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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiff,

v.

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

Defendants.

NO. CV2019-011499

DEFENDANTS JPMORGAN CHASE BANK, N.A., SAMANTHA NELSON, KRISTOFER NELSON, VIKRAM DADLANI, & JANE DOE DADLANI'S REPLY IN SUPPORT OF THEIR MOTION TO DISMISS COUNT TWO OF PLAINTIFF'S FIRST AMENDED COMPLAINT

(Assigned to the Honorable Daniel Martin)

(Oral Argument Requested)

DenSco's Response to the Motion to Dismiss ("Response") confirms that DenSco's lone claim for aiding and abetting fails as a matter of law. While DenSco raises a number of scattershot arguments why its claim is not time-barred, DenSco cannot escape the impact of its judicial admissions—both in this case and in the *Clark Hill* litigation—that DenSco's president knew that Menaged and AZHF were engaged in fraud ***before*** AZHF even opened a bank account at Chase. Given that this knowledge—which DenSco admits arose in November 2013—existed many months before there was a single pertinent transaction at Chase and nearly six years before DenSco commenced this action, DenSco's claim for aiding and abetting is unquestionably time-barred.

This knowledge of Menaged's fraud also forecloses DenSco from pleading an underlying tort of fraud, as there can be no justifiable reliance by DenSco on Menaged's alleged assertions about the Chase cashier's checks as a matter of law. Possessing express knowledge that Menaged and AZHF had misappropriated DenSco loan funds meant that DenSco could never reasonably rely on any of Menaged's subsequent representations.

Along with the statute of limitations problems and the inability to plead an underlying fraud claim, the FAC also fails to allege actual knowledge and substantial assistance of the fraud by the Chase Defendants. The aiding and abetting claim should be dismissed with prejudice because no further amendments can save DenSco's stale and baseless claim, and the Receiver's effort to manipulate the facts to contradict what his separate team of lawyers argued in the *Clark Hill* matter should be rejected.

I. DenSco's Claim is Barred by the Statute of Limitations.

a. DenSco's Accrual Theory Hinges on the False Distinction that Menaged/AZHF Conducted Two Frauds and Ignores Ample Judicially Noticeable Facts Demonstrating that DenSco Knew of Menaged's Fraud in 2014

Taken together, DenSco's FAC and Response constitute a brazen—but unavailing—attempt to cleave one years-long fraud into two separate torts. The Response, in particular, strains credulity as it attempts to depict DenSco as an unwitting victim blindsided by the sinister machinations of Menaged, whose so-called "second" fraud was

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"amazing" and "tragic," only revealed through the Receiver's "diligent efforts and exhaustive investigation" in 2016 and 2017. (Resp. at 2–3.) This is a fiction. As detailed in the Chase Defendants' Motion to Dismiss ("Motion"), DenSco's judicial admissions demonstrate that its distinction between a so-called "first" and "second" fraud is nothing more than self-serving and transparent revisionist history. (*See* Mot. at 4–9.) Further, DenSco's response argues that Chittick was fully aware of the ongoing fraud and even assisted with the scheme by concealing the fraud from his investors, entering into a forbearance agreement to recover the fraud loss, and aiding Menaged in an effort to defraud the bankruptcy court by hiding the Auction.com assets from the court. (Resp. at 5–8.) Put simply, DenSco's argument that the fraud was not discovered until after the Receiver's appointment is wrong.

DenSco attempts to address this hole in its narrative by repeatedly accusing the Chase Defendants of "refusing to take the Receiver's allegations as true" and attempting to improperly "resolv[e] factual disputes at the pleading stage based on an undeveloped record." (Resp. at 3; *see also id.* at 5, 6, 7, 8.)[1] This tactic should not be countenanced, as it ignores ample caselaw counseling that it is not appropriate to accept as true allegations that contradict matters properly subject to judicial notice. (*See* Mot. at 3 n.1.) Such counsel is particularly apt here, where the matters subject to judicial notice consist exclusively of DenSco's own judicial admissions. The Response does not rebut the judicially-noticeable evidence that Menaged committed a single, ongoing fraud that DenSco remained aware of throughout Menaged's banking relationship with Chase.

Here, even DenSco's allegations in the FAC demonstrate that a fraudster (Menaged) was committing real estate loan fraud on a lender (DenSco), and midway

[1] DenSco briefly suggests that Denny Chittick's journal entries demonstrate that DenSco was not aware of the so-called second fraud. (Resp. at 8.) This halfhearted argument accuses the Chase Defendants of taking journal entries out of context and relies on a single entry wherein Chittick referenced a tie-up of money in bankruptcy proceedings. (*Id.*) DenSco does not explain how any of the verbatim entries quoted in the Motion were taken out of context (they were not), nor bothers to address the most damning: Chittick's December 2014 admission that he knew that "all along [he] had been an unwitting[] accomplice in some kind of fraud." (Mot. at 9.)

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through the process, after his conduct was revealed to DenSco, he adjusted his tactics for continuously duping DenSco out of real estate loan funds. Moreover, DenSco knew Menaged was defrauding it when AZHF's banking relationship with Chase commenced in April 2014. Or, at the very latest, by December 2014, when Chittick admitted to realizing that DenSco was an "accomplice" in Menaged's fraud. (*See, e.g.,* Mot. at 8–9, Table of Judicial Admissions.)[2] Either way, Count Two accrued in 2014, and DenSco's five-years-later filing is barred by the three-year statute of limitations.

b. DenSco has Also Conceded that it Was on Inquiry Notice of Menaged's Fraud in April 2014 and Investigated the Fraud in June 2014

While the judicial admissions referenced thus far amount to actual knowledge of Menaged's ongoing fraud, Arizona's discovery rule requires less and does not help DenSco's claim here. As DenSco admits, "'a plaintiff's cause of action does not accrue until the plaintiff[,] **in the exercise of reasonable caution, should know the facts underlying the cause**.'" (Resp. at 4 (emphasis added).) DenSco's Response does not address this issue, likely because its judicial admissions demonstrate that, at the very minimum, it should have known it was being defrauded. (*See* Mot. at 8–9, Table of Judicial Admissions). Indeed, further admissions demonstrate both the ease with which DenSco could have discovered Menaged's fraud and indicate that DenSco did investigate and discover the fraud.

In its *Clark Hill* Prima Facie SOF, attached to the Motion as Exhibit A, DenSco lays out the details of a letter sent to DenSco in late 2013 by other of Menaged's lenders. The lenders accused DenSco of "falsely stat[ing] that DenSco had 'provided purchase money funding' and that its 'loans are evidenced by a check payable to the trustee for

[2] DenSco suggests that the Chase Defendants incorrectly argue that the aiding and abetting claims accrued in November 2013, when DenSco first discovered Menaged's fraud. (Resp. at 4.) This misrepresents what the Motion says, but to the extent clarification is needed, it is the Chase Defendants' position that Count Two's statute of limitations accrued in April 2014, or, alternatively, by December 2014 at the latest based on DenSco's actual knowledge of the fraud. Alternatively, as detailed in Section I(b), DenSco was unquestionably put on inquiry notice of the ongoing fraud prior to AZHF opening the Chase accounts in April 2014, which prevents tolling of the limitations period by the discovery rule.

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each of the'" properties acquired by the lenders. (*See* Mot., Ex A., ¶¶ 162–69.) The lenders threatened to sue DenSco if it did not sign subordination agreements acknowledging that it did not have first position liens. (*Id.*) DenSco relied on this letter to support its argument that the Clark Hill law firm, when it reviewed the letter, should have discovered that Menaged/AZHF were lying to DenSco about the scope of the problem and should have advised DenSco to sever its relationship with Menaged. (*Id.*, ¶¶ 173–74.) Specifically, DenSco argued that an "easily conducted [] limited investigation," involving a search of "less than five minutes" on publicly available search engines "would produce records showing that for each of the 49 properties [at issue], Menaged had signed both a DenSco Mortgage and another lender's deed of trust before a notary, providing further **evidence that Menaged, not 'some guy working in his office,' had secured all of the loans in questions, *and had purposefully defrauded DenSco***." (*Id.*, ¶ 175 (emphasis added).)

There can be no starker evidence of a plaintiff who, in the exercise of reasonable caution, should have known it was being defrauded than the admission that a mere five-minute search would have revealed that Menaged and AZHF were not actually using the cashier's checks to purchase properties because the proper documents memorializing the purchases were not recorded. Further, the DenSco journals that DenSco attached to the *Clark Hill* Prima Facie SOF litigation show that Chittick ***was suspicious*** enough of Menaged and AZHF in June 2014—a mere two months after AZHF began banking at Chase—that he attended an auction incognito to see if AZHF was really using DenSco funds to buy homes. (*See* Mot. at 8.) Thus, the judicially noticeable facts demonstrate that DenSco was not only on inquiry notice in April 2014, but actually did inquire, and should have known of the fraud long before the Receiver was appointed—and more than five years before this litigation was commenced. Under Arizona's discovery rule, Count Two would have accrued in April 2014, and it would be barred by the statute of limitations.

c. The Adverse Domination Doctrine Does Not Toll Count Two's Accrual

DenSco contends that even if Chittick was aware of the fraud, the adverse domination doctrine tolls Count Two's accrual because Chittick's control of DenSco

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"prevented others from discovering" Chittick's, and necessarily Menaged's, wrongdoing. (Resp. at 9–10.) DenSco, however, cannot avail itself of this doctrine to save its untimely claim because the adverse domination doctrine is not applicable when a sole actor runs the company alleged to have engaged in misconduct. Indeed, adverse domination is subject to a basic exception—the widely-adopted "sole actor" rule, recognized in Arizona for over 50 years—whereby the agent's knowledge (Chittick's) is attributed to the principal (DenSco) when the agent, "although engaged in perpetrating [fraud] on his own account, is the sole representative of the principal." *Pearll v. Selective Life Ins. Co.*, 444 P.2d 443, 445 (1968) (internal citation and quotations omitted).

DenSco concedes that Chittick was "the sole director and shareholder of DenSco." (Resp. at 10.) That automatically triggers the sole actor exception to the adverse domination doctrine, imputes Chittick's knowledge of wrongdoing to DenSco, and precludes a tolling of the statute of limitations based on the doctrine of adverse domination. *See id.*; *see also, e.g., In re Mediators, Inc.*, 105 F.3d 822, 827 (2d Cir. 1997) (sole actor rule "imputes the agent's knowledge to the principal" when "the principal and agent are one and the same"); *In re Nat'l Century Fin. Enters.*, 783 F. Supp. 2d 1003, 1016 (S.D. Ohio 2011) ("[u]nder the sole actor rule, an agent's wrongdoing is directly attributed to the principal if he so dominated and controlled the principal that it had no separate mind, will or existence of its own," and "the principal and agent are one and the same").

In any event, DenSco cannot have it both ways. If Chittick had knowledge of Menaged's fraud and actively assisted in that fraud as the Response argues, then the Receiver lacks standing to bring a claim against Chase. As numerous courts have held and the Eleventh Circuit reaffirmed earlier this month, a receiver standing in the shoes of a tarnished entity that benefitted from a Ponzi scheme lacks standing to bring third-party claims for aiding and abetting on behalf of the entity because the corporation cannot be said to have suffered an injury from the scheme it helped to perpetrate. *See Isaiah v. JPMorgan Chase Bank*, 960 F.3d 1296, 1307 (11th Cir. 2020). ("the Ponzi schemers'

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torts cannot properly be separated from the Receivership Entities, and the Receivership Entities cannot be said to have suffered any injury from the Ponzi scheme that the Entities themselves perpetrated"); *see also Credit Managers Ass'n v. Kennesaw Life & Accident Ins. Co.*, 809 F.2d 617, 622 (9th Cir. 1986) (where a receiver represents a company and its affiliates, but not the company's beneficiaries, the receiver lacks standing to assert state law fraud claims that lie with the third-party beneficiaries).

II. The Response Does Not Rebut the Chase Defendants' Legal Authority Showing That the FAC Fails to Allege a Viable Underlying Tort.

a. DenSco Abandons its Opposition to the Chase Defendants' Justifiable Reliance Argument.

In response to the Chase Defendants' justifiable reliance argument, **DenSco cites *no* authority**. (*See* Resp. at 10–12.) Below, the Chase Defendants respond to DenSco's legally unsupported assertions with argument supported by applicable authority. But since the Receiver has abandoned opposition to the justifiable reliance argument, Count Two should be dismissed, for the reasons stated in the Chase Defendants' Motion. *See Ness v. W. Sec. Life Ins. Co.*, 174 Ariz. 497, 503, 851 P.2d 122, 128 (App. 1992) (courts will not consider "[a]rguments unsupported by any authority"); *Cullum v. Cullum*, 215 Ariz. 352, 355 ¶ 14 n.5, 160 P.3d 231, 234 n.5 (App. 2007) (same).

b. DenSco Could Not, as a Matter of Law, Justifiably Rely on Menaged's Representations Once it Discovered His Fraud.

The justifiable reliance issue turns on a straightforward question of law: is a real estate lender justified in relying on the representations of a real estate loan fraudster once the lender gains express knowledge that the same fraudster already defrauded the lender in a real estate loan fraud? (*See, e.g.*, Mot. at 12–13.) Rather than substantively rebut the clear answer (no), DenSco: (1) recites the misrepresentations Menaged allegedly made to DenSco after it already knew he was a fraudster; and (2) describes how Menaged and DenSco enabled the so-called second fraud to operate. (*See* Resp. at 10–11.) DenSco does so to prop up this lone, unsupported conclusion:

> 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

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mean that Menaged did not defraud DenSco.

(*Id.* at 12.) This assertion misses the point entirely. The Chase Defendants have never argued that Menaged did not make false misrepresentations to DenSco in 2014 and 2015. Rather, they argue that DenSco's reliance upon those misrepresentations was not *justified*, as the law requires for actionable fraud. On its own, DenSco's failure to address how, as a matter of law, it was justified in relying on Menaged's misrepresentations warrants dismissal of its claim.

Moreover, it defies all logic and reason that even though DenSco knew Menaged defrauded it in a real estate scam, DenSco could still be justified in relying on Menaged's misrepresentations relating to that same scam. As the Ninth Circuit articulated in a decision cited by the Chase Defendants and uncommented on in the Response (*see* Mot. at 12), "if a person [has] special knowledge, experience and competence he may not be permitted to rely on representations that an ordinary person would properly accept." *In re Kirsh*, 973 F.2d 1454, 1458 (9th Cir. 1992) (internal citation and quotations omitted). This is to say nothing of binding Arizona precedent—also quoted in the Motion and ignored in the Response (*see* Mot. at 13)—holding "that a party is not entitled to a verdict [on a fraud] if by an ordinary degree of caution the party complaining could have ascertained the falsity of the representations complained of." *Stanley Fruit Co. v. Ellery*, 42 Ariz. 74, 78, 22 P.2d 672, 674 (Ariz. 1933).

United States Supreme Court case law is aligned and holds that there can be no justifiable reliance "where, under the circumstances, the facts should be apparent to one of [the victim's] knowledge and intelligence from a cursory glance, or **he has discovered something which should serve as a warning that he is being deceived**, that he is required to make an investigation of his own." *Field v. Mans*, 516 U.S. 59, 71 (1995) (emphasis added) (internal citation and quotations omitted). In still another example, just last year, the Texas Supreme Court held that justifiable reliance "may be negated as a matter of law when circumstances exist under which reliance cannot be justified," which standard provides that a "party alleging fraud must have exercised ordinary care to protect

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its own interests and cannot blindly rely on the defendant's reputation, representations, or conduct where the plaintiff's knowledge, experience, and background warrant investigation." *Mercedes-Benz USA, LLC v. Carduco, Inc.*, 583 S.W.3d 554, 558, 563 (Tex. 2019). "[W]hen a party fails to exercise such diligence, it is charged with knowledge of all facts that would have been discovered by a reasonably prudent person similarly situated." *Id.* at 563.

In light of this near-uniform standard, DenSco's Response only confirms that its reliance on Menaged's misrepresentations was unjustified. From the opposition brief:

> [T]here is evidence that Chittick, as the sole owner, director and shareholder of DenSco, breached his fiduciary duties to DenSco by, among other things, engaging in a course of conduct designed to conceal the full nature and extent of the First Fraud from DenSco's investors and creditors. This included [] an effort to conceal the First Fraud from the investors, how his own failures allowed the First Fraud to occur, and how his agreement to a workout plan [] with Menaged in response to the First Fraud was not in the best interests of DenSco, its investors and other creditors.

(Resp. at 10.) As noted above, this assertion in the Response is a concession that when DenSco loaned funds to AZHF in April 2014 when AZHF began banking with Chase, DenSco did so while already knowing about and actively concealing Menaged's fraud. DenSco, then, is a prime example of a party well-equipped to "ascertain[] the falsity" of a fraudster's misrepresentations, since ***it already knew it had been defrauded by the very same fraudster***. *See Stanley Fruit*, 42 Ariz. at 78, 22 P.2d at 674.

The Response verifies that DenSco's reliance on Menaged's representations that he was using the funds DenSco wired to Chase for home purchases could never be justified. The Response not only confirms that DenSco ignored Menaged's red flags—*i.e.*, the multimillion-dollar fraud already underway—but also expressly states that DenSco actively concealed the scheme as it "continued doing business with Menaged as a means to recover" money already lost to Menaged's fraud. (Resp. at 1–3.) Thus, it is perhaps understandable that DenSco articulates no justification for its reliance on Menaged's misrepresentations, as any contention that a lender managing millions of dollars was justified in relying on the representations of the same real estate loan fraudster

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who had already defrauded it fails as a matter of law. Lacking one plausible allegation that DenSco was justified in relying on Menaged's representations during the time he banked at Chase, DenSco cannot state an underlying fraud claim as a matter of law.

III. DenSco Makes Unfounded "Knowledge" Assumptions About What the Chase Defendants Could Have Reasonably Inferred.

DenSco presents eight bullet points that, boiled to their essence, constitute this three-pronged theory: the Chase Defendants inferred Menaged's fraud because they were allegedly aware that (i) the DenSco loan proceeds were supposed to be used for the purchase of certain properties, (ii) Menaged redeposited DenSco-funded checks after writing "Not Used For Intended Purpose" on the checks, and (iii) Menaged was withdrawing DenSco loan proceeds in cash, using the funds for gambling, and transferring the funds to other of Menaged's personal accounts. (*See e.g., id.* at 13–15.) This, DenSco argues, "sufficient[ly] allege[s] that Chase knew and was generally aware that Menaged was defrauding DenSco." (*Id.* at 15.)

But DenSco's arguments in the response ignore that, under Arizona law, "mere knowledge of suspicious activity is not enough." *Stern v. Charles Schwab & Co., Inc.*, No. CV-09-1229, 2010 WL 1250732, at *8 (D. Ariz. Mar. 24, 2010) ("*Stern II*"). In sum, all that DenSco alleges is a banking customer with unusual transaction habits who occasionally gambled. Such allegations do not "'suggest[] in any way that [Chase] had knowledge of [Menaged's] intent or even propensity to act in bad faith toward [DenSco].'" (Mot. at 15 (quoting *Federico v. Maric*, 224 Ariz. 34, 37 ¶ 11 (App. 2010)).) Adopting the inferences that DenSco seeks would be unreasonable and would improperly impose liability on the Chase Defendants for doing what is expressly allowed by the law: processing transactions in an account that, in retrospect, appear "unusual, unprecedented and unexplained." *Stern II*, 2010 WL 1250732 at *10. DenSco pleads red flags, not actual knowledge. That is not enough, and Count Two should be dismissed.

IV. DenSco Relies on Inapposite Authority and Fails to Address Caselaw Demonstrating that DenSco Cannot Plead Substantial Assistance.

As DenSco concedes, in Arizona, "'ordinary course transactions'" only

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"'constitute substantial assistance **under some circumstances, such as where there is an *extraordinary economic motivation* to aid** in the fraud.'" (Resp. at 15 (quoting *Wells Fargo Bank v. Ariz. Laborers, Teamsters, & Cement Masons Local No. 395 Pension Tr. Fund*, 201 Ariz. 474, 489 ¶ 48, 38 P.3d 12, 27 (2002)) (emphasis added).) But DenSco's Response largely ignores this pleading requirement and argues only—without citation to authority—that the large volume of Menaged's money that passed through his Chase accounts created the heightened economic incentive necessary for the Chase Defendants' processing of ordinary transactions to constitute substantial assistance. (*See* Resp. at 17.)

Not so. As the Motion demonstrated, courts applying Arizona law have held that a bank's collection of ordinary banking fees does not create a circumstance of "extraordinary economic motivation" such that processing ordinary bank transactions morphs into substantial assistance. (Mot. at 17 (discussing *Stern v. Charles Schwab & Co., Inc.*, No. CV-09-1229, 2009 WL 3352408, at *8 (D. Ariz. Oct. 16, 2009) ("*Stern I*")).)[3] The only contrary caselaw DenSco marshals is either extrajurisdictional and divorced from Arizona's "extraordinary economic motivation" standard (*see, e.g.,* Resp. at 14–15 (discussing *Rotstain v. Trustmark Nat'l Bank*, No. 3:09-CV-2384-N, 2015 WL 13034513, at *11 (N.D. Tex. Apr. 21, 2015))), or, for its lone Arizona case, a wholly inaccurate depiction of that opinion (*see* Resp. at 15–16 (citing *Alesii v. Bank of America, N.A.*, No. 1 CA–CV 13–0462, 2014 WL 7341292 (App. Dec. 23, 2014))).

DenSco cites *Alesii* for the proposition that "[c]ourts have held—like in this case—a bank that repeatedly allowed the tortfeasor to immediately return cashier's checks drawn on the investment account and deposit the proceeds in the tortfeasor's personal account is an unusual and highly suspicious transaction." (Resp. at 15–16.) Notably, here,

[3] DenSco's references to the volume of funds passing through the AZHF account are not sufficient to show substantial assistance. First, as DenSco well knows, there was never $300 million passing through the AZHF accounts, as the amount of DenSco loan funds was far lower. Second, the deposit and withdrawal of the same funds repeatedly, accompanied by the time and expense of processing such transactions, cannot be considered a benefit to Chase and do not create a basis for an extraordinary economic motivation to assist a fraud.

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the allegations are that Menaged redeposited the cashier's check back into the AZHF business account, so *Alesii* has no application. Additionally, DenSco misstates the holding in *Alessi*. There, the appellate court reversed the trial court's dismissal of an aiding and abetting claim on vicarious liability grounds. 2014 WL 7341292, at *3–4. The court twice noted in passing that the plaintiffs *alleged* that the transactions were "unusual and highly suspicious," but it never passed judgment on this allegation. *Id.* at *1, 2. The court merely said in *dicta* that the defendant bank "***may*** [] be liable [] if Plaintiffs establish [the bank's] employees [] substantially assisted or encouraged [the fraudster's] conduct." *Id.* at *4 (emphasis added). The *Alesii* court never "held" that repeat returns of cashier's checks are unusual or highly suspicious—it never even suggested they might be. The case's actual holding cannot be reconciled with DenSco's description of it in the Response.

Beyond *Alesii*, DenSco relies almost entirely on the unpublished *Rotstain* decision, which held that providing routine banking services could substantially assist a banking scheme premised on the sale of fake certificates of deposit. (Resp. at 14–15.) But *Rotstain* is distinguishable, as the case concerned a Texas state law that does not require pleading and establishing an extraordinary economic motivation for assisting a fraud where only routine banking services are at issue. Just as inapposite are DenSco's citations to two California law rulings that do not touch on economic motivation. (*See* Resp. at 15–17 (citing *In re First Alliance Mortg. Co.*, 471 F.3d 977 (9th Cir. 2006); *Benson v. JPMorgan Chase Bank, N.A.*, No. C-09-5272 EMC, 2010 WL 1526394 (N.D. Cal. Apr. 15, 2010)).) This authority is irrelevant to the consideration of whether DenSco's allegations of ordinary banking activity show the necessary "extraordinary economic motivation."

Stern I should be the beginning and end of the issue, and DenSco's failure to address that decision is glaring. DenSco must allege more than the existence of "ordinary account fees and credit interest." *Stern I*, 2009 WL 3352408, at *8 (citing *Ariz. Laborers*, 201 Ariz. at 489 ¶ 48, 38 P.3d at 27). Because the FAC does nothing of the sort, Count Two should be dismissed for failing to allege substantial assistance.

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CONCLUSION

For the reasons stated above and in the Motion, Count Two should be dismissed, with prejudice, and the Chase Defendants should be dismissed from this case.

RESPECTFULLY SUBMITTED this 29th day of June 2020.

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ORIGINAL of the foregoing e-filed with the Clerk of Court this 29th day of June 2020.

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Hon. Daniel Martin

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