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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE COUNTY OF MARICOPA**

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

Plaintiff,

vs.

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.

Case No.: cv2019-011499

**PLAINTIFF'S RESPONSE TO
MOTION TO DISMISS FILED
BY THE U.S. BANK
DEFENDANTS**

(Assigned to the Hon. Daniel Martin)

(Oral Argument Requested)

Plaintiff, Peter S. Davis, as Receiver of DenSco Investment Corporation ("Receiver"), hereby submits his response to the Motion to Dismiss filed by U.S. Bank National Association ("U.S. Bank") and Hilda Chavez (collectively, the "U.S. Bank Defendants"). The Motion to Dismiss should be denied because (1) the Receiver filed his Complaint less than three years

1 after he uncovered both the Second Fraud and the facts involving the aiding and abetting
2 claim against the U.S. Bank Defendants, and (2) the Receiver's Complaint contains sufficient
3 factual allegations demonstrating the U.S. Bank Defendants' knowledge of and substantial
4 assistance to Menaged in furtherance of the Second Fraud. This Response is supported by
5 the following Memorandum of Points.¹

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. FACTUAL BACKGROUND**

8 Yomtov Scott Menaged ("Menaged") defrauded DenSco in excess of \$46 million
9 dollars between 2011 through 2016. *See* proposed First Amended Complaint ("FAC"),
10 attached hereto as Exhibit A, at ¶ 16). Menaged misappropriated these funds by two separate
11 and distinct fraudulent schemes promulgated upon the unwitting victim DenSco. To address
12 any confusion, these are referred to herein as the First Fraud and the Second Fraud.

13 The First Fraud was orchestrated by Menaged between 2011 and 2013. (FAC ¶ 24.)
14 Essentially, Menaged took advantage of lax lending practices of DenSco and obtained two
15 mortgages on real estate that Menaged purchased at foreclosure auctions. (FAC ¶ 23-25.)
16 DenSco discovered the First Fraud in November 2013 when other lenders began to question
17 why certain properties owned by Menaged had two hard money loans secured against the real
18 estate. (FAC ¶ 26.) To address the First Fraud, Menaged and DenSco entered into a
19 Forbearance Agreement whereby Menaged guaranteed the repayment of \$37,420,120.47 to
20 DenSco and agreed to liquidate other assets which he represented to be valued at
21 approximately \$4 to \$5 million, and to use rental income from his properties and other means
22 to pay the sum due under the Forbearance Agreement. (FAC ¶¶ 35-36.)

23 After the First Fraud ended, DenSco continued doing business with Menaged by
24 funding hard money loans to Menaged for the purchase of real estate from foreclosure

25 ¹ The factual background in Section I and the arguments in Section II.A of this response are
essentially identical to the corresponding sections in Plaintiff's Response To Motion To
Dismiss Filed By The Chase Defendants filed concurrently herewith.

1 auctions as a means to recover the losses caused by the First Fraud. (FAC ¶¶ 37-42.)
2 However, because of the actions which transpired that resulted in the First Fraud, DenSco
3 altered its lending practices by requiring Menaged to provide copies of the specific cashier's
4 checks issued by Menaged's banks made payable to the respective foreclosure trustee with
5 the property address in the memo line, as well as a copy of the receipt which Menaged
6 received from the foreclosure trustee for the purchase of a real property at a trustee's sale.
7 (FAC ¶¶ 46-47.)

8 Unfortunately, these additional safeguards did not prevent Menaged from
9 orchestrating the Second Fraud. Between January 2014 and June 2016, Menaged obtained
10 over 1,400 loans from DenSco for the purchase of real estate from foreclosure auctions. (FAC
11 ¶¶ 48-49.) After diligent investigation, the Receiver discovered that Menaged engaged in a
12 fraudulent scheme, with the help of the U.S. Bank Defendants, to make it appear that he was
13 purchasing real estate with DenSco's money when he was not.

14 Amazingly, Menaged convinced both U.S. Bank and Chase to issue actual cashier's
15 checks, complete with the name of the Trustee who he pretended was conducting a
16 foreclosure sale of a parcel of real estate. (FAC ¶¶ 103-105; 151-153.) Each cashier's check
17 contained the address of the property supposedly being purchased and had DenSco's name in
18 the memo line, further memorializing the purported use of DenSco's funds. *Id.* Tragically,
19 Menaged and the defendants knew that Menaged never intended to use over 2,000 cashier's
20 checks to purchase property. Menaged, with the material assistance of the U.S. Bank
21 Defendants, took a picture of each cashier's check to send to DenSco and then immediately
22 re-deposited the check into his bank account. (FAC ¶¶ 102-112.) After providing DenSco
23 with photographic evidence of the cashier's check, Menaged would falsify a trustee's sales
24 receipt purporting to evidence the purchase of a real property that never happened. (FAC ¶
25 112.) These forged sales receipts typically contained information directly from the cashier's
check issued and redeposited by U.S. Bank, providing further legitimacy to DenSco. *Id.*

1 The Receiver was appointed on August 18, 2016. Through diligent efforts and
2 exhaustive investigation, he first discovered the existence and nature of the Second Fraud in
3 approximately December 2016, although the full extent of it was not yet known at that time.
4 (FAC ¶ 71-82.) During this investigation, the Receiver came to understand how the
5 defendants aided and abetted Menaged to commit the Second Fraud through the substantial
6 assistance they provided that allowed him to “issue” over 1,400 cashier’s checks whose sole
7 purpose was to be photographed so that Menaged could present them as legitimate to DenSco.
8 *Id.* The Receiver subsequently filed its Complaint on August 16, 2019, which is well within
9 three years after discovering the Second Fraud.

10 **II. LEGAL ANALYSIS**

11 **A. The Receiver Filed Its Complaint Within Three Years After Discovering 12 The Facts Constituting The Second Fraud**

13 The U.S. Bank Defendants argue the Receiver’s claims against them are time barred
14 by the statute of limitations because the Receiver filed the Complaint more than five years
15 after the U.S. Bank Defendants finally stopped aiding and abetting Menaged in the
16 furtherance of the Second Fraud. This argument conveniently ignores any analysis of when
17 the Receiver’s causes of action accrued, and is not supported either by law or fact.

18 **1. The Cause Of Action Did Not Accrue Until The Receiver Discovered 19 U.S. Bank Aided And Abetted Menaged’s Second Fraud**

20 When discovery occurs and a cause of action accrues are usually and necessarily
21 questions of fact for the jury. *Gust, Rosenfeld & Henderson v. Prudential Ins. Co. of America*,
22 182 Ariz. 586, 591, 898 P.2d 964, 969 (1995) (trial judge correct to let jury decide when
23 discovery occurred). Here, the parties agree that the statute of limitations for aiding and
24 abetting fraud is three years pursuant to A.R.S. § 12-543(3). The U.S. Bank Defendants argue
25 the statute of limitations has expired because the Complaint was filed more than five years
after they stopped assisting Menaged’s fraud in April 2014, even though the Second Fraud
and the U.S. Bank Defendants’ assistance would not be discovered until much later.

1 The U.S. Bank Defendants conveniently ignore that A.R.S. § 12-543(3) specifically
2 provides that a cause of action for fraud “shall not be deemed to have accrued until the
3 discovery by the aggrieved party of the facts constituting the fraud or mistake.” Here, any
4 statute of limitations did not accrue when the U.S. Bank Defendants finally stopped aiding
5 and abetting Menaged in the furtherance of the Second Fraud. Rather, the statute of
6 limitations began to accrue when the Receiver discovered, or through the exercise of
7 reasonable diligence might have discovered, that U.S. Bank aided and abetted Menaged in
8 furtherance of the Second Fraud. *Transamerica Ins. Co. v. Trout*, 145 Ariz. 355, 358, 701
9 P.2d 851, 854 (App. 1985) (holding that the discovery date in A.R.S. § 12-543 begins at the
10 time the defrauded party, by exercise of reasonable diligence, might have discovered the
11 fraud); *see also Merck & Co, Inc. v. Reynolds*, 559 U.S. 633, 651-653 (2010) (statute of
12 limitations begins when plaintiff discovers or a reasonably diligent plaintiff would have
13 discovered the facts constituting the violation; discovery of facts that only put a plaintiff on
14 “inquiry notice” does not automatically begin the running of the limitations period).

15 While the Complaint admittedly does not identify when the Receiver discovered that
16 U.S. Bank aided and abetted the Second Fraud, that is a meaningless defect that is easily
17 remedied in the Receiver’s proposed First Amended Complaint.² In any event, the Receiver
18 filed his Complaint within three years from the day he was appointed Receiver. Assuming,
19 hypothetically, that the Receiver could have uncovered the Second Fraud and the U.S. Bank
20 Defendants’ involvement on the day he was appointed, the Complaint was still filed less than
21 three years before the statute of limitations expired.

22 The proposed First Amended Complaint (“FAC”) sets forth the details and history of
23 both the First Fraud and the Second Fraud, including how and when each separate fraud was

24 ² Before granting a Rule 12(b)(6) motion to dismiss, the Receiver should be given an
25 opportunity to amend the complaint if such amendment cures its defects. *Dube v. Likens*, 216
Ariz. 406, 415, ¶ 24, 167 P.3d 93, 102 (App. 2007). The Receiver has filed a motion to amend
its Complaint contemporaneous with this Response.

1 discovered. (FAC ¶¶ 16-82.) In particular, the Receiver alleges how after DenSco discovered
2 the First Fraud, Menaged concocted an entirely new scheme to defraud DenSco for a second
3 time. (FAC ¶¶ 47-61.) It is this fraudulent scheme, the Second Fraud, that forms the basis of
4 the Receiver's aiding and abetting claims against the U.S. Bank Defendants.

5 Menaged filed for Chapter 7 bankruptcy in April 2016. (FAC ¶ 62.) At the time, he
6 and his companies owed DenSco approximately \$30 million in loans. (FAC ¶ 63.) Denny J.
7 Chittick ("Chittick") was the sole owner, shareholder and operator of DenSco. (FAC ¶ 2.)
8 When Chittick confronted Menaged about the amounts owed to DenSco, Menaged lied and
9 told Chittick that DenSco's money was being held at Auction.com, an online marketplace for
10 foreclosure buyers, and that Menaged would be able to retrieve the money and repay DenSco
as soon as the bankruptcy action was discharged. (FAC ¶ 64.)

11 Sadly, Chittick committed suicide on July 28, 2016. (FAC ¶ 68.) Chittick was not
12 aware of the Second Fraud when he committed suicide. Based on Menaged's
13 misrepresentations, Chittick believed that Auction.com was holding DenSco's loan proceeds
14 pursuant to an agreement between Auction.com and Menaged, the details of which he did not
15 understand. (FAC ¶¶ 69-70.)

16 The Receiver was appointed on August 18, 2016. (FAC ¶ 3.) A few days later, the
17 Receiver first became vaguely aware of the lending procedures DenSco and Menaged used
18 after the First Fraud. (FAC ¶ 72.) The Receiver immediately began an investigation to track
19 the funds DenSco loaned to Menaged. (FAC ¶ 73.) During that investigation, the Receiver
20 discovered that Menaged did not use the funds obtained from DenSco for the purpose they
21 were intended. (FAC ¶ 74.) The Receiver obtained a forensic image of Menaged's computers
22 and cell phone on or around October 3, 2016, in which it located a number of emails from
23 Menaged to Chase. (FAC ¶¶ 75-76.) The Receiver deposed Menaged on October 20, 2016
24 and issued subpoenas to U.S. Bank and Chase in November 2016. (FAC ¶¶ 77-78.) The
25 Receiver ultimately performed a complete forensic recreation of Menaged banking activities.
(FAC ¶ 80.) It was only when the Receiver completed an initial draft of that forensic

1 investigation on or around June 13, 2017, that if finally understood the facts and losses
2 involving the Second Fraud. (FAC ¶ 81.)

3 These and other allegations in the proposed First Amended Complaint, which must be
4 assumed as true for purposes of the motion to dismiss, show that Receiver's claims against
5 the U.S. Bank Defendants did not accrue until on or around June 13, 2017. At a minimum,
6 these allegations demonstrate that it was the Receiver's thorough and painstaking
7 investigation that uncovered the Second Fraud. That investigation began after the Receiver
8 was appointed on August 18, 2016. The Receiver filed its Complaint on August 16, 2019,
9 less than three years after his appointment. The statute of limitations does not, therefore, bar
10 the Receiver's claims against the U.S. Bank Defendants.

11 2. The Statute of Limitations Against The U.S. Bank Defendants Could
12 Not Have Accrued Before The Receiver's Appointment Under The
13 Doctrine Of Adverse Domination

14 The doctrine of adverse domination provides a second, independent basis for why the
15 Receiver's claims against the U.S. Bank Defendants could not have accrued before the
16 Receiver was appointed. Pursuant to the adverse domination doctrine, the statute of
17 limitations for an entity's claim is tolled when the entity is controlled or dominated by
18 individuals engaged in conduct that is harmful to the entity. *F.D.I.C. v Jackson*, 133 F.3d
19 694, 698 (9th Cir. 1998); *Warfield v. Carnie*, 2007 WL 1112591, at *15 (N.D. Tx. April 13,
20 2007). The doctrine applies in cases where the directors' control of a corporation reasonably
21 prevented others from discovering the directors' wrongdoing. *Resolution Trust Corp. v.*
22 *Blasdel*, 930 F. Supp. 417, 429-430 (D. Ariz. 1994). The doctrine recognizes that an entity
23 is paralyzed to protect itself against officers and directors who have engaged in wrongdoing
24 by ensuring the statute of limitations begins to run only when the wrongdoers lose control of
25 the entity. *Shapo v. O'Shaughnessy*, 246 F. Supp. 2d 935, 953 (N.D. Ill. 2002).

While the adverse domination doctrine typically applies to an entity's claims asserted
against its own wrongdoing officers and directors, courts have also applied it to toll an

1 entities' claims against third parties under the theory that the wrongdoing officers and
2 directors would not bring claims against culpable third parties on behalf of the entity out of
3 fear that it would bring their own misconduct to light. *See, e.g., Damian v. A-Mark Precious*
4 *Metals, Inc.*, 2017 WL 6940515, at *4-5 (C.D. Cal. Aug. 28, 2017) (holding the adverse
5 domination doctrine applies to claims against third parties); *In re Am. Continental*
6 *Corp./Lincoln Sav. & Loan Sec. Litig.*, 794 F. Supp. 1424, 1453 (D. Ariz. 1992) (applying the
7 adverse domination doctrine against a law firm that was alleged to have been part of the
8 wrongdoing); *Admiralty Fund v. Peerless Ins. Co.*, 143 Cal.App.3d 379, 390 (Cal. App. 1983)
9 (holding that the adverse domination doctrine could apply in a suit against third-party
10 insurance company where the plaintiff corporation claimed that it was prevented from
11 discovering its loss until the "wrongdoer employees" were removed).

12 While Chittick was not aware of the mechanics of the Second Fraud or of the
13 substantial assistance the U.S. Bank Defendants provided, there is ample evidence that
14 Chittick, as the sole owner, director and shareholder of DenSco, breached his fiduciary duties
15 to DenSco by, among other things, engaging in a course of conduct designed to conceal the
16 full nature and extent of the First Fraud from DenSco's investors and creditors. This included,
17 among other things, an effort to conceal the First Fraud from the investors, how his own
18 failures allowed the First Fraud to occur, and how his agreement to a workout plan (the
19 Forbearance Agreement) with Menaged in response to the First Fraud was not in the best
20 interests of DenSco, its investors and other creditors and opened the door to allow Menaged
21 to orchestrate the Second Fraud.³ (FAC ¶¶ 29-45.)

22 Because Chittick, who had total control of DenSco, breached his fiduciary duties to
23 DenSco to prevent his own misconduct from coming to light, the statute of limitations on

24 ³ These and other issues regarding Chittick's breaches of his fiduciary duties to DenSco
25 have been addressed at length in the Receiver's companion litigation also before this Court,
Davis v Clark Hill, CV2017-013832. The pleadings in that case are a matter of public
record.

1 DenSco's claims against the U.S. Bank Defendants is tolled at least until the date of the
2 Receiver's appointment, which was less than three years before the Receiver filed the
3 Complaint.

4 **B. The Receiver Sufficiently Alleged That Chase Knew Of Menaged's**
5 **Scheme.**

6 U.S. Bank argues that the Receiver failed to state a claim for aiding and abetting
7 because the Receiver did not allege that U.S. Bank had knowledge of Menaged's fraudulent
8 scheme. The issue here is whether the Receiver allege facts that one could infer that U.S.
9 Bank was "generally aware" of Menaged's fraud; importantly, the law does not require
10 complete knowledge of Menaged's fraud scheme.

11 Courts have held that the knowledge element in an aiding and abetting fraud claim
12 against a bank can be satisfied when (1) the bank knew the purpose of the investment funds
13 (i.e., the bank had knowledge of plaintiff's expectations); and (2) the bank knew the
14 perpetrator was not using the investment funds for the intended purpose (i.e., the bank had
15 knowledge of the perpetrator's false representation).

16 The Receiver alleged numerous facts demonstrating that U.S. Bank was "generally
17 aware" of Menaged's fraudulent scheme under these scenarios.

18 1. "General Awareness" May Be Inferred from The Circumstances.

19 Arizona law requires that "defendants must know that the conduct they are aiding and
20 abetting is a tort." *Wells Fargo Bank v. Arizona Laborers*, 201 Ariz. 474, 485, 38 P.3d 12,
21 23 (2002). This requirement is satisfied by showing "*general awareness*" of the primary
22 tortfeasor's scheme. *Dawson v. Withycombe*, 216 Ariz. 84, 102, 163 P.3d 1034, 1052 (App.
23 2007) (emphasis added). "A showing of actual and complete knowledge of the tort is not
24 uniformly necessary . . . [and] can be met, even though the bank may not have known of all
25 the details of the primary fraud—the misrepresentations, omissions, and other fraudulent
practices." *Wells Fargo Bank*, 201 Ariz. at 488, 38 P.3d at 26. Instead, "such knowledge

1 may be inferred from the circumstances.” *Id.* at 485, 38 P.3d at 23 (emphasis added).

2 In *Wells Fargo Bank*, the bank lent money to the perpetrator for a construction project
3 and the plaintiff provided the perpetrator with permanent financing for the project that would
4 repay the bank’s loan. The perpetrator defrauded plaintiff by misrepresenting material facts
5 related to his financial condition. The plaintiff later sued the bank for aiding and abetting the
6 perpetrator’s fraud and alleged facts showing: (1) the bank knew the perpetrator was
7 providing financial information to the plaintiff, and (2) the bank knew that the perpetrator was
8 making false representations concerning his financial condition. The Court concluded that
9 “[t]his accumulation of evidence raises the inference that the Bank knew [the perpetrator] was
10 engaged in false representations to the [plaintiff].” *Id.* at 488, 38 P.3d at 26.

11 Courts have also held that a plaintiff properly alleged an aiding and abetting claim
12 against a credit card company when, like a bank, it accepts wire transfers while knowing that
13 the funds were fraudulently obtained and were used for the defrauder’s benefit. *Koss Corp.*
14 *v. American Exp. Co.*, 233 Ariz. 74, 93, ¶ 65, 303 P.3d 898, 917 (App. 2013) (a bank or credit
15 card company may be liable for aiding and abetting the fraud by its customer without owing
16 any duty to the victim).

17 Courts have held this in other jurisdictions too.

18 ➤ Massachusetts: *Mansor v. JPMorgan Chase Bank N.A.*, 183 F. Supp. 3d 250,
19 270-72 (D. Mass. 2016)(knowledge can be inferred when the bank knew
20 investors expected the funds to be used for the purpose of purchasing CDs, and
21 the bank knew the perpetrators were not using the investment funds for the
intended purpose because it could see that no money was being used for
investment activity and that the perpetrator was transferring the investment
funds to their own personal accounts).

22 ➤ California: *Arreola v. Bank of Am. Nat. Ass’n*, 2012 WL 4757904 *3 (C.D. Ca.
23 2012)(banks can be liable for aiding and abetting when tortfeasor’s bank
24 accounts received investor funds, and knew that tortfeasor transferred the funds
25 to his personal accounts); *Benson v. JPMorgan Chase Bank, N.A.*, 2010 WL
1526394, (N.D. Cal. 2010)(bank knew that that none of the investor funds were
being used to purchase any securities, but instead, were being wired to offshore
bank accounts or being used to pay for the tortfeasor’s personal expenses).

- 1 ➤ Texas: *Rostain v. Trustmark Nat'l Bank*, 2015 WL 1303 4513 10-11 (N.D. Tex.
2 2015)(plaintiff adequately plead scienter by alleging that the bank knew the
3 tortfeasor's funds in his account were investment proceeds, and knew that the
4 tortfeasor was transferring those funds into his own personal accounts).
- 5 ➤ Minnesota: *Anderson v. U.S. Bank Nat. Ass'n*, 2014 WL 502955 (Minn. App.
6 2014)(knowledge inferred when there were incongruities between the
7 tortfeasor's claimed business activities and his actual account activities and
8 transactions "inconsistent with any legitimate business activity").

9 2. The Receiver's Allegations Regarding U.S. Bank's General
10 Awareness.

11 Here, the Receiver has sufficiently plead that U.S. Bank knew, and was generally
12 aware, of Menaged's fraudulent scheme. The Receiver plead that U.S. Bank knew that the
13 funds DenSco loaned to Menaged were for purchased properties, but Menaged used those
14 funds for his own personal gain. The allegations are as follows:

- 15 ➤ U.S. Bank knew that Menaged was in the business of purchasing foreclosed
16 properties because he told U.S. Bank, and other U.S. Bank Defendants
17 expressed interest in purchasing a foreclosed home. (Complaint ¶¶ 64 - 66).
- 18 ➤ U.S. Bank knew that DenSco loaned money to Menaged and AZHF for the
19 purchase of foreclosed homes because (1) he told U.S. Bank this; and (2)
20 DenSco would wire money to U.S. Bank and was listed as the "originator" of
21 that wire transfer. (Complaint ¶¶ 67-68).
- 22 ➤ U.S. Bank knew that nearly all of the funds in Menaged's accounts consisted
23 of DenSco loan proceed because U.S. Bank accepted the wire transfers from
24 DenSco, kept records of AZHF's account transactions, and compiled this
25 information in bank statements. (Complaint ¶ 46-47).
- U.S. Bank knew that the DenSco loan proceeds were to be used to purchase
foreclosed property because after DenSco wired the funds to Menaged's or
Easy Investment's U.S. Bank accounts, U.S. Bank would prepare cashier's
checks approximately equal to the amount of the wire transfer, made payable
to a particular trustee, and the cashier's check memorialized the purpose of the
funds was for the purchase of a foreclosed property because it stated "DenSco
Payment [property address]" in the memo lines. (Complaint ¶¶ 42 -54, 64 -70).

- 1 ➤ U.S. Bank knew that Menaged was not using the DenSco loan proceeds to
2 purchase the foreclosed properties identified, but rather for his own gain,
3 because U.S. Bank would re-deposit the cashier's checks into Menaged's
4 account, transfer the DenSco funds into his personal account, and knew that
Menaged was withdrawing the DenSco loan proceeds in the form of cash.
(Complaint ¶¶ 55-56, 62, 69-72).

5 These allegations are sufficient to allege that U.S. Bank knew and was generally aware
6 that Managed was defrauding DenSco. Clearly U.S. Bank saw that Menaged did not use the
7 incoming funds for any legitimate banking or other investment activity. *Mansor*, 183 F. Supp.
8 3d at 270-72; *Neilson v. Union Bank of California, N.A.*, 290 F. Supp. 2d 1101 (C.D. Cal.
9 2003)(the bank utilized atypical banking procedures to service the tortfeasor's accounts,
10 raising an inference that they knew of the Ponzi scheme and sought to accommodate it by
11 altering their normal ways of doing business).

12 3. U.S. Bank Misconstrues the Receiver "Knowledge" Allegations.

13 U.S. Bank seems to argue that the Receiver's allegations related to the "general
14 awareness requirement" are really that U.S. Bank "should have known" of Menaged's
15 fraudulent scheme because of various "red flags". But that is not the case. Nowhere does
16 the Receiver allege that U.S. Bank should have known of Menaged's fraud because of various
17 red flags. Rather, the Receiver is very clear that U.S. Bank knew and was generally aware of
18 Menaged's fraud.

19 **C. The Receiver Sufficiently Alleged That U.S. Bank Substantially Assisted**
20 **Menaged.**

21 U.S. Bank next argues that the Receiver did not allege sufficient facts that U.S. Bank
22 substantially assisted Menaged in his fraudulent scheme. Not true.

23 "[S]ubstantial assistance by an aider and abettor, can take many forms, but means more
24 than a little aid." *Wells Fargo Bank*, 201 Ariz. at 488, 38 P.3d at 26 (2002). "[S]ubstantial
25 assistance does not mean assistance that is necessary to commit the fraud. *The test is whether*
the assistance makes it easier for the violation to occur, not whether the assistance was

1 necessary.” *Id.* at 489, 38 P.3d at 27 (emphasis added). For example, “executing transactions,
2 even ordinary course transactions, can constitute substantial assistance under some
3 circumstances, such as where there is an extraordinary economic motivation to aid in the
4 fraud.” *Id.* Indeed, “[o]rdinary business transactions a bank performs for a customer can
5 satisfy the substantial assistance element of an aiding and abetting claim ... [k]nowledge is
6 the crucial element.” *In re First Alliance Mortg. Co.*, 471 F.3d 977, 955 (9th Cir. 2006).

7 For example, in *Rotstain v. Trustmark Nat’l Bank*, the plaintiffs alleged that numerous
8 bank defendants aided and abetted a fraudulent scheme involving the sale of fake certificates
9 of deposits (“CDs”). 2015 WL 13034513, at *1 (N.D. Tex. 2015). The court concluded that
10 the bank “substantially assisted” the fraudulent scheme simply because the bank continued to
11 maintain the perpetrators’ account despite knowledge of the fraudulent scheme. *Id.* at *11.
12 The court reasoned, that “[b]y providing even routine banking services for the [fraudulent]
13 scheme, Defendants inherently facilitated the financial transactions and operations that
14 formed the lifeblood of the [fraudulent] scheme.” *Id.*

15 Courts have held—like in this case—a bank that repeatedly allowed the tortfeasor to
16 immediately return cashier’s checks drawn on the investment account and deposit the
17 proceeds in the tortfeasor’s personal account is an unusual and highly suspicious transaction.
18 *Alesii v. Bank of Am., N.A.*, 2014 WL 7341292 (Ariz. App. 2014).

19 Accordingly, the question is this: Did the Receiver allege facts, if taken as true, that
20 U.S. Bank “made it easier” for Menaged to defraud DenSco? The answer is a resounding
21 “yes”.

22 1. U.S. Bank Assisted Menaged By Providing Routine Banking Services
23 While Knowing That Menaged Was Defrauding DenSco.

24 First, the Receiver has alleged that U.S. Bank continued to furnish Menaged routine
25 banking services despite knowing that he was defrauding DenSco. (Complaint ¶ 73-74, 80).
These services included, but are not limited to:

- accepting wire transfers from DenSco knowing that the DenSco Loan Proceeds were not going to be used for their intended purpose of purchasing homes in foreclosure proceedings. (Complaint ¶ 74, 80);
- creating cashier's checks knowing that they consisted of DenSco Loan Proceeds and were not going to be used for their intended purpose. (Complaint ¶ 74, 80);
- redepositing the cashier's checks for Menaged into his accounts knowing that they consisted of DenSco Loan Proceeds and that Menaged would use the redeposited DenSco Loan Proceeds for his own benefit. (Complaint ¶ 74, 80);
- allowing Menaged to withdraw substantial amounts of DenSco Loan Proceeds in the form of cash. (Complaint ¶ 74, 80); and
- transferring DenSco Loan Proceeds from Menaged's AZHF Accounts to his other accounts at U.S. Bank. (Complaint ¶ 74, 80).

The Receiver alleged that not only did these transactions make it easier for Menaged to defraud DenSco, but Menaged could not have done it without the U.S. Bank Defendant's material assistance. (Complaint ¶ 81). These facts alone establish that the U.S. Bank Defendants substantially assisted Menaged. *Alesii v. Bank of Am., N.A.*, No. 1 CA-CV 13-0462, 2014 WL 7341292, (Ariz. App. 2014) (allowing aiding and abetting claim to go forward because the bank repeatedly allowed the tortfeasor to immediately return cashier's checks drawn on the investment account and deposit the proceeds in the tortfeasor's personal account, an unusual and highly suspicious transaction).

The U.S. Bank Defendants argue the Receiver did not allege that U.S. Bank had a heightened economic motivation to materially assist Menaged in his scheme to defraud DenSco. The Receiver disagrees. The Receiver alleged Menaged moved millions of dollars through his U.S. Bank accounts, \$6,931,048.00 to be exact and assisted Menaged based on its own economic motivation. (Complaint ¶¶ 82-84). If having this volume of money pass through the U.S. Bank Defendant's accounts does not provide U.S. Bank with an obvious "heightened" economic motivation, or its role in creating illegitimate cashier's checks for no

1 legitimate banking purpose, then nothing is.⁴

2 Despite what U.S. Bank argues, these are not routine banking services. Menaged and
3 the U.S. Bank Defendants worked together to create, and then immediately redeposit at least
4 cashier's checks totaling almost \$7 million, which Menaged used for his personal benefit.
5 This is not, as U.S. Bank argues, the typical depositor-bank relationship. Likewise, it is not
6 routine to issue, photograph, and immediately redeposit several cashier's checks nearly every
7 business during the banking relationship.

8 2. U.S. Bank Actively Assisted Menaged In Using the DenSco Loan
9 Proceeds For his Own Benefit.

10 Second, U.S. Bank assisted Menaged in defrauding DenSco by actively assisting
11 Menaged using the DenSco loaned funds for his own gain by, among other things, overriding
12 bank policies and making large amounts of cash available for Menaged's use. Complaint at
13 ¶¶ 75-79. *See, Anderson v. U.S. Bank Nat. Ass'n*, 2014 WL 502955 (Minn. Ct. App.
14 2014)(Bank facilitated huge wire transfers out of the tortfeasor's stated business purpose;
15 Bank allowed unusual and large withdrawals of cash and facilitated those withdrawals by
16 setting up a system to ensure that the branch had enough cash on hand to accommodate the
17 tortfeasor's large withdrawals).

18 **III. CONCLUSION**

19 Based upon the foregoing, Plaintiff urges this Court to deny the Motion to Dismiss
20 filed by the U.S. Bank Defendants, and allow this case to proceed on the merits.
21

22 ⁴ However, to avoid any confusion in this matter, the Receiver alleges in the First Amended
23 Complaint that: "Because Menaged and U.S. Bank re-deposited the cashier's check 41 times
24 totaling almost \$7 million, and U.S. Bank knew that Menaged was not using DenSco's loan
25 proceeds for their intended purpose, U.S. Bank knew that the cashier's check scheme had no
legitimate banking or business purpose, and despite this, continued to provide Menaged
banking services because of its own heightened motivation of maintaining accounts worth
millions of dollars. " (FAC ¶ 124.)

DATED this 2nd day of March, 2020.

Bergin, Frakes, Smalley & Oberholtzer, PLLC

/s/ Ken Frakes

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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE COUNTY OF MARICOPA**

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

Plaintiff,

vs.

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.

Case No.: CV2019-011499

FIRST AMENDED
COMPLAINT
(Breach of Contract)

(*TIER 3*)

(*Eligible for Commercial Court*)

Plaintiff, Peter S. Davis, as Receiver of DenSco Investment Corporation (“Plaintiff”) brings this Complaint against Defendants U.S. Bank, N.A. (“US Bank”), JPMorgan Chase Bank, N.A. (“Chase”), Hilda Chavez (“Chavez”), Samantha Nelson (“Nelson”), and Vikram Dadlani (“Dadlani”).¹

¹ US Bank, Chase, Chavez, Nelson, and Dadlani, may be collectively referred to as “Defendants”.

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Accordingly, Plaintiff brings this action to recover compensatory and punitive damages for the losses DenSco suffered as a result of Defendants' aiding and abetting Menaged's fraud.

1. At all material times relevant to the claims set forth below, DenSco was an investment company that raised approximately \$85 million from investors to make short term “hard money loans” to “foreclosure specialists” who were buying homes in foreclosure proceedings at trustee’s sales. DenSco would charge its borrowers 15% to 18% interest for these loans, and they were to be secured by a deed of trust recorded against the purchased property.

2.3. On August 18, 2016, the court in *Arizona Corporation Commission v. DenSCO Investment Corporation*, Maricopa County Superior Court, Case No. CV2016-014142 entered its *Order Appointing Receiver*, which appointed Plaintiff as Receiver of DenSCO Investment Corporation (“Receivership Order”).

1 ~~3.4.~~ The Receivership Order authorizes Plaintiff, to, among other things, employ
2 attorneys and other professionals that are necessary for the proper collection, preservation,
3 and maintenance of Receivership Assets. This includes bringing claims that the DenSco
4 Receivership Estate may have against third party tortfeasors that have damaged DenSco.

5 ~~4.5.~~ Plaintiff has determined that DenSco holds significant claims against
6 Defendants for aiding and abetting Menaged's fraudulent scheme.

7 ~~5.6.~~ Defendant US Bank is a national banking association that is authorized to
8 conduct business in the State of Arizona and conducting business in Maricopa County,
9 Arizona. This Court has personal jurisdiction over US Bank because US Bank provided
10 banking services in Arizona to Arizona residents and Arizona businesses.

11 ~~6.7.~~ At all times material hereto, Defendant Chavez and John Doe Chavez, wife
12 and husband, were and are residing in Maricopa County, Arizona.

13 ~~7.8.~~ At all times material hereto Defendant Chavez was acting for, and on behalf
14 of, the marital community. Plaintiff does not know the true name of the defendant
15 denominated as John Doe Chavez but will substitute the true name of the party prior to entry
16 of judgment.

17 ~~8.9.~~ Defendant Chase is a national banking association that is authorized to
18 conduct business in the State of Arizona and conducts business in Maricopa County,
19 Arizona. This Court has personal jurisdiction over Chase because Chase provided banking
20 services in Arizona to Arizona residents and Arizona businesses.

21 ~~9.10.~~ At all times hereto, Defendants Samantha Nelson (formerly known as
22 Samantha Kumbaleck) and Kristofer Nelson, wife and husband, were and are residing in
23 Maricopa County, in the state of Arizona.

24 ~~10.11.~~ At all times alleged Defendant Samantha Nelson was acting for, and on
25 behalf of, the marital community.

~~11.12.~~ At all times hereto, Defendants Vikram Dadlani and Jane Doe Dadlani, were
husband and wife, and were residing in Maricopa County, in the State of Arizona.

1 12.13. At all times alleged Defendant Vikram Dadlani was acting for, and on behalf
2 of, the marital community. Plaintiff does not know the true name of the defendant
3 denominated as Jane Doe Dadlani but will substitute the true name of the party prior to
4 entry of judgment.

5 13.14. This Court has subject matter jurisdiction under Article VI, § 14 of the
6 Arizona Constitution and A.R.S. § 12-123.

7 14.15. Venue is proper in Maricopa County under A.R.S. §12-401 because US Bank
8 and Chase conduct business or reside in Maricopa County.

9 **MENAGED’S FRAUDULENT SCHEMES.**

10 16. Menaged defrauded DenSco in excess of \$46 million between 2011 and 2016.

11 15.17. Upon information and belief, Menaged was the sole member of Easy
12 Investments, LLC (“Easy Investments”).

13 16.18. Upon information and belief, Menaged was the sole member of Arizona
14 Home Foreclosures, LLC (“AZHF”).

15 17.19. Menaged held himself, Easy Investments, and AZHF to be in the business of
16 purchasing homes being foreclosed upon at trustee’s sales.

17 18.20. DenSco made “hard money loans” to Menaged, Easy Investments, and AZHF
18 for the stated purpose of purchasing foreclosed upon homes at trustees’ sales.

19 21. Menaged, however, defrauded DenSco by not using the funds that he, Easy
20 Investments, or AZHF borrowed from DenSco (“DenSco Loan Proceeds”) to purchase
21 homes at trustee’s sales, but rather, he used the DenSco Loan Proceeds for his own personal
22 benefit.

23 22. Menaged perpetrated two separate and distinct fraudulent schemes against
24 DenSco.

25 23. In the first fraudulent scheme (the “First Fraud”), Menaged executed multiple
promissory notes, deeds of trust and other documents from DenSco and other hard money
lenders with the knowledge that he was soliciting two separate loans from two separate

1 lenders who unbeknownst to each other believed that they were the only lender and would
2 be the only secured creditor in first position.

3 24. Menaged orchestrated the First Fraud by obtaining two loans from separate
4 lenders through the use of fraud and deception at least one hundred and seventy-nine (179)
5 times between 2011 and 2013.

6 25. Menaged was able to orchestrate the First Fraud in part because Chittick
7 funded the loans by paying the money directly to Menaged rather than to the trustee or
8 escrow company conducting the trustee's sale as DenSco represented in its private offering
9 memoranda to investors.

10 26. DenSco discovered the First Fraud in or around November 2013 when other
11 lenders began to question why certain properties owned by Menaged had two hard money
12 loans secured against the properties.

13 27. On November 27, 2013, Menaged met with Chittick about the facts and
14 circumstances of the First Fraud.

15 28. During that meeting, Menaged lied to Chittick about Menaged's involvement
16 in the First Fraud. Menaged falsely told Chittick that his wife had cancer and that his
17 "cousin" had masterminded and perpetuated the First Fraud while he was distracted by
18 caring for his sick wife.

19 29. Chittick owed fiduciary duties to DenSco and its investors, including duties of
20 loyalty and care.

21 30. Chittick's fiduciary duties required him to place the interest of the corporation
22 and DenSco's investors above his own interests.

23 31. Chittick's fiduciary duties also required him to inform DenSco's investors of
24 all of the facts and existence of the First Fraud.

25 32. Chittick breached the fiduciary duties he owed to DenSco and DenSco's
investors by placing his personal interests above the interests of the corporation and the
investors, and by concealing the First Fraud from the investors.

1 33. Chittick was concerned that if DenSco's investors learned about the First
2 Fraud, they would lose faith in him and would demand the return of their investments,
3 which he did not have because of Menaged's fraud.

4 34. Chittick was also concerned that he may face criminal charges for whatever
5 role he had in allowing Menaged to orchestrate the First Fraud if the investors discovered
6 learned about First Fraud.

7 35. Instead of disclosing the First Fraud to DenSco's investors, Chittick had
8 DenSco enter into a Forbearance Agreement with Menaged whereby DenSco agreed to
9 forbear its rights and remedies against Menaged and his companies provided Menaged
10 agreed, among other things, to pay certain sums and take other actions to repay the amounts
11 owed to DenSco.

12 36. Pursuant to and as of the date of the Forbearance Agreement, Menaged was
13 indebted to DenSco in the amount of \$37,420,120.47.

14 37. Pursuant to the Forbearance Agreement, DenSco continued to fund hard
15 money loans to Menaged for the purchase of real estate from foreclosure auctions.

16 38. This was done to help Menaged "fix" the problem by repaying the losses
17 caused by the First Fraud before Chittick disclosed the First Fraud to DenSco's investors.

18 39. Chittick informed and sought advice from DenSco's attorney, David
19 Beauchamp ("Beauchamp") about the First Fraud in January 2014.

20 40. Beauchamp helped DenSco negotiate and implement the Forbearance
21 Agreement with Menaged.

22 41. Beauchamp also advised Chittick that DenSco could raise new money from
23 investors to fund additional loans to Menaged without disclosing the First Fraud to those
24 investors.

25 42. Beauchamp advised Chittick to alter DenSco's lending practices with
Menaged by requiring Menaged to provide copies of the specific cashier's checks issued by
Menaged's banks made payable to the respective foreclosure trustee with the property

1 address in the memo line, and to provide copies of the receipts Menaged received from the
2 foreclosure trustee for the purchase of a real property at a trustee's sale.

3 43. Chittick relied upon Beauchamp's advice in deciding to continue to lend
4 additional monies to Menaged after the discovery of the First Fraud.

5 44. Beauchamp did not advise Chittick that he must immediately disclose the
6 First Fraud to DenSco's investors or that DenSco should not loan any additional funds to
7 Menaged.

8 45. Chittick breached his fiduciary duties to DenSco and its investors by causing
9 DenSco to (i) make 2,712 new loans to Menaged after the First Fraud for which DenSco has
10 suffered losses in excess of \$25 million; (ii) obtain more than \$15 million from investors
11 who were never told of Chittick's mismanagement of DenSco, the First Fraud, and the
12 Forbearance Agreement; and (iii) misdirect investors' money to fund the "work out"
13 contemplated by the Forbearance Agreement rather than use the money as promised to
14 investors when they invested.

15 46. After the First Fraud was discovered and ended, DenSco and Menaged altered
16 their business practices for all future loans from DenSco to Menaged.

17 47. Starting in January 2014, for new loans between DenSco and Menaged,
18 DenSco required that Menaged provide copies of the specific cashier's checks issued by US
19 Bank and Chase Bank to the respective foreclosure trustee, as well as copies of the receipts
20 received by Menaged from the foreclosure trustee for the purchase of a property by
21 Menaged at a trustee's sale.

22 48. Menaged then engaged in a systematic and comprehensive scheme to defraud
23 DenSco for a second time through the use and creation of falsified checks, deeds, contracts
24 and receipts related to the purported purchase of real estate at a trustee's sale (the "Second
25 Fraud").

49.49. As part of the Second Fraud, Menaged obtained a total of over 1,400 loans
from DenSco between January 2014 and June 2016. However, Menaged did not use these

1 loan proceeds for the purpose for which they were intended—to actually purchase real
2 estate at a trustees’ sale or otherwise.

3 20.50. Menaged would email DenSco lists of properties in foreclosure proceedings
4 (“Identified Properties”).

5 24.51. In those emails, Menaged intentionally misrepresented to DenSco that (1) he
6 was the winning bidder on properties that were sold at a trustee’s sale; (2) his companies,
7 Easy Investments or AZHF, needed financing to purchase the Identified Properties; and (3)
8 requested that DenSco loan Easy Investments or AZHF the funds required to complete the
9 purchase of the Identified Properties.

10 22.52. These emails included, among other things, (1) the addresses of the Identified
11 Properties that Menaged misrepresented to DenSco that he intended to complete the
12 purchase with the DenSco Loan Proceeds; and (2) the amount of the loan that Menaged
13 needed.

14 23.53. The DenSco Loan Proceeds were supposed to be secured with deeds of trust
15 recorded against the Identified Properties purchased.

16 24.54. These misrepresentations were material to DenSco.

17 25.55. Menaged never intended to purchase the Identified Properties, but rather
18 intended for DenSco to rely on these material misrepresentations and loan him money.

19 26.56. DenSco relied on the truth of Menaged’s material misrepresentations and
20 loaned Menaged, Easy Investments, and AZHF the funds required for Menaged to complete
21 the purchase of the Identified Properties.

22 27.57. -DenSco did not know that Menaged’s representations were false.

23 28.58. DenSco had the right to rely on the truth of Menaged’s misrepresentations,
24 and such reliance were reasonable and justified under the circumstances.

25 29.59. DenSco expected that the DenSco Loan Proceeds would be used for the
specific purpose of purchasing the Identified Properties, secured by a deed of trust at the
agreed upon interest rate of 15%-18%.

1 30-60. Menaged, however, did not use the DenSco Loan Proceeds to purchase the
2 Identified Properties. Rather, he used the DenSco Loan Proceeds for his own personal
3 benefit.

4 61. As a result, DenSco was damaged.

5 **DISCOVERY OF THE SECOND FRAUD**

6 62. In April 2016, Menaged filed for Chapter 7 bankruptcy.

7 63. At the time, Menaged, AZHF and Easy Investments owed DenSco
8 approximately \$30 million in loans.

9 64. When Chittick confronted Menaged about the amounts owed to DenSco,
10 Menaged lied to Chittick and told him the money owed to DenSco was safe and was being
11 held at Auction.com, an online marketplace for foreclosure buyers.

12 65. Menaged lied and told Chittick that he would be able to retrieve the money
13 from Auction.com and repay DenSco as soon as the bankruptcy action was discharged.

14 66. Menaged told Chittick that no one can know about Auction.com because the
15 bankruptcy court would go after the money if it discovered it and Menaged would be unable
16 to repay DenSco and its investors.

17 67. Menaged also threatened Chittick by telling him that if Chittick told anyone
18 about Auction.com, Menaged would testify that Chittick was complicit in the First Fraud
19 and knew all along that DenSco's loans were unsecured.

20 68. On July 28, 2016, Chittick committed suicide.

21 69. Chittick was not aware of the Second Fraud when he committed suicide.

22 70. Based on Menaged's misrepresentations, Chittick believed that the money
23 owed to DenSco was tied up at Auction.com pursuant to a supposed agreement between
24 Auction.com and Menaged, the details of which he did not fully understand and, because of
25 the bankruptcy action, Menaged could not repay DenSco.

71. The facts involving the Second Fraud were not discovered until after the
Receiver was appointed on August 18, 2016.

1 72. On August 23, 2016, the Receiver obtained a document that vaguely
2 referenced the method in which Menaged and DenSco altered their business practices after
3 the Forbearance Agreement.

4 73. The Receiver immediately began investigating to track and document the
5 funds DenSco loaned to Menaged after the Forbearance Agreement and to determine how
6 those funds were used by Menaged.

7 74. During that investigation, the Receiver discovered that Menaged did not use
8 the funds obtained from DenSco to purchase the Identified Properties.

9 75. On or about October 3, 2016, the Receiver obtained a forensic image of
10 Menaged's computers and cellphone.

11 76. The Receiver located a number of emails from Menaged to Chase employees
12 from Menaged's computers, but still did not fully understand the nature and extent of the
13 Second Fraud and the damages.

14 77. On October 20, 2016, the Receiver deposed Menaged.

15 78. In November 2016, the Receiver issued subpoenas to US Bank and to Chase
16 and slowly began to receive documents from both US Bank and Chase.

17 79. By December 2016, the Receiver understood the general nature of the Second
18 Fraud but did not yet know the full extent of it.

19 80. The Receiver ultimately performed a complete forensic recreation of
20 Menaged's banking activity.

21 81. The Receiver finally understood the extent and losses constituting the Second
22 Fraud, and the substantial assistance U.S. Bank and Chase provided to Menaged, when it
23 completed an initial draft of that forensic recreation of Menaged's banking activity on or
24 about June 13, 2017.

25 34-82. The Receiver continued to learn additional information regarding the
substantial assistance US Bank and Chase Bank provided to Menaged in relation to the
Second Fraud after June 13, 2017.

1 **MENAGED’S INDICTMENT AND GUILTY PLEA.**

2 32.83. On or about May 16, 2017 Menaged was indicted in the United States District
3 Court, District of Arizona, Case No. CR-17-00680-PHX-GMS(MHB) (the “District Court
4 Action”), for Wire Fraud, Aggravated Identity Theft, Conspiracy to Defraud, and Forfeiture,
5 in connection with his ownership, and management, of his real estate and furniture
6 businesses.

7 33.84. On or about August 4, 2017, Menaged and Francine Menaged entered into a
8 Settlement Agreement with Plaintiff, whereby the Menageds consented to the entry of a
9 nondischargeable civil judgment in favor of Plaintiff in the amount of \$31,000,000.00, and
10 whereby Plaintiff agreed to offset the judgment in an amount equal to the gross recovery
11 from third parties that is related to Menaged’s cooperation.

12 34.85. On or about October 17, 2017, Menaged pleaded guilty to Conspiracy to
13 Commit Bank Fraud, Aggravated Identity Theft, and Money Laundering Conspiracy, in the
14 District Court Action.

15 35.86. Menaged was sentenced to 17 years in a federal prison.

16 36.87. Menaged could not conduct this scheme on his own. This is where
17 Defendants come in.

18 **MENAGED’S CASHIER’S CHECK SCHEME: THE US BANK YEARS.**

19 37.88. From December 2012 through May 2016, Menaged and his business Easy
20 Investments maintained a series of accounts with US Bank.

21 38.89. Upon information and belief, Menaged banked at US Bank’s branch located
22 at 6611 W. Bell Road, Glendale, Arizona, which is located in a Fry’s grocery store.

23 39.90. Upon information and belief, Defendant Chavez worked at US Bank and was
24 the manager of the US Bank branch at 6611 W. Bell Road, Glendale, Arizona.

25 40.91. Upon information and belief, Defendant Chavez was Menaged’s main contact
at US Bank. She committed the wrongful acts set forth below while conducting official US
Bank business.

1 41.92. US Bank and Defendant Chavez may be referred to as “the US Bank
2 Defendants.”

3 42.93. From December 2012 through May 2016, Menaged emailed DenSco a list of
4 Identified Properties that were in foreclosure proceedings. Menaged intentionally
5 misrepresented that he (or his company) attended the various trustee’s sale public auctions
6 and was the winning bidder to purchase the Identified Properties.

7 43.94. In those emails, he would set forth the address of the Identified Property that
8 he purportedly purchased, and request financing from DenSco.

9 44.95. Relying on Menaged’s misrepresentations, DenSco made the requested loans
10 and wired the DenSco Loan Proceeds to Menaged’s Easy Investments account at US Bank.

11 45.96. DenSco’s wire transfers to US Bank included the following information:

- 12 a. The name of the originator: “DenSco Investment Corp”;
- 13 b. The name of the recipient: “Easy Investments, LLC”; and
- 14 c. The amount of the DenSco loan transferred to Menaged for the
15 purchase of the Identified Properties.

16 46.97. Upon information and belief, nearly all funds in Menaged’s Easy Investments
17 account at US Bank consisted of the DenSco Loan Proceeds made to Menaged to purchase
18 the Identified Properties.

19 47.98. The US Bank Defendants knew almost all of the funds in Menaged’s Easy
20 Investments account at US Bank consisted of the DenSco Loan Proceeds because they
21 accepted the wire transfers from DenSco, kept records of Easy Investments’ account, and
22 compiled this information in the US Bank bank statements evidencing this.

23 48.99. On or about the day that DenSco wired the DenSco Loan Proceeds to
24 Menaged’s Easy Investments’ account, Menaged, or his assistant Veronica Castro, would
25 visit the US Bank branch to obtain cashier’s checks.

49.100. The cashier’s checks that Menaged or Castro obtained from US Bank

1 consisted of the DenSco Loan Proceeds.

2 ~~50.101.~~ The amount of the cashier's checks that the US Bank Defendants
3 created for Menaged were equal to the amount of the DenSco Loan Proceeds that DenSco
4 wired to Menaged's Easy Investments account on or about that particular day, less the
5 \$10,000.00 deposit that Menaged would have had to deposit with the trustee as the winning
6 bidder.

7 ~~51.102.~~ Upon information and belief, Defendant Chavez, or other US Bank
8 employees, would assist Menaged and Castro in obtaining the cashier's checks.

9 ~~52.103.~~ Menaged or Castro instructed the US Bank Defendants to (1) make the
10 cashier's checks payable to the trustee who allegedly conducted the public sale of the
11 foreclosed property; and (2) in the amount for which Menaged misrepresented to DenSco
12 that he purchased the property, less the \$10,000.00 deposit that Menaged would have had to
13 deposit with the trustee as the winning bidder.

14 ~~53.104.~~ Menaged or Castro also instructed the US Bank Defendants to
15 memorialize on each individual cashier's checks' memo line: "DenSco Payment [and
16 address of the property]" or "DenSco [and address of the property]".

17 ~~54.105.~~ The US Bank Defendants prepared the cashier's checks in accordance
18 with Menaged's or Castro's instructions.

19 ~~55.106.~~ On almost all occasions, Menaged did not use the US Bank cashier's
20 checks to purchase the Identified Properties as he had represented to DenSco.

21 ~~56.107.~~ Rather, the purpose of these cashier's checks was to defraud DenSco,
22 as it was Menaged's intention to use the DenSco Loan Proceeds for his personal benefit.

23 ~~57.108.~~ Specifically, Menaged used the US Bank cashier's checks to provide
24 assurances to DenSco, and make DenSco believe, that he would be using the DenSco Loan
25 Proceeds to purchase the Identified Properties.

~~58.109.~~ To provide these assurances to DenSco, Menaged or Castro took a
picture of each cashier's check prepared and issued by US Bank.

1 59.110. Upon information and belief, if Menaged was at the US Bank branch
2 obtaining the cashier's checks, he would electronically send the photos of the cashier's
3 checks to DenSco while at the branch.

4 60.111. Upon information and belief, if Castro was at the US Bank branch
5 obtaining the cashier's checks, she would take these pictures and send them to Menaged
6 while at the US Bank branch, and then Menaged would forward them to DenSco.

7 61.112. Immediately after the electronic photo of the cashier's checks was sent
8 to DenSco, the US Bank Defendants would then redeposit the cashier's checks, which
9 consisted of the DenSco Loan Proceeds, back into Menaged's Easy Investments' account.

10 After providing DenSco with photographic evidence of the cashier's check, Menaged would
11 falsify a trustee's sale receipt purporting to evidence the purchase of a real property that
12 never happened. The forged sales receipts typically contained information directly from the
13 cashier's check issued and redeposited by Chase. This provided further legitimacy to
14 DenSco that Menaged was using the loan proceeds for their intended purpose

15 62.113. Then, Menaged would use the DenSco Loan Proceeds for his own
16 personal benefit.

17 63.114. Menaged and the US Bank Defendants worked together to create,
18 photograph, and then immediately redeposit at least 41 cashier's checks in the total amount
19 of \$6,931,048.00, which allowed Menaged to use the DenSco Loan Proceeds for his own
20 personal benefit.

21 **US BANK DEFENDANTS KNEW THAT MENAGED WAS DEFRAUDING**
22 **DENSCO.**

23 64.115. The US Bank Defendants knew, and were generally aware, that
24 Menaged was using the cashier's checks to ~~defraud DenSco~~ commit the Second Fraud for
25 several reasons.

65.116. First, the US Bank Defendants knew that Menaged promoted himself
and Easy Investments as being in the business of purchasing foreclosed homes from public

1 auctions because he regularly told them.

2 ~~66.117.~~ Also, upon information and belief, Defendant Chavez knew that
3 Menaged and Easy Investments were in the business of purchasing foreclosed homes at
4 public auctions because she was interested in purchasing foreclosed properties as rentals,
5 and Defendant Chavez met with Menaged to mentor her in the business.

6 ~~67.118.~~ Second, Menaged told the US Bank Defendants that DenSco was his
7 and Easy Investments' lender and that DenSco loaned funds to Menaged and his companies
8 for the intended purchase of homes in foreclosure proceedings.

9 ~~68.119.~~ The US Bank Defendants knew that DenSco loaned money to
10 Menaged and Easy Investments because DenSco wired the DenSco Loan Proceeds to
11 Menaged's Easy Investments account at US Bank and the wire transfers listed DenSco as
12 "the originator."

13 ~~69.120.~~ The US Bank Defendants knew that the cashier's checks that Menaged
14 or Castro obtained consisted of DenSco Loan Proceeds because it would receive DenSco's
15 wire transfer which listed DenSco as "the originator" and then they created the cashier's
16 checks which memorialized that they were DenSco's payment for a certain property on the
17 cashier's checks' memo lines.

18 ~~70.121.~~ Third, the US Bank Defendants knew that DenSco had the expectation
19 that the DenSco Loan Proceeds wired into Menaged's Easy Investments account would be
20 used to purchase the Identified Properties because the US Defendants would prepare
21 cashier's checks that would:

- 22 a. be approximately equal to the total amount that DenSco wired to
23 Menaged's Easy Investments' account;
- 24 b. be made payable to a trustee that conducted the public auction; and
- 25 c. memorialize the cashier's checks' purported purpose by stating in their
memo lines: "DenSco Payment [property address]."

~~71.122.~~ Fourth, the US Bank Defendants knew that Menaged was not using the

1 DenSco Loan Proceeds to complete the purchase of the Identified Properties, but rather to
2 perpetuate his fraud, because the US Bank Defendants would immediately redeposit the
3 cashier's checks back into the Easy Investments account for him.

4 123. Fifth, the US Bank Defendants knew that Menaged was not using the DenSco
5 Loan Proceeds for their intended purpose of purchasing the Identified Properties at trustee's
6 sales, but rather, Menaged was using the DenSco Loan Proceeds for his personal benefit
7 because, upon information and belief, he would withdraw large amounts of the redeposited
8 DenSco Loan Proceeds in cash from the US Bank's Easy Investments' account and transfer
9 redeposited DenSco Loan Proceeds from his US Bank Easy Investments account to his
10 other US Bank accounts.

11 72.124. Because Menaged and U.S. Bank re-deposited the cashier's check 41
12 times totaling almost \$7 million, and U.S. Bank knew that Menaged was not using
13 DenSco's loan proceeds for their intended purpose, U.S. Bank knew that the cashier's check
14 scheme had no legitimate banking or business purpose, and despite this, continued to
15 provide Menaged banking services because of its own heightened motivation of maintaining
16 accounts worth millions of dollars.

16 **THE US BANK DEFENDANTS SUBSTANTIALLY ASSISTED MENAGED.**

17 73.125. As discussed above, the US Bank Defendants had actual knowledge of
18 Menaged's fraud the Second Fraud and substantially assisted Menaged in defrauding
19 DenSco by knowing that Menaged was defrauding DenSco and performing routine banking
20 services that allowed him to perpetuate his fraudulent scheme.

21 74.126. Upon information and belief, these routine banking services included,
22 but were not limited to:

- 23 a. accepting wire transfers from DenSco knowing that the DenSco Loan
24 Proceeds were not going to be used for their intended purpose of
25 purchasing homes in foreclosure proceedings;
- b. creating cashier's checks knowing that they consisted of DenSco Loan
Proceeds and were not going to be used for their intended purpose of

1 purchasing homes in foreclosure proceedings;

- 2 c. redepositing the cashier's checks for Menaged into his Easy
3 Investments account knowing that they consisted of DenSco Loan
4 Proceeds and that Menaged would use the redeposited DenSco Loan
5 Proceeds for his own benefit;
6
7 d. allowing Menaged to withdraw substantial amounts of DenSco Loan
8 Proceeds in the form of cash from the Easy Investments Account; and
9
10 e. transferring the DenSco Loan Proceeds from Menaged's Easy
11 Investments accounts to his other accounts at US Bank.

12 75.127. Also, and upon information and belief, Menaged requested that the US
13 Bank Defendants keep substantial amounts of cash at US Bank branch at 6611 W. Bell
14 Road, Glendale, Arizona to ensure adequate cash was available for Menaged's regular and
15 substantial cash withdrawals.

16 76.128. Upon information and belief, the US Bank Defendants accommodated
17 this request and changed its policies at the US Bank branch at 6611 W. Bell Road, Glendale,
18 Arizona and kept up to \$20,000.00 of cash at any given time for Menaged's cash
19 withdrawals.

20 77.129. The US Bank Defendants also substantially assisted Menaged in
21 ~~defrauding DenSeo~~committing the Second Fraud by ignoring its own policies and
22 procedures.

23 78.130. Upon information and belief, US Bank has a "hold period" on
24 redeposited cashier's checks, where the redeposited funds would not be available to the
25 account owner for several days.

26 79.131. Upon information and belief, the US Bank Defendants materially
27 assisted ~~Menaged's fraudulent scheme against DenSeo~~the Second Fraud by violating their
28 own internal policies and procedures by intentionally "over-riding" these holds on the
29 redeposited cashier's checks to allow Menaged immediate access to the redeposited DenSco
30 Loan Proceeds.

1 ~~80.132.~~ The US Bank Defendants materially assisted ~~Menaged's fraudulent~~
2 ~~scheme against DenSco~~ the Second Fraud by continuing to furnish routine banking services
3 to Menaged, despite:

- 4 a. knowing that Easy Investments' business account was used for the
5 purchase of properties at trustee's sales;
- 6 b. knowing DenSco loaned money to Easy Investments for purchasing
7 the Identified Properties at trustee's sales;
- 8 c. knowing that Menaged was obtaining cashier's checks with the
9 DenSco Loan Proceeds for the purported purchase of the Identified
10 Properties, but instead was redepositing them back into his Easy
11 Investments account; and
- 12 d. knowing that Menaged instead used the DenSco Loan Proceeds for his
13 own personal use.

14 ~~81.133.~~ Without the material and substantial assistance that the US Bank
15 Defendants provided to Menaged, Menaged could not have conducted ~~his fraudulent~~
16 ~~scheme against DenSco~~ the Second Fraud from December 2012 through April of 2014.

17 ~~82.134.~~ The US Bank Defendants intended to assist Menaged in ~~this scheme~~
18 ~~because~~ because the Second Fraud Menaged moved millions of dollars through his Easy
19 Investment account at US Bank, and therefore, the US Bank Defendants had a financial
20 motive to maintain Menaged's business at US Bank.

21 ~~83.135.~~ The US Bank Defendants benefited from ~~Menaged's fraudulent~~
22 ~~scheme~~ the Second Fraud by maintaining Menaged's business accounts.

23 ~~84.136.~~ The US Bank Defendants, through their actions as described above,
24 acted to serve US Bank's own interests, having reason to know and consciously
25 disregarding a substantial risk that their conduct might significantly injure the rights of
others, including DenSco.

~~85.137.~~ The US Bank Defendants, through the actions as described above,
consciously pursued a course of conduct knowing that it created a substantial risk of

1 significant harm to others, including DenSco.

2 ~~86.138.~~ Because the US Bank Defendants aided and abetted Menaged in
3 defrauding DenSco, DenSco was damaged in an amount to be proved at trial, but no less
4 than \$1,000,000.00.

5 **MENAGED’S CASHIER’S CHECK SCHEME: THE CHASE YEARS.**

6 ~~87.139.~~ From April 2014 through at least November 2016, Menaged and
7 AZHF banked with Chase.

8 ~~88.140.~~ Upon information and belief, Menaged banked at Chase’s branch
9 located at 8999 East Shea Boulevard, Scottsdale, Arizona.

10 ~~89.141.~~ From April 2014 through at least November 2016, Defendants Nelson
11 and Dadlani worked at Chase and were managers at the Chase branch located at 8999 East
12 Shea Boulevard, Scottsdale, Arizona. They committed the wrongful acts set forth below
13 while conducting official Chase business.

14 ~~90.142.~~ Upon information and belief, Defendants Nelson and Dadlani were
15 Menaged’s main contacts at Chase.

16 ~~91.143.~~ Chase, Nelson, and Dadlani may be referred to as “the Chase
17 Defendants.”

18 ~~92.144.~~ From April 2014 through at least November 2016, Menaged emailed
19 DenSco a list of properties that were in foreclosure proceedings. He intentionally
20 misrepresented that he (or his company) attended the trustee’s sale public auctions and was
21 the winning bidder to purchase the Identified Properties.

22 ~~93.145.~~ In those emails, he would set forth the address of the Identified
23 Property purportedly purchased, and request financing from DenSco.

24 ~~94.146.~~ Relying on Menaged’s misrepresentations, DenSco wired the
25 requested DenSco Loan Proceeds to Menaged’s AZHF account at Chase.

~~95.147.~~ DenSco’s wire transfers to Chase included the following information:

- a. The name of the originator: “DenSco Investment Corp”;

1 b. The name of the recipient: “Arizona Home Foreclosure, LLC”; and

2 c. The amount of the DenSco loan transferred to Menaged for the
3 purchase of the Identified Properties.

4 ~~96.148.~~ Upon information and belief, nearly all funds in Menaged’s AZHF
5 account at Chase consisted of the DenSco Loan Proceeds to purchase the Identified
6 Properties.

7 ~~97.149.~~ The Chase Defendants knew that most of the funds in Menaged’s Easy
8 AZHF account at Chase consisted of the DenSco Loan Proceeds because Chase accepted
9 the wire transfers from DenSco, kept records of AZHF’s account transactions, and compiled
10 this information in the Chase bank statements evidencing this.

11 ~~98.150.~~ After Chase received a DenSco wire transfer, Menaged would email
12 the Chase Defendants and request them to issue cashier’s checks from his AZHF account.

13 ~~99.151.~~ In those emails to the Chase Defendants, Menaged instructed them to
14 (1) make the cashier’s check payable to the trustee who allegedly conducted the public
15 auction of the foreclosed property; and (2) in the amount for which Menaged
16 misrepresented to DenSco that he purchased the property, less the \$10,000.00 deposit that
17 Menaged would have had to deposit with the trustee as the winning bidder.

18 ~~100.152.~~ In those emails to the Chase Defendants, Menaged also instructed the
19 Chase Defendants to memorialize on each individual cashier’s check’s memo line: “DenSco
20 Payment [and address of the property]” or “DenSco [and address of the property]”.

21 ~~101.153.~~ The Chase Defendants prepared the cashier’s checks from AZHF’s
22 account in accordance with Menaged’s emailed instructions.

23 ~~102.154.~~ The Chase cashier’s checks consisted of DenSco Loan Proceeds.

24 ~~103.155.~~ In addition, when a Chase Defendant prepared the cashier’s checks in
25 accordance with Menaged’s instructions, he or she stamped the back of the cashier’s checks
 “Not Used For Intended Purposes,” and prepared a withdrawal slip and a corresponding
 deposit slip for the identical amount of the cashier’s checks so that Menaged could redeposit

1 the cashier's checks back into his AZHF account after he took pictures of them.

2 ~~104.156.~~ The withdrawal slip would contain the total amount of all cashier's
3 checks being issued (e.g., four or five checks at a time) and the deposit slip would be for the
4 same amount as the withdrawal slip.

5 ~~105.157.~~ The Chase Defendants prepared this packet prior to Menaged's arrival
6 at the branch and had the packet waiting for him to further his fraudulent scheme.

7 ~~106.158.~~ When Menaged arrived at the Chase branch, the Chase Defendants
8 would then hand him the withdrawal slips, cashier's checks, and deposit slips in one
9 paperclip.

10 ~~107.159.~~ Menaged did not prepare any of the paperwork himself. He instead
11 relied on Chase to fill out the withdrawal slips and the deposit slips for him before he
12 arrived at the branch.

13 ~~108.160.~~ On almost all occasions, Menaged did not use the DenSco Loan
14 Proceeds to purchase the Identified Properties as he had represented to DenSco.

15 ~~109.161.~~ Rather, the purpose of these cashier's checks was to defraud DenSco,
16 as it was Menaged's intention to use the DenSco Loan Proceeds for his personal benefit.

17 ~~110.162.~~ Specifically, Menaged used the Chase cashier's checks to provide
18 assurances to DenSco, and make DenSco believe, that he would be using the DenSco Loan
19 Proceeds to purchase the Identified Properties.

20 ~~111.163.~~ To provide these assurances to DenSco, Menaged would take photos
21 of the cashier's checks and electronically send the photos to DenSco.

22 ~~112.164.~~ Menaged often took a picture of the cashier's checks in front of a
23 Chase Defendant.

24 ~~113.165.~~ The Chase Defendants had no problem assisting Menaged in
25 defrauding DenSco. Upon information and belief, on at least one occasion, a Chase
Defendant took the picture for Menaged on his cell phone so that he could provide the false
assurances to DenSco.

1 ~~114.166.~~ The Chase Defendants typically did not ask Menaged to show his
2 identification at any point during the transaction of receiving and redepositing the cashier's
3 checks.

4 ~~167.~~ Immediately after Menaged sent the electronic photo of the cashier's checks
5 to DenSco, the Chase Defendants would then redeposit the cashier's check, comprised of
6 the DenSco Loan Proceeds, back into Menaged's AZHF account.

7 ~~168. After providing DenSco with photographic evidence of the cashier's check,~~
8 ~~Menaged would falsify a trustee's sale receipt purporting to evidence the purchase of a real~~
9 ~~property that never happened.~~

10 ~~115.169. The forged sales receipts typically contained information directly from~~
11 ~~the cashier's check issued and redeposited by Chase. This provided further legitimacy to~~
12 ~~DenSco that Menaged was using the loan proceeds for their intended purpose.~~

13 ~~116.170.~~ Then, Menaged would use the DenSco Loan Proceeds for his own
14 personal benefit.

15 ~~117.171.~~ Menaged and the Chase Defendants worked together to create,
16 photograph, and then immediately redeposit at least 1,349 cashier's checks, in the total
17 amount of \$312,108,679.00, which Menaged used for his personal benefit.

18 **CHASE DEFENDANTS KNEW THAT MENAGED WAS DEFRAUDING**
19 **DENSCO.**

20 ~~118.172.~~ The Chase Defendants knew, and were generally aware, that Menaged
21 was using this cashier's check scheme to ~~defraud DenSco~~ commit the Second Fraud for
22 several reasons.

23 ~~119.173.~~ The Chase Defendants knew that Menaged promoted himself and
24 AZHF as being in the business of purchasing foreclosed homes from public auctions
25 because he regularly ~~sold~~ told them.

~~120.174.~~ Also, upon information and belief, Defendant Nelson (or another bank
officer or employee) knew that Menaged was in the business of purchasing foreclosed

1 properties as she expressed interest in purchasing a foreclosed home for her personal use.

2 ~~121.175.~~ Menaged told the Chase Defendants that DenSco was his and AZHF's
3 lender and that DenSco loaned funds to Menaged and his companies for the intended
4 purchase of homes in foreclosure proceedings.

5 ~~122.176.~~ The Chase Defendants knew that DenSco loaned money to Menaged
6 and AZHF because DenSco wired the DenSco Loan Proceeds to Menaged's accounts at
7 Chase and the wire transfers listed DenSco as "the originator."

8 ~~123.177.~~ The Chase Defendants knew that the cashier's checks consisted of
9 DenSco Loan Proceeds because Chase would receive DenSco's wire transfer which listed
10 DenSco as "the originator," and then they created the cashier's checks which memorialized
11 that the checks were DenSco's payment for a certain property on the cashier's checks'
12 memo lines.

13 ~~124.178.~~ The Chase Defendants knew that DenSco had the expectation that the
14 DenSco Loan Proceeds that it wired into Menaged's Chase accounts would be used to
15 purchase the Identified Properties because the Chase Defendants would prepare cashier's
16 checks that would:

- 17 a. be approximately equal to the total amount that DenSco wired to
18 Menaged's Easy Investments' account;
- 19 b. be made payable to a particular trustee that conducted the public
20 auction; and
- 21 c. memorialize the cashier's checks' purported purpose by stating in their
22 memo lines: "DenSco Payment [property address]."

23 ~~125.179.~~ The Chase Defendants knew that Menaged was using the cashier's
24 checks to provide false assurances to DenSco because (1) a Chase Defendant had asked
25 Menaged why he would take pictures of the cashier's checks; (2) Menaged told her that he
was sending photos of the cashier's checks to DenSco to provide assurances to DenSco that
the DenSco funds were actually being used to purchase the Identified Properties; and (3) the
Chase Defendants redeposited the checks back into Menaged's AZHF's account.

1 ~~126.180.~~ The Chase Defendants knew that Menaged was generally not using the
2 cashier's checks to purchase the Identified Properties because (1) when a Chase Defendant
3 prepared the cashier's checks in accordance with Menaged's instructions, he or she stamped
4 the back of the cashier's checks "Not Used For Intended Purpose;" and (2) they prepared a
5 corresponding deposit slip for the identical amount of the cashier's checks so that Menaged
6 could redeposit cashier's checks back into his AZHF account after he took pictures of them.

7 ~~127.181.~~ From time to time, Menaged used a cashier's check for its intended
8 purpose to purchase one of the Identified Properties at a trustee's sale.

9 ~~128.182.~~ The Chase Defendants and Menaged came up with a system whereby
10 Menaged provided them with notice that he was going to take a cashier's check and did not
11 want the Chase Defendants to redeposit that particular cashier's check back into AZHF's
12 account.

13 ~~129.183.~~ Upon information and belief, the Chase Defendants instructed
14 Menaged that Chase would assume all of the cashier's checks would be redeposited in the
15 AZHF account and would mark the cashier's checks as "Not Used For Intended Purposes"
16 prior to Menaged's arrival at the Chase branch, unless Menaged indicated in his email to the
17 Chase Defendants that he intended to take a certain cashier's check with him when he left
18 the branch.

19 ~~130.184.~~ If Menaged did not inform the Chase Defendants that he intended to
20 take a cashier's check with him when he left the branch, Chase would automatically prepare
21 the cashier's checks for redeposit and would mark the cashier's checks "Not Used For
22 Intended Purposes" before Menaged arrived to "pick up" the checks.

23 ~~131.185.~~ When Menaged intended to take a cashier's check, he indicated in his
24 emails to Chase "taking with me," or something similar, next to the dollar amount or
25 trustee's name. That was Menaged's signal to the Chase Defendants that the cashier's
check would not be redeposited so that the Chase Defendants would not mark it "Not Used
For Intended Purposes."

1 ~~132.186.~~ In nearly every other case, however, and unbeknownst to DenSco,
2 Menaged and the Chase Defendants redeposited the checks back into AZHF's account at
3 Chase.

4 ~~133.187.~~ Menaged and the Chase Defendants did this nearly every single
5 business day of the week from April 2014 through June 2015.

6 ~~134.188.~~ Upon information and belief, there are thousands of transactions
7 whereby Menaged and the Chase Defendants would withdraw the DenSco Loan Proceeds in
8 the form of cashier's checks and redeposit those funds on the very same day.

9 ~~135.189.~~ The Chase Defendants knew that Menaged was not using the DenSco
10 Loan Proceeds to complete the purchase of the Identified Properties because the Chase
11 Defendants would redeposit the cashier's checks back into Menaged's bank account for him
12 immediately after he took pictures of the cashier's checks.

13 ~~190.~~ The Chase Defendants knew that Menaged was not using the DenSco Loan
14 Proceeds for their intended purpose of purchasing the Identified Properties at trustee's sales,
15 but rather, Menaged was using the DenSco Loan Proceeds for his personal benefit because,
16 upon information and belief, he would withdraw large amounts of the redeposited DenSco
17 Loan Proceeds in cash from his Chase accounts and transfer the redeposited DenSco Loan
18 Proceeds from his AZHF account to Menaged's other Chase accounts.

19 ~~136.191.~~ Because Menaged and Chase re-deposited the cashier's check 1,349
20 times totaling over \$312,108,679.00, and Chase knew that Menaged was not using
21 DenSco's loan proceeds for their intended purpose, Chase knew that the cashier's check
22 scheme had no legitimate banking or business purpose, and despite this, continued to
23 provide Menaged banking services because of its own heightened motivation of maintaining
24 accounts worth millions of dollars.

25 **THE CHASE DEFENDANTS SUBSTANTIALY ASSISTED MENAGED.**

~~137.192.~~ As discussed above, the Chase Defendants had actual knowledge of
Menaged's fraud the Second Fraud and substantially assisted Menaged in defrauding

1 DenSco by knowing that Menaged was defrauding DenSco and performing routine banking
2 services that allowed him to perpetuate his fraudulent scheme.

3 ~~138.193.~~ Upon information and belief, these routine banking services included,
4 but were not limited to:

- 5 a. accepting wires from DenSco knowing that the funds were not going
6 to be used for their intended purpose of purchasing homes in
7 foreclosure proceedings;
- 8 b. creating cashier's checks knowing that they consisted of DenSco Loan
9 Proceeds and that they were not going to be used for their intended
10 purposes of purchasing homes in foreclosure proceedings;
- 11 c. redepositing the cashier's checks for Menaged into his accounts
12 knowing that they consisted of DenSco Loan Proceeds and that
13 Menaged would use the redeposited DenSco Loan Proceeds for his
14 own benefit;
- 15 d. allowing Menaged to withdraw substantial amounts of DenSco Loan
16 Proceeds in the form of cash;
- 17 e. and transferring DenSco Loan Proceeds from Menaged's AZHF
18 Accounts to his other accounts at Chase.

15 ~~139.194.~~ The Chase Defendants materially assisted ~~Menaged in defrauding~~
16 ~~DenSco~~ the Second Fraud by instructing Menaged on how to circumvent Chase and
17 government procedures to avoid scrutiny when he engaged in these cash transactions.

18 ~~140.195.~~ For instance, the Chase Defendants informed Menaged that a cash
19 transaction over \$10,000 needed to be reported to government authorities.

20 ~~141.196.~~ The Chase Defendants also informed Menaged that any cash
21 transactions just under \$10,000, such as \$9,900, could trigger an internal suspicious activity
22 report, which is a report Chase generates when it appears someone is conducting
23 transactions in a manner that suggests that the person is trying to intentionally circumvent
24 the \$10,000 reporting requirement.

25 ~~142.197.~~ The Chase Defendants advised and instructed Menaged to withdraw or

1 deposit cash in amounts that would not cause Chase to write up a suspicious activity report.

2 ~~143.198.~~ Menaged followed the Chase Defendants' instructions on how to
3 avoid scrutiny and deposited or withdrew cash from his AZHF's account in amounts that
4 did not require the transaction to be reported to governmental authorities, nor cause Chase to
5 write up a suspicious activity report.

6 ~~144.199.~~ The Chase Defendants also substantially assisted ~~Menaged's fraud~~the
7 Second Fraud by facilitating Menaged's gambling with DenSco Loan Proceeds.

8 ~~145.200.~~ Menaged frequently gambled with DenSco Loan Proceeds by using
9 his AZHF debit card at casinos.

10 ~~146.201.~~ The Chase Defendants knew that Menaged gambled significant
11 amounts of DenSco Loan Proceeds at casinos because they kept records and because of the
12 facts set forth below.

13 ~~147.202.~~ The Chase Defendants assisted ~~Menaged in defrauding DenSeo~~the
14 Second Fraud by helping him use DenSco Loan Proceeds in the AZHF account for
15 gambling purposes.

16 ~~148.203.~~ Menaged's AZHF debit card had a spending limit and Chase would
17 decline the card when Menaged exceeded the limit at the casino.

18 ~~149.204.~~ The Chase Defendants assisted ~~Menaged in defrauding DenSeo~~the
19 Second Fraud by increasing the spending limits on Menaged's AZHF debit card to
20 approximately \$40,000 so he could gamble at casinos with the DenSco Loan Proceeds
21 without Chase's fraud prevention department flagging the account or declining his debit
22 card.

23 ~~150.205.~~ Upon Menaged's request, the Chase Defendants assisted ~~Menaged in~~
24 ~~defrauding DenSeo~~the Second Fraud by contacting the Chase debit-card fraud prevention
25 department to remove suspensions or "flags" on the AZHF debit card due to the high dollar
amounts that were being charged at casinos so that he could gamble with the DenSco Loan
Proceeds.

1 ~~151.206.~~ The Chase Defendants also assisted ~~Menaged in defrauding~~
2 ~~DenSeo~~the Second Fraud by initiating outgoing wire transfers and issuing cashier's checks
3 from the DenSco Loan Proceeds in Menaged's AZHF account to various casinos.

4 ~~152.207.~~ In short, the Chase Defendants knew that the funds in Menaged's
5 AZHF account were DenSco Loan Proceeds, but facilitated Menaged's fraud by making it
6 easier, among other things, to gamble with those funds.

7 ~~153.208.~~ The Chase Defendants also assisted ~~Menaged in defrauding~~
8 ~~DenSeo~~the Second Fraud by confirming with various casinos that the cashier's checks or
9 wire transfers from AZHF's account were legitimate, if the casinos called them to verify the
10 transactions.

11 ~~154.209.~~ The Chase Defendants also assisted ~~Menaged in defrauding~~
12 ~~DenSeo~~the Second Fraud because even though the Chase Defendants knew the DenSco
13 Loan Proceeds were to be used for the purchase of Identified Properties at trustee's sales,
14 the Chase Defendants transferred DenSco Loan Proceeds funds from AZHF's account into
15 other accounts held by Menaged personally and by his other businesses, for Menaged's own
16 use.

17 ~~155.210.~~ The Chase Defendants substantially assisted ~~Menaged's fraud~~the
18 Second Fraud by not following its own policies and procedures.

19 ~~156.211.~~ Upon information and belief, Chase's system does not recognize wire
20 transferred funds as being immediately available to be withdrawn.

21 ~~157.212.~~ The Chase Defendants routinely and intentionally "over-rode" holds
22 on the AZHF account to allow them to immediately issue cashier's checks after Chase
23 received DenSco's wire transfer.

24 ~~158.213.~~ Upon information and belief, Chase ordinarily had a policy for a 5-7
25 day hold on redeposited cashier's checks. Against its own policy, Chase routinely and
intentionally "over-rode" those holds to allow Menaged to immediately use the redeposited
DenSco Loan Proceeds for his own gain. Thus, Chase would release these holds so that the

1 funds were immediately available to Menaged for his own personal use.

2 ~~159.214.~~ It was also contrary to Chase's policy to issue cashier's checks by
3 email request. Upon information and belief, Chase's policy required the account holder to
4 be at the bank in person to sign the required documentation to obtain a cashier's check.
5 Chase ignored that policy and issued cashier's checks to Menaged based upon his email
6 requests.

7 ~~160.215.~~ The Chase Defendants also substantially assisted ~~Menaged in~~
8 ~~defrauding DenSco~~ the Second Fraud by continuing to furnish routine banking services to
9 Menaged, despite:

- 10 a. knowing the AZHF business account was for the purchase of
11 Identified Properties at trustee's sales;
- 12 b. knowing DenSco loaned the DenSco Loan Proceeds to AZHF for
13 purchasing properties at trustee's sales;
- 14 c. knowing Menaged was assuring DenSco the DenSco Loan Proceeds
15 were being used to purchase properties at trustee's sales; and
- 16 d. knowing that Menaged instead used the DenSco Loan Proceeds for his
17 own personal use.

18 ~~161.216.~~ Without the material and substantial assistance that the Chase
19 Defendants provided to Menaged, Menaged could not have operated ~~his fraudulent~~
20 ~~scheme~~ the Second Fraud against DenSco from April of 2014 through June 2015.

21 ~~162.217.~~ The Chase Defendants intended to assist Menaged in ~~this scheme~~ the
22 Second Fraud because Menaged moved millions of dollars through his accounts at Chase,
23 and therefore, the Chase Defendants had a financial motive to maintain Menaged's
24 business.

25 ~~163.218.~~ The Chase Defendants benefited from ~~Menaged's fraudulent~~
~~scheme~~ the Second Fraud by, among other things, maintaining Menaged's business
accounts.

1 ~~164.219.~~ The Chase Defendants, through its actions as described above, acted to
2 serve Chase's interests, having reason to know and consciously disregard a substantial risk
3 that its conduct might significantly injure the rights of others, including DenSco.

4 ~~165.220.~~ The Chase Defendants, through their actions as described above,
5 consciously pursued a course of conduct knowing that it created a substantial risk of
6 significant harm to others, including DenSco.

7 ~~166.221.~~ Because the Chase Defendants aided and abetted Menaged in
8 defrauding DenSco, DenSco was damaged in an amount to be proved at trial, but no less
9 than \$1,000,000.00.

10 **COUNT ONE**
(Aiding and Abetting: US Bank; Chavez)

11 ~~167.222.~~ DenSco re-alleges and reincorporates paragraphs 1 through ~~166.221~~ of
12 this Complaint as if fully set forth herein.

13 ~~168.223.~~ Menaged was engaged in fraudulent conduct for which he would be
14 liable to DenSco.

15 ~~169.224.~~ The US Bank Defendants were aware that Menaged was engaging in
16 such conduct.

17 ~~170.225.~~ The US Bank Defendants provided substantial assistance or
18 encouragement to Menaged with the intent of promoting Menaged's fraudulent conduct.

19 **COUNT TWO**
(Aiding and Abetting: Chase; Nelson; Dadlani)

20 ~~171.226.~~ DenSco re-alleges and reincorporates paragraphs 1 through ~~170.225~~ of
21 this Complaint as if fully set forth herein.

22 ~~172.227.~~ Menaged was engaged in fraudulent conduct for which he would be
23 liable to DenSco.

24 ~~173.228.~~ The Chase Defendants were aware that Menaged was engaging in such
25 conduct.

~~174.229.~~ The Chase Defendants provided substantial assistance or

1 encouragement to Menaged with the intent of promoting Menaged’s fraudulent conduct.

2 **PRAYER FOR RELIEF**

3 Wherefore, based upon the foregoing, Plaintiff prays for judgment against
4 Defendants as follows:

- 5 A. For an award of compensatory damages against U.S. Bank, N.A. in an
6 amount to be determined at trial.
- 7 B. For an award of compensatory damages against Defendants Hilda Chavez and
8 John Doe Chavez, wife and husband, in an amount to be determined at trial.
- 9 C. For an award of compensatory damages against J.P. Morgan Chase Bank,
10 N.A. to be determined at trial;
- 11 D. For an award of compensatory damages against Defendants Samantha Nelson
12 and Kristofer Nelson, wife and husband, in an amount to be determined at
13 trial.
- 14 E. For an award of compensatory damages against Defendants Vikram Dadlani
15 and Jane Doe Dadlani, husband and wife, in an amount to be determined at
16 trial.
- 17 F. For an award of punitive damages;
- 18 G. For an award of prejudgment interest and costs;
- 19 H. For such other and further relief as this Court deems just and proper under the
20 circumstances.

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DATED this ____ day of ~~August~~, 20~~19~~20.

**Bergin, Frakes, Smalley & Oberholtzer,
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