

Nicole M. Goodwin, SBN 024593
goodwinn@gtlaw.com
GREENBERG TRAURIG, LLP
2375 East Camelback Road
Phoenix, Arizona 85016
T: (602) 445-8000
F: (602) 445-8100

Paul J. Ferak (*pro hac vice*)
ferakp@gtlaw.com
Jonathan H. Claydon (*pro hac vice*)
claydonj@gtlaw.com
GREENBERG TRAURIG, LLP
77 West Wacker Drive, Suite 3100
Chicago, IL 60601
T: (312) 456-8400
F: (312) 456-8435

*Attorneys for Defendants JP Morgan Chase Bank, N.A.,
Samantha Nelson f/k/a Samantha Kumbaleck,
Kristofer Nelson, Vikram Dadlani, and Jane Doe Dadlani*

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 KUMBALECK and
KRISTOFER NELSON, a married couple, and
VIKRAM DADLANI and JANE DOE
DADLANI, a married couple,

Defendants.

NO. CV2019-011499

**DEFENDANTS JPMORGAN
CHASE BANK, N.A., SAMANTHA
NELSON F/KA/ SAMANTHA
KUMBALECK, KRISTOFER
NELSON, VIKRAM DADLANI, &
JANE DOE DADLANI'S FOURTH
SUPPLEMENTAL RULE 26.1
DISCLOSURE STATEMENT**

(Assigned to the Hon. Daniel Martin)

Defendants JPMorgan Chase Bank, N.A. (“Chase”), Samantha Nelson, Kristofer Nelson, Vikram Dadlani, and Jane Doe Dadlani (collectively, the “Chase Defendants”) hereby furnish their **Fourth** Supplemental Rule 26.1 Disclosure Statement. This supplemental disclosure statement is based upon information currently known to the Chase Defendants and reasonably believed to be relevant. The Chase Defendants reserve the right to supplement this disclosure statement in the event additional information becomes known as the result of ongoing discovery or otherwise. Moreover, if any part of this disclosure statement is used in any way in connection with this matter, the Chase Defendants reserve all objections and state that, at the time this disclosure statement was prepared, the case was in the early stages of discovery. New information is in **bold type**.

I. FACTUAL BASES OF THE CHASE DEFENDANTS’ DEFENSES

This lawsuit was brought by Plaintiff Peter S. Davis as receiver (the “Receiver”) on behalf of DenSco Investment Corporation (“DenSco”) and concerns DenSco’s involvement in a real estate loan fraud perpetrated by Scott Menaged (“Menaged”). The essence of DenSco’s case against the Chase Defendants, as alleged in the First Amended Complaint, is that Menaged maintained bank accounts for his business at Chase for part of the time (2014 and 2015) he was defrauding DenSco, and, therefore, Chase and two of its branch bankers must have known of the fraud and aided it.

The Chase Defendants possess a variety of meritorious defenses to this claim, including: (a) the Receiver lacks standing to bring this claim; (b) the claim is barred by the statute of limitations; (c) the Receiver cannot satisfy a number of the elements necessary to sustain an aiding and abetting fraud claim; and (d) and several additional affirmative defenses pleaded in the Chase Defendants’ answers. Below, the Chase Defendants describe the facts currently known to them that support each category of defense.

A. Facts Supporting a Lack of Standing Defense

In the Order Appointing Receiver (“Appointment Order”), the Maricopa County

1 Superior Court defined the “Receivership Assets” as “the assets monies, securities, choses
2 in action, and properties, real and personal, tangible and intangible, of whatever kind and
3 description, wherever situated, of [DenSco].” In keeping, the Appointment Order
4 authorizes the Receiver “to institute [] actions or proceedings [] as may in his discretion
5 be advisable or proper for the protection of the Receivership Assets or proceeds
6 therefrom, and to institute [or] prosecute [] such actions or proceedings [] as may in his
7 judgment be necessary or proper for the collection, preservation and maintenance of the
8 Receivership Assets.”

9 In other words, the Appointment Order authorizes the Receiver to bring claims
10 that belong to the actual entity in receivership: DenSco. The Receiver, as a matter of both
11 fact and law, steps into the shoes of DenSco. The Appointment Order does not authorize
12 the Receiver to bring claims that belong to *investors* in DenSco. The fraud allegedly
13 perpetrated by Menaged did not, in fact, tortiously injure DenSco as a company. To the
14 contrary, the First Amended Complaint makes clear that DenSco, as operated by its sole
15 owner, shareholder, and operator, Denny Chittick (“Chittick”), was a participant in the
16 alleged fraud—not a victim. Because DenSco participated in the scheme for its own
17 benefit, it does not have standing nor the ability to bring a claim against Chase. And,
18 because the Receiver is authorized only to bring claims on behalf of DenSco, and not
19 DenSco’s investors, he too lacks standing.

20 **B. Facts Supporting a Statute of Limitations Defense**

21 The statute of limitations for a claim of aiding and abetting in Arizona is three
22 years. Menaged began banking with Chase in April 2014, five months after DenSco
23 admittedly discovered Menaged’s fraudulent activity in or around November 2013. Thus,
24 DenSco’s claim accrued by April 2014, and its claim—not filed for over five years later
25 on August 16, 2019—is barred by the applicable three-year statute of limitations.

26 Moreover, the facts in the following table demonstrate that DenSco remained
27 aware of Menaged’s alleged fraudulence throughout 2014 and 2015—the full duration of
28 his banking relationship with Chase. These facts are drawn from a corporate journal

maintained by DenSco in 2014 and 2015, and an investor letter that Chittick wrote to DenSco investors shortly before his death in July 2016.

Date	Source	Excerpt ¹
2/25/2014	DenSco Journal	I talked with Scott for an hour, we went over like three more scenarios. It all boils down to him coming up with cash. He does, that we'll be able to pay off a lot of loans, in numbers not dollars. Then his attorney sent over a 35 page agreement which was completely different than what scott agreed too. I swear they are just drgging this out and have no intention of signing anything.
3/31/2014	DenSco Journal	Scott is now convinced he's going to just sell all the properties and owe me a sh!t load of money and work on paying it off. at this point it clears the books, brings in the interest and then hopefully he can produce enough money that he can pay down the debt, it could be 8 million. That's a scary f*cking number. I'll now be able to fund a few more deals that are popping up. I only lost 95k this month. If he sells the properties, and I get the interest in, I'll have a good year, which will be good to put some capital on the books incase he f*cks me at some point.
6/10/14	DenSco Journal	I started looking up old wholesale deals from scott, I couldn't find any that were recorded, or very few. I went to the auction today to see if I could see louie buy some. No one knows me. John ray walks up and blows it! he's introducing me to everyone. I see louie buy one, then that's not on the list. I question scott about it he says it was paid for by a customer, he only bought two others, and they were after I left. Then the thing with the deeds he explains that they hold them until the guy they sell it to sells it so that if there are HOA's they don't get hit with all the fees. We go over all the properties. He's almost 40 million now.

¹ The DenSco Journal and Investor Letter include typos. The Chase Defendants have maintained those typos in this chart in order to ensure an accurate iteration of the text of the documents.

9/15/14	DenSco Journal	Scott was back and forth several times with me checking properties and amounts. Gregg was trying to give him releases for properties that were already paid off my only problem is that scott kept saying hey I came to you a year and half ago, when it was just in November. I think he knew about this longer than he's telling me.
Late 2014	Investor Letter	This whole agreement bothered me and wasn't sure it was right. Over time I was getting more and more uncomfortable with this arrangement and kept asking more questions. I told him I wasn't comfortable with this arrangement and he need to return the funds to me and I would no longer fund any more deals. [] We are now in late 2014. I was adamant that I wanted to stop this transaction. I wasn't sure what the truth was as far as arrangement how or who was getting paid etc.
December 2014	Investor Letter	Now compounded with the knowledge that all along I had been an unwittingly accomplice in some kind of fraud in my estimation. I felt like I was between a rock and hard place, with no out. In December I said no more.

Finally, Chittick was DenSco's sole owner, shareholder, and operator. As a result, his knowledge of Menaged's alleged fraud is attributed to DenSco, conclusively triggering the accrual of any purported aiding and abetting claim DenSco possesses at the time Chittick acquired knowledge of the alleged fraud.

C. Facts Supporting DenSco's Inability to Satisfy the Elements of the Claim

DenSco is unable to establish the elements necessary to prevail on an aiding and abetting fraud claim. The record established in this case already demonstrates that DenSco is unable to prove (i) the existence of an actionable underlying tort; (ii) knowledge on the Chase Defendants' part; and (iii) substantial assistance on the Chase Defendants' part.

i. *There is no actionable underlying tort.*

In Arizona, an actionable fraud only exists where the party alleging fraud actually

1 and justifiably relies on the misrepresentations at hand. Reliance, in turn, is not justifiable
2 where the allegedly defrauded party could have ascertained the falsity of those
3 representations. The facts outlined above and as part of the Receiver's prior filings
4 demonstrate not only that DenSco could have ascertained that Menaged's representations
5 were false, but that DenSco—through Chittick, its sole owner, shareholder, and
6 operator—in fact knew that Menaged was making misrepresentations about his usage of
7 DenSco's real estate loan funds.

8 **ii. *The Chase Defendants had no knowledge of Menaged's alleged***
9 ***fraud.***

10 In Arizona, aiding and abetting liability only lies where a defendant knows that the
11 conduct they are allegedly aiding and abetting is, in fact, a tort. Defendants Vikram
12 Dadlani and Samantha Nelson—the Chase employees through whom Chase is alleged to
13 possess knowledge of Menaged's alleged fraud—have confirmed in sworn deposition
14 testimony that they had no knowledge whatsoever of misconduct on Menaged's part. And
15 the Chase Defendants' only interactions with Menaged were in the context of banking
16 activities on accounts Menaged owned and controlled that did not lead to actual
17 knowledge of Menaged's alleged misconduct. The fact that the Receiver believes
18 Menaged engaged in conduct that should have alerted the Chase bankers to Menaged's
19 fraud (the Chase Defendants disagree) is of no moment. The law is well-established:
20 "should have known" is not tantamount to actual knowledge for purposes of pleading or
21 establishing an aiding and abetting claim.

22 **iii. *The Chase Defendants did not substantially assist Menaged's***
23 ***alleged fraud.***

24 In Arizona, the processing of banking transactions does not constitute substantial
25 assistance of fraud unless the alleged assistance was accompanied by an extraordinary
26 economic motivation. Chase collected only ordinary banking fees in connection with
27 Menaged's account, and the named individuals (the Nelsons and Dadlanis) had absolutely
28 no extraordinary economic motivation to assist Menaged. Samantha Nelson and Vikram

1 Dadlani are salaried employees whose only economic motivation was the paycheck they
2 received from Chase.

3 **D. Facts Supporting the Chase Defendants’ Affirmative Defenses**

4 In their Answers to the First Amended Complaint, the Chase Defendants identified
5 thirteen affirmative defenses, two of which are the standing and statutes of limitations
6 defenses described above. Many of the defenses—including laches, waiver,
7 acquiescence, estoppel, unclean hands, *in pari delicto*, comparative fault, assumption of
8 risk, and fraud—rely, at least in part, on facts articulated above. These defenses will be
9 further developed as facts become available to the Chase Defendants in discovery. Certain
10 other defenses—including those predicated on issue and claim preclusion and admissions
11 made by the Receiver in other court filings—rely, at least in part, on legal documents and
12 court filings in *Peter S. Davis, as Receiver for DenSco Inv. Corp. v. Clark Hill PLC*, Case
13 No. 2017-013832 (“*Clark Hill Action*”). So too will these be further developed as the
14 Chase Defendants investigate the voluminous court file in the *Clark Hill Action* and any
15 other potentially relevant legal proceedings in which the Receiver has engaged.

16 **II. LEGAL BASES OF THE CHASE DEFENDANTS’ DEFENSES**

17 **A. Lack of Standing**

18 A receiver stands in the shoes of a corporate entity and is only authorized to bring
19 claims that would otherwise belong to that entity. The Receiver does not stand in the
20 shoes of individual investors that invested in the entity, and consequently lacks standing
21 to prosecute claims that belong to those investors. *See, e.g., Managers Ass’n v. Kennesaw*
22 *Life & Accident Ins. Co.*, 809 F.2d 617, 622 (9th Cir. 1986) (where a receiver represents
23 a company and its affiliates, but not the company’s beneficiaries, the receiver lacks
24 standing to assert state law fraud claims that lie with the third-party beneficiaries). In the
25 case of a Ponzi scheme, where an entity in receivership was used in service of the scheme,
26 it is the investors, and not the entity, that suffered injury as a result of the scheme. Thus,
27 a third-party tort claim predicated on fraud necessarily arises from damages to the
28 investors, not the receiver, depriving the receiver of standing. *See, e.g., Isaiah v.*

1 *JPMorgan Chase Bank*, 960 F.3d 1296, 1307 (11th Cir. 2020). (“the Ponzi schemers’
2 torts cannot properly be separated from the Receivership Entities, and the Receivership
3 Entities cannot be said to have suffered any injury from the Ponzi scheme that the Entities
4 themselves perpetrated”).

5 **B. Statute of Limitations**

6 Arizona has a three-year statute of limitations for fraud. Ariz. Rev. Stat. § 12-
7 543(3). That same period applies to aiding and abetting fraud claims. Here, DenSco’s
8 allegations demonstrate it was on notice of the fraud for at least three-plus years before it
9 filed suit against Chase. More specifically, its allegations show that a fraudster (Menaged)
10 was committing real estate loan fraud on the lender (DenSco), and midway through the
11 process, after his conduct was revealed to DenSco, Menaged made further false promises
12 while continuing the real estate loan fraud scheme and causing DenSco additional losses.
13 Also, DenSco admits in its allegations that it knew Menaged was defrauding it when
14 Menaged began the banking relationship with Chase commenced in April 2014. Since
15 this suit was not commenced until more than five years later in August 2019, the claim
16 against Chase is forever time-barred.

17 DenSco also concedes that it was on inquiry notice of the alleged fraud as of April
18 2014, and actually investigated the fraud in June 2014. As reflected in the table above,
19 DenSco knew enough about Menaged’s fraud in June 2014—a mere two months after he
20 began banking at Chase—that DenSco’s sole employee/representative attended an
21 auction incognito because of concern that Menaged was not really using DenSco funds to
22 buy homes. Thus, DenSco, a sophisticated business and real estate lender, was not only
23 on inquiry notice in April 2014, but actually did inquire, and knew or certainly should
24 have known of the fraud long before the Receiver was appointed—and more than five
25 years before this litigation was commenced. *See, e.g., Stulce v. Salt River Project Agric.*
26 *Improvement & Power Dist.*, 197 Ariz. 87, 90 ¶ 10, 3 P.3d 1007, 1010 (App. 1999) (under
27 Arizona’s “discovery rule,” a cause of action accrues when a plaintiff discovers or
28 “reasonably should have discovered” defendant’s injury-causing misconduct).

1 Finally, DenSco cannot rely on the doctrine of adverse domination to save its stale
2 claim. The adverse domination doctrine is not applicable when a sole actor runs the
3 company alleged to have engaged in misconduct. Indeed, adverse domination is subject
4 to a basic exception—the widely-adopted “sole actor” rule, recognized in Arizona for
5 over 50 years—whereby the agent’s knowledge (Chittick’s) is attributed to the principal
6 (DenSco) when the agent, “although engaged in perpetrating [fraud] on his own account,
7 is the sole representative of the principal.” *Pearll v. Selective Life Ins. Co.*, 444 P.2d 443,
8 445 (1968) (internal citation and quotations omitted). Where an entity is controlled by a
9 sole actor, that period does not toll, but instead accrues at the time the sole actor discovers
10 the misconduct giving rise to the claim, as the sole actor’s knowledge is imputed to the
11 entity under the sole actor rule. *See, e.g., In re Mediators, Inc.*, 105 F.3d 822, 827 (2d Cir.
12 1997) (sole actor rule “imputes the agent’s knowledge to the principal” when “the
13 principal and agent are one and the same”); *In re Nat’l Century Fin. Enters.*, 783 F. Supp.
14 2d 1003, 1016 (S.D. Ohio 2011) (“[u]nder the sole actor rule, an agent’s wrongdoing is
15 directly attributed to the principal if he so dominated and controlled the principal that it
16 had no separate mind, will or existence of its own,” and “the principal and agent are one
17 and the same”).

18 **C. DenSco’s Inability to Satisfy the Elements of the Claim**

19 **i. No actionable underlying tort.**

20 In Arizona, an actionable fraud only exists where the party alleging fraud actually
21 and justifiably relies on the misrepresentations at hand. Reliance, in turn, is not justifiable
22 where the allegedly defrauded party could have or should have ascertained the falsity of
23 those representations. Specifically, a party in Arizona is not entitled to a verdict on a fraud
24 if by an ordinary degree of caution the party complaining could have ascertained the
25 falsity of the representations complained of. *See Stanley Fruit Co. v. Ellery*, 42 Ariz. 74,
26 78, 22 P.2d 672, 674 (Ariz. 1933) (“a party is not entitled to a verdict [on a fraud] if by
27 an ordinary degree of caution the party complaining could have ascertained the falsity of
28 the representations complained of”).

1 ii. ***The Chase Defendants lack knowledge of Menaged’s alleged***
2 ***fraud.***

3 In Arizona, aiding and abetting liability only lies where a defendant knows that the
4 conduct they are allegedly aiding and abetting is, in fact, a tort. Mere knowledge of
5 suspicious activity is not enough, nor is the processing of transactions in an account that,
6 in retrospect, appear unusual, unprecedented, and unexplained. *See, e.g., Stern v. Charles*
7 *Schwab & Co., Inc.*, No. CV-09-1229, 2010 WL 1250732, at *8 (D. Ariz. Mar. 24, 2010)
8 (“mere knowledge of suspicious activity is not enough”). In other words, it is not enough
9 that a defendant should have known something was amiss or known even of the alleged
10 fraud. The defendant must have been actually aware that the fraudster did or would in fact
11 perpetrate the specific fraud at issue.

12 iii. ***The Chase Defendants did not substantially assist Menaged’s***
13 ***alleged fraud.***

14 In Arizona, the processing of “ordinary course transactions” only “constitute
15 substantial assistance under some circumstances, such as where there is an extraordinary
16 economic motivation to aid in the fraud.” *Wells Fargo Bank v. Ariz. Laborers, Teamsters,*
17 *& Cement Masons Local No. 395 Pension Tr. Fund*, 201 Ariz. 474, 489 ¶ 48, 38 P.3d 12,
18 27 (2002). Such motivation requires more than the existence of ordinary account fees and
19 credit interest. *See, e.g., Stern v. Charles Schwab & Co., Inc.*, No. CV-09-1229, 2009 WL
20 3352408, at *8 (D. Ariz. Oct. 16, 2009) (holding that a bank’s collection of ordinary
21 banking fees does not create a circumstance of “extraordinary economic motivation” such
22 that processing ordinary bank transactions morphs into substantial assistance). Merely
23 permitting a customer to open and continue maintaining an account with transactions in
24 the millions of dollars is not enough to establish an extraordinary economic motivation.

25 **D. Other Defenses**

26 The Chase Defendants assert that DenSco’s claims are barred, may be barred, or
27 reduced by other matters constituting a defense or affirmative defense as set forth in
28 Arizona Rule of Civil Procedure 8 and Arizona’s common law, and as may be determined
to exist through discovery. Those defenses include laches, waiver, acquiescence, estoppel,

unclean hands, *in pari delicto*, comparative fault, assumption of risk, fraud, admission, and issue and claim preclusion.

The Chase Defendants have not yet identified all the legal defenses that they may have to DenSco's claims and reserve the right to supplement this disclosure.

III. THE NAME, ADDRESS, AND TELEPHONE NUMBER OF EACH WITNESS THE CHASE DEFENDANTS EXPECT TO CALL AT TRIAL, WITH DESIGNATION OF THE SUBJECT MATTER ABOUT WHICH EACH WITNESS MIGHT BE CALLED TO TESTIFY

The Chase Defendants anticipate that their trial witnesses will include the following:

1. Representative of JPMorgan Chase Bank, N.A.
c/o Nicole M. Goodwin
Greenberg Traurig, LLP
2375 East Camelback Road, Suite 700
Phoenix, Arizona 85016
(602) 445-8000

The Chase Defendants anticipate that a representative of Chase will be called to testify regarding the facts and circumstances surrounding DenSco's allegations, the damages alleged, and the Chase Defendants' defenses.

2. Vikram Dadlani
c/o Nicole M. Goodwin
Greenberg Traurig, LLP
2375 East Camelback Road, Suite 700
Phoenix, Arizona 85016
(602) 445-8000

Vikram Dadlani is a Defendant in this action. The Chase Defendants anticipate that he will testify regarding the facts and circumstances surrounding DenSco's allegations and Vikram and Jane Doe Dadlani's defenses.

3. Samantha Nelson
c/o Nicole M. Goodwin
Greenberg Traurig, LLP
2375 East Camelback Road, Suite 700
Phoenix, Arizona 85016
(602) 445-8000

Samantha Nelson is a Defendant in this action. The Chase Defendants anticipate that she will testify regarding the facts and circumstances surrounding DenSco's allegations and Samantha and Kristofer Nelson's defenses.

- 1 4. Peter S. Davis
 c/o Plaintiff's counsel

2 Mr. Davis is the receiver appointed for DenSco, and acts on DenSco's behalf and
3 in DenSco's stead as the Plaintiff in this action. The Chase Defendants anticipate that
4 Mr. Davis will testify regarding the facts and circumstances surrounding Plaintiffs'
5 allegations, his lack of personal knowledge thereof, and alleged damages.

- 6 5. Witnesses disclosed in future discovery, without waiver of objection.

- 7 6. Witnesses necessary to lay the foundation of exhibits.

- 8 7. Witnesses properly listed by any other party in this matter, without waiver
9 of objection.

- 10 8. Any necessary rebuttal or impeachment witnesses, fact and expert.

11 The Chase Defendants reserve the right to supplement this disclosure as
12 appropriate.

13 **IV. THE NAME AND ADDRESS OF ANY PERSON THE CHASE**
14 **DEFENDANTS BELIEVE MAY HAVE KNOWLEDGE RELEVANT TO**
15 **THE EVENTS, TRANSACTIONS, OR OCCURRENCES THAT**
16 **ALLEGEDLY GAVE RISE TO THIS ACTION, AND A DESCRIPTION OF**
17 **THE NATURE OF THE KNOWLEDGE OR INFORMATION EACH**
18 **SUCH PERSON IS BELIEVED TO POSSESS**

19 The Chase Defendants have not yet identified all of the witnesses with relevant
20 knowledge of the events, transactions, or occurrences that gave rise to this action, but they
21 anticipate that all witnesses listed above in § III have relevant knowledge. With respect
22 to any other persons, the Chase Defendants identify the following:

- 23 1. Yomtov "Scott" Menaged
24 FCI Safford
25 1529 West Highway 366
26 Safford, Arizona 85546

27 Mr. Menaged is the alleged fraudster at the heart of DenSco's case. The Chase
28 Defendants believe he possesses information about the facts and circumstances
 surrounding DenSco's claims.

2. Veronica Castro
 Current address unknown

Veronica Castro allegedly participated in the commission of Menaged's alleged fraud. The Chase Defendants believe she possesses information about the facts and circumstances surrounding DenSco's allegations.

3. David Beauchamp
Clark Hill PLC
14850 N. Scottsdale Road, Suite 500
Scottsdale, Arizona 85254

David Beauchamp served as DenSco's lawyer. The Chase Defendants believe he possesses information about the facts and circumstances surrounding DenSco's knowledge of Menaged's activities.

4. All witnesses necessary to lay foundation for exhibits; and

5. All witnesses listed by all other parties in their Rule 26.1 disclosure, and any supplements and amendments thereto, to which Defendants do not otherwise object, whether withdrawn or not.

The Chase Defendants reserve the right to supplement this disclosure as appropriate.

V. THE NAMES AND ADDRESSES OF ALL PERSONS WHO HAVE GIVEN STATEMENTS WHETHER WRITTEN OR RECORDED, SIGNED OR UNSIGNED, AND THE CUSTODIANS OF COPIES OF THE STATEMENTS

Defendants Vikram Dadlani and Samantha Nelson were deposed by counsel for the Receiver in connection with the *Clark Hill* Action, copies of which were made available to both the Receiver and counsel for the Chase Defendants shortly after the deposition. Vikram Dadlani's and Samantha Nelson's contact information is listed above in § IV.

Mr. Menaged has sat for numerous depositions, transcripts of all of which are believed to be in the possession of counsel for the Receiver.

VI. EXPERT WITNESSES

The Chase Defendants have not yet determined the expert(s) they may call in this case, or the subject matter(s) that may be covered by such expert(s). The Chase Defendants reserve the right to name one or more expert witnesses at a later date.

1 **VII. A COMPUTATION AND MEASURE OF DAMAGES**

2 The Chase Defendants deny all damages and remedies claimed by DenSco.

3 The Chase Defendants reserve the right to seek their attorneys' fees and costs
4 associated with this suit, if allowed by law.

5 **VIII. THE EXISTENCE, LOCATION, CUSTODIAN, AND GENERAL**
6 **DESCRIPTION OF ANY TANGIBLE EVIDENCE OR RELEVANT**
7 **DOCUMENTS THE CHASE DEFENDANTS PLAN TO USE AT TRIAL**
8 **AND RELEVANT INSURANCE AGREEMENT**

9 The Chase Defendants have not yet determined what their trial exhibits will be and
10 will supplement this disclosure as appropriate. The Chase Defendants anticipate that their
11 trial exhibits may include the documents listed below in § IX of this disclosure, and any
12 supplements and amendments thereto, as well as:

- 13 1. All documents attached to or referenced in all pleadings and motions in this
14 matter;
- 15 2. All documents attached to or referenced in any party's disclosure
16 statements in this matter, and any supplements thereto;
- 17 3. All discovery responses, including documents produced in response to
18 requests for production or subpoenas duces tecum;
- 19 4. All deposition transcripts and exhibits; and
- 20 5. All exhibits listed by all other parties in their disclosure statements, and any
21 supplements and amendments thereto, to which the Chase Defendants do not otherwise
22 object, whether withdrawn or not.

23 In the event any information and documents protected by the attorney-client
24 privilege and/or work product doctrine are disclosed or produced, such disclosure or
25 production is purely inadvertent and not a knowing and intentional waiver of such
26 privilege. In the event any information and documents protected by the attorney-client
27 privilege and/or work product doctrine are disclosed or produced, the Chase Defendants
28 request immediate notification thereof by the other parties and/or their attorneys to the
Chase Defendants' counsel pursuant to and as required by ABA Formal Opinion 05-437

(October 1, 2005) and ER 4.4(b), Arizona Rules of Professional Conduct.

IX. A LIST OF DOCUMENTS, OR IN THE CASE OF VOLUMINOUS DOCUMENTARY INFORMATION, A LIST OF THE CATEGORIES OF DOCUMENTS THAT MAY BE RELEVANT TO THIS ACTION

The Chase Defendants possess the following documents which they believe may be relevant to the issues raised in the complaint:

	DESCRIPTION	BATES RANGE
1.	Documents and communications produced in response to subpoenas issued in the <i>Clark Hill</i> Action	JPMC_0000001 to JPMC_0001187
2.	Account statements and records produced in responses to subpoenas previously issued by the Receiver	N/A
3.	Receiver's Statement of Facts in Support of Motion for Determination that Plaintiff Has Made a Prima Facie Case for Punitive Damages	N/A
4.	DenSco's 2013 Corporate Journal	N/A
5.	DenSco's 2014 Corporate Journal	N/A
6.	DenSco's 2015 Corporate Journal	N/A
7.	DenSco's 2016 Investor Letter	N/A
8.	Additional Documents to be produced in response to the Receiver's Second Request for the Production of Documents	JPMC_0001188 to JPMC_0001240
9.	Chase Employee Files	JPMC_0001241 to JPMC_0001286
10.	Chase Policies & Procedures	JPMC_0001287 to JPMC_0001349
11.	Chase Employee Susan Lazar Employee Files and Communications	JPMC_0001350 to JPMC_0001999
12.	Additional Internal Chase Communications	JPMC_0002000 to JPMC_0002049

Per the agreement of the parties, Chase agreed to: (1) allow DenSco to withdraw its first set of written discovery requests; and (2) respond to DenSco's Second Set of Requests for Production. Subject to and without waiving all objections raised therein,

Chase discloses that it will produce:

- Emails and communications between Menaged, and the named Chase employees Vikram Dadlani, and Samantha Nelson for the relevant time period that were produced in response to a subpoena issued in the matter captioned *Davis, as Receiver of DenSco Investment Corp., v. Clark Hill PLC, et al.*, No. CV2017-013832 (Superior Court of AZ, Maricopa Cty.) with Bates labels conforming to the scheme for the present case. (*See* RFP Responses ¶¶ 3, 11.)
- Policies and procedures regarding cashier's checks during the relevant time of the Third Amended Complaint ("TAC") that were produced in response to a subpoena issued in the matter captioned *Davis, as Receiver of DenSco Investment Corp., v. Clark Hill PLC, et al.*, No. CV2017-013832 (Superior Court of AZ, Maricopa Cty.) with Bates labels conforming to the scheme for the present case. (*See* RFP Responses ¶ 7.)
- Policies and procedures regarding reporting of unusual activities available to branch employees for the time period alleged in the TAC. (*See* RFP Responses ¶ 8.)
- Policies and procedures regarding the preparation of currency transaction reports available to branch employees for the time period alleged in the TAC. (*See* RFP Responses ¶ 14.)

Further, after a reasonable search of potentially relevant documents, Chase will produce any responsive and non-privileged documents as set forth below to the extent any such documents exist:

- Emails and communications internal to the bank regarding Menaged, his staff, like Veronica Castro, or his personal and Arizona Home Foreclosures, LLC accounts. (*See* RFP Responses ¶ 2.)
- Compliance exception reports, if any such documents are located after a reasonable search. (*See* RFP Responses ¶ 6.)
- Policies or procedures relating to deposit hold accounts available to branch

employees for the time period alleged in the TAC. (*See* RFP Responses ¶ 10.)

- Training records for Samantha Nelson and Vikram Dadlani. (*See* RFP Responses ¶ 12.)
- Documents pertaining to the account opening process available to branch employees for the time period alleged in the TAC, as well as any account profile information for Menaged and Arizona Home Foreclosures, LLC. (*See* RFP Responses ¶ 15.)
- Loan applications submitted by Menaged or Arizona Home Foreclosures, LLC, if any, for the time period alleged in the TAC. (*See* RFP Responses ¶ 16.)
- Vikram Dadlani, Samantha Nelson, and Susan Lazar's employment files and compensation histories for the time period alleged in the TAC. (*See* RFP Responses ¶ 17.)
- Documents pertaining or related to increasing any financial limits regarding banking by Menaged and Arizona Home Foreclosures, LLC, if any, for the time period alleged in the TAC. (*See* RFP Responses ¶ 18.)
- Documents, if any, related to Case #5682556 and Case #5763950. (*See* RFP Responses ¶¶ 20, 21.)

The Chase Defendants may be in possession of additional documents relevant to this action. The Chase Defendants respectfully submit that the Receiver, through its investigation and through discovery in the *Clark Hill* Action is in possession of voluminous documents that may be relevant to the claims and defenses in this action. Discovery has just begun in this matter, and the Chase Defendants reserve the right to identify additional documents and to amend or supplement this disclosure statement accordingly.

X. SOURCES

As provided in Rule 26.1, this disclosure includes required disclosures of information and documents in the Chase Defendants' possession, custody, and control at this time, and such required information and documents as have been ascertained or

1 acquired by reasonable inquiry to date. The Chase Defendants base their disclosure, in
2 part, on information from documents and witnesses, and this disclosure is not a party
3 statement or admission by the Chase Defendants. The Chase Defendants reserve the right
4 to supplement or amend this disclosure.

5
6 Dated this 9th day of August, 2021.

7 GREENBERG TRAURIG, LLP

8
9 By: /s/ Nicole M. Goodwin

Nicole M. Goodwin
Attorney for Defendants JPMorgan Chase
Bank, N.A., Samantha Nelson, Kristofer Nelson,
Vikram Dadlani, and Jane Doe Dadlani

10
11
12 COPY of the foregoing served via E-Mail
13 and U.S. Mail this 9th day of August, 2021
14 to:

15 Colin F. Campbell
16 Geoffrey M. T. Sturr
17 Timothy J. Eckstein
18 Joseph N. Roth
19 OSBORN MALEDON, P.A.
20 2929 North Central Avenue, Suite 2100
Phoenix, AZ 85012
ccampbell@omlaw.com
gsturr@omlaw.com
teckstein@omlaw.com
jroth@omlaw.com
Attorneys for Plaintiff

21 Gregory J. Marshall
22 Amanda Z. Weaver
23 Bradley Pollock
24 SNELL & WILMER, L.L.P.
25 One Arizona Center
26 400 E. Van Buren Street, Suite 1900
27 Phoenix, AZ 85004-2202
gmarshall@swlaw.com
aweaver@swlaw.com
bpollock@swlaw.com
Attorneys for U.S. Bank National
Association and Hilda Chavez

28 /s/ Amy Hershberger