Nicole M. Goodwin, SBN 024593
goodwinn@gtlaw.com
Adrianna Griego Gorton, SBN 031836
gortona@gtlaw.com
GREENBERG TRAURIG, LLP
2375 East Camelback Road, Suite 800
Phoenix, Arizona 85016
T: (602) 445-8000
F: (602) 445-8100

Paul J. Ferak (*pro hac vice*)
ferakp@gtlaw.com
Jonathan H. Claydon (*pro hac vice*)
claydonj@gtlaw.com
GREENBERG TRAURIG, LLP
77 West Wacker Drive, Suite 3100
Chicago, IL 60601
T: (312) 456-8400
F: (312) 456-8435

Attorneys for Defendants JPMorgan Chase Bank, N.A., Samantha Nelson f/k/a Samantha Kumbaleck, Kristofer Nelson, Vikram Dadlani, and Jane Doe Dadlani

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; JPMORGAN 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

DEFENDANT SAMANTHA NELSON AND KRISTOFER NELSON'S REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

(Assigned to the Hon. Dewain Fox)

(Oral Argument Requested)

The Opposition fails to identify any evidence showing that Ms. Nelson, an assistant branch manager during the time that Menaged had Chase accounts, had actual knowledge of Menaged's fraudulent activity and chose to assist Menaged in executing the fraud. Without this evidence (which the Receiver has had over seven years to identify after dragging Ms. Nelson into this case), there is no basis for the claims against Ms. Nelson and her husband to proceed any further. The Receiver's attempt to save his claims by resorting to baseless attacks on Ms. Nelson's credibility and arguing for lower evidentiary standards to apply are both telling and meritless. That the Receiver must rely on such attacks and for the application of inapplicable standards and unreasonable inferences not supported by this exhaustively developed case record only further confirms that, as a matter of Arizona law, summary judgment must be entered in favor of Ms. Nelson and her husband.

ARGUMENT

A. The Receiver Lacks Standing to Bring His Claims Against Ms. Nelson.

Ms. Nelson hereby adopts and incorporates by reference as if fully set forth herein the argument set forth in Section A of Chase's contemporaneously filed reply brief.

B. The Statute of Limitations for the Receiver's Claims Has Expired.

Ms. Nelson hereby adopts and incorporates by reference as if fully set forth herein the argument set forth in Section B of Chase's contemporaneously filed reply brief.

C. There is No Evidence to Establish Any Underlying Tort to Support the Aiding and Abetting Fraud Claim.

Ms. Nelson hereby adopts and incorporates by reference as if fully set forth herein the argument set forth in Section C of Chase's contemporaneously filed reply brief.

D. The Receiver Cannot Establish the Elements of Aiding and Abetting Fraud.

1. There Is No Evidence that Ms. Nelson Had Actual Knowledge.

The Receiver concedes that he has no evidence that Ms. Nelson knew of any fraud so he argues that Ms. Nelson's "general awareness of Menaged's fraudulent scheme may be inferred." (Opp. 12). The Receiver also requests the Court ignore established Arizona

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

law and apply the willful blindness doctrine, which he concedes has never been done before. The Receiver's arguments should be rejected for three reasons.

First, the Receiver must show that Ms. Nelson had actual knowledge that Menaged was engaged in fraud. *See Stern v. Charles Schwab & Co.*, 2010 WL 1250732, at *8 (D. Ariz. Mar. 24, 2010) ("*Stern II*") ("aiding and abetting liability is based on proof of scienter ... the defendants must *know* that the conduct they are aiding and abetting is a tort.") (quoting *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund*, 38 P.3d 12, 23 (Ariz. 2002)); *see also Hashimoto v. Clark*, 264 B.R. 585, 598 (D. Ariz. 2001) ("The requisite degree of knowledge for an aiding and abetting claim is actual knowledge."). Such evidence does not exist. Ms. Nelson testified [redacted]. (Chase Combined Statement of Undisputed Facts ("CSOF") ¶¶ 70, 81). Crucially, there is no evidence that Ms. Nelson had any knowledge of the inner workings of the business relationship between DenSco and Menaged, such that Ms. Nelson would ever be privy to any representation by Menaged to DenSco. (*Id.* ¶ 77). The Receiver has identified no evidence showing that Ms. Nelson ever learned of the representations that Menaged purportedly made to DenSco, let alone that Ms. Nelson learned of the fraud scheme.

The Receiver's assertion that Ms. Nelson did not follow bank policy by failing to report Menaged's transactions has no basis in the record. (Opp. 4-5). [redacted]. (*See* RSOF ¶¶ 93-94).[1] [redacted]

[1] [redacted] (RSOF ¶¶ 93-94). This is an absurd contention. [redacted] (CSFO Ex. 89 at 147:11-148:3.) [redacted] In any event, these facts—unrebutted by any actual evidence—show that Ms. Nelson did not, as the Receiver speciously contends, fail to follow any bank policy.

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

[redacted] (CSOF ¶ 69, CSOF Ex. 40, p.1). The evidence shows that Ms. Nelson followed policy, and the Opposition never addresses the many cases cited in Ms. Nelson's motion holding that "generalized suspicions about fraudulent activity d[o] not suffice to raise an inference that the bank had actual knowledge of the fraudulent scheme." *In re Agape Litig.*, 681 F. Supp. 2d 352, 363 (E.D.N.Y. 2010). The Receiver simply ignores the law.

Lacking evidence, the Receiver resorts to launching attacks on Ms. Nelson's credibility. This tactic is insufficient to create an issue of material fact. *Comerica Bank v. Mahmoodi*, 229 P.3d 1031, 1034 n.3 (Ariz. Ct. App. 2010) (rejecting challenges to a witness's credibility; holding that "[a] party opposing a motion for summary judgment is not entitled to proceed to trial on the mere hope that the jury will disbelieve uncontroverted testimony."). There is no evidence showing that Ms. Nelson had actual knowledge of Menaged's fraud; therefore, she is entitled to summary judgment.

Second, the Receiver argues that because Ms. Nelson had access to Chase's KYC database, Ms. Nelson could have reviewed Menaged's activity, and since the Receiver claims Menaged's transactions were "atypical," Ms. Nelson must have had knowledge of fraud. (Opp. 12-13). But the fact that Ms. Nelson *could have* learned of the fraud or that—in hindsight—there was conduct that is now characterized as suspicious is irrelevant when assessing the Receiver's claims; evidence of actual knowledge of fraud is required. *Stern v. Charles Schwab & Co.*, 2009 WL 3352408, at *7 (D. Ariz. Oct. 16, 2009) ("*Stern I*") ("[M]ere knowledge of suspicious activity is not enough. The defendant must be aware of the fraud.") (citing *Dawson v. Withycombe*, 216 Ariz. 84, 163 P.3d 1034 (Ariz. Ct. App. 2007)).

Tellingly, the Receiver ignores the holdings in *Arizona Laborers* and *Dawson* setting forth what is required to show actual knowledge under Arizona law. *Arizona Laborers* plainly held that, as the court noted in *Stern II*, "suspicion is not enough." 2010 WL 1250732, at *9. As *Stern II* described it,

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

> In finding sufficient circumstantial evidence to conclude that the bank had "actual knowledge" that Symington was defrauding the Funds, the Arizona Supreme Court relied on these facts, among others: the bank knew Symington had a duty under his agreement with the Funds to provide accurate financial information to the Funds; the bank knew Symington was using false financial statements; the bank knew Symington was in financial trouble on another development that involved the bank, but did not involve the Funds; the bank knew Symington was representing that he had access to securities to which he actually had no access; the bank knew Symington was overstating the value of his real estate holdings; the bank knew Symington was asserting that there was no prospect of litigation, when in fact he was facing litigation on other projects; and the bank knew Symington was making these misrepresentations concerning his financial condition as the time for the Funds' permanent financing approached—permanent financing that would repay the bank's loan.

Id. at *8 (citing *Ariz. Laborers*, 201 Ariz. at 486-88, 38 P.3d at 24-26). The Arizona Supreme Court held that "[t]his accumulation of evidence raises the inference that the Bank *knew* Symington was engaged in false representations to the Funds." *Ariz Laborers*, 201 Ariz. at 488, 38 P.3d at 26 (emphasis added).

Here, Ms. Nelson had no knowledge whatsoever what representations Menaged made to Chittick, so there is no factual basis for an inference that Ms. Nelson had knowledge or awareness of Menaged's fraud. Given the absence of any proper basis for the inferential leap the Receiver asks for, this request should be rejected. *See Federico v. Maric*, 224 Ariz. 34, 37-38, 226 P.3d 403, 406-407 (Ariz. Ct. App. 2010) (granting summary judgment on aiding and abetting claim where plaintiff's "arguments go far beyond the inferences that may be reasonably drawn by the facts presented"); *BAE Sys. Mobility & Prot. Sys. v. Armorworks Enters.*, 2011 WL 1192987, at *11 (D. Ariz. Mar. 28, 2011) ("an inference of knowledge will not be made lightly").

At most, all the Receiver can point to is evidence that Ms. Nelson received emails from Menaged requesting cashier's checks that contained a reference to DenSco on the memo line. (CSOF ¶¶ 71, 72; CSOF Ex. 37). These emails contained only lists of properties and amounts; there is no representation that Menaged was bidding on properties or using DenSco loans to make purchases. (*Id.*). To infer from Ms. Nelson's receipt of such emails that she had knowledge of a fraud scheme is unreasonable and unjustified. In *Dawson*, the court rejected a request for such an inference and held that knowledge of a defrauder's poor financial condition and dishonesty did not satisfy the knowledge requirement:

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

> That Turner and Withycombe were aware of Futech's financial condition and of Goett's dishonest character, and were aware that he was soliciting funds from Dawson, indicates poor judgment and risky business practices. It does not, however, rise to the level of scienter required for aiding and abetting, specifically that they were *aware* that Goett *did or would in fact* use fraudulent statements as a means of procuring the loan."

Dawson, 216 Ariz. at 103, 163 P.3d at 1053. Just as in *Dawson*, there is no evidence that Ms. Nelson was "aware of the fraudulent scheme to procure [a] loan" and, therefore, "[t]o infer awareness of the fraudulent scheme from [the Receiver's] characterization of what [Ms. Nelson] knew and thought is to pile inference upon inference, which stretches the evidence presented beyond the bounds of circumstantial evidence." *Id.* at 216 Ariz. at 103, 163 P.3d at 1053; *see also Stern II*, 2010 WL 1250732, at *11 ("Where the circumstantial evidence in *Arizona Laborers* showed that the bank actually knew that one of their partners in the tri-party agreement was defrauding the other partner, the evidence in this case provides no such knowledge and no such connection.").

Third, the Receiver's attempt to apply the willful blindness doctrine—despite conceding that no Arizona court has ever applied this doctrine to a civil case—must be rejected. In response to this argument, Ms. Nelson hereby adopts and incorporates by references Section D.1 of Chase's contemporaneously filed Reply. [redacted] It is illogical to contend that she took "deliberate action and consciously avoided confirming a high probability that the Bank's customer was obtaining cashier's checks, photographing them and then re-depositing the funds for a fraudulent purpose." *Davis v. US Bank, N.A., et al.*, Slip Op. at 4 (Aug. 8, 2022).

2. There Is No Evidence of Substantial Assistance.

Substantial assistance requires a showing that the defendants conduct was "a substantial factor in causing the [plaintiff's] harm." *Stern I*, 2009 WL 3352408, at *8. The Receiver devotes a mere one sentence of the Opposition to this element, stating in conclusory fashion that Ms. Nelson substantially assisted Menaged "by making the scheme even easier to conduct from his car window." (Opp. 14). This argument, however, is unsupported and contrary to Arizona law, which holds that "processing day-to-day

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

transactions does not constitute substantial assistance unless the bank has 'extraordinary economic motivation to aid in the fraud.'" *Stern I*, 2009 WL 3352408, at *8 (quoting *Az. Laborers*, 201 Ariz. at 489, 38 P.3d at 27). Menaged conducting transactions through the drive-through—just like every other customer could do—is not "substantial assistance" under the law.

In fact, the Receiver cites no authority for the notion that transactions conducted at a drive through bank window are subject to a different standard than transactions conducted inside a branch, and such an assertion defies credulity. The Receiver's position also ignores that transactions at a bank drive-through are no different than day-to-day banking transactions in the branch. Indeed, the Receiver's evidence shows that Menaged would go through the drive-through to do the same transactions as inside the bank: checks and cash withdrawals. (Opp. 6-7). These are nothing more than day-to-day transactions that do not constitute substantial assistance. *See Stern I*, 2009 WL 3352408, at *8 (holding that "'extending significant credit,' 'failing to investigate the source of deposits,' 'permitting transactions in the millions of dollars that lacked business sense,' 'permitting transactions' that allowed a Ponzi scheme to continue, [and] 'accepting deposits and transferring' money despite 'red flags'" were "typical banking transactions" that did not establish substantial assistance).[2]

The Receiver's argument that Ms. Nelson acted with "extraordinary economic motivation" because she "had the opportunity to share in the branch profits via the 2014 Branch Profitability Incentive Plan" is also contrary to Arizona law. (Opp. 14 n.2). The Receiver has no evidence that Ms. Nelson obtained any benefit whatsoever from Menaged's account. Although Ms. Nelson was potentially eligible for annual bonuses, [redacted]

[2] The Receiver, once again, makes no effort to explain the obvious contradiction in his case theory: [redacted] (*See* Mot. 9-10). [redacted] (CSOF ¶ 69). The Receiver's illogical contention cannot stand.

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

[redacted] (CSOF ¶ 65). [redacted] (*Id.* ¶ 67). There is no evidence that Menaged's accounts had any impact on Ms. Nelson's compensation and similarly no evidence to show "extraordinary economic motivation." *See Ariz. Laborers*, 201 Ariz. at 498, 38 P.3d at 27 (holding that the bank had an extraordinary motivation when assisting in the fraud would ensure that the customer would not default on a loan worth ten million dollars); *see also Stern I*, 2009 WL 3352408, at *8 (holding that "ordinary account fees and credit interest" are "not enough" to establish extraordinary economic motivation).

E. The Opposition Confirms that the Civil RICO Claim Fails.

1. The Receiver's Claim Is Barred Because It Involves Securities Fraud.

The Receiver argues that the provision in A.R.S. § 13-2314.04 barring civil RICO claims where the conduct "would have been actionable as fraud in the purchase or sale of securities" is inapplicable. (Opp. 17). The Receiver's arguments fail for three reasons.

First, the Receiver argues that *Sell v. Zions First Nation Bank*, 2006 WL 322469 (D. Ariz. Feb. 9, 2006), is not applicable because it deals with the federal RICO statute. But, Arizona courts "look to federal interpretation for guidance where the federal and state RICO statutes contain similar provisions." *Hannosh v. Segal*, 235 Ariz. 108, 112, 328 P.3d 1049, 1053 (Ariz. Ct. App. 2014). The Receiver cannot identify any material difference between the federal and Arizona statute because they are analogues. The federal RICO statute provides that "no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities," *Sell*, 2006 WL 322469, at *6, and the Arizona statute similarly provides that "[n]o person may rely on any conduct that would have been actionable as fraud in the purchase or sale of securities to establish an action under this section[.]" A.R.S. § 13-2314.04 (A). Accordingly, this Court should look to *Sell* and other cases involving the federal RICO statute when analyzing the Receiver's claim.

Second, the Receiver fails to demonstrate that Menaged's fraud was not carried out "in connection with" the sale of securities. He argues that Menaged himself was not selling

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

securities, (Opp. 18), but it does not matter. "[I]f the alleged conduct could form the basis of a security fraud claim against any party—be it against, or on behalf of, the plaintiff, defendants or a non-party—it may not be fashioned as a civil RICO claim." *Zohar CDO 2003-1, Ltd. v. Patriarch Partners, LLC*, 286 F. Supp. 3d 634, 645 (S.D.N.Y. 2017). Further, the Supreme Court has recognized that the misappropriation of proceeds arising from the sale of securities constitutes fraud under the Securities Exchange Act because the "scheme to defraud and the sale of securities coincide[d]." *SEC v. Zandford*, 535 U.S. 813, 822 (2002). Here, Chittick and Menaged misappropriated funds that arose from the sale of securities to DenSco investors and they both participated in and covered up the scheme through the end. (CSOF §§ II.b-c, i-l). And it is undisputed that because of Chittick and Menaged's conduct, the Arizona Corporation Commission prosecuted DenSco for "Fraud in Connection with the Offer and Sale of Securities." (Mot. 13). Accordingly, the Receiver's RICO claim is barred under A.R.S. § 13-2314.04(A).

Third, the Receiver argues that because Menaged was convicted of a crime the securities fraud exception does not apply. (Opp. 17). This argument mischaracterizes the statute, which provides that "[n]o person may rely on any conduct that would have been actionable as fraud in the purchase or sale of securities to establish an action under this section except an action **against a person who is convicted** of a crime in connection with the fraud[.]" A.R.S. § 13-2314.04(E) (emphasis added). The statute "by its terms only permits RICO claims against a defendant convicted in connection with the securities fraud." *Powers v. Wells Fargo Bank, NA*, 439 F.3d 1043, 1046 (9th Cir. 2006). This action is against Ms. Nelson; therefore, the civil action cannot be maintained.

2. The Receiver Does Not Show that Menaged's Conduct Fits the Statutory Definitions of Arizona's Racketeering Statue

The Opposition fails to address the argument that Menaged's conduct does not fall within the definition of the unlawful predicate acts listed in A.R.S. § 13-2301(D)(4). The Receiver does not incorporate his partial summary judgment reply ("PMSJ Reply"). Even if the Court were to consider the PMSJ Reply, his arguments fail for three reasons.

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

First, the Receiver argues Ms. Nelson ignores that theft encompasses multiple forms of misconduct. (PSMJ Reply 6). But the Receiver never identifies which specific offense under A.R.S. § 13-1802(A) his claim is based upon or what evidence shows that such an offense was committed. (*See id.*). In any event, all of the possibly pertinent definitions of theft set forth in the statute involve "control" of the property of another or the "intent to deprive" another person of their property. A.R.S. § 13-1802(A). This is exactly what was addressed by the Court's September 10, 2021 Order, which found that "[o]nce it deposited the money into Menaged's accounts, DenSco lost the right to control the funds." (9/10/21 Order 7). Because DenSco voluntarily wired the funds, the conduct does not satisfy the definition of theft or conversion.

Second, the Receiver contends that racketeering premised on involvement in a scheme or artifice to defraud does not require a showing of reliance. (PMSJ Reply 7). The Receiver misconstrues Ms. Nelson's argument. The Receiver must set forth evidence of misrepresentations that are "reasonably calculated to deceive persons of ordinary prudence and comprehension." *State v. Poundstone*, 179 Ariz. 511, 512, 880 P.2d 731, 731 (Ariz. Ct. App. 1994). Despite this, the Receiver failed to identify specific statements by Menaged that could form the basis of the "false pretense" element of his claim in the partial motion for summary judgment. (*See* Chase's Response to PMSJ ("PMSJ Resp.") 10). Instead, the Receiver asserted generally that "DenSco *relied* upon Menaged's representations that he would use all future loans from DenSco for their intended purpose" and cited only his own self-serving affidavit as support. (*See* Partial Motion for Summary Judgment p. 3). This is an improper and inadmissible conclusory statement. (*See* PMSJ Resp. 11).

Third, the Receiver contends that Ms. Nelson's "argument that Menaged's activities did not involve either 'racketeering proceeds' or 'proceeds of an offense' would require finding that none of the funds he redirected from DenSco for his personal use . . . were the results of any act involving an enumerated crime." (PMSJ Reply 7). The Receiver, again, ignores the legal issue. The Receiver must show that the "laundered funds" are proceeds of a separate racketeering act. *In re US Currency In Amount of $26,980.00*, 199 Ariz. 291,

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

298, 18 P.3d 85, 92 (Ariz. Ct. App. 2000) (state failed to prove money laundering because it did not prove an underlying drug operation, stating "Pima County has not demonstrated that even the $5,000 was racketeering proceeds."). The Receiver argues that the funds taken by Menaged must have been the fruits of a racketeering act, but he makes no such factual showing. Further, the Receiver never addressed Ms. Nelson's argument that Menaged's transactions did not involve the use of forged or falsified checks. (PMSJ Resp. 14.)

3. There Is No Evidence of Continuity.

The Opposition also fails to address Ms. Nelson's argument that the Receiver cannot establish a pattern of unlawful activity because the acts were not continuous. Courts have declined to find continuity where—as here—the scheme involves a limited number of perpetrators and victims and was directed at a single goal. *See, e.g., Glen Flora Dental Ctr., Ltd. v. First Eagle Bank*, 2018 WL 4300478, at *7 (N.D. Ill. Sept. 10, 2018) (concluding no continuity arose from a single scheme to defraud a single victim, even though "injury" resulted from "numerous transactions" with that victim). Though the Receiver argued that Ms. Nelson "cites only to random out-of-state decisions . . . but ignores contrary authority" (PMSJ Reply 8), the Receiver's authority actually supports the argument that there can be no continuity where there is a single scheme to defraud a single victim. In *Allwaste, Inc. v. Hecht*, there were **four** victims arguing that the defendants "successfully solicited kickbacks, received and distributed illicit gratuities and commissions, secretly invested the proceeds in businesses that compete with [plaintiffs], and created false receipts overcharging [plaintiffs] for transportation of goods and services." 65 F.3d 1523, 1526 (9th Cir. 1995). Similarly, in *Walters v. Fid. Mortg. of Cal.*, the plaintiff alleged the existence of many victims. 730 F. Supp. 2d 1185 (E.D. Cal. 2010) (Dkt. No. 26, 2d Am. Compl. at ¶ 144) ("[Plaintiff] . . . alleges that all of the predicate acts described in this Complaint were continuous so as to form a pattern of racketeering activity in that Ocwen engaged in the predicate acts over a substantial period of time, and were carried out not only in connection with Ms. Walters' loan **but with the loans of hundreds of other borrowers**") (emphasis added). Here, unlike in the Receiver's cited authority, the defined unlawful conduct

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

involves one victim: DenSco. Accordingly, there is no continuity and the Receiver's claim fails.

4. There Is No Evidence Showing that Ms. Nelson Had Knowledge or Conscious Awareness of Menaged's Scheme

The undisputed evidence establishes that Ms. Nelson did not have knowledge or awareness that Menaged was engaged in a criminal fraud. (*See* Mot. 5-6). The Receiver nevertheless argues that in order to prove that Ms. Nelson "ratified or recklessly tolerated the unlawful conduct" under ARS § 13-2314.04(L), he is not required to establish knowledge or awareness but must only satisfy a lesser standard based on a dictionary definition of the word "recklessly" that purportedly requires something less than awareness of a risk. (Opp. 16). The Receiver is once again mistaken. The term "recklessly" is defined by Arizona statute meaning "that a person is ***aware of*** and ***consciously*** disregards a substantial and unjustifiable risk that the result will occur or the circumstance exists." A.R.S. § 13-105.10(c). And though the Receiver makes no mention of the term "ratification" in his Opposition, its legal definition also requires knowledge. *See, e.g., Bentley v. Slavik*, 663 F. Supp. 736, 740 (S.D. Ill. 1987) ("The concept of ratification includes an understanding and full knowledge of the facts necessary to an intelligent assent.") (citing *Black's Law Dictionary* (4th ed. 1968)).[3] As this plainly shows, to ratify or recklessly tolerate the wrongful conduct of a third-party must necessarily have knowledge or conscious awareness that the conduct is criminal in nature. Because there is no evidence that Ms. Nelson had awareness of Menaged's allegedly fraudulent representations to DenSco, summary judgment should be entered in Ms. Nelson's favor.

CONCLUSION

For the reasons set forth above, this Court should enter summary judgment in favor of Ms. Nelson and Kristofer Nelson.

[3] Ms. Nelson acknowledges that the decision in *Digital Sys. Eng'g, Inc. v. Bruce-Moreno*, 2010 WL 5030808, at *6 (Ariz. Ct. App. Nov. 16, 2010) is unpublished but respectfully submits that it is the only Arizona decision that directly addresses and construes the pertinent language of ARS § 13-2314.04(L).

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

RESPECTFULLY SUBMITTED this 6th day of September, 2023.

GREENBERG TRAURIG, LLP

By:*/s/ Nicole M. Goodwin*
Nicole M. Goodwin
Paul J. Ferak *(pro hac vice)*
Jonathan H. Claydon *(pro hac vice)*
Attorneys for Defendants JPMorgan Chas Bank, N.A., Samantha Nelson f/k/ Samantha Kumbaleck, Kristofer Nelson Vikram Dadlani, and Jane Doe Dadlani

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

ORIGINAL of the foregoing e-filed with the Clerk of Court this 6th day of September 2023.

COPY of the foregoing electronically distributed this 6th day of September 2023 to:

Hon. Dewain Fox

COPY of the foregoing served via TurboCourt e-Service and E-Mail this 6th day of September 2023 to:

Colin F. Campbell
Geoffrey M. T. Sturr
Timothy J. Eckstein
Jeffrey B. Molinar
BriAnne N. Illich Meeds
OSBORN MALEDON, P.A.
2929 N. Central Avenue, Suite 2100
Phoenix, AZ 85012
ccampbell@omlaw.com
gsturr@omlaw.com
jmolinar@omlaw.com
billichmeeds@omlaw.com

/s/ Tammy Mowen
Employee, Greenberg Traurig

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000