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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

Peter S. Davis, as Receiver of DenSco
Investment Corporation, an Arizona
corporation,

Plaintiff,

v.

U.S. Bank, NA, a national banking
organization; Hilda H. Chavez and John
Doe Chavez, a married couple; JP Morgan
Chase Bank, N.A., a national banking
organization; Samantha Nelson f/k/a
Samantha Kumbalek and Kristofer
Nelson, a married couple; and Vikram
Dadlani and Jane Doe Dadlani, a married
couple,

Defendants

No. CV2019-011499

**PLAINTIFF'S CONTROVERTING
STATEMENT OF FACTS AND
EVIDENTIARY OBJECTIONS**

(Assigned to the Honorable
Dewain D. Fox)

1 Pursuant to Rule 56(c)(3)(B)(i) of the Arizona Rules of Civil Procedure, Peter
2 S. Davis, as Receiver of DenSco Investment Corporation (“DenSco”) hereby submits
3 his Controverting Statement of Facts in response to Defendants’ Combined Statement
4 of Facts in support of their Motions for Summary Judgment. This Controverting
5 Statement identifies which paragraphs in Defendants’ Statement are disputed, provides
6 the factual bases for such dispute, and lists evidentiary objections.¹

7 As the evidence shows, Defendants’ Statement of Facts is incomplete. For
8 example, it ignores the role of Clark Hill. (See ¶¶ 14–33.) It assumes that Chittick was
9 a co-participant in Menaged’s Second Fraud when he was the victim. (See ¶¶ 34–36,
10 44–66.) Defendants’ Statement also overlooks Chase’s own policies, procedures, and
11 training. (See ¶¶ 37–43, 81–86.) It sweeps under the rug the massive amount of
12 information that Chase knew at the branch and on a national level. (See ¶¶ 67–80, 91–
13 113 (Susan Lazar), 114–45 (Vikram Dadlani and Samantha Nelson), 152–97 (AML
14 Department). And it ignores that Chase’s credibility is a major issue in the case. (See
15 ¶¶ 146–51.)

- 16 1. The Receiver does not controvert paragraph 1.
- 17 2. The Receiver does not controvert paragraph 2.
- 18 3. The Receiver does not controvert paragraph 3.
- 19 4. The Receiver does not controvert paragraph 4.
- 20 5. The Receiver does not controvert paragraph 5.
- 21 6. The Receiver does not controvert paragraph 6.
- 22 7. The Receiver controverts paragraph 7 in part and disputes that DenSco’s
23 investors were given “dividends.” Those investors would receive a general obligation
24 note and receive interest on the note. (Defendants’ Combined Statement of Facts
25

26 ¹ The Receiver is filing concurrently a separate Combined Statement of Facts
27 (“Receiver SOF”), pursuant to Rule 56(c)(3)(B)(ii), which identifies facts and evidence
28 establishing a genuine dispute or otherwise precluding summary judgment in favor of
Defendants.

1 (“SOF”) Ex. 11 (June 1, 2007 Private Offering Memorandum).)

2 8. The Receiver objects to the transcript of Denny Chittick’s telephone call
3 with Scott Menaged (SOF Ex. 12) because it is hearsay and inadmissible. Nonetheless,
4 the Receiver does not dispute that investors in DenSco included, among others, family
5 and friends of Chittick.

6 9. The Receiver controverts paragraph 9 in part. The Private Offering
7 Memorandum (SOF Ex. 11) states on the third page, in bold print, “**The notes are**
8 **speculative and investment in the notes involves a high level of risk.**” The cited
9 single page from the website (SOF Ex. 13) also does not say that the notes are a low-
10 risk, safe investment. The Receiver does not dispute the lending guidelines.

11 10. The Receiver objects to the written expert report of Mark Lee (SOF Ex.
12 14), which is hearsay and inadmissible and not supported by affidavit. Nonetheless,
13 the Receiver does not dispute that, if DenSco did not keep the lending guidelines, it
14 could increase the risk.

15 11. The Receiver does not controvert paragraph 11.

16 12. The Receiver does not controvert paragraph 12.

17 13. The Receiver objects to the written expert report of Andrew Richmond
18 (SOF Ex. 18), which is hearsay and inadmissible and not supported by affidavit.
19 Nonetheless, the Receiver does not dispute that the concentration of loans from DenSco
20 to AZHF increased over time.

21 14. The Receiver controverts paragraph 14 in part. The Receiver does not
22 dispute that Chittick discovered the First Fraud on November 27, 2014. However, the
23 Receiver disputes paragraph 14 insofar as it suggests that Chittick knew that Menaged
24 committed the First Fraud. Menaged told Chittick that one of Menaged’s family
25 members—a cousin—was double-licensing properties without Menaged’s knowledge.
26 (SOF Ex. 15 (letter from Chittick to Beauchamp, January 7, 2014).)

27 15. The Receiver does not controvert paragraph 15.

28 16. The Receiver does not controvert paragraph 16.

1 17. The Receiver objects to the written expert report of Richmond (SOF Ex.
2 18), which is hearsay and inadmissible and not supported by affidavit. Nonetheless,
3 the Receiver does not dispute that the concentration of loans to Menaged on
4 November 1, 2013 was 43%, more or less.

5 18. The Receiver objects to the written expert report of Jack Hilton (SOF Ex.
6 23), which is hearsay and inadmissible and not supported by affidavit. Nonetheless,
7 the Receiver does not dispute that providing loan funds directly to Menaged allowed
8 Menaged to use the monies for another purpose, and that Chittick had always sent
9 money directly to borrowers since 2003.

10 19. The Receiver objects to the referenced email (SOF Ex. 74), which is
11 hearsay and inadmissible and not supported by affidavit. The Receiver controverts
12 paragraph 19 and disputes that the email establishes Chittick's knowledge of a fraud in
13 2012. Instead, a fair reading of the email is that Chittick is asking for an explanation.
14 Further, this paragraph is contradicted by Defendants' Exhibit 15, the email from
15 Chittick to David Beauchamp. and contrary to Defendants' Exhibit 21, the personal
16 diary entry, which states that Chittick learned about the double-liening issue on
17 November 27, 2013.

18 20. The Receiver controverts paragraph 20 in part. The Receiver does not
19 dispute the Complaint itself (SOF Ex. 75), which is a public document, or that the
20 Complaint contains an allegation in paragraph 20 that "Easy attempted to encumber the
21 property with deeds of trust to Active and DenSco." The Receiver, however, disputes
22 the conclusion stated. The complaint was against several entities, including Active.
23 The Complaint alleged the property was mistakenly made the subject of a trustee's sale.
24 The fact that a Complaint was filed is not evidence that Chittick read the Complaint or
25 was aware of all its allegations. Defendants' Exhibit 75 also contains an email from
26 Chittick to Beauchamp, dated June 14, 2013. If the e-mail is admissible, it does not
27 demonstrate that Chittick knew about double-liening, as the e-mail only discusses the
28 following: "He bought a property at auction, was issued a trustee's deed, I put a loan

1 on it. Evidently the trustee had already sold it before the auction and received money
2 on it Freo Arizona LLC.” The email is not evidence that Chittick knew of the double-
3 lien fraud in 2012.

4 21. The Receiver controverts paragraph 21. As set out in Defendants’
5 Statement of Facts, DenSco did change its lending practices with Menaged by entering
6 into a forbearance agreement, and continued lending from DenSco to Menaged was
7 conditioned on Menaged’s providing a copy of a certified check for the particular
8 property DenSco was funding and a trustee’s sale receipt. The Receiver does not
9 dispute that Chittick continued to send money directly to borrowers as he had since
10 2003.

11 22. The Receiver does not dispute that Chittick made the comments
12 attributable to his diary. The Receiver objects to the admissibility of the Receiver’s
13 personal opinions as to what was reasonable or unreasonable for a hard-money lender.
14 The test for reliance in common law fraud is a subjective test, tied to the circumstances
15 and the victim; the Receiver’s opinion is not relevant. Defendants’ Exhibit 79 is the
16 Receiver’s Statement of Facts in the Clark Hill case, filed to support Plaintiff’s motion
17 that there was a *prima facie* case against Clark Hill for punitive damages. If Exhibit 79
18 is admissible as an admission of the Receiver, then the remainder of the filing should
19 come in under the Rule of Completeness. *See* Ariz. R. Evid. 106. Exhibit 79
20 demonstrates how Chittick relied upon the advice of Beauchamp, his lawyer, in going
21 forward with Menaged. Beauchamp prepared Private Offering Memoranda that
22 DenSco issued to investors in 2003, 2005, 2007, 2009, and 2011. (Ex. 79, ¶¶ 12–13.)
23 Beauchamp was negligent in failing to prepare a new Private Offering Memorandum
24 in 2013. (*Id.* ¶¶ 106–112.) Beauchamp was negligent in failing to advise DenSco to
25 stop selling notes until a new Private Offering Memorandum was prepared. (*Id.* ¶¶ 153-
26 157.) Beauchamp was negligent in advising Chittick about the practices DenSco should
27 follow in continuing to loan money to Menaged. (*Id.* ¶¶ 214–217.) Beauchamp was
28 negligent in advising Chittick that he could continue offering general obligation notes

1 and delay issuing a new Private Offering Memorandum. (*Id.* ¶¶ 263–304.)

2 23. The Receiver does not controvert paragraph 23.

3 24. The Receiver objects to the use of the diary (SOF Ex. 25) for the truth of
4 the matter asserted as hearsay and inadmissible. If the diary entries are admissible, the
5 Receiver controverts paragraph 24 in part. The diary entries cited do not strategize a
6 plan; they do not talk about a forbearance agreement or not telling Chittick’s investors.
7 The Receiver does not dispute his Admission No. 12, which states the following: “After
8 reasonable inquiry, Plaintiff is not able to admit the Request that Denny Chittick did
9 not take any action to confirm the truth of Menaged’s story, as Denny Chittick may
10 have taken actions that were not evident from the records and other information that
11 Plaintiff has obtained. Based upon discovery in the Clark Hill case, Plaintiff admits
12 that he is not aware of any actions Denny Chittick took to confirm Menaged’s story
13 about his cousin other than believing Menaged.”

14 25. The Receiver does not controvert paragraph 25.

15 26. The Receiver does not controvert paragraph 26.

16 27. The Receiver objects to the written expert report of Lee (SOF Ex. 14),
17 which is hearsay and inadmissible. Nonetheless, the Receiver does not dispute that
18 DenSco and Chittick had a duty of disclosure to their general obligation note holders.

19 28. The Receiver does not controvert paragraph 28.

20 29. The Receiver does not controvert paragraph 29.

21 30. The Receiver objects to the written expert report of Lee (SOF Ex. 14),
22 which is hearsay and inadmissible and not supported by affidavit. Nonetheless, the
23 Receiver does not dispute that the Arizona Corporation Commission filed a Complaint
24 against DenSco that alleged in Count One a fraud in connection with the sale of a
25 security (SOF Ex. 5). The security was the general obligation notes between DenSco
26 and its investors. (Complaint ¶ 8.)

27 31. The Receiver does not controvert paragraph 31.

28 32. The Receiver objects to the written expert report of Hilton (SOF Ex. 23),

1 which is hearsay and inadmissible and not supported by affidavit. Nonetheless, the
2 Receiver does not dispute that sending the money directly to Menaged created the
3 opportunity for Menaged to use the money for other purposes, and that the better
4 practice would have been to deliver the money to the trustee conducting the foreclosure
5 sale.

6 33. The Receiver controverts paragraph 33 in part. The Receiver does not
7 dispute his testimony in Defendants' Exhibit 78, at pages 87, 88, 153, and 178 of his
8 deposition. The testimony addresses things that Chittick could have done to uncover
9 the fraud. However, the Receiver noted, "And Denny believed people, you know, and
10 it worked for him with his other hard-money lenders. But it certainly would have been
11 a better practice to do that. I agree with you in that regard. It is a better practice." (Ex.
12 78 at 153:13–15.)

13 34. The Receiver objects to the admissibility of his personal opinion as to
14 what is reasonable or unreasonable. Insofar as Chase is using the opinion on the issue
15 of justifiable reliance in common law fraud, the test for reliance is a subjective one
16 based on the circumstances and the victim, and the Receiver's opinion is not relevant.

17 35. The Receiver does not controvert paragraph 35.

18 36. The Receiver does not controvert paragraph 36.

19 37. The Receiver does not controvert paragraph 37.

20 38. The Receiver controverts paragraph 38 in part. The Receiver does not
21 dispute that Chittick continued to solicit investments between December 2013 and
22 January 2014. The Receiver disputes the cash value of monies from investors as the
23 exhibit does not contain or explain the mathematical calculation.

24 39. The Receiver objects to the email communications (SOF Exs. 29–30),
25 which are hearsay and inadmissible. Nonetheless, the Receiver does not dispute
26 paragraph 39 insofar as Beauchamp and Goulder negotiated a forbearance agreement
27 and the parties were trying to avoid litigation between the other hard-money lender, on
28 the one hand, and Menaged and DenSco, on the other. The Receiver does not dispute

1 that Beauchamp expressed the opinion that the forbearance agreement would protect
2 Chittick from claims by investors.

3 40. The Receiver objects to the emails between Chittick and Menaged (SOF
4 Exs. 32–33), which are hearsay and inadmissible. Nonetheless, Chase misstates the
5 substance of the emails. To say that Chittick viewed the forbearance agreement as a
6 formality is not a fair inference. For example, one inference from the emails is that the
7 work-out would be done by September, which is the date Chittick gave Beauchamp.
8 (SOF Ex. 32.) Another inference is that things could simply change in the future. (SOF
9 Ex. 33.)

10 41. The Receiver objects to the written expert report of Richmond (SOF Ex.
11 18), which is hearsay and inadmissible. Nonetheless, the Receiver does not dispute
12 paragraph 41.

13 42. The Receiver controverts paragraph 42. The emails are mischaracterized.
14 They are simply back-and-forth attorney-client emails about the negotiations.

15 43. The Receiver controverts paragraph 43. The exhibit supports an
16 inference that Chittick sought legal advice from Beauchamp and Clark Hill and
17 followed that legal advice. It is not a fair inference that he disregarded Beauchamp's
18 advice.

19 44. The Receiver does not controvert paragraph 44.

20 45. The Receiver does not controvert paragraph 45.

21 46. The Receiver does not controvert paragraph 46.

22 47. The Receiver objects to the written expert report of Richmond (SOF Ex.
23 18), which is hearsay and inadmissible. Nonetheless, the Receiver does not dispute that
24 the concentration of Menaged loans had increased.

25 48. The Receiver does not controvert paragraph 48.

26 49. The Receiver objects to the written expert report of Hilton, (SOF Ex. 19),
27 which is hearsay and inadmissible, and disputes whether there are industry wide
28 standards in Maricopa County, Arizona. Nonetheless, the Receiver does not dispute

1 that DenSco wired money to Menaged, did not conduct title searches, and, to the
2 Receiver's knowledge, did not make further investigations into the story about
3 Menaged's cousin.

4 50. The Receiver controverts whether any of the actions would have
5 prevented Menaged from causing losses to DenSco. The Receiver does not dispute
6 that:

- 7 · Admission No. 5 admits that "the direct payment of loan monies to
8 Menaged by Chittick provided an opportunity for Menaged to commit a
9 second fraud."
- 10 · Admission No. 10 admits that "Densco continued to make loans to
11 Menaged after January 2014."
- 12 · Admission No. 12 admits that the Receiver "is not aware of any actions
13 Denny Chittick took to confirm Menaged's story about his cousin other
14 than believing Menaged."
- 15 · Admission No. 14 admits that "if Chittick had done a title search," he
16 would have found that properties were double liened.
- 17 · Admission No. 16 admits that "publicly available information from the
18 Recorder's Office includes property transferring by foreclosure, the
19 purchaser of property and recorded encumbrances."

20 51. The Receiver does not controvert paragraph 51.

21 52. The Receiver does not controvert paragraph 52.

22 53. The Receiver does not controvert paragraph 53.

23 54. The Receiver does not controvert paragraph 54.

24 55. The Receiver controverts paragraph 55 in part. From April 2014 to early
25 July 2014, Menaged would go to the bank each day and do transactions for cashier's
26 checks over the counter. The email requests for checks did not start until July 2014,
27 per the idea of Samantha Nelson. Menaged would email a list of checks he needed the
28 next day. Chase would prepare everything in advance to speed up the transactions, and

1 Menaged could use the drive-through window to minimize his time at the bank. This
2 occurred from July 2014 through June 2015. (Receiver’s Combined SOF ¶¶ 44–61.)

3 56. The Receiver controverts paragraph 56 in part. The Receiver disputes
4 paragraph 56 as to the interactions between Dadlani and Menaged. Dadlani and
5 Menaged interacted primarily through email, and from August 2014 through June 2015,
6 almost daily. (*Id.* ¶¶ 115–45 (Dadlani’s interaction with Menaged), 146–51 (Dadlani’s
7 credibility).)

8 57. The Receiver controverts paragraph 57. Dadlani received emails
9 requesting cashier’s checks more than “sometimes.” They were a daily occurrence.
10 (*Id.* ¶¶ 139–45.)

11 58. The Receiver controverts paragraph 58 in part. The Receiver does not
12 dispute that Dadlani testified to a lack of memory. The Receiver disputes the credibility
13 of Dadlani’s testimony. (*Id.* ¶¶ 115–45 (Dadlani’s interaction with Menaged), 146–51
14 (Dadlani’s credibility).) Receiver controverts that the checks were not stamped “not
15 used for the intended purpose” before giving the check to Menaged as Dadlani has no
16 foundation to make this statement because of his lack of memory.

17 59. The Receiver controverts paragraph 59 in part. The Receiver does not
18 dispute that Dadlani testified he had no knowledge. The Receiver disputes the
19 credibility of Dadlani’s testimony. (*Id.* ¶¶ 115–45 (Dadlani’s interaction with
20 Menaged), 146–51 (Dadlani’s credibility).)

21 60. The Receiver controverts paragraph 60 in part. The Receiver does not
22 dispute that this is what Dadlani testified he did not know. The Receiver disputes the
23 credibility of Dadlani’s testimony. (*Id.* ¶¶ 115–45 (Dadlani’s interaction with
24 Menaged), 146–51 (Dadlani’s credibility).)

25 61. The Receiver controverts paragraph 61 in part. The Receiver does not
26 dispute that this is Dadlani’s testimony. The Receiver disputes the credibility of
27 Dadlani’s testimony. (*Id.* ¶¶ 115–45 (Dadlani’s interaction with Menaged), 146–51
28 (Dadlani’s credibility).)

1 62. The Receiver controverts paragraph 62 in part. The Receiver does not
2 dispute that this is Dadlani's testimony. The Receiver disputes the credibility of
3 Dadlani's testimony. (*Id.* ¶¶ 115–45 (Dadlani's interaction with Menaged), 146–51
4 (Dadlani's credibility).)

5 63. The Receiver controverts paragraph 63 in part. The Receiver does not
6 dispute that this is Dadlani's testimony. The Receiver disputes the credibility of
7 Dadlani's testimony. (*Id.* ¶¶ 115–45 (Dadlani's interaction with Menaged), 146–51
8 (Dadlani's credibility).) Dadlani was copied on a request for a \$250,000 cashier's
9 check to Wynn Las Vegas. (*Id.* ¶ 141.)

10 64. The Receiver controverts paragraph 64 in part. The Receiver does not
11 dispute that Menaged testified as he did, but this is not the entirety of Menaged's
12 testimony. On interactions between Menaged and Dadlani, including emails and
13 conversations, *see id.* ¶¶ 115–45.

14 65. The Receiver controverts paragraph 65. (*Id.* ¶¶ 87–90 (Chase profit-
15 incentive program).)

16 66. The Receiver does not controvert paragraph 66.

17 67. The Receiver controverts paragraph 67 in part. The Receiver does not
18 dispute that this is Nelson's testimony. The Receiver disputes her credibility. (*Id.* 114–
19 51.)

20 68. The Receiver does not controvert paragraph 68.

21 69. The Receiver controverts paragraph 69 in part. The Receiver does not
22 dispute paragraph 69 insofar as this is what Nelson testified to in the Clark Hill case.

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 (*Id.* ¶¶ 107–12.) The Receiver disputes Nelson's testimony that the transactions were
28 normal. (*Id.* ¶¶ 81–86.)

1 70. The Receiver controverts paragraph 70. The Receiver disputes Nelson's
2 credibility. (*Id.* ¶ 114–51.) Menaged testified that he told Nelson he needed photos for
3 proof of payment. (*Id.* ¶ 129.) [REDACTED]. (*Id.* ¶¶ 81–
4 86.) [REDACTED]
5 [REDACTED] (*Id.* ¶ 85.)

6 71. The Receiver controverts paragraph 71. The Receiver disputes Nelson's
7 credibility. She conducted so many transactions and received so many emails that her
8 inability to recall the volume is nothing less than unbelievable. (*Id.* ¶¶ 134–38 (teller
9 transactions), 140–42 (emails), 146–51.)

10 72. The Receiver controverts paragraph 72 in part. The Receiver does not
11 dispute that Nelson filled out withdrawal and deposit slips. The Receiver disputes that
12 Nelson did not know the checks would be redeposited given her participation in the
13 redeposited checks. (*Id.* ¶¶ 134–38 (teller transactions).) After all, 1,344 checks were
14 returned. The Receiver disputes Nelson's credibility. (*Id.* ¶¶ 146–51.)

15 73. The Receiver controverts paragraph 73 in part. The Receiver does not
16 dispute that this is Nelson's testimony. The Receiver disputes her credibility. (*Id.* ¶¶
17 146–51.) [REDACTED]
18 [REDACTED] (*Id.* ¶ 41 [REDACTED]
19 [REDACTED])

20 74. The Receiver controverts paragraph 74 in part. The Receiver does not
21 dispute paragraph 74 as to customers' being permitted to redeposit cashier's checks.
22 The Receiver disputes whether it was reasonable and normal or compliant with policy
23 in this case. (*Id.* ¶¶ 81–86.) The Receiver disputes that funds were immediately
24 available. (*Id.* ¶¶ 104, 106.)

25 75. The Receiver controverts paragraph 75 in part. The Receiver does not
26 dispute that this is Nelson's testimony. The Receiver disputes her credibility. (*Id.* ¶¶
27 45–51 (from April 2014 to July 2014, Menaged obtained cashier's checks at teller's
28 counter and photographed checks daily at counter), 134–36 (Teller 1 and Teller 2

1 transaction history).) Given the number of transactions Nelson conducted, she would
2 have observed Menaged multiple times.

3 76. The Receiver controverts paragraph 76 in part. The Receiver does not
4 dispute that this is Nelson's testimony. The Receiver disputes her credibility. (*Id.* ¶¶
5 104, 106 (regarding holds on checks).)

6 77. The Receiver controverts paragraph 77 in part. The Receiver does not
7 dispute that this is Nelson's testimony. The Receiver disputes her credibility. (*Id.* ¶¶
8 114–51.) "DenSco" or "DenSco Payment" was put on every cashier's check. (*Id.* ¶¶
9 46–47.) Menaged told Nelson that DenSco was a hard-money lender. (*Id.* ¶ 128.) ■

10 ■
11 ■ (*Id.* ¶¶ 70–72, 109–12.)

12 78. The Receiver does not controvert paragraph 78 as Nelson did not produce
13 personal email or phone records.

14 79. The Receiver does not controvert paragraph 79.

15 80. The Receiver does not controvert paragraph 80.

16 81. The Receiver does not controvert paragraph 81.

17 82. The Receiver does not controvert paragraph 82.

18 83. The Receiver objects to the written expert report of Robert Paysley (SOF
19 Ex. 43), which is hearsay and inadmissible and not supported by affidavit. Nonetheless,
20 Plaintiff does not dispute paragraph 83.

21 84. The Receiver controverts paragraph 84. (*Id.* ¶¶ 91–113 (Lazar's
22 relationship with Menaged).)

23 85. The Receiver controverts paragraph 85 in part. The Receiver does not
24 dispute paragraph 85 as a general statement, but notes that the general statement does
25 not apply to Menaged, who had numerous customer requests and interactions with
26 Lazar. (*Id.* ¶¶ 81–113.)

27 86. The Receiver controverts paragraph 86. (*Id.* ¶¶ 81–113.)

28 87. The Receiver controverts paragraph 87 in part. While the Receiver does

1 not dispute that Lazar did not know Menaged until opening an account, the Receiver
2 disputes whether Menaged and Lazar had a personal relationship; they did. (*Id.* ¶¶ 81–
3 93.) Lazar’s job was to build a lasting relationship with Menaged. (*Id.* ¶ 94.)

4 88. Plaintiff does not dispute paragraph 88.

5 89. Plaintiff does not dispute paragraph 89.

6 90. The Receiver does not controvert paragraph 90.

7 91. The Receiver controverts paragraph 91 in part. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] (*Id.* ¶¶ 159 [REDACTED] 166–75 [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED]. (*Id.* ¶¶ 161–

13 64 [REDACTED] 176 [REDACTED]

14 92. The Receiver does not controvert paragraph 92.

15 93. The Receiver disputes paragraph 93 in part. The Receiver does not
16 dispute paragraph 93 [REDACTED]

17 [REDACTED]

18 [REDACTED] (*Id.* ¶¶ 107–11.)

19 94. The Receiver controverts paragraph 94 in part. The [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED] (*Id.* ¶¶ 107–11.)

23 95. The Receiver controverts paragraph 95 in part, [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 96. The Receiver controverts paragraph 96 in part. [REDACTED]

27 [REDACTED]

28 [REDACTED]

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[REDACTED]
[REDACTED]. (*Id.* ¶ 165.) [REDACTED]
[REDACTED] (*Id.* ¶¶ 166–73 [REDACTED]
[REDACTED]
97. The Receiver controverts paragraph 97 in part. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. (*Id.* ¶¶ 177–78.)
98. The Receiver controverts paragraph 98 in part. [REDACTED]
[REDACTED]
[REDACTED] (*Id.* ¶ 178.)
99. The Receiver controverts paragraph 99 in part. [REDACTED]
[REDACTED]
[REDACTED]
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100. The Receiver controverts paragraph 100 in part. [REDACTED]
[REDACTED]
[REDACTED] (Receiver’s
Combined SOF ¶ 181; *see also* Jeff Gaia Nov. 1, 2022 Report, Receiver’s Combined
SOF Ex. B, attachment 2.)

1 101. The Receiver controverts paragraph 101 in part. [REDACTED]
2 [REDACTED]
3 [REDACTED] (Receiver's Combined SOF ¶ 182; *see also* Jeff Gaia
4 November 1, 2022 report, Receiver's Combined SOF Ex. B. attachment 2.)
5 102. The Receiver controverts paragraph 102 in part. [REDACTED]
6 [REDACTED] (Depo. Ex. 214 at JPMC 013285.)
7 103. The Receiver controverts paragraph 103 in part. [REDACTED]
8 [REDACTED] [REDACTED]
9 [REDACTED] (Receiver's Combined SOF ¶ 185; *see also* Jeff Gaia
10 November 1, 2022 Report, Receiver's Combined SOF Ex. B. attachment 2.)
11 104. The Receiver controverts paragraph 104 in part. [REDACTED]
12 [REDACTED]
13 [REDACTED] (Receiver's Combined SOF ¶ 186 [REDACTED]
14 [REDACTED]
15 105. The Receiver controverts paragraph 105 in part. [REDACTED]
16 [REDACTED] (*Id.* ¶ 155 [REDACTED]
17 106. The Receiver controverts paragraph 106 in part. [REDACTED]
18 [REDACTED] That is not true; Chase produced the
19 email after the deposition. [REDACTED]
20 [REDACTED]. But Chase does not recite
21 the entire email, as required under Rule 106 of the Arizona Rules of Evidence. The
22 emails stated in full [REDACTED]
23 [REDACTED].
24 107. The Receiver controverts paragraph 107 in part. [REDACTED]
25 [REDACTED] The Receiver does
26 dispute whether it is truthful. (*Id.* ¶¶ 158, 182.)
27 108. The Receiver does not controvert paragraph 108.
28 109. The Receiver controverts paragraph 109. [REDACTED]

1 [REDACTED]
2 [REDACTED]. (SOF Ex. 81 at JPMC 013440.)

3 110. The Receiver controverts paragraph 110 in part. [REDACTED]
4 [REDACTED]
5 [REDACTED] The Receiver disputes
6 paragraph 110 inasmuch as the [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 111. The Receiver objects to the written expert report of Richmond (SOF Ex.
13 18), which is hearsay and inadmissible and not supported by affidavit. The Receiver
14 also controverts paragraph 111. The Second Fraud does not change for the 1,344 Chase
15 cashier's checks. Menaged told DenSco that AZHF had purchased property, DenSco
16 wired the money for the purchase, and Menaged then forwarded to DenSco a copy of a
17 cashier's check that was redeposited and a forged trustee receipt. These are in the
18 exhibits of cashier's checks and property folders.

19 112. The Receiver objects to the written expert report of Richmond
20 (Defendants' SOF ex. 18), which is hearsay and inadmissible and not supported by
21 affidavit. The Receiver also objects to the diary entry in Exhibit 25, which is offered
22 for the truth of the matter asserted, but is hearsay and inadmissible. The Receiver also
23 controverts paragraph 112. The Second Fraud does not change for the 1,344 Chase
24 cashier's checks. Menaged told DenSco that AZHF had purchased property, DenSco
25 wired the money for the purchase, and Menaged then forwarded to DenSco a copy of a
26 cashier's check that was redeposited and a forged trustee receipt. These are in the
27 exhibits of cashier's checks and property folders.

28 113. The Receiver objects to the written expert report of Richmond

1 (Defendants' SOF ex. 18), which is hearsay and inadmissible and not supported by
2 affidavit. Nonetheless, the Receiver does not dispute the increased concentration of
3 loans.

4 114. The Receiver controverts paragraph 114. Under the Rule of
5 Completeness, Exhibit 20 at 146:17 to 149:25 should be read along with the citation.
6 *See* Ariz. R. Evid. 106. The discussion was whether Menaged should offer to buy
7 homes. If the homeowner would sell, then when one went to title or escrow, the bank
8 wanted proof of funds. DenSco would provide funding at 18 percent. Receiver's
9 Combined SOF, Depo. Ex. 1558 is DenSco's file for a loan for property at 26017 South
10 Foxglenn Drive in May 2015. On May 7, 2015, DenSco wired monies for several
11 properties to AZHF, including Foxglenn. (Depo. Ex. 356 at JPMC 011030 (May 2015
12 AZHF bank statement).) The cashier's check for purchase of the property is dated
13 May 7, 2015. A note secured by deed of trust is dated May 8, 2015. A deed of trust
14 and assignment of rents is dated May 8, 2015. The mortgage for the purpose of making
15 an offer is dated May 8, 2015. An insurance binder on the property is dated May 8,
16 2015. A payoff letter for a payoff on June 5, 2015 is dated May 14, 2015. From the
17 documents, a reasonable inference is that Chittick funded a property on May 7, 2015
18 that was closing the next day, on May 8, 2015. The Second Fraud does not change for
19 the 1,344 Chase cashier's checks. Menaged told DenSco that AZHF had purchased
20 property, DenSco wired the money for the purchase, and Menaged then forwarded to
21 DenSco a copy of a cashier's check that was redeposited and a forged trustee receipt.
22 These are in the exhibits of cashier's checks and property folders.

23 115. The Receiver controverts paragraph 115 in part. The Receiver does not
24 dispute that Exhibit 50 contains multiple mortgage notes, which are dated from
25 April 30, 2014 to June 2, 2014, and that the mortgage notes contain the selected
26 quotation. The Receiver disputes whether mortgages were "given before the
27 homeowners accepted an offer to purchase," as that inference cannot be made solely
28 from the mortgage document. *See* paragraph 114 above. The Second Fraud does not

1 change for the 1,344 Chase cashier's checks. Menaged told DenSco that AZHF had
2 purchased property, DenSco wired the money for the purchase, and Menaged then
3 forwarded to DenSco a copy of a cashier's check that was redeposited and a forged
4 trustee receipt. These are in the exhibits of cashier's checks and property folders.

5 116. The Receiver controverts paragraph 116 in part. The Receiver does not
6 dispute that there is a difference in language. The Receiver disputes paragraph 116
7 insofar as it suggests that Menaged had changed the Second Fraud. The Second Fraud
8 does not change for the 1,344 Chase cashier's check. Menaged told DenSco that AZHF
9 had purchased property, DenSco wired the money for the purchase, and Menaged then
10 forwarded to DenSco a copy of a cashier's check that was redeposited and a forged
11 trustee receipt. These are in the exhibits of cashier's checks and property folders.

12 117. The Receiver objects to the written expert report of Richmond
13 (Defendants' SOF ex. 18), which is hearsay and inadmissible and not supported by
14 affidavit. *See* paragraph 114 above. The Receiver also controverts paragraph 117. The
15 Second Fraud does not change for the 1,344 Chase cashier's checks. Menaged told
16 DenSco that AZHF had purchased property, DenSco wired the money for the purchase,
17 and Menaged then forwarded to DenSco a copy of a cashier's check that was
18 redeposited and a forged trustee receipt. These are in the exhibits of cashier's checks
19 and property folders.

20 118. Plaintiff objects to the written expert opinion of Richmond (SOF Ex. 18),
21 which is hearsay and inadmissible and not supported by affidavit. The Receiver also
22 controverts paragraph 118. Deposition Ex. 1565 is a compilation of DenSco's
23 documentation for a purchase of property at 9309 Sheridan Street. DenSco wired
24 monies to AZHF on May 8, 2015, and the wire included the note "Heridan Street."
25 (Depo. Ex. 356 at JPMC_00011030 (May 2015 monthly statement).) The certified
26 check from Chase, sent to DenSco, is dated May 8, 2015. A note secured by deed of
27 trust is dated May 11, 2015. A mortgage with the offer-to-purchase language is dated
28 May 11, 2015. A deed of trust and assignment of rents is dated May 11, 2015. An

1 insurance binder is dated May 11, 2015. A trustee certificate of sale is forwarded to
2 DenSco on May 11, 2015, and the email says it forwards a receipt. The offer-to-
3 purchase language was, in effect, the same Ponzi scheme that Menaged was running.
4 The Second Fraud does not change for the 1,344 Chase cashier's checks. Menaged told
5 DenSco that AZHF had purchased property, DenSco wired the money for the purchase,
6 and Menaged then forwarded to DenSco a copy of a cashier's check that was
7 redeposited and a forged trustee receipt. These are in the exhibits of cashier's checks
8 and property folders.

9 119. The Receiver objects to the written expert report of Hilton (SOF Ex. 23),
10 which is hearsay and inadmissible and not supported by affidavit. The Receiver objects
11 to the email chain from Menaged to Chittick (Defendants' SOF Ex. 52), which is
12 hearsay and inadmissible. Further, the email chain does not reference any particular
13 property or DenSco file.

14 120. The Receiver objects to the email chain between Menaged and Chittick,
15 dated June 11, 2015 (SOF 53), which is hearsay and inadmissible.

16 121. The Receiver objects to the email chains between Chittick and Menaged
17 (SOF Exs. 54–56), which are hearsay and inadmissible. Chase's participation in aiding
18 and abetting Menaged's fraud stopped in late June 2015 when Menaged ceased buying
19 cashier's checks from Chase. Lending activity after that is not relevant to the case
20 against Chase.

21 122. The Receiver objects to the email chains between Chittick and Menaged
22 (SOF Exs. 57 and 58), which are hearsay and inadmissible. Nonetheless, the Receiver
23 does not dispute that, at a point in time, Chittick and Menaged began netting numbers
24 daily. Chase's participation in aiding and abetting Menaged's fraud stopped in late
25 June 2015 when Menaged ceased buying cashier's checks from Chase. Lending
26 activity after that is not relevant to the case against Chase.

27 123. The Receiver objects to the email chain between Chittick and Menaged
28 (SOF Ex. 59), which is hearsay and inadmissible. Nonetheless, the Receiver does not

1 dispute that the balance continued to climb, as is typical of Ponzi schemes.

2 124. The Receiver objects to the email chain between Chittick and Menaged
3 (SOF Ex. 60), which is hearsay and inadmissible. Chase's participation in the Ponzi
4 scheme stopped in late June 2015. Activities after that date are not relevant to the case.

5 125. The Receiver objects to the email chain between Chittick and Menaged
6 (SOF Ex. 60), which is hearsay and inadmissible. Chase's participation in aiding and
7 abetting Menaged's fraud stopped in late June 2015 when Menaged ceased buying
8 cashier's checks from Chase. Lending activity after that is not relevant to the case
9 against Chase.

10 126. The Receiver objects to the email chain between Chittick and Menaged
11 (SOF Ex. 61), which is hearsay and inadmissible. Chase's participation in aiding and
12 abetting Menaged's fraud stopped in late June 2015 when Menaged ceased buying
13 cashier's checks from Chase. Lending activity after that is not relevant to the case
14 against Chase.

15 127. The Receiver objects to the email chain between Chittick and Menaged
16 (SOF Ex. 61), which is hearsay and inadmissible. Chase's participation in aiding and
17 abetting Menaged's fraud stopped in late June 2015 when Menaged ceased buying
18 cashier's checks from Chase. Lending activity after that is not relevant to the case
19 against Chase.

20 128. The Receiver objects to the written expert report of Richmond (SOF Ex.
21 18), which is hearsay and inadmissible and not supported by affidavit. Chase's
22 participation in aiding and abetting Menaged's fraud stopped in late June 2015 when
23 Menaged ceased buying cashier's checks from Chase. Lending activity after that is not
24 relevant to the case against Chase.

25 129. The Receiver objects to the email chain between Chittick and Menaged
26 (SOF Ex. 62), which is hearsay and inadmissible. Chase's participation in aiding and
27 abetting Menaged's fraud stopped in late June 2015 when Menaged ceased buying
28 cashier's checks from Chase. Lending activity after that is not relevant to the case

1 against Chase.

2 130. The Receiver objects to the written expert report of Richmond (SOF Ex.
3 18), which is hearsay and inadmissible and not supported by affidavit. Chase's
4 participation in aiding and abetting Menaged's fraud stopped in late June 2015 when
5 Menaged ceased buying cashier's checks from Chase. Lending activity after that is not
6 relevant to the case against Chase.

7 131. The Receiver does not dispute that Chittick continued to raise monies
8 after November 13, 2013. Exhibit 28 is a collection of investor statements prepared by
9 DenSco. Each investor statement has an investor history section. Exhibit 28 does not
10 contain Defendants' mathematical calculation as to new investor money.

11 132. The Receiver controverts paragraph 132. Exhibit 63 contains several
12 monthly statements for the "Chittick Family Trust/Mo and Sam Chittick" (*see, e.g.*,
13 JPMC-Receiver 07618). The statements have an investment history with investments
14 from August 9, 2001 to December 1, 2012. There were no new investments listed after
15 December 1, 2012.

16 133. The Receiver objects to the email chain between Chittick and Menaged,
17 (SOF Ex. 64), which is hearsay and inadmissible. Nonetheless, the Receiver does not
18 dispute that, at a point in time, Chittick and Menaged adjusted their books for daily
19 payments without exchanging funds. Chase's participation in aiding and abetting
20 Menaged's fraud stopped in late June 2015 when Menaged ceased buying cashier's
21 checks from Chase. Lending activity after that is not relevant to the case against Chase.

22 134. The Receiver objects to the email chain between Chittick and Menaged
23 (SOF Ex. 65), which is hearsay and inadmissible. Chase's participation in aiding and
24 abetting Menaged's fraud stopped in late June 2015 when Menaged ceased buying
25 cashier's checks from Chase. Lending activity after that is not relevant to the case
26 against Chase.

27 135. The Receiver objects to the written expert report of Richmond, (SOF Ex.
28 18), which is hearsay and inadmissible and not supported by affidavit. Nonetheless,

1 the Receiver does not dispute that DenSco was damaged by Menaged's Second Fraud
2 and Ponzi scheme.

3 136. The Receiver does not controvert paragraph 136.

4 137. The Receiver objects to the transcript of a telephone conversation (SOF
5 Ex. 12), which is hearsay and inadmissible. If Exhibit 12 is admissible, then the entire
6 call should be admitted under Rule 106 of the Arizona Rules of Evidence. Receiver
7 controverts that they talked about "our fraud." Chittick is confronting Menaged with
8 what happened to DenSco's funds. In later paragraphs, Menaged tells Chittick that the
9 money is in auction.com.

10 138. The Receiver objects to the transcript of a telephone conversation (SOF
11 Ex. 12), which is hearsay and inadmissible. If Exhibit 12 is admissible, then the entire
12 call should be admitted under Rule 106 of the Arizona Rules of Evidence.

13 139. The Receiver objects to the transcript of a telephone conversation (SOF
14 Ex. 12), which is hearsay and inadmissible. If Exhibit 12 is admissible, then the entire
15 call should be admitted under Rule 106 of the Arizona Rules of Evidence. A fair reading
16 of the transcript is that this is the time Chittick learns that he is a victim of Menaged's
17 fraud schemes.

18 140. The Receiver objects to the transcript of a telephone conversation (SOF
19 Ex. 12), which is hearsay and inadmissible. If Exhibit 12 is admissible, then the entire
20 call should be admitted under Rule 106 of the Arizona Rules of Evidence. A fair reading
21 of the transcript is that this is the time Chittick learns that he is a victim of Menaged's
22 fraud schemes.

23 141. The Receiver objects to the transcript of a telephone conversation (SOF
24 Ex. 12), which is hearsay and inadmissible. If Exhibit 12 is admissible, then the entire
25 call should be admitted under Rule 106 of the Arizona Rules of Evidence. A fair reading
26 of the transcript is that this is the time Chittick learns that he is a victim of Menaged's
27 fraud schemes.

28 142. The Receiver objects to the transcript of a telephone conversation (SOF

1 Ex. 12), which is hearsay and inadmissible. If Exhibit 12 is admissible, then the entire
2 call should be admitted under Rule 106 of the Arizona Rules of Evidence. A fair reading
3 of the transcript is that this is the time Chittick learns that he is a victim of Menaged's
4 fraud schemes.

5 143. The Receiver does not dispute that Chittick committed suicide. The
6 Receiver does not dispute that Chittick wrote the investor letter (SOF Ex. 17) and made
7 the statements therein. He wrote the investor letter after Menaged told him of the
8 Second Fraud.

9 144. The Receiver controverts paragraph 144 in part. The Receiver does not
10 dispute that the Arizona Corporation Commission filed a Complaint (SOF Ex. 5). The
11 Complaint alleges securities fraud in connection with the issuance of the general
12 obligation notes to investors. (*Id.* ¶ 8.) The Receiver disputes paragraph 144 insofar
13 as the Complaint makes no allegations that DenSco acted in "collusion with Menaged."
14 The Receiver disputes whether DenSco/Chittick knew about Menaged's Second Fraud,
15 or Menaged's Ponzi scheme, until shortly before his suicide.

16 145. The Receiver does not dispute that the Arizona Corporation Commission
17 filed a Complaint (SOF Ex. 5) making these allegations.

18 146. The Receiver does not dispute that the Arizona Corporation Commission
19 filed a Complaint (SOF Ex. 5) and alleged Count One.

20 147. The Receiver does not dispute that the Arizona Corporation Commission
21 filed a Memorandum in Support of its Application for a Receiver (SOF Ex. 69) and that
22 the quote is taken from page 6 of the Application setting forth its arguments for a
23 Receiver.

24 148. The Receiver controverts paragraph 148 in part. The Receiver does not
25 dispute that the Receiver filed Petition No. 19 (SOF Ex. 70) for an Order Establishing
26 Claim Procedures and that the Receiver wrote the sections quoted. However, the
27 Receiver disputes whether DenSco and Chittick were aware of Menaged's Second
28 Fraud, or Menaged's Ponzi scheme, until shortly before Chittick's suicide.

1 149. The Receiver controverts paragraph 149 in part. The Receiver does not
2 dispute the statements made in the Petition For Order Establishing Claims Procedures
3 (SOF Ex. 70), which is recited in paragraph 148. However, the Receiver disputes
4 whether DenSco and Chittick were aware of the Second Fraud, or Menaged's Ponzi
5 scheme, until shortly before Chittick's suicide.

6 150. The Receiver controverts paragraph 150 in part. The Receiver does not
7 dispute that he filed as Complaints Exhibits 71, 72, and 73 and made the allegations set
8 forth in the Complaints that are recited in paragraph 150. The Receiver disputes
9 whether or not Chittick was aware of the Second Fraud, or Menaged's Ponzi scheme,
10 until shortly before his suicide.

11 151. The Receiver does not dispute that he filed a Notice of Claim against the
12 Estate of Denny Chittick (Ex. 2) and that the quotes are statements the Receiver made
13 in the Complaint. The Receiver disputes whether or not Chittick understood the extent
14 to which DenSco had been defrauded as of the date Menaged explained that his cousin
15 had double-liened the properties. The Receiver disputes whether or not Chittick was
16 aware of the extent of Menaged's fraud, which led to DenSco's insolvency, at the time
17 that Chittick made these cash distributions.

18 152. The Receiver does not dispute that:

- 19 · Admission No. 1 admits that Denny Chittick discovered that Menaged
20 was taking monies from DenSco without obtaining a first lien in late
21 November 2013. The Receiver refers to this period as the First Fraud,
22 when Menaged was obtaining two loans on properties, one from DenSco
23 and one from another hard-money lender.
- 24 · Admission No. 2 admits "that prior to November 2013, DenSco funded
25 loans directly to Menaged's businesses for purposes of purchasing
26 foreclosed homes at trustee's sales."
- 27 · Admission No. 3 admits "that after November 2013, DenSco funded
28 loans directly to Menaged's businesses for purposes of purchasing

1 foreclosed homes at trustee's sales."

2 153. The Receiver does not dispute that:

- 3 · Admission No. 17 admits "that Chittick breached his duties to DenSco
4 and its investors by concealing, prior to his death, the alleged 'First Fraud'
5 from DenSco's investors."
- 6 · Admission No. 18 admits "that Denny Chittick breached his duties to
7 DenSco and its investors by concealing how, prior to his death, Chittick's
8 own failures allowed the alleged 'First Fraud' to occur."
- 9 · Admission No. 19 "objects to this Request as to his 'own failures' is
10 vague" and "admits that Chittick breached his duties to DenSco and its
11 investors by concealing how his lending practices did not conform to the
12 then current version of the Private Offering Memorandum."

13 DATED this 21st day of July, 2023.

14 OSBORN MALEDON, P.A.

15
16 By /s/Colin F. Campbell

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