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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiff,

v.

U.S. BANK, NA, a national banking  
organization; HILDA H. CHAVEZ and  
JOHN DOE CHAVEZ, a married couple;  
JP MORGAN CHASE BANK, N.A., a  
national banking organization;  
SAMANTHA NELSON f/k/a  
SAMANTHA KUMBALECK and  
KRISTOFER NELSON, a married couple;  
and VIKRAM DADLANI and JANE DOE  
DADLANI, a married couple.

Defendants.

No. CV2019-011499

**JOINT STATEMENT OF  
DISCOVERY OR DISCLOSURE  
DISPUTE RE PLAINTIFF'S NOTICE  
OF RULE 30(B)(6) DEPOSITION  
REGARDING TWENTY (20)  
CHECKS**

(Assigned to the Hon. Dewain D. Fox)

On August 25, 2022, this Court ordered a Rule 30(b)(6) deposition of U.S. Bank and directed the parties' counsel to work together to narrow the Rule 30 (b)(6) notice to "the twenty (20) checks and the databases discussed." The parties have since conferred, but

1 were unable to reach agreement regarding the inclusion of paragraph (c) of the attached  
2 Rule 30(b)(6) deposition notice that Plaintiff has proposed. *See* Ex. A. Thus, in compliance  
3 with the Court’s August 25, 2022 Order, the parties now file this joint statement.

4 **U.S. Bank’s Statement:**

5 As a reminder, the Court authorized deposition inquiry into U.S. Bank’s retention  
6 schedules regarding certain cashier’s check transactions that U.S. Bank *reversed* in early  
7 2014 (*i.e.*, the bank voided the transactions and did not pay the checks), and for which U.S.  
8 Bank understandably had no record of by the time Plaintiff finally filed this lawsuit in late  
9 2019. Since the Court’s Order, U.S. Bank produced its retention schedules, showing how  
10 any documentation of those *reversed* cashier’s check transactions fell beyond retention by  
11 the time Plaintiff filed this lawsuit.<sup>1</sup> Against this backdrop, U.S. Bank provides its position  
12 regarding Plaintiff’s proposed topic (c):

13 Plaintiff’s deposition topics (a)(1)-(5) and (b) fully cover the discovery this Court  
14 authorized in its Order, but Plaintiff’s proposed topic (c), seeking testimony about U.S.  
15 Bank’s “efforts” in responding to two document subpoenas served on U.S. Bank in 2016  
16 and 2017 in another, now dismissed lawsuit, goes too far. Topic (c) is improper and should  
17 be disallowed for several reasons.

18 First, neither of the subpoenas sought documentation of the checks at issue. As to  
19 the 2016 subpoena, Plaintiff limited the sought-after production in its cover letter to “front  
20 and back copies of all cashier’s checks paid from the accounts,” and the 2017 subpoena  
21 primarily sought “communications.” A reasonable, responsive search would not have  
22 included documentation of *reversed* check transactions, as those checks were not “paid”  
23 from the account. Moreover, Plaintiff did not dispute the adequacy of U.S. Bank’s  
24 productions in that now dismissed lawsuit, even though Plaintiff possessed copies of the  
25 *reversed* cashier’s checks at issue and was accordingly aware of them.

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26  
27 <sup>1</sup> Plaintiff insists that federal law and the bank’s retention schedules required the bank to  
28 retain these records through the filing of this lawsuit. U.S. Bank welcomes the argument,  
as Plaintiff is plainly wrong on both points.

1 Second, the retention schedules for documentation of the *reversed* cashier check  
2 transactions at issue lapsed *before* the first of the subpoenas was served on U.S. Bank, so  
3 U.S. Bank would not have possessed documents of these transactions by the time it  
4 responded to the 2016 subpoena anyway. For this reason, deposition inquiry on this topic  
5 could not yield any relevant information.

6 Third, the subject of U.S. Bank's compliance with either subpoena in a now  
7 dismissed case cannot be raised in this Court, nor did the service of either subpoena put  
8 U.S. Bank on reasonable notice that it would be sued by Plaintiff in 2019 such that U.S.  
9 Bank's duty to preserve documents was triggered per Ariz. R. Civ. P. 37(g)(1) by its receipt  
10 of either subpoena.

11 Fourth, Plaintiff's topic (c) (*i.e.*, the bank's "efforts" in responding to subpoenas) is  
12 suffused with attorney / client privileged information, as the department that complies with  
13 subpoenas is part of the law division, and the paralegals tasked with responding to  
14 subpoenas work at the direction and supervision of the bank's legal counsel. Yet, Plaintiff's  
15 proposed topic (c) purports to invade that privilege by inquiring into why the law division  
16 made the decisions that it did in responding to these subpoenas.

17 Fifth, Plaintiff's topic (c) imposes a disproportionate burden on U.S. Bank, which  
18 would task U.S. Bank with reconstructing decisions legal division personnel made five (5)  
19 and six (6) years ago responding to subpoenas Plaintiff deemed satisfied in a now dismissed  
20 case – two of thousands of subpoenas legal division personnel have processed since – all  
21 without the prospect of benefiting the litigation process in this case in any meaningful way.  
22 For these reasons, the Court should disallow Plaintiff's proposed topic (c).

23 **Plaintiff's Position:**

24 U.S. Bank's response to subpoenas issued by the Receiver in 2016 and 2017 is not a  
25 new topic. It was included in the Rule 30(b)(6) deposition notice that was the subject of the  
26 parties' August 8, 2022 Joint Statement of Discovery or Disclosure Dispute; and the  
27 subpoena response was the first topic addressed by the Receiver in its portion of the Joint  
28

1 Statement.<sup>2</sup> In keeping with the Court's August 25, 2022, Order, the previous request for  
2 testimony regarding the subpoena response has been limited to the 20 Cashier's Checks for  
3 which the Court authorized Rule 30(b)(6) deposition testimony.  
4

5 The subpoenas are related to this case. The Receiver was appointed in August 2016  
6 in *Arizona Corporation Commission v. DenSco*, CV 2016-14126. This is an on-going civil  
7 action, and overlaps with this case. In November 2016, the Receiver subpoenaed records  
8 from US Bank. The subpoena was broad.<sup>3</sup> In particular, the subpoena paragraph (2)(c)  
9 requested:  
10

11 For the period from January 1, 2010 to date, all documents that refer to, relate to, or  
12 concern any transaction in any account, including, but not limited to, the front and  
13 back of canceled checks, front and back of any cashier's checks, wire transfer  
documents, deposit slips and withdrawal slips.<sup>4</sup>

14 The 20 cashier's checks were issued by US Bank and given to the customer Menaged's  
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16

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17 <sup>2</sup> The Plaintiff and US Bank disagree of the federal law regarding retention of records;  
18 whether US Bank's policies allowed for the destruction of void check lists and cashier's  
19 check lists; and whether a *Willits* instruction is appropriate. The Plaintiff Receiver and US  
20 Bank disagree on federal as to how long documents related to these 20 cashier's checks  
21 need to be retained; disagree whether their document destruction policies apply to the void  
22 check lists; and disagree as to whether a *Willits* instruction should be called for. But those  
23 issues are not now before the Court. The issue in this dispute is simply whether the  
24 Plaintiff Receiver can take discovery.  
25

26 <sup>3</sup> The cover letter stated: "The subpoena request is very broad. At this time please provide  
27 us with . . . copies of all transaction items over \$1,000, including cancelled checks, wire  
28 transfer details, and the front and back copy of each deposit item [and] front and back  
copies of all cashier's checks paid from the accounts." Hilda Chavez testified the 20  
checks were paid for from funds in the account.

<sup>4</sup> On August 24, 2017, the Receiver issued a second subpoena to US Bank in the  
Receivership civil action. Among other documents, the subpoena asked for ". . . (c)  
Regulatory or compliance reports prepared by you or your agents; and (d) Internal analyses,  
notes or reports prepared by you." Again, the list or database of issued cashier's checks and  
void cashier's checks would be regulatory or compliance or internal reports.

1 company Easy Investments. They plainly fell within the subpoenas. By US Bank policy,  
2 they should not have been “reversed,” and, even then, they should be listed on a void check  
3 list.  
4

5 US Bank’s argument that the topic is “suffused” with attorney client issues is not  
6 correct. Plaintiff Receiver seeks no communication between counsel and an employee at  
7 US Bank. Rather, discovery is sought as to what was done to look for the subpoenaed  
8 documents. In any event, counsel can object at a deposition if necessary.  
9

10 US Bank’s argument that the discovery is disproportionate ignores the facts of the  
11 case. Of the 60 cashier’s checks used in this fraud, 20 of the cashier’s checks were not  
12 produced by US Bank.<sup>5</sup> The discovery goes to core issues in the case directly relevant to  
13 the knowledge of US Bank employees of the Easy Investment fraud.  
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27 <sup>5</sup> Plaintiff’s liability expert concludes based on the daily check balance reports of Easy  
28 Investments, that there were insufficient funds for these cashier’s checks to be issued on  
those days, and that they were issued and destroyed in violation of US Bank policies.

1 DATED this 28<sup>th</sup> day of November, 2022.

2  
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28

# EXHIBIT A



1                   **ATTACHMENT A: SUBJECT MATTER OF THE EXAMINATION**

2

3

- 4           (a)     U.S. Bank's document retention schedules applicable to the following:
- 5                   (1) Check Detail Reports for cashier's checks as described in U.S. Bank's
- 6                   Operating Procedures Manual M-5 (USB\_DENSCO001082);
- 7                   (2) Daily Check Void Reports as described in U.S. Bank's Operating
- 8                   Procedures Manual M-5 (USB\_DENSCO001071, 1082);
- 9                   (3) cash withdrawal slips, deposit slips (if any) and proof work copies for
- 10                  the cashier's checks included in Exhibit 155; and
- 11                  (4) the Audit Manual as described in U.S. Bank's Operating Procedures
- 12                  "Voiding Bank Checks" (Quick Reference M-5) (USB\_DENSCO001070
- 13                  to 71: "Place the report in the audit manual");
- 14                  (5) electronic data (if any) for the cash withdrawal slips, deposit slips (if
- 15                  any), proof work copies, and for the transaction itself, including a reversal
- 16                  of the transaction, for the cashier's checks included in Exhibit 155.
- 17           (b)     The date and manner of destruction of any documents referenced in
- 18                  paragraph (a) with respect to the US Bank records on accounts held by
- 19                  Yomtov Scott Menaged and his affiliated entities, if known.
- 20           (c)     The efforts the Bank undertook, in responding to a subpoena duces tecum
- 21                  issued by the Receiver on November 10, 2016, and responded to by Carol
- 22                  Lieberman by affidavit on July 7, 2017, and a subpoena duces tecum dated
- 23                  issued by the Receiver on August 24, 2017, and responded to by Carol
- 24                  Lieberman by letter dated September 21, 2017, to identify and produce the
- 25                  cashier's checks included in Deposition Exhibit 155 and any related cash
- 26                  withdrawal slips, deposit slips and proof work copies.
- 27
- 28