distressed property as represented in the request for the hard  
22 money loans. Upon information and belief, after sending the photograph of the  
23 cashier’s checks to DJC, on occasion, the Defendant would cancel the cashier’s check  
24 and redeposit the funds into an account over which Defendant maintained exclusive  
25 control. In this manner, the Defendant had, within the one year period before the  
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1 Petition Date, fraudulently misrepresented to DJC and Densco that hard money  
2 loans were being used to purchase distressed properties when, in fact, they had not  
3 been so used.

4 47. Upon information and belief, on numerous occasions during the one  
5 year period before the Petition Date, the Defendant misrepresented that he had  
6 used Densco's hard money loan funds for their intended purpose by sending DJC  
7 copies of fraudulent, forged Trustee Receipts that had not in fact been received from  
8 trustees for the purchase of distressed properties identified in Defendant's hard  
9 money loan requests.  
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12 48. During the one year period before the Petition Date, on numerous  
13 occasions, Defendant obtained hard money loans from Densco by misrepresenting to  
14 DJC that certain properties were being auctioned for sale by a foreclosure trustee  
15 when trustee sales on such properties had in fact been cancelled before Defendant  
16 requested such funds from Densco.  
17

18 49. During the one year period before the Petition Date, the Defendant  
19 misappropriated hard money loan funds received from Densco by using such funds  
20 for his own personal use. Such funds were used for, among other things, the  
21 repayment of purported loans from family members, the payment of certain family  
22 members' living expenses, and the payment of personal expenditures including  
23 large sums spent gambling. Some of the hard money loan funds received by  
24 Defendant from Densco were also used to repay Densco interest payments that were  
25 due with respect to prior hard money loans from Densco.  
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1           50.    The hard money loan funds received from Densco were commingled  
2 with funds from Defendant's personal accounts and various Entities' accounts.  
3 Within the year before the Petition Date, the Defendant misappropriated funds that  
4 he received on behalf of the Alter Ego Real Estate Entities from Densco by using  
5 such funds to repay family loans, transferring funds to Defendants' family members  
6 and other entities including the Furniture Entities, and using such funds for  
7 personal expenditures including gambling in Las Vegas. The hard money loan  
8 funds that Defendant received in the name of the Alter Ego Real Estate Entities  
9 constituted property of the Defendant upon their receipt.  
10

11           51.    Within the one year period before the Petition Date, the Defendant  
12 transferred and concealed Defendant's funds and property with intent to hinder,  
13 delay, and defraud creditors, including specifically Densco.  
14

15           52.    Defendant was aware from at least April 2014 when the Forbearance  
16 Agreement was executed through the Petition Date that Densco hard money loans  
17 were funded at least in part by money Densco received from individual investors.  
18

19           53.    Defendant was aware from at least February 2015 that DJC was  
20 having a hard time paying the Densco investors.  
21

22           54.    Defendant failed to maintain appropriate documentation from which to  
23 determine the outstanding balance of loans that he and his Alter Ego Real Estate  
24 Entities received from Densco at any given point in time. At his November 2016  
25 Deposition, Defendant claimed to have no idea of the outstanding amount of the  
26 loans due to Densco at the time of the Petition Date and was unable to answer  
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1 whether he served as a personal guarantor of the Densco loans to AHF. Defendant  
2 has listed Densco as a personal creditor in these bankruptcy proceedings.

3 55. During the one year period before the Petition Date, when the  
4 Defendant knew that he owed millions of dollars to Densco and to other creditors,  
5 the Defendant transferred at least \$747,000 of funds from AHF's accounts, into  
6 which Densco hard money loans had been deposited, to Defendant's father in  
7 repayment of alleged loans by Defendant's father to AHF.  
8

9 56. In September 2015, when the Defendant knew that he owed millions of  
10 dollars to Densco and to other creditors, Defendant purchased real property at  
11 Electra Lane in Peoria, Arizona for approximately \$1.9 million.  
12

13 57. After the Petition Date, the Defendant spoke to DJC about the  
14 repayment of the Densco hard money loans. During a conversation between  
15 Defendant and DJC in July 2016, Defendant made false statements to DJC in an  
16 effort to hinder, delay, and defraud Densco. During that conversation, Defendant  
17 intentionally misrepresented to DJC that Defendant had numerous valuable assets  
18 from which Defendant would be able to repay the Defendant's and Entities' debt to  
19 Densco after the conclusion of Defendant's personal bankruptcy case.  
20  
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22 58. Defendant intentionally misrepresented to DJC that he had access to  
23 real properties in New York and over \$30 million of funds that were being held in  
24 an account or in trust with the company Auction.com.  
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1           59. Defendant intentionally made false statements to DJC to falsely  
2 convince DJC that the outstanding loan from Densco to Defendant and his Entities  
3 would be repaid.

4           60. Defendant told DJC that if DJC waited until Defendant's personal  
5 bankruptcy proceedings were completed, then Densco would be repaid in full. At  
6 the time that Defendant made these false statements to DJC, the Defendant was  
7 fully aware that if he was able to obtain a discharge of his debts in this bankruptcy,  
8 then he would have no legal obligation to repay Densco after the bankruptcy was  
9 concluded.

10           61. Within the one year period before the Petition Date, the Defendant  
11 falsely claimed to DJC that the reason that he and his Entities had been unable to  
12 repay the loans from Densco was because Defendant had a cousin who embezzled  
13 millions of dollars from Defendant's Entities.

14                           **TRANSFER OF BENTLEY AND MUSTANG**

15           62. In May 2013, the Defendant executed a motor vehicle lease as lessee of  
16 a 2013 Bentley Continental GT Coupe from the company Putnam Leasing Co. I LLC  
17 ("Putnam"). The lease obligated the Defendant to make 58 payments of \$2,959.63  
18 per month. The lease term was due to expire in about March 2018. The lease  
19 provided the Defendant with the option to purchase the Bentley at the end of the  
20 lease term through the payment of \$85,000.

21           63. In July 2016, the total payoff due on the Bentley lease was  
22 approximately \$144,000 which included the \$85,000 option to purchase amount.  
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1           64.    Less than six months before the Petition Date, in November 2015, the  
2 Defendant transferred the Bentley to his father Joseph Menaged in exchange for a  
3 purported \$150,000 credit on the outstanding balance of a \$5.5 million loan  
4 allegedly owed by Defendant's entity AHF to Defendant's father pursuant to a  
5 promissory note dated December 1, 2011.  
6

7           65.    In exchange for receiving a purported \$150,000 credit on the alleged  
8 loan outstanding between AHF and Defendant's father, the Defendant transferred  
9 possession and use of the Bentley to his father. In the meantime, the Defendant  
10 continued to pay the monthly lease payments and obligated himself to continue  
11 paying the lease payments and the \$85,000 balloon payment at the end of the lease.  
12

13           66.    The Defendant's transfer of the Bentley to his father occurred less than  
14 six months before the Petition Date at a time when the Defendant was not able to  
15 pay all of his debts as they became due and at a time when the Defendant was being  
16 pursued by creditors.  
17

18           67.    After the Petition Date, the Defendant continued making payments on  
19 the Bentley lease and was continuing to make such payments at the time of his  
20 November 2016 Deposition. The Defendant made a knowing and intentional false  
21 oath on his Schedule J in this case by failing to disclose the monthly lease payments  
22 being paid for the Bentley on his father's behalf at the time of the Petition Date.  
23

24           68.    The Defendant, with intent to hinder, delay, or defraud creditors,  
25 fraudulently transferred his interest in the Bentley lease to his father within one  
26 year before the Petition Date.  
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1           69. Two months before the Petition Date, in about February 2016, the  
2 Defendant sold a 1965 Ford Mustang that was titled in the Defendant's personal  
3 name. That sale generated net proceeds of about \$35,000.

4           70. The Defendant, with intent to hinder, delay, or defraud creditors,  
5 deposited the net sale proceeds into a corporate account held in the name of one of  
6 the Furniture Entities rather than making those cash funds available to personal  
7 creditors through the bankruptcy.  
8

9           71. Despite having received over \$35,000 of net proceeds from the sale of  
10 the 1965 Mustang, the Defendant claimed to have just \$1,340 in cash on hand and  
11 just about \$700 of funds in bank accounts as of the Petition Date.  
12

13           72. The Defendant, with intent to hinder, delay, or defraud creditors,  
14 fraudulently concealed the proceeds received from the sale of the 1965 Mustang and  
15 fraudulently transferred those proceeds to a corporate entity account within one  
16 year before the Petition Date.  
17

18           **FALSE OATHS AND RECKLESS DISREGARD IN BANKRUPTCY**  
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20           73. In his November 2016 Deposition, the Defendant testified that before  
21 filling out the information in his bankruptcy Schedules and SOFA, he did not  
22 carefully review his records to ensure that he properly listed all of the debts that he  
23 owed to creditors as of the Petition Date. During that deposition, the Defendant  
24 also testified that he was not sure if certain items on his amended bankruptcy  
25 pleadings were correct.  
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1           74. Defendant acted knowingly and fraudulently and with reckless  
2 indifference to the accuracy of his Schedules, SOFA, and other bankruptcy  
3 pleadings and of testimony provided in this case by making material false  
4 statements including the following:

- 5           a. Schedule A/B: failing to disclose his equitable interest in and  
6                 ownership of all of the Corporate Bank Accounts;
- 7           b. Schedule A/B: disclosing unknown values for all of the entities  
8                 identified in Item No. 19;
- 9           c. Schedule F: failing to disclose his father as an unsecured creditor with  
10                 respect to an alleged outstanding debt to his father in the amount of  
11                 about \$2.6 million;
- 12           d. Schedule F: disclosing an unknown amount of the outstanding balance  
13                 of unsecured debt owed to Densco;
- 14           e. Schedule G: failing to disclose a purported verbal agreement with a  
15                 “friend” to assume payments on the 2016 Ford Mustang listed in  
16                 Defendant’s Schedule A/B in exchange for Defendant’s agreement to  
17                 transfer title to this friend upon payment of the car loan in full;
- 18           f. Schedule I: failing to disclose the calculation of net income listed on  
19                 Item #8a;
- 20           g. Schedule J: failing to disclose expenses being paid by Defendant under  
21                 the Bentley lease that was transferred to his father;
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1 h. SOFA #4: failing to disclose the true amount of income Defendant  
2 received by virtue of draws or distributions from and payment of  
3 personal expenditures by Defendant's various Entities;

4 i. SOFA #4: disclosing only unknown amounts for income from  
5 employment or operating a business during 2014 and 2015;

6 j. SOFA #6: failing to disclose payments made with respect to the  
7 Bentley Lease during the 90 days before the Petition Date;

8 k. SOFA #7, #8, #18: failing to disclose the transfer of net proceeds  
9 received from sale of 1965 Ford Mustang to AHF months before the  
10 Petition Date;

11 l. SOFA #18: failing to disclose the purported agreement to transfer title  
12 to the 2016 Ford Mustang listed on Schedule A/B.

13 75. Defendant's misrepresentations and omissions as listed above were  
14 made under oath, knowingly and intentionally, and with respect to material  
15 information.

16 76. The Defendant acted with reckless disregard for the truth of his  
17 disclosures, the Schedules, SOFA, and testimony in this case.

18 **LACK OF DOCUMENTATION**

19 77. Defendant failed to maintain corporate books and records or any  
20 corporate financial statements, other than bank statements, from which the  
21 Defendant's financial condition or business transactions might be ascertained.

1           78. Defendant either failed to maintain or failed to produce, in response to  
2 the UST's document request, documents from which the repayment of alleged loans  
3 between the Defendant and/or AHF and Defendant's father could be ascertained.  
4 Defendant testified that numerous payments "in benefit of the loans from his  
5 father" were made to family members, but failed to maintain, or failed to produce,  
6 documentation pursuant to which such repayments were recorded or otherwise  
7 documented.  
8

9           79. Defendant either failed to maintain or failed to produce, in response to  
10 the UST's document request, sufficient documentation from which the amount of  
11 Defendant's draws or distributions from his corporate Entities could be ascertained.  
12

13           80. Defendant either failed to maintain or failed to produce, in response to  
14 the UST's document request, sufficient documentation from which the amount and  
15 frequency of payments of personal bills through the use of funds directly from  
16 Corporate Bank Accounts could be ascertained.  
17

18           81. Defendant either failed to maintain or failed to produce, in response to  
19 the UST's document request, sufficient documentation from which to ascertain the  
20 nature and purpose of transfers between Defendant's personal and corporate bank  
21 accounts.  
22

23           82. Defendant testified at his November 2016 Deposition that certain  
24 transfers from corporate accounts to his personal account may have been loans that  
25 were immediately repaid, but the Defendant either failed to maintain or failed to  
26 produce, in response to the UST's document request, sufficient documentation to  
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1 ascertain when and in what amount such short-term loans were being made and  
2 repaid.

3 83. Defendant either failed to maintain or failed to produce, in response to  
4 the UST's document request, any general ledgers, check registers, Quickbooks, or  
5 other accounting/bookkeeping documents from which to ascertain the Defendant's  
6 financial condition and business transactions.  
7

8 **ADVERSE INFERENCE FROM INVOCATION**  
9 **OF FIFTH AMENDMENT PRIVILEGE**

10 84. At his November 2016 Deposition, the Defendant invoked his privilege  
11 not to incriminate himself pursuant to the Fifth Amendment to the U.S.  
12 Constitution when asked numerous questions pertaining to his financial condition  
13 and business transactions.  
14

15 85. For example, the Defendant invoked his Fifth Amendment privilege  
16 when asked about false receipts that were given to DJC to show that Densco's funds  
17 were used to purchase certain properties from a foreclosure trustee.  
18

19 86. Likewise, Defendant refused on the basis of the Fifth Amendment  
20 privilege to answer numerous questions regarding emails from Defendant and his  
21 associates to DJC regarding the purchasing of distressed properties, obtaining hard  
22 money loans from Densco, providing documentation to DJC regarding the properties  
23 to be purchased by hard money loans from Densco, the pricing of such properties,  
24 the payoff amounts listed in such emails, and the amount of funds that were wired  
25 from Densco for such purchases.  
26  
27  
28

87. At his November 2016 Deposition, Defendant also invoked the Fifth Amendment privilege when he was asked when and why he ceased seeking hard money loans from Densco before filing for bankruptcy, whether he knew he was unable to pay the Densco loan balances in full at the time he filed bankruptcy, and whether and when he stopped making payments to Densco in repayment of hard money loans.

88. At his November 2016 Deposition, Defendant invoked the Fifth Amendment privilege and refused to answer numerous other questions that pertain directly to Defendant's financial condition, business transactions, knowledge, and intent.

89. In light of the Defendant's invocation of the Fifth Amendment privilege and refusal to testify regarding certain matters at his November 2016 Deposition, the Court may draw a negative or adverse inference from the Defendant's refusal to answer.

## COUNT ONE

TRANSFER AND CONCEALMENT WITH INTENT TO DEFRAUD  
11 U.S.C. § 727(a)(2)

90. Plaintiff repeats and re-alleges paragraphs 1 through 89 herein.

91. Within one year before the Petition Date herein, Defendant transferred, removed and concealed Defendant's funds and property, including funds and property held in the name of alter ego Entities, with the intent to hinder, delay, or defraud Defendant's creditors.

1           92. Defendant's transfers and concealments have delayed and hindered  
2 the ability of Defendant's creditors to recover the debts that are due and owing by  
3 Defendant.

4           93. As a result of the conduct alleged herein, Defendant is not entitled to a  
5 discharge in bankruptcy under 11 U.S.C. § 727(a)(2).  
6

7                           **COUNT TWO**

8                           **CONCEALING OR FAILING TO KEEP RECORDS**

9                           **11 U.S.C. § 727(a)(3)**

10           94. Plaintiff repeats and re-alleges paragraphs 1 through 93 herein.

11           95. Defendant has failed to keep or preserve documents from which the  
12 Defendant's financial condition and business transactions might be ascertained.  
13

14           96. As a result of Defendant's conduct as alleged herein, Defendant is not  
15 entitled to a discharge in bankruptcy under 11 U.S.C. § 727(a)(3).  
16

17                           **COUNT THREE**

18                           **FALSE OATH - 11 U.S.C. § 727(a)(4)**

19           97. Plaintiff repeats and re-alleges paragraphs 1 through 96 herein.

20           98. Defendant knowingly and intentionally made false statements  
21 concerning material information under oath in this case.  
22

23           99. Defendant acted with reckless disregard for the truth of his  
24 disclosures, pleadings, and testimony in this case.

25           100. Defendant's false oath statements and omissions include, but are not  
26 necessarily limited to, the statements referred to in paragraph 74 above.  
27

28           101. Discovery in this case may reveal additional false oaths.

1           102. As a result of Defendant's conduct as alleged herein, Defendant is not  
2 entitled to a discharge in bankruptcy under 11 U.S.C. § 727(a)(4).

3                           **PRAYER FOR RELIEF**

4           WHEREFORE the United States Trustee respectfully requests that:  
5

6           A. Judgment be entered against the Defendant and in favor of the United

7               States Trustee in this case;

8           B. Defendant be denied a discharge in bankruptcy under 11 U.S.C. § 727;

9               and  
10

11          C. The Court grant any other relief that the Court deems just and

12               appropriate.  
13

14           RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of December, 2016.  
15

16                           ILENE J. LASHINSKY  
17                           United States Trustee  
18                           District of Arizona

19                           /s/ JAG (NY #2520005)

20                           \_\_\_\_\_  
21                           JENNIFER A. GIAIMO  
22                           Trial Attorney  
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