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18
19 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
20
21 IN AND FOR THE COUNTY OF MARICOPA

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

25 Plaintiff,

26 v.

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

Defendants

No. CV2019-011499

**PLAINTIFF RECEIVER'S
COMBINED RESPONSE TO
DEFENDANTS DADLANI AND
NELSON'S MOTIONS FOR
SUMMARY JUDGMENT**

(Assigned to the Honorable
Dewain D. Fox)

(Oral Argument Requested)

1 Peter S. Davis, as Receiver of DenSco Investment Corporation (“DenSco”), hereby
2 submits his Combined Response to the motions for summary judgment filed by Vikram
3 Dadlani and Samantha Nelson. The Response is supported by the Receiver’s
4 Controverting Statement of Facts and separate Combined Statement of Facts under Rules
5 56(c)(3)(B)(i) and (ii) of the Arizona Rules of Civil Procedure. Defendants filed three
6 interconnected motions for summary judgment—one on behalf of JP Morgan Chase
7 Bank, N.A. (“Chase”) and one each on behalf of Chase employees Dadlani and Nelson.
8 In this pleading, the Receiver focuses on the latter two motions and the actions of Dadlani
9 and Nelson. The broad factual background of the case is provided in the Combined
10 Statement of Facts and the Receiver’s Response to Chase’s motion, which are
11 incorporated herein.

12 **I. FACTUAL BACKGROUND.**

13 **A. Menaged’s Second Fraud and 1,344 Chase Cashier’s Checks.**

14 From April 2014 to July 2014, Scott Menaged would go to the Chase branch
15 located at 90th Street and Shea Boulevard (the “Chase Branch”) on a daily basis and
16 request multiple cashier’s checks at the teller counter, purportedly to purchase foreclosed
17 properties for which DenSco had specifically wired funds. (Receiver’s Combined
18 Statement of Facts in Opposition to Defendants’ Motions for Summary Judgment
19 (“CSOF”) ¶ 36.) Tellers had limited authority to issue negotiable instruments. For
20 amounts over their limits, the branch or assistant branch manager had to approve. (*Id.*
21 ¶ 129.) Either Nelson or a teller under her direction at the Chase Branch prepared the
22 cashier’s checks. The Chase template for cashier’s checks had a “pay to” line, which was
23 made out to a trustee of the foreclosed property to be purchased. (*Id.* ¶ 46.) In a block
24 for a separate notation on check information, the teller hand-wrote “DenSco” and the
25 specific property address when Menaged was in the bank. (*Id.*)

26 The cashier’s checks were purchased through cash withdrawal slips from
27 Menaged’s Arizona Home Foreclosures (“AZHF”) account, which was 95% funded by
28 DenSco wire transfers for the purchase of properties. (*Id.* ¶¶ 48, 70.) Nelson or a teller

1 under her direction handed the cashier's checks to Menaged at the teller counter. (*Id.*
2 ¶ 49.) Menaged would photograph the checks with his phone at the counter and then hand
3 the cashier's checks back for immediate redeposit. (*Id.*) Filling out a deposit slip, Chase
4 would then redeposit each of the cashier's checks back into the AZHF account and note
5 on the back of the check, in writing or by stamp, that it was not used for its intended
6 purpose. (*Id.* ¶ 50.) On AZHF's monthly bank statements, these were listed as cash
7 deposits. (*Id.* ¶ 73.)

8 Dadlani became branch manager in July 2014. (*Id.* ¶ 113.) That same month,
9 Nelson devised a system to speed up the cashier's check transactions. Instead of having
10 Menaged come into the Chase Branch for the same, predictable transactions, Menaged
11 would send emails every day to Nelson listing multiple cashier's checks he needed the
12 next day. (*Id.* ¶ 52.) The emails listed a reference to DenSco, a property address, and the
13 amount for each cashier's check requested. (*Id.* ¶ 53.)

14 From July to December of 2014, Nelson could simply fill out a withdrawal slip
15 and note on the signature line "at the customer request." (*Id.* ¶ 59.) As to cashier's checks,
16 Nelson or a teller under her direction could cut and paste from the Menaged email into
17 the cashier's check template. (*Id.* ¶ 143.) Instead of filling in the information block, the
18 "Order of" line of the check stated "Densco Payment" and the address of the property.
19 (*Id.* ¶ 47.) Nelson would fill out a deposit slip also. (*Id.* ¶¶ 54–55.)

20 When Menaged arrived at the bank, he then could use the drive-through lane
21 because all the documents Menaged and Chase needed were ready: the withdrawal slip,
22 the cashier's checks, and the deposit slip. (*Id.* ¶ 54.) The documents traveled by
23 pneumatic tube to Menaged, he photographed the checks on his lap, and he sent them
24 back for immediate redeposit. (*Id.* ¶ 57.) Starting in August 2014, Dadlani was copied
25 on the emails to Nelson setting out the checks needed for the next day, so that he could
26 step in and ensure the transaction was completed if Nelson was on vacation or otherwise
27 away from the Chase Branch. (*Id.* ¶¶ 139, 143.)

28 In December 2014, Dadlani changed the procedure. He informed Menaged that

1 he needed to sign the withdrawal slips himself, rather than having Nelson or another
2 employee write “at the customer request.” In a December 2, 2014 email from Dadlani to
3 Menaged, Dadlani wrote: “Also going forward, we’ll need your signature on the
4 withdrawal ticket before we have the checks printed up for you. But continue to send the
5 e-mails to us, so we can cut & paste the information on the cashier’s checks to keep your
6 wait time limited.” (*Id.* ¶ 143.)

7 From April 2014 through June 2015, Dadlani and Nelson were right in the middle
8 of a massive Ponzi fraud that was facilitated and aided by their actions. Menaged *never*
9 bought properties with the 1,344 cashier’s checks that he purchased specifically for
10 DenSco properties and promptly redeposited. (*Id.* ¶ 36.) Rather, Menaged used the
11 photographs, along with false receipts, to deceive DenSco into believing that he was using
12 the money to purchase properties. (*Id.*) He paid off old DenSco loans with new DenSco
13 monies, and siphoned off the excess redeposited cashier’s check monies for his gambling
14 and lifestyle—a classic Ponzi scheme.

15 [REDACTED]
16 [REDACTED]
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[REDACTED]

[REDACTED]

Plaintiff's banking expert has opined that the issuance and immediate redeposit of 1,344 cashier's checks every day for fifteen months has no business purpose and, in his experience, is astonishing conduct by the bank. (*Id.* ¶ 80.) Yet, Dadlani testified that he had no knowledge that this conduct was occurring. He did not know this volume of checks was issued and redeposited. As set forth below, Dadlani's testimony is contradicted by the facts. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Nelson, at least, testified in the prior Clark Hill lawsuit that she asked Menaged why he was photographing the checks. She testified that he responded it was for bookkeeping purposes. (*Id.* ¶ 128.) Menaged denies that; he testified he told her it was for proof of funds. (*Id.*) If, as Menaged said he told her, it was for proof of funds, Nelson knew that there was no actual payment at all as the checks were immediately redeposited as not used for their intended purposes.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]
2 [REDACTED] This
3 happened every day in the AZHF account. Dadlani, again like Colonel Klink in Hogan's
4 Heroes, "knows nothing." Nelson knows more but will not acknowledge it. [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 **B. Dadlani's and Nelson's Actions.**

12 From July 2014 to July 2015, Dadlani was the branch manager at the Chase
13 Branch. (*Id.* ¶ 113.) Nelson was the assistant branch manager from the start of the AZHF
14 account in April 2014 through July 2015 and thereafter. (*Id.*) Dadlani's arrival at the
15 Chase branch coincided with Nelson's decision to have Menaged use the drive-through
16 lane and not the teller counter for his daily transactions. (*Id.* ¶ 114.) Dadlani's departure
17 from the Chase Branch in July 2015 coincided with the ending of Menaged's use of
18 cashier's checks to defraud DenSco. (*Id.* ¶ 115.) Dadlani managed the Chase Branch
19 during Menaged's entire scheme at Chase except in April, May, and June of 2014. (*Id.*)

20 As branch manager, Dadlani was responsible for all functions and staff at the
21 Chase Branch. (*Id.* ¶ 117.) He was responsible for developing and cultivating long-term
22 business and consumer relationships and for the branch's growth and customer retention.
23 (*Id.*) Dadlani was tasked with improving revenue, lowering expenses, and exceeding
24 customer expectations. (*Id.*)

25 As branch manager, Dadlani also was responsible for ensuring that the Chase
26 Branch complied with all [REDACTED]

27 [REDACTED]
28 [REDACTED] The branch manager serves as the chief compliance officer at

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[REDACTED]

Nelson was the assistant branch manager and was present at the Chase branch for the entire fraud that Menaged conducted at Chase. (*Id.* ¶ 113.) She worked primarily on the teller line and was the lead teller, assigned to the cashbox designated as number 1 or number 2. (*Id.* ¶ 133.) The handwriting on slips for Teller no. 2 look like her handwriting. (*Id.* ¶ 133.) Teller no. 1 did 276 transactions; Teller no. 2 did 587 transactions for Menaged. (*Id.* ¶ 134, 135.) Menaged testified that when he went to a teller other than Nelson, Nelson would often come over and assist the teller with the transaction. (*Id.* ¶ 124.) Nelson would help him when he used the drive-through lane as well. (*Id.*)

Dadlani and Nelson were the focal point for all of the 1,344 cashier's check transactions. [REDACTED]

[REDACTED]

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[REDACTED]

Every Chase employee has a cashbox number for transactions. [REDACTED]

[REDACTED]

[REDACTED] Although Dadlani does not recall whether he was assigned teller [REDACTED] the entire time he was branch manager, between July

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[REDACTED]

[REDACTED]

C. Dadlani’s and Nelson’s Credibility.

If you summed up the core of Dadlani’s and Nelson’s motions for summary judgment, it would be: “We did not know there was a fraud, believe us.” Although Dadlani’s and Nelson’s fingerprints are all over the 1,344 Menaged sham transactions, they incredulously have lost their recollection of their involvement. Dadlani’s defense apparently is simply that he knew nothing. He testified that he did not know that Menaged was purchasing multiple cashier’s checks each day, photographing them, and then redepositing them as not used for their intended purpose, even though this happened 1,344 times on his watch. (*Id.* ¶ 145–46.) Given his communications with Menaged, how he ensured that he would handle the transactions when Nelson could not, his direct involvement in the expedited drive-through procedure for cashier’s checks, and Menaged’s testimony, Dadlani’s denials and credibility raise issues of fact for the jury.

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

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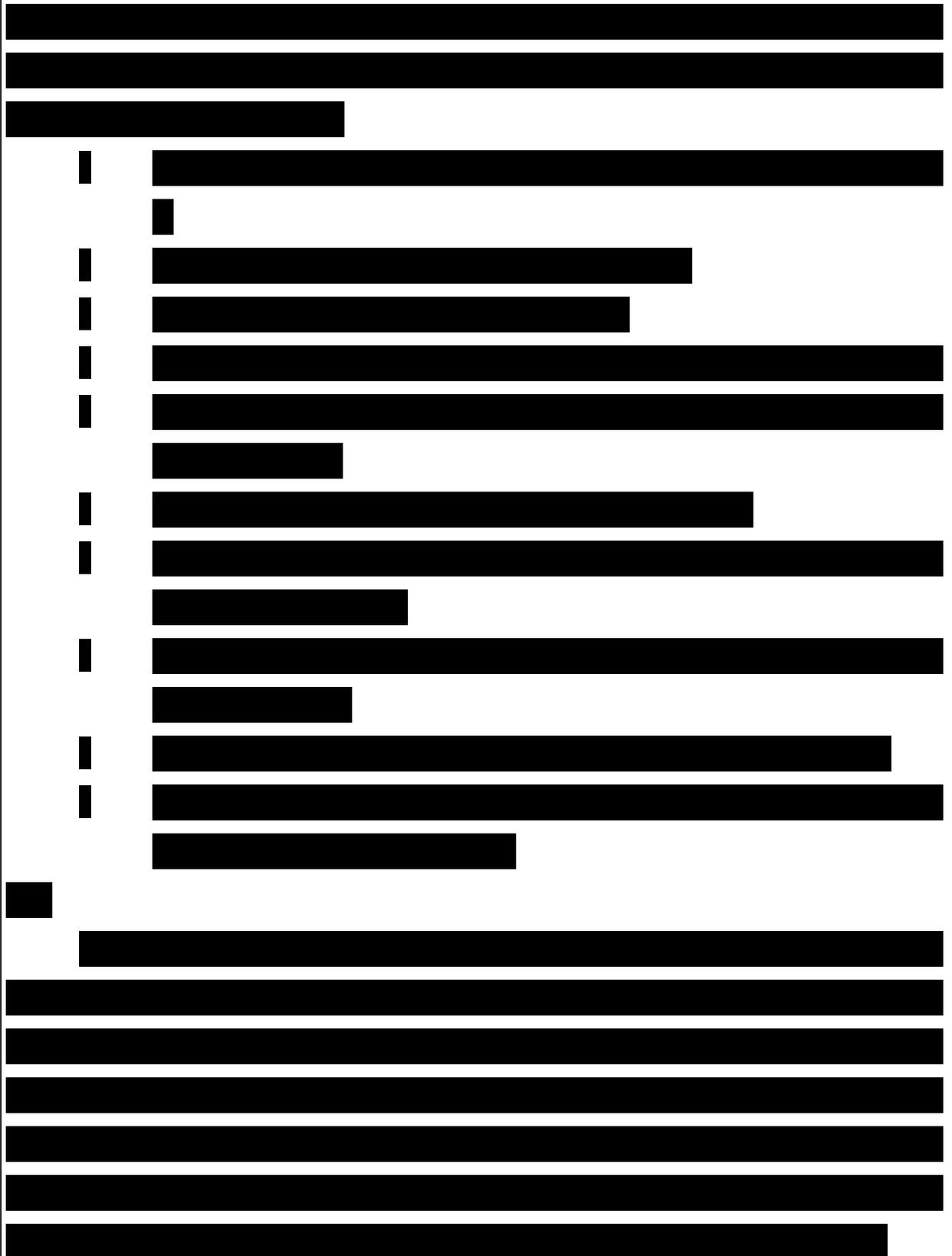
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1 **II. ARGUMENT.**

2 **A. Dadlani and Nelson’s Joinder in Chase’s Motion for Summary**
3 **Judgment.**

4 Dadlani and Nelson join in Chase Bank’s Motion for Summary Judgment. The
5 Receiver will not repeat the arguments made in his Response, and incorporates them by
6 this reference.

7 **B. Dadlani and Nelson’s Joinder in Response to Receiver’s Motion for**
8 **Summary Judgment on Unlawful Pattern of Activity.**

9 Dadlani and Nelson join in the arguments made in response to the Receiver’s
10 pending Motion for Partial Summary Judgment on Unlawful Pattern of Activity. The
11 Receiver will not repeat the arguments made in his Motion and Reply, and incorporates
12 them by this reference.

13 **C. Whether Dadlani and Nelson Aided and Abetted Menaged’s Fraud Is**
14 **a Question of Fact.**

15 A claim for aiding and abetting fraud requires evidence that Dadlani and Nelson
16 (1) knew Menaged’s conduct constituted a fraud and (2) substantially assisted or
17 encouraged Menaged in the achievement of the fraud. *See Wells Fargo Bank v. Ariz.*
18 *Laborers, Teamsters and Cement Masons Local No. 395 Pension Tr. Fund*, 201 Ariz.
19 474, 485 (2002). To hold a secondary tortfeasor liable, “[a] showing of actual and
20 complete knowledge of the tort is not uniformly necessary.” *Id.* at 488 ¶ 45. Rather, a
21 “general awareness of the fraudulent scheme” is sufficient. *Id.* Such “[k]nowledge may
22 be inferred from the circumstances.” *Id.* at 485 ¶ 36. “Moreover, “if [a] . . . method or
23 transaction is atypical or lacks business justification, it may be possible to infer the
24 knowledge necessary for aiding and abetting liability.” *Id.* at 489 ¶ 51. (citation omitted.)

25 Here, based on all the evidence, Dadlani’s and Nelson’s general awareness of
26 Menaged’s fraudulent scheme may be inferred. [REDACTED]

27 [REDACTED]
28 [REDACTED]

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[REDACTED]

Dadlani and Nelson were intimately involved with the cashier's check transactions. Nelson, as Teller 1 or Teller 2, was directly involved in hundreds of these checks. Dadlani, [REDACTED], was also directly involved in hundreds of these checks.

[REDACTED]

Dadlani and Nelson cannot feign they had no or little knowledge of Menaged's business and transactions. [REDACTED]

[REDACTED]

[REDACTED] And this information was all over the transactions and cashier's checks. Wires from DenSco came in every day. Every cashier's check that was prepared listed "DenSco" and the property address on the check, and starting in July 2014, the "pay to order" lines stated "DenSco payment" with the property address. Dadlani and Nelson knew that DenSco was Menaged's primary funding source for that business.

After June 2014, under Nelson's expedited drive-through procedure, [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 Dadlani and Nelson knowingly allowed Menaged's practices to continue for an
5 astounding 1,344 separate transactions over more than a year. Despite their general
6 awareness of his scheme, they did not stop Menaged. Instead, they substantially assisted
7 him by making the scheme even easier to conduct from his car window. *See Wells Fargo*,
8 201 Ariz. at 489 ¶ 54 ("The test is whether the assistance makes it 'easier' for the violation
9 to occur, not whether the assistance was necessary."). Such accommodations went
10 beyond ordinary protocol and did not merely constitute the processing of day-to-day
11 transactions. Essentially, the fraud was not simply allowed to continue; it was made more
12 convenient, thanks to their assistance.²

13 Finally, the first month after Menaged opened the account, he withdrew large
14 amounts of cash for cashier's checks payable to casinos. In January 2015 and June 2015,
15 he again procured large cashier's checks to Wynn Las Vegas. These funds were taken
16 out of his business account. [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 Aside from evidence of knowledge and general awareness under *Wells Fargo*, the
20 issues of willful blindness and conscious disregard briefed in response to Chase's Motion
21 for Summary Judgment are equally applicable and incorporated here. [REDACTED]

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23 ² Because Dadlani's and Nelson's behavior went beyond passively allowing day-to-day
24 transactions to be processed, the Receiver is not required to establish that they acted with
25 extraordinary economic motivation. *See Stern v. Charles Schwab & Co.*, No. CV-09-
1229-PHX-DGC, 2009 WL 3352408, at *8 (D. Ariz. Oct. 16, 2009). [REDACTED]

26 [REDACTED]
27 87-90.) Consequently, the Receiver has set forth sufficient evidence that Dadlani and
28 Nelson knew Menaged's conduct constituted a breach of duty and substantially assisted
said breach to survive summary judgment on the aiding-and-abetting claim.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 In response to Chase’s Motion, the Receiver also discusses that questions as to
5 knowledge and general awareness are generally questions for the jury. That principle is
6 applicable here as well.

7 **D. Whether Dadlani and Nelson Are Liable for Menaged’s Unlawful**
8 **Pattern of Activity Is a Question of Fact.**

9 **1. Dadlani and Nelson Authorized, Ratified, or Recklessly**
10 **Tolerated Menaged’s Unlawful Activity.**

11 Arizona RICO claims have a different statutory test for aiding and abetting. As
12 the Court held in its September 10, 2021 ruling, an injured party may recover damages
13 from an individual that authorizes, ratifies, or recklessly tolerates unlawful racketeering
14 activity:

15 A natural person shall not be held liable in damages or for other relief
16 pursuant to this section based on the conduct of another unless the fact finder
17 finds by a preponderance of the evidence that the natural person authorized,
requested, commanded, ratified or recklessly tolerated the unlawful conduct
of the other.

18 A.R.S. § 13-2314.04(L). “The statute does not require that a ‘natural person,’ who is
19 liable for authorizing, ratifying or recklessly tolerating the unlawful conduct of another,
20 must also act for financial gain.” Sept. 10, 2021 Ruling at 11.

21 Given the dearth of case law interpreting the terms “authorized,” “ratified,” and
22 “recklessly tolerated”—and no published, citable Arizona opinion addressing them³—the
23 Court must rely on the plain meaning of the terms. *See Dearing v. Ariz. Dep’t of Econ.*
24 *Sec.*, 121 Ariz. 203, 204 (App. 1978) (“A cardinal principle of statutory interpretation is
25 to follow the plain and natural meaning of language to discover what the legislature

26 ³ Dadlani and Nelson’s reliance on an unpublished memorandum decision, *Digital*
27 *Systems Engineering, Inc. v. Bruce-Moreno*, is improper, as the opinion—published prior
28 to January 1, 2015—may not be cited pursuant to Rule 111(c) of the Arizona Rules of the
Supreme Court.

1 intended to say.”).

2 “Recklessly” means “[i]n such a manner that the actor knew that there was a
3 substantial and unjustifiable risk that the social harm the law was designed to prevent
4 would occur and ignored this risk when engaging in the prohibited conduct.” *Recklessly*,
5 Black’s Law Dictionary (11th ed. 2019); *see also Recklessness*, Bryan A. Garner,
6 *Garner’s Dictionary of Legal Usage* 756 (3d ed. 2011) (“recklessness” occurs even
7 “when the actor does not desire the consequence but foresees the possibility and
8 consciously takes the risk”); *Wanton; reckless*, Bryan A. Garner, *Garner’s Dictionary of*
9 *Legal Usage* 936 (3d ed. 2011) (“A *reckless* person is generally fully aware of the risks
10 and may even be trying and hoping to avoid harm.”).

11 The ordinary meaning of “tolerate” is “to allow to be or to be done without
12 prohibition, hindrance, or contradiction.” *Tolerate*, Merriam-Webster.com (last visited
13 May 18, 2023). By its natural meaning, to recklessly tolerate an action is to fail to stop it
14 while understanding the risks of that dereliction.

15 The plain meaning of the statutory language, along with the undisputed facts, make
16 a compelling case for a finding of Dadlani’s and Nelson’s liability. At the very least, their
17 liability is a fact question for the jury. Nelson and Dadlani were active, continual, and
18 critical participants in Menaged’s illegal conduct. They both were well-aware of
19 Menaged’s daily misuse of cashier’s checks, not only tolerating the practice but also
20 constantly assisting him and even devising ways to make it easier for him to continue his
21 scheme. [REDACTED]

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]. Yet they knowingly allowed
25 Menaged to continue and redirect DenSco’s funds for his own use. Instead of stopping
26 or reporting Menaged’s brazen misconduct, Nelson and Dadlani made the scheme easier
27 to conduct and harder for DenSco to detect.

28 As with the Receiver’s other claims, the Court should deny summary judgment on

1 the Receiver's claims for racketeering liability. And if the facts are sufficient to require
2 the jury to determine knowledge or conscious disregard under *Wells Fargo*, then Nelson
3 and Dadlani cannot avoid facing the jury on their aiding and abetting a pattern of unlawful
4 activity.

5 **2. The Securities Fraud Exception Does Not Apply.**

6 Dadlani and Nelson contend that the Receiver may not rely on Menaged's pattern
7 of unlawful activity to recover under the racketeering statute, because the statute does not
8 allow recovery based on "conduct that would have been actionable as fraud in the
9 purchase or sale of securities." A.R.S. § 13-2314.04 (A). There is a short answer to this
10 argument. As set out below, Menaged's fraud against DenSco is not actionable as a fraud
11 in connection with the sale of securities. But even if there was a connection, the bar
12 would not apply here, because Menaged was then convicted of a crime in connection with
13 the fraud. *See Id.* (creating an exception to the securities fraud bar for RICO actions
14 involving persons "convicted of a crime in connection with the fraud"). Menaged's
15 criminal indictment was supplemented in an information prior to his plea, and he was
16 ordered to pay restitution to DenSco's investors.

17 There is no connection between Menaged's fraud against DenSco, and the
18 securities fraud issues between DenSco and its general note holders. As does Chase,
19 Dadlani and Nelson conflate DenSco's duties to its general obligation note holders, on
20 the one hand, and the fraudulent conduct committed by Menaged upon DenSco, on the
21 other hand.

22 The Arizona Corporation Commission sued DenSco based on its failures to
23 disclose material facts to its general obligation note holders. The general obligation notes,
24 which had no security like a deed of trust or mortgage, and relied upon the acumen of
25 DenSco for repayment, are securities. Private Offering Memoranda were prepared for
26 them under federal securities laws.

27 The relationship between DenSco and AZHF, however, was an arm's length
28 commercial transaction. In an ordinary real estate transaction with monies used to

1 purchase property, the loan secured by a note is not a security. *See State v. Tober*, 173
2 Ariz. 211, 213 (1992) (“[A]ll consumer transactions involving the purchase of real
3 property or goods are exempt [from statutes regarding securities transactions] where the
4 buyer pays by giving a promissory note.”). *See also* A.R.S. § 44-1843 (securities sections
5 44-1841 and 1842 not apply to notes secured by mortgages or deeds of trust.) The
6 promissory note from DenSco to Menaged is no more a security than a Chase bank loan
7 secured by a mortgage or deed of trust. The Menaged fraud was done in connection with
8 his inducing DenSco to lend him money on promissory notes secured by deeds of trust.

9 Dadlani and Nelson’s reliance on the District of Arizona’s unpublished decision
10 in *Sell* is misplaced. *Sell* applied the Private Securities Litigation Reform Act in the
11 context of federal RICO, to suggest that any conduct that broadly occurs “*in connection*
12 *with*” an offer to sell or buy securities constitutes securities fraud, and therefore cannot
13 form the basis of RICO civil liability. *See Sell v. Zions First Nation Bank*, No. CV 05
14 0684 PHX SRB, 2006 WL 322469, at *8-10 (D. Ariz. 2006) (emphasis added). But a
15 tangential relationship between a party’s conduct and the sale or purchase of securities is
16 not enough to transform the conduct into securities fraud. Rather, conduct occurs “in
17 connection with” the sale of securities if the “same set of facts can support convictions
18 for . . . securities fraud.” *Id.* at *10.

19 Dadlani and Nelson do not argue that Menaged’s conduct, itself, would have been
20 actionable as securities fraud. To do so, they would be required to show “the [party’s]
21 fraud coincided with the sales themselves.” *Id.* at *9 (quoting *S.E.C. v. Zandford*, 535
22 U.S. 813 (2002)). Menaged simply did not purchase or sell securities. *See Monterey Bay*
23 *Mil. Hou., LLC v. AMBAC Assurance Corp.*, No. 17-cv-04992-BLF, 2018 WL 3439372,
24 at *9 (N.D. Cal. July 17, 2018) (conduct not actionable as securities fraud where the
25 purchase, sale, or ownership in securities is not at issue).

26 **III. CONCLUSION.**

27 For the foregoing reasons, the Court should deny Dadlani’s and Nelson’s motions.
28

1 DATED this 21st day of July, 2023.

2 OSBORN MALEDON, P.A.

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