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

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

CR-17-0680-PHX-GMS

**UNITED STATES' RESPONSE TO
DEFENDANT'S MOTION FOR *DE
NOVO* REVIEW OF DETENTION
HEARING [DOC. 49]**

20 Plaintiff United States of America, hereby files its Response to Defendant's Motion
21 for *De Novo* Review of Detention Hearing (Doc. 49). The United States' motion is based
22 on the attached memorandum of points and authorities, and the files and records in this
23 case.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **Summary of Argument**

26 Menaged's motion for *de novo* review of the detention hearing is unavailing for
27 several reasons. First, although this is a *de novo* review, Menaged has not provided the
28 Court any additional evidence that was not presented at the detention hearing before the

1 Magistrate Judge. Second, and most important, the investigation of Menaged since his
2 detention hearing demonstrates that he is engaging in additional fraud from his jail cell that
3 involves using his 14-year-old son to make three-way phone calls, directing the movement
4 of money, and the establishment of credit lines that could be used for flight. Third,
5 Menaged's assertion that he has been fully compliant with the dictates of the Bankruptcy
6 Court is inaccurate. Indeed, as detailed below, Menaged has consistently misled the Federal
7 Bankruptcy Court by concealing assets and money. He, therefore, has a history of not
8 complying with federal court orders. Fourth, Menaged is exposed to a greater prison
9 sentence since his detention hearing in May. In sum, Menaged is more of a risk of flight
10 and an economic danger since his previous detention hearing. He should be detained
11 pending trial.

12 **I. ARGUMENT**

13 **A. Standard of Review**

14 This Court's review of the Magistrate Judge's detention order is *de novo*. *United*
15 *States v. Koenig*, 912 F.2d 1190, 1192-93 (9th Cir. 1990). The Court must "review the
16 evidence before the magistrate and make its own independent determination whether the
17 magistrate's findings are correct, with no deference." *Id.* at 1193. If "necessary or
18 desirable," the Court may conduct additional evidentiary hearings in its discretion. *Id.*

19 **B. Menaged has Committed Additional Crimes While in Custody**

20 Menaged should remain in custody because he continues to be an economic danger
21 to the community. *See United States v. Reynolds*, 956 F.2d 192 (9th Cir. 1992) (Defendant
22 convicted of mail fraud under 18 U.S.C. § 1341 posed an economic or pecuniary danger to
23 the community); *United States v. Zaragoza*, 2008 WL 686825, at *3 (N.D.Cal. Mar. 11,
24 2008) (Court notes that danger to community can include narcotics activity or even
25 encompass pecuniary or economic harm. *Id.* (citing *Reynolds*, 956 F.2d at 192)). *United*
26 *States v. LeClercq*, 2007 WL 4365601, at *4 (S.D.Fla. Dec. 13, 2007) ("The reference to
27 safety of the community in the Bail Reform Act of 1984 'refers to the danger that the
28

1 defendant might engage in criminal activity to the detriment of the community. The [Senate
2 Judiciary] Committee intends that the concern about safety be given a broader construction
3 than merely danger of harm involving physical violence.’ ”).

4 First, a review of Menaged’s jail calls since his arrest demonstrates that he is
5 engaging in a variety of frauds; some involve using his 14-year-old son. (*See* Exhibit A;
6 Declaration of Agent Byron Anderton, ¶¶ 8-10.) Menaged is using his son to have
7 three-way calls with bank representatives to circumvent the U.S. Marshal’s policy
8 prohibiting three-way calls. (*Id.*) Inmates are specifically advised that three way calls are
9 prohibited and could result in disciplinary action.

10 Second, during those calls he is requesting account information and attempting to
11 determine the liquidation value of furniture. (*Id.* at ¶ 8.) Presumably, Menaged intends to
12 obtain the proceeds from the liquidation and fail to disclose the proceeds to the Bankruptcy
13 Court. Alternatively, he would have the funds available for successful flight.

14 Third, he is attempting to file an affidavit from a fictitious employee to facilitate
15 loan fraud. As background, an employee at Menaged’s direction made a false police report
16 that an “employee” of his furniture store had filed false credit applications with Wells
17 Fargo Bank to finance furniture purchases. (*Id.* ¶ 11.) This was done in an effort to conceal
18 Menaged’s rampant loan fraud. The loans totaled \$600,000. It has been determined that the
19 “employee” identified as committing fraud was fictitious. While in custody, Menaged is
20 using his son to attempt to perpetuate this fraud. (*Id.* ¶ 10.)

21 Fourth, Menaged is instructing his sister to withdraw money from credit lines that
22 Menaged, unbeknownst to his sister, placed in her name. (*Id.* ¶ 12.) He further instructs her
23 to obtain a cashier’s check and “hold onto the check and not deposit it.” Menaged would
24 have access to this money if released and could use it for flight.

25 Fifth, there are a series of calls where Menaged discusses credit accounts established
26 in the name of his estranged wife, Francine Menaged. (*Id.* ¶ 13.) During the calls, his wife
27 acknowledges that she never opened these accounts. (*Id.*) Again, these credit lines would
28 be available to Menaged upon release.

1 Simply stated, if Menaged was allowed to reside at home instead of in a secure
2 detention facility, he could not be adequately supervised (*e.g.*, his calls would not be
3 recorded, his computer and phone access could not be restricted, he would not be monitored
4 24 hours a day, etc.) In sum, he is engaging in obstructive activity and committing further
5 fraud. He, therefore, is a serious economic danger to his family and the community. He
6 should remain detained.

7 **C. Menaged’s Family Members have Benefited from His Fraud.**

8 Menaged touts his strong ties to Phoenix as a basis for his release on conditions.
9 First, he identifies his two children that reside in Phoenix as a reason that he would not
10 flee. This argument is unavailing based on his use of his 14-year-old son, as noted above,
11 to further his fraud from the detention facility. Moreover, his 2-year-old son resides with
12 his estranged wife who is separated from Menaged and is filing for divorce.

13 In his motion he has attached letters from other family members attesting to his
14 strong ties to Phoenix. However, in the case of his sister Joy, Menaged has used her to
15 establish fraudulent accounts. (*See Exhibit A, ¶ 12.*) In short, his family members do not
16 establish ties to the community as they are being used by Menaged to facilitate a fraud or
17 they have benefitted from his fraud. They cannot be entrusted to adequately supervise him.

18 **D. Menaged has Lied to the Bankruptcy Court**

19 Menaged has committed fraud in his bankruptcy proceeding and, therefore, cannot
20 be trusted to comply with any court imposed terms of release. *United States v. Hir*, 517
21 F.3d 1081, 1092 (for a release order to be effective, “they depend on [the defendant’s] good
22 faith compliance.) (quoting *United States v. Tortora*, 922 F.2d 880, 886 (1st Cir. 1990)
23 (concluding that a similarly extensive set of release conditions contained “an Achilles’
24 heel . . . virtually all of them hinge on the defendant’s good faith compliance” and “the
25 conditions as a whole are flawed in that their success depends largely on the defendant’s
26 good faith - or lack of it. They can be too easily circumvented or manipulated.”). Here,
27 Menaged has proven that he is unwilling to comply with the orders of a Federal Court.
28

1 In his Motion, Menaged claims that his compliance with all Bankruptcy Court
2 orders in connection with his pending Chapter 7 bankruptcy case indicates that he will
3 comply with pre-trial release conditions. Contrary to Menaged’s suggestion, however,
4 Menaged has not provided full truthful disclosure to the Bankruptcy Court, which is the
5 *sine qua non* of bankruptcy protection.

6 When Menaged initially filed his bankruptcy case in April 2016, he filed Schedules
7 of Assets and Liabilities and a Statement of Financial Affairs (“SOFA”) under oath subject
8 to penalty of perjury. Despite that oath, Menaged failed to disclose that he owned
9 substantial assets including real property in Phoenix, jewelry worth over \$50,000, financial
10 accounts, and several vehicles. When the Chapter 7 trustee overseeing the case began
11 investigating Menaged’s assets, Menaged allowed his case to be dismissed based on his
12 failure to file all forms that the Court directed him to file. Ultimately, the Chapter 7 trustee
13 discovered the missing assets and moved to reopen the case. A copy of the Chapter 7
14 trustee’s motion to reopen is attached as Exhibit B. It wasn’t until more than four months
15 after he filed the case and three months after the Chapter 7 trustee discovered the concealed
16 assets that Menaged amended his Schedules and his SOFA to itemize the previously
17 undisclosed assets.

18 Menaged’s suggestion that he has complied with all of the Bankruptcy Court
19 requirements is also belied by the fact that that the United States Trustee’s Office, which
20 is the Department of Justice component that is responsible for ensuring the integrity of the
21 bankruptcy system, filed a complaint against Menaged, alleging *inter alia* that Menaged
22 had fraudulently transferred and concealed assets with the intent to defraud creditors in the
23 bankruptcy and that Menaged knowingly and fraudulently made numerous false statements
24 under oath in the bankruptcy. A copy of the United States Trustee’s complaint is attached
25 as Exhibit C. Similarly, one of Menaged’s creditors filed a complaint in the bankruptcy
26 case against Menaged alleging *inter alia* that Menaged had made fraudulent
27 misrepresentations to the creditor *after the bankruptcy filing* in order to induce the creditor
28 to take no action against Menaged in the bankruptcy. A copy of the creditor’s complaint

1 is attached as Exhibit D.

2 Finally, Menaged has failed to cooperate with the Chapter 7 trustee overseeing his
3 bankruptcy case. As set forth in the Declaration of Jill Ford (attached as Exhibit E),
4 Menaged requested that the Chapter 7 Trustee provide Menaged with an opportunity to
5 “purchase back” the jewelry that he was required to turn over to the trustee as part of the
6 bankruptcy case. Ordinarily, the trustee would engage a professional auctioneer to sell
7 such assets. The trustee acquiesced in Menaged’s request, however, and conducted her
8 own public auction with Menaged and his counsel in attendance. At that auction, in early
9 2017, Menaged became the winning bidder on several items of his own jewelry and thereby
10 became obligated to pay the Chapter 7 trustee \$7,500 for the jewelry. Despite that
11 obligation, Menaged reneged. The Chapter 7 trustee contacted Menaged’s counsel by
12 email and telephone on numerous occasions and was told that Menaged would pay.
13 Eventually, however, Menaged’s counsel informed the Chapter 7 trustee that Menaged
14 would not pay.

15 Menaged also failed to cooperate with the Chapter 7 trustee by failing to amend tax
16 returns. Since the inception of the case, Menaged has assured the Chapter 7 trustee that he
17 would be amending his tax returns for 2014 and 2015. The Chapter 7 trustee required
18 accurate tax returns in order to have a clear-cut understanding of Menaged’s financial
19 condition. Despite numerous follow-up requests by the Chapter 7 trustee, Menaged has
20 still failed, or refused, to amend his tax returns. Lastly, Menaged hired contract employees
21 to prepare false books and records to provide them to the Bankruptcy Court. (*See* Exhibit
22 A, ¶ 24.) His conduct in the Bankruptcy proceeding demonstrates that he is incapable of
23 complying with court orders.

24 **E. Menaged’s Motive to Flee has Increased Since His Arrest.**

25 Menaged is named in a multiple count indictment and the United States intends to
26 supersede with additional counts. The Ninth Circuit permits the District Court to consider
27 possible punishment as an incentive for a defendant to flee in assessing a defendant’s risk
28 of flight. *United Sates v. Townsend*, 897 F.2d 989, 995 (9th Cir. 1990) (“[T]he defendants

1 are charged with multiple counts, and it is reasonable, from their perspective, to look at the
2 potential maximum sentences they face if they were found guilty on each count and
3 sentenced consecutively on each count. . . Facing the much graver penalties possible under
4 the present indictment, the defendants have an even greater incentive to consider flight.”)

5 Here, the potential punishment creates a strong incentive to flee. A conservative
6 estimate of the loss attributable to Menaged’s various frauds is \$42 million. The guideline
7 just for loss without considering any other applicable offense characteristics (*e.g.*,
8 leadership, sophisticated scheme, financial hardship to victims, etc.) would place him near
9 a 10-year sentence. (*See* U.S.S.G. § 2B1.1(b)(1)(L).) In short, Menaged has more of an
10 incentive to flee since his previous detention hearing.

11 **F. The Evidence Is Stronger Against Menaged Since His Detention**
12 **Hearing.**

13 Of the four detention factors a district court must consider, the Ninth Circuit has
14 instructed that the weight of the evidence is the least important of the factors. *United States*
15 *v. Honeyman*, 470 F.2d 473, 474 (9th Cir.1972). Nevertheless, regarding all counts, the
16 evidence of Menaged’s guilt is substantial, and in his motion he has failed to rebut or even
17 address the evidence. The Indictment details evidence of Menaged’s leadership role in a
18 complicated fraud scheme. As noted above, the United States intends to file a superseding
19 indictment that involves a \$42 million loss. Additionally, his jail calls using his minor son
20 may also form the basis of additional counts. The evidence against Menaged is
21 overwhelming and considerable. The second § 3142(g) factor strongly favors detention
22 because convictions are likely. Accordingly, no set of release conditions would reasonably
23 assure Menaged’s appearance at trial or other court proceedings if he were released from
24 custody.

25 **G. Electronic Monitoring is Untenable.**

26 Lastly, Menaged’s offer to be placed on electronic monitoring is unavailing. As
27 argued above, he has no credible third party custodian to insure that he would comply with
28 his release conditions and to supervise him 24 hours a day. Therefore, without a party

1 assuming responsibility for his appearance at further court proceedings, electronic
2 monitoring is of little value. Electronic monitoring cannot monitor a person's movement
3 twenty-four hours a day, and thus is not as effective around an international border, such
4 as Mexico.

5 **II. CONCLUSION**

6 This is not a close case on detention. Menaged is continuing his fraudulent activities
7 while detained. He has no employment in Arizona. He has no third-party custodian or
8 assets to insure his appearance. He has engaged in recent international travel. He is
9 exposed to a lengthy prison sentence on charges for which the evidence of guilt is
10 substantial. He, therefore, poses both a risk of flight and an economic danger to his family
11 and the community. Menaged should be detained pending trial.

12 Respectfully submitted this 30th day of June, 2017.

13
14 ELIZABETH A. STRANGE
15 Acting United States Attorney
16 District of Arizona

17 *s/ Kevin M. Rapp*
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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2017, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing a copy to the following CM/ECF registrants: Molly Brizgys, Esq.

s/ Lauren M. Routen
U.S. Attorney's Office

EXHIBIT A

DECLARATION OF SPECIAL AGENT BYRON ANDERTON

I, Byron Anderton, declare:

1. I am a Special Agent with the HSI.
2. I currently serve in the Phoenix Field Office, Financial Crimes Unit. Over the past eleven (11) years as a federal agent, I have conducted numerous criminal investigations involving violations of Immigration and Customs law. These violations have included financial crimes, weapons violations, narcotics violations, document and benefit fraud, and human smuggling. Also assigned to this investigation is a Special Agent with the United States Treasury Department, Internal Revenue Service (IRS) who specializes in tax law violations and other various financial investigations.
3. This declaration is submitted in support of the government's request for pretrial detention of Yomtov Scott Menaged ("Menaged"). If called upon, I will competently testify to the matters set forth below:
4. This declaration represents additional facts and finds that have been discovered since Menaged's initial pretrial detention hearing. The following is information based on my personal observations, the observations of other federal and state law enforcement agents, a review of records and evidence during the course of the investigation and evidence obtained through search warrants and subpoenas.

Background

5. On approximately March 03, 2016, Wells Fargo Bank Fraud Investigators met with HSI SAC Phoenix Special Agent Byron Anderton and provided him with information regarding an individual identified as Yomtov Scott Menaged. Menaged owns furniture stores operating under the names *Furniture King*, *Furniture and Electronic King*, *Scott's Fine Furniture*, and *American Furniture*, all of which are located throughout the Phoenix metropolitan area. Beginning in 2015, Menaged entered into agreements with Wells Fargo and Synchrony Financial to open merchant credit accounts at his stores. The agreements allowed Menaged to offer lines of credit to his customers for

the purpose of in-store for furniture purchases.

6. In February of 2016, Wells Fargo was alerted to several unusual activities associated with the *Furniture King* merchant account. Wells Fargo discovered that after a customer established their initial credit line (usually \$3,000-5,000), the store made a subsequent request to raise the credit line to as high as \$15,000 for the initial purchase. This is especially unusual at low priced furniture stores like *Furniture King*. Upon review, the so-called customers who signed up for credit lines were almost all recently deceased individuals. In most cases, the customer had passed away only a couple of days prior to the establishment of the credit line. A review on the credit applications showed similar handwriting on each of them, and the identification documents appeared to have been altered. The photos on several of the identification documents had been used multiple times on different credit applications. The total financial loss to Wells Fargo was approximately \$1,199,900.
7. In September 2016, Synchrony Financial experienced a strikingly similar fraud. A complete review of the various furniture stores associated with Menaged revealed four Synchrony Financial merchant accounts used for fraudulent transactions. The total financial loss to Synchrony Financial was approximately \$842,369.75.

Review of Central Arizona Detention Center (CCA) Menaged Phone Calls
from May 24, 2017-June 16, 2017

8. During CCA calls, Menaged instructed his son Brandon (14 years old) to place repeated three-way calls to Menaged's merchant bank representatives. With this assistance from his son, Menaged has direct conversations with representatives from SNAP Finance in which he requests account information. Additional calls between Brandon and Menaged reveal that Menaged is instructing his son to work with J&K to determine liquidation value for the furniture at his store. At Menaged's instruction, Brandon communicates directly with SNAP Finance and Progressive Financial and also places numerous of these three-way calls. Brandon places additional three-way calls to the law offices handling Menaged's affairs. In these calls, Menaged requests affidavits to

be emailed to Brandon.

9. In one particular call, Menaged had Brandon place a call to SNAP Finance. He refers to Brandon as his “accountant” and requests that SNAP Finance sends financial records to Brandon at his email address, Brandon1234gt@icloud.com.
10. During one conversation with Brandon, Menaged had his son read out-loud, a false police report or affidavit that involved a cover-up of fraud committed by a fictitious employee of *Furniture King*, believed to be Charles Begay. It has been determined that Charles Begay is not an employee and never was an employee of Menaged. Menaged had instructed his employee’s to provide false statements to the Avondale Police Department as part of the fraud committed against Wells Fargo.

False Avondale Police Report (Exhibit 1 and 2)

11. A cooperating source divulged that Menaged instructed Furniture King employees to file a false report (Exhibit 1) with the Avondale Police Department when Wells Fargo was aggressively inquiring as to the details of the fraud committed against them. According to the Avondale Police report, a lone employee identified as Charles Begay established approximately 70 fraudulent credit accounts in the names of deceased customers and fraudulently purchased \$600,000 of furniture. The source and others have confirmed that Charles Begay was not an employee of Menaged or Menaged controlled entities and that Menaged had fabricated the story. Menaged went so far as to hire a private investigator at Premier Investigations to attempt to locate Begay. According to the source, Premier Investigations determined that Menaged had fabricated the story of Begay working for his store (Furniture King). A false employee file and illegible driver’s license for Charles Begay was obtained (Exhibit 2). The documents have a signature of a Charles Begay and are signed by *Furniture King* store representative (Operations Manager) Veronica Castro.
12. During CCA calls, Menaged instructed his sister, Joy Menaged, to withdraw money from the American Furniture account that he (Menaged) put in her name. Menaged

instructed his sister to have the bank issue a bank check with the withdrawn funds. He asked his sister only to hold onto the check, and not to deposit it. Menaged stated that he had put *American Furniture* in Joy Menaged's name several months ago when he was having problems with the bank and could not open a bank account. Menaged instructed Joy Menaged to monitor the American Furniture account and told her that if the account went from a negative balance to a positive balance, she should transfer the money to her account.

13. During a conversation with Kelly Griffin (owner of KEG Inspections), Griffin informed Menaged that she has the jewelry from *American Furniture* and is holding on to it. This is further corroborated by a conversations on June 9, 2017 and June 19, 2017 between the government and Francine Menaged (Menaged's wife), in which Francine informed the government that Griffin currently has her jewelry and that it is worth approximately \$30,000. She further stated that Menaged had been hiding the jewelry from her and would not return it.
14. During a conversation with Kelly Griffin, Menaged instructed Kelly to contact J&K to provide an estimate for his furniture inventory at liquidation value. Kelly agreed to contact the liquidation company.

Synchrony Financial Accounts

15. During a CCA call with Francine Menaged, she informed Menaged that she received a check from Synchrony Financial and does not know what it is for. She further divulged that she never had an account with Synchrony Financial and believes that it is related to a fraudulent account that Menaged established in her name and his mother's name (Michelle Menaged) without her knowledge. Synchrony Financial confirmed that a joint account (0247) was established in the names Francine Menaged and Michelle Menaged. The phone number associated with account (0247) is 480-261-7386. This phone number is Scott Menaged's personal Verizon cell phone number. The email address associated with the account is SMENA98754@aol.com. The email address

belongs to Scott Menaged and is the email identified as being used for Menaged's real estate company, Arizona Home Foreclosures (AHF). It was also used in communications between Menaged and DENSCO. A review of payment history made on account (0247) shows that multiple payments had been made from a business account for Scott's Fine Furniture located at 13550 W. Van Buren St. Goodyear, AZ 85386 (same address as that on the KEG Inspections fraudulent invoices referenced in paragraph 19) and the checks had been signed by Scott Menaged. On June 20, 2017, the account was reported as fraudulent and the conversation was recorded by Synchrony Financial. During a Synchrony Financial recorded call, Francine Menaged states that the account was opened fraudulently by her husband and that he had been arrested for the conduct. A query by Synchrony Financial indicated that at least five (5) Synchrony Financial credit accounts (0247) (3661) (4912) (2590) (7932) had been established in the name Francine Menaged. The remaining four (4) accounts show no activity and no balances, but have complete available credit.

16. A further review of Synchrony Financial credit accounts found at least one additional account in the name of Jess Menaged account (3711). Jess Menaged is the younger brother of Menaged and has been described by Menaged associates as "having challenges". Contact information for account (3711) lists Scott Menaged's residence located at 10510 E. Sunnyside Dr. Scottsdale, AZ 85259. The phone number associated with account (3711) is Scott Menaged's Verizon cell phone number 480-261-7385. The email associated with account (3711) is Scott Menaged's email address SMENA98754@aol.com. The account shows no activity and no balance, but has complete available credit at Menaged's discretion if he were inclined to utilize it.

17. Approximately five (5) Synchrony Financial credit accounts (5087) (2517) (3389) (0269) (4097), were discovered in the name Jeff Menaged. Jeff Menaged is a name that was utilized by Scott Menaged to establish the Scott's Fine Furniture merchant account with Synchrony Financial. Contact information for the Jeff Menaged credit accounts lists Scott Menaged's residence, located at 10510 E. Sunnyside Dr. Scottsdale,

AZ 85259. The phone number associated with the accounts is Scott Menaged's Verizon cell phone number 480-261-7385. The email associated with the accounts is Scott Menaged's email address SMENA98754@aol.com. Several payments were made on account (0269) by Scott Menaged. One payment was made on or about June 6, 2016 for the amount of \$400. The payment was made from a Scott's Fine Furniture account (check #1025) and was signed by Scott Menaged. A second payment was made on or about September 28, 2016 for the amount of \$200. The payment was made from an American Furniture account (check #1125) and was signed by Scott Menaged. Additional payments were made in a similar manner. The remaining four (4) accounts show no activity and no balances, but have complete available credit if Menaged was inclined to utilize it.

18. Additional accounts continue to be discovered with variations of names, social security numbers, and dates of birth of Menaged associates. Many of the discovered credit accounts were established in 2016, around the time of Denny Chittick's (DENSCO owner) suicide and Menaged's bankruptcy filing. At least ten (10) of the accounts opened by Menaged in other individual's names had no activity or charges, however, each of the accounts had complete unused available credit that could be utilized by Menaged.

Counterfeit KEG Inspection Invoices

19. On or about May 31, 2017, the government returned computer and financial records to Kelly and Richelle Griffin. The computer and records were voluntarily provided to the government on May 24, 2017. Upon the return of the records and computer, the Griffin's provided four invoices that the Griffin's stated were fraudulent. Kelly and Richelle stated that Menaged asked them through their company (KEG Inspections) to generate false invoices that show inflated estimates for repairs to be performed at Furniture King/Electronic King LLC 13550 W. Van Buren St. Goodyear, AZ 85338. The work and repairs were never performed. Menaged had requested the false invoices

in order to negotiate a discounted lease agreement with the landlord. The combine total for all four invoices was approximately \$255,445.00. The false invoices indicated that the total amount was paid in full.

- Invoice: 4722 (February 22, 2016)
Total: \$101,600.00
Amount Paid: \$101,600.00 (Paid in Full)
- Invoice: 4724 (February 22, 2016)
Total: \$80,150.00
Amount Paid: \$80,150.00 (Paid in Full)
- Invoice: 4783 (March 29, 2016)
Total: \$28,900.00
Amount Paid: \$28,900.00 (Paid in Full)
- Invoice: 4784 (April 4, 2016)
Total: \$44,795.00
Amount Paid: \$44,795.00 (Paid in Full)

KEG Inspections Statements

20. A review of KEG Inspections Bank of America account (3572) revealed that funds originating from Menaged and/or Menaged controlled entities were used for personal expenses. As an example, the KEG Inspections account (3572) received approximately \$122,251.02 in January 2015, and \$128,518.90 from the Arizona Home Foreclosures Chase account, and approximately \$27,505.60 in December 2015 and \$18,896.05 in February 2016 from Furniture King and/or Furniture & Electronic King. Withdrawals from account (3572) for these months included purchases from the following:

- Restaurants including Outback, Zipps, Oreganos, Melting Pot, AH So Sushi and Steak, Texas Roadhouse, PF Changs;
- Retail including Louis Vuitton, Kohl's, Victoria's Secret, Spencer's Gifts, Petco, Fry's Grocery, Safeway
- Beauty and Health including Massage Envy, Orange Theory, Pro Nails and Spa by Tina, ASF Fitness, The Vitamin Shop
- Entertainment including Netflix, Renaissance Festival, Dave & Busters, Brunswick Bowl, Top Golf, and movietickets.com

- Credit payments to TJX, Weisfield, and Nordstrom

Gambling

21. A review of casino records from Wild Horse Pass Casino indicated that Menaged and his wife Francine Menaged frequently gambled with Kelly and Richelle Griffin. Below is a sample of local trips to Wild Horse Pass Casino in which the four gambled together:

DATE	SUBJECT NAME	CASH IN	CASH OUT
07/26/2015	MENAGED/YOMTOV/S	\$57,500.00	\$37,000.00
08/02/2015	MENAGED/YOMTOV/S	\$24,800.00	\$38,000.00
08/16/2015	MENAGED/YOMTOV/S	\$22,600.00	
08/25/2015	MENAGED/YOMTOV/S	\$31,500.00	\$20,000.00
09/01/2015	MENAGED/YOMTOV/S	\$36,700.00	\$20,000.00
09/23/2015	MENAGED/YOMTOV/S	\$15,600.00	\$20,000.00
09/29/2015	MENAGED/YOMTOV/S	\$31,000.00	\$20,000.00
12/26/2015	MENAGED/YOMTOV/S	\$14,960.00	\$20,000.00
01/10/2016	MENAGED/YOMTOV/S	\$27,000.00	\$20,000.00
01/25/2016	MENAGED/YOMTOV/S	\$11,920.00	\$20,000.00
		\$273,580.00	\$215,000.00

DATE	SUBJECT NAME	CASH IN	CASH OUT
07/26/2015	GRIFFIN/KELLY/E	\$28,700.00	
08/02/2015	GRIFFIN/KELLY/E	\$11,500.00	
08/16/2015	GRIFFIN/KELLY/E	\$14,501.00	
08/25/2015	GRIFFIN/KELLY/E	\$17,200.00	
09/01/2015	GRIFFIN/KELLY/E	\$12,900.00	
09/23/2015	GRIFFIN/KELLY/E	\$11,800.00	
09/29/2015	GRIFFIN/KELLY/E	\$23,020.00	
12/26/2015	GRIFFIN/KELLY/E	\$12,800.00	
01/10/2016	GRIFFIN/KELLY/E	\$11,600.00	
01/25/2016	GRIFFIN/KELLY/E	\$13,401.00	
		\$157,422.00	\$0.00

DATE	SUBJECT NAME	CASH IN	CASH OUT
07/26/2015	GRIFFIN/RICHELE	\$22,400.00	
08/02/2015	GRIFFIN/RICHELE	\$13,100.00	
08/16/2015	GRIFFIN/RICHELE	\$13,000.00	
08/25/2015	GRIFFIN/RICHELE	\$12,000.00	

01/10/2016	GRIFFIN/RICHELE	\$10,100.00	
		\$70,600.00	\$0.00

DATE	SUBJECT NAME	CASH IN	CASH OUT
07/26/2015	MENAGED/FRANCINE	\$27,780.00	
08/02/2015	MENAGED/FRANCINE	\$14,100.00	
08/16/2015	MENAGED/FRANCINE	\$22,860.00	
08/25/2015	MENAGED/FRANCINE	\$14,100.00	
		\$78,840.00	\$0.00

Finances

22. Menaged has signatory authority on at least 28 bank accounts at 5 financial institutions.

He uses all of the accounts interchangeably, routinely transferring funds amongst the various bank accounts. The accounts were also used to transfer funds to family and friends.

23. Menaged has used at least two social security numbers to establish bank accounts. The social security numbers used by Menaged are as follows:

114-68-3032 does match Menaged.

600-33-3332 does not match Menaged.

Menaged boasted about having two social security numbers that he would use. A review of financial records associated with Menaged's bank accounts supports the assertion that Menaged has utilized the above referenced social security numbers. In several instances, Menaged utilized both social security numbers at the same financial institution.

24. A cooperating source informed the government that upon filing for Chapter 7 bankruptcy, Menaged requested assistance from his employee's to aid him in generating inaccurate records. He used Quickbooks software and bank statements from his various businesses in order to provide the inaccurate documents to the bankruptcy court. Paperwork found at the American Furniture store subsequent to a federal search warrant indicated that the aforementioned employees were hired as subcontractors to sell furniture, when the actual purpose of their employment with the furniture store was

to generate inaccurate financial records for Menaged's bankruptcy.

Joseph Menaged Interview

25. On May 24, 2017, special agents with Homeland Security Investigations and Internal Revenue Service Criminal Investigations interviewed Joseph Menaged. Joseph stated that he had a written agreement with Menaged in which Menaged would collect funds owed on financing deals involving real estate. Upon the collection of the funds, Menaged would send a lump sum payment to Joseph each month. The payments would fluctuate between, \$51,000 to \$57,000. This agreement had been in place for the past 3-4 years. Menaged recently told Joseph that a business partner, Denny Chittick, hung himself and that his kids had found him. Menaged divulged to Joseph that Chittick had accused Menaged of cheating him by lending him money and paying him back with his own money. Joseph acknowledged that the activity that Menaged was describing was a Ponzi Scheme. Joseph stated that he has not received funds from Menaged in approximately a year due to Menaged's legal troubles. Joseph stated that he sent Menaged \$200,000 when his legal troubles began and that Joseph would often help out other members of the family with funds that originated with Menaged.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Executed this 30th day of June, 2017 at Phoenix, Arizona.

s/ Byron Anderton
BYRON ANDERTON
Special Agent, HSI

EXHIBIT 1



Aspiring. Achieving. Accelerating.
www.avondale.org



FAX

TO: Byron Anderton

F: 602-258-4071

FROM: Detective M. Lydic #1070

Avondale Police Department

11485 W Civic Center Drive

Avondale, Arizona 85323

D: 623-333-7309

F: 623-333-0702

Mlydic@avondale.org

RE: Furniture King Investigation



AVONDALE POLICE DEPARTMENT

Officer Report for Incident 1613568

Nature: FRAUD

Address: 965 E VAN BUREN ST;

FURNITURE KING

Location: BA96A

AVONDALE AZ 85323

Offense Codes:

Received By: TOADDY,R

How Received: T

Agency: AVPD

Responding Officers:

Responsible Officers: TOVES,E 2022

Disposition: ACT 03/14/16

When Reported: 11:27:16 03/14/16

Occurred Between: 08:00:00 11/01/15 and 17:00:00 02/29/16

Assigned To:

Detail:

Date Assigned: **/**/**

Status:

Status Date: **/**/**

Due Date: **/**/**

Complainant: 130480

Last: FURNITURE
KING

First:

Mid:

DOB: **/**/**

Dr Lic:

Address: 2020 E BELL RD

Race: **Sex:**

Phone: (602)971-2448

City: PHOENIX, AZ 85022

Alert Codes:

Offense Codes

Reported: ___ BLANK

Observed: FRAU FRAUD

Additional Offense: FRAU FRAUD

Circumstances

LT28 SPECIALTY STORE

VRY VICTIM RIGHTS FORM PROVIDED

Responding Officers:

Unit :

RALPH,C 1985

A13

TOVES,E 2022

B43F

MYERS,R 1668

B43F

Responsible Officer: TOVES,E 2022

Agency: AVPD

Received By: TOADDY,R

Last Radio Log: **:**:** **/**/**

How Received: T TELEPHONE

Clearance: 6 ORIGINAL DR COMPLETED

When Reported: 11:27:16 03/14/16

Disposition: ACT **Date:** 03/14/16

Officer Report for Incident 1613568

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Judicial Status:

Occurred between: 08:00:00 11/01/15

Misc Entry:

and: 17:00:00 02/29/16

Modus Operandi:

Description :

Method :

Involvements

Date	Type	Description
-------------	-------------	--------------------

Narrative

NARRATIVE Ofc. E.Toves #2022

SYNOPSIS:

Between 11/2015 and 2/2016 a former Furniture King employee (S)Charles Begay committed Fraud by opening 70 fake credit lines by using fictitious or deceased individuals' personal information and fraudulently purchased \$600,000 dollars of furniture from the Furniture King formerly located at 965 E Van Buren St, Avondale AZ. Furniture King desired to aid in prosecution. The case will be forwarded to the Avondale Police Criminal Investigation Bureau for follow-up.

Active

PARTIES INVOLVED:

Investigative Lead
Charles E Begay
05/10/1975
4539 W Beautiful Ln, Levine AZ 85339
(602)780-1218
*Possibly Fake Identification

Victim
Furniture King
2020 E Bell Rd, Phoenix AZ 85312
(602)971-2448

Mention
Veronica Castro
[REDACTED]
(602)386-8586

Mention
Daniel Gutierrez
(Employee)
Furniture King
2020 E Bell Rd, Phoenix AZ 85312

DESCRIPTION OF INJURIES: NONE

PROPERTY TAKEN / DAMAGED AND VALUE

\$600,000 dollars in miscellaneous furniture

NARRATIVE:

On 3/14/16 at 1139 hours, I was dispatched to contact Veronica Castro by telephone reference a call of theft from Furniture King at 965 E Van Buren St, Avondale AZ At 1150 hours, I made contact by telephone with (M)Veronica Castro who informed me that she wanted to file a theft complaint but did not have all information available reference the theft. Veronica asked to call back in about an hour with information.

At 1510 hours, I again made telephone contact with Veronica who informed me that a former employee of the Furniture King store formerly located at 965 E Van Buren St. Avondale AZ, had created and processed 70 fraudulent credit applications from fictitious or deceased individuals at Furniture King, which were financed by Wells Fargo. Veronica stated that the issue was discovered in February of 2016 when Wells Fargo found that information on the credit applications were fictitious and contained information of deceased individuals. Veronica stated that Furniture King was able to identify that all the fraudulent credit applications discovered by Wells Fargo were processed by one employee. Veronica explained that at that time the employee who had processed all of the applications stopped coming to work and could not be contacted by telephone. Veronica identified the employee from company records and her personal knowledge as:

(IL)Charles E. Begay
05/10/1975
4539 W Beautiful Ln, Levine AZ 85319
(602)780-1218
AZ DL no. 474235698
SS no. 585-12-1580
M/Native American/5'7"/172lbs/Brown Hair/Brown Eyes

Veronica indicated that she also had a photograph of the employee available if required. Veronica further stated that another employee of the company (M)Daniel Gutierrez may be able to help describe and identify Charles. Daniel was not available as of completion of this report. Veronica explained that Charles had processed these applications and that the records of those transactions are available at the new address of the Furniture King at 2020 E Bell Rd, Phoenix AZ 85022. Veronica stated that the company has to file a police report for insurance purposes and that there is a dispute between Furniture King and Wells Fargo regarding who is at fault for approving the fraudulent applications. Veronica indicated that the credit applications amounted to about \$800,000 dollars in value and that Furniture King has a direct loss of about \$600,000 dollars. Veronica could only identify her point of contact with Wells Fargo as Tamara and would call back to provide contact details. As of the completion of my report, Veronica had not called back to provide Tamara's information.

At the conclusion of my telephone interview, I informed Veronica that she would be contacted by Detectives for follow up on this report. Veronica acknowledged and stated she will be prepared to provide all documents that could help in this case. A Victim's Rights Form was completed and mailed to Veronica on behalf of Furniture King.

After completing my interview with Veronica a search through MVD records was conducted for Charles based on the details provided, but no matching records could be located.

At the time of this report, there is an investigative lead and evidence remains to be examined at Furniture King. This report will be forwarded to the Criminal Investigation Bureau for follow up.

Active

ADDITIONAL INFORMATION ON OTHER DOCUMENTS:

Officer Report for Incident 1613568

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Victim's Rights Form

Ofc. E.Toves #2022 Mon Mar 14 16:44:30 MST 2016

Responsible LEO:

Approved by:

Date

Officer Report for Incident 1613568

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Supplement

CASE REVIEW/VICTIM FOLLOW UP: Detective M. Lydic #1070

PARTIES INVOLVED:

MENTION

Veronica Castro
Furniture King
Business Manager
602-386-8586

MENTION

Scott Menaged (01/31/1977)
Furniture King Owner
480-261-7385

NARRATIVE:

On March 15, 2016 I was assigned this case for further follow up. I reviewed this case and learned that an ex-employee known as Charles E. Begay completed fraudulent loan applications with Furniture King using deceased persons social security numbers in order to get loans for furniture through Wells Fargo.

On March 16, 2016 at approximately 0900 hours, I was able to contact Furniture King Business Manager Veronica Castro who filed the initial fraud report to Officer E. Toves #2022. Veronica explained the following;

In November of 2015 Furniture King hired employee Charles E. Begay. Veronica told me an employee application was completed to include emergency contacts and a copy of Charles Begay's Arizona drivers license. Veronica said Charles Begay was hired as a "1099" employee, meaning he would make commissions on his sales. Veronica said at the time Charles got hired Furniture King was going through liquidation at the Avondale location (965 E Van Buren Street) in plan on closing the store.

Veronica told me that Charles spoke to the store owner, Scott Menaged and the two agreed that Charles could be in charge of the liquidation for the Avondale store. Veronica said Charles was given full access to the store to include alarm code and key. Veronica said Charles stated he could provide further services of his own to customers reference design and furniture choices through the liquidation process.

Veronica said that all furniture that was sold was already at the Avondale store location and nothing was on order. Veronica said some damaged furniture would be brought to the Avondale store from other Furniture King store locations. Veronica told me Charles had an old box truck of his own that furniture would be delivered in.

I asked Veronica how the loan process worked with Furniture King and Veronica explained that a loan application would be completed by the employee (Charles Begay) and then Charles would contact her or Scott to have it approved.

Veronica said once Charles called her or Scott then the next step would be to contact Wells Fargo to get the line of credit approved through Wells Fargo. Veronica told me that Furniture King had an agreement with Wells Fargo that would allow Wells Fargo to complete the credit checks and approve or deny the

line of credit. Veronica said Furniture King was asked not to completed credit checks and to allow Wells Fargo to complete the process first.

Veronica said average sales for the Avondale store would be approximately \$50,000 a month. During the liquidation that occurred from November 2015 to February 2016 the Avondale store sold approximately \$700,000.00 worth of furniture, making the average total sales per a month approximately \$175,000.00 over the four months between November and February.

Veronica said nothing was suspicious and explained during the liquidation of furniture the actual price of the furniture is inflated to cover for the steep discounts during liquidation sales.

I asked Veronica how these fraudulent accounts were noticed or brought to her attention. Veronica said she was trying to set up a tier system with finance companies to include Wells Fargo so customers have options and better chances of being approved. Veronica said while completed the tier system a second finance company contacted Wells Fargo about Furniture Kings loan or credit activity.

Veronica said during Wells Fargo's search of Furniture King's loan or credit request some suspicious accounts were noticed and were shown to be in default. Veronica said Wells Fargo contacted her in February of 2016 and she was told that the information on the credit applications was fraudulent as the social security numbers belonged to persons reported as deceased.

Veronica told me Wells Fargo and Furniture King are at a dispute over financial losses. Veronica told me Furniture King and the owner Scott Menaged were at a financial loss for furniture alone an estimated \$600,000.00 to \$700,000.00. Veronica said Wells Fargo is looking for payment for all the fraudulent accounts opened with Furniture King and estimated all loans to be around \$700,000.00 to \$1,000,000.00.

Veronica told me she is in the process of gathering all loan applications, invoices for furniture sold with each account, account numbers to each loan application and Charles E. Begay's employee documents. Veronica advised she would contact me back once all documents are located and ready to be turned into the Avondale Police Department.

CHARLES BEGAY EMPLOYEE DOCUMENTS

On March 17, 2016 I received an e-mail from Veronica Gutierrez that had two attachments. The first attachment was a photograph of a new Arizona driver's license in the name of Charles E. Begay with a DLN of 474235698 and date of birth of 05/10/1975. The second attachment was Charles E. Begay's employee information forms.

Charles Eagle Begay listed an address of 4539 W Beautiful Lane in Laveen, Arizona, a telephone number of 602-780-1215 and a social security number of 585-12-1580. Charles listed his brother, Davin Begay as his emergency contact who resides in Snowflake, Arizona.

Attached to the employee forms was a Internal Revenue Service 1099 for Charles E. Begay showing Charles made \$28,575.00 from November 15, 2015 to the end of December 2015 while working for Furniture King.

Officer Report for Incident 1613558

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Due to getting no returns from the Arizona Department of Motor Vehicle using the information on the Arizona drivers license for Charles E. Begay; I searched the name Charles E. Begay through an information based web site. The photograph on the Arizona drivers license appeared to be of a Native American male, late twenties to early thirties listing his height and wieght as 5'07" and 172 pounds.

I received only one return to a Charles Edward Begay, a 52 year old male, who resides in Chinle, Arizona. There was no information that matches anything from Charles E. Begay's employee information form or the Arizona drivers license.

I checked the social security number and phone number provided by Charles E. Begay and located two names that returned to that social security number, not matching Charles Begay and one name that listed the phone number as an old number, but not related to a Charles Begay.

The address 4539 W Beautiful Lane in Laveen, Arizona does return to a Byron Begay, a 50 year old male, but I could not locate any associates linked to a Charles E. Begay.

This ended my follow up with Veronica Castro as further supplement will be completed upon receiving the documents and identifying Charles E. Begay.

ADDITIONAL INFORMATION ON OTHER DOCUMENTS:

None

Detective M. Lydic #1070 Thu Mar 24 09:51:06 MST 2016

Supplement

WELLS FARGO FOLLOW UP: Detective M. Lydic #1070

ADDITIONAL PARTIES INVOLVED:

VICTIM

Wells Fargo
PO Box 53456 | Phoenix, AZ 85072
480-457-2323

MENTION

Tamara Clements
Wells Fargo
Financial Crimes Investigator
480-457-2323

MENTION

Yomtov Scott Menaged (01/31/1977)
10510 E Sunnyside Drive
Scottsdale, Arizona
480-261-7385

NARRATIVE:

On March 18, 2016 I spoke to Wells Fargo Financial Crimes Investigator Tamara Clements reference the Furniture King loan frauds. Tamara was able to tell me she has been in discussions with the owner of Furniture King, Scott Menaged and his business manager Veronica Castro since the beginning of February 2016.

Tamara said the Furniture King merchant account was brought to her attention by her management group. Tamara said Furniture King's account was very busy and doing very well which raised some suspicion. Tamara said Furniture Kings accounts were checked into and she learned that some of the social security numbers being used were associated with people that were deceased.

Tamara said that Scott Menaged had signed up in 2012 for a dealer merchant account that would allow him to offer financing to his customers. The dealer account was closed after a short time due to low approval ratings and not enough loans being processed.

Tamara said Scott signed up again in 2015 for a dealer merchant account that was linked to a Chase Bank merchant account. Tamara said all the funds from the loan approvals were transferred to his Chase Bank merchant account.

Tamara said that Scott used two different social security numbers (600-33-3332) and (114-68-3032) when he was setting up his dealer merchant accounts between 2012 and 2015 and also used the name Yomtov on one of the forms.

Tamara was able to send me Wells Fargo documents of all the credit accounts that were submitted and approved with Furniture King. I looked over the excel spread sheet and noted 81 total credit accounts, with 1 being submitted in November 2015, 23 being submitted in December of 2015, 39 being submitted in January 2016 and 18 being submitted in February 2016.

Tamara said Wells Fargo did complete the credit checks on the line of credit submitted by Furniture King and asked Furniture King not complete the credit

Officer Report for Incident 1613568

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checks. Tamara said Wells Fargo did this so that the customer would not have their credit checked more than once as Wells Fargo would complete a credit check regardless if Furniture King completed one.

The total amount of credit approved was \$1,203,100.00, the total account balances was \$1,174,025.58 and the total loss amount is listed as \$1,166,820.58. There were 11 payments made on 81 of the accounts and Tamara was able to tell me the payments usually came in the form of a money order or money gram.

Tamara said she looked into each person that was approved for the line of credit with Furniture King. Tamara said she was only able to confirm three people to still be alive as the rest were showing to be deceased.

This ended my contact with Tamara Clement as she advised she would contact me with any further information. Tamara advised Wells Fargo desired prosecution and will be looking for restitution reference the money that was fraudulently obtained.

Nothing further.

ADDITIONAL INFORMATION ON OTHER DOCUMENTS:

None

Detective M. Lydic #1070 Thu Mar 24 14:24:55 MST 2016

Supplement

RESEARCH CHARLES E. BEGAY: Detective M. Lydic #1070

OTHER PARTIES INVOLVED:

MENTION

Tyron Jay Smith (09/28/1980)
4539 W Beautiful Lane
Laveen, Arizona

MENTION

Sal Seanz
4540 W Beautiful Lane
Laveen, Arizona
602-399-2505

DRIVERS LICENSE INFORMATION:

While looking at the drivers license of Charles E. Begay and comparing it to a known true Arizona drivers license some of the indentations of the first name, date of birth, address, eyes and hair color are incorrect. There are missing numbers near the sex, height, weight and incorrect numbers by the eye color and hair color. The abbreviation for the color brown by the hair and eye color is also incorrect. There is also a comma in the number for the height where there is supposed to be a apostrophe. I completed follow up with the information on the driver's license even though the errors lead me to believed the driver's license is a forged and fraudulent identification.

Name (Charles E. Begay) and Date of Birth (05/10/1975): Returns no record with the Arizona Department of Motor Vehicles (DMV). I checked the name through an information based web site and received only one return for a Charles Edward Begay (03/11/1964) and was able to determine he was not the Charles E. Begay after I completed a DMV license photograph query.

Drivers License Number 474235698: Returns no record with the Arizona DMV. I checked the number as a social security number through an information based web site and it returns to a female who resides in Hutchinson, Minnesota. I could not locate any links between the female and Arizona at this time.

Address 250 N Grand Slam Circle, Snowflake, Arizona 85937: Per Snowflake Police Department there is a Davin Begay (nothing further) that requested a burn permit in March of 2015 for the residence. A Jacob Ordyna (01/30/1977) who was contacted reference a criminal damage to which he provided the address as his home address. No calls fox service at the residence since 2009. Phone numbers for Jacob are 928-536-6956 and 928-241-3012. Jacob's DMV photograph does not match the male pictured on the drivers license of Charles E. Begay.

FURNITURE KING EMPLOYEE INFORMATION FORM:

Address 4539 W Beautiful Lane, Laveen, Arizona: Per the Maricopa County Assessors web site the residence belongs to a Byron Begay and a Leashana Philips-Begay. I also checked the address through an information based web site and was able to locate a third name; Tyron Jay Smith (09/28/1980) who I was able

Officer Report for Incident 1613568

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to determine was not the subject pictured on the Arizona driver's license in the name of Charles E. Begay after I completed a DMV photograph query on Tyron Jay Smith.

On March 31, 2016 at approximately 0830 hours, I arrived at the residence and after talking with neighbors learned that Tyron Smith was living in the residence, but moved out about a year ago. A neighbor believed the subject pictured on the Charles E. Begay driver's license may have been a cousin of Tyron Smith, but did not recognize him.

Another neighbor Sal Seanz who lives (4540) directly across the street advised he knew Tyron Smith was residing at the residence, but eventually was kicked out by the owner Byron Begay because Tyron was not meeting his obligations of the lease reference HOA dues.

Sal further said he was contacted by an older white male identifying himself as a private investigator driving a Chevrolet Impala yesterday looking for a Charlie Begay. Sal said the male showed him what looked to be a DMV photograph and said he has never seen the male in the photograph shown to him.

Sal said he would pass along my information to the HOA president as he knows the Begay Family a little better.

Social security number 585-12-1580: I checked the social security number through an information based web site and it showed to belong to a male residing in Tracy, California. I could not find any links between the male and Arizona at this time.

Emergency contact listed was a brother named Davin Begay with the Snowflake, Arizona address listed on the driver's license for Charles E. Begay. The phone numbers listed for Davin Begay were 520-261-7082 which I could not locate any owner information for and 928-230-1507 which showed to possibly be an old number to a female out of Lake Havasu City, Arizona.

There were three tax forms that showed Charles E. Begay elected to have no Arizona tax liability for the year 2015 and filed exempt for his federal taxes. A 1099 form showed Charles E. Begay had a non-employee compensation of \$28,575.00 from November 15, 2015 to December 31, 2015 listing the social security number of 585-12-1580.

No further follow up at this time reference the information provided on the driver's license or employee information form for Charles E. Begay.

Detective M. Lydic #1070 Thu Mar 31 13:03:05 MST 2016

Supplement

MEETING WITH VERONICA CASTRO: Detective M. Lydic #1070

PARTIES INVOLVED:

MENTION

Veronica Castro
Furniture King
Business Manager

MENION

Jake Fritz
Private Investigator
Premiere Investigations
602-240-2240

NARRATIVE:

On April 01, 2016 at approximately 1140 hours, I met with Veronica Castro at the Furniture King located at 5905 W Bell Road in Glendale, Arizona reference sales documents she had for me.

Upon my arrival I asked Veronica how Charles became an employee with Furniture King and Veronica explained that Charles had just walked into their store located at 2020 E Bell Road in Phoenix, Arizona. Charles asked to speak with someone in charge and Charles was referred to Scott as he was upstairs.

Veronica said Scott talked with Charles for a short time and Charles then left the business. Veronica said she heard Charles was looking for employment and made an offer to Scott to be his partner.

Veronica told me Charles spoke as if he was educated and appeared to know about the furniture business. Veronica said she then met with Charles around November 15, 2015 and completed the employee information form.

I asked Veronica if Charles ever mentioned any of his past history regarding employment, family or friends and Veronica told me he did not. Veronica said she was busy and remembers completing the employee form and making a copy of Charles driver's license.

I asked Veronica if the male pictured on Charles Begay's drivers license is the same male she spoke to in person. Veronica said she believed it was the same person, but stated people always change from what they looked like on their driver's license.

I asked Veronica how Charles was paid and Veronica said Charles was paid in cash and believed his commission was 7.5 percent of the total sale. Veronica said that the sales Charles had would be given to Scott and Scott would put the cash together for Charles to be paid.

Veronica told me her husband is Daniel Gutierrez and he was the person that would go pick up he files from Charles at the Avondale store. Veronica said Daniel may have more information about Charles as he interacted with him more often.

Veronica told me Scott hired a private investigator and Veronica was able to

contact me after I left her store and provided the private investigators name of Jake Fritz with Premier Investigations. Jake's contact number is 602-240-2240. Veronica said Jake was paid up front and advised he should be able to identify Charles Begay quickly. Veronica later called and stated Jake had no new information reference Charles Begay.

Prior to leaving, Veronica handed me documents from the sales completed by Charles that were approved through Wells Fargo.

Upon my arrival back at the Avondale Police Department I looked through the sales documents from Furniture King and application forms for Wells Fargo. I noticed a lot of the identifications used were suspicious. The indents around the area of the names, address, eye and hair color were incorrect. Some of the individuals dates of births would put the individual around 90 to 100 years old, but the individual appeared to be extremely younger in their photographs on the identification. Some of the photographs appeared to be mug shots or personal photographs that do not match the Department of Motor Vehicle standards for photographs on identifications.

EVIDENCE IMPOUND

On April 01, 2016 I impounded documents from Wells Fargo as item number 1 and documents from Furniture King as item number 2 into locker 26 at the Avondale Police Department Property Bureau located at 11485 W Civic Center Drive in Avondale, Arizona.

ADDITIONAL INFORMATION ON OTHER DOCUMENTS:

Furniture King sales documents

Detective M. Lydic #1070 Fri Apr 08 08:01:20 MST 2016

EXHIBIT 2



Employee Information

Personal Information (to be completed by employee)

Full Name: Besay Charles Eagle
Last First M.I.

Address: 4539 N. Beautiful Ln.
Street Address Apartment/Unit #

Haveen AZ 85339
City State ZIP Code

Home Phone: _____ Alternate Phone: 602 780-1215

Email: Charles.besay75@gmail.com

SSN or Gov't ID: 585-12-1580

Birth Date: 5-10-75 Marital Status: Single

Spouse's Name: _____

Spouse's Employer: _____ Spouse's Work Phone: _____

Job Information (to be completed by employer)

Title: Sales Employee ID: _____

Supervisor: _____ Department: Arundall

Work Location: _____ Email: _____

Work Phone: _____ Cell Phone: _____

Start Date: Nov. Salary: \$ Commission 1099

Emergency Contact Information (to be completed by employee)

Full Name: Besay Davin
Last First M.I.

Address: _____
Street Address Apartment/Unit #

Snowflake AZ 85937
City State ZIP Code

Primary Phone: _____ Alternate Phone: _____

Relationship: brother

Arizona Form

A-4

Employee's Arizona Withholding Election

2015

Type or print your Full Name <i>Bogay Charles</i>		Your Social Security Number <i>585-12-1580</i>
Home Address - number and street or rural route <i>4539 W. Beautiful Ln.</i>		
City or Town <i>Avellan</i>	State <i>AZ</i>	ZIP Code <i>85339</i>

Choose either box 1 or box 2:

- 1** Withhold from gross taxable wages at the percentage checked (check only one percentage):
- 0.8%
 1.3%
 1.8%
 2.7%
 3.6%
 4.2%
 5.1%
- Check this box and enter an extra amount to be withheld from each paycheck \$
- 2** I elect an Arizona withholding percentage of zero, and I certify that I expect to have no Arizona tax liability for the current taxable year.

I certify that I have made the election marked above.

Charles Bogay _____ DATE *11-15-16*

SIGNATURE

Employee's Instructions

Arizona law requires your employer to withhold Arizona income tax from your wages for work done in Arizona. This amount is applied to your Arizona income tax due when you file your tax return. The amount withheld is a percentage of your gross taxable wages of every paycheck. You may also have your employer withhold an extra amount from each paycheck. Complete this form to select a percentage and any extra amount to be withheld from each paycheck.

What are my "Gross Taxable Wages"?

For withholding purposes, your "gross taxable wages" are the wages that will generally be in box 1 of your federal Form W-2. It is your gross wages less any pretax deductions, such as your share of health insurance premiums.

New Employees

Complete this form in the first five days of employment to select an Arizona withholding percentage. You may also have your employer withhold an extra amount from each paycheck. If you do not file this form, the department requires your employer to withhold 2.7% of your gross taxable wages.

Current Employees

If you want to change the current amount withheld, you must file this form to change the Arizona withholding percentage or change the extra amount withheld.

What Should I do With Form A-4?

Give your completed Form A-4 to your employer.

Electing a Withholding Percentage of Zero

You may elect an Arizona withholding percentage of zero if you expect to have no Arizona income tax liability for the current year. Arizona tax liability is gross tax liability less any tax credits, such as the family tax credit, school tax credits, or credits for taxes paid to other states. If you make this election, your employer will not withhold Arizona income tax from your wages for payroll periods beginning after the date you file the form. Zero withholding does not relieve you from paying Arizona income taxes that might be due at the time you file your Arizona income tax return. If you have an Arizona tax liability when you file your return or if at any time during the current year conditions change so that you expect to have a tax liability, you should promptly file a new Form A-4 and choose a percentage that applies to you.

Voluntary Withholding Election by Certain Nonresident Employees

Compensation earned by nonresidents while physically working in Arizona for temporary periods is subject to Arizona income tax. However, under Arizona law, compensation paid to certain nonresident employees is not subject to Arizona income tax withholding. These nonresident employees need to review their situations and determine whether they should elect to have Arizona income taxes withheld from their Arizona source compensation. Nonresident employees may request that their employer withhold Arizona income taxes by completing this form to elect Arizona income tax withholding.

Form W-4 (2015)

Purpose. Complete Form W-4 so that your employer can withhold the correct federal income tax from your pay. Consider completing a new Form W-4 each year and when your personal or financial situation changes.

Exemption from withholding. If you are exempt, complete only lines 1, 2, 3, 4, and 7 and sign the form to validate it. Your exemption for 2015 expires February 16, 2016. See Pub. 505, Tax Withholding and Estimated Tax.

Note. If another person can claim you as a dependent on his or her tax return, you cannot claim exemption from withholding if your income exceeds \$1,050 and includes more than \$350 of unearned income (for example, interest and dividends).

Exceptions. An employee may be able to claim exemption from withholding even if the employee is a dependent, if the employee:

- Is age 65 or older,
- Is blind, or
- Will claim adjustments to income; tax credits; or itemized deductions, on his or her tax return.

The exceptions do not apply to supplemental wages greater than \$1,000,000.

Basic instructions. If you are not exempt, complete the **Personal Allowances Worksheet** below. The worksheets on page 2 further adjust your withholding allowances based on itemized deductions, certain credits, adjustments to income, or two-earners/multiple jobs situations.

Complete all worksheets that apply. However, you may claim fewer (or zero) allowances. For regular wages, withholding must be based on allowances you claimed and may not be a flat amount or percentage of wages.

Head of household. Generally, you can claim head of household filing status on your tax return only if you are unmarried and pay more than 50% of the costs of keeping up a home for yourself and your dependent(s) or other qualifying individuals. See Pub. 501, Exemptions, Standard Deduction, and Filing Information, for information.

Tax credits. You can take projected tax credits into account in figuring your allowable number of withholding allowances. Credits for child or dependent care expenses and the child tax credit may be claimed using the **Personal Allowances Worksheet** below. See Pub. 505 for information on converting your other credits into withholding allowances.

Nonwage income. If you have a large amount of nonwage income, such as interest or dividends, consider making estimated tax payments using Form 1040-ES, Estimated Tax for Individuals. Otherwise, you may owe additional tax. If you have pension or annuity income, see Pub. 505 to find out if you should adjust your withholding on Form W-4 or W-4P.

Two earners or multiple jobs. If you have a working spouse or more than one job, figure the total number of allowances you are entitled to claim on all jobs using worksheets from only one Form W-4. Your withholding usually will be most accurate when all allowances are claimed on the Form W-4 for the highest paying job and zero allowances are claimed on the others. See Pub. 505 for details.

Nonresident alien. If you are a nonresident alien, see Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens, before completing this form.

Check your withholding. After your Form W-4 takes effect, use Pub. 505 to see how the amount you are having withheld compares to your projected total tax for 2015. See Pub. 505, especially if your earnings exceed \$130,000 (Single) or \$180,000 (Married).

Future developments. Information about any future developments affecting Form W-4 (such as legislation enacted after we release it) will be posted at www.irs.gov/w4.

Personal Allowances Worksheet (Keep for your records.)

A	Enter "1" for yourself if no one else can claim you as a dependent	A	_____
B	Enter "1" if: • You are single and have only one job; or • You are married, have only one job, and your spouse does not work; or • Your wages from a second job or your spouse's wages (or the total of both) are \$1,500 or less.	B	_____
C	Enter "1" for your spouse. But, you may choose to enter "-0-" if you are married and have either a working spouse or more than one job. (Entering "-0-" may help you avoid having too little tax withheld.)	C	_____
D	Enter number of dependents (other than your spouse or yourself) you will claim on your tax return	D	_____
E	Enter "1" if you will file as head of household on your tax return (see conditions under Head of household above)	E	_____
F	Enter "1" if you have at least \$2,000 of child or dependent care expenses for which you plan to claim a credit (Note. Do not include child support payments. See Pub. 503, Child and Dependent Care Expenses, for details.)	F	_____
G	Child Tax Credit (including additional child tax credit). See Pub. 972, Child Tax Credit, for more information. • If your total income will be less than \$65,000 (\$100,000 if married), enter "1" for each eligible child; then less "1" if you have two to four eligible children or less "2" if you have five or more eligible children. • If your total income will be between \$65,000 and \$84,000 (\$100,000 and \$119,000 if married), enter "1" for each eligible child	G	_____
H	Add lines A through G and enter total here: (Note. This may be different from the number of exemptions you claim on your tax return.) ▶	H	_____

For accuracy, complete all worksheets that apply.

- If you plan to itemize or claim adjustments to income and want to reduce your withholding, see the **Deductions and Adjustments Worksheet** on page 2.
- If you are single and have more than one job or are married and you and your spouse both work and the combined earnings from all jobs exceed \$50,000 (\$20,000 if married), see the **Two-Earners/Multiple Jobs Worksheet** on page 2 to avoid having too little tax withheld.
- If neither of the above situations applies, stop here and enter the number from line H on line 5 of Form W-4 below.

Separate here and give Form W-4 to your employer. Keep the top part for your records.

Form W-4 Department of the Treasury Internal Revenue Service		Employee's Withholding Allowance Certificate		OMB No. 1545-0074 2015	
▶ Whether you are entitled to claim a certain number of allowances or exemption from withholding is subject to review by the IRS. Your employer may be required to send a copy of this form to the IRS.					
1 Your first name and middle initial <i>Charles</i>		Last name <i>Regay</i>		2 Your social security number	
Home address (number and street or rural route) <i>4539 W. Beautiful Ln.</i>			3 <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withheld at higher Single rate. Note. If married, but legally separated, or spouse is a nonresident alien, check the "Single" box.		
City or town, state, and ZIP code <i>Nashua AZ 85339</i>			4 If your last name differs from that shown on your social security card, check here. You must call 1-800-772-1213 for a replacement card. ▶ <input type="checkbox"/>		
5 Total number of allowances you are claiming (from line H above or from the applicable worksheet on page 2)				5 _____	
6 Additional amount, if any, you want withheld from each paycheck				6 \$ _____	
7 I claim exemption from withholding for 2015, and I certify that I meet both of the following conditions for exemption. • Last year I had a right to a refund of all federal income tax withheld because I had no tax liability, and • This year I expect a refund of all federal income tax withheld because I expect to have no tax liability. If you meet both conditions, write "Exempt" here ▶				7 <i>Exempt</i>	
Under penalties of perjury, I declare that I have examined this certificate and, to the best of my knowledge and belief, it is true, correct, and complete.					
Employee's signature (This form is not valid unless you sign it.) ▶ <i>Charles Regay</i>				Date ▶ <i>11-15-15</i>	
8 Employer's name and address (Employer: Complete lines 8 and 10 only if sending to the IRS.)			9 Office code (optional)		10 Employer identification number (EIN)

Deductions and Adjustments Worksheet

Note. Use this worksheet *only* if you plan to itemize deductions or claim certain credits or adjustments to income.

- 1 Enter an estimate of your 2015 itemized deductions. These include qualifying home mortgage interest, charitable contributions, state and local taxes, medical expenses in excess of 10% (7.5% if either you or your spouse was born before January 2, 1951) of your income, and miscellaneous deductions. For 2015, you may have to reduce your itemized deductions if your income is over \$309,900 and you are married filing jointly or are a qualifying widow(er); \$284,050 if you are head of household; \$258,250 if you are single and not head of household or a qualifying widow(er); or \$154,950 if you are married filing separately. See Pub. 505 for details 1 \$ _____
- 2 Enter: { \$12,600 if married filing jointly or qualifying widow(er)
\$9,250 if head of household
\$6,300 if single or married filing separately } 2 \$ _____
- 3 **Subtract** line 2 from line 1. If zero or less, enter "-0-" 3 \$ _____
- 4 Enter an estimate of your 2015 adjustments to income and any additional standard deduction (see Pub. 505) 4 \$ _____
- 5 **Add** lines 3 and 4 and enter the total. (Include any amount for credits from the *Converting Credits to Withholding Allowances for 2015 Form W-4* worksheet in Pub. 505.) 5 \$ _____
- 6 Enter an estimate of your 2015 nonwage income (such as dividends or interest) 6 \$ _____
- 7 **Subtract** line 6 from line 5. If zero or less, enter "-0-" 7 \$ _____
- 8 **Divide** the amount on line 7 by \$4,000 and enter the result here. Drop any fraction 8 _____
- 9 Enter the number from the **Personal Allowances Worksheet**, line H, page 1 9 _____
- 10 **Add** lines 8 and 9 and enter the total here. If you plan to use the **Two-Earners/Multiple Jobs Worksheet**, also enter this total on line 1 below. Otherwise, **stop here** and enter this total on Form W-4, line 5, page 1 10 _____

Two-Earners/Multiple Jobs Worksheet (See *Two earners or multiple jobs* on page 1.)

Note. Use this worksheet *only* if the instructions under line H on page 1 direct you here.

- 1 Enter the number from line H, page 1 (or from line 10 above if you used the **Deductions and Adjustments Worksheet**) 1 _____
- 2 Find the number in **Table 1** below that applies to the **LOWEST** paying job and enter it here. **However**, if you are married filing jointly and wages from the highest paying job are \$65,000 or less, do not enter more than "3" 2 _____
- 3 If line 1 is **more than or equal to** line 2, subtract line 2 from line 1. Enter the result here (if zero, enter "-0-") and on Form W-4, line 5, page 1. **Do not** use the rest of this worksheet 3 _____

Note. If line 1 is **less than** line 2, enter "-0-" on Form W-4, line 5, page 1. Complete lines 4 through 9 below to figure the additional withholding amount necessary to avoid a year-end tax bill.

- 4 Enter the number from line 2 of this worksheet 4 _____
- 5 Enter the number from line 1 of this worksheet 5 _____
- 6 **Subtract** line 5 from line 4 6 _____
- 7 Find the amount in **Table 2** below that applies to the **HIGHEST** paying job and enter it here 7 \$ _____
- 8 **Multiply** line 7 by line 6 and enter the result here. This is the additional annual withholding needed 8 \$ _____
- 9 Divide line 8 by the number of pay periods remaining in 2015. For example, divide by 25 if you are paid every two weeks and you complete this form on a date in January when there are 25 pay periods remaining in 2015. Enter the result here and on Form W-4, line 6, page 1. This is the additional amount to be withheld from each paycheck 9 \$ _____

Table 1

Table 2

Married Filing Jointly		All Others		Married Filing Jointly		All Others	
If wages from LOWEST paying job are—	Enter on line 2 above	If wages from LOWEST paying job are—	Enter on line 2 above	If wages from HIGHEST paying job are—	Enter on line 7 above	If wages from HIGHEST paying job are—	Enter on line 7 above
\$0 - \$6,000	0	\$0 - \$8,000	0	\$0 - \$75,000	\$600	\$0 - \$38,000	\$600
6,001 - 13,000	1	8,001 - 17,000	1	75,001 - 135,000	1,000	38,001 - 83,000	1,000
13,001 - 24,000	2	17,001 - 26,000	2	135,001 - 205,000	1,120	83,001 - 180,000	1,120
24,001 - 26,000	3	26,001 - 34,000	3	205,001 - 360,000	1,320	180,001 - 395,000	1,320
26,001 - 34,000	4	34,001 - 44,000	4	360,001 - 405,000	1,400	395,001 and over	1,580
34,001 - 44,000	5	44,001 - 75,000	5	405,001 and over	1,580		
44,001 - 50,000	6	75,001 - 85,000	6				
50,001 - 65,000	7	85,001 - 110,000	7				
65,001 - 75,000	8	110,001 - 125,000	8				
75,001 - 80,000	9	125,001 - 140,000	9				
80,001 - 100,000	10	140,001 and over	10				
100,001 - 115,000	11						
115,001 - 130,000	12						
130,001 - 140,000	13						
140,001 - 150,000	14						
150,001 and over	15						

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. Internal Revenue Code sections 3402(f)(2) and 6109 and their regulations require you to provide this information; your employer uses it to determine your federal income tax withholding. Failure to provide a properly completed form will result in your being treated as a single person who claims no withholding allowances; providing fraudulent information may subject you to penalties. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation; to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws; and to the Department of Health and Human Services for use in the National Directory of New Hires. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The average time and expenses required to complete and file this form will vary depending on individual circumstances. For estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9, Employment Eligibility Verification

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification (To be completed and signed by employee at the time employment begins.)

Print Name: Last <u>Begay</u>	First <u>Charles</u>	Middle Initial <u>E.</u>	Maiden Name <u>-</u>
Address (Street Name and Number) <u>4539 W. Beantel</u>		Apt. # <u>2A</u>	Date of Birth (month/day/year) <u>5-10-75</u>
City <u>Haveen</u>	State <u>AZ</u>	Zip Code <u>85339</u>	Social Security # <u>585-121580</u>

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States (see instructions)
- A lawful permanent resident (Alien #) _____
- An alien authorized to work (Alien # or Admission #) _____ until (expiration date, if applicable - month/day/year)

Employee's Signature Charles B Date (month/day/year) 11-15-15

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	
Date (month/day/year)	

Section 2. Employer Review and Verification (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

List A	OR	List B	AND	List C
Document title: <u>AZ Drivers</u>		_____	_____	_____
Issuing authority: <u>ADOT</u>		_____	_____	_____
Document #: <u>471235698</u>		_____	_____	_____
Expiration Date (if any): <u>10-11-33</u>		_____	_____	_____
Document #: _____		_____	_____	_____
Expiration Date (if any): _____	_____	_____	_____	_____

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) 11-15-15 and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agency may omit the date the employee began employment.)

Signature of Employer or Authorized Representative <u>[Signature]</u>	Print Name <u>Veronica Castro</u>	Title <u>operations manager</u>
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code) <u>Humane Kitty</u>		Date (month/day/year) <u>11/15/15</u>

Section 3. Updating and Reverification (To be completed and signed by employer.)

A. New Name (if applicable)	B. Date of Rehire (month/day/year) (if applicable)	
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.		
Document Title: _____	Document #: _____	Expiration Date (if any): _____
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.		
Signature of Employer or Authorized Representative		Date (month/day/year)

LISTS OF ACCEPTABLE DOCUMENTS

All documents must be unexpired

LIST ADocuments that Establish Both
Identity and Employment
Authorization**LIST B**Documents that Establish
Identity**LIST C**Documents that Establish
Employment Authorization

OR

AND

1. U.S. Passport or U.S. Passport Card	1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	1. Social Security Account Number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		2. Certification of Birth Abroad issued by the Department of State (Form FS-545)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa	2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	3. Certification of Report of Birth issued by the Department of State (Form DS-1350)
4. Employment Authorization Document that contains a photograph (Form I-766)	3. School ID card with a photograph	4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
5. In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form	4. Voter's registration card	5. Native American tribal document
	5. U.S. Military card or draft record	
	6. Military dependent's ID card	6. U.S. Citizen ID Card (Form I-197)
	7. U.S. Coast Guard Merchant Mariner Card	
	8. Native American tribal document	7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
9. Driver's license issued by a Canadian government authority		
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI	For persons under age 18 who are unable to present a document listed above:	8. Employment authorization document issued by the Department of Homeland Security
	10. School record or report card	
	11. Clinic, doctor, or hospital record	
	12. Day-care or nursery school record	

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no. Furniture King LLC 7320 W Bell Rd Glendale AZ 85308 602-386-8586		1 Rents \$	OMB No. 1545-0115 2015 Form 1099-MISC	Miscellaneous Income	
PAYER'S federal identification number 45-3148163		2 Royalties \$	3 Other income \$		
RECIPIENT'S identification number 585-12-1580		5 Fishing boat proceeds \$	6 Medical and health care payments \$	Copy 1 For State Tax Department	
RECIPIENT'S name Charles E. Begay Street address (including apt. no.) 4539 W Beautiful Ln City or town, state or province, country, and ZIP or foreign postal code Laveen AZ 85339		7 Nonemployee compensation \$ 28575.00	8 Substitute payments in lieu of dividends or interest \$		
Account number (see instructions)	FATCA filing requirement <input type="checkbox"/>	9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10 Crop insurance proceeds \$	11	
13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$	12	15a Section 409A deferrals \$		
15b Section 409A income \$	16 State tax withheld \$	17 State/Payer's state no.	18 State income \$	\$	

Form 1099-MISC

www.irs.gov/form1099misc

Department of the Treasury - Internal Revenue Service

Instructions for Payer

To complete Form 1099-MISC, use:

- the 2015 General Instructions for Certain Information Returns, and
- the 2015 Instructions for Form 1099-MISC.

To order these instructions and additional forms, go to www.irs.gov/form1099misc or call 1-800-TAX-FORM (1-800-829-3676).

Caution. Because paper forms are scanned during processing, you cannot file Forms 1096, 1097, 1098, 1099, 3921, 3922, or 5498 that you print from the IRS website.

Due dates. Furnish Copy B of this form to the recipient by February 1, 2016. The due date is extended to February 16, 2016, if you are reporting payments in boxes 8 or 14.

File Copy A of this form with the IRS by February 29, 2016. If you file electronically, the due date is March 31, 2016. To file electronically, you must have software that generates a file according to the specifications in Pub. 1220, Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G. The IRS does not provide a fill-in form option.

Need help? If you have questions about reporting on Form 1099-MISC, call the information reporting customer service site toll free at 1-866-455-7438 or 304-263-8700 (not toll free). Persons with a hearing or speech disability with access to TTY/TDD equipment can call 304-579-4827 (not toll free).

Arizona DRIVERS LICENSE USA



1 CLASS D
2 SEX M
3 BEGAY
4 CHARLES E.
5 250 N GRAND SLAM CIR.
6 SNOWFLAKE, AZ 85537-8742
7 EXP 10/11/2033
8 ISS 06/11/75
9 HGT 5,07"
10 WGT 172 lb
11 EYES BRW
12 HAIR BRW 11

47 DOB 474235898
DOB 05/10/1975

Charles Begay

5 DO 876470087552365MO

EXHIBIT B

STEVE BROWN & ASSOCIATES, LLC
1414 EAST INDIAN SCHOOL ROAD, SUITE 200
PHOENIX, ARIZONA 85014
(602) 264-9224

Steven J. Brown (#010792) sbrown@sjbrownlaw.com
Steven D. Nemecek (#015219) snemecek@sjbrownlaw.com
Attorneys for Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:

YOMTOV SCOTT MENAGED,

Debtor.

In Proceedings Under Chapter 7

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

**TRUSTEE'S MOTION FOR ORDER
VACATING MAY 12, 2016 ORDER
DISMISSING CASE AND
REINSTATING CASE**

Pursuant to Federal Rules of Bankruptcy Procedure 9023 and 9024 and Federal Rules of Civil Procedure 59(e) and 60(b), Chapter 7 Trustee Jill Ford respectfully moves for an order vacating this Court's May 12, 2016 Order Dismissing Case (Dkt. #26) (the "Dismissal Order") and reinstating the case. The Trustee believes that reinstatement is in the best interests of creditors because Debtor owns and/or has failed to disclose numerous, potentially valuable assets that could be liquidated and distributed to creditors. This motion is timely as it is filed within 14 days of the Dismissal Order. This Motion is supported by the following Memorandum of Points and Authorities.

...
...
...
...

1 DATED this 25th day of May, 2016.

2 STEVE BROWN & ASSOCIATES, LLC

3 By /s/ Steven D. Nemecek

4 Steven J. Brown

5 Steven D. Nemecek

6 1414 East Indian School Road, Suite 200

7 Phoenix, Arizona 85014

8 Attorneys for Trustee

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. BACKGROUND**

11 Debtor filed for Chapter 7 relief on April 20, 2016. Trustee Jill Ford was appointed and
12 retained undersigned counsel by order dated May 4, 2016. The Trustee and her counsel
13 immediately began investigating potential assets. The Trustee also was contacted by two
14 creditors who had been pursuing Debtor prior to the bankruptcy and had serious concerns that
15 Debtor had not made full and accurate disclosures regarding his assets and income. The
16 Trustee's preliminary investigation reveals that Debtor appears to own several real and
17 personal property interests that have not been accurately disclosed, or disclosed at all.

18 **A. Real Properties**

19 Debtor has appeared on the Discovery Channel TV show "Property Wars" as a house
20 flipper. The Trustee and her counsel began reviewing online records and consulting with real
21 estate agent Beth Jo Zeitzer regarding real properties owned by Debtor.

22 Based on her preliminary investigation, the Trustee believes that Debtor has
23 undervalued his Scottsdale property, failed to disclose an insider lien on his Peoria property,
24 and failed to schedule yet another property in Phoenix. Specifically:

- 25 • **10510 East Sunnyside Drive in Scottsdale:** Debtor scheduled this property as
26 his "house" and listed the value at \$2.2 million and the secured debt owed to
U.S. Bank at \$1.998 million. However, Ms. Zeitzer estimates the value to be
higher, at between \$2.4 and \$2.5 million. The Trustee has located in online

1 records potential liens and real property taxes in the face amount of about \$2.1
2 million. Thus, this property may have significant equity, depending on the
3 actual value and lien payoffs, and even if a homestead exemption is available.

- 4 • **9331 West Electra Lane, aka 23412 North 93rd Avenue, in Peoria:** Debtor
5 scheduled this property as his "second home" and listed the value at \$1.8 million
6 with no secured debt. Ms. Zeitzer believes the scheduled value is probably
7 close to being accurate. The Trustee has located in online records potential liens
8 and real property taxes in the face amount of about \$1.9 million. However, one
9 of the potential liens is a \$500,000 deed of trust in favor of Joseph Menaged,
10 recorded on September 11, 2015, at Maricopa County Recorder's Office
11 Document No. 20150659121. According to the deed of trust, Joseph Menaged's
12 address is 10510 East Sunnyside Drive in Scottsdale, same as Debtor's address
13 listed on the Voluntary Petition and Schedule A. See Exhibit "A" attached
14 hereto. That deed of trust in particular requires further scrutiny in order to
15 determine whether there might be equity in the property.

- 16 • **1605 West Winter Drive in Phoenix:** Debtor did not schedule this property.
17 However, online records show the owner of the property as Yom Tov Scott
18 Menaged. Ms. Zeitzer believes the value is probably \$380,000 to \$390,000.
19 The Trustee has located in online records potential liens and real property taxes
20 in the face amount of about \$911,000. It would appear that the property does
21 not have equity though further investigation would be necessary with respect to
22 the potential liens and also any rental income being generated by the property.

23 **B. Business Entities/Furniture Stores**

24 Debtor scheduled no business entities in Schedule A and described himself as self-
25 employed by Furniture King for the last two years in Schedule I. However, online records at
26 the Arizona Corporation Commission state that Debtor is the manager or sole member of the

1 following entities, all of which have not been disclosed except for Furniture King:

- 2 • Arizona Home Foreclosures, LLC
- 3 • Auto King, LLC
- 4 • Beneficial Finance, LLC
- 5 • Divine Design Home Interiors, LLC
- 6 • Easy Investments, LLC
- 7 • Furniture & Electronic King LLC
- 8 • Furniture King LLC
- 9 • Scott's Fine Furniture, LLC (Scott's Fine Furniture's website states that it has
10 four stores: 5905 West Bell Road in Glendale, 4245 West Thomas Road in
11 Phoenix, 1660 South Alma School Road in Mesa, and 13550 West Van Buren
12 Street in Phoenix. The Trustee's preliminary investigation reveals that all four
13 locations are open and operating.)

14 Debtor also is listed in Arizona Corporation Commission records as one of several
15 members in an entity called Investors Title Holdings LLC.

16 Also, one of the creditors provided to the Trustee information that Debtor caused a
17 check to be paid from a bank account in the name of "Keg Inspections, Inc." in July 2015. Yet
18 according to Arizona Corporation Commission records, that entity was administratively
19 dissolved almost six years earlier, on September 2, 2009, and Debtor had no ownership
20 interest in the entity. That bank account requires further investigation.

21 **C. Vehicles**

22 Debtor listed in his schedules a leased 2013 BMW (Debtor did not list the model) and
23 an underwater 2016 Ford Mustang. However, one of the creditors shared with the Trustee
24 Arizona Department of Motor Vehicles records dated April 14, 2016, indicating that Debtor
25 also might own or lease at least four other vehicles:

- 1 • 2013 BMW X5 (owned outright by Debtor and Keri Anne Frazier)
- 2 • 2016 Mercedes CLS 63 (lease)
- 3 • 2014 BMW X5 (lease)
- 4 • 2016 Cadillac Escalade (owned subject to lien)

5 See Exhibit "B" attached hereto.

6 While only the 2013 BMW X5 appears to be owned free and clear by Debtor and Ms.
7 Frazier, the other vehicles are still worth noting because they are late model, higher-end
8 vehicles and Debtor has to be making the lease or loan payments, which are not listed in his
9 Schedule J expenses and would require more income than the \$10,000 he lists in Schedule I,
10 all of which and then some is chewed up in his Schedule J expenses.

11 **D. The Notice Of Deficient Filings and Dismissal Order**

12 On April 22, 2016, the Clerk issued a Notice of Deficient Filings (the "Notice"), stating
13 that Debtor did not use the revised Official Forms that became mandatory effective December
14 1, 2015. The Notice references Official Form 106C Schedule C: Property You Claim as
15 Exempt - Individual and Official Form 107 Your Statement of Financial Affairs - Individual.
16 (Dkt. 11)¹

17 However, Debtor in fact did use the Official Forms that became mandatory effective
18 December 1, 2015, for Official Form 106C Schedule C: Property You Claim as Exempt -
19 Individual and Official Form 107 Your Statement of Financial Affairs - Individual. (Dkt. 10,
20 page 14 and page 38)

21 The Notice probably meant to say that Debtor did not use the revised Official Forms
22 that became mandatory effective April 1, 2016, as beginning that date, revised dollar amounts

23
24
25 ¹On April 20, 2016, the Clerk issued a different Notice of Deficient Filings stating that Debtor
26 had not submitted a certificate of completion when he filed the Voluntary Petition. (Dkt. 5)
On April 27, 2016 (Dkt. 19), and April 28, 2016 (Dkt. 20), Debtor filed his certificate. The
Dismissal Order does not pertain to those deficiencies.

1 in certain Official Forms took effect, including Schedule C (Official Form 106C) and the
2 Statement of Financial Affairs (Official Form 107).

3 Debtor apparently did not respond to the Notice. The Court issued the Dismissal Order,
4 referencing that Debtor "failed to timely file all required Official Forms as indicated by the
5 court." (Dkt. 26, related to Dkt. 11)

6 **II. REQUESTED RELIEF**

7 The Bankruptcy Code does not contain a provision governing reinstatement of Title 11
8 cases. Courts treat motions to reinstate dismissed cases as a request to vacate the order of
9 dismissal and governed by Rule 9023, which incorporates Federal Rule of Civil Procedure 59,
10 or Rule 9024, which incorporates Federal Rule of Civil Procedure 60. E.g., In re Walker, 2010
11 WL 2812570, *2-3 (Bankr. N.D. Ala. 2010) (considering motion to reinstate under Rule
12 59(e)); In re Lampman, 494 B.R. 218 (Bankr. M.D. Pa. 2013) (considering motion to reinstate
13 under Rule 60(b)).

14 Rule 59(e) allows a party to file a motion to alter or amend a judgment. Courts will
15 grant a Rule 59(e) motion where: (1) the court is presented with newly discovered evidence;
16 (2) the court committed clear error or its initial decision was manifestly unjust; or (3) there is
17 an intervening change in controlling law. Circuit City Stores, Inc. v. Mantor, 417 F.3d 1060,
18 1064, n.1 (9th Cir. 2005).

19 Rule 60(b) provides five specific grounds and one catch-all provision for relief from a
20 "final judgment, order or proceeding":

- 21 (1) mistake, inadvertence, surprise, or excusable neglect;
- 22 (2) newly discovered evidence that, with reasonable diligence, could not have been
23 discovered in time to move for a new trial under Rule 59(b);
- 24 (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or
25 misconduct by an opposing party;
- 26 (4) the judgment is void;

1 (5) the judgment has been satisfied, released or discharged; it is based on an earlier
2 judgment that has been reversed or vacated; or applying it prospectively is no longer equitable;
3 or

4 (6) any other reason that justifies relief.
5 Fed.R.Civ.P. 60(b)(1)-(6). The specific grounds listed in sections (b)(1)-(5) are mutually
6 exclusive from the broader, "any other reason" language of section (b)(6). Pioneer Inv. Servs.
7 Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 393 (1993).

8 Here, relief is appropriate under Rules 59(e) and 60(b)(1), (4) and (6). The Notice
9 leading to the Dismissal Order stated that Debtor did not use the revised Official Forms that
10 became mandatory effective December 1, 2015, when in fact Debtor used those forms. The
11 case should not have been dismissed given that Debtor used the forms that the Notice stated he
12 should have used (even if they were the wrong forms). The Notice contained a mistake that
13 justifies vacating the Dismissal Order and reinstating the case.

14 The case also should be reinstated because Debtor has scheduled over \$1.7 million in
15 unsecured creditors and has omitted from his schedules assets that could be worth tens or even
16 hundreds of thousands of dollars. The Trustee already has been contacted by two creditors
17 who believe that Debtor has not disclosed valuable assets and has asked the Trustee to
18 investigate leads they were developing when Debtor filed bankruptcy. The Trustee believes
19 she has a duty to file this motion to protect the interests of unsecured creditors who could be
20 paid from a liquidation of assets.² It would be a manifest injustice to creditors if the case were
21 to remain dismissed.

22
23 ² As the Estate's legal representative with the duty to liquidate assets and pay creditors, the
24 Trustee is the proper party to file this motion. See In the Matter of Casco Chemical Co., 355
25 F.2d 646, 651 (5th Cir. 1964) (holding that bankruptcy trustee has standing to file a Rule 60(b)
26 motion); see also In re Hall, 15 B.R. 913, 916-17 (9th Cir. BAP 1981) (holding that as
representative of the bankruptcy estate with the duty to liquidate assets and pay creditors the
trustee has standing to object to a debtor's motion to dismiss and that motion to dismiss should
have been denied unless all creditors consented to dismissal).

1 **III. CONCLUSION**

2 For the foregoing reasons, the Trustee respectfully requests that the Court vacate the
3 Dismissal Order and reinstate the case.

4 DATED this 25th day of May, 2016.

5 STEVE BROWN & ASSOCIATES, LLC

6 By /s/ Steven D. Nemecek

7 Steven J. Brown
8 Steven D. Nemecek
9 1414 East Indian School Road, Suite 200
10 Phoenix, Arizona 85014
11 Attorneys for Trustee

11 Copy of the foregoing served via ECF and
12 emailed and/or mailed this 25th day of
13 May, 2016, to:

13 Yomtov Scott Menaged
14 10510 East Sunnyside Drive
15 Scottsdale, AZ 85259
16 Debtor

16 Larry Watson
17 Office of the U.S. Trustee
18 230 North First Avenue, Suite 204
19 Phoenix, AZ 85003-1706
20 larry.watson@usdoj.gov

20 Timothy H. Barnes
21 Timothy H. Barnes, P.C.
22 428 East Thunderbird Road, #150
23 Phoenix, Arizona 85022
24 tim@thbpc.com
25 Attorney for Redi Carpet, LLC

25 By: /s/ Karen Flaaen

EXHIBIT A

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Recording Information

Name(s)	Document Code(s)
ABRAHAM ANDREW MENAGED JOSEPH MENAGED YOMTOV SCOTT	DEED TRST

Recording Date/Time	Recording Number	Pages
9/11/2015 4:42:11 PM	20150659121	8

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When recorded, return to:

Joseph Menaged
10510 E Sunnyside Dr
Scottsdale, AZ 85259

DO'
ho:

DEED OF TRUST

Effective Date: 9/10/2015	County and State Where Real Property is located: Maricopa County, Arizona
TRUSTOR: Yomtov Scott Menaged, a married man as his sole and separate property	BENEFICIARY: Joseph Menaged 10510 E Sunnyside Dr Scottsdale, AZ 85259
TRUSTEE: Andrew Abraham, Esq., 702 East Osborn Road Phoenix, AZ 85004	
Obligation Secured (Nature, Date, All Parties) Promissory Note dated: September 10 th 2015 Five Hundred Thousand Dollars and 00/100 (\$500,000.00)	
Subject Property Street Address 9331 W Electra Ln. Peoria AZ 85383 Parcel #201-16-012Z	
Subject Real Property Legal Description: See Exhibit "A" attached hereto and made a part hereof for legal description TOGETHER with an undivided interest in and to the common elements as set forth in said declaration and as designed on said plat.	

1. **Conveyance.** Trustor irrevocably grants and conveys to Trustee in trust, with power of sale, the Subject Real Property, subject to covenants, conditions, restrictions, rights of way and easements of record, to be held as security for the payment by Trustor of the Obligation Secured and for the performance of other obligations of Trustor as set forth in this Deed of Trust.

2. **Appurtenances.** Trustor grants, together with the Subject Real Property, all buildings and improvements now or hereafter erected thereon, and all fixtures attached to or used in connection with the Subject Real Property (including, without limiting the generality of the foregoing, all ventilating, heating, air-conditioning, refrigeration, plumbing and lighting fixtures), together with all leases, rents issues, profits or income therefrom (hereinafter "Property Income"), subject, however, to the right, power and authority hereinafter given to beneficiary to collect and apply such property income.

3. **Taxes and Assessments and Trust Expenses.** Trustor shall pay before delinquent all taxes and assessments affecting the Subject Real Property or any part thereof, which appear to be prior or superior

hereto all cost, fees and expenses of this trust and all lawful charges, costs and expenses of any reinstatement of this Deed of Trust following default.

4. Fire Insurance. Trustor shall, at Trustor's expense, maintain in force fire and extended coverage insurance in any amount of not less than the full replacement value of any buildings which may exist on the Subject Real Property with loss payable to Beneficiary. Trustor shall provide fire insurance protection on his furniture, fixtures and other personal property on the Subject of Real Property in an amount equal to the full insurable value thereof, and promises that any insurance coverage in this regard will contain a waiver of the insurer's right of the subrogation against Beneficiary.

5. Liability Insurance. Trustor shall, at Trustor's expense, maintain in force policies of liability insurance, with Beneficiary as an additional Insured thereunder, insuring Trustor against any claims resulting from the injury to or the death of any person or the damage to or the destruction of any property belonging to any person by reason of Beneficiary's interest hereunder or the use and occupancy of the Subject Real Property by Trustor. Such insurance shall be in the following amounts:

- a. \$500,000 against any claim resulting from injury to or the death of any one person;
- b. \$1,000,000 against any claim resulting from injury to or the deaths of any number of persons from any one accident;
- c. \$500,000 against any claim resulting from the damage to or destruction of any property belonging to any person.

6. Processing of Insurance Policies. Trustor shall promptly deliver to Beneficiary the originals or true and exact copies of all insurance policies required by this Deed of Trust. Trustor shall not do or omit to do any act which will in any way impair or invalidate any insurance policy required by this Deed of Trust. All insurance policies shall contain a written obligation of the insurer to notify Beneficiary in writing at least ten (10) days prior to any cancellation thereof.

7. Indemnification of Trustee and Beneficiary. Unofficial Document Trustor shall hold Trustee and Beneficiary harmless from, and indemnify them for, any and all claims raised by any third party against Trustee or Beneficiary resulting from their interests hereunder or the acts of Trustor. Such indemnification shall include reasonable attorney's fees and costs, including cost of evidence of title.

8. Right of Beneficiary or Trustee to Pay Obligations of Trustor. If Trustor fails or refuses to pay any sums due to be paid by it under the provisions of this Deed of Trust, or fails or refuses to take any action as herein provided, then Beneficiary or Trustee shall have the right to pay any such sum due to be paid by Trustor and to perform any act necessary. The amount of such sums paid by Beneficiary or Trustee for the account of Trustor and the cost of any such action, together with interest thereon at the maximum legal contractual rate per annum from the date of payment until the satisfaction shall be added to the obligation Secured. The payment of Beneficiary or Trustee of any such sums or the performance of any such action shall be prima facie evidence of the necessity therefor.

9. Condemnation. Any award of damages in connection with any condemnation or injury to any of the Subject Real Property by reason of public use or for damages for private trespass or injury thereto, are assigned in full and shall be paid to Beneficiary, who shall apply them to payment of the principal of the Obligation Secured, the interest thereon and any other charges or amount secured hereby in such manner as Beneficiary may elect. Any remaining balance shall be paid to Trustor. Beneficiary may, at Beneficiary's option, appeal from any such award in the name of Trustor. Unless Trustor and Beneficiary otherwise agree in writing, any application of such proceeds to principal shall not extend or postpone the due dates of any installment payments of the Obligation Secured or change the amount of such payments.

10. Care of Property. Trustor shall take reasonable care of the Subject Real Property and the buildings thereon, ordinary depreciation excepted. Trustor shall commit or permit no waste and do no act which will unduly impair or depreciate the value of the Subject Real Property as required, then Beneficiary or Trustee, at their option, may make necessary repairs and add the cost thereof to the obligation Secured. Trustor shall purchase and use on the Subject Real Property the amount of water to which it is or shall be

entitled and shall not abandon any water rights, power rights or any rights of whatever nature which are appurtenant to the Subject Real Property.

11. Right to Inspect Subject Real Property. At all convenient and reasonable times, upon prior notice to Trustor, beneficiary or Trustee shall have the right and license to go on and into the Subject Real Property to inspect it in order to determine whether the provisions of the Deed of Trust are being kept and performed.

12. Acceleration. In the event of default by Trustor, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice setting forth the nature thereof and of election to cause the Subject Real Property to be sold under this Deed of Trust. Beneficiary shall also deposit with Trustee all documents evidencing the Obligation Secured and any expenditures secured hereby.

13. Event of Default. Each of the following shall be considered an event of default of this Deed of Trust:

- a. The failure of Trustor to make any payment due hereunder or under the Obligation Secured on or before the due date thereof;
- b. The failure of Trustor to perform any duty required by this Deed of Trust;
- c. The sale or attempted sale of the Subject Real Property by Trustor without the consent of Beneficiary;
- d. The removal or attempted removal by Trustor of any property included in the Subject Real Property without the consent of Beneficiary;
- e. Abandonment of the Subject Real Property by Trustor;
- f. The filing, execution or occurrence of:
 - i. A petition in bankruptcy by or against Trustor;
 - ii. A petition or answer seeking a reorganization, composition, readjustment, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Act.
 - iii. Adjunction of Trustor as a bankrupt or insolvent, or Insolvency in the bankruptcy equity sense;
 - iv. An assignment by Trustor for the benefit of creditors, whether by trust, mortgage or otherwise;
 - v. A petition or other proceeding by or against Trustor for the appointment of a trustee, receiver, guardian, conservator or liquidator of Trustor with respect to all or substantially all of its property;
 - vi. Trustor's dissolution or liquidation, or the taking of possession of Trustor's property by any governmental authority in connection with dissolution or liquidation.
- g. A determination by Beneficiary that the security of the Deed of Trust is inadequate or in danger of being impaired or threatened from any cause whatsoever.

14. Trustee's Sale. Upon receipt of Beneficiary's notice of election to cause the Subject of Real Property to be sold. Trustee shall, in accordance with all provisions of law, give notice of Trustee's sale and, after the lapse of the required amount of time, sell the Subject Real Property at public auction, at the time and place specified in the Notice of Trustee's Sale, to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Any persons, including Trustor, Trustee or Beneficiary may purchase at the Trustee's Sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for sale. Upon sale, Trustee shall deliver to the purchaser a Trustee's Deed conveying the Subject Real Property, but without any covenant or warranty, expressed or implied.

15. Proceeds of Trustee's Sale. After deducting all costs, fees and expenses of Trustee and of this trust, including the cost of evidence of title in connection with the sale and reasonable attorney's fees, trustee shall apply the proceeds of sale to payment of all sums then secured hereby and all other sums

due under the terms hereof, with accrued interest, and the remainder, if any, to the persons legally entitled thereto or as provided by **ARS § 33-812**.

16. Deficiency Judgment. Unless prohibited by law, Beneficiary shall be entitled to a deficiency judgment against Trustor if the Trustee's Sale yields an amount insufficient to fully satisfy Trustor's obligation hereunder. **ARS § 33-814**

17. Defaults on Prior Encumbrances. If there are mortgages upon the Subject Real Property or other encumbrances which are prior in time or prior in right, then Trustor promises to comply with the terms of these prior mortgages or encumbrances. If Trustor fails to comply with such terms and defaults on these mortgages or obligations, such default shall also be considered a default of this Deed of Trust, and Trustee or Beneficiary herein may advance the moneys necessary to remedy such defaults, and, if it does, such moneys shall be added to the obligation secured and shall bear the maximum contractual legal rate of interest from the date moneys are tendered. Beneficiary may also proceed on this default by exercising the same remedies it has on this Deed of Trust.

18. Foreclosure and Other Remedies. In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have all other rights and remedies available hereunder and at law or in equity. All rights and remedies shall be cumulative.

19. Reinstatement After Default. Notwithstanding Beneficiary's acceleration of sums secured by this Deed of Trust, Trustor shall have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued and to have this Deed of Trust reinstated at any time before the day of the Trustee's Sale or before the filing of a foreclosure action. In order to have the Deed of Trust reinstated after default, the Trustor must:

- a. Pay to beneficiary the entire amount due under this Deed of Trust and the Obligation Secured, other than such portion of the principal as would not be due had no default occurred;
- b. Cure all defaults or any covenants or agreements of Trustor as contained in this Deed of Trust;
- c. Pay all costs and expenses incurred by Beneficiary and Trustee in enforcing the terms of this Deed of Trust and pursuing remedies;
- d. Pay reasonable attorney's fees actually incurred by Beneficiary and Trustee, in an amount not to exceed One Hundred Dollars (\$100) or one-half of one percent (.5%) of the entire unpaid principal sum secured, whichever is greater;
- e. Pay the recording fee for any cancellation of notice of sale;
- f. Pay the Trustee's fees, in an amount not to exceed One Hundred Dollars (\$100) or one-half of one percent (.5%) of the entire unpaid principal sum secured, whichever is greater. Upon reinstatement, this Deed of Trust and the obligation secured hereby shall remain in full force and effect as if no acceleration had occurred.

20. Assignment of Property Income. As additional security, Trustor hereby gives Beneficiary the right, power and authority during the continuance of this Trust, to collect the property income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such property income as it becomes due and payable. Upon any such default, Beneficiary may at any time, without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured: (i) enter upon and take possession of the Subject Real Property or any part thereof; in its own name sue for or otherwise collect such property income, including that past due and unpaid; and (ii) apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, in such order as Beneficiary may determine.

21. Acts of Trustee Affecting Subject Real Property. At any time, without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Obligation Secured for endorsement, Trustee may, without liability, release and reconvey all or any part of the Subject of Real Property; consent to the making and recording, or either, of any map or plat of all or any part of the Subject Real Property; join in

granting any easement thereon; join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof. Any such action by Trustee may be taken without affecting the personal liability of any person for payment of the indebtedness secured hereby, without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the property affected by Trustee's action be credited on the indebtedness.

22. Satisfaction of the Obligation. If Trustee receives full payment of the Obligation Secured in the amount secured, at the request of Trustor, Trustee shall acknowledge satisfaction of the Deed of Trust by recording and delivering to Trustor a Satisfaction or Release of Realty Deed of Trust. Should Trustee fail to make such acknowledgment within ten (10) days of the request by Trustor, Trustee shall be liable to Trustor, its heirs or assigns, in the amount of \$100 plus actual damages occasioned by the neglect or failure. **ARS § 33-712.**

23. Notices. Copies of all notices and communication concerning this Deed of Trust shall be mailed to the parties at the addresses specified in this Deed of Trust, and any change of address shall be communicated to the other party in writing. Any documents which may adversely affect the rights of any party to this Deed of Trust shall be dispatched by Certified Mail, Return Receipt Requested.

24. Headings. The marginal or topical headings of the provisions herein are for convenience only and do not define, limit or construe the contents of these provisions.

25. Interpretation. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural and vice versa.

26. Applicable Law. This Deed of Trust shall be subject to and governed by the laws of the State of Arizona, regardless of the fact that one or more parties now is or may become a resident of a different state.

Unofficial Document

27. Waiver. Any waiver by either party of a breach of any provision of this Deed of Trust shall not operate or be constructed as a waiver of any subsequent breach hereof.

28. Succession of Benefits. The provisions of this Deed of Trust shall insure to the benefit of and be binding upon the parties hereto, their heirs, personal representatives, conservators and permitted assigns.

29. Successor Trustee. Beneficiary may appoint a Successor Trustee in the manner prescribed by law. A Successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all predecessor's title, estate, rights, powers and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.

30. Entire Agreement. The terms of this Deed of Trust constitute the entire agreement between the parties, and the parties represent that there are no collateral or side agreements no otherwise provided for within the terms of this Deed of Trust.

31. Time of Essence. Time is of the essence in this Deed of Trust and every term, condition, covenant and provision hereof.

32. Modification. No modification of this Deed of Trust shall be binding unless evidenced by an agreement in writing and signed by both parties.

33. Partial Invalidity. If any provision of this Deed of Trust is held to be invalid or unenforceable, all the remaining provisions shall nevertheless continue in full force and effect.

Trustor

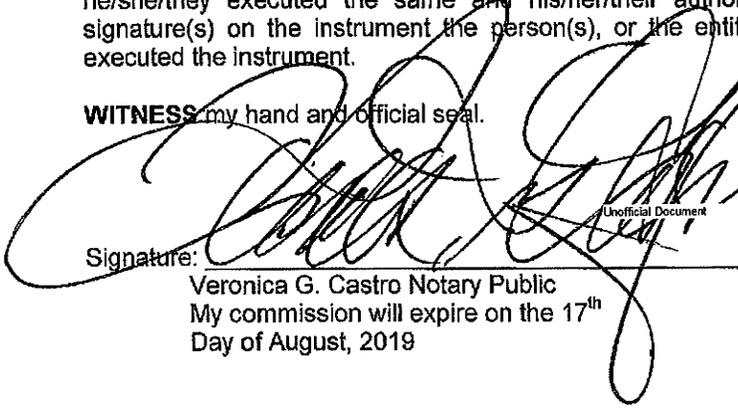


Yomtov Scott Menaged

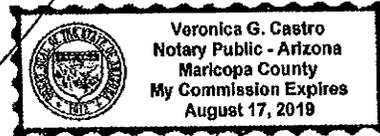
State of Arizona)
) ss.
County of Maricopa)

On **September 10th 2015** before me, Veronica G. Castro, a Notary Public, personally appeared **Yomtov Scott Menaged** personally known to me (or provided to me on the basis of satisfactory evidence) to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledge to me that he/she/they executed the same and his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Unofficial Document



Signature: _____
Veronica G. Castro Notary Public
My commission will expire on the 17th
Day of August, 2019

Escrow No. 04055118-737-DCP

EXHIBIT "A"
Legal Description

Parcel No. 1:

Being a portion of the Southeast quarter of Section 9, Township 4 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southeast corner of said Section 9;

Thence along the South line of the Southeast quarter of said Section 9, North 89 degrees 56 minutes 14 seconds West, 1,768.15 feet;

Thence leaving said South line, North 00 degrees 03 minutes 46 seconds East, 55.00 feet to a point of Intersection with a line that is parallel with and distant 55.00 feet Northerly, measured at right angles, from said South line, said point of Intersection being the True Point of Beginning;

Thence along said parallel line, North 89 degrees 56 minutes 14 seconds West, 209.51 feet to the Westerly line of land described in Document No. 97-0634255, records of Maricopa County;

Thence along said Westerly line, North 00 degrees 44 minutes 54 seconds East, 304.82 feet;

Thence South 89 degrees 58 minutes 40 seconds East, 210.09 feet;

Thence South 00 degrees 51 minutes 26 seconds West, 304.98 feet to the True Point of Beginning.

AND the North 15 feet of the South 55 feet of the West 209.51 feet of the East half of the Southwest quarter of the Southeast quarter of Section 9, Township 4 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Unofficial Document

Parcel No. 2:

An easement for private ingress and egress over the following described property:

BEING a portion of the Southeast quarter of Section 9, Township 4 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southeast corner of said Section 9;

Thence along the South line of the Southeast quarter of said Section 9, North 89 degrees 56 minutes 14 seconds West, 1,318.88 feet to the Southeast corner of the Southwest quarter of the Southeast quarter of said Section;

Thence along the East line of the Southwest quarter of the Southeast quarter of said Section, North 00 degrees 51 minutes 55 seconds East, 322.83 feet;

Thence leaving said East line, North 89 degrees 08 minutes 05 seconds West, 30.00 feet Westerly from said East line, said point of intersection being the True Point of Beginning;

Thence North 73 degrees 34 minutes 06 seconds West, 48.21 feet;

Thence North 81 degrees 37 minutes 20 seconds West, 75.02 feet;

Thence North 89 degrees 58 minutes 40 seconds West, 229.79 feet to the beginning of a tangent curve, concave to the Southeast, having a radius of 45.00 feet;

Thence Southwesterly along said curve though a central angle of 50 degrees 17 minutes 28 seconds, an arc distance of 39.50 feet to the beginning of a reverse curve, concave to the East, having a radius of 45.00 feet, a radial to said point bears North 50 degrees 16 minutes 07 seconds West;

Legal Description
DOR FORM 82162 (10/2013)

Escrow No. 04056118-737-DCP

Thence Westerly, Northerly and Easterly along said curve through a central angle 280 degrees 34 minutes 55 seconds, an arc distance of 220.37 feet to the beginning of a reverse curve, concave to the Northeast, having a radius of 45.00 feet, a radial to said point bears North 50 degrees 18 minutes 48 seconds East;

Thence Southeasterly along said curve through a central angle 50 degrees 17 minutes 28 seconds, an arc distance of 39.50 feet;

Thence South 89 degrees 58 minutes 40 seconds East, 229.49 feet;

Thence North 81 degrees 44 minutes 51 seconds East, 73.77 feet;

Thence North 74 degrees 44 minutes 04 seconds East, 50.64 feet to said parallel line;

Thence along said parallel line, South 00 degrees 51 minutes 55 seconds West, 73.50 feet to the Point of Beginning.

Unofficial Document

Legal Description
DOR FORM 82162 (10/2013)

EXHIBIT B

ARIZONA MOTOR VEHICLE RECORD AS OF 04/14/2016

D250114

-000 TAB CAT VIN [REDACTED] 6520 EXP NOV 15 2016
 BMW 2013 4DSW VMO X5 FLP 055200 GVW 000000 MFR DEC 2012 FUEL G 0D 0023301
 OWNER YOMTOV, SCOTT, MENAGED OR ACTUAL MILEAGE

M/ADR [REDACTED] PRD
 SCOTTSDALE AZ 852592918 CO 07 FNED
 S/ADR 00 V/COLOR1 WHI
 V/COLOR2

COMMENTS

TITLE NO ELTB016104121 ST AZ DATE 04132016 FILM DMS
 LIEN1 NONE DT L/S
 ADR
 LIEN2 NONE DT L/S
 ADR
 LIEN3 NONE DT L/S
 ADR

SC:

27-OWN, VEH, TTL RECORD

ARIZONA MOTOR VEHICLE RECORD AS OF 04/14/2016

D250114

BTD3041 -001 TAB BTD3041 CAT A VIN [REDACTED] 1198 EXP FEB 15 2017
 MERZ 2016 4DSD VMO CLS63 FLP 107800 GVW 000000 MFR MAR 2016 FUEL G OD 0000027
 OWNER YOMTOV,S,MENAGED LESSEE ACTUAL MILEAGE
 DAIMLER TRUST LESSOR

M/ADR [REDACTED] PRD
 SCOTTSDALE AZ 852592918 CO 07 FNE
 S/ADR V/COLOR1 BLK
 00 V/COLOR2

COMMENTS

TITLE NO 628H016056095 ST AZ DATE 02282016 FILM DMS
 LIEN1 DAIMLER TITLE CO DT 02082016 L/S
 ADR PO BOX 997545 SACRAMENTO CA 958997545
 LIEN2 NONE DT L/S
 ADR
 LIEN3 NONE DT L/S
 ADR
 SC:
 25-TTL® OWN,VEH RECORD

ARIZONA MOTOR VEHICLE RECORD AS OF 04/14/2016

D250114

BFF5211 -001 TAB BFF5211 CAT A VIN [REDACTED] 3122 EXP JUN 30 2016
 BMW 2014 4DSW VMO X550 FLP 068200 GWV 000000 MFR JUL 2014 FUEL G 0D 0000033
 OWNER SCOTT, MENAGED LESSEE ACTUAL MILEAGE
 FINANCIAL SERVICES VEHICLE TRUST LESSOR
 M/ADR [REDACTED] PRD
 SCOTTSDALE AZ 852592918 CO 07 FNED
 S/ADR 00 V/COLOR1 WHI
 V/COLOR2

COMMENTS

TITLE NO 616H014204156 ST AZ DATE 07232014 FILM DMS
 LIEN1 NONE DT L/S
 ADR
 LIEN2 NONE DT L/S
 ADR
 LIEN3 NONE DT L/S
 ADR

SC:
 25-TTL® OWN,VEH RECORD

ARIZONA MOTOR VEHICLE RECORD AS OF 04/14/2016

D250114

BSC7834 -001 TAB BSC7834 CAT A VIN [REDACTED] 5331 EXP NOV 30 2016
CADI 2016 4DSW VMO ESCAL FLP 084145 GVW 000000 MFR DEC 2015 FUEL G OD 0000025
OWNER YOMTOV,S,MENAGED ACTUAL MILEAGE

M/ADR [REDACTED] AZ 852592918 CO 07 PRD
SCOTTSDALE FNEB
S/ADR 00 V/COLOR1 WHI
V/COLOR2

COMMENTS

TITLE NO 633H016006007 ST AZ DATE FILM DMS
LIEN1 US BANK N A DT 11212015 L/S
ADR PO BOX 3427 OSHKOSH WI 54903
LIEN2 NONE DT L/S
ADR
LIEN3 NONE DT L/S
ADR
SC:
02-TITLE IN PROCESS 26-OWN,REG,VEH RECORD

EXHIBIT C

1 ILENE J. LASHINSKY (AZ #3073)
2 United States Trustee
3 District of Arizona

4 JENNIFER A. GIAIMO (NY #2520005)
5 Trial Attorney
6 230 North First Ave., Suite 204
7 Phoenix, Arizona 85003-1706
8 Telephone: (602) 682-2600
9 Facsimile: (602) 514-7270
10 Email: Jennifer.A.Giaimo@usdoj.gov

11 IN THE UNITED STATES BANKRUPTCY COURT
12 FOR THE DISTRICT OF ARIZONA

13	In re:) Chapter 7
14)
15	YOMTOV SCOTT MENAGED,) Case No. 2:16-bk-04268-PS
16)
17	Debtor.) Adversary Case No. 2-16-ap-00589-PS
18)
19	<hr/>)
20	ILENE J. LASHINSKY, UNITED STATES TRUSTEE,) UNITED STATES TRUSTEE'S
21) COMPLAINT TO DENY DISCHARGE
22	Plaintiff,) UNDER 11 U.S.C. § 727
23	v.)
24)
25	YOMTOV SCOTT MENAGED,)
26)
27	Defendant.)
28)

21 Plaintiff, the United States Trustee (“UST” or “Plaintiff”), by and through the
22 undersigned counsel, files this Complaint to Deny Discharge Under 11 U.S.C. § 727
23 and alleges as follows:
24

25 1. This is a complaint to deny the Debtor, Yomtov Scott Menaged
26 (“Defendant”), a discharge in bankruptcy pursuant to 11 U.S.C. § 727(a)(2), (a)(3),
27 and (a)(4).
28

JURISDICTION AND VENUE

1
2 2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§
3 151, 157, and 1334.

4 3. This is a core proceeding under 28 U.S.C. § 157(b)(2)(J).

5
6 4. Venue is proper in the District of Arizona under 28 U.S.C. § 1409.

7 **PARTIES**

8 5. Plaintiff, Ilene J. Lashinsky, is the United States Trustee for the
9 District of Arizona.

10 6. Plaintiff's responsibilities include supervising the administration of
11 cases under Chapter 7 of the United States Bankruptcy Code, 11 U.S.C., ("the
12 Code"). Plaintiff has standing to pursue this adversary proceeding pursuant to 11
13 U.S.C. § 307, which provides that the United States Trustee has standing to be
14 heard on any issue in any case or proceeding under the Code.
15
16

17 7. Defendant resides in Maricopa County, Arizona.

18 **PROCEDURAL BACKGROUND**

19 8. Defendant filed his voluntary Chapter 7 bankruptcy petition in this
20 case on April 20, 2016 (the "Petition Date").
21

22 9. The case was dismissed and then reinstated by order dated June 2,
23 2016. *See* Administrative Docket #37.

24 10. The first date set for the meeting of creditors after reinstatement of the
25 case was August 1, 2016. *See* Administrative Docket #38.
26
27
28

1 11. By orders dated September 21, 2016 and November 14, 2016, the Court
2 extended the deadline for the UST to file a complaint objecting to the Debtor's
3 discharge pursuant to 11 U.S.C. § 727 until December 15, 2016. *See* Administrative
4 Docket #138 and #203.

5
6 12. This complaint is being timely filed before the expiration of the Court-
7 ordered deadline for the UST to file a complaint under 11 U.S.C. § 727.

8 13. Defendant filed his original Petition, Schedules, Statement of
9 Financial Affairs (hereinafter "SOFA"), and Statement of Current Monthly Income
10 (hereinafter "CMI") on April 20, 2016. *See* Administrative Docket #1, #9 and #10.
11 Defendant signed the original Petition, Schedules, SOFA, and CMI under oath and
12 subject to penalty of perjury.
13

14
15 14. After the case was reinstated, Defendant filed amended pleadings in
16 the administrative case as follows:

- 17 a. Amended Petition filed at Administrative Docket #88 on August 25,
18 2016;
19
20 b. Amended Schedules filed at Administrative Docket #89 on August 25,
21 2016;
22
23 c. Amended SOFA filed at Administrative Docket #90 on August 25,
24 2016;
25
26 d. Amended CMI filed at Administrative Docket #92 on August 25, 2016;
27
28 e. Amended Schedules filed at Administrative Docket #94 on August 25,
2016;

1 f. Amended Schedules filed at Administrative Docket #98 on August 26,
2 2016;

3 g. Amended Schedules filed at Administrative Docket #102 on August 29,
4 2016; and

5 h. Amended Schedules filed at Docket #135 on September 20, 2016.

6 All of the foregoing pleadings, identified in subparagraphs (a) through (h)
7 were filed under oath and subject to penalty of perjury.
8

9 15. Defendant appeared and testified under oath at a meeting of creditors
10 held pursuant to 11 U.S.C. § 341 on August 26, 2016 (hereinafter the “341
11 Meeting”).
12

13 16. Defendant appeared and testified under oath at a deposition conducted
14 by counsel for the Receiver of Densco Investment Corporation in this case on
15 October 20, 2016 (hereinafter the “October 2016 Deposition”)
16

17 17. Defendant appeared and testified under oath at a deposition conducted
18 by counsel for the UST in this case on November 3, 2016 (hereinafter the
19 “November 2016 Deposition”).
20

21 **FACTUAL BACKGROUND**

22 18. From at least 2008 through the Petition Date, the Defendant has
23 earned his income through a number of solely-owned companies that he created and
24 managed to engage in a variety of business ventures.
25
26
27
28

1 19. Among the businesses created and managed by the Defendant before
2 the Petition Date were Easy Investments, LLC (hereinafter “Easy Investments”)
3 and Arizona Home Foreclosures, LLC (hereinafter “AHF”).

4 20. Easy Investments was formed by the Defendant in Arizona in
5 September 2007. Defendant became the sole member of Easy Investments in
6 February 2008 and remained the sole owner of that entity from February 2008
7 through the Petition Date.

8 21. AHF was formed by the Defendant in December 2007. Defendant was
9 and remained the sole owner of AHF from its inception through the Petition Date.

10 22. Both Easy Investments and AHF were created to purchase foreclosed
11 properties for resale. On occasion, both Easy Investments and AHF would also
12 collect rental income from properties that had been temporarily rented out to
13 tenants instead of being resold.

14 23. Other entities under the exclusive ownership and control of Defendant
15 within the one year period before the Petition Date were Furniture King, LLC,
16 Furniture & Electronic King, LLC, and Scott’s Fine Furniture, LLC (hereinafter
17 “the Furniture Entities”), and Auto King, LLC (“AK”).
18
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USE OF CORPORATE ENTITIES AS ALTER EGOS/NOMINEES

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2 24. During the two-year period preceding the Petition Date, Defendant
3 was the sole and exclusive decision maker with respect to the financial management
4 of Easy Investments, AHF, the Furniture Entities, and AK (collectively “the
5 Entities”).
6

7 25. During the two-year period preceding the Petition Date, Defendant
8 was the person solely responsible for authorizing the payment of bills and allocation
9 of funds on behalf of the Entities.
10

11 26. During the two-year period preceding the Petition Date, Defendant
12 had complete and unfettered access to and signatory authority over bank accounts
13 held in the name of the Entities.
14

15 27. During the two-year period preceding the Petition Date, Defendant
16 was the beneficial owner and equitable owner of numerous bank accounts held in
17 the name of the Entities (hereinafter “Corporate Bank Accounts”).
18

19 28. During the two year period preceding the Petition Date, the Defendant
20 disregarded corporate formalities in handling the Entities’ financial affairs and in
21 separating his personal finances from his corporate Entities’ finances. During that
22 time, the Defendant commingled funds between himself and his Entities and freely
23 transferred money between the various Entities and himself without regard to
24 corporate formalities.
25

26 29. During the two-year period preceding the Petition Date, the Defendant
27 failed to maintain regular corporate books and records on behalf of the Entities,
28

1 including financial statements such as balance sheets, income statements or profit
2 and loss statements, and equity statements.

3 30. During at least the one-year period preceding the Petition Date, Easy
4 Investments and AHF were grossly undercapitalized. The Defendant was aware of
5 such undercapitalization but continued to commingle funds between himself and
6 the Entities and to disregard corporate formalities.
7

8 31. Based on Defendant's conduct, the Entities were and are Defendant's
9 alter egos.
10

11 32. Based on Defendant's conduct, the Corporate Bank Accounts were held
12 in the name of the Entities as mere nominees for the Defendant and constituted
13 property of the Defendant before the Petition Date and property of the Defendant's
14 estate after the Petition Date.
15

16 33. Within one year before the Petition Date, the Defendant, acting with
17 intent to hinder, delay, and defraud his creditors, made fraudulent transfers of over
18 a million dollars from the Corporate Bank Accounts and intentionally depleted his
19 personal account and the Corporate Bank Accounts of funds by, among other things,
20 transferring large sums of money to family members and by using large sums of
21 money for lavish personal expenditures for, among things, gambling, luxury
22 vehicles, payment of private school expenses that included catered lunches for his
23 thirteen-year old son, and the purchase of a 5,700 square foot residence with its own
24 lazy river.
25
26
27
28

THE DENSCO FRAUD

1
2 34. In about 2003, the Defendant began engaging in the real estate
3 investment business by seeking to purchase distressed residential real properties
4 that were being auctioned for sale pursuant to notices of trustee sales filed with the
5 Maricopa County, Arizona Recorder’s Office by foreclosure trustees. Typically,
6 Defendant would locate properties that were being noticed for trustee sale, bid on
7 the properties at the trustee’s auction, and, if he succeeded in becoming the winning
8 bidder, obtain hard money loans to purchase the property.
9
10

11 35. A hard money loan is a type of asset-based loan financing through
12 which a borrower receives funds secured by real property. Hard money loans are
13 typically issued by private investors or companies on a short-term basis at interest
14 rates higher than the prevailing interest rates on ordinary mortgages.
15

16 36. Upon obtaining the hard money loan, the Defendant would purchase
17 the distressed property and then either immediately resell it at a profit or
18 rehabilitate the property for resale. On some occasions, if the property was not
19 resold, the Defendant would rent the property out and collect rental income until
20 such time as he decided to resell the property at a profit.
21

22 37. Defendant’s experience in bidding on foreclosed properties led to the
23 Defendant becoming a cast member on a reality television program called “Property
24 Wars” in about 2011 or 2012.
25

26 38. From about 2007 or 2008, Defendant engaged in the business of
27 purchasing distressed properties through his alter ego entities Easy Investments
28

1 and AHF (hereinafter jointly the “Alter Ego Real Estate Entities”). Easy
2 Investments and AHF were treated by the Defendant as being one in the same
3 entity and funds were freely transferred between accounts held in the names of
4 each of those entities.

5
6 39. In about 2007 or 2008, Defendant began conducting business with a
7 company called Densco Investment Corporation (“Densco”) of which the owner and
8 President was Denny J. Chittick (“DJC”). Densco was a hard money lender from
9 whom Defendant sought hard money loans to purchase distressed properties in the
10 name of his Alter Ego Real Estate Entities.

11
12 40. In about 2014, Defendant and his Alter Ego Real Estate Entities had
13 defaulted on the repayment of over \$35 million of hard money loans from Densco.
14 The Defendant was personally liable on those loans by virtue of a guaranty he
15 provided Densco on behalf of the Alter Ego Real Estate Entities.

16
17 41. In an effort to prevent Densco from pursuing its legal remedies for the
18 default, Defendant requested that Densco execute a forbearance agreement. As a
19 result, in April 2014, Defendant on behalf of himself and his Alter Ego Real Estate
20 Entities entered into an agreement titled “Forbearance Agreement.” Through that
21 agreement, Defendant acknowledged that the outstanding balance of loans payable
22 by Defendant and his Alter Ego Real Estate Entities to Densco was over \$35
23 million.

24
25
26 42. After the execution of the Forbearance Agreement, the Defendant
27 continued to receive hard money loans from Densco for the purchase of distressed
28

1 properties in the name of his Alter Ego Real Estate Entities. Pursuant to the
2 business arrangement between Defendant and Densco after execution of the
3 Forbearance Agreement, Defendant would obtain hard money loans for purchasing
4 distressed properties at trustee sales by using the following protocol:

- 5 a. Defendant would bid on a property at foreclosure auction;
- 6 b. Upon becoming the successful bidder, Defendant would notify DJC of
7 the purchase price and the necessary hard money loan amount for
8 completing the purchase;
- 9 c. DJC would then wire funds from Densco to an account held in the
10 name of one of Defendant's Alter Ego Real Estate Entities; and
- 11 d. Defendant would utilize the hard money loan funds received from
12 Densco to obtain a cashier's check payable to the trustee noticing the
13 sale and then purchase the property.

14
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16
17 43. On various occasions, Defendant would take photographs of the
18 cashier's checks payable to trustees from whom the Defendant was purchasing
19 distressed properties pursuant to hard money loans received from Densco. The
20 Defendant sent photographs of such cashier's checks to DJC by email in order to
21 show DJC that the hard money loan funds were in fact used to purchase the
22 distressed properties identified in the corresponding hard money loan request sent
23 by Defendant to DJC.

24
25
26 44. On various occasions, the Defendant also transmitted to DJC
27 photographed copies of receipts purportedly evidencing the trustee's actual receipt
28

1 of the funds to purchase the property identified in the corresponding hard money
2 loan request sent by Defendant to DJC (hereinafter referred to as “the Trustee
3 Receipts”).

4 45. During the one year period before the Petition Date, the Defendant,
5 with intent to hinder, delay, and defraud his creditors, including specifically
6 Densco, falsely represented to DJC that the Defendant had completed purchases of
7 specific distressed properties using hard money loans received from Densco for the
8 purchase of such specific properties. During that same period, Defendant
9 misrepresented to DJC that certain funds were used to purchase distressed
10 properties, when such funds had not in fact been used for that purpose, by
11 photographing and sending, via email or other electronic transmission, copies of
12 cashier’s checks and forged Trustee Receipts indicating that the funds had been
13 paid to the foreclosure trustee.
14
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16

17 46. During the one year period before the Petition Date, on numerous
18 occasions, the Defendant obtained cashier’s checks payable to the specific trustee
19 from whom specific property was to be purchased, photographed that cashier’s
20 check and sent it to DJC to evidence that Defendant had actually completed the
21 purchase of the distressed property as represented in the request for the hard
22 money loans. Upon information and belief, after sending the photograph of the
23 cashier’s checks to DJC, on occasion, the Defendant would cancel the cashier’s check
24 and redeposit the funds into an account over which Defendant maintained exclusive
25 control. In this manner, the Defendant had, within the one year period before the
26
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1 Petition Date, fraudulently misrepresented to DJC and Densco that hard money
2 loans were being used to purchase distressed properties when, in fact, they had not
3 been so used.

4 47. Upon information and belief, on numerous occasions during the one
5 year period before the Petition Date, the Defendant misrepresented that he had
6 used Densco's hard money loan funds for their intended purpose by sending DJC
7 copies of fraudulent, forged Trustee Receipts that had not in fact been received from
8 trustees for the purchase of distressed properties identified in Defendant's hard
9 money loan requests.
10
11

12 48. During the one year period before the Petition Date, on numerous
13 occasions, Defendant obtained hard money loans from Densco by misrepresenting to
14 DJC that certain properties were being auctioned for sale by a foreclosure trustee
15 when trustee sales on such properties had in fact been cancelled before Defendant
16 requested such funds from Densco.
17

18 49. During the one year period before the Petition Date, the Defendant
19 misappropriated hard money loan funds received from Densco by using such funds
20 for his own personal use. Such funds were used for, among other things, the
21 repayment of purported loans from family members, the payment of certain family
22 members' living expenses, and the payment of personal expenditures including
23 large sums spent gambling. Some of the hard money loan funds received by
24 Defendant from Densco were also used to repay Densco interest payments that were
25 due with respect to prior hard money loans from Densco.
26
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1 50. The hard money loan funds received from Densco were commingled
2 with funds from Defendant's personal accounts and various Entities' accounts.
3 Within the year before the Petition Date, the Defendant misappropriated funds that
4 he received on behalf of the Alter Ego Real Estate Entities from Densco by using
5 such funds to repay family loans, transferring funds to Defendants' family members
6 and other entities including the Furniture Entities, and using such funds for
7 personal expenditures including gambling in Las Vegas. The hard money loan
8 funds that Defendant received in the name of the Alter Ego Real Estate Entities
9 constituted property of the Defendant upon their receipt.
10

11 51. Within the one year period before the Petition Date, the Defendant
12 transferred and concealed Defendant's funds and property with intent to hinder,
13 delay, and defraud creditors, including specifically Densco.
14

15 52. Defendant was aware from at least April 2014 when the Forbearance
16 Agreement was executed through the Petition Date that Densco hard money loans
17 were funded at least in part by money Densco received from individual investors.
18

19 53. Defendant was aware from at least February 2015 that DJC was
20 having a hard time paying the Densco investors.
21

22 54. Defendant failed to maintain appropriate documentation from which to
23 determine the outstanding balance of loans that he and his Alter Ego Real Estate
24 Entities received from Densco at any given point in time. At his November 2016
25 Deposition, Defendant claimed to have no idea of the outstanding amount of the
26 loans due to Densco at the time of the Petition Date and was unable to answer
27
28

1 whether he served as a personal guarantor of the Densco loans to AHF. Defendant
2 has listed Densco as a personal creditor in these bankruptcy proceedings.

3 55. During the one year period before the Petition Date, when the
4 Defendant knew that he owed millions of dollars to Densco and to other creditors,
5 the Defendant transferred at least \$747,000 of funds from AHF's accounts, into
6 which Densco hard money loans had been deposited, to Defendant's father in
7 repayment of alleged loans by Defendant's father to AHF.
8

9 56. In September 2015, when the Defendant knew that he owed millions of
10 dollars to Densco and to other creditors, Defendant purchased real property at
11 Electra Lane in Peoria, Arizona for approximately \$1.9 million.
12

13 57. After the Petition Date, the Defendant spoke to DJC about the
14 repayment of the Densco hard money loans. During a conversation between
15 Defendant and DJC in July 2016, Defendant made false statements to DJC in an
16 effort to hinder, delay, and defraud Densco. During that conversation, Defendant
17 intentionally misrepresented to DJC that Defendant had numerous valuable assets
18 from which Defendant would be able to repay the Defendant's and Entities' debt to
19 Densco after the conclusion of Defendant's personal bankruptcy case.
20
21

22 58. Defendant intentionally misrepresented to DJC that he had access to
23 real properties in New York and over \$30 million of funds that were being held in
24 an account or in trust with the company Auction.com.
25
26
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28

1 59. Defendant intentionally made false statements to DJC to falsely
2 convince DJC that the outstanding loan from Densco to Defendant and his Entities
3 would be repaid.

4 60. Defendant told DJC that if DJC waited until Defendant's personal
5 bankruptcy proceedings were completed, then Densco would be repaid in full. At
6 the time that Defendant made these false statements to DJC, the Defendant was
7 fully aware that if he was able to obtain a discharge of his debts in this bankruptcy,
8 then he would have no legal obligation to repay Densco after the bankruptcy was
9 concluded.
10

11 61. Within the one year period before the Petition Date, the Defendant
12 falsely claimed to DJC that the reason that he and his Entities had been unable to
13 repay the loans from Densco was because Defendant had a cousin who embezzled
14 millions of dollars from Defendant's Entities.
15
16

17 **TRANSFER OF BENTLEY AND MUSTANG**

18 62. In May 2013, the Defendant executed a motor vehicle lease as lessee of
19 a 2013 Bentley Continental GT Coupe from the company Putnam Leasing Co. I LLC
20 ("Putnam"). The lease obligated the Defendant to make 58 payments of \$2,959.63
21 per month. The lease term was due to expire in about March 2018. The lease
22 provided the Defendant with the option to purchase the Bentley at the end of the
23 lease term through the payment of \$85,000.
24
25

26 63. In July 2016, the total payoff due on the Bentley lease was
27 approximately \$144,000 which included the \$85,000 option to purchase amount.
28

1 64. Less than six months before the Petition Date, in November 2015, the
2 Defendant transferred the Bentley to his father Joseph Menaged in exchange for a
3 purported \$150,000 credit on the outstanding balance of a \$5.5 million loan
4 allegedly owed by Defendant's entity AHF to Defendant's father pursuant to a
5 promissory note dated December 1, 2011.
6

7 65. In exchange for receiving a purported \$150,000 credit on the alleged
8 loan outstanding between AHF and Defendant's father, the Defendant transferred
9 possession and use of the Bentley to his father. In the meantime, the Defendant
10 continued to pay the monthly lease payments and obligated himself to continue
11 paying the lease payments and the \$85,000 balloon payment at the end of the lease.
12

13 66. The Defendant's transfer of the Bentley to his father occurred less than
14 six months before the Petition Date at a time when the Defendant was not able to
15 pay all of his debts as they became due and at a time when the Defendant was being
16 pursued by creditors.
17

18 67. After the Petition Date, the Defendant continued making payments on
19 the Bentley lease and was continuing to make such payments at the time of his
20 November 2016 Deposition. The Defendant made a knowing and intentional false
21 oath on his Schedule J in this case by failing to disclose the monthly lease payments
22 being paid for the Bentley on his father's behalf at the time of the Petition Date.
23

24 68. The Defendant, with intent to hinder, delay, or defraud creditors,
25 fraudulently transferred his interest in the Bentley lease to his father within one
26 year before the Petition Date.
27
28

1 69. Two months before the Petition Date, in about February 2016, the
2 Defendant sold a 1965 Ford Mustang that was titled in the Defendant's personal
3 name. That sale generated net proceeds of about \$35,000.

4 70. The Defendant, with intent to hinder, delay, or defraud creditors,
5 deposited the net sale proceeds into a corporate account held in the name of one of
6 the Furniture Entities rather than making those cash funds available to personal
7 creditors through the bankruptcy.
8

9 71. Despite having received over \$35,000 of net proceeds from the sale of
10 the 1965 Mustang, the Defendant claimed to have just \$1,340 in cash on hand and
11 just about \$700 of funds in bank accounts as of the Petition Date.
12

13 72. The Defendant, with intent to hinder, delay, or defraud creditors,
14 fraudulently concealed the proceeds received from the sale of the 1965 Mustang and
15 fraudulently transferred those proceeds to a corporate entity account within one
16 year before the Petition Date.
17

18 **FALSE OATHS AND RECKLESS DISREGARD IN BANKRUPTCY**

19 73. In his November 2016 Deposition, the Defendant testified that before
20 filling out the information in his bankruptcy Schedules and SOFA, he did not
21 carefully review his records to ensure that he properly listed all of the debts that he
22 owed to creditors as of the Petition Date. During that deposition, the Defendant
23 also testified that he was not sure if certain items on his amended bankruptcy
24 pleadings were correct.
25
26
27
28

1 74. Defendant acted knowingly and fraudulently and with reckless
2 indifference to the accuracy of his Schedules, SOFA, and other bankruptcy
3 pleadings and of testimony provided in this case by making material false
4 statements including the following:

- 5
- 6 a. Schedule A/B: failing to disclose his equitable interest in and
7 ownership of all of the Corporate Bank Accounts;
- 8 b. Schedule A/B: disclosing unknown values for all of the entities
9 identified in Item No. 19;
- 10 c. Schedule F: failing to disclose his father as an unsecured creditor with
11 respect to an alleged outstanding debt to his father in the amount of
12 about \$2.6 million;
- 13 d. Schedule F: disclosing an unknown amount of the outstanding balance
14 of unsecured debt owed to Densco;
- 15 e. Schedule G: failing to disclose a purported verbal agreement with a
16 “friend” to assume payments on the 2016 Ford Mustang listed in
17 Defendant’s Schedule A/B in exchange for Defendant’s agreement to
18 transfer title to this friend upon payment of the car loan in full;
- 19 f. Schedule I: failing to disclose the calculation of net income listed on
20 Item #8a;
- 21 g. Schedule J: failing to disclose expenses being paid by Defendant under
22 the Bentley lease that was transferred to his father;
- 23
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- 1 h. SOFA #4: failing to disclose the true amount of income Defendant
2 received by virtue of draws or distributions from and payment of
3 personal expenditures by Defendant's various Entities;
4
5 i. SOFA #4: disclosing only unknown amounts for income from
6 employment or operating a business during 2014 and 2015;
7
8 j. SOFA #6: failing to disclose payments made with respect to the
9 Bentley Lease during the 90 days before the Petition Date;
10
11 k. SOFA #7, #8, #18: failing to disclose the transfer of net proceeds
12 received from sale of 1965 Ford Mustang to AHF months before the
13 Petition Date;
14
15 l. SOFA #18: failing to disclose the purported agreement to transfer title

16 75. Defendant's misrepresentations and omissions as listed above were
17 made under oath, knowingly and intentionally, and with respect to material
18 information.

19
20 76. The Defendant acted with reckless disregard for the truth of his
21 disclosures, the Schedules, SOFA, and testimony in this case.

22 **LACK OF DOCUMENTATION**

23
24 77. Defendant failed to maintain corporate books and records or any
25 corporate financial statements, other than bank statements, from which the
26 Defendant's financial condition or business transactions might be ascertained.
27
28

1 78. Defendant either failed to maintain or failed to produce, in response to
2 the UST's document request, documents from which the repayment of alleged loans
3 between the Defendant and/or AHF and Defendant's father could be ascertained.
4 Defendant testified that numerous payments "in benefit of the loans from his
5 father" were made to family members, but failed to maintain, or failed to produce,
6 documentation pursuant to which such repayments were recorded or otherwise
7 documented.
8

9 79. Defendant either failed to maintain or failed to produce, in response to
10 the UST's document request, sufficient documentation from which the amount of
11 Defendant's draws or distributions from his corporate Entities could be ascertained.
12

13 80. Defendant either failed to maintain or failed to produce, in response to
14 the UST's document request, sufficient documentation from which the amount and
15 frequency of payments of personal bills through the use of funds directly from
16 Corporate Bank Accounts could be ascertained.
17

18 81. Defendant either failed to maintain or failed to produce, in response to
19 the UST's document request, sufficient documentation from which to ascertain the
20 nature and purpose of transfers between Defendant's personal and corporate bank
21 accounts.
22

23 82. Defendant testified at his November 2016 Deposition that certain
24 transfers from corporate accounts to his personal account may have been loans that
25 were immediately repaid, but the Defendant either failed to maintain or failed to
26 produce, in response to the UST's document request, sufficient documentation to
27
28

1 ascertain when and in what amount such short-term loans were being made and
2 repaid.

3 83. Defendant either failed to maintain or failed to produce, in response to
4 the UST's document request, any general ledgers, check registers, Quickbooks, or
5 other accounting/bookkeeping documents from which to ascertain the Defendant's
6 financial condition and business transactions.
7

8 **ADVERSE INFERENCE FROM INVOCATION**
9 **OF FIFTH AMENDMENT PRIVILEGE**

10 84. At his November 2016 Deposition, the Defendant invoked his privilege
11 not to incriminate himself pursuant to the Fifth Amendment to the U.S.
12 Constitution when asked numerous questions pertaining to his financial condition
13 and business transactions.
14

15 85. For example, the Defendant invoked his Fifth Amendment privilege
16 when asked about false receipts that were given to DJC to show that Densco's funds
17 were used to purchase certain properties from a foreclosure trustee.
18

19 86. Likewise, Defendant refused on the basis of the Fifth Amendment
20 privilege to answer numerous questions regarding emails from Defendant and his
21 associates to DJC regarding the purchasing of distressed properties, obtaining hard
22 money loans from Densco, providing documentation to DJC regarding the properties
23 to be purchased by hard money loans from Densco, the pricing of such properties,
24 the payoff amounts listed in such emails, and the amount of funds that were wired
25 from Densco for such purchases.
26
27
28

1 87. At his November 2016 Deposition, Defendant also invoked the Fifth
2 Amendment privilege when he was asked when and why he ceased seeking hard
3 money loans from Densco before filing for bankruptcy, whether he knew he was
4 unable to pay the Densco loan balances in full at the time he filed bankruptcy, and
5 whether and when he stopped making payments to Densco in repayment of hard
6 money loans.
7

8 88. At his November 2016 Deposition, Defendant invoked the Fifth
9 Amendment privilege and refused to answer numerous other questions that pertain
10 directly to Defendant's financial condition, business transactions, knowledge, and
11 intent.
12

13 89. In light of the Defendant's invocation of the Fifth Amendment privilege
14 and refusal to testify regarding certain matters at his November 2016 Deposition,
15 the Court may draw a negative or adverse inference from the Defendant's refusal to
16 answer.
17

18 **COUNT ONE**

19 **TRANSFER AND CONCEALMENT WITH INTENT TO DEFRAUD**
20 **11 U.S.C. § 727(a)(2)**

21 90. Plaintiff repeats and re-alleges paragraphs 1 through 89 herein.
22

23 91. Within one year before the Petition Date herein, Defendant
24 transferred, removed and concealed Defendant's funds and property, including
25 funds and property held in the name of alter ego Entities, with the intent to hinder,
26 delay, or defraud Defendant's creditors.
27
28

1 92. Defendant's transfers and concealments have delayed and hindered
2 the ability of Defendant's creditors to recover the debts that are due and owing by
3 Defendant.

4 93. As a result of the conduct alleged herein, Defendant is not entitled to a
5 discharge in bankruptcy under 11 U.S.C. § 727(a)(2).
6

7 **COUNT TWO**

8 **CONCEALING OR FAILING TO KEEP RECORDS**

9 **11 U.S.C. § 727(a)(3)**

10 94. Plaintiff repeats and re-alleges paragraphs 1 through 93 herein.

11 95. Defendant has failed to keep or preserve documents from which the
12 Defendant's financial condition and business transactions might be ascertained.
13

14 96. As a result of Defendant's conduct as alleged herein, Defendant is not
15 entitled to a discharge in bankruptcy under 11 U.S.C. § 727(a)(3).
16

17 **COUNT THREE**

18 **FALSE OATH - 11 U.S.C. § 727(a)(4)**

19 97. Plaintiff repeats and re-alleges paragraphs 1 through 96 herein.

20 98. Defendant knowingly and intentionally made false statements
21 concerning material information under oath in this case.
22

23 99. Defendant acted with reckless disregard for the truth of his
24 disclosures, pleadings, and testimony in this case.

25 100. Defendant's false oath statements and omissions include, but are not
26 necessarily limited to, the statements referred to in paragraph 74 above.
27

28 101. Discovery in this case may reveal additional false oaths.

EXHIBIT D

1 GUTTILLA MURPHY ANDERSON

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3 Email: randerson@gamlaw.com

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Attorneys for Receiver

5 **IN THE UNITED STATES BANKRUPTCY COURT**

6 **FOR THE DISTRICT OF ARIZONA**

7 In Re:

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

8 YOMTOV SCOTT MENAGED,

Chapter 7

9 Debtor.

10 PETER S. DAVIS, AS RECEIVER OF
DENSICO INVESTMENT
CORPORATION,

Adv. Case No. 2:17-ap-00116-PS

11 Plaintiff,

**VERIFIED COMPLAINT TO
DETERMINE DISCHARGEABILITY OF
DEBT**

12 vs.

13 YOMTOV SCOTT MENAGED,
14 FRANCINE MENAGED, and their marital
community,

15 Defendants.

16 Peter S. Davis, the court-appointed receiver of DenSico Investment Corporation (“Plaintiff” or
17 “Receiver”), by and through undersigned counsel, and for his complaint to determine the
18 dischargeability of debts against Yomtov Scott Menaged (“Debtor” or “Defendant”), Francine
19 Menaged, and their martial community (hereinafter “Defendants”) complains and alleges as follows:

20 **I. INTRODUCTION**

21 1. The Receiver has uncovered that the Defendants have orchestrated a series of
22 complicated fraud schemes taking advantage of procedures and processes utilized in the purchase of
real property at Foreclosure Sales for the sole purpose of defrauding the Plaintiff of \$47,156,641.92.

23 2. Defendants utilized their ill-gotten gains from the various schemes to defraud the
24 Plaintiff to live a lavish lifestyle, support other unrelated businesses and the Defendants’ family

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1 members.

2 3. The direct cause of the Defendants’ fraudulent schemes has rendered the Plaintiff
3 insolvent and under the control of the Receiver.

4 4. Rather than address his insolvency as a result of the fraudulent schemes perpetrated
5 upon him by the Defendants, the sole owner and operator of the Plaintiff, Denny J. Chittick
6 committed suicide on or about July 28, 2016.

7 **II. JURISDICTION, VENUE AND PARTIES**

8 5. This action is a core proceeding. This Court has jurisdiction over this proceeding
9 pursuant to 11 U.S.C. § 523 and 28 U.S.C. § 157(b)(2)(I).

10 6. This adversary is based upon both “core” a “non-core” claims. Pursuant to Rule
11 7008, Fed.R.Bankr.P., the Plaintiff expressly consents to entry of a final order or judgement by the
12 Bankruptcy Court on all non-core claims brought in this Complaint along with any claims which are
13 core claims, but over which a Bankruptcy Court does not have authority to enter a final order or
14 judgement (commonly referred to as *Stern* claims based upon *Stern v. Marshall*, 564 U.S. 462, 131
15 S. Ct. 2594 (2011) and its progeny).

16 7. Pursuant to 28 U.S.C. § 1409, venue for this action properly lies in this Court in that
17 the instant proceeding is related to the case under Title 11 of the United States Code, which is before
18 this Court.

19 8. Plaintiff is the Receiver for the DenSco Investment Corporation (“DenSco”)
20 appointed pursuant to the *Order Appointing Receiver*, dated August 18, 2016 in *Arizona*
21 *Corporation Commission v. DenSco Investment Corporation* CV2016-014142. See *Order*
22 *Appointing Receiver*, attached as Exhibit A.

23 9. Pursuant to the Order Appointing Receiver, the Receiver is authorized to institute
24 actions or proceedings in state or federal courts for the collection, preservation and maintenance of
the Receivership assets.

10. The Defendant, Yomtov Scott Menaged, is the Debtor herein.

11. At all times material to the factual allegations in this Complaint, the Defendant was

1 married to Francine Menaged and all of the acts alleged by the Defendant Yomtov Scott Menaged
2 were for the benefit of the marital community of the Defendant and Francine Menaged.

3 12. The Defendants marital community benefited from the Defendant’s acts.

4 13. Defendant was or is the sole owner, member and manager of a number of limited
5 liability companies and other entities, including, but not limited to, Easy Investments (“Easy”)¹ and
6 Arizona Home Foreclosures, LLC (“AHF”)².

7 14. The conduct alleged herein was perpetrated by the Defendant and in many cases, his
8 use of Easy and AHF.

9 15. Defendants or their agents, entities, and companies caused all actions herein.

10 16. The Defendants are residents of the State of Arizona.

11 **III. BACKGROUND AND FACTUAL ALLEGATIONS**

12 17. DenSco is an Arizona Corporation formed by Denny J. Chittick in April of 2001.

13 18. Denny J. Chittick (now deceased) was the sole owner, shareholder and operator of
14 DenSco during all times material to the transactions referenced herein.

15 19. DenSco was a “hard money lender” and its primary business was in funding “hard
16 money” loans for the purchase of real estate secured by deeds of trust.

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

20 21. Upon information and belief between 2007 and 2008, DenSco began a lending
21 relationship with the Defendant and loaning the Defendant monies for the purchase of residential
22 real estate through foreclosure auctions.

23 22. At all material times herein Defendant utilized two of his limited liability companies,
24 Easy and AHF to solicit loans from DenSco.

25 23. Upon information and belief, Defendant learned through his ongoing relationship

¹ See Debtor’s Third Amended Schedule A/B, docket number 102.

² See Debtor’s Third Amended Schedule A/B, docket number 102.

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

8 **A. THE FIRST FRAUD**

9 24. Starting sometime in 2011, Defendant began intentionally soliciting DenSco and
10 other unrelated hard money lenders for two hard money loans on the same subject real property that
11 the Defendant had purchased at a foreclosure auction by being the highest bidder.

12 25. When seeking loans from DenSco and the other unrelated hard money lenders, both
13 DenSco and the other unrelated hard money lenders were led to believe by Defendant that they
14 would be the sole lender on the property and their loan would be secured against the property with a
15 first position Deed of Trust.

16 26. Defendant learned that the delay in the recordation of the Foreclosure Trustees' Deed
17 to the Buyer and the lending practices of DenSco allowed Defendant the opportunity to defraud
18 DenSco and the other hard money lenders by seeking two loans on property he purchased.

19 27. Defendant learned that while other hard money lenders would deliver funds it
20 intended to lend to the Defendant directly to the Foreclosure Trustee, DenSco's lending practices
21 were to deliver loan proceeds directly to the Defendant, who was then obligated to deliver the loan
22 proceeds to the Foreclosure Trustee to finalize the Defendant's purchase.

23 28. Defendant executed multiple promissory notes, deeds of trust and other documents
24 from DenSco and the other hard money lenders with the knowledge that he was soliciting two
25 separate loans from two separate lenders who unbeknownst to each other believed that they were the
26 only lender and would be the only secured creditor in first position.

27 29. Defendant orchestrated this fraud of obtaining two hard money loans on hundreds of

1 residential properties with each of the respective lenders being led to believe that they were first
2 position lien holders (hereinafter this fraudulent scheme of obtaining two hard money loans on
3 hundreds of properties purchased by the Defendant will be referred to as the “First Fraud”). Some
4 examples of the First Fraud by Defendant, are as follows:

5 PROPERTY #1- GRAYHAWK PROPERTY:

6 30. On August 17, 2012, Defendant purchased 20802 North Grayhawk Drive, Unit 1076,
7 Scottsdale, AZ 85255 (“Grayhawk Property”) in the name of Easy for \$274,100.00 at a trustee’s
8 sale. *See* Trustee’s Deed Upon Sale (Maricopa County recorded document no. 20120866188).

- 9 a. On August 17, 2012, Defendant sent an email to DenSco and indicated that he
10 had purchased the Grayhawk Property and requested a loan in the amount of
11 \$250,000.00. *See* Exhibit B-1.
- 12 b. At the same time, Defendant obtained a loan in the amount of \$264,100.00
13 from a third party lender, Active Funding Group, LLC (“Active”) to purchase
14 the property. *See* Notice of Deed of Trust with Assignment of Rents
15 (Maricopa County recorded document no. 20120773674).
- 16 c. In response to Defendant’s loan request, DenSco wired \$250,000.00 to Easy’s
17 bank account on August 20, 2012.
- 18 d. However, Defendant had already used the Grayhawk Property to secure a
19 \$264,100.00 loan from Active.
- 20 e. Defendant, knowing he had obtained multiple loans against the Grayhawk
21 Property, executed and notarized a series of documents purporting to give
22 DenSco a first position lien against the Grayhawk Property including a
23 Mortgage, Deed of Trust and Promissory Note.
- 24 f. DenSco was not aware of Active’s first position lien on the Grayhawk
Property when it lent Defendant \$250,000.00.
- g. Defendant did not tell DenSco that he had sought and obtained a separate loan
secured against the Grayhawk Property.

- 1 h. Given the multiple loans and liens, the Grayhawk Property was over-
2 encumbered by approximately \$144,100.00 as of August 2012 due to the
3 fraud perpetrated by Defendant.

4 PROPERTY #2-SEXTON PROPERTY

5 31. On December 27, 2012, Defendant purchased 3740 E. Sexton St., Gilbert, AZ 85295
6 (“Sexton Property”) in the name of Easy for \$186,000.00 at a trustee’s sale. *See* Trustee’s Deed
7 Upon Sale (Maricopa County recorded document no. 20130049406).

- 8 a. On December 27, 2012, Defendant sent an email to DenSCO and indicated that
9 he had purchased the Sexton Property and requested a loan in the amount of
10 \$150,000.00. *See* Exhibit B-2
11 b. At the same time, Defendant obtained a loan in the amount of \$176,000.00
12 from a third party lender, Active to purchase the property. *See* Notice of Deed
13 of Trust with Assignment of Rents (Maricopa County recorded document no.
14 20130050214).
15 c. In response to Defendant’s loan request, DenSCO wired \$150,000.00 to Easy’s
16 bank account on December 28, 2012.
17 d. However, Defendant had already used the Sexton Property to secure a
18 \$176,000.00 loan from Active.
19 e. Defendant, knowing he had obtained multiple loans against the Sexton
20 Property, executed and notarized a series of documents purporting to give
21 DenSCO a first position lien against the Sexton Property including a Mortgage,
22 Deed of Trust and Promissory Note.
23 f. DenSCO was not aware of Active’s first position lien on the Sexton Property
24 when it lent Defendant \$150,000.00.
 g. Defendant did not tell DenSCO that he had sought and obtained a separate loan
 secured against the Sexton Property.
 h. Given the multiple loans and liens, the Sexton Property was over-encumbered

1 by approximately \$140,000.00 as of December 2012 due to the fraud
2 perpetrated by Defendant.

3 PROPERTY #3-HADLEY ST. PROPERTY

4 32. On February 13, 2013, Defendant purchased 23949 W. Hadley St., Buckeye, AZ
5 85326 (“Hadley St. Property”) in the name of Easy for \$116,500.00 at a trustee’s sale. *See* Trustee’s
6 Deed Upon Sale (Maricopa County recorded document no. 20130781470).

- 7 a. On February 13, 2013, Defendant sent an email to DenSco and indicated that
8 he had purchased the Hadley St. Property and requested a loan in the amount
9 of \$90,000.00. *See* Exhibit B-3.
- 10 b. At the same time, Defendant obtained a loan in the amount of \$94,500.00
11 from a third party lender, Active to purchase the property. *See* Notice of Deed
12 of Trust with Assignment of Rents (Maricopa County recorded document no.
13 20130143379).
- 14 c. In response to Defendant’s loan request, DenSco wired \$90,000.00 to Easy’s
15 bank account on February 13, 2013.
- 16 d. However, Defendant had already used the Hadley St. Property to secure a
17 \$94,500.00 loan from Active.
- 18 e. Defendant, knowing he had obtained multiple loans against the Hadley St.
19 Property, executed and notarized a series of documents purporting to give
20 DenSco a first position lien against the Hadley St. Property including a
21 Mortgage, Deed of Trust and Promissory Note.
- 22 f. DenSco was not aware of Active’s first position lien on the Hadley St.
23 Property.
- 24 g. Defendant did not tell DenSco that he had sought and obtained a separate loan
secured against the Hadley St. Property.
- h. Given the multiple loans and liens, the Hadley St. Property was over-
encumbered by approximately \$68,000.00 as of February 2013 due to the

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1 fraud perpetrated by Defendant.

2 PROPERTY #4-PALM ST. PROPERTY

3 33. On May 20, 2013, Defendant purchased 2681 S. Palm St., Gilbert, AZ 85295 (“Palm
4 St. Property”) in the name of Easy for \$377,000.00 at a trustee’s sale. *See* Trustee’s Deed Upon Sale
5 (Maricopa County recorded document no. 20130509883).

6 a. On May 20, 2013, Defendant sent an email to DenSco and indicated that he
7 had purchased the Palm St. Property and requested a loan in the amount of
8 \$300,000.00. *See* Exhibit B-4.

9 b. At the same time, Defendant obtained a loan in the amount of \$301,600.00
10 from a third party lender, Sell Wholesale Funding, LLC who then assigned it
11 to Azben Limited, LLC (“Azben”) to purchase the Palm St. Property. *See*
12 Notice of Deed of Trust with Assignment of Rents (Maricopa County
13 recorded document no. 20130466815).

14 c. In response to Defendant’s loan request, DenSco wired \$300,000.00 to Easy’s
15 bank account on May 21, 2013.

16 d. However, Defendant had already used the Palm St. Property to secure a
17 \$301,600.00 loan from Azben.

18 e. Defendant, knowing he had obtained multiple loans against the Palm St.
19 Property, executed and notarized a series of documents purporting to give
20 DenSco a first position lien against the Palm St. Property including a
21 Mortgage, Deed of Trust and Promissory Note.

22 f. DenSco was not aware of Azben’s first position lien on the Palm St. Property.

23 g. Defendant did not tell DenSco that he had sought and obtained a separate loan
24 secured against the Palm St. Property.

h. Given the multiple loans and liens, the Palm St. Property was over-
encumbered by approximately \$224,600.00 as of May 2013, due to the fraud
perpetrated by Defendant.

PROPERTY #5-LYNX PROPERTY

34. On June 26, 2013, Defendant purchased 2968 E. Lynx Way, Gilbert, AZ 85298 (“Lynx Property”) in the name of Easy for \$294,000.00 at a trustee’s sale. *See* Trustee’s Deed Upon Sale (Maricopa County recorded document no. 20130619750).

a. On June 26, 2013, Defendant sent an email to DenSco and indicated that he had purchased the Lynx Property and requested a loan in the amount of \$240,000.00. *See* Exhibit B-5.

b. At the same time, Defendant obtained a loan in the amount of \$207,000.00 from a third party lender, Active to purchase the Lynx property. *See* Notice of Deed of Trust with Assignment of Rents (Maricopa County recorded document no. 20130620044).

c. In response to Defendant’s loan request, DenSco wired \$240,000.00 to Easy’s bank account on June 27, 2013.

d. However, Defendant had already used the Lynx Property to secure a \$207,000.00 loan from Active.

e. Defendant, knowing he had obtained multiple loans against the Lynx Property, executed and notarized a series of documents purporting to give DenSco a first position lien against the Lynx Property including a Mortgage, Deed of Trust and Promissory Note.

f. DenSco was not aware of Active’s first position lien on the Lynx Property.

g. Defendant did not tell DenSco that he had sought and obtained a separate loan secured against the Lynx Property.

h. Given the multiple loans and liens, the Lynx Property was over-encumbered by approximately \$153,000.00 as of June 2013, due to the fraud perpetrated by Defendant.

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1 PROPERTY #6-HAMMOND PROPERTY

2 35. On July 25, 2013, Defendant purchased 10440 W. Hammond Lane, Tolleson, AZ
3 85353 (“Hammond Property”) in the name of Easy for \$139,500.00 at a trustee’s sale. *See* Trustee’s
4 Deed Upon Sale (Maricopa County recorded document no. 20130734745).

- 5 a. On July 25, 2013, Defendant sent an email to DenSco and indicated that he
6 had purchased the Hammond Property and requested a loan in the amount of
7 \$100,000.00. *See* Exhibit B-6.
- 8 b. At the same time, Defendant obtained a loan in the amount of \$111,600.00
9 from a third party lender, Geared Equity, LLC (“Geared”) to purchase the
10 Hammond Property. *See* Notice of Deed of Trust with Assignment of Rents
11 (Maricopa County recorded document no. 20130687243).
- 12 c. In response to Defendant’s loan request, DenSco wired \$100,000.00 to Easy’s
13 bank account on July 29, 2013.
- 14 d. However, Defendant had already used the Hammond Property to secure a
15 \$111,600.00 loan from Geared.
- 16 e. Defendant, knowing he had obtained multiple loans against the Hammond
17 Property, executed and notarized a series of documents purporting to give
18 DenSco a first position lien against the Hammond Property including a
19 Mortgage, Deed of Trust and Promissory Note.
- 20 f. DenSco was not aware of Geared’s first position lien on the Hammond
21 Property.
- 22 g. Defendant did not tell DenSco that he had sought and obtained a separate loan
23 secured against the Hammond Property.
- 24 h. Given the multiple loans and liens, the Hammond Property was over-
encumbered by approximately \$72,000.00 as of July 2013, due to the fraud
perpetrated by Defendant.

///

PROPERTY #7-POTTER PROPERTY

36. On September 25, 2013, Defendant purchased 707 E. Potter Drive, Phoenix, AZ 85024 (“Potter Property”) in the name of Easy for \$223,000.00 at a trustee’s sale. *See* Trustee’s Deed Upon Sale (Maricopa County recorded document no. 20150309209).

- a. On September 25, 2013, Defendant sent an email to DenSco and indicated that he had purchased the Potter Property and requested a loan in the amount of \$170,000.00. *See* Exhibit B-7.
- b. At the same time, Defendant obtained a loan in the amount of \$178,407.00 from a third party lender, Geared to purchase the Potter Property. *See* Notice of Deed of Trust with Assignment of Rents (Maricopa County recorded document no. 20130858878).
- c. In response to Defendant’s loan request, DenSco wired \$170,000.00 to Easy’s bank account on September 25, 2013.
- d. However, Defendant had already used the Potter Property to secure a \$178,407.00 loan from Geared.
- e. Defendant, knowing he had obtained multiple loans against the Potter Property, executed and notarized a series of documents purporting to give DenSco a first position lien against the Potter Property including a Mortgage, Deed of Trust and Promissory Note.
- f. DenSco was not aware of Geared’s first position lien on the Potter Property.
- g. Defendant did not tell DenSco that he had sought and obtained a separate loan secured against the Potter Property.
- h. Given the multiple loans and liens, the Potter Property was over-encumbered by approximately \$125,407.00 as of September 2013, due to the fraud perpetrated by Defendant.

///

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1 PROPERTY #8-ASPEN PROPERTY

2 37. On October 03, 2013, Defendant purchased 15143 E. Aspen Dr., Fountain Hills, AZ
3 85268 (“Aspen Property”) for \$261,100.00 at a trustee’s sale. *See* Trustee’s Deed Upon Sale
4 (Maricopa County recorded document no. 20130901535).

- 5 a. On October 3, 2013, Defendant sent an email to DenSco and indicated that he
6 had purchased the Aspen Property and requested a loan in the amount of
7 \$210,000.00. *See* Exhibit B-8.
- 8 b. At the same time, Defendant obtained a loan in the amount of \$209,000.00
9 from a third party lender, Active to purchase the property. *See* Notice of Deed
10 of Trust with Assignment of Rents (Maricopa County recorded document no.
11 20130884152).
- 12 c. In response to Defendant’s loan request, DenSco wired \$210,000.00 to Easy’s
13 bank account on October 4, 2013.
- 14 d. However, Defendant had already used the Aspen Property to secure a
15 \$209,000.00 loan from Active.
- 16 e. Defendant, knowing he had obtained multiple loans against the Aspen
17 Property, executed and notarized a series of documents purporting to give
18 DenSco a first position lien against the Aspen Property including a Mortgage,
19 Deed of Trust and Promissory Note.
- 20 f. DenSco was not aware of Active’s first position lien on the Aspen Property.
- 21 g. Defendant did not tell DenSco that he had sought and obtained a separate loan
22 secured against the Aspen Property.
- 23 h. Given the multiple loans and liens, the Aspen Property was over-encumbered
24 by approximately \$157,900.00 as of October 2013, due to the fraud
perpetrated by Defendant.

38. Upon information and belief, the Defendant orchestrated the First Fraud, to defraud
DenSco by obtaining two loans from separate lenders though the use of fraud and deception, at least

1 one hundred and twenty six (126)³ times between 2011 and 2013.

2 39. In November of 2013, DenSco became aware of the First Fraud.

3 40. DenSco learned that the Defendant had double encumbered over a hundred properties
4 and that Defendant had intentionally misled DenSco to believe that DenSco was the only lender
5 with a promissory note secured by a Deed of Trust in first position on all the subject properties.

6 41. Specifically, on November 27, 2013, Defendant met with Denny J. Chittick and lied
7 to Mr. Chittick about the facts and circumstances of the First Fraud.

8 42. When confronted by DenSco, Defendant told Mr. Chittick that his wife had cancer
9 and that the Defendant's "cousin" had masterminded the First Fraud while he was distracted by
10 taking care of his sick wife.

11 43. When DenSco confronted the Defendant about the use of the proceeds from the First
12 Fraud, the Defendant told DenSco that the Defendant's cousin had absconded to Israel with the
13 proceeds wrongfully gained from the First Fraud.

14 44. Upon information and belief, Denny J. Chittick died in 2016 never knowing that
15 Defendant had lied about the true nature of the First Fraud and that Defendant made up the false
16 story that the "cousin" had misappropriated the DenSco funds.

17 45. Defendant admitted that he devised, facilitated, and operated the First Fraud and
18 utilized the proceeds from the First Fraud for other purposes, including repayment of other DenSco
19 loans, living expenses, gambling and the acquisition of personal assets.

20 46. Defendant admitted that DenSco had no knowledge that it could be in second position
21 on any loans that were solicited by Defendant during the First Fraud.

22 **B. THE FORBEARANCE AGREEMENT**

23 47. Between November 2013 and April 2014, DenSco and Defendant sorted through all
24 of the properties double encumbered by DenSco and other lenders as a result of the Defendants'
actions in the operation of the First Fraud.

³To keep the page size of this complaint reasonable, the Plaintiff provided examples of 8 of the 126 transactions that give rise to the First Fraud.

1 48. The Defendant concocted a resolution of the First Fraud by entering into a
2 Forbearance Agreement (and the related, attached, incorporated, amended and additional documents
3 incorporated into the Forbearance Agreement therein) with DenSco. *See* Exhibit C.

4 49. Pursuant to the Forbearance Agreement, the Defendant, at the time of the Forbearance
5 Agreement, was indebted to DenSco in the amount of \$37,420,120.47⁴. *See* Forbearance
6 Agreement, page 3 (ACC000237), paragraph 1.

7 50. As set forth in the Forbearance Agreement, Defendant admitted that certain properties
8 were used as security for one or more loans from one or more other lenders and that DenSco may not
9 be in first position on each respective property. *See* Forbearance Agreement, page 2 (ACC000236),
paragraph G.

10 51. As set forth in the Forbearance Agreement, Defendant guaranteed the repayment of
11 \$37,420,120.47 to DenSco. *See* Forbearance Agreement, page 3 (ACC000237), paragraph 1.

12 52. As set forth in the Forbearance Agreement, Defendant agreed to liquidate his other
13 assets, which he represented to be valued at approximately \$4 to \$5 Million Dollars, use rental
14 income from his properties and other means to pay the sum due under the Forbearance Agreement.
See Forbearance Agreement, page 4 (ACC00238), paragraph 6(A).

15 53. As set forth in the Forbearance Agreement, Defendant agreed to obtain outside
16 financing and deliver \$4.2 Million Dollars to DenSco by September 15, 2014. *See* Forbearance
17 Agreement, page 5 (ACC000239), paragraph F.

18 54. DenSco's books and records report two unsecured receivables currently due from
19 Defendant from the First Fraud: a balance of \$15,519,078.48 under the Forbearance Agreement and
20 another \$1,133,012.11 classified as "Work Out 1 Million".

21 55. A total of \$16,652,090.59 is due from the Defendant under the Forbearance
22 Agreement as of the Petition Date.

23 56. The Defendant acknowledges the debt owed under the Forbearance Agreement on his

24 ⁴ However, the Defendant originally, purposefully, concealed the debt to DenSco under the Forbearance Agreement from his Bankruptcy Schedules. *See* Original Schedule F filed on April 20, 2016, docket number 10.

1 Amended Schedule E/F. *See* Amended Schedule E/F filed at Docket 94, page 26 of 56.

2 57. Upon information and belief, Defendant Francine Menaged was aware of the
3 Forbearance Agreement and the First Fraud as she executed certain documents in support of the
4 Forbearance Agreement including a detailed representation and disclaimer agreement.

5 58. Defendant also issued promissory notes and deeds of trust securing such in
6 Defendant's related real properties: Michelle Menaged- 9103 E. Charter Oak Dr., Scottsdale, AZ
7 85260; Easy Investments- 1605 W. Winter Dr., Phoenix, AZ 85021; Easy Investments- 9555 E.
8 Raintree Dr. #1004, Scottsdale, AZ 85260; and Jess Menaged- 9555 E. Raintree Dr., #1020,
9 Scottsdale, AZ 85260 ("Promissory Notes") for \$2,382,251.33.

9 **C. THE SECOND FRAUD**

10 59. Upon information and belief, due to the massive amounts of money that were owed to
11 DenSco by Defendant under the Forbearance Agreement, DenSco and Defendant continued to do
12 business together with DenSco agreeing to continue funding hard money loans to Defendant for the
13 purchase of real estate from foreclosure auctions.

14 60. However, after the discovery of the First Fraud, DenSco and Defendant altered their
15 business practices for all future loans from DenSco to Defendant.

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

20 62. DenSco's requirement that Defendant provides to DenSco the evidence that the
21 Defendant had purchased the underlying real property (by providing a copy of the cashier's check
22 used by Defendant to purchase the property and obtain a copy of the receipt that the Defendant
23 received from the foreclosure trustee) was a direct result of Defendant's fraudulent actions which
24 gave rise to the First Fraud.

23 63. Under the new lending practices, Defendant obtained a total of 2,712 loans from
24 DenSco between January 2014 and June 2016.

1 64. However, the Plaintiff has determined that only 96 of these loans were secured by the
2 actual purchase of real estate at a trustees' sale or otherwise.

3 65. The Defendant engaged in a systematic and comprehensive scheme to defraud
4 DenSco for a second time through the use and creation of falsified checks, deeds, contracts and
5 receipts related to the purported purchase of real property at trustee a sale (the "Second Fraud").

6 66. The Plaintiff has determined that despite the new requirement that Defendant was to
7 provide DenSco with evidence of each cashier's check and receipt confirming each purchase,
8 Defendant caused the issuance of cashier's checks that Defendant never intended to use for the
9 purchase of properties and intentionally falsified trustee's sale receipts purporting to evidence the
purchase of properties that never happened.

10 67. The Second Fraud is sophisticated in that Defendant obtained cashier's checks from
11 his bank to make it appear that he was actually using the DenSco loan proceeds to purchase property
12 from a foreclosure trustee, when in fact, Defendant obtained the cashier's check for the sole purpose
13 of simply taking a picture of the cashier's check to send to DenSco to make it appear that the
DenSco funds were being used to purchase real property.

14 68. Upon information and belief, in furtherance of the Second Fraud, the Defendant
15 identified the address of the property that Defendant had falsely represented to DenSco was
16 purchased on each of the cashier's checks.

17 69. In furtherance of the Second Fraud, Defendant executed, notarized and provided to
18 DenSco a series of documents purporting to give DenSco a first position lien against the property
19 that Defendant had falsely represented to DenSco was purchased by Defendant, including a
Mortgage, Deed of Trust and Promissory Note.

20 70. The Second Fraud is sophisticated in that Defendant falsified hundreds of receipts
21 from foreclosure trustees in an effort to confirm that the Defendant actually purchased the property
22 at the foreclosure sale.

23 71. The Defendant skillfully created fraudulent receipts from different companies,
24 foreclosure trustees, law firms and other organizations for the sole purpose of convincing DenSco

1 that it used the DenSco funds to purchase real property.

2 72. The Defendant was extremely diligent and detailed in the creation of the false
3 receipts, as he was careful to ensure the check number from the cashier's check that was obtained
4 matched the number of the cashier's check on the receipt.

5 73. The Defendant caused each of the fraudulent receipts to be signed by not only the
6 purported foreclosure trustee, but also one of his agents, typically Luigi Amoroso.

7 74. Each individual fraudulent receipt was intricately prepared by Defendant for the sole
8 purpose to defraud DenSco and trick DenSco into believing that Defendant had actually used
9 DenSco's funds for the purchase of real property, when in fact, Defendant simply utilized DenSco's
10 funds for his own purposes. Some examples of the Second Fraud, as operated by Defendant, are as
11 follows:

12 #1. FRAUDULENT LOAN FOR 1207 EAST MARCO POLO ROAD, PHOENIX, AZ

13 75. On December 9, 2014, Defendant e-mailed DenSco identifying that he needed a loan
14 to complete the purchase of three properties that he purportedly purchased at a foreclosure sale
15 including a loan request for \$147,000.00 to purchase 1207 East Marco Polo Road, Phoenix, AZ
16 ("Marco Polo Property"). *See* Exhibit D-1.

17 76. In his loan request, Defendant provided DenSco with the recording information for
18 the purported foreclosure/trustee sale where Defendant allegedly purchased the Marco Polo
19 Property. *See* Exhibit D-1.

20 77. On December 9, 2014, in response to the Defendant's loan request, DenSco wire
21 transferred \$1,309,200.00 to the Defendant, including \$147,300.00 to fund Defendant's alleged
22 purchase of the Marco Polo Property.

23 78. On December 10, 2014, Defendant signed and provided to DenSco an executed and
24 notarized Mortgage, Deed of Trust and Promissory Note purporting to secure DenSco's loan against
the Marco Polo Property. The Mortgage was recorded by DenSco at Maricopa County Recorder
number 20140811246. *See* Exhibit D-1.

79. Defendant sent a photograph of cashier's check, number 9018122689 to DenSco.

1 This photograph shows a cashier's check made payable to Auction.com LLC and specifically
2 identifies it as "DenSco Payment 1207 East Marco Polo Rd" and is in the amount of \$137,309.00.
3 *See Exhibit D-1.*

4 80. On the next day, Defendant provided to DenSco a picture of a "Trustee Certificate of
5 Sale/Receipt" ("Fake Receipt") purporting to evidence the sale of the Marco Polo Property to the
6 Defendant.

7 81. The Fake Receipt was created by the Defendant, or at the direction of the Defendant,
8 for the sole purpose to defraud DenSco and make it appear that the Defendant had purchased the
9 Marco Polo Property.

10 82. The Fake Receipt contains information that one would expect to see on a receipt from
11 a foreclosure trustee, including the address of the Marco Polo Property, that cashier's check number
12 9018122689 was received by the trustee and the Fake Receipt is even signed by Luigi Amoroso and
13 allegedly a representative of the trustee in an effort to add to its authenticity.

14 83. Despite the false representations of Defendant that it purchased the Marco Polo
15 Property, the foreclosure sale never took place and on February 4, 2015, Trustee David W. Cowles
16 filed a Cancellation of Trustee Sale. *See Recorder number 20150072452.*

17 #2. FRAUDULENT LOAN FOR 7835 EAST MACKENZIE DRIVE, SCOTTSDALE, AZ

18 84. On December 9, 2014, Defendant e-mailed DenSco identifying that he needed a loan
19 to complete the purchase of three properties that he purportedly purchased at a foreclosure sale
20 including a loan request for \$267,100.00 to purchase 7835 East Mackenzie Drive, Scottsdale, AZ
21 ("Mackenzie Drive Property"). *See Exhibit D-2.*

22 85. In his loan request, Defendant provided DenSco with the recording information for
23 the purported foreclosure/trustee sale where Defendant allegedly purchased the Mackenzie Drive
24 Property. *See Exhibit D-2.*

86. On December 9, 2014, in response to the Defendant's loan request, DenSco wire
transferred \$1,309,200.00 to the Defendant, including \$267,100.00 to fund Defendant's alleged
purchase of the Mackenzie Drive Property.

1 87. On December 10, 2014, Defendant signed and provided to DenSco an executed and
2 notarized Mortgage, Deed of Trust and Promissory Note purporting to secure DenSco's loan against
3 the Mackenzie Drive Property. The Mortgage was recorded by DenSco at Maricopa County
4 Recorder number 20140811247. *See* Exhibit D-2.

5 88. Defendant sent a photograph of cashier's check, number 9018122690 to DenSco.
6 This photograph shows a cashier's check made payable to Auction.com LLC and specifically
7 identifies it as "DenSco Payment 7835 Mackenzie" and is in the amount of \$257,109.00. *See*
8 Exhibit D-2.

9 89. On the next day, Defendant provided to DenSco a picture of a "Trustee Certificate of
10 Sale/Receipt" purporting to evidence the sale of the Mackenzie Drive Property to the Defendant.
11 This was another Fake Receipt.

12 90. The Fake Receipt was created by the Defendant, or at the direction of the Defendant,
13 for the sole purpose to defraud DenSco and make it appear that the Defendant had purchased the
14 Mackenzie Drive Property.

15 91. The Fake Receipt contains information that one would expect to see on a receipt from
16 a foreclosure trustee, including the address of the Mackenzie Drive Property, that cashier's check
17 number 9018122690 was received by the trustee and the Fake Receipt is even signed by Luigi
18 Amoroso and a representative of the trustee in an effort to add to its authenticity.

19 92. Despite the false representations of Defendant that it purchased the Mackenzie Drive
20 Property, the foreclosure sale never took place and on February 10, 2015, Trustee David W. Cowles
21 filed a Cancellation of Trustee Sale. *See* Maricopa County Recorder number 20150085661.

22 #3. FRAUDULENT LOAN FOR 9532 WEST AVENIDA DEL SOL, PEORIA, AZ

23 93. On August 15, 2014, Defendant e-mailed DenSco identifying that he needed a loan to
24 complete the purchase of four properties that he purportedly purchased at a foreclosure sale
including a loan request for \$271,400.00 to purchase 95323 W. Avenida Del Sol, Peoria, AZ
("Avenida Property"). *See* Exhibit D-3.

 94. In his loan request, Defendant provided DenSco with the recording information for

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1 the purported foreclosure/trustee sale where Defendant allegedly purchased the Avenida Property.
2 *See* Exhibit D-3.

3 95. On August 18, 2014, in response to the Defendant's loan request, DenSco wire
4 transferred \$896,900.00 to the Defendant, including \$271,400.00 to fund Defendant's alleged
5 purchase of the Avenida Property.

6 96. On August 18, 2014, Defendant signed and provided to DenSco an executed and
7 notarized Mortgage, Deed of Trust and Promissory Note purporting to secure DenSco's loan against
8 the Avenida Property. The Mortgage was recorded by DenSco at Maricopa County Recorder
9 number 20140542817. *See* Exhibit D-3.

10 97. Defendant sent a photograph of cashier's check, number 901812XXX⁵ dated August
11 18, 2014 to DenSco. This photograph shows a cashier's check made payable to David W. Cowles,
12 Trustee and specifically identifies it as "DenSco Payment 9532 W. Avenida Del Sol" and is in the
13 amount of \$261,409.00. *See* Exhibit D-3.

14 98. On the next day, Defendant provided to DenSco a picture of a Receipt (another Fake
15 Receipt) purporting to evidence the sale of the Avenida Property to the Defendant.

16 99. The Fake Receipt was created by the Defendant, or at the direction of the Defendant,
17 for the sole purpose to defraud DenSco and make it appear that the Defendant had purchased the
18 Avenida Property.

19 100. The Fake Receipt contains information that one would expect to see on a receipt from
20 a foreclosure trustee, including the address of the Avenida Property and it purports to be on the
21 letterhead of the Law Firm of Tiffany and Bosco P.A.

22 101. The Fake Receipt is purportedly signed by an employee of Tiffany and Bosco P.A in
23 an effort to add to its authenticity.

24 102. Tiffany and Bosco P.A. reviewed the Fake Receipt and have advised it is fake and
never produced by its law firm or any of its employees.

⁵ The last few digits on this cashier's check are not visible in the picture sent by Defendant to DenSco.

1 103. Despite the false representations of Defendant that it purchased the Avendia Property,
2 the foreclosure sale never took place and on September 19, 2014, Trustee David W. Cowles filed a
3 Cancellation of Trustee Sale. *See* Recording number 2014622557.

4 #4. FRAUDULENT LOAN FOR 9029 EAST MCDOWELL ROAD, MESA, AZ

5 104. On January 28, 2015, Defendant e-mailed DenSco identifying that he needed a loan
6 to complete the purchase of five properties that he purportedly purchased at a foreclosure sale
7 including a loan request for \$509,600.00 to purchase 9029 E. McDowell Road, Mesa (“McDowell
8 Property”). *See* Exhibit D-4.

9 105. In his loan request, Defendant provided DenSco with the recording information for
10 the purported foreclosure/trustee sale where Defendant allegedly purchased the McDowell Property.
11 *See* Exhibit D-4.

12 106. On January 29, 2015, in response to the Defendant’s loan request, DenSco wire
13 transferred \$1,244,800.00 to the Defendant, including \$509,600.00 to fund Defendant’s alleged
14 purchase of the McDowell Property.

15 107. On January 29, 2015, Defendant signed and provided to DenSco an executed and
16 notarized Mortgage, Deed of Trust and Promissory Note purporting to secure DenSco’s loan against
17 the McDowell Property. The Mortgage was recorded by DenSco at Maricopa County Recorder
18 number 20150058659. *See* Exhibit D-4.

19 108. Defendant sent a photograph of cashier’s check, number 9018123303 dated January
20 29, 2015 to DenSco. This photograph shows a cashier’s check made payable to “Trustee Corps.” and
21 specifically identifies it as “DenSco Payment 9029 E. McDowell Rd” and is in the amount of
22 \$499,610.00. *See* Exhibit D-4.

23 109. On the next day, Defendant provided to DenSco a picture of another fake Receipt
24 purporting to evidence the sale of the McDowell Property to the Defendant.

 110. The Fake Receipt was created by the Defendant, or at the direction of the Defendant,
for the sole purpose to defraud DenSco and make it appear that the Defendant had purchased the
McDowell Property.

1 111. The Fake Receipt contains information that one would expect to see on a receipt from
2 a foreclosure trustee, including the address of the McDowell Property, that cashier's check number
3 9018123303 was received by the Trustee and the Fake Receipt is even signed and dated by Luigi
4 Amoroso and a representative of the Trustee in an effort to add to its authenticity

5 112. Despite the false representations of Defendant that it purchased the McDowell
6 Property, the foreclosure sale never took place and on October 9, 2013, nearly two years before the
7 alleged trustee sale was conducted where the Defendant purchased the McDowell Property, Trustee
8 MTC Financial Inc., dba Trustee Corps filed a Cancellation of Trustee Sale. *See* Maricopa County
9 Recorder number 20130901609.

9 #5. FRAUDULENT LOAN FOR 18626 EAST PURPLE SAGE DRIVE, QUEEN CREEK, AZ

10 113. On June 24, 2015, Defendant e-mailed DenSco identifying that he needed a loan to
11 complete the purchase of seven properties that he purportedly purchased at a foreclosure sale
12 including a loan request for \$304,500.00 to purchase 18626 East Purple Sage Drive, Queen Creek,
13 AZ ("Purple Sage Property"). *See* Exhibit D-5.

14 114. In his loan request, Defendant provided DenSco with the recording information for
15 the purported foreclosure/trustee sale where Defendant allegedly purchased the Purple Sage
16 Property. *See* Exhibit D-5.

17 115. On June 25, 2015, in response to the Defendant's loan request, DenSco wire
18 transferred \$1,634,800.00 to the Defendant, including \$304,500.00 to fund Defendant's alleged
19 purchase of the Purple Sage Property.

20 116. On June 25, 2015, Defendant signed and provided to DenSco an executed and
21 notarized Mortgage, Deed of Trust and Promissory Note purporting to secure DenSco's loan against
22 the Purple Sage Property. The Mortgage was recorded by DenSco at Maricopa County Recorder
23 number 20150454537. *See* Exhibit D-5.

24 117. Defendant sent a photograph of cashier's check, number 9031814078 dated June 24,
2015 to DenSco. This photograph shows a cashier's check made payable to "David W. Cowles,
Trustee." and specifically identifies it as "DenSco Payment 18626 East Purple Sage Drive" and is in

1 the amount of \$294,509.00. *See* Exhibit D-5.

2 118. On the next day, Defendant provided to DenSco a picture of a “Trustee Certificate of
3 Sale/Receipt”, yet again another fake receipt, purporting to evidence the sale of the Purple Sage
4 Property to the Defendant.

5 119. The Fake Receipt was created by the Defendant, or at the direction of the Defendant,
6 for the sole purpose to defraud DenSco and make it appear that the Defendant had purchased the
7 Purple Sage Property.

8 120. The Fake Receipt contains information that one would expect to see on a receipt from
9 a foreclosure trustee, including the address of the Purple Sage Property, that cashier’s check number
10 9031814078 was received by the Trustee and the Fake Receipt is even signed and dated by Luigi
11 Amoroso and a representative of the Trustee in an effort to add to its authenticity.

12 121. Moreover, in an effort to add to its authenticity, the Fake Receipt is stamped by
13 “Auction.com for Tiffany and Bosco PA” with an address in Newport Beach California.

14 122. Despite the false representations of Defendant that it purchased the Purple Sage
15 Property, the foreclosure sale never took place and on August 5, 2015, Trustee David W. Cowles
16 filed a Cancellation of Trustee Sale. *See* Maricopa County Recorder number 20150579092.

17 #6. FRAUDULENT LOAN FOR 14034 NORTH 44TH PLACE, PHOENIX, AZ

18 123. On June 29, 2015, Defendant’s assistant, Veronica Castro, e-mailed DenSco⁶
19 identifying that the Defendant needed a loan to complete the purchase of six properties that he
20 purportedly purchased at a foreclosure sale including a loan request for \$287,100.00 to purchase
21 14034 North 44th Place, Phoenix, AZ (“North 44th Place Property”). *See* Exhibit D-6.

22 124. In his loan request, Defendant provided DenSco with the recording information for
23 the purported foreclosure/trustee sale where Defendant allegedly purchased the North 44th Place.
24 *See* Exhibit D-6.

125. On June 30, 2015, in response to the Defendant’s loan request, DenSco wire

⁶ This e-mail was also sent to the Defendant on June 29, 2015.

1 transferred \$1,502,000.00 to the Defendant, including \$287,100.00 to fund Defendant's alleged
2 purchase of the North 44th Place Property.

3 126. On June 30, 2015, Defendant signed and provided to DenSco an executed and
4 notarized Mortgage, Deed of Trust and Promissory Note purporting to secure DenSco's loan against
5 the North 44th Place Property. The Mortgage was recorded by DenSco at Maricopa County
6 Recorder number 20150470141. *See* Exhibit D-6.

7 127. Defendant sent a photograph of cashier's check, number 9031815052 dated June 29,
8 2015 to DenSco. This photograph shows a cashier's check made payable to "FATSS" and
9 specifically identifies it as "DenSco Payment 14034 North 44th PI" and is in the amount of
\$277,100.00. *See* Exhibit D-6.

10 128. On the next day, Defendant provided to DenSco a picture of a "3rd Party Trustee Sale
11 Instruction & Receipt", Fake Receipt, purporting to evidence the sale of the North 44th Place
12 Property to the Defendant.

13 129. The Fake Receipt was created by the Defendant, or at the direction of the Defendant,
14 for the sole purpose to defraud DenSco and make it appear that the Defendant had purchased the
North 44th Place Property.

15 130. The Fake Receipt contains information that one would expect to see on a receipt from
16 a foreclosure trustee, including the address of the North 44th Place Property, that cashier's check
17 number 9031815052 was received by the Trustee and the Fake Receipt is even signed and dated by
18 Luigi Amoroso and a representative of the Trustee in an effort to add to its authenticity.

19 131. Despite the false representations of Defendant that it purchased the North 44th Place
20 Property, the foreclosure sale never took place and on December 18, 2015, First American Title
21 Company filed a Cancellation of Trustee Sale. *See* Maricopa County Recorder number
20150212767.

22 132. Upon information and belief, the Defendant perpetrated the Second Fraud upon
23 DenSco between January 2014 and June 2016.

24 133. During this time period, Defendant solicited and DenSco funded a total of two-

1 thousand, seven hundred and twelve (2,712) loans.

2 134. The Receiver has determined that of these 2,712 loans only ninety-six were secured
3 by the actual purchase of real property by the Defendant.

4 135. DenSco lent Defendant a total of \$15,001,843.42 for the 96 loans that were secured
5 against real property purchased by the Defendants.

6 136. The Receiver has determined that the other 2,616 loans⁷ made to Defendant by
7 DenSco were not secured by any real property, because Defendant never purchased the underlying
8 property, despite representations that the Defendant had done so.

9 137. The Defendant admitted in his 2004 examination that the Fake Receipt listed in each
10 of the above 6 properties, as well as the receipts for all of the other properties not actually purchased,
11 was not a legitimate receipt. *See* Exhibit D-7, Excerpt from Scott Menaged's 2004 Examination,
12 page 224, lines 24-25, page 225, lines 1-9 (Q= Defendant's Counsel, A= Defendant).

13 138. The Receiver has determined that a total of \$734,484,440.67 was lent to Defendant as
14 a result of Defendant's operation of the Second Fraud.

15 139. Defendant intentionally concealed his embezzlement, and diversion of DenSco funds,
16 and made misrepresentations regarding the business transactions, purchases and liens, to obtain and
17 cover up his embezzlement and defalcation of DenSco funds through the use of false pretenses.

18 140. As a result of the Second Fraud, DenSco is an unsecured creditor and the Debtor has
19 provided DenSco a series of unsecured promissory notes obtained under false pretenses.

20 141. DenSco, unbeknownst to it, and outside of the scope of the business dealings with the
21 Defendant, was now an unsecured creditor of the Defendant.

22 142. The balance owed by the Defendant to DenSco under the terms of the unsecured
23 promissory notes is \$30,504,551.33 ("Promissory Note Balance"). *See* Exhibit E.

24 ⁷ To keep the page size of this complaint reasonable, the Plaintiff provided examples of only 6 of the 2,616 transactions that give rise to the Second Fraud.

1 **D. THE THIRD FRAUD**

2 143. On April 20, 2016, the Defendant filed a Voluntary Petition under Chapter 7 of the
3 United States Bankruptcy Code (“Petition Date”).

4 144. Despite the requirement under penalty of perjury to disclose all of your creditors, the
5 Debtor’s statements and schedules failed to list DenSco as a creditor, and therefore DenSco was not
6 notified of the bankruptcy.

7 145. Sometime in June 2016, DenSco discovered that the Defendant had filed bankruptcy
8 and began to investigate its open loans to Defendant.

9 146. Denny Chittick confronted the Defendant about lack of security interests in real estate
10 despite hundreds of executed notes and deeds of trust and the Defendant conceded there were no
11 security interests in the properties.

12 147. Instead of telling DenSco the truth about the Second Fraud, the Defendant made a
13 series of misrepresentations to DenSco designed to keep DenSco from taking action against
14 Defendant.

15 148. In a conversation, recorded by Denny Chittick before he committed suicide, the
16 Defendant told Mr. Chittick that he did not misappropriate any money from DenSco, but all of the
17 DenSco funds were being held by a foreclosure trustee company called Auction.com. *See* Exhibit
18 F-1 - [excerpts from Transcript of Recorded Conversation Denny Chittick and Yomtov Scott
19 Menaged (“Conversation Transcript”)], page 97, lines 2-24.

20 149. Specifically, perpetuating the Second Fraud, Defendant told Denny Chittick that there
21 was \$31.8 Million held by foreclosure trustee Auction.com. *See* Exhibit F-2 - Conversation
22 Transcript, page 102, lines 17-21.

23 150. The Defendant admitted to Denny Chittick that he had destroyed all of his records of
24 the Fake Receipts, and that he would never testify that the \$31.8 Million existed or was being held
by Auction.com. *See* Exhibit F-3 – Conversation Transcript, page 86, lines 3-25, continued to page
87, lines 1-3.

 151. The Defendant admitted to Denny Chittick that he undertook affirmative steps to

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1 conceal his embezzlement, and diversion of DenSco funds. The Defendant admitted that the Fake
2 Receipts evidencing the purported sales were not available as they were created on Veronica
3 Castro's computer and the computer was now "gone". See Exhibit F-4 - excerpts from Conversation
4 Transcript, page 91, lines 7-11.

5 152. The Defendant told Denny Chittick that the outstanding sum due to DenSco would be
6 repaid by funds currently held with Auction.com and after the Bankruptcy Case was over and the
7 Defendant intended to wire the money overseas and "incorporate" himself, and then "start taking
8 cash from there every [expletive] day, every day". See Exhibit F-5 - Conversation Transcript, page
9 97, lines 2-24.

10 153. The Defendant told Denny Chittick that he believed the DenSco funds are "sitting in a
11 trust account, not in the name of auction.com." See Exhibit F-6 - Conversation Transcript, page 40,
12 lines 10-25.

13 154. The Defendant told Mr. Chittick that he would never "talk" about all of the DenSco
14 money at auction.com because it would result in him going to prison. See Exhibit F-7 -
15 Conversation Transcript, page 27, lines 16-25.

16 155. During his 2004 exam, the Defendant testified that no money was held at Aution.com
17 for the benefit of DenSco and that he lied to Denny J. Chittick about the money being held at
18 Auction.com.

19 156. According to the Defendant, DenSco is an unsecured creditor of the Debtor. See
20 Amended Schedules, docket #94.

21 157. Defendant's conduct with respect to DenSco, as alleged herein, was willful and
22 malicious and intended to cause injury and harm.

23 158. DenSco is entitled to a judgment that declares and determines that its claims against
24 the Defendants, and the Defendants' debts and liabilities owed to DenSco, are not dischargeable in
this bankruptcy case.

COUNT I - NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))

159. Plaintiff incorporates by reference all of the allegations contained in the preceding

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1 paragraphs as more fully set forth herein.

2 160. To obtain a determination that a debt is nondischargeable under Section 523(a)(2) of
3 the Bankruptcy Code, the creditor must prove the following elements:

- 4 a. The Debtor made a misrepresentation;
- 5 b. The Debtor knew the misrepresentation was false at the time it was made;
- 6 c. The representation was deliberately made for the purpose of deceiving the
7 creditor;
- 8 d. The creditor justifiably relied on the representation; and
- 9 e. The creditor sustained a loss or damages as a proximate result of the
representation being made.

10 161. At the time of First Fraud, the information provided by Defendant that DenSco was in
11 first position on the properties was materially false and DenSco relied on such information.

12 162. The Defendant made a misrepresentation to DenSco that it held or would hold a first
13 position lien against the property.

14 163. The Defendant knew DenSco was not a first position lien holder.

15 164. The Defendant lied to DenSco to obtain funds.

16 165. DenSco relied on the Defendant's statements.

17 166. DenSco sustained substantial financial loss of at least \$16,652,090.59 by not being in
18 a first security position.

19 167. The Defendants' actions require that the Defendants' debt to Receiver be found
nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

20 **COUNT I(A)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))**

21 168. Plaintiff incorporates by reference all of the allegations contained in the preceding
22 paragraphs as more fully set forth herein.

23 169. At the time of purchase of the Grayhawk Property, the information provided by
24 Defendant that DenSco was a first position lien holder on the property was materially false and
DenSco relied on such information.

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170. The Defendant made a misrepresentation to DenSco that it held or would hold a first position lien against the Grayhawk Property.

171. The Defendant knew DenSco was not a first position lien holder given its dealings with Active.

172. The Defendant lied to DenSco to obtain funds.

173. DenSco relied on the Defendant's statements.

174. DenSco sustained substantial financial loss by not being in first security position against the Grayhawk Property.

175. The Defendants' actions require that the Defendants' debt to Receiver be found nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

COUNT I(B)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))

176. Plaintiff incorporates by reference all of the allegations contained in the preceding paragraphs as more fully set forth herein.

177. At the time of purchase of the Sexton Property, the information provided by Defendant that DenSco was a first position lien holder on the property was materially false and DenSco relied on such information.

178. The Defendant made a misrepresentation to DenSco that it held or would hold a first position lien against the Sexton Property.

179. The Defendant knew DenSco was not a first position lien holder given its dealings with Active.

180. The Defendant lied to DenSco to obtain funds.

181. DenSco relied on the Defendant's statements.

182. DenSco sustained substantial financial loss by not being in first security position against the Sexton Property.

183. The Defendants' actions require that the Defendants' debt to Receiver be found nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

1 197. DenSco relied on the Defendant's statements.

2 198. DenSco sustained substantial financial loss by not being in first security position
3 against the Palm St. Property.

4 199. The Defendants' actions require that the Defendants' debt to Receiver be found
5 nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

6 **COUNT I(E)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))**

7 200. Plaintiff incorporates by reference all of the allegations contained in the preceding
8 paragraphs as more fully set forth herein.

9 201. At the time purchase of the Lynx Property, the information provided by Defendant
10 that DenSco was a first position lien holder on the property was materially false and DenSco relied
11 on such information.

12 202. The Defendant made a misrepresentation to DenSco that it held or would hold a first
13 position lien against the Lynx Property.

14 203. The Defendant knew DenSco was not a first position lien holder given its dealings
15 with Active.

16 204. The Defendant lied to DenSco to obtain funds.

17 205. DenSco relied on the Defendant's statements.

18 206. DenSco sustained substantial financial loss by not being in first security position
19 against the Lynx Property.

20 207. The Defendants' actions require that the Defendant s' debt to Receiver be found
21 nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

22 **COUNT I(F)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))**

23 208. Plaintiff incorporates by reference all of the allegations contained in the preceding
24 paragraphs as more fully set forth herein.

209. At the time purchase of the Hammond Property, the information provided by
Defendant that DenSco was a first position lien holder on the property was materially false and
DenSco relied on such information.

1 210. The Defendant made a misrepresentation to DenSco that it held or would hold a first
2 position lien against the Hammond Property.

3 211. The Defendant knew DenSco was not a first position lien holder given its dealings
4 with Geared.

5 212. The Defendant lied to DenSco to obtain funds.

6 213. DenSco relied on the Defendant's statements.

7 214. DenSco sustained substantial financial loss by not being in first security position
8 against the Hammond Property.

9 215. The Defendants' actions require that the Defendants' debt to Receiver be found
10 nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

11 **COUNT I(G)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))**

12 216. Plaintiff incorporates by reference all of the allegations contained in the preceding
13 paragraphs as more fully set forth herein.

14 217. At the time purchase of the Potter Property, the information provided by Defendant
15 that DenSco was in first position on the property was materially false and DenSco relied on such
16 information.

17 218. The Defendant made a misrepresentation to DenSco that it held or would hold a first
18 position debt against the Potter Property.

19 219. The Defendant knew DenSco was not in first position given its dealings with Geared.

20 220. The Defendant lied to DenSco to obtain funds.

21 221. DenSco relied on the Defendant's statements.

22 222. DenSco sustained substantial financial loss by not being in first security position
23 against the Potter Property.

24 223. The Defendants' actions require that the Defendants' debt to Receiver be found
nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

COUNT I(H)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))

 224. Plaintiff incorporates by reference all of the allegations contained in the preceding

1 paragraphs as more fully set forth herein.

2 225. At the time purchase of the Aspen Property, the information provided by Defendant
3 that DenSco was a first position lien holder on the property was materially false and DenSco relied
4 on such information.

5 226. The Defendant made a misrepresentation to DenSco that it held or would hold a first
6 position lien against the Aspen Property.

7 227. The Defendant knew DenSco was not a first position lien holder given its dealings
8 with Active.

9 228. The Defendant lied to DenSco to obtain funds.

10 229. DenSco relied on the Defendant's statements.

11 230. DenSco sustained substantial financial loss by not being in first security position
12 against the Aspen Property.

13 231. The Defendants' actions require that the Defendants' debt to Receiver be found
14 nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

15 **COUNT II - NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))**

16 232. Plaintiff incorporates by reference all of the allegations contained in the preceding
17 paragraphs as more fully set forth herein.

18 233. During the Second Fraud, the receipts created by the Defendant evidencing the
19 purchase of properties were forged and fake.

20 234. The Defendant presented the Fake Receipts to DenSco.

21 235. The Defendant and/or AHF knew the receipts were fake as the properties had not
22 been purchased.

23 236. The receipts were provided to DenSco trick DenSco into believing that numerous
24 properties had been purchased with DenSco funds.

25 237. DenSco relied on the Fake Receipts as evidence that the cashier's checks were used to
purchase the properties.

26 238. DenSco sustained a loss of at least \$28,122,300.00 by not purchasing the properties.

1 See Exhibit I - Spreadsheet of unsecured loans for properties in the Second Fraud.

2 239. Defendant kept the \$28,122,300.00 funds for his personal use and benefit.

3 240. The Defendants' actions require that the Defendants' debt to Receiver be found
4 nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

5 **COUNT II(A)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))**

6 241. Plaintiff incorporates by reference all of the allegations contained in the preceding
7 paragraphs as more fully set forth herein.

8 242. The Fake Receipt provided by AHF confirming the purchase of the Avenida property
9 was a forgery.

10 243. The Defendant and/or AHF knew the Avenida Receipt was fake.

11 244. The Avenida Receipt was provided to confirm the purchase of the Avenida property.

12 245. DenSco relied on the Avenida Receipt as evidence that cashier's check 901812XXX
13 was used to purchase the Avenida property.

14 246. DenSco sustained a loss of at least \$261,409.00 by not purchasing the Avenida
15 property.

16 247. Defendant kept the \$261,409.00 funds for his personal use and benefit.

17 248. The Defendants' actions require that the Defendants' debt to Receiver be found
18 nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

19 **COUNT II(B) - NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))**

20 249. Plaintiff incorporates by reference all of the allegations contained in the preceding
21 paragraphs as more fully set forth herein.

22 250. At the time of the Second Fraud, the Fake Receipts given to DenSco by the Defendant
23 were materially false.

24 251. The Defendant knew that the Fake Receipts were fraudulent documents as he never
actually finalized the sales supported by the Fake Receipts.

251. The Defendant used the Fake Receipts to obtain funds from DenSco.

253. DenSco relied on that Fake Receipts and lent funds based on the misrepresentation.

1 254. DenSco sustained damages of at least \$28,122,300.00 based on the Fake Receipts
2 issued during the Second Fraud.

3 255. Upon information and belief, 2,616 loans made to Defendant by DenSco were not
4 secured by any real property because Defendant never purchased the underlying property, despite
5 representation and Fake Receipts that the Defendant had done so.

6 256. The Defendants' actions require that the Defendants' debt to Receiver be found
7 nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

8 **COUNT II(C) - NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))**

9 257. Plaintiff incorporates by reference all of the allegations contained in the preceding
10 paragraphs as more fully set forth herein.

11 258. At the time of the Second Fraud, the mortgages, deeds of trust, and promissory notes
12 given to DenSco by the Defendant were materially false.

13 259. The Defendant knew that the mortgages, deeds of trust, and promissory notes were
14 fraudulent documents as he never actually finalized the sales supported by the mortgages, deeds of
15 trust, and promissory notes.

16 260. The Defendant used the mortgages, deeds of trust, and promissory notes to obtain
17 funds from DenSco.

18 261. DenSco relied on that mortgages, deeds of trust, and promissory notes and lent funds
19 based on the misrepresentation.

20 262. Upon information and belief, 2,616 loans made to Defendant by DenSco were not
21 secured by any real property because Defendant never purchased the underlying property, despite
22 representation and mortgages, deeds of trust, and promissory notes that the Defendant had done so

23 263. DenSco sustained damages of at least \$28,122,300.00 based on the false documents
24 issued during the Second Fraud.

 264. The Defendants' actions require that the Defendants' debt to Receiver be found
nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

COUNT III- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))

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2 265. Plaintiff incorporates by reference all of the allegations contained in the preceding
3 paragraphs as more fully set forth herein.

4 266. The Deeds of Trust generated under the Second Fraud confirming the purchase of the
5 properties were provided solely to deceive DenSco.

6 267. The Defendant and/or AHF knew the Deeds of Trust were not being recorded.

7 268. The Deeds of Trust were provided to show the purchase of the properties.

8 269. DenSco relied on the validity of the Deeds of Trust.

9 270. DenSco relied on the Deeds of Trust as evidence that the cashier's checks were used
10 to purchase the properties.

11 271. DenSco sustained a loss of at least \$28,122,300.00 by not purchasing the properties.

12 272. Defendant kept the \$28,122,300.00 funds for his own personal use and benefit.

13 273. The Defendants' actions require that the Defendants' debt to Receiver be found
14 nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

COUNT III(A)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))

15 274. Plaintiff incorporates by reference all of the allegations contained in the preceding
16 paragraphs as more fully set forth herein.

17 275. The Deed of Trust for the Mackenzie Drive Property giving DenSco a security
18 interest in said property was provided solely to deceive DenSco.

19 276. The Defendant and/or AHF knew the Deed of Trust for Mackenzie Drive Property
20 would not be recorded.

21 277. The Deed of Trust for the Mackenzie Drive Property was provided to show the
22 purchase of the property.

23 278. DenSco relied on the validity of the Deed of Trust for the Mackenzie Drive Property.

24 279. DenSco relied on the Deed of Trust for the Mackenzie Drive Property as evidence
that the funds wired to AHF were used to purchase the Mackenzie Drive Property.

280. DenSco sustained a loss of at least \$267,100.00 by not purchasing the Mackenzie

1 Drive Property.

2 281. Defendant kept the \$267,100.00 funds for his own personal use and benefit.

3 282. The Defendants' actions require that the Defendants' debt to Receiver be found
4 nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

5 **COUNT III(B)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))**

6 283. Plaintiff incorporates by reference all of the allegations contained in the preceding
7 paragraphs as more fully set forth herein.

8 284. The Deed of Trust for the Marco Polo Property giving DenSco a security interest in
9 said property was provided solely to deceive DenSco.

10 285. The Defendant and/or AHF knew the Deed of Trust for the Marco Polo Property
11 would not be recorded.

12 286. The Deed of Trust for the Marco Polo Property was provided to show the purchase of
13 the property.

14 287. DenSco relied on the validity of the Deed of Trust for the Marco Polo Property.

15 288. DenSco relied on the Deed of Trust for the Marco Polo Property as evidence that
16 funds wired to AHF were used to purchase the Marco Polo property.

17 289. DenSco sustained a loss of at least \$147,000.00 by not purchasing the Marco Polo
18 property.

19 290. Defendant kept the \$147,000.00 funds for his own personal use and benefit.

20 291. The Defendants' actions require that the Defendants' debt to Receiver be found
21 nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

22 **COUNT III(C)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))**

23 292. Plaintiff incorporates by reference all of the allegations contained in the preceding
24 paragraphs as more fully set forth herein.

293. The Deed of Trust for the Avenida Del Sol Property giving DenSco a security interest
in said property was provided solely to deceive DenSco.

294. The Defendant and/or AHF knew the Deed of Trust for the Avenida Del Sol Property

1 would not be recorded.

2 295. The Deed of Trust for the Avenida Del Sol Property was provided to show the
3 purchase of the property.

4 296. DenSco relied on the validity of the Deed of Trust for the Avenida Del Sol Property.

5 297. DenSco relied on the Deed of Trust for the Avenida Del Sol Property as evidence that
6 funds wired to AHF were used to purchase the Avenida Del Sol Property.

7 298. DenSco sustained a loss of at least \$271,400.00 by not purchasing the Avenida
8 property.

9 299. Defendant kept the \$271,400.00 funds for his personal use and benefit.

10 300. The Defendants' actions require that the Defendants' debt to Receiver be found
11 nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

12 **COUNT III(D)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))**

13 301. Plaintiff incorporates by reference all of the allegations contained in the preceding
14 paragraphs as more fully set forth herein.

15 302. The Deed of Trust for the McDowell Property giving DenSco a security interest in
16 said property was provided solely to deceive DenSco.

17 303. The Defendant and/or AHF knew the Deed of Trust for the McDowell Property
18 would not be recorded.

19 304. The Deed of Trust for the McDowell Property was provided to show the purchase of
20 the property.

21 305. DenSco relied on the validity of the Deed of Trust for the McDowell Property.

22 306. DenSco relied on the Deed of Trust for the McDowell Property as evidence that funds
23 wired to AHF were used to purchase the McDowell Property.

24 307. DenSco sustained a loss of at least \$499,610.00 by not purchasing the McDowell
Property.

308. Defendant kept the \$499,610.00 funds for his own personal use and benefit.

309. The Defendants' actions require that the Defendants' debt to Receiver be found

1 nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

2 **COUNT III(E)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))**

3 310. Plaintiff incorporates by reference all of the allegations contained in the preceding
4 paragraphs as more fully set forth herein.

5 311. The Deed of Trust for the Purple Sage Property giving DenSco a security interest in
6 said property was provided solely to deceive DenSco.

7 312. The Defendant and/or AHF knew the Deed of Trust for the Purple Sage Property
8 would not be recorded.

9 313. The Deed of Trust for the Purple Sage Property was provided to show the purchase of
10 the property.

11 314. DenSco relied on the validity of the Deed of Trust for the Purple Sage Property.

12 315. DenSco relied on the Deed of Trust for the Purple Sage Property as evidence that
13 funds wired to AHF were used to purchase the Purple Sage Property.

14 316. DenSco sustained a loss of at least \$294,509.00 by not purchasing the Purple Sage
15 Property.

16 317. Defendant kept the \$294,509.00 funds for his own personal use and benefit.

17 318. The Defendants' actions require that the Defendants' debt to Receiver be found
18 nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

19 **COUNT III(F)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))**

20 319. Plaintiff incorporates by reference all of the allegations contained in the preceding
21 paragraphs as more fully set forth herein.

22 320. The Deed of Trust for the North 44th Place Property giving DenSco a security interest
23 in said property was provided solely to deceive DenSco.

24 321. The Defendant and/or AHF knew the Deed of Trust for the North 44th Place Property
would not be recorded.

322. The Deed of Trust for the North 44th Place Property was provided to show the
purchase of the property.

1 323. DenSco relied on the validity of the Deed of Trust for the North 44th Place Property.

2 324. DenSco relied on the Deed of Trust for the North 44th Place Property as evidence that
3 funds wired to AHF were used to purchase the North 44th Place Property.

4 325. DenSco sustained a loss of at least \$277,100.00 by not purchasing the North 44th
5 Place Property.

6 326. Defendant kept the \$277,100.00 funds for his own personal use and benefit.

7 327. The Defendants' actions require that the Defendants' debt to Receiver be found
8 nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

9 **COUNT IV- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))**

10 328. Plaintiff incorporates by reference all of the allegations contained in the preceding
11 paragraphs as more fully set forth herein.

12 329. The Second Fraud was done solely to deceive and defraud DenSco.

13 330. The Defendant created falsified checks, deeds, contracts, and receipts related to the
14 purported purchase of real properties at trustee sales.

15 331. All of the documents created during the Second Fraud scheme, by the Defendant or
16 for the Defendant's behalf, were created and used to deceive DenSco.

17 332. The Defendant knew the falsified checks, deeds, contracts, and receipts related to the
18 purchase of the properties were false.

19 333. DenSco relied on the validity of the documents presented by the Defendant during the
20 Second Fraud.

21 334. DenSco sustained a substantial loss of at least \$28,122,300.00 due to the Second
22 Fraud.

23 335. The Defendant kept the \$28,122,300.00 for his own personal use and benefit.

24 336. The Defendants' actions require that the Defendants' debt to Receiver be found
nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

COUNT V - NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))

337. Plaintiff incorporates by reference all of the allegations contained in the preceding

1 paragraphs as more fully set forth herein.

2 338. On July 25, 2016 the Defendant told DenSco that the funds were available through
3 Auction.com and would be paid to him after the bankruptcy case closed.

4 339. The Defendant's statements about Auction.com holding any funds for Defendant or
5 DenSco were false.

6 340. The Defendant admitted that Auction.com did not and does not hold any of
7 Defendant's funds.

8 341. The Defendant admitted that Auction.com did not and does not hold any of DenSco's
9 funds.

10 342. The Defendant made the statements about Auction.com to hold off DenSco's
11 collection efforts.

12 343. DenSco believed the Defendant.

13 344. DenSco suffered a substantial financial loss of at least \$47,156,641.92.

14 345. The Defendants' actions require that the Defendants' debt to Receiver be found
15 nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

16 **COUNT VI - NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2))**

17 346. Plaintiff incorporates by reference all of the allegations contained in the preceding
18 paragraphs as more fully set forth herein.

19 347. Throughout the relationship, the Defendant obtained money and property from
20 DenSco through false pretenses, false representations, fraud and concealment.

21 348. The Defendant represented, among other things, that he would act in an honest,
22 trustworthy, and truthful manner with respect to DenSco's money and property.

23 349. DenSco reasonably and justifiably relied on the Defendant in his business
24 relationship, to provide honest and truthful services, and therefore allowed the Defendant to have
access to DenSco's accounts, money and property.

350. The Defendant intentionally took money and property from DenSco, which he was
not entitled to take, for his own personal benefit and for third parties.

1 351. The Defendant misrepresented and concealed the purposes for which he obtained and
2 used DenSco's money and property.

3 352. The Defendant's misrepresentations of DenSco's money caused DenSco to suffer
4 substantial damages.

5 353. The Defendant's embezzlement of DenSco's money caused DenSco to suffer
6 substantial damages

7 354. DenSco is entitled to compensatory and punitive damages in an amount of at least
8 \$47,156,641.92 plus interest to the fullest extent permitted by law, and reasonable attorneys' fees
9 and costs.

10 355. Pursuant to 11 U.S.C. § 523(a)(2), the Defendants are not entitled to a discharge as to
11 the debts and liabilities owed to DenSco.

12 **COUNT VII - NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2)(A))**

13 356. Plaintiff incorporates by reference all of the allegations contained in the preceding
14 paragraphs as more fully set forth herein.

15 357. At the time of the Forbearance Agreement, the Defendant's statements that he would
16 repay the sum due from the First Fraud were materially false and DenSco relied on such information.

17 358. Defendant had no intention of repaying DenSco for the First Fraud.

18 359. The Defendants' actions require that the Defendants' debt to Receiver be found
19 nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

20 **COUNT VIII - NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2)(A))**

21 360. Plaintiff incorporates by reference all of the allegations contained in the preceding
22 paragraphs as more fully set forth herein.

23 361. The Defendant's statements that he would repay the sum due under the Second Fraud
24 by the funds held in Auction.com were materially false.

362. DenSco relied on such information.

363. Defendant had no intention of repaying DenSco from Auction.com as Auction.com is
not holding any funds for DenSco or the Defendant.

1 364. The Defendants' actions require that the Defendants' debt to Receiver be found
2 nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

3 **COUNT IX - NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(2)(A))**

4 365. Plaintiff incorporates by reference all of the allegations contained in the preceding
5 paragraphs as more fully set forth herein.

6 366. On November 27, 2013, the Defendant confessed to Denny Chittick and DenSco that
7 certain properties involved in the First Fraud had also been used as security for one or more loans
8 from one or more other lenders and that DenSco may not be a first position lien holder on each
9 respective property.

10 367. Defendant had no intention of providing DenSco with first position security interests
11 in the properties.

12 368. Defendant knew at the time of securing the properties that DenSco believed it would
13 be a first position lien holder.

14 369. Defendant knew that it granted a first position lien on many of the properties to other
15 lenders even though it obtained DenSco's funds for that very purpose.

16 370. The Forbearance Agreement confirms Defendant's false representations and
17 intentions.

18 371. The Defendants' actions require that the Defendants' debt to Receiver be found
19 nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

20 **COUNT X - NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(4))**

21 372. Plaintiff incorporates by reference all of the allegations contained in the preceding
22 paragraphs as more fully set forth herein.

23 373. A debt is nondischargeable under Section 523(a)(4) of the Bankruptcy Code, for
24 fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

374. Embezzlement is defined as the act of withholding assets for the purpose of
conversion of such assets, by one or more persons to whom the assets were entrusted, either to be
held or used for a specific purpose.

1 375. A relationship between Defendant and DenSco existed as far back as 2011 when the
2 parties began their property purchase transactions.

3 376. DenSco relied on Defendant to use DenSco's funds to purchase property for the
4 benefit of DenSco.

5 377. The Defendant acquired access to DenSco's funds through their relationship of
6 Defendant purchasing property for DenSco's business portfolio.

7 378. The Defendant kept DenSco's funds which were allocated for the purchase of
8 property, or rerouted the funds allocated for the purchase of property, into Defendant's accounts.

9 379. The Defendant intentionally took and kept DenSco's funds.

10 380. The Defendant embezzled from DenSco.

11 381. DenSco suffered a financial loss of at least \$47,156,641.92 as a result of Defendant's
12 embezzlement.

13 382. The Defendants' actions require that the Defendants' debt to Receiver be found
14 nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

15 **COUNT XI - NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(4))**

16 383. Plaintiff incorporates by reference all of the allegations contained in the preceding
17 paragraphs as more fully set forth herein.

18 384. A relationship between Defendant and DenSco existed as far back as 2007 when the
19 parties began their property purchase transactions.

20 385. The Defendant perpetrated the Second Fraud on DenSco from 2014 through 2016.

21 386. The Defendant perpetrated the Third Fraud on DenSco when he lied about the
22 existence of the Auction.com funds, and the ability to repay DenSco.

23 387. DenSco relied on Defendant to repay the funds from the Second Fraud.

24 388. DenSco relied on the Defendant to repay the funds owed under the Forbearance
Agreement, subsequent work out agreements, Promissory Notes, and Second Fraud.

389. DenSco believed that the Defendant held the funds in Auction.com.

390. The Defendant intentionally took and kept DenSco's funds.

1 391. The Defendant embezzled from DenSco and was fully aware that he would not repay
2 DenSco from funds held by Auction.com.

3 392. The Defendants' actions require that the Defendants' debt of \$47,156,641.92 to
4 Receiver be found nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

5 **COUNT XII - NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(4))**

6 393. Plaintiff incorporates by reference all of the allegations contained in the preceding
7 paragraphs as more fully set forth herein.

8 394. A debt is nondischargeable under Section 523(a)(4) of the Bankruptcy Code, for
9 fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

10 395. Defalcation includes acts that taint a particular debt such that it cannot be discharged.

11 396. Defalcation requires proof of "a culpable state of mind... involving knowledge of, or
12 gross recklessness in respect to, the improper nature of the relevant fiduciary behavior." Bullock v.
13 BankChampaign, N.A. 133 S. Ct 1754 at p. 1757 (2013).

14 397. DenSco entrusted the Debtor with access to its accounts, money and property, to,
15 among other things, acquire additional properties and Deeds of Trust for DenSco.

16 398. The Defendant intentionally and fraudulently misused his position and access to
17 embezzle money from DenSco for his own personal benefit.

18 399. The Defendant knew he was taking DenSco's funds without purchasing property.

19 400. The Defendant knew he was keeping DenSco's funds for his own benefit.

20 401. The Defendant concealed his actions from DenSco by providing Fake Receipts and/or
21 Deeds of Trust.

22 402. The Defendant concealed his embezzlement of DenSco's money by, among other
23 things, not returning the cashier's checks, or funds associated with each cashier's check, when a sale
24 was not completed.

 403. The Defendant's conduct constituted defalcation in a fiduciary capacity.

 404. The Defendant admitted he took DenSco's funds.

 405. The Defendant's actions caused DenSco to suffer substantial damage, including but

1 not limited to the inability to pay legitimate company debts and obligations.

2 406. Defendant is entitled to compensatory and punitive damages in an amount to be
3 proven at trial, plus interest to the fullest extent permitted by law, and reasonable attorney's fees and
4 costs.

5 407. Pursuant to 11 U.S.C. § 523(a)(4), the Defendants are not entitled to a discharge as to
6 the debts and liabilities owed to DenSco.

7 **COUNT XII(A) - NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(4))**

8 408. Plaintiff incorporates by reference all of the allegations contained in the preceding
9 paragraphs as more fully set forth herein.

10 409. A debt is nondischargeable under Section 523(a)(4) of the Bankruptcy Code, for
11 fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

12 410. DenSco entrusted the Debtor with access to its accounts, money and property, to,
13 among other things, acquire additional properties and Deeds of Trust for DenSco.

14 411. The Defendant intentionally and fraudulently misused his position and access to
15 embezzle money from DenSco for his own personal benefit.

16 412. The Defendant knew he was taking DenSco's funds without purchasing property.

17 413. The Defendant falsified the receipt evidencing the purchase of the Avenida Property.

18 414. The Defendant never purchased the Avenida Property, and ultimately redeposited the
19 funds associated with cashier's check 901812xxx into a bank account under his control.

20 415. The Defendant's conduct constituted defalcation in a fiduciary capacity.

21 416. The Defendant's actions caused DenSco to suffer substantial damage, including but
22 not limited to the inability to pay legitimate company debts and obligations.

23 417. Defendant is entitled to compensatory and punitive damages in an amount to be
24 proven at trial, plus interest to the fullest extent permitted by law, and reasonable attorney's fees and
costs.

418. Pursuant to 11 U.S.C. § 523(a)(4), the Defendants are not entitled to a discharge as to
the debts and liabilities owed to DenSco.

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1 430. Defendant admitted in the Forbearance Agreement that he knew that certain
2 properties were used as security for one or more loans from one or more lenders and that DenSco
3 was not in first position on each respective loan.

4 431. The status of a first position lien holder v. a second position lien holder is significant,
5 and material.

6 432. The Defendant knew the order of the various lenders' positions against the subject
7 properties as he orchestrated the purchase of the property and communicated with the various
8 lenders regarding the same. The Defendant knew his statements to DenSco that it was in first
9 position were false.

10 433. Defendant intended for DenSco to rely on the information that it was in first position
11 to encourage more transactions.

12 434. DenSco provided funds, and received promissory notes and deeds of trust based on
13 the Defendants' representation that DenSco was in first position on the properties.

14 435. DenSco relied on the Defendant's statements, documents and further actions.

15 436. DenSco had a right to rely on Defendant's statements and documents, and the
16 continued lending practices and on-going business relationship of the party.

17 437. DenSco suffered damages of \$37,420,120.47 for the First Fraud committed upon him
18 by the Defendant.

19 438. The Defendant acknowledged the First Fraud, entered into the Forbearance
20 Agreement and paid down on the debt prior to the bankruptcy filing. The debt owed on the Petition
21 Date under the Forbearance Agreement for the First Fraud is \$16,652,090.59.

22 439. The Defendants' actions require that the Defendants' debt to Receiver be found
23 nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

24 **COUNT XIV(A)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(4))**

440. Plaintiff incorporates by reference all of the allegations contained in the preceding
paragraphs as more fully set forth herein.

441. For the purchase of the Grayhawk Property, the Defendant engaged in his then

1 common practice of obtaining two hard money loans for first position deeds of trust on the same
2 property.

3 442. The Defendant sent DenSco an email indicating that he purchased the Grawhawk
4 Property and needed a loan of \$250,000.00.

5 443. Meanwhile the Defendant obtained a loan from Active to purchase the same property,
6 and Active recorded its' deed of trust.

7 444. Defendant's representations to DenSco that it was in first position on the subject
8 property was false, given that Defendant knew that Active was already in first position against the
9 subject property.

10 445. Defendant admitted in the Forbearance Agreement that he knew that certain
11 properties, including the Grayhawk Property, were used as security for one or more loans from one
12 or more lenders and that DenSco was not in first position for his loan.

13 446. The status of a first position lien holder v. a second position lien holder is significant,
14 and material, especially given the value of the Grayhawk Property.

15 447. The Defendant knew that Active was in first position on the property and that DenSco
16 believed it was in first position on the Grayhawk Property.

17 448. Defendant intended for DenSco to rely on the information that it was in first position
18 on the Grayhawk Property since Defendant obtained funds from DenSco for that purpose.

19 449. DenSco provided funds, and received a promissory note and deed of trust based on
20 the Defendant's representation that DenSco was in first position on the Grayhawk Property.

21 450. DenSco relied on the Defendant's statements, documents and further actions.

22 451. Defendant failed to tell DenSco about Active's first position status.

23 452. DenSco had a right to rely on Defendant's statements and documents, given that
24 DenSco lent the Defendant \$250,000.00 for the specific purpose of being the first position lender on
the Grayhawk Property.

453. DenSco suffered damages of at least \$144,100.00 for fraud committed upon him by
the Defendant for the Grayhawk Property.

1 454. The Defendants' actions require that the Defendants' debt to Receiver be found
2 nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

3 **COUNT XIV(B)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(4))**

4 455. Plaintiff incorporates by reference all of the allegations contained in the preceding
5 paragraphs as more fully set forth herein.

6 456. For the purchase of the Sexton Property, the Defendant engaged in his then common
7 practice of obtaining two hard money loans for first position deeds of trust on the same property.

8 457. The Defendant sent DenSco an email indicating that he purchased the Sexton
9 Property and needed a loan of \$150,000.00.

10 458. Meanwhile the Defendant obtained a loan from Active to purchase the same property,
11 and ultimately Active recorded its' deed of trust.

12 459. Defendant's representations to DenSco that it was in first position on the subject
13 property was false, given that Defendant knew that Active was already set to claim its' first position
14 security interest against the subject property.

15 460. Defendant admitted in the Forbearance Agreement that he knew that certain
16 properties, including the Sexton Property, were used as security for one or more loans from one or
17 more lenders and that DenSco was not in first position for his loan.

18 461. The status of a first position lien holder v. a second position lien holder is significant,
19 and material, especially given the value of the Sexton Property.

20 462. The Defendant knew that Active was in first position on the property and that DenSco
21 believed it was in first position on the Sexton Property.

22 463. Defendant intended for DenSco to rely on the information that it was in first position
23 on the Sexton Property since Defendant obtained funds from DenSco for that purpose.

24 464. DenSco provided funds, and received a promissory note and deed of trust based on
the Defendant's representation that DenSco was in first position on the Sexton Property.

465. DenSco relied on the Defendant's statements, documents and further actions.

466. Defendant failed to tell DenSco about Active's first position status.

1 467. DenSco had a right to rely on Defendant's statements and documents, given that
2 DenSco lent the Defendant \$150,000.00 for the specific purpose of being the first position lender on
3 the Sexton Property.

4 468. DenSco suffered damages of at least \$140,000.00 for fraud committed upon him by
5 the Defendant for the Sexton Property.

6 469. The Defendants' actions require that the Defendants' debt to Receiver be found
7 nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

8 **COUNT XIV(C)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(4))**

9 470. Plaintiff incorporates by reference all of the allegations contained in the preceding
10 paragraphs as more fully set forth herein.

11 471. For the purchase of the Hadley St. Property, the Defendant engaged in his then
12 common practice of obtaining two hard money loans for first position deeds of trust on the same
13 property.

14 472. The Defendant sent DenSco an email indicating that he purchased the Hadley St.
15 Property and needed a loan of \$90,000.00.

16 473. Meanwhile the Defendant obtained a loan from Active to purchase the same property,
17 and ultimately Active recorded its' deed of trust.

18 474. Defendant's representations to DenSco that it was in first position on the subject
19 property was false, given that Defendant knew that Active was already set to claim its' first position
20 security interest against the subject property.

21 475. Defendant admitted in the Forbearance Agreement that he knew that certain
22 properties, including the Hadley St. Property, were used as security for one or more loans from one
23 or more lenders and that DenSco was not in first position for his loan.

24 476. The status of a first position lien holder v. a second position lien holder is significant,
and material, especially given the value of the Hadley St. Property.

477. The Defendant knew that Active was in first position on the property and that DenSco
believed it was in first position on the Hadley St. Property.

1 478. Defendant intended for DenSco to rely on the information that it was in first position
2 on the Hadley St. Property since Defendant obtained funds from DenSco for that purpose.

3 479. DenSco provided funds, and received a promissory note and deed of trust based on
4 the Defendant's representation that DenSco was in first position on the Hadley St. Property.

5 480. DenSco relied on the Defendant's statements, documents and further actions.

6 481. Defendant failed to tell DenSco about Active's first position status.

7 482. DenSco had a right to rely on Defendant's statements and documents, given that
8 DenSco lent the Defendant \$90,000.00 for the specific purpose of being the first position lender on
9 the Hadley St. Property.

10 483. DenSco suffered damages of at least \$68,000.00 for fraud committed upon him by the
11 Defendant for the Hadley St. Property.

12 484. The Defendants' actions require that the Defendants' debt to Receiver be found
13 nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

14 **COUNT XIV(D)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(4))**

15 485. Plaintiff incorporates by reference all of the allegations contained in the preceding
16 paragraphs as more fully set forth herein.

17 486. For the purchase of the Palm St. Property, the Defendant engaged in his then common
18 practice of obtaining two hard money loans for first position deeds of trust on the same property.

19 487. The Defendant sent DenSco an email indicating that he purchased the Palm St.
20 Property and needed a loan of \$300,000.00.

21 488. Meanwhile the Defendant obtained a loan from Azben to purchase the same property,
22 and ultimately Azben recorded its' deed of trust.

23 489. Defendant's representations to DenSco that it was in first position on the subject
24 property was false, given that Defendant knew that Azben was already set to claim its' first position
security interest against the subject property.

490. Defendant admitted in the Forbearance Agreement that he knew that certain
properties, including the Palm St. Property, were used as security for one or more loans from one or

1 more lenders and that DenSco was not in first position for his loan.

2 491. The status of a first position lien holder v. a second position lien holder is significant,
3 and material, especially given the value of the Palm St. Property.

4 492. The Defendant knew that Azben was in first position on the property and that DenSco
5 believed it was in first position on the Palm St. Property.

6 493. Defendant intended for DenSco to rely on the information that it was in first position
7 on the Palm St. Property since Defendant obtained funds from DenSco for that purpose.

8 494. DenSco provided funds, and received a promissory note and deed of trust based on
9 the Defendant's representation that DenSco was in first position on the Palm St. Property.

10 495. DenSco relied on the Defendant's statements, documents and further actions.

11 496. Defendant failed to tell DenSco about Azben's first position status.

12 497. DenSco had a right to rely on Defendant's statements and documents, given that
13 DenSco lent the Defendant \$300,000.00 for the specific purpose of being the first position lender on
14 the Palm St. Property.

15 498. DenSco suffered damages of at least \$224,600.00 for fraud committed upon him by
16 the Defendant for the Palm St. Property.

17 499. The Defendants' actions require that the Defendants' debt to Receiver be found
18 nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

19 **COUNT XIV(E)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(4))**

20 500. Plaintiff incorporates by reference all of the allegations contained in the preceding
21 paragraphs as more fully set forth herein.

22 501. For the purchase of the Lynx Property, the Defendant engaged in his then common
23 practice of obtaining two hard money loans for first position deeds of trust on the same property.

24 502. The Defendant sent DenSco an email indicating that he purchased the Lynx Property
and needed a loan of \$240,000.00.

503. Meanwhile the Defendant obtained a loan from Active to purchase the same property,
and ultimately Active recorded its' deed of trust.

1 504. Defendant's representations to DenSco that it was in first position on the subject
2 property was false, given that Defendant knew that Active was already set to claim its' first position
3 security interest against the subject property.

4 505. Defendant admitted in the Forbearance Agreement that he knew that certain
5 properties, including the Lynx Property, were used as security for one or more loans from one or
6 more lenders and that DenSco was not in first position for his loan.

7 506. The status of a first position lien holder v. a second position lien holder is significant,
8 and material, especially given the value of the Lynx Property.

9 507. The Defendant knew that Active was in first position on the property and that DenSco
10 believed it was in first position on the Lynx Property.

11 508. Defendant intended for DenSco to rely on the information that it was in first position
12 on the Lynx Property since Defendant obtained funds from DenSco for that purpose.

13 509. DenSco provided funds, and received a promissory note and deed of trust based on
14 the Defendant's representation that DenSco was in first position on the Lynx Property.

15 510. DenSco relied on the Defendant's statements, documents and further actions.

16 511. Defendant failed to tell DenSco about Active's first position status.

17 512. DenSco had a right to rely on Defendant's statements and documents, given that
18 DenSco lent the Defendant \$240,000.00 for the specific purpose of being the first position lender on
19 the Lynx Property.

20 513. DenSco suffered damages of at least \$153,000.00 for fraud committed upon him by
21 the Defendant for the Lynx Property.

22 514. The Defendants' actions require that the Defendants' debt to Receiver be found
23 nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

24 **COUNT XIV(F)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(4))**

515. Plaintiff incorporates by reference all of the allegations contained in the preceding
paragraphs as more fully set forth herein.

516. For the purchase of the Hammond Property, the Defendant engaged in his then

1 common practice of obtaining two hard money loans for first position deeds of trust on the same
2 property.

3 517. The Defendant sent DenSco an email indicating that he purchased the Hammond
4 Property and needed a loan of \$100,000.00.

5 518. Meanwhile the Defendant obtained a loan from Geared to purchase the same
6 property, and ultimately Geared recorded its' deed of trust.

7 519. Defendant's representations to DenSco that it was in first position on the subject
8 property was false, given that Defendant knew that Geared was already set to claim its' first position
9 security interest against the subject property.

10 520. Defendant admitted in the Forbearance Agreement that he knew that certain
11 properties, including the Hammond Property, were used as security for one or more loans from one
12 or more lenders and that DenSco was not in first position for his loan.

13 521. The status of a first position lien holder v. a second position lien holder is significant,
14 and material, especially given the value of the Hammond Property.

15 522. The Defendant knew that Geared was in first position on the property and that
16 DenSco believed it was in first position on the Hammond Property.

17 523. Defendant intended for DenSco to rely on the information that it was in first position
18 on the Hammond Property since Defendant obtained funds from DenSco for that purpose.

19 524. DenSco provided funds, and received a promissory note and deed of trust based on
20 the Defendant's representation that DenSco was in first position on the Hammond Property.

21 525. DenSco relied on the Defendant's statements, documents and further actions.

22 526. Defendant failed to tell DenSco about Geared's first position status.

23 527. DenSco had a right to rely on Defendant's statements and documents, given that
24 DenSco lent the Defendant \$100,000.00 for the specific purpose of being the first position lender on
the Hammond Property.

528. DenSco suffered damages of at least \$72,000.00 for fraud committed upon him by the
Defendant for the Hammond Property.

1 529. The Defendants' actions require that the Defendants' debt to Receiver be found
2 nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

3 **COUNT XIV(G)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(4))**

4 530. Plaintiff incorporates by reference all of the allegations contained in the preceding
5 paragraphs as more fully set forth herein.

6 531. For the purchase of the Potter Property, the Defendant engaged in his then common
7 practice of obtaining two hard money loans for first position deeds of trust on the same property.

8 532. The Defendant sent DenSco an email indicating that he purchased the Potter Property
9 and needed a loan of \$170,000.00.

10 533. Meanwhile the Defendant obtained a loan from Geared to purchase the same
11 property, and ultimately Geared recorded its' deed of trust.

12 534. Defendant's representations to DenSco that it was in first position on the subject
13 property was false, given that Defendant knew that Geared was already set to claim its' first position
14 security interest against the subject property.

15 535. Defendant admitted in the Forbearance Agreement that he knew that certain
16 properties, including the Potter Property, were used as security for one or more loans from one or
17 more lenders and that DenSco was not in first position for his loan.

18 536. The status of a first position lien holder v. a second position lien holder is significant,
19 and material, especially given the value of the Potter Property.

20 537. The Defendant knew that Geared was in first position on the property and that
21 DenSco believed it was in first position on the Potter Property.

22 538. Defendant intended for DenSco to rely on the information that it was in first position
23 on the Potter Property since Defendant obtained funds from DenSco for that purpose.

24 539. DenSco provided funds, and received a promissory note and deed of trust based on
the Defendant's representation that DenSco was in first position on the Potter Property.

540. DenSco relied on the Defendant's statements, documents and further actions.

541. Defendant failed to tell DenSco about Geared's first position status.

1 542. DenSco had a right to rely on Defendant's statements and documents, given that
2 DenSco lent the Defendant \$170,000.00 for the specific purpose of being the first position lender on
3 the Potter Property.

4 543. DenSco suffered damages of at least \$125,407.00 for fraud committed upon him by
5 the Defendant for the Potter Property.

6 544. The Defendants' actions require that the Defendants' debt to Receiver be found
7 nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

8 **COUNT XIV(H)- NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(4))**

9 545. Plaintiff incorporates by reference all of the allegations contained in the preceding
10 paragraphs as more fully set forth herein.

11 546. For the purchase of the Aspen Property, the Defendant engaged in his then common
12 practice of obtaining two hard money loans for first position deeds of trust on the same property.

13 547. The Defendant sent DenSco an email indicating that he purchased the Aspen Property
14 and needed a loan of \$210,000.00.

15 548. Meanwhile the Defendant obtained a loan from Active to purchase the same property,
16 and ultimately Aspen recorded its' deed of trust.

17 549. Defendant's representations to DenSco that it was in first position on the subject
18 property was false, given that Defendant knew that Active was already set to claim its' first position
19 security interest against the subject property.

20 550. Defendant admitted in the Forbearance Agreement that he knew that certain
21 properties, including the Aspen Property, were used as security for one or more loans from one or
22 more lenders and that DenSco was not in first position for his loan.

23 551. The status of a first position lien holder v. a second position lien holder is significant,
24 and material, especially given the value of the Aspen Property.

552. The Defendant knew that Active was in first position on the property and that DenSco
believed it was in first position on the Aspen Property.

553. Defendant intended for DenSco to rely on the information that it was in first position

1 on the Aspen Property since Defendant obtained funds from DenSco for that purpose.

2 554. DenSco provided funds, and received a promissory note and deed of trust based on
3 the Defendant's representation that DenSco was in first position on the Aspen Property.

4 555. DenSco relied on the Defendant's statements, documents and further actions.

5 556. Defendant failed to tell DenSco about Active's first position status.

6 557. DenSco had a right to rely on Defendant's statements and documents, given that
7 DenSco lent the Defendant \$210,000.00 for the specific purpose of being the first position lender on
8 the Aspen Property.

9 558. DenSco suffered damages of at least \$157,900.00 for fraud committed upon him by
10 the Defendant for the Aspen Property.

11 559. The Defendants' actions require that the Defendants' debt to Receiver be found
12 nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

13 **COUNT XV - NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(4))**

14 560. Plaintiff incorporates by reference all of the allegations contained in the preceding
15 paragraphs as more fully set forth herein.

16 561. During the Second Fraud, the Defendant once again lied to DenSco and obtained
17 millions of dollars through his fraudulent actions.

18 562. The Defendant issued cashier's checks that were never used for the intended purchase
19 of real property, and provided a picture of said cashier's check to DenSco indicating that it was in
20 fact used to purchase property.

21 563. The Defendant provided receipts to DenSco indicating the Defendant's payment of
22 funds for the subject property, however the receipts were Fake Receipts.

23 564. The Defendant executed a series of documents, including mortgages, deeds of trust,
24 and promissory notes ("Documents") purporting to give DenSco a first position lien against the
property that Defendant had falsely represented to DenSco was purchased by the Defendant.

565. The Defendant upped his game and implemented this sophisticated Second Fraud
against DenSco, given that DenSco had put in security measures to protect DenSco's funds and

1 interest after the First Fraud.

2 566. The cashier's checks, Fake Receipts and Documents provided to DenSco was
3 representations.

4 567. The cashier's checks, Fake Receipts and Documents provided to DenSco during the
5 Second Fraud were false documents.

6 568. The purchase of the property through the cashier's check, the receipt for such
7 purchase, and the accompanying documents evidencing the purchase and security agreement are all
8 material facts involved in real estate transactions.

9 569. As Defendant knew he did not actually purchase any specific property with the
10 cashier's check he knew sending a picture of the cashier's check with a property address on it to
11 DenSco was conveying a false representation.

12 570. As Defendant knew he did not actually purchase any specific property, he must have
13 known that the Fake Receipt he provided to DenSco was false and conveying a false representation.

14 571. As the knew he did not actually purchase any specific property, he knew that the
15 Documents were false and that he was conveying a false representation.

16 572. The Defendant knew that DenSco would rely on the cashier's check, Fake Receipts
17 and Documents as evidence of his purchase of the real property.

18 573. The Defendant knew that DenSco would provide additional funding for future loans
19 so long as the Second Fraud was not discovered.

20 574. DenSco believed that DenSco's funds were being used to purchase property,
21 especially given the detailed evidence provided by Defendant of such purchases.

22 575. DenSco believed that it held security positions on the new properties purchased under
23 loans given during the Second Fraud.

24 576. Given the new security measures that DenSco put it place, he relied on the validity of
the Fake Receipt and Documents, and had a right to rely on such.

577. Plaintiff discovered that the Second Fraud involved 2,616 loans by DenSco wherein
there was no underlying security interest because Defendant had not purchased any property, and all

1 the cashier's check, receipts and Documents for those 2,616 loans were fake.

2 578. Densco suffered injury in the amount of \$30,504,551.33.

3 579. The Defendants' actions require that the Defendants' debt to Receiver be found
4 nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

5 **COUNT XVI - NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(4))**

6 580. Plaintiff incorporates by reference all of the allegations contained in the preceding
7 paragraphs as more fully set forth herein.

8 581. The Defendant piled on more lies and fraud and insisted that he would repay all the
9 outstanding sums due from the First Fraud and Second Fraud with funds he hid with Auction.com
(previously and herein after "Third Fraud").

10 582. During the conversation between the Defendant and Denny Chittick, principal of
11 DenSco, the Defendant reiterated numerous times that there was \$31.8 Million Dollars held by
12 Auction.com that belonged to Defendant and that he would use those funds to repay DenSco for the
13 amounts due under the First Fraud and Forbearance Agreement, and as a result of the Second Fraud.

14 583. Defendant represented that the outstanding sum due to DenSco would be paid to
15 DenSco after the bankruptcy case was over. See Exhibit G- Excerpt from Scott Menaged's 2004
16 Examination, page 202, lines 13-22, page 204, lines 8-21 (Q= Receiver's counsel, A= Defendant).

17 584. During his deposition, the Defendant testified that that no money was held at
18 Auction.com for his use or benefit, or for the benefit of Densco.

19 585. Obviously the representation that there is \$31.8 Million Dollars available to repay an
outrageous outstanding debt is a material fact.

20 586. The Defendant's statements caused the Third Fraud against DenSco.

21 587. The Defendant testified in his deposition that he lied to Denny Chittick about the
existence of the funds with Auction.com.

22 588. During the entire recorded conversation between Defendant and Denny Chittick, the
23 Defendant repeatedly told Denny Chittick that the funds held in Auction.com would pay the
24 outstanding debt after the bankruptcy case, and Denny Chittick pushed for a time when the funds

1 would be available.

2 589. The Defendant answered Denny Chittick's questions about the repayment and time
3 frame with additional lies, including convincing Denny Chittick that Defendant would go to prison if
4 the Auction.com funds were discovered so Denny Chittick had to keep quiet about Auction.com.

5 590. In fact, during that conversation, the Defendant said that he would deny the existence
6 of the Auction.com funds.

7 591. Denny Chittick believed that the Defendant had millions sitting with Auction.com.

8 592. Denny Chittick believed everything that the Defendant told him, especially when
9 Defendant constantly told Denny Chittick that Defendant could go to prison if the Auction.com
funds were discovered.

10 593. Denny Chittick believed the Defendant would repay DenSco.

11 594. DenSco had received repayment on the First Fraud and Forbearance Agreement, so
12 his reliance that the Defendant had funds held in Auction.com and that Defendant would use those
funds to repay DenSco was reasonable.

13 595. Defendant's lies about the Auction.com caused harm to DenSco.

14 596. Third Fraud caused harm to DenSco.

15 597. The Defendants' actions require that the Defendants' full debt to Receiver be found
16 nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

17 **COUNT XVII - NONDISCHARGEABILITY OF DEBT (SECTION 523(a)(6))**

18 598. Plaintiff incorporates by reference all of the allegations contained in the preceding
19 paragraphs as more fully set forth herein.

20 599. A debt is nondischargeable under Section 523(a)(6) of the Bankruptcy Code, for
willful and malicious injury by the debtor to another entity or to the property of another.

21 600. The Defendant's conduct with respect to DenSco, as set forth herein, was willful and
22 malicious.

23 601. The Defendant's willful and malicious conduct caused DenSco to suffer substantial
24 damage.

1 at trial, plus interest to the fullest extent permitted by law, and reasonable attorneys' fees and costs.

2 625. The Defendants are not entitled to a discharge as to full debts and liabilities owed to
3 DenSco.

4 **COUNT XX- UNJUST ENRICHMENT**

5 626. Plaintiff incorporates by reference all of the allegations contained in the preceding
6 paragraphs as more fully set forth herein.

7 627. Defendant by and through his conduct as set forth herein, improperly, wrongfully,
8 and unjustly embezzled and/or received property and money belonging to DenSco.

9 628. Defendant paid no compensation and provided no consideration for the money,
10 property, and benefits that he obtained at DenSco's expense.

11 629. Defendant cannot in good conscience and equity retain the property, money, and
12 benefits without compensating DenSco, which would be an unjust result.

13 630. Defendant has been unjustly enriched at DenSco's expense.

14 631. DenSco has been impoverished by Defendant's unjust enrichment.

15 632. Defendant's unjust enrichment actually and proximately caused DenSco to suffer
16 substantial monetary harm in an amount of at least \$734,484,440.67.

17 633. There is no legal justification for Defendant's unjust enrichment, and DenSco may
18 have no plain, speedy, or adequate way to remedy the embezzlement of its money.

19 634. DenSco is entitled to compensatory damages in an amount to be proven at trial, plus
20 interest to the fullest extent permitted by law, and reasonable attorneys' fees and costs.

21 635. The Defendants are not entitled to a discharge as to full debts and liabilities owed to
22 DenSco.

23 **WHEREFORE**, Plaintiff prays that the Court enter judgment in its favor and against
24 Defendant as follows:

- A. For a determination that the amount of at least \$47,156,641.92 constitutes nondischargeable obligations under at least 11 U.S.C. § 523(a), including but not limited to subsections (2), (4), and/or (6), in this Bankruptcy Case and

Guttilla Murphy Anderson, P.C.
5415 E. High Street, Suite 200
Phoenix, AZ 85054
(480) 304-8300

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any subsequent bankruptcy case;

- B. For a determination that the full, outstanding debt of \$47,156,641.92 constitutes nondischargeable obligations;
- C. For an award of actual, consequential, punitive, and all other available damages in an amount to be proven at trial;
- D. For pre- and post-judgment interest to the fullest extent and at the highest rate permitted by law;
- E. For an award of attorneys’ fees, taxable costs, and all other costs under all applicable law, plus interest as provided by law, including A.R.S. § 12-341.01; and
- F. For such other and further relief as the Court deems just and proper.

DATED this 31st day of January, 2017.

GUTTILLA MURPHY ANDERSON, P.C.

/s/ Ryan W. Anderson
Ryan W. Anderson
Attorneys for Receiver

VERIFICATION

Peter S. Davis, being first duly sworn, does depose and say:

1. I am the court-appointed Receiver of DenSco Investment Corporation. I make this Verification based upon behalf of the Receivership of DenSco Investment Corporation.

2. I have read the Complaint and to the best of my knowledge, and based upon the records and information gathered by the Receivership, believe the allegations contained to be true and correct.

FURTHER AFFIANT SAITH NOT



SARA BERETTA
Notary Public - Arizona
Maricopa County
Expires 08/15/2018

[Signature]
Peter S. Davis
Receiver of DenSco Investment Corporation

STATE OF ARIZONA }
County of Maricopa } ss.

SUBSCRIBED AND SWORN to before me this 30th day of January, 2017
by Peter S. Davis.

[Signature]
Notary Public

My commission expires on:

June 15, 2018

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EXHIBIT E

DECLARATION OF JILL H. FORD

I, Jill H. Ford, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a resident of Maricopa County, Arizona and am over the age of eighteen (18).
2. I make this declaration from personal knowledge.
3. I have served as the Chapter 7 Trustee in the bankruptcy case of Yomtov Scott Menaged in United States Bankruptcy Court for the District of Arizona, case number 2:16-bk-04268-PS, since Mr. Menaged filed his case on April 20, 2016.
4. Among the assets that I collected from Mr. Menaged for liquidation in the bankruptcy case were a number of items of jewelry, including watches, bracelets, pendants, and chains. With regard to those items, Mr. Menaged and his bankruptcy attorney Cody Jess requested that I conduct public sales at the bankruptcy courthouse to allow Mr. Menaged an opportunity to bid on the particular items he wanted because they had sentimental value to him. I accommodated that request and arranged for public sales at the bankruptcy courthouse rather than engage the services of an auctioneer to conduct an online sale or rather than sell the items in lots.
5. I conducted public sales in November 2016 and January 2017. Mr. Menaged appeared and was the successful bidder on approximately 27 items and became obligated to pay a total of \$7,500 to the Chapter 7 bankruptcy estate in exchange for those items.
6. Ordinarily, the successful bidder has five business days to pay the sale price. Despite repeated telephone calls and emails from my office and my attorney's office to Mr. Menaged's bankruptcy attorney demanding payment, Mr. Menaged did not pay. Eventually, on about March 15, 2017, Mr. Menaged's bankruptcy attorney informed me that Mr. Menaged would not pay the sale price after all, thus forcing me to incur the fees and expenses associated with

engaging the services of a professional auctioneer to sell those items for the benefit of the bankruptcy estate.

7. In or about August 2016, Mr. Menaged informed me that his 2015 tax return was incorrect and would be amended to accurately reflect, among other things, gambling winnings/losses and business income. My attorney has tried for several months to obtain Mr. Menaged's amended tax return from Mr. Menaged's bankruptcy attorney Mr. Jess. As of the date of this declaration, Mr. Menaged has not provided to me or my attorney an amended 2015 tax return as he had originally promised.

I HEREBY DECLARE under penalty of perjury that the foregoing declaration is true and correct.

RESPECTFULLY SUBMITTED this 28th day of June, 2017.

s/ Jill H. Ford

JILL H. FORD, Trustee