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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PETER S. DAVIS, as Receiver of
DENSCO INVESTMENT
CORPORATION, an Arizona corporation,

Plaintiff,

v.

U.S. BANK, NA, a national banking
organization; HILDA H. CHAVEZ and
JOHN DOE CHAVEZ, a married couple;
JP MORGAN CHASE BANK, N.A., a
national banking organization;
SAMANTHA NELSON f/k/a
SAMANTHA KUMBALECK and
KRISTOFER NELSON, a married couple;
and VIKRAM DADLANI and JANE DOE
DADLANI, a married couple.

Defendants.

No. CV2019-011499

NOTICE OF NONPARTY AT FAULT

(Assigned to the Hon. Daniel Martin)

Pursuant to A.R.S. § 12-2506(B) and Ariz. R. Civ. P. 26(b)(5), Defendants U.S. Bank National Association and Hilda H. Chavez (collectively, the “U.S. Bank Defendants”) submit their Notice of Nonparty at Fault alleging that the following individuals and entities may be wholly or partially at fault or responsible for causing or contributing to the damages Plaintiff (“DenSco”) seeks in this litigation. This Notice is based on information reasonably available to the U.S. Bank Defendants as of this date. The U.S. Bank Defendants reserve their right to supplement this Notice in accordance with Ariz. R. Civ. P. 26(b)(5) as further information is discovered.

1 **1. Yomtov Scott Menaged (Inmate Number: 74322-408 c/o Federal**
2 **Bureau of Prisons, 1529 West Highway 366 Safford, AZ 85546); Arizona Home**
3 **Foreclosures, LLC (c/o Yomtov Scott Menaged); Easy Investments, LLC (c/o**
4 **Yomtov Scott Menaged); and employees and agents of the foregoing, including:**
5 **Veronica Castro (aka Veronica Gutierrez Reyes) (address and telephone number**
6 **currently unknown) Alberto Pena (address and telephone number currently**
7 **unknown); and Troy Flippo (address and telephone numbers currently unknown).**

8 Yomtov Menaged, his wholly owned and operated businesses (Arizona Home
9 Foreclosures, LLC and Easy Investments, LLC), and employees (Veronica Castro,
10 Alberto Pena, and Troy Flippo) are wholly or partially at fault or responsible for the
11 damages DenSco seeks for the following reasons: According to DenSco's allegations,
12 Menaged defrauded DenSco by using the loan proceeds from DenSco for his own
13 personal benefit, instead of purchasing properties in foreclosure and giving DenSco a first
14 position secured interests in those properties. *See, e.g.,* Second Amended Compl.
15 ("SAC"); *see also, e.g.,* Menaged Dep., *Davis v. Clark Hill, PLC*, CV2017-013832.
16 Menaged, individually and through his wholly owned companies,¹ and with the support
17 and assistance of his agents and employees, would obtain cashier's checks from funds
18 that DenSco wired to Menaged's business accounts. DenSco allegedly required that
19 Menaged provide a photo of the cashier's checks to DenSco as proof that the loaned
20 funds were being used to purchase foreclosed properties, which Menaged or his
21 employees (*e.g.,* Veronica Castro) would then send to DenSco. Menaged or Castro
22 would then redeposit the cashier's checks into Menaged's business account with U.S
23 Bank, and, among other things, allegedly provided DenSco fabricated copies of receipts
24 in a poorly made effort to conceal the fraud. *See, e.g.,* SAC; Plea Agreement, *United*

25 _____
26 ¹ Arizona Home Foreclosures, LLC's and Easy Investments, LLC's liability is
27 coterminous with Menaged's: according to the Receiver, Menaged "and his companies,
28 Arizona Home Foreclosures, LLC and Easy Investments" defrauded DenSco. *See, e.g.,*
Plf.'s Resp. to U.S. Bank Defs.' Mot. Dismiss FAC. Menaged was the sole member of
Arizona Home Foreclosures, which he held out as being in the business of purchasing
foreclosed homes. *See* SAC.

1 *States v. Menaged*, CR-17-00680-PHX-GMS. Castro, as Menaged's long-time associate
2 and employee, *see* Indictment, *United States v. Menaged*, CR-17-00680-PHX-GMS,
3 worked directly with Menaged to accomplish the above fraudulent activities, SAC; *see*
4 *also, e.g.,* Anderson Dep., *Davis v. Clark Hill, PLC*, CV2017-013832, as did Pena and
5 Flippo, who were employees of Menaged's through a company called American
6 Furniture, which was an alias for Furniture King, LLC. *See* Indictment, *United States v.*
7 *Menaged*, CR-17-00680-PHX-GMS. Among other things, Castro also assisted Menaged
8 in mingling DenSco's funds with other amounts in at least one of Menaged's accounts
9 with U.S. Bank, in furtherance of the fraud. *See* SAC ¶ 51; Menaged Dep., *Davis v.*
10 *Clark Hill, PLC*, CV2017-013832.

11 **2. DenSco Investment Corporation (c/o Gutilla Murphy Anderson, PC,**
12 **5414 E. High Street Ste. 200 Phoenix, AZ 85054) and Denny Chittick (deceased).**

13 DenSco² and Chittick are wholly or partially at fault or responsible for the
14 damages DenSco seeks for the following reasons: DenSco and Chittick were admittedly
15 aware that Menaged and/or his family had already perpetrated a massive fraud on them,
16 and yet continued to lend Menaged and his companies money, particularly without,
17 among other things, implementing reasonable processes and procedures to ensure that
18 DenSco and Chittick would not be further defrauded. *See, e.g.,* SAC; Receiver's Expert
19 Report of N. Wertlieb, *Davis v. Clark Hill, PLC*, CV2017-013832. Not only should
20 DenSco and Chittick have refrained from doing further business with Menaged, and
21 instead pursued criminal and civil remedies against him and/or his family, but sufficient
22 processes and procedures should have been immediately implemented to prevent
23 Menaged from further defrauding DenSco, any of one of which would have quickly
24 confirmed that Menaged was not using the loan funds for their intended purposes, such as
25 checking the public records to confirm that trustees were recording trustee's deeds in the
26

27 ² As far as DenSco exists (and existed) as a separate entity from the Receiver, *see, e.g.,*
28 Compl. ¶¶ 2, 24, *Ariz. Corp. Comm'n v. DenSco Inv. Corp.*, CV2016-014142 (granting
control to Receivership Assets, but not vesting complete authority as to, *e.g.,* attorney-
client privilege).

1 name of Menaged or his businesses, and confirming that deeds of trust naming DenSco as
2 the beneficiary were being recorded in the public land records, something easily and
3 inexpensively done. *See, e.g., id.*; A.R.S. §§ 33-411.01, -705.

4 **3. Clark Hill, PLC (14850 N. Scottsdale Rd Ste. 500, Scottsdale, AZ**
5 **85254); David G. Beauchamp (c/o Clark Hill, PLC); Robert G. Anderson (c/o Clark**
6 **Hill, PLC); and Daniel A. Schenck (c/o Clark Hill, PLC)**

7 Clark Hill, PLC, and attorneys David G. Beauchamp, Robert G. Anderson, and
8 Daniel A. Schenck, are wholly or partially at fault or responsible for the damages DenSco
9 seeks for the following reasons: Clark Hill represented DenSco at all times relevant,
10 including the negotiation and drafting of the Forbearance Agreement.³ Receiver's Rule
11 26.1 Initial Disclosure Statement, *Davis v. Clark Hill, PLC*, CV2017-013832. Among
12 other things, Clark Hill and the foregoing attorneys should have advised DenSco and its
13 principal Chittick on any one of several important actions that they fully failed to do,
14 including, but not limited to, the following: advising DenSco to pursue litigation against
15 Menaged, his companies, and/or his family upon discovery of Menaged's initial
16 fraudulent activities (resulting in DenSco being undersecured on multiple properties, and
17 the resulting substantial increased risk of nonpayment on the underlying loans), to sever
18 its relationship with Menaged following learning of the initial fraud, to report the matter
19 to law enforcement, and to provide non-negligent legal advice to ensure that Menaged
20 was not continuing to defraud DenSco with respect to the loans that DenSco continued to
21 make to Menaged and his businesses. *See, e.g., SAC; Receiver's Expert Report of N.*
22 *Wertlieb, Davis v. Clark Hill, PLC*, CV2017-013832; Menaged Dep., *Davis v. Clark Hill,*
23 *PLC*, CV2017-013832; Anderson Dep., *Davis v. Clark Hill, PLC*, CV2017-013832;
24 Receiver's Rule 26.1 Initial Disclosure Statement, *Davis v. Clark Hill, PLC*, CV2017-
25 013832.

26
27 ³ It appears that Chittick never had separate legal counsel to represent him and his
28 interests as the sole shareholder, director, officer, or employee of DenSco. *See, e.g.,*
Receiver's Expert Report of N. Wertlieb, *Davis v. Clark Hill, PLC*, CV2017-013832.

DATED this 1st day of March, 2021.

SNELL & WILMER L.L.P.

By: /s/ Amanda Z. Weaver

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CERTIFICATE OF SERVICE

The foregoing was electronically filed and e-served via azturbocourt and served via e-mail on the following parties this 1st day of March, 2021.

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4848-1801-0331.3