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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiff,

v.

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

Defendants.

No. CV2019-011499

PLAINTIFF'S SEVENTEENTH SUPPLEMENTAL RULE 26.1 DISCLOSURE STATEMENT RE LEGAL THEORY ON COLLECTIVE KNOWLEDGE

(Assigned to the Honorable Dewain D. Fox)

For its Seventeenth Supplemental Disclosure Statement, Plaintiff Peter S. Davis, as Receiver of DenSco Investment Corporation, sets forth the following in addition to its prior disclosure statements:

II. LEGAL BASIS OF CLAIMS

C. The facts will show that US Bank and Chase knew of Menaged's fraud, because the sum of the knowledge of each bank's employees is imputed to the corporations.

To make a prima facie case of aiding and abetting a tort against the Banks, Plaintiff must show (1) Menaged committed a tort causing injury to Plaintiff; (2) the Banks *knew* that Menaged's conduct constituted a breach of duty to Plaintiff; and (3) the Banks substantially assisted or encouraged Menaged in the achievement of the breach. *Wells Fargo Bank v. Ariz. Laborers, Teamsters and Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 485 (2002) (emphasis added). The Supreme Court in *Wells Fargo* sets forth Arizona's knowledge standard in the aiding and abetting context. It explains that knowledge, inferred from all of the circumstances in conjunction need only reach the level of "general awareness" rather than comprehensive understanding. *Id.* at 488. Therefore, Plaintiff will meet the knowledge burden at summary judgment if a reasonable juror can conclude that, looking to all the circumstances in the aggregate, the banks had a general awareness of Menaged's fraudulent scheme. An intent showing is unnecessary.

Plaintiff can show that US Bank and Chase had a general awareness of Menaged's fraud by adding up the knowledge of each bank's employees and imputing it to each corporation, because the collective knowledge doctrine applies. Specifically, the Restatement (Third) Of Agency has embraced the collective knowledge doctrine in comment c to § 5.03, stating, in relevant part, "[o]rganizations are treated as possessing the collective knowledge of their employees and other agents[] when that knowledge is material to the agents' duties." Arizona has repeatedly followed the Restatement (Third) Of Agency § 5.03 (2006). *See FTC v. Electronic Payment Solutions of Am. Inc.*, No. CV-17-025354-PHX-SMM, 2021 WL 3661138, at *10 (D. Ariz. Aug. 11, 2021); *Bilyeu v. Morgan Stanley Long -Term Disability Plan*, No. CV-0802071-PHX-SRB, 2015 WL 4134447, at *11 (D. Ariz. June 2, 2015); *Empire W. Title Agency, LLC v. Talamante*, 234 Ariz. 497, 500 (2014). Moreover, "[i]n absence of law to the

contrary, Arizona follows the Restatement." *Webster v. Culbertson*, 158 Ariz. 159, 162 (1988). The Court should properly apply the Restatement's approach in comment c to § 5.03.

The collective knowledge doctrine has been applied expansively in other jurisdictions. The U.S. Supreme Court first imputed the knowledge of a corporation's agents to the corporation itself in 1909. *See N.Y. Cent & H.R.R. Co. v. U.S.,* 212 U.S. 481, 495 (1909) ("We see . . . every reason in public policy[] why the corporation, which [] can only act through its agents and officers, shall be held punishable by fine because of the knowledge and intent of its agents to whom it has intrusted [sic] authority to act . . . and whose knowledge and purposes may well be attributed to the corporation for which the agents act."). The Western District of Virginia thereafter added up the knowledge of various truck dispatchers and imputed that knowledge to their employer to determine that it was aware of widespread impaired driving for purposes of assessing compliance with the Interstate Commerce Act. *See U.S. v. Time-DC, Inc*., 381 F. Supp. 730 (W.D.Va. 1974). The California state courts then adopted the collective knowledge doctrine in *Olson*, noting, "[failing to adopt the collective knowledge doctrine] would permit a corporation, by not letting its right hand know what is in its left hand, to mislead and deceive those who are dealing with it in perfectly good faith." *People v. Forest E. Olson, Inc.,* 137 Cal. App. 3d 137 (1982).

Finally, in *Bank of New England*, the First Circuit imputed the collective knowledge of a bank's employees to the bank after a customer repeatedly presented multiple checks to tellers, none of which individually amounted to $10,000, but which—once combined into a single withdrawal—exceeded $10,000 and triggered obligations under the Currency Transaction Reporting Act. *U.S. v. Bank of New England*, N.A., 821 F.2d 844 (1st Cir. 1987). The trial court embraced the collective knowledge doctrine, explaining,

> [Y]ou have to look at the bank as an institution. As such, its knowledge is the sum of the knowledge of all of the employees. That is, the bank's knowledge is the totality of what all of the employees know within the scope of their employment. So, if Employee A knows one facet of the currency reporting requirement, B knows another facet of it, and C a third facet of it, the bank knows them all. So if you find that an employee within the scope of his employment knew that CTRs had to be filed, even if multiple checks are used, the bank is deemed to know it. The bank is also deemed to know it if each of several employees knew a part of that requirement and the sum of what the separate employees knew amounted to knowledge that such a requirement existed.

Id. at 855. The First Circuit affirmed, noting,

> Corporations compartmentalize knowledge, subdividing the elements of specific duties and operations into smaller components. The aggregate of those components constitutes the corporation's knowledge of a particular operation. It is irrelevant whether employees administering one component of an operation know the specific activities of employees administering another aspect of the operation:
>
> [A] corporation cannot plead innocence by asserting that the information obtained by several employees was not acquired by any one individual who then would have comprehended its full import. Rather the corporation is considered to have acquired the collective knowledge of its employees and is held responsible for their failure to act accordingly. *United States v. T.I.M.E.–D.C., Inc.*, 381 F. Supp. at 738. Since the Bank had the compartmentalized structure common to all large corporations, the court's collective knowledge instruction was not only proper but necessary.

Id. at 856. Although *Bank of New England* applied the collective knowledge doctrine in the context of the Currency Transaction Reporting Act, courts have applied the doctrine in various contexts. *See, e.g.*, *CPC Intern. v. Aerojet-Gen. Corp.*, 825 F. Supp. 795 (W.D. Mich. 1993) (Comprehensive Environmental Response, Compensation, and Liability Act); *Gutter v. E.I. Dupont De Demours*, 124 F. Supp. 2d 1291, 1309 (S.D. Fla. 2000) (federal securities class action); *U.S. ex rel. Miller v. Bill Harbert Int'l Const. Inc.*, 608 F.3d 871, 901 (D.C. Cir. 2010) (False Claims Act); *U.S. v. PG&E*, No.14-cr-00175-TEH, 2015 WL 9460313 (N.D. Cal. Dec. 23, 2015) (willfully making and submitting a false income tax return); *State v. UPS, Inc.* 253 F. Supp. 3d 583 (S.D.N.Y. 2017) (Contraband Cigarette Trafficking Act, Prevent all Cigarette Trafficking Act,

RICO); *Copeman Labs. Co. v. GMC*, 36 F. Supp. 755 (E.D. Mich. 1941) (patent and contract claims).

Nevertheless, the Banks likely seek to avoid an imputation of collective knowledge by pointing to their employees' lack of recollection of facts they knew in years past. The Banks' efforts are unavailing. A bank employee's current lack of recollection of prior knowledge does not nullify the Banks' knowledge of the facts. Instead, "if an agent learns a material fact when a relationship of agency exists with a particular principal, the principal is charged with notice of the fact although the agent forgets the fact or claims to have forgotten it at a later time when knowledge of the fact is material to the principal's legal relations." Restatement (Third) Of Agency § 5.03, cmt b. Based on the foregoing, Plaintiff will be able to show that the Banks were generally aware of the fraud being committed by Menaged by adding up the knowledge of individual bank employees and attributing that combined knowledge to the Banks.

III. WITNESSES

1. Yomtov Scott Menaged
   Inmate No. 74322408
   Federal Corrections Institution
   Satellite Camp
   P.O. Box 24549
   Tucson, AZ 85734

Mr. Menaged's address is updated to the above. All other information remains unchanged.

DATED this 29th day of June, 2022.

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By _____

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VERIFICATION

Pursuant to Rule 8(h), Ariz.R.Civ.P., I, Peter S. Davis, as receiver for Plaintiff, DenSco Investment Corporation, an Arizona corporation, verify under penalty of perjury the foregoing is true and correct:

1. DenSco Investment Corporation is the Plaintiff for the above-entitled action.

2. I have read the Plaintiff's Seventeenth Supplemental Rule 26.1 Disclosure Statement and know the contents thereof.

3. The statements and matters alleged are true of my own personal knowledge as the receiver for DenSco Investment Corporation, except as to those matters stated upon information and belief, and as to such matters, I reasonably believe them to be true.

DATED this 28th day of June, 2022.

DENSCO INVESTMENT CORPORATION, an Arizona corporation

By: Peter S. Davis
Its: Receiver