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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiff,

v.

U.S. BANK, NA, et al.

Defendants.

NO. CV2019-011499

**NOTICE OF NON-PARTIES AT
FAULT**

(Assigned to the Honorable Daniel Martin)

Pursuant to A.R.S. § 12-2506(B) and Ariz. R. Civ. P. 26(b)(5), Defendants JPMorgan Chase Bank, N.A. (“Chase”), Samantha Nelson, Kristofer Nelson, Vikram Dadlani, and Jane Doe Dadlani (collectively, the “Chase Defendants”) submit their Notice of Nonparty at Fault alleging that the following individuals and entities may be wholly or partially at fault or responsible for causing or contributing to the damages Plaintiff seeks in this litigation. This Notice is based on information reasonably available to the Chase Defendants as of this date. The Chase Defendants reserve their right to supplement this Notice in accordance with Ariz. R. Civ. P. 26(b)(5) as further information is discovered. By giving this notice, the Chase Defendants do not concede that Plaintiff has in fact sustained damages or that the Chase Defendants were in any way responsible for any portion of Plaintiff’s claimed damages. Moreover, Plaintiff has previously been put on notice of individuals and entities that may be wholly or partially at fault for the same damages claimed herein, as part of the Notice of Non-Parties at Fault dated June 7, 2018, in the *Peter S. Davis, as Receiver of DenSco Investment Corporation v. Clark Hill PLC*,

1 *et al.*, Case No. CV2017-013832 (Superior Court of Ariz., Maricopa Cty.) litigation, and
2 in the Notice of Non-Parties at Fault dated March 1, 2021, served in this matter by U.S.
3 Bank, N.A.

4 **1. Dennis J. Chittick (deceased)**

5 Dennis J. Chittick was wholly or partially at fault or responsible for the damages
6 Plaintiff seeks. Mr. Chittick was the President and sole shareholder of DenSco
7 Investment Corporation ("DenSco") from its inception in 2001 until his death in 2016. He
8 controlled all operations of DenSco and retained complete authority to make loans,
9 modify loans, bring in new investors, and raise capital. He likely was the only individual
10 that at all times was aware of: (1) the total value of DenSco's portfolio; (2) the number
11 and identity of DenSco's investors; (3) the number of loans that DenSco had made to third
12 party borrowers; (4) the terms of the loans made to those third parties; and (5) the identity
13 of those third party borrowers. Mr. Chittick was best-positioned to ensure that the capital
14 raised from DenSco's investors was being managed prudently and according both to the
15 terms of the private offering memoranda and associated documents that DenSco provided
16 to investors and appropriate procedures and protocols for hard money lenders. Based on
17 the facts currently known it appears, however, that Mr. Chittick failed to follow the
18 guidelines provided in the private offering memoranda and associated documents in
19 making loans to third party borrowers and also failed to properly conduct the business of
20 DenSco pursuant to sound business practices. Among other things, Mr. Chittick failed to
21 diversify the number of borrowers to whom he made loans on behalf of DenSco, loaning
22 Mr. Menaged significantly more than 10-15% of DenSco's portfolio, which was the cap
23 for loans to a single borrower. Mr. Chittick also failed to follow appropriate protocols for
24 lending money, including those set forth in his loan documents, by lending money directly
25 to borrowers such as Mr. Menaged, rather than to a trustee or escrow company. Moreover,
26 Mr. Chittick chose to continue making loans to Mr. Menaged after he became aware that
27 Mr. Menaged and his companies had defrauded DenSco and stolen DenSco—months
28 before even a single transaction occurred at Chase.

1 **2. DenSco Investment Corporation (c/o Gutilla Murphy Anderson, PC,**
2 **5414 E. High Street Ste. 200 Phoenix, AZ 85054)**

3 DenSco shall be considered a third party that caused or contributed to all or part
4 of the damages alleged by Plaintiff in this case for the same reasons set forth with respect
5 to Mr. Chittick above.

6 **3. Yomtov Menaged (Inmate Number: 74322-408 c/o Federal Bureau of**
7 **Prisons, 1529 West Highway 366 Safford, AZ 85546)**

8 Yomtov Menaged, his wholly owned and operated businesses (Arizona Home
9 Foreclosures, LLC and Easy Investments, LLC), and employees (Veronica Castro,
10 Alberto Pena, and Troy Flippo) were wholly or partially at fault or responsible for the
11 damages Plaintiff seeks. Starting in 2007, Mr. Menaged obtained loans from DenSco
12 personally or through entities in which he was the sole owner and manager purportedly
13 in order to buy distressed properties around Arizona. Mr. Menaged represented to Mr.
14 Chittick that the loans he obtained from DenSco would be placed in a first lien position,
15 as DenSco required, but beginning in 2011 or 2012, they were not. According to the
16 Receiver's December 23, 2016 report, in fact, Mr. Menaged used a single property to
17 secure loans from multiple hard money lenders and the loans acquired from lenders other
18 than DenSco were frequently placed in the first lien position.

19 After Mr. Chittick and DenSco discovered this fraud in late 2013, Mr. Chittick and
20 DenSco executed a workout agreement in early 2014 whereby Mr. Menaged and his
21 affiliated entities agreed to make DenSco whole again by raising capital from third
22 parties and taking additional loans from DenSco, and investing that money such that the
23 loans to both the other lenders and DenSco could be paid off. Unfortunately, Mr.
24 Menaged's fraud continued as documented in an investigation conducted by the
25 Department of Justice and filings in the associated criminal case No. CR 17-00680-PHX-
26 GMS in the District of Arizona. According to the plea agreement in Mr. Menaged's
27 criminal case, he defrauded DenSco out of at least \$34,000,000 and consented to a
28 federal criminal judgment against him for defrauding DenSco.

1 **4. Clark Hill PLC and David Beauchamp (14850 N. Scottsdale Road,
2 Suite 500, Scottsdale, Arizona 85254)**

3 David Beauchamp and Clark Hill PLC (“Clark Hill”) served as DenSco’s lawyers
4 and were wholly or partially at fault or responsible for the damages DenSco seeks. Clark
5 Hill represented DenSco in connection with its business, including the solicitation of
6 investor funds and its practice of lending money to Menaged and his companies. As
7 Plaintiff asserted in its prior litigation against Clark Hill (captioned Peter S. Davis v. Clark
8 Hill et al. Case No. CV2017-013832), Clark Hill failed to: properly advise DenSco and
9 allowed Menaged’s fraud to continue rather than advising DenSco upon discovery of the
10 fraud in November 2013, that DenSco should cease business with Menaged; report the
11 matter to law enforcement; and provide proper legal advice to ensure that Menaged was
12 not able to continue to defraud DenSco.

13 Indeed, as Plaintiff argued in its case against Clark Hill, Clark Hill and Mr.
14 Beauchamp received a letter sent to DenSco in late 2013 by other of Menaged’s lenders
15 that accused DenSco of “falsely stat[ing] that DenSco had ‘provided purchase money
16 funding’ and that its ‘loans are evidenced by a check payable to the trustee for each of
17 the’” properties acquired by the lenders. The lenders threatened to sue DenSco if it did
18 not sign subordination agreements acknowledging that it did not have first position liens.
19 DenSco relied on this letter to support its argument that Clark Hill, when it reviewed the
20 letter, should have discovered that Menaged was lying to DenSco about the scope of the
21 problem and should have advised DenSco to sever its relationship with Menaged.
22 Specifically, DenSco argued that an “easily conducted [] limited investigation,” involving
23 a search of “less than five minutes” on publicly available search engines “would produce
24 records showing that for each of the 49 properties [at issue], Menaged had signed both a
25 DenSco Mortgage and another lender’s deed of trust before a notary, providing further
26 evidence that Menaged, not ‘some guy working in his office,’ had secured all of the loans
27 in questions, and had purposefully defrauded DenSco.”

28 Clark Hill and Mr. Beauchamp, therefore, were positioned to stop DenSco from
suffering any further damages by no later than January 2014, but failed to properly advise

1 DenSco and, therefore, are responsible for any damages claimed thereafter.

2
3 Dated this 30th day of April, 2021.

4 GREENBERG TRAURIG, LLP

5 By: /s/ Nicole M. Goodwin

6 Nicole M. Goodwin

7 *Attorney for Defendants JPMorgan Chase*
8 *Bank, N.A., Samantha Nelson, Kristofer Nelson,*
9 *Vikram Dadlani, and Jane Doe Dadlani*

10 COPY of the foregoing served via
11 TurboCourt e-Service and E-Mail
12 this 30th day of April, 2021 to:

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