

1 **GUTTILLA MURPHY ANDERSON**

2 **Ryan W. Anderson** (Ariz. No. 020974)

3 5415 E. High St., Suite 200

4 Phoenix, Arizona 85054

5 Email: randerson@gamlaw.com

6 Phone: (480) 304-8300

7 Fax: (480) 304-8301

8 Attorneys for the Receiver

9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

10 IN AND FOR MARICOPA COUNTY

11 ARIZONA CORPORATION
12 COMMISSION,

13 Plaintiff,

14 v.

15 DENSCO INVESTMENT
16 CORPORATION, an Arizona
17 corporation,

18 Defendant.

Cause No. CV2016-014142

PETITION NO. 88

PETITION FOR ORDER APPROVING
PAYMENT OF \$150,000 FROM
STEPHEN BROWN AND \$350,000
FROM JOSEPH MENAGED

(Assigned to the Honorable
Teresa Sanders)

19 Peter S. Davis, as the court appointed Receiver of DenSco Investment Corporation,
20 respectfully petitions the Court for an Order approving the receipt of \$350,000 from Joseph
21 Menaged and \$150,000 from Stephen Brown as follows:

I. Background

1. On August 18, 2016, this Court entered its *Order Appointing Receiver*, which
appointed Peter S. Davis as Receiver of DenSco Investment Corporation (“DenSco”).
DenSco is an Arizona Corporation formed by Denny J. Chittick in April of 2001.

2. Denny J. Chittick (now deceased) was the sole owner, shareholder and operator of DenSco. DenSco was a “hard money lender” and its primary business was in funding “hard money” loans for the purchase of real estate secured by deeds of trust.

3. DenSco’s hard money loans were funded from monies that DenSco raised from its investors. DenSco raised more than \$85 Million from its investors pursuant to a securities offering, in which the investors of DenSco were essentially unsecured general creditors of DenSco.

4. Between 2007 and 2008, DenSco began a lending relationship with Yomtov Scott Menaged (“Menaged”) and loaned Menaged monies for the purchase of residential real estate through foreclosure auctions. Menaged utilized two limited liability companies to solicit loans from DenSco.

5. Menaged learned through his ongoing relationship with DenSco that he could take advantage of DenSco’s lending practices and defraud DenSco by employing a series of fraudulent schemes including: 1) intentionally obtaining two (2) hard money loans on a single property that Menaged had “purchased” at a foreclosure auction by tricking different hard money lenders into believing that their respective loan was going to be secured against the real property in a first position, and 2) falsifying documents to trick DenSco into believing that Menaged had purchased property at a foreclosure auction and that DenSco’s loan was secured against the related property, when in fact Menaged never purchased the property at all.

1 6. Starting sometime in 2011, Menaged began intentionally soliciting DenSco and
2 other unrelated hard money lenders for two hard money loans on the same subject real
3 property that Menaged had purchased at a foreclosure auction by being the highest bidder.

4 7. When seeking loans from DenSco and the other unrelated hard money lenders,
5 both DenSco and the other unrelated hard money lenders were led to believe by Menaged that
6 they would be the sole lender on the property and their loan would be secured against the
7 property with a first position Deed of Trust.

8 8. Menaged learned that the delay in the recordation of the Foreclosure Trustees'
9 Deed to the Buyer and the lending practices of DenSco allowed Menaged the opportunity to
10 defraud DenSco and the other hard money lenders by seeking two loans on property he
11 purchased.

12 9. Menaged learned that while other hard money lenders would deliver funds it
13 intended to lend to Menaged directly to the Foreclosure Trustee, DenSco's lending practices
14 were to deliver loan proceeds directly to Menaged, who was then obligated to deliver the loan
15 proceeds to the Foreclosure Trustee to finalize Menaged's purchase.

16 10. Menaged executed multiple promissory notes, deeds of trust and other
17 documents from DenSco and the other hard money lenders with the knowledge that he was
18 soliciting two separate loans from two separate lenders who unbeknownst to each other
19 believed that they were the only lender and would be the only secured creditor in first position.
20 (Hereinafter this fraudulent scheme of obtaining two hard money loans on hundreds of
21 properties purchased by Menaged will be referred to as the "First Fraud").

1 11. Menaged orchestrated the First Fraud, to defraud DenSco by obtaining two
2 loans from separate lenders though the use of fraud and deception, at least one hundred
3 seventy-nine (179) times between 2011 and 2013. Not until November of 2013, did DenSco
4 become aware of the First Fraud.

5 12. Between November 2013 and April 2014, DenSco and Menaged sorted through
6 all of the properties double encumbered by DenSco and other lenders as a result of the
7 Defendants' actions in the operation of the First Fraud.

8 13. Menaged concocted a resolution of the First Fraud by entering into a
9 Forbearance Agreement with DenSco.

10 14. Apparently, due to the massive amounts of money that were owed to DenSco
11 by Menaged under the Forbearance Agreement, DenSco and Menaged continued to do
12 business together with DenSco agreeing to continue funding hard money loans to Menaged
13 for the purchase of real estate from foreclosure auctions. However, after the discovery of the
14 First Fraud, DenSco and Menaged altered their business practices for all future loans from
15 DenSco to Menaged.

16 15. Starting in January 2014, for new loans between DenSco and Menaged, DenSco
17 required that Menaged provide copies of the specific cashier's checks, issued by Menaged's
18 bank to the respective foreclosure trustee, as well as copies of the receipts received by
19 Menaged from the foreclosure trustee for the purchase of a property by Menaged at a trustee's
20 sale.

1 16. DenSco's requirement that Menaged provide DenSco the evidence that
2 Menaged had purchased the underlying real property (by providing a copy of the cashier's
3 check used by Menaged to purchase the property and a copy of the receipt that Menaged
4 received from the foreclosure trustee) was a direct result of Menaged's fraudulent actions that
5 gave rise to the First Fraud.

6 17. Under the new lending practices, Menaged obtained a total of 2,712 loans from
7 DenSco between January 2014 and June 2016. However, the Receiver has determined that
8 only 96 of these loans were secured by the actual purchase of real estate at a trustees' sale or
9 otherwise.

10 18. The Receiver determined that Menaged engaged in a systematic and
11 comprehensive scheme to defraud DenSco for a second time through the use and creation of
12 falsified checks, deeds, contracts and receipts related to the purported purchase of real
13 property at a trustee's sale (the "Second Fraud"). The Receiver has determined that despite
14 the new requirement that Menaged was to provide DenSco with evidence of each cashier's
15 check and receipt confirming each purchase, Menaged caused the issuance of cashier's checks
16 that Menaged never intended to use for the purchase of properties and intentionally falsified
17 trustee's sale receipts purporting to evidence the purchase of properties that never happened.

18 19. The Second Fraud relied on Menaged's ability to obtain cashier's checks from
19 his banks to make it appear that he was actually using the DenSco loan proceeds to purchase
20 property from a foreclosure trustee, when in fact, Menaged obtained the cashier's check for
21 the sole purpose of simply taking a picture of the cashier's check to send to DenSco to make

1 it appear that the DenSco funds were being used to purchase real property. Additionally,
2 Menaged executed, notarized and provided to DenSco a series of documents purporting to
3 give DenSco a first position lien against the property that Menaged had falsely represented to
4 DenSco was purchased by Defendant, including a Mortgage, Deed of Trust and Promissory
5 Note.

6 20. The Second Fraud was sophisticated in that Menaged falsified hundreds of
7 receipts from foreclosure trustees in an effort to confirm that Menaged actually purchased the
8 property at the foreclosure sale. Menaged skillfully created fraudulent receipts from different
9 companies, foreclosure trustees, law firms and other organizations for the sole purpose of
10 convincing DenSco that it used DenSco's funds to purchase real property. Each individual
11 fraudulent receipt was intricately prepared by Menaged for the sole purpose to defraud
12 DenSco and trick DenSco into believing that Menaged had actually used DenSco's funds for
13 the purchase of real property, when in fact, Menaged simply utilized DenSco's funds for his
14 own purposes.

15 21. Eventually, Menaged admitted that he devised, facilitated, and operated the
16 First Fraud and utilized the proceeds from the First Fraud for other purposes, including
17 repayment of loan obligations to his father Joseph Menaged and using the DenSco funds for
18 his living expenses, gambling and the acquisition of personal assets.

19 22. The Receiver completed a forensic analysis of the Menaged bank accounts and
20 was able to determine that if you subtract the total interest paid by Menaged to DenSco
21

1 (\$15,328,635) from the Menaged loan balance (\$46,288,983), then DenSco's net loss from
2 Menaged's fraudulent activities was \$30,960,348.

3 23. On or about May 24, 2017, Menaged was indicted and arrested for his role in
4 an alleged effort to defraud Wells Fargo Bank and Synchrony Financial. On October 17,
5 2017, the government filed an information statement to incorporate Menaged's crimes against
6 DenSco and added money laundering to the criminal charges against Menaged. The same
7 day, Menaged entered into a plea agreement with the United States wherein Menaged plead
8 guilty to the crimes alleged against him. On December 19, 2017, Menaged was sentenced to
9 seventeen (17) years in federal prison.

10 II. Criminal Case against Joseph Menaged and Stephen Brown

11 24. During his investigation into the operations of DenSco, the Receiver conducted
12 a forensic recreation of the books and records of Menaged and his related companies to
13 determine the disposition of DenSco funds transferred to Menaged. The Receiver's financial
14 investigation determined that Joseph Menaged received a substantial amount of DenSco funds
15 directly traceable to transfers made by DenSco to Menaged.

16 25. On or about April 2, 2019, the United States indicted Menaged's father, Joseph
17 Menaged and Stephen Brown¹ in *USA vs Joseph Menaged and Stephen Brown* CR19-0352-
18 PHX-SPL [See Exhibit "A"].

19
20
21 ¹ Mr. Stephen Brown was Joseph Menaged's accountant.

1 26. In the indictment, the United States alleged that Joseph Menaged and Stephen
2 Brown violated federal law by creating and “back dating” fraudulent documents, which were
3 used to obtain mortgage loans to purchase real property in New York and Florida.

4 27. The Receiver has been informed that the United States and Joseph Menaged
5 have entered into a Plea Agreement to address the government’s allegations against Joseph
6 Menaged [See Exhibit “B”].

7 28. One term of the plea agreement is that Joseph Menaged has agreed to pay
8 \$350,000 to the Receiver for the benefit of the DenSco victims. The Plea Agreement indicates
9 that it may take a significant time for Joseph Menaged to complete his financial obligations
10 under the terms of the Plea Agreement and made the \$350,000 payment to the Receiver, as it
11 is contemplated that Joseph Menaged will need to liquidate certain real property to generate
12 sufficient funds to pay his financial obligations under the Plea Agreement. The Receiver is
13 informed that it may take twelve (12) months for Joseph Menaged to make the payment of
14 \$350,000 to the Receiver.

15 29. The Receiver has been informed that the United States and Stephen Brown have
16 entered into a deferred prosecution agreement to address the government’s allegations against
17 Stephen Brown [See Exhibit “C”]. Per the terms of the deferred prosecution agreement, the
18 United States will dismiss its prosecution against Stephen Brown with a payment of \$150,000
19 being made by Stephen Brown to the Receiver.

20 30. The Receiver is informed that Stephen Brown is prepared to make the \$150,000
21 payment to the Receiver within five (5) days of an entry of an Order granting this Petition.

WHEREFORE, the Receiver respectfully requests that the Court enter an order approving Petition No 88.

Respectfully submitted: February 24, 2020.

GUTTILLA MURPHY ANDERSON, P.C.

/s/ Ryan W. Anderson

Ryan W. Anderson

Attorneys for the Receiver

2359-001(390918)

EXHIBIT A

FILED	LODGED
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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

SEALED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,

vs.

1. Joseph Menaged, and
(Counts 1-7)
2. Stephen Brown;
(Counts 1-3)
Defendants.

No. CR-19-0352-PHX-SPL (MHB)

INDICTMENT

VIO: 18 U.S.C. § 371
(Conspiracy to Commit Bank Fraud)
Count 1

18 U.S.C. § 1344(1)
(Bank Fraud)
Counts 2-3

18 U.S.C. § 1957
(Transactional Money Laundering)
Counts 4-7

18 U.S.C. §§ 981 and 982,
21 U.S.C. § 853, and
28 U.S.C. § 2461(c)
(Forfeiture Allegation)

THE GRAND JURY CHARGES:

BACKGROUND

A. Introduction

1. Joseph Menaged ("Defendant Menaged"), a resident of Miami, Florida, received money from a number of Arizona businesses and entities that were operated by his son Y.S.M.

2. Stephen Brown ("Defendant Brown"), a resident of Cedarhurst, New York, is Defendant Menaged's longtime accountant.

3. Y.S.M, who lived and worked in the Phoenix metropolitan area from at least

1 2008 through 2017, was a real estate investor who purchased foreclosed properties and
2 rehabilitated and sold the properties for a profit. Y.S.M. conducted business through a
3 number of companies including, amongst others, Easy Investments, LLC ("Easy
4 Investments") and Arizona Home Foreclosures, LLC ("AHF"). Y.S.M., through Easy
5 Investments and AHF, obtained hard money loans from lenders including DENSCO
6 Investment Corporation ("DENSCO") to purchase real estate. Between January 2013 and
7 June 2016, Y.S.M. obtained approximately 2,712 loans from DENSCO totaling
8 approximately \$734,484,440.67.

9 4. Between 2011 and 2017, Y.S.M. transferred, via checks and electronic
10 transfers, approximately \$11,459,084.00 to Defendant Menaged.

11 5. Y.S.M frequently utilized, among others, Easy Investment's Bank of
12 America ("BoA") account ending in #5496, and AHF's JP Morgan Chase account ending
13 in #1151 to make transfers to accounts owned and controlled by Defendant Menaged.

14 6. Defendant Menaged frequently utilized, among others, BoA account ending
15 in #0078 in the name of Short Term Finance, LLC; a personal BoA account ending in
16 #0731, and a personal Bank United account ending #0927 to receive transfers from Y.S.M.

17 **B. Purchase and Financing of New York Property**

18 7. On or about June 1, 2012, Defendant Menaged entered into a purchase
19 agreement with Extell West 57th Street, LLC for the purchase of Unit 42C at 157 West
20 57th Street, New York, New York ("Unit 42C"). The terms of the agreement included a
21 purchase price of \$3,225,120.00, payable as follows: a) initial deposit of \$651,024.00 due
22 at signing; b) a deposit of \$162,756.00 due on December 1, 2012; and c) balance of
23 \$2,441,340.00 due at closing.

24 8. On or about March 30, 2015, Defendant Menaged obtained a mortgage from
25 Bank United in the amount of \$2,278,584.00 associated with Unit 42C. On the loan
26 application, Defendant Menaged indicated he was self-employed as a real estate
27 consultant/investor and had a monthly income of approximately \$60,409.00. Monthly
28 electronic mortgage payments for \$9,003.16 from Defendant Menaged's Bank United

1 account ending #0927 began in approximately May 2015.

2 **C. Purchase and Financing of Miami Properties**

3 9. On or about March 22, 2013, Defendant Menaged entered into a purchase
4 agreement with Tower 3315, LLC for the purchase of Unit 9D at 3315 Collins Avenue in
5 Miami Beach, Florida ("Unit 9D"). The terms of the agreement included a purchase price
6 of \$2,600,000.00, payable as follows: a) a reservation deposit of \$260,000.00; b) initial
7 deposit of \$260,000.00 due at signing; c) a deposit of \$260,000.00 due no later than 5 days
8 following notice of pouring of the ground floor slab; and d) balance of \$1,820,000.00 due
9 at closing.

10 10. On or about April 11, 2013, Defendant Menaged entered into a purchase
11 agreement with Tower 3315, LLC for the purchase of Unit 9C at 3315 Collins Avenue in
12 Miami Beach, Florida ("Unit 9C"). The terms of the agreement included a purchase price
13 of \$5,000,000.00, payable as follows: a) initial deposit of \$500,000.00 due at signing; b) a
14 deposit of \$500,000.00 due no later than 5 days following notice of pouring of the ground
15 floor slab; and c) balance of \$4,000,000.00 due at closing.

16 11. On or about September 17, 2015, Defendant Menaged was approved for a
17 \$3,000,000.00 mortgage with Morgan Stanley Private Bank ("Morgan Stanley") associated
18 with Unit 9C. On the loan application, Defendant Menaged indicated he was self-
19 employed and had a monthly income of approximately \$70,250.00. Monthly electronic
20 mortgage payments for \$11,760.26 from Defendant Menaged's Bank United account
21 ending #0927 began in approximately November 2015.

22 12. On or about September 18, 2015, Defendant Menaged was approved for a
23 \$1,300,000.00 mortgage with Bank United associated with Unit 9D. On the loan
24 application, Defendant Menaged indicated he was self-employed with AHF for eight years
25 and had a monthly income of approximately \$102,429.00. Monthly electronic mortgage
26 payments for \$5,747.25 from Defendant Menaged's Bank United account ending #0927
27 began in approximately November 2015.

28 13. After closing on Units 9C and 9D, Defendant Menaged combined the units

1 into a single residence.

2 14. Prior to obtaining mortgages from Bank United and Morgan Stanley in 2015,
3 between 2013 and 2015, Defendant Menaged, with the assistance of Defendant Brown and
4 others, unsuccessfully applied to obtain mortgages for the three properties at, among others,
5 PNC Bank, JP Morgan Chase Bank, and Citibank, N.A.

6 **COUNT 1**

7 **Conspiracy to Commit Bank Fraud**

8 **[18 U.S.C. § 371]**

9 15. The factual allegations in paragraphs 1 through 14 of the Indictment are
10 incorporated by reference and re-alleged as though fully set forth herein.

11 16. From in or around June 2012 through September 2015, the exact date being
12 unknown to the Grand Jury, in the District of Arizona and elsewhere, Defendants JOSEPH
13 MENAGED and STEPHEN BROWN, did unlawfully, voluntarily, intentionally, and
14 knowingly conspire, combine, confederate, and agree together and with each other, and
15 with other individuals, both known and unknown to the Grand Jury, to commit bank fraud.
16 Specifically, MENAGED and BROWN did knowingly execute and attempt to execute a
17 scheme or artifice to defraud and to obtain money, funds, credits, and assets, by and under
18 the custody and control of JPMorgan Chase, Citibank, N.A, PNC Bank, Bank United, and
19 Morgan Stanley, all federally insured financial institutions as defined under Title 18,
20 United States Code Section 20, by means of materially false and fraudulent pretenses,
21 representations, and promises in violation of Title 18, United States Code, Section 1344.

22 **MANNER AND MEANS OF CONSPIRACY AND SCHEME**

23 17. Among the manner and means by which MENAGED and BROWN and their
24 co-conspirators carried out the conspiracy were the following:

25 a. MENAGED, BROWN, and others created and backdated fraudulent
26 documents purporting to establish that MENAGED made loans to Y.S.M., Easy
27 Investments, and AHF to explain money transferred from Y.S.M to MENAGED.

28 b. MENAGED, BROWN, and others created and backdated fraudulent
records purporting to establish ongoing business dealings between Easy Investments, AHF,

1 and MENAGED.

2 c. MENAGED, BROWN, and others created fabricated tax forms to
3 create the appearance that MENAGED earned income.

4 d. MENAGED, BROWN, and others compiled and created material
5 false business records to substantiate deposits into MENAGED's bank accounts.

6 e. MENAGED, BROWN, and others prepared materially false letters of
7 explanation in response to inquiries from financial institutions.

8 **OVERT ACTS**

9 18. In furtherance of the conspiracy, and to affect the objects and purposes
10 thereof, the following overt acts, among others, occurred within the District of Arizona,
11 and elsewhere.

12 a. On or between May 13 and June 24, 2014, MENAGED, BROWN,
13 and others prepared and executed documents titled "Promissory Note," all of which were
14 backdated December 1, 2011. Notarized versions of the Promissory Note also indicated
15 that the documents were executed on December 1, 2011, when in fact, they were created
16 and signed in 2014.

17 b. On or between August 14-21, 2014, MENAGED, BROWN, and
18 others compiled information related to properties sold by Y.S.M and his entities to
19 substantiate false claims of income to MENAGED.

20 c. On or about August 19, 2014, MENAGED, BROWN, and others
21 prepared and executed a document titled "Consignment Sales Agreement" dated December
22 18, 2013 to substantiate false claims of income to MENAGED.

23 d. On or about August 25, 2014, BROWN prepared and provided
24 MENAGED with a false Income Verification Letter.

25 e. On or about September 9, 2014, BROWN prepared and filed Forms
26 1040, Individual Income Tax Return for tax years 2012 and 2013 on behalf of MENAGED
27 listing false sources of income and assets.

28 f. On or about December 4, 2014, BROWN, MENAGED and others prepared

1 and executed letters addressed to the bank to falsely substantiate transfers of funds from
2 Y.S.M to MENAGED.

3 g. On or between January 5 and February 9, 2015, at the direction of BROWN,
4 Y.S.M created fictitious Internal Revenue Forms 1099INT and 1099MISC on behalf of
5 MENAGED.

6 h. On or about January 12, 2015, BROWN prepared and provided Y.S.M. and
7 others language to execute a letter from AHF in response to a specific inquiry from the
8 financial institution.

9 i. On or about May 11, 2015, BROWN prepared and filed Form 1040,
10 Individual Income Tax Return for tax year 2014 on behalf of MENAGED listing false
11 sources of income and assets.

12 j. On or about June 12, 2015, BROWN prepared and provided MENAGED
13 with multiple formats of an "Income Letter" to provide as verification to financial
14 institutions when requested.

15 k. On or between June 21 and July 21, 2015, BROWN prepared and provided
16 MENAGED, Y.S.M., and others with draft letters to finalize documentation on AHF
17 letterhead to substantiate false claims of income to MENAGED.

18 All in violation of Title 18, United States Code, Section 371.

19 **COUNT 2**

Bank Fraud

20 **[18 U.S.C. § 1344(1)]**

21 19. Paragraphs 1 to 18 are realleged and incorporated by reference as though
22 fully set forth herein.

23 20. From in or around June 2012 to in or around September 2015, the exact dated
24 being unknown to the Grand Jury, in the District of Arizona and elsewhere, Defendants
25 JOSEPH MENAGED and STEPHEN BROWN, and others both known and unknown to
26 the Grand Jury, knowingly executed a scheme to obtain the money, funds, and other
27 property owned by and under the control of Bank United, then insured by the Federal
28 Deposit Insurance Corporation, by means of material false and fraudulent pretenses,

1 representation and promised as detailed in Count 1 of the Indictment, and including in or
2 around January 2015, by providing a fraudulent document title "Promissory Note," with
3 the intent to defraud Bank United and obtain property.

4 All in violation of Title 18, United States Code, Section 1344(1).

5 **COUNT 3**

6 **Bank Fraud**

7 **[18 U.S.C. § 1344(1)]**

8 21. Paragraphs 1 to 20 are realleged and incorporated by reference as though
9 fully set forth herein.

10 22. From in or around June 2012 to in or around September 2015, the exact dates
11 being unknown to the Grand Jury, in the District of Arizona and elsewhere, Defendants
12 JOSEPH MENAGED and STEPHEN BROWN, and others both known and unknown to
13 the Grand Jury, knowingly executed a scheme to obtain the money, funds, and other
14 property owned by and under the control of Morgan Stanley, then insured by the Federal
15 Deposit Insurance Corporation, by means of material false and fraudulent pretenses,
16 representation and promised as detailed in Count 1 of the Indictment, and including in or
17 around January 2015, by providing a fraudulent document title "Promissory Note," with
18 the intent to defraud Morgan Stanley and obtain property.

19 All in violation of Title 18, United States Code, Section 1344(1).

20 **COUNT 4-7**

21 **Transactional Money Laundering**

22 **[18 U.S.C. § 1957]**

23 23. The factual allegations in paragraphs 1 through 22 of the Indictment are
24 incorporated by reference and re-alleged as through fully set forth herein.

25 24. On or about the dates set forth below, in the District of Arizona, and elsewhere,
26 Defendant JOSEPH MENAGED, and others both known and unknown to the Grand Jury,
27 did knowingly engage and attempt to engage in the following monetary transactions
28 through or to a financial institution, affecting interstate or foreign commerce, and within
the United States, in criminally derived property of a value greater than \$10,000, that is,
the electronic transfer of funds, such property having been derived from a specified

unlawful activity, that is, wire fraud, each transaction representing a separate count:

COUNT	DATE	MONETARY TRANSACTION
4	3/27/15	Wire transfer for \$262,000 from Bank United account ending #0927 for Unit 42C, New York, NY
5	9/17/15	Wire transfer for \$1,013,974.86 from Bank United account ending #0927 for Unit 9C, Miami Beach, FL
6	9/18/15	Wire transfer for \$452,052.08 from Bank United account ending #0927 for Unit 9D, Miami Beach, FL
7	9/21/15	Wire transfer for \$13,000.00 from Bank United account ending #0927 for Unit 9D, Miami Beach, FL

All in violation of Title 18, United States Code, Section 1957.

FORFEITURE ALLEGATION

25. The Grand Jury realleges and incorporates the allegations of Counts 1 through 7 of this Indictment, which are incorporated by reference as though fully set forth herein.

26. Pursuant to Title 18, United States Code, Sections 981 and 982, Title 21, United States Code, Section 853 and Title 28, United States Code, Section 2461(c), and upon conviction of one or more of the offenses alleged in Counts 1 through 7 of this Indictment, the Defendant(s) shall forfeit to the United States all right, title, and interest in any and all property, real or personal, involved in such offense(s), or any property traceable to such property involved in the offense(s), or conspiracy to commit such offense(s), including the following: (a) all money or other property that was the subject of each transaction, transportation, transmission or transfer in violation of a statute listed in Title 18, United States Code, Section 982, (b) all other property constituting proceeds obtained as a result of those violations, and (c) all property used in any manner or part to commit or to facilitate the commission of those violations including, but not limited to the sum of money representing the amount of money involved in the offense(s) and the property

1 named below.

2 Real property located at:

3 (1) 157 W 57th St., Unit 42C, New York, New York 10019; and

4 (2) 3315 Collins Ave., Unit 9C/9D, Miami Beach, FL 33140

5 A sum of money equal to at least \$11,459,084.00 in United States currency,
6 representing the amount of money involved in the offense(s).

7 27. If any of the above-described forfeitable property, as a result of any act or
8 omission of the Defendant(s):

9 (1) cannot be located upon the exercise of due diligence,

10 (2) has been transferred or sold to, or deposited with, a third party,

11 (3) has been placed beyond the jurisdiction of the court;

12 (4) has been substantially diminished in value, or

13 (5) has been commingled with other property which cannot be divided
14 without difficulty, it is the intent of the United States to seek forfeiture of any other property
15 of said Defendant(s) up to the value of the above-described forfeitable property, pursuant
16 to Title 21, United States Code, Section 853(p).

17 All in accordance with Title 18, United States Code, Sections 981 and 982, Title 21,
18 United States Code, Section 853, Title 28, United States Code, Section 2461(c), and Rule
19 32.2, Federal Rules of Criminal Procedure.

20 A TRUE BILL

21
22 s/
FOREPERSON OF THE GRAND JURY
Date: April 2, 2019

23
24 ELIZABETH A. STRANGE
First Assistant United States Attorney
25 District of Arizona

26 s/
MONICA EDELSTEIN
27 Assistant U.S. Attorney
28

EXHIBIT B

MICHAEL BAILEY
United States Attorney
District of Arizona
MONICA EDELSTEIN
Arizona State Bar No. 023098
RAYMOND K. WOO
Arizona State Bar No. 023050
Assistant United States Attorneys
Two Renaissance Square
40 N. Central Ave., Suite 1200
Phoenix, Arizona 85004
Telephone: 602-514-7500
Email: monica.edelstein@usdoj.gov; raymond.woo@usdoj.gov
Attorneys for Plaintiff

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JAN 30 2020	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY <i>[Signature]</i>	DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

No. CR- 19-0352-01-PHX-DLR

PLEA AGREEMENT

1. Joseph Menaged,

Defendant.

Plaintiff, United States of America, and the defendant, Joseph Menaged, hereby agree to dispose of this matter on the following terms and conditions:

1. PLEA

The defendant will plead guilty to Count 1 of the indictment charging the defendant with a violation of 18 United States Code (U.S.C.) § 371, Conspiracy to Commit Bank Fraud, a Class E felony offense.

2. MAXIMUM PENALTIES

a. A violation of 18 U.S.C. § 371, is punishable by a maximum fine of \$250,000, a maximum term of imprisonment of 5 years, or both, and a term of supervised release of 3 years. A maximum term of probation is five years.

b. According to the Sentencing Guidelines issued pursuant to the Sentencing Reform Act of 1984, the Court shall order the defendant to:

1 (1) make restitution to any victim of the offense pursuant to 18 U.S.C.
2 § 3663 and/or 3663A, unless the Court determines that restitution would not be
3 appropriate;

4 (2) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a
5 fine is not appropriate;

6 (3) serve a term of supervised release when required by statute or when a
7 sentence of imprisonment of more than one year is imposed (with the understanding that
8 the Court may impose a term of supervised release in all other cases); and

9 (4) pay upon conviction a \$100 special assessment for each count to
10 which the defendant pleads guilty pursuant to 18 U.S.C. § 3013.

11 c. The Court is required to consider the Sentencing Guidelines in determining
12 the defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court
13 is free to exercise its discretion to impose any reasonable sentence up to the maximum set
14 by statute for the crime(s) of conviction, unless there are stipulations to the contrary that
15 the Court accepts.

16 **3. AGREEMENTS REGARDING SENTENCING**

17 a. Stipulation. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and
18 the defendant stipulate that the defendant shall be sentenced to time served on Count 1 of
19 the indictment.

20 b. Stipulation. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and
21 the defendant stipulate that, before the sentencing hearing, the defendant shall be current
22 on any outstanding bank loans, fees, and delinquent property taxes for the New York and
23 Miami properties identified in Count 1. The parties recognize there could be a significant
24 delay in sentencing so that Defendant can comply with his obligation under the plea. After
25 the defendant has entered into this plea agreement, the United States shall withdraw its
26 motion for interlocutory sale of the properties without prejudice. Before the sentencing
27 hearing, the defendant specifically agrees to pay \$350,000 to the Receiver assigned to the
28 DenSco case through counsel Ryan W. Anderson, Esq., Guttilla Murphy Anderson, 5415

1 E. High Street, Suite 200, Phoenix, Arizona 85054. The defendant agrees that the Receiver
2 can use these funds to repay DenSco victims. The United States shall be permitted to
3 withdraw from the plea agreement if defendant fails to satisfy this stipulation. In the event
4 the plea is withdrawn, the United States shall be free to refile any forfeiture claims relating
5 to the properties.

6 c. Stipulation. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and
7 the defendant stipulate that the acceptance of this plea is contingent on co-defendant
8 Stephen Brown's acceptance of a deferred prosecution agreement. The defendant
9 understand that if his co-defendant fails to accept the deferred prosecution agreement, or if
10 this plea is rejected for any reason by the Court, the United States will not be bound by this
11 agreement and shall be permitted to withdraw from the plea.

12 d. Assets and Financial Responsibility. The defendant shall make a full
13 accounting of all assets in which the defendant has any legal or equitable interest. The
14 defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend, or
15 transfer any such assets or property before sentencing, without the prior approval of the
16 United States (provided, however, that no prior approval will be required for routine, day-
17 to-day expenditures). The defendant also expressly authorizes the United States Attorney's
18 Office to immediately obtain a credit report as to the defendant in order to evaluate the
19 defendant's ability to satisfy any financial obligation imposed by the Court. The defendant
20 also shall make full disclosure of all current and projected assets to the U.S. Probation
21 Office immediately and prior to the termination of the defendant's supervised release or
22 probation, such disclosures to be shared with the U.S. Attorney's Office, including the
23 Financial Litigation Unit, for any purpose. Finally, the defendant shall participate in the
24 Inmate Financial Responsibility Program to fulfill all financial obligations due and owing
25 under this agreement and the law.

26 e. Acceptance of Responsibility. If the defendant makes full and complete
27 disclosure to the U.S. Probation Office of the circumstances surrounding the defendant's
28 commission of the offense, and if the defendant demonstrates an acceptance of

1 responsibility for this offense up to and including the time of sentencing, the United States
2 will recommend a two-level reduction in the applicable Sentencing Guidelines offense
3 level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an offense level of 16 or more,
4 the United States will recommend an additional one-level reduction in the applicable
5 Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(b).

6 **4. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

7 a. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States, at the time of
8 sentencing, shall dismiss the following charges: Counts 2-7 and the forfeiture allegations
9 of the indictment.

10 b. The United States shall withdraw its Motion for Interlocutory Sale related to
11 the subject properties. (Doc. 44)

12 c. This office shall not prosecute the defendant for any offenses committed by
13 the defendant, and known by this office.

14 d. This agreement does not, in any manner, restrict the actions of the United
15 States in any other district or bind any other United States Attorney's Office.

16 **5. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

17 a. If the Court, after reviewing this plea agreement, concludes that any
18 provision contained herein is inappropriate, it may reject the plea agreement and give the
19 defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.
20 11(c)(5).

21 b. If the defendant's guilty plea or plea agreement is rejected, withdrawn,
22 vacated, or reversed at any time, this agreement shall be null and void, the United States
23 shall be free to prosecute the defendant for all crimes of which it then has knowledge and
24 any charges that have been dismissed because of this plea agreement shall automatically
25 be reinstated. In such event, the defendant waives any and all objections, motions, and
26 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional
27 restrictions in bringing later charges or proceedings. The defendant understands that any
28 statements made at the time of the defendant's change of plea or sentencing may be used

1 against the defendant in any subsequent hearing, trial, or proceeding subject to the
2 limitations of Fed. R. Evid. 410.

3 **6. WAIVER OF DEFENSES AND APPEAL RIGHTS**

4 The defendant waives (1) any and all motions, defenses, probable cause
5 determinations, and objections that the defendant could assert to the indictment or
6 information; and (2) any right to file an appeal, any collateral attack, and any other writ or
7 motion that challenges the conviction, an order of restitution or forfeiture, the entry of
8 judgment against the defendant, or any aspect of the defendant's sentence, including the
9 manner in which the sentence is determined, including but not limited to any appeals under
10 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255
11 (habeas petitions), and any right to file a motion for modification of sentence, including
12 under 18 U.S.C. § 3582(c). This waiver shall result in the dismissal of any appeal,
13 collateral attack, or other motion the defendant might file challenging the conviction, order
14 of restitution or forfeiture, or sentence in this case. This waiver shall not be construed to
15 bar an otherwise-preserved claim of ineffective assistance of counsel or of "prosecutorial
16 misconduct" (as that term is defined by Section II.B of Ariz. Ethics Op. 15-01 (2015)).

17 **7. DISCLOSURE OF INFORMATION**

18 a. The United States retains the unrestricted right to provide information and
19 make any and all statements it deems appropriate to the U.S. Probation Office and to the
20 Court in connection with the case.

21 b. Any information, statements, documents, and evidence that the defendant
22 provides to the United States pursuant to this agreement may be used against the defendant
23 at any time.

24 c. The defendant shall cooperate fully with the U.S. Probation Office. Such
25 cooperation shall include providing complete and truthful responses to questions posed by
26 the U.S. Probation Office including, but not limited to, questions relating to:

27 (1) criminal convictions, history of drug abuse, and mental illness; and
28

1 (2) financial information, including present financial assets or liabilities
2 that relate to the ability of the defendant to pay a fine or restitution.

3 **8. ELEMENTS**

4 **Conspiracy to Commit Bank Fraud**

5 In or about June 2012 through September 2015, in the District of Arizona, and
6 elsewhere:

- 7 1. There was an agreement between two or more persons to commit at least one
8 crime as charged in the indictment;
- 9 2. The defendant became a member of the conspiracy knowing of at least one
10 of its objects and intending to help accomplish it; and
- 11 3. One of the members of the conspiracy performed at least one overt act for
12 the purpose of carrying out the conspiracy.

13 **9. FACTUAL BASIS**

14 a. The defendant admits that the following facts are true and that if this matter
15 were to proceed to trial the United States could prove the following facts beyond a
16 reasonable doubt:

17 On or about June 1, 2012, the defendant entered into a purchase agreement with
18 Extell West 57th Street, LLC for the purchase of Unit 42C at 157 West 57th Street, New
19 York, New York ("Unit 42C") for \$3,225,120.00. On or about March 22, 2013, the
20 defendant entered into a purchase agreement with Tower 3315, LLC for the purchase of
21 Unit 9D at 3315 Collins Avenue in Miami Beach, Florida ("Unit 9D") for \$2,600,000.00.
22 On or about April 11, 2013, the defendant entered into a purchase agreement with Tower
23 3315, LLC for the purchase of Unit 9C at 3315 Collins Avenue in Miami Beach, Florida
24 ("Unit 9C") for \$5,000,000.00. In an effort to finance a large portion of each purchase,
25 the defendant, and others at his direction, including co-defendant Stephen Brown, sought
26 financing from federally insured financial institutions including JPMorgan Chase,
27 Citibank, N.A, PNC Bank, Bank United, and Morgan Stanley.

28 The defendant, with the assistance of others, prepared and submitted to the banks a

1 document titled "promissory note," that misrepresented the source of the defendant's
2 income. In March 2015, the defendant submitted a loan application falsely indicating that
3 he was self-employed as a real estate consultant/investor. In or about September 2015, the
4 defendant submitted another loan application to Morgan Stanley that falsely indicated that
5 he was self-employed. That same month, the defendant submitted a second loan
6 application to Bank United falsely claiming that he was self-employed with Y.S.M.'s
7 company AFH for eight years. As a result of these misrepresentations, the defendant
8 obtained mortgages from Bank United and Morgan Stanley and finalized the purchase of
9 all three properties.

10 b. The defendant shall swear under oath to the accuracy of this statement and, if the
11 defendant should be called upon to testify about this matter in the future, any intentional
12 material inconsistencies in the defendant's testimony may subject the defendant to
13 additional penalties for perjury or false swearing, which may be enforced by the United
14 States under this agreement.

15 **APPROVAL AND ACCEPTANCE OF THE DEFENDANT**

16 I have read the entire plea agreement with the assistance of my attorney. I
17 understand each of its provisions and I voluntarily agree to it.

18 I have discussed the case and my constitutional and other rights with my attorney.
19 I understand that by entering my plea of guilty I shall waive my rights to plead not guilty,
20 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to
21 present evidence in my defense, to remain silent and refuse to be a witness against myself
22 by asserting my privilege against self-incrimination, all with the assistance of counsel, and
23 to be presumed innocent until proven guilty beyond a reasonable doubt.

24 I agree to enter my guilty plea as indicated above on the terms and conditions set
25 forth in this agreement.

26 I have been advised by my attorney of the nature of the charges to which I am
27 entering my guilty plea. I have further been advised by my attorney of the nature and range
28

1 of the possible sentence and that my ultimate sentence shall be determined by the Court
2 after consideration of the advisory Sentencing Guidelines.

3 My guilty plea is not the result of force, threats, assurances, or promises, other than
4 the promises contained in this agreement. I voluntarily agree to the provisions of this
5 agreement and I agree to be bound according to its provisions.

6 I understand that if I am granted probation or placed on supervised release by the
7 Court, the terms and conditions of such probation/supervised release are subject to
8 modification at any time. I further understand that if I violate any of the conditions of my
9 probation/supervised release, my probation/supervised release may be revoked and upon
10 such revocation, notwithstanding any other provision of this agreement, I may be required
11 to serve a term of imprisonment or my sentence otherwise may be altered.

12 This written plea agreement, and any written addenda filed as attachments to this
13 plea agreement, contain all the terms and conditions of the plea. Any additional
14 agreements, if any such agreements exist, shall be recorded in a separate document and
15 may be filed with the Court under seal; accordingly, additional agreements, if any, may not
16 be in the public record.

17 I further agree that promises, including any predictions as to the Sentencing
18 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone
19 (including my attorney) that are not contained within this written plea agreement, are null
20 and void and have no force and effect.

21 I am satisfied that my defense attorney has represented me in a competent manner.

22 I fully understand the terms and conditions of this plea agreement. I am not now
23 using or under the influence of any drug, medication, liquor, or other intoxicant or
24 depressant that would impair my ability to fully understand the terms and conditions of this
25 plea agreement.

26 1/30/20
27 Date

28 Joseph Menaged
Joseph Menaged
Defendant

APPROVAL OF DEFENSE COUNSEL

I have discussed this case and the plea agreement with my client in detail and have advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the constitutional and other rights of an accused, the factual basis for and the nature of the offense to which the guilty plea will be entered, possible defenses, and the consequences of the guilty plea including the maximum statutory sentence possible. I have further discussed the concept of the advisory Sentencing Guidelines with the defendant. No assurances, promises, or representations have been given to me or to the defendant by the United States or any of its representatives that are not contained in this written agreement. I concur in the entry of the plea as indicated above and that the terms and conditions set forth in this agreement are in the best interests of my client. I agree to make a bona fide effort to ensure that the guilty plea is entered in accordance with all the requirements of Fed. R. Crim. P. 11.

Date

1-30-20

LEE STEIN

Attorney for Joseph Menaged

APPROVAL OF THE UNITED STATES

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth herein are appropriate and are in the best interests of justice.

MICHAEL BAILEY
United States Attorney
District of Arizona

Date

1-30-2020

MONICA EDELSTEIN
RAYMOND WOO
Assistant U.S. Attorneys

ACCEPTANCE BY THE COURT

Date _____

HON. DOUGLAS L. RAYES
United States District Judge

EXHIBIT C



U.S. Department of Justice

United States Attorney
District of Arizona

Two Renaissance Square
40 N. Central Ave., Suite 1800
Phoenix, AZ 85004-4408

Main: (602) 514-7500
Main Fax: (602) 514-7693

January 8, 2020

Brian D. Linder, Esq.
Paul Hugel, Esq.
Clayman & Rosenberg, LLP
305 Madison Avenue, Suite 650
New York, New York 10165

Re: Deferred Prosecution Agreement for Mr. Stephen Brown
CR19-0352-02-PHX-DLR

Dear Mr. Linder and Mr. Hugel

Based on the implementation on the Deferred Prosecution Agreement ("Agreement") described below, and subject to the terms and conditions set forth herein, the U.S. Attorney's Office for the District of Arizona ("USAO-AZ") will dismiss its prosecution against Mr. Stephen Brown ("Mr. Brown"), for the crimes alleged in the Indictment in CR19-0352-02-PHX-DLR, issued on April 2, 2019. The Indictment alleged that, between in or around June 2012 and September 2015, Mr. Brown conspired with Joseph Menaged ("Mr. Menaged") to commit Bank Fraud through the submission of material false statements and documentation to victim banks JP Morgan Chase, Citibank, PNC Bank, Bank United, and Morgan Stanley.

It is understood that on November 22, 2019, Mr. Menaged and Mr. Brown offered to globally settle the criminal matter by having: 1) Mr. Menaged plead to a felony count with stipulation to time served, and to pay \$350,000 in restitution to Densco victims; and 2) Mr. Brown enter into a deferred prosecution agreement whereby Mr. Brown's charges would be dismissed after making the payment of \$150,000 referred below.

It is understood that Mr. Menaged, Mr. Brown, and the USAO-AZ have now agreed to globally settle the matter under the following conditions.

- Mr. Menaged will plead to Count 1 in the Indictment (charging conspiracy to commit bank fraud), stipulate to satisfying the victim bank loans and fees and delinquent property taxes on the New York and Miami properties, and stipulate to paying \$350,000 in restitution to Densco victims before sentencing. In exchange for Mr. Menaged's guilty plea, the government will stipulate that Mr. Menaged be sentenced to time served, dismiss the remaining counts in the Indictment at the time of sentencing, and forego its lawful attempt to forfeit 100% of the net proceeds from a forfeiture sale of the New York and Miami properties. The government will also withdraw its motion for interlocutory sale of the properties.
- Mr. Brown and the government enter into an Agreement, whereby Mr. Brown will pay a financial penalty of \$150,000. Mr. Brown understands and agrees that his payment will be made to the bankruptcy receiver overseeing the Densco bankruptcy and these funds shall be allocated as restitution for Densco victims in CR17-00680-PHX-GMS. Attorney Ryan W. Anderson, who is located at 5415 E. High St., Suite 200, Phoenix, AZ 85054, represents the bankruptcy receiver. Contingent on Mr. Menaged's plea of guilty, and Mr. Brown's assent and satisfaction of the conditions in this Agreement, the USAO-AZ will then move to dismiss its Indictment against Mr. Brown (charging Bank Fraud, Conspiracy, and Money Laundering) with prejudice and agree to bring no further charge based on Mr. Brown's involvement in the transactions, creation of documents, and applications for bank loans referred to in the Indictment.

It is understood that this Agreement does not bind any federal, state, or local prosecuting authority other than the USAO-AZ. It is understood that this Agreement concerns only the allegations alleged in the Indictment against Mr. Brown. It is further understood that the Agreement does not bar the USAO-AZ from prosecuting Mr. Brown for any crimes committed subsequent to the signing of this Agreement.

It is understood that, with respect to the matter in CR19-0352-02-PHX-DLR, this Agreement serves to supersede any prior understandings, promises and/or conditions between the USAO-AZ and Mr. Brown. It is further understood that no additional promises, agreements, and

conditions have been entered into other than those explicitly set forth in this letter.


By signing the letter below, Mr. Brown represents that he has reviewed this deferred prosecution agreement with his attorney, that he understands each condition, and that he voluntarily agrees to it. Mr. Brown further represents that his assent to the Agreement is not the result of force, threats, assurances, or promises, other than the promises contained in this Agreement.

Sincerely,

MICHAEL BAILEY
United States Attorney
District of Arizona



MONICA EDELSTEIN
RAYMOND K. WOO
Assistant United States Attorneys




JAMES R. KNAPP
Financial Crimes Section Chief

AGREED AND CONSENTED TO:



STEPHEN BROWN

1/10/20
DATE



BRIAN D. LINDER
PAUL HUGEL
ASHLEY ADAMS
Attorneys for Stephen Brown

1/10/2020
DATE

PROPOSED

1 GUTTILLA MURPHY ANDERSON

2 **Ryan W. Anderson** (Ariz. No. 020974)

3 5415 E. High St., Suite 200

4 Phoenix, Arizona 85054

5 Email: randerson@gamlaw.com

6 Phone: (480) 304-8300

7 Fax: (480) 304-8301

8 Attorneys for the Receiver

9 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

10 IN AND FOR THE COUNTY OF MARICOPA

11 ARIZONA CORPORATION
12 COMMISSION,

Plaintiff,

v.

13 DENSCO INVESTMENT
14 CORPORATION, an Arizona
15 corporation,

Defendant.

Cause No. CV2016-014142

ORDER RE: PETITION NO. 88

(Assigned to Honorable
Teresa Sanders)

16 The Receiver having filed Petition No. 88, Petition for Order Approving Receiver's
17 Payment of \$150,000 from Stephen Brown and \$350,000 from Joseph Menaged, and the
18 Court having considered same, and it appearing to the Court that the matters requested by
19 Petition No. 88 are reasonable, just and appropriate:

IT IS HEREBY ORDERED:

20 1. Approving the payment of \$150,000 from Stephen Brown pursuant to the terms
21 and conditions of his Deferred Prosecution Agreement with the United States executed on or
about January 10, 2020 in the matter of *In re USA vs Joseph Menaged and Stephen Brown*,
Cause No. 2:19-cr-00352-DLR, D. Ariz.; and

Judge of the Superior Court

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