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12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF ARIZONA
14

15 United States of America,
16 Plaintiff,
17 vs.
18 Yomtov Scott Menaged,
19 Defendant.

CR-17-0680-PHX-GMS

**UNITED STATES SENTENCING
MEMORANDUM**

20
21 The United States of America, through undersigned counsel, recommends that the
22 Court sentence Yomtov Scott Menaged (“Defendant Menaged”) to 204 months incarceration.
23 Defendant Menaged is a financial predator and con artist, but his actions should NOT be
24 minimized or categorized as purely financial crimes; Defendant Menaged’s brazen and greed-
25 motivated decisions directly caused a business partner to take his own life, spelled financial
26 ruin for countless others, and victimized elderly individuals and their families. The United
27 States recommends the maximum sentence allowed by the plea agreement, followed by a
28 three-year term of supervised release, and restitution in the amount of \$33,558,407.76. The
recommendation is supported by the attached memorandum of points and authority.

MEMORANDUM OF POINTS AND AUTHORITY

I. FACTUAL HISTORY

Defendant Menaged was the principal architect of one of the most egregious embezzlement schemes in the history of Arizona, and he should be sentenced to the maximum allowable under the plea agreement. From at least early 2007 until his arrest in May 2017, Defendant Menaged committed multiple frauds resulting in more than a \$30,000,000 loss to many victims in order to indulge in a lavish lifestyle, without regard for the devastating consequences faced by his numerous victims. The United States agrees with the facts laid out in the Presentence Investigation Report (“P.S.R.”) and believes it accurately reflects Defendant Menaged’s criminal behavior and the procedural posture of this case. (P.S.R. ¶¶ 1-45). As detailed below, several key facts support the United States’ sentencing recommendation.

Primary among these is the devastating impact of Defendant Menaged’s conduct as it relates to DenSco, its investors, and of course, DenSco’s principal, D.C. As described in paragraph 17 of the P.S.R., in July 2016, D.C. recorded a conversation he had with Defendant Menaged after he became aware of the Defendant’s bankruptcy. Within days of making that recording, D.C. took his own life. In a letter excerpted below, D.C. describes why he did what he did and exactly how Defendant Menaged’s fraud was the direct cause of his actions:

I’m better dead than alive! This isn’t a financial decision. I’m looking at it as a well being decision, what is best for my boy’s long term and to help mom and dad. Plus I would have to face all these people my family, my best friends, neighbors, I can’t even imagine those discussions. It’s not a financial decision based on me it’s for the boys....I rather sacrifice myself for them to allow them to go to college and start a life....I’m desperate to do the right thing and I’m sure I’m doing it....I put them in financial straits. I’ve ruined lifelong friendships. I’ve done all of this. None of it intentional or purposeful but I’m responsible....I’ve absolutely ruined them...What do I do point the finger and say Scott screwed me he defrauded me, yes it’s true. But shame on me...I’m the one that was supposed to ensure that didn’t happen. Despite my best efforts and years of experience I missed it. When I tried to fix it, I didn’t do the right thing and come forward. Now I’ve compounded the issue and its worse....

....Then I find out he’s got some “arrangement with auction.com”

1 which I've never been full made aware of, I believe is a scam. I've been
 2 providing the funding for and now I'm guilty. What am I going to get anyone
 3 to believe I could lend this man this much money and not be aware? No one
 4 would believe me.

5The difference is that by me doing this it shields my personal assets
 6 so that I can provide something for mom and dad and the boys....The guilty
 7 is so overwhelming that I've hurt my boys I can't even think about it because
 8 I go crazy, yelling, crying and then I say I'm not going to do it, then I think
 9 now what, I know what will happen to me. How is that better? It's not. This
 10 is better. I know I had no intention of doing anything illegal. But I know
 11 that the law says about fiduciary responsibility and there has been money
 12 lost. This means there are penalties both legal and financial. That would be
 13 devastating in both counts and I would put my boys and mom and dad in
 14 worse shape.¹ [sic]

15 The United States could expand upon the pertinent facts regarding the DenSco fraud
 16 and its unimaginable result---D.C.'s suicide. Instead, several individuals will speak at the
 17 sentencing hearing to provide additional critical information to support the assertion that but
 18 for Defendant Menaged defrauding DenSco to the extent and in the manner that he did, D.C.
 19 may not have blamed himself for trusting Defendant Menaged. These individuals include co-
 20 defendant Veronica Castro and several members of D.C.'s family, including his sister.

21 Second, the DenSco fraud is only part of Defendant Menaged's criminal conduct in this
 22 case. In defrauding various banks including Wells Fargo and Synchrony Financial, Defendant
 23 Menaged utilized his background in real estate and lending/financing to search credit sites and
 24 prayed on elderly and deceased individuals he identified in public obituaries. As the Court
 25 will hear, this was intentional because Defendant Menaged was overheard claiming that elderly
 26 individuals are more likely to have good credit. Defendant Menaged's actions are egregious
 27 because he intentionally created the added protection of not having to worry that a living
 28 individual would discover that their personal information was compromised without any

¹ The government provided the full version of the letter, which it obtained as part of the records in the bankruptcy cases to Defendant's Counsel and the P.S.R. writer by electronic mail on Friday, December 1st.

1 consideration for how his actions would impact his victims and ultimately their
 2 families/estates. As the Court can see from the statement provided by victim C.S., who was
 3 actually not deceased but shared the same name as an individual who was, Defendant
 4 Menaged's actions have had significant ramifications for the people he exploited all so that he
 5 could continue support his extravagant lifestyle after the money stopped coming in from
 6 DenSco. It is worth noting that the majority of the Identity Theft/Bank Fraud schemes
 7 occurred *after* Defendant Menaged had already filed for bankruptcy. Therefore, while seeking
 8 to discharge his many debts he continued to commit egregious fraud against the Bankruptcy
 9 Court as well as the victims in this case. Displaying an audacity that only further illustrates
 10 his lack of conscience, Defendant Menaged continued defrauding multiple financial
 11 institutions including Synchrony Bank---in the names of his employees---up until he was shut
 12 down when arrested in May 2017.

13 The United States cannot stress enough that Defendant Menaged perpetrated these
 14 crimes for personal gain and to support his lavish lifestyle that included, expensive houses,
 15 luxury cars, and prolific gambling. He did this all in the name of greed, with no regard that
 16 others would pay the consequences for his conduct. Defendant Menaged may claim he was
 17 only trying to provide for his children and family or keep his businesses running for his
 18 employees; any such claim is miserably inadequate. In taking care of his own, Defendant
 19 Menaged terrorized D.C.'s family and many other victims. There is no excuse, no justification,
 20 or explanation that mitigates Defendant Menaged's conscientious and calculated conduct. The
 21 maximum term of incarceration allowable by the terms of the plea is necessary given the facts
 22 and circumstances of this case.

23 **II. THE P.S.R. and ADVISORY U.S.S.G. RANGE**

24 **A. P.S.R.'s Total Offense Level (TOL) calculations**

25 According to the P.S.R., Menaged's TOL is calculated as follows:

26 (a) the defendant's Base Offense Level is a Level 37 pursuant to U.S.S.G.

27 Sections 2B1.1 and 2S1.1;

28 (b) the defendant received a 2-level increase for role pursuant to U.S.S.G.

1 Section 3B1.1(c);

2 (c) the defendant received a 3-level reduction for acceptance of responsibility
3 pursuant to U.S.S.G. Section 3E1.1.

4 (P.S.R. ¶¶52-60). As such, the PSR determined that Defendant Menaged's TOL is a level
5 36. (P.S.R. ¶ 61).

6 **B. PSR's Criminal History**

7 According to the PSR, Defendant Menaged's prior criminal history results in zero
8 criminal history points and places him in CHC I. The government has no contrary
9 information. (P.S.R. ¶64).

10 **C. PSR's Advisory U.S.S.G. Range and Recommended Sentence**

11 The PSR determined that Defendant Menaged's TOL of 36 and CHC I provides for an
12 advisory U.S.S.G. range of 188 to 235 months. (P.S.R. pg. 26). The PSR recommends that
13 the Court sentence Defendant Menaged to a term of imprisonment totaling 212 months,
14 followed by three-years of supervised release, and restitution of \$33,558,407.76. (P.S.R. pg.
15 26).

16 **D. The Plea Agreement is Reasonable and Should be Accepted**

17 Application of the Guidelines to the counts of conviction calls for a sentence of 188
18 to 235 months. Here, Defendant Menaged's plea agreement caps him at 204 months, well
19 within the advisory guidelines range. This is a reasonable sentence in light of Defendant
20 Menaged's guilty plea, his agreement to waive his appellate rights, resolve the case against
21 him, avoids litigation risks for both parties, and brings closure to the victims. The Court
22 should accept the plea agreement as stipulated and sentence the Defendant pursuant to its'
23 terms.

24 **III. RECOMMENDATION**

25 Some of the factors to be considered in imposing sentence include the nature and
26 circumstances of the offense, the history of the defendant, a need to promote respect for the
27 law, provide just punishment, afford adequate deterrence, protect the public, and provide the
28 defendant with any training or treatment as appropriate. 18 U.S.C. § 3553(a) (2012). Other

relevant factors include the kinds of sentences available, any applicable Guideline recommendations, any pertinent policy statements, a need to avoid disparate sentencing amongst similarly situated offenders, and a need to provide restitution to any victims. *Id.*

A. 18 U.S.C. § 3553(a) Factors

The factors set forth in Section 3553(a), particularly the nature and circumstances of Defendant Menaged's fraud, his role and personal history, and the need for forcible deterrence as to him particularly, call for the most severe punishment permitted by the plea agreement.

1. Nature and Circumstances of the Offense and Defendant Menaged's History and Character

Defendant Menaged's crimes differ from other fraud offenses. His actions were not those of a typical financial fraudster. Defendant Menaged caused much more than just financial loss to his victims, he caused emotional and psychological devastation. He is a pathological liar and thief who used any information he had access to, or knowledge of the industry that he worked in, to his advantage in committing these multi-million dollar crimes. He lied to anyone and everyone to serve his interests. Even this Court expressed concern as to whether Defendant Menaged was being honest in its latest detention order and stated: "the Court also has no confidence, [especially given the circumstances here that Defendant Menaged has not retained the necessary funds to flee or] that Defendant Menaged is being straightforward with this Court." (Doc. 152, pg. 3, lns. 6-9). Defendant Menaged's version of facts and truth are whatever he believes will serve his immediate purpose at the time the words are coming out of his mouth. He is consistently looking for ways to gain his own advantage without regard to what consequences there may be to others. His co-defendant and employee Ms. Castro had the unique perspective of hearing and seeing what Defendant Menaged really thought or believed at each stage of these frauds and she is in the best position to provide these details to the Court to confirm his true character.

If the measure of a man's character is evident from his words and actions, then despite D.C.'s terrible final act, based on his words cited above, it is clear that he was motivated to

1 act selflessly. In contrast, based on the evidence before this Court, the nature of these crimes
2 as outlined in the P.S.R., and the information presented at sentencing, it is equally clear that
3 Defendant Menaged is purely selfish. Notwithstanding his advantages in life, family support
4 and love, and successful business opportunities, Defendant Menaged committed his crimes
5 to satisfy his own greed and vanity. Dissatisfied with attempting to succeed legitimately as
6 a real estate investor and a salesman, Menaged simply defrauded victims to finance the
7 trappings of a lavish lifestyle, complete with million dollar homes, luxury vehicles, gambling
8 trips, and endless support to his own family and friends at the expense of others. As
9 described in the P.S.R. and above, when the DenSco funds were no longer flowing, or when
10 he ran low on money, he simply devised another fraud scheme to fuel his avarice and sustain
11 his lifestyle. Consistent with his selfishness, Defendant Menaged put himself and his needs
12 first without any consideration for the irreversible damage he was causing everyone around
13 him including multiple investor victims, financial institutions, his own employees,
14 vulnerable elderly victims, and of course D.C.'s family.

15 Among many claims Menaged may make at his sentencing is the claim that he is a
16 first time offender. To be clear, he does fall into CHC I, but that categorization is obviously
17 incomplete. Rather, his criminal conduct began long before this investigation began.
18 Defendant Menaged has been in the business of crime since at least 2007, if not well before
19 that date, when he first began defrauding D.C. and DenSco. Defendant Menaged's true
20 history is a long history of deceit and fraud. The lack of a prior criminal record reflects how
21 well Defendant Menaged hid his fraudulent conduct and how effectively he concealed his
22 many different schemes. Fraud has been at least a part of Defendant Menaged's business
23 dealings for the past ten years. This Court should not consider Defendant Menaged's lack
24 of a prior criminal record as a mitigating factor. Doing so would essentially reward
25 Defendant Menaged for many years of criminal success.

26 In addition, as outlined in the facts above, Defendant Menaged's crimes stopped only
27 after he was caught. In fact, the United States initially did not indict with respect to the
28 DenSco fraud because any delay would have afforded Defendant Menaged additional time

1 to defraud the Bankruptcy Court, his creditors, or any number of additional financial
 2 institutions who were not yet onto his scheme. But for the enforcement action in this case,
 3 Defendant Menaged's conduct would likely have continued unabated.

4 2. Just Punishment and the Need for the Sentence Imposed to Protect the 5 Public and Promote Deterrence

6 A significant term of incarceration is necessary to afford adequate deterrence to
 7 Defendant Menaged specifically and to send the clear message that there are real
 8 consequences for this conduct. Defendant Menaged made the decision long ago to not follow
 9 the rules or live as a productive member of society, but rather to resort to fraud and
 10 embezzlement to make his living all while using the tools he had access to from any
 11 legitimate trade to accomplish his aims. Defendant Menaged proved skilled at separating
 12 victims from their money and the opportunity to obtain millions of dollars without doing any
 13 real work is a draw both to this Defendant in particular, and others who might be tempted to
 14 make similar choices. A lengthy sentence would send the appropriate message to Defendant
 15 Menaged and others that regardless of the fact that this case was charged as a financial crime,
 16 this type of conduct is outrageous and the consequences for these choices will be
 17 commiserate with these types of deliberate actions.

18 3. Avoiding Unwarranted Sentence Disparities

19 According to the most recent information collected by the United States Sentencing
 20 Commission, in 2016, the median loss for all offenders sentenced under U.S.S.G. Section
 21 2B1.1 was \$137,828. *See* United States Sentencing Commission, *Quick Facts: Theft,*
 22 *Property Destruction, and Fraud Offenses*, available at
 23 <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick>
 24 [facts/Theft_Property_Destruction_Fraud_FY2016.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick). Further nearly 86.1% of all offenses
 25 involved loss amounts of \$1.5 million or less, which puts Defendant Menaged comfortably
 26 within the top 1% of all offenders. *Id.* The average guideline minimum was 29 months in
 27 2016, and the average sentence imposed during the same time was 22 months. *Id.*
 28 Accordingly, § 2B1.1 offenders received sentences that were around 30% reductions from

1 the low end of the guidelines. Here, Defendant's calculated range is 188 to 235 months.
2 The government is requesting a sentence of 204 months, which falls in the middle of the
3 applicable guideline range. It is clear from the facts and circumstances of this case that
4 comparisons to the average defendant sentenced under § 2B1.1 are inapposite, and that
5 Defendant Menaged deserves harsher treatment due to the incredible fraud loss figures and
6 the non-economic damage he caused his victims to suffer. In sum, these statistics support a
7 17-year sentence for Defendant Menaged.

8 **IV. CONCLUSION**

9 For the foregoing reasons, the United States respectfully requests that the Court
10 accept the plea agreement and sentence Defendant Menaged to 180 months' incarceration
11 for the fraud schemes and 24 months' consecutive for the Aggravated ID theft charge for
12 a total of 204 months incarceration. Lastly, the United States further requests a three-year
13 term of supervised release, restitution in the amount of \$33,558,407.76, and the imposition
14 of the \$300 special assessment.

15
16 Respectfully submitted this 7th day of December 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of December 2017, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing a copy to the following CM/ECF registrants: Molly Brizgys, Esq.

s/ Monica Edelstein
U.S. Attorney's Office