

1 **SCHIAN WALKER, P.L.C.**

2 1850 NORTH CENTRAL AVENUE, #900

3 PHOENIX, ARIZONA 85004-4531

4 TELEPHONE: (602) 277-1501

5 FACSIMILE: (602) 297-9633

6 E-MAIL: bkddocket@biz.law

7 **CODY J. JESS, #025066**

8 **TYLER J. GRIM, #031300**

9 Attorneys for Debtor

10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF ARIZONA**

12 In re:

13 YOMTOV SCOTT MENAGED,

14 Debtor.

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

CHAPTER 7

**APPLICATION FOR RULE 2004
PRODUCTION OF DOCUMENTS TO
PALMS HOTEL AKA PALMS CASINO
RESORT**

15 Pursuant to Bankruptcy Rule 2004, Debtor Yomtov Scott Menaged (the “**Debtor**”), files this
16 Application for an order directing Palms Hotel, aka Palms Casino Resort (“**Palms**”), to produce the
17 documents set forth on Exhibit “A.” The production of documents is to be scheduled on a date and time
18 agreeable to the parties, or if upon notice, after not less than 14 days’ notice.

19 Pursuant to Bankruptcy Rule 2004, the Court may order any person to produce documents
20 relating to the acts, conduct, or property of a debtor, or to the liabilities or financial condition of a
21 debtor, or relating to any matter that may affect the administration of a debtor’s bankruptcy estate. The
22 Debtor desires an order requiring Palms to produce documents for the purposes allowed under
23 Bankruptcy Rule 2004.

24 The topics upon which the Debtor seeks to examine Palms fall squarely within the purview of
25 Rule 2004 as they relate to the assets and liabilities of the Debtor and to the administration of the
Debtor’s bankruptcy estate. A form of order approving this Application is being lodged herewith for the

1 Court's convenience.

2 DATED this 5th day of January, 2017.

3 SCHIAN WALKER, P.L.C.

4
5 By /s/ CODY J. JESS, #025066

6 Cody J. Jess
7 Tyler J. Grim
8 Attorneys for Debtor

9 COPY of the foregoing e-mailed
10 or mailed this 5th day
of January, 2017 to:

11 Jill H. Ford
12 Chapter 7 Trustee
13 Post Office Box 5845
Carefree, Arizona 85377
jford@trustee.phxcxmail.com

14 Steven J. Brown, Esq.
15 Steven D. Nemecek, Esq.
16 Steve Brown & Associates, LLC
17 1414 East Indian School Road, #200
Phoenix, Arizona 85014
Attorneys for Trustee
sbrown@sjbrownlaw.com
snemecek@sjbrownlaw.com

18 Jennifer A. Giaimo, Esq.
19 U.S. Trustee's Office
20 230 North First Avenue, #204
Phoenix, Arizona 85003-1706
jennifer.a.giaimo@usdoj.gov

21 James E. Shively, Esq.
22 James B. Ball, Esq.
23 Ball, Santin & McLeran, PLC
24 2999 North 44th Street, #500
Phoenix, Arizona 85018
Attorneys for BMW Financial Services, NA, LLC
And Daimler Trust
shively@bsmplc.com
ball@bsmplc.com

1 Cynthia L. Johnson, Esq.
2 Law Office of Cynthia L. Johnson
3 11640 East Caron Street
4 Scottsdale, Arizona 85259
5 Attorneys for Sell Wholesale Funds, LLC
6 Cynthia@jsk-law.com

7 David N. Ingrassia, Esq.
8 David N. Ingrassia, P.C.
9 3961 East Chandler Boulevard, #111-119
10 Phoenix, Arizona 85048
11 Attorneys for Direct Capital Corporation
12 David.ingrassia@cox.net

13 Aldridge Pite, LLP
14 4375 Jutland Drive, #200
15 Post Office Box 17933
16 San Diego, California 92177-0933
17 Attorneys for U.S. Bank, N.A.

18 David L. Knapper, Esq.
19 Law Offices of David L. Knapper
20 1599 East Orangewood Avenue, #125
21 Phoenix, Arizona 85020
22 Attorneys for Azben Limited, LLC
23 dlk@knapperlaw.com

24 Kevin J. Blakley, Esq.
25 Gammage & Burnham, P.L.C.
Two North Central Avenue, 15th Floor
Phoenix, Arizona 85004
Attorneys for Shawna C. Heuer,
Personal representative of the Estate of
Denny J. Chittick
kblakley@gbllaw.com

Ryan W. Anderson, Esq.
Alisan M. B. Patten, Esq.
Guttilla Murphy Anderson
5415 East High Street, #200
Phoenix, Arizona 85054
Attorneys for the Receiver
randerson@gamlaw.com
apatten@gamlaw.com

/s/ JULIE LARSEN

1 **EXHIBIT “A”**

2 **DEFINITIONS**

3 1. “Communications” means and includes all oral and written communications of any
4 nature, type, or kind including, but not limited to, any documents, conversations (telephonic or
5 otherwise), discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium
6 through which information is conveyed or transmitted.

7 2. “Debtor” means Yomtov Scott Menaged.

8 3. “Document” means documents and other tangible things as defined in the broadest sense
9 permissible under the Federal Rules of Civil Procedure and shall include, without limitation: the
10 original, or, if an original is not available, any copies, as well as any non-identical copies (regardless of
11 origin and whether or not including additional writing thereon or attached thereto) and whether or not
12 still in existence and drafts of any (a) memorandum, (b) reports, (c) evaluations, (d) correspondence,
13 (e) interoffice communications, (f) books, (g) manuals, (h) instructions, (i) directives, (j) notes,
14 (k) forms, (l) letters, (m) agreements, (n) contracts, (o) invoices or purchase orders, (p) checks,
15 (q) journals, (r) ledgers, (s) financial statements, (t) pro formas, (u) telexes, (v) rapid faxes,
16 (w) radiograms, (x) confirmations, (y) telegrams, and telexes, (z) pamphlets, (aa) drawings,
17 (bb) contracts or agreements, (cc) lawsuits, including complaints oppositions, replies, and all other
18 pleadings or memoranda submitted to or for submission to any court, administrative agency, association,
19 or governmental tribunal, whether in or outside the United States, (dd) periodicals, (ee) newspapers,
20 (ff) press or publicity releases, (gg) computer or business machine printouts, (hh) accountants’ work
21 papers, accountants’ statements and writings, (ii) notations or any record of meetings, (jj) brochures,
22 (kk) catalogs, (ll) photographs, (mm) circulars, (nn) charts, (oo) maps, (pp) sketches, (qq) statements,
23 (rr) notations of any sort concerning conversations, telephone calls, meetings or other communications,
24 (ss) bulletins, (tt) lists, (uu) minutes, (vv) audio or video tapes and computer discs, (ww) electronic or
25 magnetic transcriptions including data stored in or for use in computers, word processors and memory

1 typewriters, (xx) graphic or pictorial matter, (yy) applications and amendments, (zz) newsletters,
2 (aaa) training materials, (bbb) promotional materials, (ccc) advertisements, (ddd) transcripts,
3 (eee) diaries, (fff) analyses, (ggg) summaries, (hhh) enclosures, (iii) questionnaires and surveys,
4 (jjj) complaints whether in the form of letters, notes of telephone calls, on forms, on tape recordings, on
5 video recordings, or on any record whatsoever, (kkk) all drafts, preliminary versions, alterations,
6 modifications, revisions, changes, amendments, and written comments concerning any of the foregoing,
7 (lll) phone logs, (mmm) phone bills, (nnn) phone message logs, and (ooo) all other documentary
8 materials of any nature whatsoever within the possession, custody, or control of the parties.

9 4. “Electronically Stored Information” means, without limitation, all information contained
10 on any computing device owned, maintained, or otherwise controlled by you, including but not limited
11 to, mainframe, desktop, laptop, tablet, or palm pilot, network servers, telephone voicemail servers,
12 employees’ employer provided home computers, and the personal digital assistants (PDAs), digital cell
13 phones, telephone answering machines, pagers or other information storing electronic devices of you, or
14 on associated external media, backup tapes, and other archival copies of same. Unless otherwise
15 specified, documents, reports, and other Electronically Stored Information created using any version of
16 Microsoft Word, PowerPoint, Excel, Visio, or Access, WordPerfect, Oracle, or any other Microsoft,
17 Adobe, or currently available “off-the-shelf” application must be produced in the form on which it is
18 currently stored on whatever media it currently resides. The electronically stored information should not
19 be locked, resaved, restructured, “scrubbed” of unapparent or hidden content or any other data or
20 metadata, but rather should be produced in a copy precisely reproducing its entire state as present in
21 your systems. Unless otherwise specified, electronic mail (e-mail) should be produced in native form;
22 that is, in whatever database or file or directory structures are used by your mail processing software.
23 All metadata and other unapparent or hidden data related to mail messages must be produced, including,
24 but not limited to file attachments, message priority flags, message read/access timestamps, and in the
25

1 case of e-mail sent to distribution lists information on the membership of such lists at the time the e-mail
2 was sent.

3 5. “Refer” or “relate” as used herein, include, but are not limited to, all drafts of documents,
4 drafts of any part of a document, and executed documents, that directly mention or that have a
5 relationship to or connection with the subject matter requested whether or not the subject matter is
6 specifically mentioned therein.

7 6. “Relate to,” “relating to,” “reference to,” “involving,” “evidencing” and “contained in”
8 mean constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way
9 pertinent to or associated with the specified subject, including documents concerning the preparation of
10 other documents.

11 7. “You,” “your,” and “yourself” means Palms Hotel, aka Palms Casino Resort, and all
12 other persons acting or purporting to act on Palm’s behalf, including, but not limited to FP Holdings,
13 L.P., Palms’ purported owner.

14 **INSTRUCTIONS**

15 1. If you assert a privilege as to any document that you have been requested to produce, in
16 your response to this Request, please identify each such document and state the nature of the privilege
17 claimed and the facts upon which such claim is based.

18 2. You are to produce all information that is your custody, control, or possession, or your
19 attorneys,’ investigators,’ agents,’ employees,’ subsidiaries,’ or other representatives’ custody, control or
20 possession.

21 3. Where an individual Request calls for a response involving more than one part, each part
22 of the Response should be clearly set out so that it is understandable.

23 4. Each of these Requests is intended to be a continuing request, and if, at a later date, you
24 obtain any additional documents different from, or in addition to, those you have produced, then you
25 should amend your answer promptly so as to fully set forth the new or different information.

1 5. If your response to a Request is “not applicable” or any similar phrase or answer, then
2 explain in detail why the Request is not applicable.

3 6. If your response to a Request is that you do not have any such documents in your
4 possession, or any similar answer, then explain in detail all efforts you made to obtain or locate
5 documents responsive to that Request.

6 7. You are requested to produce the documents for inspection as they are kept in the usual
7 course of business or to otherwise organize and label them to correspond with the categories in the
8 request.

9 8. If you contend that a document would be excludable from production regardless of its
10 relevance, then (a) describe the subject matter of the document; (b) identify its date of preparation,
11 (c) identify its author, (d) identify all recipients of the document, (e) state all the reasons why the
12 document should be excluded from production, and (f) identify each person having knowledge of the
13 factual basis, if any, on which the privilege or other ground is asserted for not producing the document.

14 9. If any of the requested documents cannot be produced in full, then produce them to the
15 fullest extent possible, and (a) state your reasons for your inability to produce the remainder of the
16 document, and (b) describe in detail whatever information, knowledge, or belief you have concerning
17 the substance or the contents of the unproduced partial or incomplete document.

18 10. If you are requested to identify any document that was at one time in existence, but is no
19 longer in existence, then please state, and specify for each document: (a) the type of document; (b) the
20 content of the information contained therein; (c) the date upon which the document ceased to exist;
21 (d) the circumstances under which it ceased to exist; (e) the identity of all persons having knowledge of
22 the circumstances under which the document ceased to exist; and (f) the identity of all persons having
23 knowledge or who had knowledge of the contents thereof.

24 **SPECIAL INSTRUCTIONS REGARDING ELECTRONIC DATA**

25 1. This request includes all electronically stored information generated, stored or accessible

1 by your computer system(s). Electronically stored information is an irreplaceable source of evidence in
2 this matter. In addition to discovery of all tangible forms of evidence, the Debtor requests production of
3 or access to your computer system(s), including access to the system, for nondestructive retrieval of
4 relevant electronically stored information. You should have already implemented and maintain the
5 following safeguards against the destruction of evidence pending resolution of this matter since the time
6 you had notice of the pending claim.

7 2. In the event you have not already taken appropriate steps to safeguard your electronically
8 stored information, you must take the following steps for all computers used by you or anyone working
9 at your direction:

10 a. For fixed drives attached to such computers or accessible by such computers
11 through a network or otherwise, (i) a true and correct copy should be made of all electronic data on such
12 fixed drives that is responsive to any of the requests enumerated below including all active files and
13 completely restored versions of all deleted electronic files and file fragments; (ii) full directory listings
14 (including hidden files) for all directories and subdirectories (including hidden files) on such fixed
15 drives should be written; and (iii) such copies and listings should be preserved.

16 b. Storage devices, such as magnetic tapes and cartridges, magneto-optical disks,
17 floppy diskettes, CDs, flash ROM, and all other such media containing any electronic data that is
18 responsive to any of the requests enumerated below, should be collected and put into storage for the
19 duration of this lawsuit.

20 3. Regarding electronically stored information that is responsive to any of the Requests
21 enumerated below, which exist on fixed drives attached to computers at the time this discovery request
22 is served: do not alter or erase such electronically stored information and do not perform other
23 procedures (such as data compression and disk de-fragmentation or optimization routines) which may
24 affect such information, unless a true and correct copy has been made of such active files and of
25 completely restored versions of such deleted electronic files and file fragments, copies have been made

1 of all directory listings, (including hidden files) for all directories and subdirectories containing such
2 files, and arrangements have been made to preserve copies while this matter is pending.

3 4. Regarding all electronic media used for off-line storage containing any electronically
4 stored information, which exists at the time of this discovery request and is responsive to any of the
5 requests enumerated below: stop any activity which may result in the loss of such electronic
6 information, including rotation, destruction, overwriting or erasure of such media in whole or in part.
7 This special instruction is intended to cover all removable electronic media used for data storage in
8 connection with your computer system, including magnetic tapes and cartridges, magneto-optical disks,
9 floppy diskettes, CDs, flash ROM, and all other such media.

10 5. Regarding storage devices maintained by third parties but accessible by you through a
11 network or otherwise: do not modify or delete any electronically stored information existing at the time
12 these discovery requests are served that are or may be responsive to any of the requests enumerated
13 below, unless a true and correct copy of each such electronic information has been made and steps have
14 been taken to assure that such a copy will be preserved and accessible for purposed of this lawsuit.

15 6. Do not dispose of any electronic data storage devices or other equipment that may
16 contain or access electronically stored information falling within the scope of the following requests.

17 7. Preserve copies of all application programs and utilities, which may be used to process
18 electronically stored information falling within the scope of the following requests.

19 8. Maintain an activity log to document modifications made to any electronic data
20 processing system that may affect the system's capability to process any electronically stored
21 information that is responsive to any of the requests enumerated below, regardless of who made such
22 modification.

23 **DOCUMENTS REQUESTED**

24 1. All documents related to the Debtor for years 2012 through 2016.
25