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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 CHASE 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 JP Morgan Chase Bank, NA, Samantha Nelson fka Samantha Kumbalek, Kristopher Nelson, Vikram Dadlani and Jane Doe Dadlani (collectively "Chase" or "Chase Defendants"). The Motion to Dismiss should be

1 denied because (1) the Receiver filed his Complaint less than three years after he uncovered  
2 both the Second Fraud and the Chase Defendants' involvement in it, (2) it is indisputable that  
3 Menaged defrauded DenSco, and (3) the Complaint contains sufficient factual allegations of  
4 the Chase Defendant's knowledge of and substantial assistance to the Second Fraud. This  
5 Response is supported by the following Memorandum of Points and Authorities.

## 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 auctions as a means to recover the losses caused by the First Fraud. (FAC ¶¶ 37-42.)  
However, because of the First Fraud, DenSco altered its lending practices by requiring  
Menaged to provide copies of the specific cashier's checks issued by Menaged's banks made

1 payable to the respective foreclosure trustee with the property address in the memo line, as  
2 well as a copy of the receipt which Menaged received from the foreclosure trustee for the  
3 purchase of a real property at a trustee's sale. (FAC ¶¶ 46-47.)

4 Unfortunately, these additional safeguards did not prevent Menaged from  
5 orchestrating the Second Fraud. Between January 2014 and June 2016, Menaged obtained  
6 over 1,400 loans from DenSco for the purchase of real estate from foreclosure auctions. (FAC  
7 ¶¶ 48-49.) After diligent investigation, the Receiver discovered that Menaged engaged in a  
8 fraudulent scheme, with the help of the Chase Defendants, to make it appear that he was  
9 purchasing real estate with DenSco's money when he was not.

10 Amazingly, Menaged convinced both U.S. Bank and Chase to issue actual cashier's  
11 checks, complete with the name of the Trustee who he pretended was conducting a  
12 foreclosure sale of a parcel of real estate. (FAC ¶¶ 103-105; 151-153.) Each cashier's check  
13 contained the address of the property supposedly being purchased and had DenSco's name in  
14 the memo line, further memorializing the purported use of DenSco's funds. *Id.* Tragically,  
15 Menaged and the defendants knew that Menaged never intended to use over 1,400 cashier's  
16 checks to purchase property. Menaged, with the material assistance of the Chase Defendants,  
17 took a picture of each cashier's check to send to DenSco and then immediately re-deposited  
18 the check into his bank account. (FAC ¶¶ 163, 167.) After providing DenSco with  
19 photographic evidence of the cashier's check, Menaged would falsify a trustee's sales receipt  
20 purporting to evidence the purchase of a real property that never happened. (FAC ¶ 167.)  
21 These forged sales receipts typically contained information directly from the cashier's check  
22 issued and redeposited by Chase, providing further legitimacy to DenSco. (FAC ¶ 169.)

23 The Receiver was appointed on August 18, 2016. Through diligent efforts and  
24 exhaustive investigation, he first discovered the existence and nature of the Second Fraud in  
25 approximately December 2016, although the full extent of it would not be known until at least  
June 2017. (FAC ¶¶ 71-82.) During this investigation, the Receiver came to understand how  
the defendants aided and abetted Menaged to commit the Second Fraud through the

1 substantial assistance they provided that allowed him to “issue” over 1,400 cashier’s checks  
2 whose sole purpose was to be photographed so that Menaged could present them as legitimate  
3 to DenSco. *Id.* The Receiver subsequently filed his Complaint on August 16, 2019, which is  
4 well within three years after discovering the Second Fraud.

## 5 **II. LEGAL ANALYSIS**

### 6 **A. The Receiver Filed Its Complaint Within Three Years After Discovering** 7 **The Facts Constituting The Second Fraud**

8 The Chase Defendants argue the Receiver’s claims against them are time barred by  
9 the statute of limitations because the Receiver filed the Complaint more than four years after  
10 the Chase Defendants finally stopped aiding and abetting Menaged in the furtherance of the  
11 Second Fraud. This argument conveniently ignores any analysis of when the Receiver’s  
12 causes of action accrued, and is not supported either by law or fact.

#### 13 **1. The Cause Of Action Did Not Accrue Until The Receiver Discovered** 14 **Chase Bank Aided And Abetted Menaged’s Second Fraud**

15 When discovery occurs and a cause of action accrues are usually and necessarily  
16 questions of fact for the jury. *Gust, Rosenfeld & Henderson v. Prudential Ins. Co. of America*,  
17 182 Ariz. 586, 591, 898 P.2d 964, 969 (1995) (trial judge correct to let jury decide when  
18 discovery occurred). Here, the parties agree that the statute of limitations for aiding and  
19 abetting fraud is three years pursuant to A.R.S. § 12-543(3). The Chase Defendants argue the  
20 statute of limitations has expired because the Complaint was filed more than three years after  
21 they stopped assisting Menaged’s fraud in June 2015, even though the Second Fraud and the  
22 Chase Defendants’ assistance would not be discovered until much later.

23 The Chase Defendants conveniently ignore that A.R.S. § 12-543(3) specifically  
24 provides that a cause of action for fraud “shall not be deemed to have accrued until the  
25 discovery by the aggrieved party of the facts constituting the fraud or mistake.” Here, any  
statute of limitations did not accrue when the Chase Defendants finally stopped aiding and  
abetting Menaged in the furtherance of the Second Fraud. Rather, the statute of limitations

1 began to accrue when the Receiver discovered, or through the exercise of reasonable diligence  
2 might have discovered, that Chase aided and abetted Menaged in furtherance of the Second  
3 Fraud. *Transamerica Ins. Co. v. Trout*, 145 Ariz. 355, 358, 701 P.2d 851, 854 (App. 1985)  
4 (holding that the discovery date in A.R.S. § 12-543 begins at the time the defrauded party, by  
5 exercise of reasonable diligence, might have discovered the fraud); *see also Merck & Co, Inc.*  
6 *v. Reynolds*, 559 U.S. 633, 651-653 (2010) (statute of limitations begins when plaintiff  
7 discovers or a reasonably diligent plaintiff would have discovered the facts constituting the  
8 violation; discovery of facts that only put a plaintiff on “inquiry notice” does not automatically  
9 begin the running of the limitations period).

10 While the Complaint admittedly does not identify when the Receiver discovered that  
11 Chase aided and abetted the Second Fraud, that is a meaningless defect that is easily remedied  
12 in the Receiver’s proposed First Amended Complaint.<sup>1</sup> In any event, the Receiver filed his  
13 Complaint within three years from the day he was appointed Receiver. Assuming,  
14 hypothetically, that the Receiver could have uncovered the Second Fraud and the Chase  
15 Defendants’ involvement on the day he was appointed, the Complaint was still filed less than  
16 three years before the statute of limitations expired.

17 The proposed First Amended Complaint (“FAC”) sets forth the details and history of  
18 both the First Fraud and the Second Fraud, including how and when each separate fraud was  
19 discovered. (FAC ¶¶ 16-82.) In particular, the Receiver alleges how after DenSco discovered  
20 the First Fraud, Menaged concocted an entirely new scheme to defraud DenSco for a second  
21 time. (FAC ¶¶ 47-61.) It is this fraudulent scheme, the Second Fraud, that forms the basis of  
22 the Receiver’s aiding and abetting claims against the Chase Defendants.

23 Menaged filed for Chapter 7 bankruptcy in April 2016. (FAC ¶ 62.) At the time, he

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24 <sup>1</sup> 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 and his companies owed DenSco approximately \$30 million in loans. (FAC ¶ 63.) Denny J.  
2 Chittick (“Chittick”) was the sole owner, shareholder and operator of DenSco. (FAC ¶ 2.)  
3 When Chittick confronted Menaged about the amounts owed to DenSco, Menaged lied and  
4 told Chittick that DenSco’s money was being held at Auction.com, an online marketplace for  
5 foreclosure buyers, and that Menaged would be able to retrieve the money and repay DenSco  
6 as soon as the bankruptcy action was discharged. (FAC ¶ 64.)

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

12 The Receiver was appointed on August 18, 2016. (FAC ¶ 3.) A few days later, the  
13 Receiver first became vaguely aware of the lending procedures DenSco and Menaged used  
14 after the First Fraud. (FAC ¶ 72.) The Receiver immediately began an investigation to track  
15 the funds DenSco loaned to Menaged. (FAC ¶ 73.) During that investigation, the Receiver  
16 discovered that Menaged did not use the funds obtained from DenSco for the purpose they  
17 were intended. (FAC ¶ 74.) The Receiver obtained a forensic image of Menaged’s computers  
18 and cell phone on or around October 3, 2016, in which it located a number of emails from  
19 Menaged to Chase. (FAC ¶¶ 75-76.) The Receiver deposed Menaged on October 20, 2016  
20 and issued subpoenas to U.S. Bank and Chase in November 2016. (FAC ¶¶ 77-78.) The  
21 Receiver ultimately performed a complete forensic recreation of Menaged banking activities.  
22 (FAC ¶ 80.) It was only when the Receiver completed an initial draft of that forensic  
23 investigation on or around June 13, 2017, that it finally understood the facts and losses  
24 involving the Second Fraud. (FAC ¶ 81.)

25 These and other allegations in the proposed First Amended Complaint, which must be  
assumed as true for purposes of the motion to dismiss, show that Receiver’s claims against  
the Chase Defendants did not accrue until on or around June 13, 2017. At a minimum, these

1 allegations demonstrate that it was the Receiver's thorough and painstaking investigation that  
2 uncovered the Second Fraud. That investigation began after the Receiver was appointed on  
3 August 18, 2016. The Receiver filed its Complaint on August 16, 2019, less than three years  
4 after his appointment. The statute of limitations does not, therefore, bar the Receiver's claims.

5 2. The Statute of Limitations Against The Chase Defendants Could Not  
6 Have Accrued Before The Receiver's Appointment Under The Doctrine  
7 Of Adverse Domination

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

20 While the adverse domination doctrine typically applies to an entity's claims asserted  
21 against its own wrongdoing officers and directors, courts have also applied it to toll an  
22 entities' claims against third parties under the theory that the wrongdoing officers and  
23 directors would not bring claims against culpable third parties on behalf of the entity out of  
24 fear that it would bring their own misconduct to light. *See, e.g., Damian v. A-Mark Precious*  
25 *Metals, Inc.*, 2017 WL 6940515, at \*4-5 (C.D. Cal. Aug. 28, 2017) (holding the adverse  
domination doctrine applies to claims against third parties); *In re Am. Continental*  
*Corp./Lincoln Sav. & Loan Sec. Litig.*, 794 F. Supp. 1424, 1453 (D. Ariz. 1992) (applying the

1 adverse domination doctrine against a law firm that was alleged to have been part of the  
2 wrongdoing); *Admiralty Fund v. Peerless Ins. Co.*, 143 Cal.App.3d 379, 390 (Cal. App. 1983)  
3 (holding that the adverse domination doctrine could apply in a suit against a third-party  
4 insurance company where the plaintiff corporation claimed that it was prevented from  
5 discovering its loss until the “wrongdoer employees” were removed).

6 While Chittick was not aware of the mechanics of the Second Fraud or of the  
7 substantial assistance the Chase Defendants provided, there is ample evidence that Chittick,  
8 as the sole owner, director and shareholder of DenSco, breached his fiduciary duties to  
9 DenSco by, among other things, engaging in a course of conduct designed to conceal the full  
10 nature and extent of the First Fraud from DenSco’s investors and creditors. This included,  
11 among other things, an effort to conceal the First Fraud from the investors, how his own  
12 failures allowed the First Fraud to occur, and how his agreement to a workout plan (the  
13 Forbearance Agreement) with Menaged in response to the First Fraud was not in the best  
14 interests of DenSco, its investors and other creditors and opened the door to allow Menaged  
15 to orchestrate the Second Fraud.<sup>2</sup> (FAC ¶¶ 29-45.)

16 Because Chittick, who had total control of DenSco, breached his fiduciary duties to  
17 DenSco to prevent his own misconduct from coming to light, the statute of limitations on  
18 DenSco’s claims against the Chase Defendants is tolled at least until the date of the Receiver’s  
19 appointment, which was less than three years before the Receiver filed the Complaint.

#### 20 **B. It Is Indisputable That Menaged Defrauded DenSco**

21 The Chase Defendants next make a truly incredible argument. They argue the  
22 Receiver cannot state a claim against them for aiding and abetting the Second Fraud because  
23 Menaged *did not commit actionable fraud* when he (1) misrepresented that he was the  
24 winning bidder on properties that were sold at a trustee’s sale, (2) misrepresented that he

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25 <sup>2</sup> These and other issues regarding Chittick’s breaches of his fiduciary duties to DenSco  
have been addressed at length in the Receiver’s companion litigation also before this Court,  
*Davis v Clark Hill*, CV2017-013832. Those pleadings are a matter of public record.



1 needed financing to purchase these properties, (3) requested that DenSco loan the funds  
2 required to complete the purchase of the properties, (4) misrepresented that he would secure  
3 the loans with deeds of trusts recorded against the properties, and (5) instead used the loan  
4 proceeds obtained from DenSco for his own personal benefit. (Complaint ¶¶ 19-31.)  
5 Menaged was indicted and pled guilty to Conspiracy to Commit Bank Fraud, Aggravated  
6 Identity Theft, and Money Laundering Conspiracy, and was sentenced to seventeen years in  
7 a federal prison. (Complaint ¶¶ 32, 34-35.) He also entered into a Settlement Agreement  
8 with the Receiver whereby he consented to the entry of a nondischargeable civil judgment  
9 against him in the amount of \$31 million dollars. (Complaint ¶ 33.)

10 Despite all of that, the Chase Defendants argue that DenSco could not prevail on a  
11 fraud claim against Menaged because it could not prove that it justifiably relied on Menaged's  
12 misrepresentations in committing the Second Fraud due to its knowledge of the First Fraud.

13 This is nonsense. It is undisputed that Menaged committed two fraudulent schemes  
14 against DenSco. However, the two schemes were completely separate and distinct and had  
15 nothing in common. Menaged orchestrated the First Fraud by obtaining two loans from  
16 separate lenders who believed they were the only lender and would be the only secured  
17 creditor on properties that were actually purchased. (FAC ¶¶ 23-25.) Menaged orchestrated  
18 the Second Fraud by creating falsified checks, deeds, contracts and receipts for properties that  
19 he never actually purchased. (FAC ¶¶ 48-61.)

20 Moreover, while DenSco knew of the First Fraud, Menaged consistently maintained  
21 that it was actually his "cousin" who was responsible for committing the fraudulent scheme  
22 while Menaged cared for his sick wife. (FAC ¶ 28.) Menaged then entered into a Forbearance  
23 Agreement designed to help Menaged to repay the losses from the First Fraud through the  
24 profits he received from future hard money loans for what DenSco believed was the purchase  
25 of real estate from foreclosure auctions. (FAC ¶¶ 35-38.) To prevent Menaged from  
repeating the scheme that resulted in the First Fraud, DenSco, upon the advice of legal  
counsel, enacted new lending procedures before agreeing to lend Menaged additional funds.

(FAC ¶¶ 39-43, 47.) Despite new lending procedures that required the acquisition of a purportedly legitimate cashier's check from the Chase Defendants, Menaged deceived DenSco into believing the certified funds were being taken to a foreclosure Trustee to purchase real property, when Menaged and the Chase Defendants knew the cashier's checks were never allowed to leave Chase Bank.

DenSco's knowledge of the First Fraud does not mean, as a matter of law, that DenSco knew or had reason to know the misrepresentations Menaged made in connection with the Second Fraud were false. It certainly does not mean that Menaged did not defraud DenSco.

**C. The Receiver Alleged That Chase Knew Of Menaged's Scheme.**

Chase argues that the Receiver failed to allege that Chase had knowledge of Menaged's fraudulent scheme. The issue here is: Did the Receiver allege facts that one could infer that Chase was "generally aware" of Menaged's fraud? Importantly complete knowledge of the fraud is not required. General awareness can be inferred in many scenarios; at least two of which apply here.

- First, (1) the bank knew the perpetrator had a duty to provide accurate information to the plaintiff, and (2) the bank knew that the perpetrator was making false representations.
- And second, (1) the bank knew the purpose of the investment funds (i.e., the bank had knowledge of plaintiff's expectations); and (2) the bank knew the perpetrator was not using the investment funds for the intended purpose (i.e., the bank had knowledge of the perpetrator's false representation).

The Receiver alleged numerous facts demonstrating that Chase was "generally aware" of Menaged's fraudulent scheme under both scenarios.

**1. General Awareness May Be Inferred from The Circumstances.**

Arizona law requires that "defendants must know that the conduct they are aiding and abetting is a tort." *Wells Fargo Bank v. Arizona Laborers*, 201 Ariz. 474, 485, 38 P.3d 12, 23 (2002). This requirement is satisfied by showing "general awareness" of the primary tortfeasor's scheme. *Dawson v. Withycombe*, 216 Ariz. 84, 102, 163 P.3d 1034, 1052 (App.

2007) (emphasis added). “A showing of actual and complete knowledge of the tort is not uniformly necessary . . . [and] can be met, even though the bank may not have known of all 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 may be inferred from the circumstances.” *Id.* at 485, 38 P.3d at 23 (emphasis added).

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

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

➤ Massachusetts: *Mansor v. JPMorgan Chase Bank N.A.*, 183 F. Supp. 3d 250, 270-72 (D. Mass. 2016)(knowledge can be inferred when the bank knew investors expected the funds to be used for the purpose of purchasing CDs, and 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).

➤ California: *Arreola v. Bank of Am. Nat. Ass’n*, 2012 WL 4757904 \*3 (C.D. Ca. 2012)(banks can be liable for aiding and abetting when tortfeasor’s bank

1 accounts received investor funds, and knew that tortfeasor transferred the funds  
2 to his personal accounts); *Benson v. JPMorgan Chase Bank, N.A.*, 2010 WL  
3 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).

4 ➤ Texas: *Rostain v. Trustmark Nat'l Bank*, 2015 WL 1303 4513 10-11 (N.D. Tex.  
5 2015)(plaintiff adequately plead scienter by alleging that the bank knew the  
6 tortfeasor's funds in his account were investment proceeds, and knew that the  
tortfeasor was transferring those funds into his own personal accounts).

7 ➤ Minnesota: *Anderson v. U.S. Bank Nat. Ass'n*, 2014 WL 502955, (Minn. App.  
8 2014)(knowledge inferred when there were incongruities between the  
9 tortfeasor's claimed business activities and his actual account activities and  
transactions "inconsistent with any legitimate business activity").

10 2. The Receiver's Allegations Regarding Chase's General Awareness.

11 Here, Chase knew, and was generally aware, of Menaged's fraudulent scheme. The  
12 Receiver plead that Chase was aware that (1) Menaged was providing assurances to DenSco  
13 that its proceeds were being used to purchase the properties, and (2) these assurances were  
14 false. (Complaint ¶ 125.) The Receiver also plead that Chase knew that the funds DenSco  
15 loaned to Menaged were for purchased properties, but Menaged used those funds for his own  
16 personal gain. These allegations are supported by facts showing Chase's knowledge that  
17 Menaged was not using the over 1400 cashier's checks to purchase real estate because the  
18 Chase Defendants generated the cashier's checks for the sole purpose to have them  
19 photographed by Menaged and then immediately re-deposited:

20 ➤ Chase knew that Menaged was in the business of purchasing foreclosed  
21 properties because he told Chase, and other Chase Defendants expressed  
interest in purchasing a foreclosed home. (Complaint ¶¶ 119-121).

22 ➤ Chase knew that DenSco loaned money to Menaged and AZHF for the  
23 purchase of foreclosed homes because (1) he told Chase this; and (2) DenSco  
24 would wire money to Chase and was listed as the "originator" of that wire  
transfer. (Complaint ¶¶ 97, 121-122).

25 ➤ Chase knew that nearly all of the funds in Menaged's accounts consisted of  
DenSco loan proceed because Chase accepted the wire transfers from DenSco,

1 kept records of AZHF's account transactions, and compiled this information in  
2 bank statements. (Complaint ¶ 97).

3 ➤ Chase knew that the DenSco loan proceeds were to be used to purchase  
4 foreclosed property because after DenSco wired the funds to Menaged or  
5 AZHF Chase accounts, Chase would prepare cashier's checks approximately  
6 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 ¶¶ 94-107, 121-124).

7 ➤ Chase also knew that DenSco had an expectation that the loan proceeds that  
8 were the subject of the cashiers' checks were for the purchase of foreclosed  
9 properties because Menaged told Chase that he sent pictures of the cashiers'  
10 checks to DenSco to provide assurances to DenSco that the funds were going  
11 to be used to purchase the foreclosed properties. (Complaint ¶ 125).

12 ➤ Chase knew that Menaged's assurances to DenSco were false because, after  
13 Menaged took the pictures of the cashiers' check, Chase would redeposit the  
14 cashiers' check in his account. Indeed, Chase and Menaged came up with a  
15 system to use the cashier's checks to defraud DenSco. (Complaint ¶¶ 125, 126,  
16 128 -132, 135).

17 ➤ In fact, Chase knew that these assurances to DenSco were false because it  
18 would mark the cashiers' check "Not Used For Intended Purpose" and prepare  
19 the deposit slip for Managed in the identical amount. (Complaint ¶ 129, 135).

20 ➤ Chase knew that Menaged was not using the DenSco loan proceeds to purchase  
21 the foreclosed properties identified, but rather for his own gain, because Chase  
22 knew that Menaged was withdrawing the DenSco loan proceeds in the form of  
23 cash; Chase was transferring the DenSco Loan Proceed to Menaged's other  
24 accounts; and Chase knew that Menaged was using DenSco Loan Proceeds for  
25 gambling. (Complaint ¶¶ 136, 144 -154).

26 These allegations are sufficient to allege that Chase knew and was generally aware  
27 that Managed was defrauding DenSco. Clearly, Chase knew that Menaged did not use the  
28 incoming funds for any legitimate banking or other investment activity. *Mansor*, 183 F. Supp.  
29 3d at 270-72; *Neilson v. Union Bank of California, N.A.*, 290 F. Supp. 2d 1101 (C.D. Cal.  
30 2003)(The Bank utilized atypical banking procedures to service the tortfeasor's accounts,

1 raising an inference that they knew of the Ponzi scheme and sought to accommodate it by  
2 altering their normal ways of doing business).

3           3.     Chase Misconstrues the Receiver “Knowledge” Allegations.

4           Chase seems to argue that the Receiver’s allegations related to the “general awareness  
5 requirement” are really that Chase “should have known” of Menaged’s fraudulent scheme  
6 because of various “red flags”. But that is not the case. Nowhere does the Receiver allege  
7 that Chase should have known of Menaged’s fraud because of various red flags. Rather, the  
8 Receiver is very clear that Chase knew and was generally aware of Menaged’s fraud.

9           **D.     The Receiver Sufficiently Alleged Chase Substantially Assisted Menaged.**

10          Chase next argues that the Receiver did not allege sufficient facts that Chase  
11 substantially assisted Menaged in his fraudulent scheme. Not true.

12          “[S]ubstantial assistance by an aider and abettor, can take many forms, but means more  
13 than a little aid.” *Wells Fargo Bank*, 201 Ariz. at 488, 38 P.3d at 26 (2002). “[S]ubstantial  
14 assistance does not mean assistance that is necessary to commit the fraud. *The test is whether*  
15 *the assistance makes it easier for the violation to occur, not whether the assistance was*  
16 *necessary.”* *Id.* at 489, 38 P.3d at 27 (emphasis added). For example, “executing transactions,  
17 even ordinary course transactions, can constitute substantial assistance under some  
18 circumstances, such as where there is an extraordinary economic motivation to aid in the  
19 fraud.” *Id.* Indeed, “[o]rdinary business transactions a bank performs for a customer can  
20 satisfy the substantial assistance element of an aiding and abetting claim ... [k]nowledge is  
the crucial element.” *In re First Alliance Mortg. Co.*, 471 F.3d 977, 955 (9th Cir. 2006).

21          For example, in *Rotstain v. Trustmark Nat’l Bank*, the plaintiffs alleged that numerous  
22 bank defendants aided and abetted a fraudulent scheme involving the sale of fake certificates  
23 of deposits (“CDs”). 2015 WL 13034513, at \*1 (N.D. Tex. 2015). The court concluded that  
24 the bank “substantially assisted” the fraudulent scheme simply because the bank continued to  
25 maintain the perpetrators’ account despite knowledge of the fraudulent scheme. *Id.* at \*11.

1 The court reasoned, that “[b]y providing even routine banking services for the [fraudulent]  
2 scheme, Defendants inherently facilitated the financial transactions and operations that  
3 formed the lifeblood of the [fraudulent] scheme.” *Id.*

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

8 1. Chase Assisted Menaged By Providing Routine Banking Services While  
9 Knowing That Menaged Was Defrauding DenSco.

10 First, the Receiver has alleged that Chase continued to furnish Menaged routine  
11 banking services despite knowing that he was defrauding DenSco. (Complaint ¶ 137-138,  
12 160). These services included, but are not limited to: accepting wire transfers from DenSco  
13 knowing that the DenSco Loan Proceeds were not going to be used for their intended purpose;  
14 creating cashier’s checks knowing that they consisted of DenSco Loan Proceeds and were not  
15 going to be used for their intended purpose; redepositing the cashier’s checks knowing that  
16 they consisted of DenSco Loan Proceeds and that Menaged would use them for his own  
17 benefit; allowing Menaged to withdraw substantial amounts of DenSco Loan Proceeds in the  
18 form of cash; and transferring DenSco Loan Proceeds from Menaged’s AZHF Accounts to  
19 his other accounts at Chase. (Complaint ¶ 138).

20 Not only did these transactions make it easier for Menaged to defraud DenSco, but  
21 Menaged could not have done it without Chase’s material assistance. (Complaint ¶ 161).  
22 These facts alone establish that the Chase Defendants substantially assisted Menaged.

23 The Chase Defendants argue the Receiver did not allege that Chase had a heightened  
24 economic motivation to materially assist Menaged in his scheme to defraud DenSco. The  
25 Receiver disagrees. The Receiver alleged Menaged moved millions of dollars through his  
Chase accounts, \$312,108,679.00 to be exact, and Chase assisted Menaged based on its own  
economic motivation. (Complaint ¶ 117, 162-164). If having this volume of money pass

1 through the Chase Defendant's accounts does not provide Chase with an obvious  
2 "heightened" economic motivation, or its role in creating thousands of illegitimate cashier's  
3 checks for no other purpose than to be photographed is not "extraordinary", then nothing is.<sup>3</sup>

4 2. Chase Provided Menaged With Banking Services That Have No  
5 Justification.

6 Second—to make matters worse—Chase also assisted Menaged by preparing the  
7 cashiers' check packets for Menaged to provide false assurances. (Complaint ¶ 125-26.)  
8 These cashiers' checks were the "lifeblood" of Menaged's fraudulent scheme. *Rostain*, 2015  
9 WL 13034513, at \*1. Chase prepared the cashier's checks, marked them "Not for Intended  
10 Purposes," and re-deposited them into Menaged's bank accounts. These are not routine  
11 services. Menaged and the Chase Defendants worked together to create, photograph, and  
12 then immediately redeposit at least 1,349 cashier's checks, in the total amount of  
13 \$312,108,679.00, which Menaged used for his personal benefit. This is not, as Chase argues,  
14 "the typical depositor-bank relationship." Likewise, it is not "routine" to issue, photograph,  
15 and immediately redeposit several cashier's checks nearly every business day for  
approximately fifteen months.

16 3. Chase Assisted Menaged In Using DenSco Funds For his Own Benefit.

17 Third, Chase assisted Menaged in defrauding DenSco by actively assisting Menaged  
18 using the DenSco loaned funds for his own gain by, among other things:

- 19 ➤ transferring DenSco Loan Proceeds from Menaged's AZHF Accounts to his  
20 other accounts at Chase (Complaint ¶ 136, 154); *Benson v. JPMorgan Chase*  
21 *Bank, N.A.*, No. C-09-5272 EMC, 2010 WL 1526394, (N.D. Cal., 2010) (Bank

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22 <sup>3</sup> However, to avoid any confusion in this matter, the Receiver alleges in the First Amended  
23 Complaint that: "Because Menaged and Chase re-deposited the cashier's check 1,349 times  
24 totaling over \$312,108,679.00, and Chase knew that Menaged was not using DenSco's loan  
25 proceeds for their intended purpose, Chase 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 ¶ 191.)



1 allowed the tortfeasor to deposit investor money into private accounts);

- 2 ➤ instructing Menaged on how to circumvent Chase and government procedures  
3 to avoid scrutiny when he engaged in these cash transactions (Complaint ¶¶  
139-143);
- 4 ➤ advising and instructing Menaged to withdraw or deposit cash in amounts that  
5 would not cause Chase to write up a suspicious activity report (*Id.*); and
- 6 ➤ knowing that the funds in Menaged's account were DenSco's Loan Proceeds,  
7 facilitating Menaged's fraud by making it easier for him, among other things,  
8 to gamble with those funds by increasing the spending limits on Menaged's  
9 AZHF debit card to approximately \$40,000 so he could gamble at casinos with  
the DenSco Loan Proceeds without Chase's fraud prevention department  
flagging the account or declining his debit card. (Complaint ¶¶ 144-153.)

10 All of these actions made it easier for Menaged to defraud DenSco. He could not have done  
11 it without Chase.

12  
13 **III. CONCLUSION**

14 Based upon the foregoing, Plaintiff urges this Court to deny the Motion to Dismiss  
15 filed by the Chase Defendants, and allow this case to proceed on the merits.

16 **DATED** this 2<sup>nd</sup> day of March, 2020.

17 **Bergin, Frakes, Smalley & Oberholtzer, PLLC**

18 /s/ Ken Frakes

19 Brian Bergin

Ken Frakes

20 Kevin Kasarjian

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3 TURBOCOURT with:

4 Maricopa County Superior Court  
5 www.turbocourt.com

6 And a copy mailed this 2<sup>nd</sup> day of March, 2020 to:

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20  
21  
22  
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24  
25  
By: /s/ Kristine Berry

# **EXHIBIT A**

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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”).<sup>1</sup>

<sup>1</sup> 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,  
PLLC**

\_\_\_\_\_  
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