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11
12 IN THE UNITED STATES BANKRUPTCY COURT

13
14 FOR THE DISTRICT OF ARIZONA

15 In Re:

16 Yomtov Scott Menaged,

17
18 Debtor.

Case No. 2:16-bk-04268-PS

Chapter 7

**RECEIVER'S MOTION FOR
BANKRUPTCY RULE 2004
EXAMINATION AND PRODUCTION
OF DOCUMENTS OF YOMTOV SCOTT
MENAGED**

19 Peter S. Davis, the court-appointed Receiver in *Arizona Corporation Commission v.*
20 *DenSco Investment Corporation*, CV2016-014142 filed in the Maricopa County Superior Court for
21 the State of Arizona ("Receiver"), by and through his undersigned attorneys, moves this Court for
22 an order directing Yomtov Scott Menaged ("Debtor") to appear for examination under oath
23 pursuant to Rule 2004, Fed.R.Bankr.P. at the law offices of Guttilla Murphy Anderson, 5415 E.
24 High Street, Ste. 200, Phoenix, Arizona 85054, at a date and time agreeable to the parties, or, if
upon written notice, after not less than twenty-eight (28) days' notice and directing the production
of documents set forth in the attached Exhibit "A," on a date and time agreeable to the parties or, if
upon written notice, after not less than twenty-one (21) days' notice, and at least ten (10) business
days prior to the examination.

1 This motion is supported by the Court's record and the following Memorandum of Points
2 and Authorities.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 Debtor filed a voluntary Chapter 7 Petition on April 20, 2016 ("Petition Date"). Jill Ford is
5 the duly appointed Chapter 7 Trustee of the Debtor's bankruptcy estate.

6 Peter S. Davis was appointed as the Receiver of DenSco Investment Corporation
7 ("DenSco"), on August 18, 2016, in *Arizona Corporation Commission v. DenSco Investment*
8 *Corporation*, CV2016-014142 filed in the Maricopa County Superior Court for the State of
9 Arizona. According to the public records of the Arizona Corporation Commission, Denny J.
10 Chittick is the President and Director of DenSco.

11 On July 26, 2016, Debtor filed an *Amendment to Debtor's Master Mailing List*, in the
12 Bankruptcy Court, and added DenSco as a creditor or party-in-interest in Debtor's bankruptcy case.
13 (*See* Court Docket Entry "CDE No. 63.)

14 The Receiver wishes to conduct an examination under oath of Debtor on the following
15 topics: (1) issues with respect to the acts, conduct, or property of the Debtor or the bankruptcy
16 estate; (2) issues with respect to the liabilities and financial condition of the Debtor; (3) issues with
17 respect to the assets of the bankruptcy estate or the Debtor; (4) issues with respect to previously
18 disposed assets or previously satisfied obligations of the Debtor; and (5) with respect to any matter
19 which may affect the administration of the Debtor's bankruptcy estate or right to a discharge.

20 Bankruptcy Rule 2004(a) provides, in pertinent part, that "[o]n motion of any party in
21 interest, the court may order the examination of any entity." *See* 11 U.S.C. § 101(15). Bankruptcy
22 Rule 2004(b) states that the examination may relate to, among other things, "... the acts, conduct,
23 or property or to the liabilities and financial condition of the debtor, or to any matter which may
24

1 affect the administration of the debtor's estate" The Receiver has standing to obtain the
2 information sought by this motion.

3 The scope of a Rule 2004 examination is "unfettered and broad" as the wording of the Rule
4 indicates. *See 9 Collier on Bankruptcy* ¶ 2004.02 [1] at 2004-6 (15th ed. Rev. 2001) (*quoting In re*
5 *Table Talk, Inc.*, 51 B.R. 143, 145 (Bankr. D. Mass. 1985)). Indeed, the scope of a Rule 2004
6 examination is far broader than the scope of discovery under Rule 26 of the Federal Rules of Civil
7 Procedure. *In re Lang*, 107 B.R. 130, 132 (Bankr. N.D. Ohio 1989). Examinations under Rule
8 2004 may include within their scope, among many other things, any matter which may affect the
9 administration of the debtor's estate. *In re Brazemore*, 216 B.R. 1020, 1023 (Bankr. S.D. Ga.
10 1998).¹ In fact, the well-settled scope of discovery conducted under Rule 2004 is so fundamental to
11 the process, and permissibly broad, that courts have gone so far as to use with approval phrases
12 such as "fishing expedition" to describe Rule 2004 examinations. *See, e.g., In re Drexell Burnham*
13 *Lambert Group*, 123 B.R. 702, 711 (Bankr. S.D.N.Y. 1991); *In re Johns-Manville Corp.*, 42 B.R.
14 362, 364 (Bankr. S.D.N.Y. 1984).

15 By this motion, the Receiver seeks to obtain critical information from related to the "acts,
16 conduct, or property or to the liability or financial condition" of the Debtor. Consequently, the
17 information the Receiver seeks is within the proper scope of Rule 2004 discovery.

18 REQUESTED DISCOVERY

19 Definitions:

20 Unless defined elsewhere, capitalized terms have the following meanings:

- 21 (a) Communication: Means and includes, without limitation, statements, discussions,
22 negotiations, conversations, speeches, meetings, remarks, questions, answers, panel
discussions, and symposia, whether written or oral. The term includes both

23 ¹ The Court in *In re Ginzburg*, 517 B.R. 175 (Bankr. C.D. Ca. 2014), held that the analysis used by the Court, in
24 *Brazemore*, regarding application of the attorney-client privilege should no longer be utilized in light of the holding in
Swindler & Berlin v. United States, 524 U.S. 399, 118 S. Ct. 2081(1998). However, that issue has no application to this
motion.

communications and statements which are face-to-face and those which are transmitted by media such as intercom, telephone, televisions, radio, modem or electronic mail.

(b) Debtor: Means Yomtov Scott Menaged.

(c) Document: Includes any contracts, agreements, communications, correspondence, memoranda, summaries, notes, records, reports, studies, books, summaries, writings, summaries or records of telephone conversations or electronic mail messages, summaries or records of personal conversations or interviews, summaries or records of negotiations, diaries, telegrams, minutes or records of meetings or conferences, calendars, forecasts, work papers and all drafts (of whatever date), journals, file folders, ledgers, accounts, appraisals, bills, invoices; checks, statements, inter-office or intra-office communications, electronic mail messages, bulletins, brochures, pamphlets, circulars, trade letters, printed matter including newspapers, magazines and other publications, and articles and clippings therefrom, advertisements, press releases, teletypes, telecopies, facsimiles, lists, language translations, transcriptions, computer printouts, disks or tapes, graphs, charts, drawings, photographs, film, other recordings, audio or video tapes, microfiche, microfilm, and other data compilations from which information can be obtained or translated, if necessary, by you through detection devices into reasonably usable form. Any draft, copy, amendment, alteration, or modification of any document which differs in any respect from the original or final document, whether in words, numbers, punctuation, date, length or format, or by reason of notations, annotations, comments or other markings thereon, or otherwise, is a separate document. Where only part of a document relates to a subject of a request of production of documents, the entire document is requested. When a document is within the scope of a request for production of documents, all amendments, riders, drafts, attachments, exhibits thereto, and all other documents which were ever physically attached to such documents, by any means, are also requested. When an amendment, rider, attachment or exhibit to a document is within the scope of a request for production of documents, the document, and all other amendments, riders, attachments, exhibits thereto, and all drafts of any of them, are also requested. If a photograph, film, computer disk or tape, video tape, or audio tape, or any part of any of them comes within the scope of a request for production of documents, all other photographs and the rest of the film taken on the same roll of film of such photograph or film, and the entire computer disk or tape, video tape and audio tape are requested, as are any inexact duplicates of any such photograph, film, disk or tape, including, without limitation, all enlargements, enhancements, and the like. Written voice recorded notes, measurements, and dictations for later transcription for review are within the definition of documents in this Request.

(d) Petition Date: Means April 20, 2016.

(e) Production: And like terms mean to bring documents or other things as requested herein to the place or places and at the dates and times stated in this Motion or later in a notice and then and there to make such documents or things available for copying and inspection by Trustee and Trustee's attorneys.

(f) Relating to/Relates to: Means showing, evidencing or pertaining to.

(g) Request: Means this Document Request and any numbered request for production of documents set forth below, as the context requires.

(h) Any/all, and/or, singular/plural, gender: The singular includes the plural and vice versa. The use of any gender includes the masculine, feminine and neuter genders. The use of the disjunctive “or” includes the conjunctive “and”, and vice versa.

Instructions:

(a) Possession, Custody or Control: If any document within the scope of this Request are within the possession, custody or control of your agents, employees, attorneys, representatives or any other person over which you have control, or you have a right of possession or production over any documents within the scope of this Request, the Request requires the production of such documents.

(b) Time Period/Supplementation: Unless otherwise indicated, all documents requested herein are for the time period from the time your association with the Debtors began to the present.

(c) Organization of Production: You shall produce the documents requested as they are kept in the usual course of business or produce and label documents produced to correspond with the categories in this Request.

(d) Non-production: If you do not comply completely with any request for production of documents, upon asserted grounds of any privilege or otherwise, you are to provide, in lieu of production, the following with respect to each withheld document:

- (1) A description of the document, including the author or authors, the addressee, title of the document, the date it was created, its present location and the identity of its custodian, and the subject or subjects of the document;
- (2) All grounds upon which production is declined; and
- (3) If any privilege is asserted, (i) identify all the privileges claimed and all holders thereof; (ii) set forth all facts necessary or material for the Court to rule upon the assertion of privilege; and (iii) provide a statement identifying all persons who have seen the document, and the positions and capacities of all addressees.

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/s/ M. Kay Lucas
2359-001(255758)

EXHIBIT "A"

DOCUMENTS TO BE PRODUCED:

1. Copies of the Debtor's individual federal tax returns for the 2014 and 2015 tax years, with all schedules;
2. Copies of account statements for a period of two-years preceding the Petition Date for any and all deposit accounts held by Debtor or his spouse;
3. Copies of operating agreements, and federal tax returns for the 2014 and 2015 tax years with all schedules, for any and all entities in which Debtor held an ownership interest, including, but not limited to:
 - A. American Furniture, LLC;
 - B. Arizona Home Foreclosures, LLC;
 - C. Auto King, LLC;
 - D. Beneficial Finance, LLC;
 - E. Divine Design Home Interiors, LLC;
 - F. Easy Investments, LLC;
 - G. Furniture & Electronic King, LLC;
 - H. Furniture Kind, LLC; and
 - I. Scott's Fine Furniture, LLC
4. Copies of any and all financial statements, including balance sheets, profit and loss statements, and income statements, for the three-years preceding the Petition Date for any and all entities in which Debtor held an ownership interest including, but not limited to, the entities listed in request number 3, *supra*;
5. Complete list of all property, assets, or other interests held by any and all entities in which Debtor, or Debtor and his spouse, held an ownership interest as of the Petition Date including, but not limited to, the entities listed in request number 3, *supra*, with estimated values of each item;
6. A detailed accounting of any and all loans, or other monies, received by Debtor, or Debtor and his spouse, or any entities in which Debtor held an ownership interest including, but not limited to, the entities listed in request number 3, *supra*, during the five years immediately preceding the Petition Date from DenSco Investment Corporation ("DenSco") or Denny J. Chittick;
7. A copy of all written correspondence of any kind, including emails and texts, from Debtor to Denny J. Chittick discussing, or related in any way to, DenSco or the transfer of funds from DenSco to Debtor, or to Debtor and his spouse within the last 5 years immediately preceding the Petition Date;
8. A copy of all written correspondence of any kind, including emails and texts from Denny Chittick to Debtor discussing, or related in any way to, DenSco, Inc. or the transfer of funds

1 from DenSco to Debtor, or to Debtor and his spouse within the last 5 years immediately
2 preceding the Petition Date;

3 9. A copy of all written agreements between DenSco and Debtor, or any entities in which
4 Debtor held an ownership interest including, but not limited to, the entities listed in request
5 number 3, *supra*;

6 10. A copy of all written agreements between Denny J. Chittick and Debtor, or Debtor and his
7 spouse, or any entities in which Debtor held an ownership interest including, but not limited
8 to, the entities listed in request number 3, *supra*.
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