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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

**DEFENDANT SAMANTHA
NELSON F/K/A SAMANTHA
KUMBALEK'S ANSWER AND
AFFIRMATIVE DEFENSES TO
THIRD AMENDED COMPLAINT**

(Assigned to the Hon. Daniel Martin)

1 Defendant Samantha Nelson f/k/a Samantha Kumbalek, improperly named as
2 Samantha Nelson f/k/a Samantha Kumbaleck (“Defendant” or “Nelson”), by and through
3 undersigned counsel, hereby answers the Third Amended Complaint filed by Plaintiff
4 Peter S. Davis, as Receiver of DenSco Investment Corporation (“Plaintiff” or
5 “Receiver”), as follows:

6 1. From July 2001 to July 2016, DenSco Investment Corporation (“DenSco”)
7 raised approximately \$85 million from investors. Among other things, DenSco told its
8 investors that (i) it would make short-term “hard money” loans to “foreclosure
9 specialists” who were buying foreclosed homes, and (ii) the loans would be “secured
10 through first position trust deeds” so that DenSco would, in the event a borrower
11 defaulted, recover the loaned funds by taking possession of the property.

12 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
13 as to the truth of the allegations in Paragraph 1, which therefore has the effect of a denial
14 pursuant to Ariz. R. Civ. P. 8(c)(5).

15 2. Yomtov Scott Menaged (“Menaged”) defrauded DenSco in two distinct
16 frauds. In the first fraud, which ended in the latter half of 2013, Menaged borrowed money
17 from both DenSco and another lender, using the same property as security, leaving
18 DenSco undersecured on hundreds of properties. Menaged used the funds he borrowed
19 from DenSco for his own purposes.

20 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
21 as to the truth of the allegations in Paragraph 2, which therefore has the effect of a denial
22 pursuant to Ariz. R. Civ. P. 8(c)(5).

23 3. In early 2014, DenSco established new procedures to ensure Menaged used
24 its loans to acquire property that would be secured by first position loans by, among other
25 things, wiring monies to accounts that Menaged maintained with Defendant US Bank,
26 N.A. and Defendant JP Morgan Chase Bank, N.A., respectively, and then having
27 Menaged provide copies of cashier’s checks that on their face were to be used to purchase
28 specific properties. In the second fraud, Menaged evaded these procedures by not using

1 these checks for their intended purpose, immediately redepositing them and converting
2 the funds for his personal use.

3 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
4 as to the truth of the allegations in Paragraph 3, which therefore has the effect of a denial
5 pursuant to Ariz. R. Civ. P. 8(c)(5).

6 4. Nearly every business day between January 2014 and June 2015, for more
7 than 1,400 transactions, Defendant banks, their named employees and their senior
8 managers substantially assisted, authorized, ratified, and recklessly tolerated Menaged's
9 unlawful conduct.

10 **RESPONSE:** Nelson denies the allegations in Paragraph 4 insofar as they pertain
11 to her. Nelson lacks knowledge or information sufficient to form a belief as to the truth
12 of the remaining allegations in Paragraph 4, which therefore has the effect of a denial
13 pursuant to Ariz. R. Civ. P. 8(c)(5).

14 5. Defendants knew that Menaged was in the business of purchasing
15 foreclosed properties, that Menaged had a fiduciary relationship with DenSco, and that
16 DenSco wired Menaged monies to issue as cashier's checks for the specific purpose of
17 purchasing foreclosed properties on DenSco's behalf.

18 **RESPONSE:** Nelson denies the allegations in Paragraph 5 insofar as they pertain
19 to her. Nelson lacks knowledge or information sufficient to form a belief as to the truth
20 of the remaining allegations in Paragraph 5, which therefore has the effect of a denial
21 pursuant to Ariz. R. Civ. P. 8(c)(5).

22 6. Defendants knew Menaged did not use these funds for their intended
23 purpose, as, almost immediately after they were issued, Menaged re-deposited these
24 cashier's checks, later using these monies for personal expenses unrelated to DenSco.

25 **RESPONSE:** Nelson denies the allegations in Paragraph 6 insofar as they pertain
26 to her. Nelson lacks knowledge or information sufficient to form a belief as to the truth
27 of the remaining allegations in Paragraph 6, which therefore has the effect of a denial
28 pursuant to Ariz. R. Civ. P. 8(c)(5).

1 7. Defendants substantially assisted and recklessly tolerated Menaged's
2 unlawful conduct by, among other things, preparing a cashier's check for each
3 transaction, stamping on the back of most of the checks "Not Used for Intended
4 Purposes," observing Menaged or his agent photograph the fronts of the checks, preparing
5 deposit slips and assisting Menaged in re-depositing the cashier's checks immediately
6 after the photos had been taken, and assisting Menaged use these funds, by, among other
7 things, avoiding bank policies to facilitate immediate cash withdrawals, transferring
8 monies to Menaged's personal accounts, and helping him use these funds to pay various
9 casinos.

10 **RESPONSE:** Nelson denies the allegations in Paragraph 7 insofar as they pertain
11 to her. Nelson lacks knowledge or information sufficient to form a belief as to the truth
12 of the remaining allegations in Paragraph 7, which therefore has the effect of a denial
13 pursuant to Ariz. R. Civ. P. 8(c)(5).

14 8. Through their knowledge and substantial assistance, Defendants aided and
15 abetted Menaged in defrauding DenSco, converting DenSco's monies and breaching his
16 fiduciary duties to DenSco.

17 **RESPONSE:** Nelson denies the allegations in Paragraph 8 insofar as they pertain
18 to her. Nelson lacks knowledge or information sufficient to form a belief as to the truth
19 of the remaining allegations in Paragraph 8, which therefore has the effect of a denial
20 pursuant to Ariz. R. Civ. P. 8(c)(5).

21 9. Menaged defrauded DenSco, committed theft of its property, and laundered
22 the monies DenSco wired to him to purchase these properties. Defendants transacted,
23 transferred or received DenSco's monies knowing that they belonged to DenSco and not
24 Menaged, and that those monies were the proceeds of Menaged's theft, fraud scheme and
25 money laundering. Defendants authorized, ratified or recklessly tolerated Menaged's
26 unlawful conduct and are therefore liable under Arizona's civil racketeering laws for
27 Menaged's conduct.
28

1 **RESPONSE:** Nelson denies the allegations in Paragraph 9 insofar as they pertain
2 to her. Nelson lacks knowledge or information sufficient to form a belief as to the truth
3 of the remaining allegations in Paragraph 9, which therefore has the effect of a denial
4 pursuant to Ariz. R. Civ. P. 8(c)(5).

5 10. Plaintiff brings this action to recover compensatory damages for the
6 financial losses DenSco suffered as a result of Defendants' aiding and abetting Menaged's
7 fraud, conversion, and breaches of fiduciary duty, and Defendants' civil racketeering.

8 **RESPONSE:** Nelson denies the allegations in Paragraph 10 insofar as they pertain
9 to her. Nelson denies that DenSco suffered damages as a result of any action or inaction
10 on the part of Nelson. Nelson lacks knowledge or information sufficient to form a belief
11 as to the truth of the remaining allegations in Paragraph 10, which therefore has the effect
12 of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

13 11. DenSco is an Arizona corporation that began operating in April 2001. Its
14 primary business was making short-term, high-interest loans to "foreclosure specialists"
15 who bought homes that were being foreclosed upon, usually through a trustee's sale.
16 DenSco's office was in Chandler, Arizona.

17 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
18 as to the truth of the allegations in Paragraph 11, which therefore has the effect of a denial
19 pursuant to Ariz. R. Civ. P. 8(c)(5).

20 12. Denny Chittick ("Chittick") was DenSco's sole shareholder. He was the
21 Company's only Director, served as its President, Vice President, Treasurer, and
22 Secretary, and was its only employee.

23 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
24 as to the truth of the allegations in Paragraph 12, which therefore has the effect of a denial
25 pursuant to Ariz. R. Civ. P. 8(c)(5).

26 13. Plaintiff was appointed as DenSco's Receiver in *Arizona Corporation*
27 *Commission v. DenSco Investment Corporation, an Arizona Corporation*, Maricopa
28

1 County Superior Court, Case No. CV2016-014142 (the “Receivership Court”). He has
2 obtained approval from the Receivership Court to pursue this action.

3 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
4 as to the truth of the allegations in Paragraph 13, which therefore has the effect of a denial
5 pursuant to Ariz. R. Civ. P. 8(c)(5).

6 14. Defendant US Bank, N.A. is a national banking association that is
7 authorized to conduct business in the State of Arizona and which maintains branches in
8 Maricopa County, among other places.

9 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
10 as to the truth of the allegations in Paragraph 14, which therefore has the effect of a denial
11 pursuant to Ariz. R. Civ. P. 8(c)(5).

12 15. Defendant Hilda Chavez was an employee and branch manager for US
13 Bank in Maricopa County. She is an Arizona resident who is married to Defendant John
14 Doe Chavez. Hilda Chavez was acting for the benefit of her marital community during
15 the relevant time period.

16 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
17 as to the truth of the allegations in Paragraph 15, which therefore has the effect of a denial
18 pursuant to Ariz. R. Civ. P. 8(c)(5).

19 16. Defendant JP Morgan Chase Bank, N.A. (“Chase”) is a national banking
20 association that is authorized to conduct business in the State of Arizona and which
21 maintains branches in Maricopa County, among other places.

22 **RESPONSE:** Nelson admits the allegations in Paragraph 16.

23 17. Defendant Samantha Nelson (formerly known as Samantha Kumbaleck)
24 was an employee, assistant branch manager and branch manager for Chase in Maricopa
25 County. She is an Arizona resident who is married to Defendant Kristofer Nelson.
26 Samantha Nelson was acting for the benefit of her marital community during the relevant
27 time period.
28

1 **RESPONSE:** Nelson admits only that she was an employee and assistant branch
2 manager for Chase in Maricopa County and that she is an Arizona resident who is married
3 to Defendant Kristofer Nelson. The remaining allegations contain legal conclusions to
4 which no response is required. To the extent a response is required, Nelson denies the
5 remaining allegations in Paragraph 17.

6 18. Defendant Vikram Dadlani was a Chase employee and branch manager in
7 Maricopa County. He is married to Defendant Jane Doe Dadlani. Vikram Dadlani was an
8 Arizona resident and was acting for the benefit of his marital community during the
9 relevant time period.

10 **RESPONSE:** Nelson admits the allegation in the first sentence of Paragraph 18.
11 Nelson lacks knowledge or information sufficient to form a belief as to the truth of the
12 remaining allegations in Paragraph 18, which therefore has the effect of a denial pursuant
13 to Ariz. R. Civ. P. 8(c)(5).

14 19. This Court has subject matter jurisdiction under Article VI, § 14 of the
15 Arizona Constitution and A.R.S. § 12-123. It has personal jurisdiction over Defendants
16 because they provided professional services in Arizona to an Arizona corporation.

17 **RESPONSE:** Because Nelson denies that Plaintiff has standing to bring the claims
18 asserted in the Third Amended Complaint, Nelson denies the allegations in Paragraph 19.

19 20. Venue is proper in Maricopa County under A.R.S. § 12-401 because
20 Defendants US Bank and Chase do business in Maricopa County and the acts that are the
21 subject of this action took place at bank branches located in Maricopa County.

22 **RESPONSE:** Because Nelson denies that Plaintiff has standing to bring the claims
23 asserted in the Third Amended Complaint, Nelson denies the allegations in Paragraph 20.

24 21. Upon information and belief, Menaged was the sole member of Easy
25 Investments, LLC (“Easy Investments”).

26 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
27 as to the truth of the allegations in Paragraph 21, which therefore has the effect of a denial
28 pursuant to Ariz. R. Civ. P. 8(c)(5).

1 22. Upon information and belief, Menaged was the sole member of Arizona
2 Home Foreclosures, LLC (“AZHF”).

3 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
4 as to the truth of the allegations in Paragraph 22, which therefore has the effect of a denial
5 pursuant to Ariz. R. Civ. P. 8(c)(5).

6 23. Menaged held himself, Easy Investments, and AZHF to be in the business
7 of purchasing homes being foreclosed upon at trustee’s sales.

8 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
9 as to the truth of the allegations in Paragraph 23, which therefore has the effect of a denial
10 pursuant to Ariz. R. Civ. P. 8(c)(5).

11 24. DenSco made “hard money loans” to Menaged, Easy Investments, and
12 AZHF for the purpose of purchasing foreclosed upon homes at trustees’ sales (the
13 “DenSco Loan Proceeds”). Menaged established a business relationship with DenSco in
14 approximately 2007. Over the years, Menaged developed with Chittick a personal
15 friendship and a business relationship such that DenSco put its trust and confidence in
16 Menaged’s integrity and fidelity.

17 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
18 as to the truth of the allegations in Paragraph 24, which therefore has the effect of a denial
19 pursuant to Ariz. R. Civ. P. 8(c)(5).

20 25. Menaged betrayed his fiduciary relationship with DenSco, and the oral and
21 written commitments he made to DenSco, by perpetrating two separate and distinct
22 fraudulent schemes against DenSco.

23 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
24 as to the truth of the allegations in Paragraph 25, which therefore has the effect of a denial
25 pursuant to Ariz. R. Civ. P. 8(c)(5).

26 26. In the first scheme (the “First Fraud”), which ended in the latter half of
27 2013, on multiple occasions, Menaged obtained loans from DenSco and another hard
28 money lender to acquire property being sold through a trustee’s sale that was intended to

1 be secured by that property. This resulted in DenSco being undersecured on multiple
2 loans and the DenSco Loan Proceeds being used by Menaged for other purposes.
3 Menaged was able to orchestrate the First Fraud in part because Chittick funded DenSco's
4 loans by paying the proceeds directly to Menaged rather than the trustee or escrow
5 company conducting the trustee's sale.

6 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
7 as to the truth of the allegations in Paragraph 26, which therefore has the effect of a denial
8 pursuant to Ariz. R. Civ. P. 8(c)(5).

9 27. Chittick discovered the First Fraud in or around November 2013.

10 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
11 as to the truth of the allegations in Paragraph 27, which therefore has the effect of a denial
12 pursuant to Ariz. R. Civ. P. 8(c)(5).

13 28. On November 27, 2013, in a face-to-face meeting, Chittick confronted
14 Menaged about the loans he had obtained from DenSco and another hard money lender
15 for the same property. Menaged falsely said that his wife had cancer and that his "cousin"
16 had masterminded and perpetrated the First Fraud while he was distracted by caring for
17 his sick wife.

18 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
19 as to the truth of the allegations in Paragraph 28, which therefore has the effect of a denial
20 pursuant to Ariz. R. Civ. P. 8(c)(5).

21 29. Chittick, believing Menaged's story, agreed with Menaged that DenSco
22 would continue loaning money to Menaged's entities so that DenSco and Menaged could
23 jointly and collaboratively "work out" the problem loans that resulted from the conduct
24 of Menaged's cousin. DenSco relied upon Menaged's representations that he would use
25 all future loans from DenSco for their intended purpose and would work closely with
26 DenSco to complete the "work out" plan. DenSco's decision to put trust and confidence
27 in Menaged, and to rely upon him as a fiduciary to effectuate the "work out" plan, is
28 reflected in numerous written communications between Chittick and Menaged that began

1 in December 2013 and continued for years thereafter, as well as a Term Sheet that
2 DenSco, Menaged, Arizona Home Foreclosures, LLC and Easy Investment, LLC signed
3 in January 2014.

4 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
5 as to the truth of the allegations in Paragraph 29, which therefore has the effect of a denial
6 pursuant to Ariz. R. Civ. P. 8(c)(5).

7 30. In January 2014, Chittick sought advice from DenSco's attorney, David
8 Beauchamp ("Beauchamp") about his plan to continue DenSco's lending relationship
9 with Menaged's entities.

10 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
11 as to the truth of the allegations in Paragraph 30, which therefore has the effect of a denial
12 pursuant to Ariz. R. Civ. P. 8(c)(5).

13 31. DenSco eventually entered into a Forbearance Agreement with Menaged
14 and his entities under which DenSco would forbear its rights and remedies against
15 Menaged and those entities, provided Menaged would among other things, pay certain
16 sums and take other actions to repay the amounts owed to DenSco, including the actions
17 Menaged had previously agreed to take to effectuate the "work out" plan.

18 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
19 as to the truth of the allegations in Paragraph 31, which therefore has the effect of a denial
20 pursuant to Ariz. R. Civ. P. 8(c)(5).

21 32. While DenSco continued to rely on Menaged's integrity and fidelity in
22 fulfilling the commitments that he and his entities had made to effectuate the "work out"
23 plan, in January 2014, Chittick, on Beauchamp's advice, took steps to protect DenSco
24 from any further misappropriation of its loan proceeds by requiring Menaged to document
25 his receipt and use of those loan proceeds, which DenSco had not previously required.
26 Specifically, DenSco agreed to continue wiring money to Menaged but required Menaged
27 to provide, for each loan made for a specific property, copies of: (i) the individual
28 cashier's check issued by Menaged's bank made payable to the respective foreclosure

1 trustee, with DenSco's name and the property address in the memo line, and (ii) the
2 corresponding receipt Menaged received from the trustee for the purchase of that
3 property.

4 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
5 as to the truth of the allegations in Paragraph 32, which therefore has the effect of a denial
6 pursuant to Ariz. R. Civ. P. 8(c)(5).

7 33. Chittick, relying on, and trusting in Menaged, did not believe that Menaged
8 had perpetrated the First Fraud and continued to accept as true, Menaged's stories about
9 his wife's compromised health. Chittick understood that he owed fiduciary duties to his
10 investors, many of whom were family members or friends, to recoup DenSco's losses
11 from the First Fraud and to protect DenSco from further losses. He relied on DenSco's
12 counsel, Beauchamp, in implementing these new procedures and believed they would
13 adequately protect DenSco from any further misappropriation of loan proceeds. Chittick
14 and DenSco continued to rely on Menaged's integrity and fidelity in fulfilling the
15 commitments that Menaged and his entities had made to effectuate the "work out" plan.

16 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
17 as to the truth of the allegations in Paragraph 33, which therefore has the effect of a denial
18 pursuant to Ariz. R. Civ. P. 8(c)(5).

19 34. Menaged, however, fooled Chittick a second time and began a systematic
20 and comprehensive scheme to defraud DenSco by obtaining, but then redepositing,
21 cashier's checks, and then creating false deeds, contracts and receipts documenting the
22 fictitious purchase of real estate at a trustee's sale (the "Second Fraud"). As part of the
23 Second Fraud, Menaged obtained over 1,400 loans from DenSco beginning in January
24 2014. Menaged did not use these loan proceeds for their intended purpose—to purchase
25 real estate at a trustee's sale.

26 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
27 as to the truth of the allegations in Paragraph 34, which therefore has the effect of a denial
28 pursuant to Ariz. R. Civ. P. 8(c)(5).

1 35. Starting in January 2014, Menaged emailed to DenSco nearly every
2 weekday a list of properties in foreclosure proceedings (“Identified Properties”).

3 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
4 as to the truth of the allegations in Paragraph 35, which therefore has the effect of a denial
5 pursuant to Ariz. R. Civ. P. 8(c)(5).

6 36. In those emails, Menaged misrepresented that (i) he was the winning bidder
7 on the listed properties at a trustee’s sale, (ii) his companies, Easy Investments or AZHF,
8 needed financing to purchase the Identified Properties, and (iii) he would use DenSco’s
9 loaned funds to complete the purchase of the Identified Properties.

10 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
11 as to the truth of the allegations in Paragraph 36, which therefore has the effect of a denial
12 pursuant to Ariz. R. Civ. P. 8(c)(5).

13 37. These emails included, among other things, the addresses of the Identified
14 Properties and the purchase prices needed to be reflected in the loan amounts.

15 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
16 as to the truth of the allegations in Paragraph 37, which therefore has the effect of a denial
17 pursuant to Ariz. R. Civ. P. 8(c)(5).

18 38. Menaged never intended to purchase the Identified Properties. Rather, he
19 intended for DenSco to rely on these material misrepresentations and wire him the
20 DenSco Loan Proceeds that he would convert for his personal use.

21 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
22 as to the truth of the allegations in Paragraph 38, which therefore has the effect of a denial
23 pursuant to Ariz. R. Civ. P. 8(c)(5).

24 39. DenSco relied on these material misrepresentations and continued to wire
25 the DenSco Loan Proceeds to Menaged.

26 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
27 as to the truth of the allegations in Paragraph 39, which therefore has the effect of a denial
28 pursuant to Ariz. R. Civ. P. 8(c)(5).

1 40. Menaged concealed from DenSco his scheme and his wrongful actions.

2 **RESPONSE:** Nelson lacks knowledge or information sufficient to form a belief
3 as to the truth of the allegations in Paragraph 40, which therefore has the effect of a denial
4 pursuant to Ariz. R. Civ. P. 8(c)(5).

5 41. DenSco was damaged as a result of Menaged's fraudulent scheme.

6 **RESPONSE:** Paragraph 41 contains legal conclusions to which no response is
7 required. To the extent a response is required, Nelson lacks knowledge and information
8 sufficient to form a belief as to the truth of the allegations in Paragraph 41, which
9 therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

10 42. From December 2012 through May 2016, Menaged and Easy Investments
11 maintained a series of accounts with US Bank.

12 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
13 as to the truth of the allegations in Paragraph 42, which therefore has the effect of a denial
14 pursuant to Ariz. R. Civ. P. 8(c)(5).

15 43. Menaged banked at US Bank's branch located at 6611 W. Bell Road,
16 Glendale, Arizona (the "US Bank Branch").

17 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
18 as to the truth of the allegations in Paragraph 43, which therefore has the effect of a denial
19 pursuant to Ariz. R. Civ. P. 8(c)(5).

20 44. US Bank assigned its Vice President Julia A. Wanta to serve as Menaged's
21 Private Banking Relationship Manager to oversee and facilitate Menaged's relationship
22 with US Bank.

23 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
24 as to the truth of the allegations in Paragraph 44, which therefore has the effect of a denial
25 pursuant to Ariz. R. Civ. P. 8(c)(5).

26 45. Defendant Chavez worked at US Bank and was the manager of the US Bank
27 Branch.
28

1 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
2 as to the truth of the allegations in Paragraph 45, which therefore has the effect of a denial
3 pursuant to Ariz. R. Civ. P. 8(c)(5).

4 46. Chavez was Menaged's main contact at US Bank. She committed the
5 wrongful acts set forth below while conducting official US Bank business. On
6 information and belief, Wanta and other US Bank senior managers authorized, ratified or
7 recklessly tolerated the account activity that Chavez directed and supervised.

8 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
9 as to the truth of the allegations in Paragraph 46, which therefore has the effect of a denial
10 pursuant to Ariz. R. Civ. P. 8(c)(5).

11 47. US Bank and Defendant Chavez may be referred to as "the US Bank
12 Defendants."

13 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
14 as to the truth of the allegations in Paragraph 47, which therefore has the effect of a denial
15 pursuant to Ariz. R. Civ. P. 8(c)(5).

16 48. Menaged told the US Bank Defendants that, through Easy Investments, he
17 was in the business of purchasing foreclosed homes from public auctions.

18 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
19 as to the truth of the allegations in Paragraph 48, which therefore has the effect of a denial
20 pursuant to Ariz. R. Civ. P. 8(c)(5).

21 49. Menaged further told the US Bank Defendants of his business relationship
22 with DenSco, including the fact that DenSco funded these transactions, lending money to
23 Easy Investments for the purpose of buying foreclosed homes.

24 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
25 as to the truth of the allegations in Paragraph 49, which therefore has the effect of a denial
26 pursuant to Ariz. R. Civ. P. 8(c)(5).

1 50. Between January 13 and April 7, 2014, DenSco wired to Menaged's Easy
2 Investments US Bank account \$7,228,002 in DenSco Loan Proceeds for the purpose of
3 issuing cashier's checks to purchase 40 separate Identified Properties.

4 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
5 as to the truth of the allegations in Paragraph 50, which therefore has the effect of a denial
6 pursuant to Ariz. R. Civ. P. 8(c)(5).

7 51. The US Bank Defendants knew of Menaged's business relationship with
8 DenSco and knew DenSco was the source of these monies, as each wire transfer included
9 the name of the originator -- "DenSco Investment Corporation" -- the entity the US Bank
10 Defendants knew was the funding source for Menaged's Easy Investments home
11 foreclosure business.

12 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
13 as to the truth of the allegations in Paragraph 51, which therefore has the effect of a denial
14 pursuant to Ariz. R. Civ. P. 8(c)(5).

15 52. Approximately 78% of the deposits to Menaged's US Bank Easy
16 Investments account consisted of the DenSco Loan Proceeds wired to Menaged to
17 purchase the Identified Properties.

18 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
19 as to the truth of the allegations in Paragraph 52, which therefore has the effect of a denial
20 pursuant to Ariz. R. Civ. P. 8(c)(5).

21 53. On or about the day DenSco wired monies to the Easy Investments account,
22 Menaged, or his assistant, Veronica Castro, visited the US Bank Branch, where Chavez
23 and other US Bank employees assisted them.

24 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
25 as to the truth of the allegations in Paragraph 53, which therefore has the effect of a denial
26 pursuant to Ariz. R. Civ. P. 8(c)(5).

27 54. Among other things, Chavez and other US Bank employees issued cashier's
28 checks made payable to the trustee for each of the Identified Properties.

1 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
2 as to the truth of the allegations in Paragraph 54, which therefore has the effect of a denial
3 pursuant to Ariz. R. Civ. P. 8(c)(5).

4 55. Chavez and other US Bank employees printed on each check in the memo
5 line: “DenSco Payment [and address of the property]” or “DenSco [and address of the
6 property]”.

7 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
8 as to the truth of the allegations in Paragraph 55, which therefore has the effect of a denial
9 pursuant to Ariz. R. Civ. P. 8(c)(5).

10 56. For nearly each of the 40 checks, which totaled \$6,823,039, Menaged did
11 not use the check for its intended purpose -- the payment to the trustee for the purchase
12 of real property described on each check.

13 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
14 as to the truth of the allegations in Paragraph 56, which therefore has the effect of a denial
15 pursuant to Ariz. R. Civ. P. 8(c)(5).

16 57. Rather, Menaged or Castro took a photo of each check while at the US Bank
17 Branch, usually in the presence of Chavez or another US Bank employee. After taking
18 these photos, Menaged or Castro had Chavez or another US Bank employee redeposit the
19 check into his Easy Investments account.

20 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
21 as to the truth of the allegations in Paragraph 57, which therefore has the effect of a denial
22 pursuant to Ariz. R. Civ. P. 8(c)(5).

23 58. Upon information and belief, neither Chavez nor any US Bank employee
24 asked Menaged or Castro why, at least 40 times, they undertook to have US Bank draft
25 cashier’s checks clearly and expressly intended to purchase from trustees specific
26 foreclosed homes as part of Menaged’s business partnership with DenSco, take photos of
27 those checks and then immediately re-deposit them. A single such transaction lacks any
28

1 legitimate business or banking purpose. Forty or more of them, involving nearly \$7
2 million dollars, is inexplicable.

3 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
4 as to the truth of the allegations in Paragraph 58, which therefore has the effect of a denial
5 pursuant to Ariz. R. Civ. P. 8(c)(5).

6 59. For every one of these issued and redeposited cashier's checks, Menaged
7 or Castro emailed a photo of the check to DenSco as proof that the DenSco Loan Proceeds
8 were being used for their intended purpose. Menaged or Castro would later create false
9 trustee's sale receipts for each transaction, which included information from the
10 photograph of the cashier's check connected to the same fictitious transactions. Menaged
11 or Castro emailed these receipts to DenSco, as well. Chittick relied upon the photographs
12 of the cashier's checks and accepted these photos and sales receipts as confirmation that
13 the DenSco Loan Proceeds were being used for their intended purpose.

14 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
15 as to the truth of the allegations in Paragraph 59, which therefore has the effect of a denial
16 pursuant to Ariz. R. Civ. P. 8(c)(5).

17 60. The US Bank Defendants knew that Menaged was taking photos of the
18 checks and had to have known that he was sending them to DenSco as proof that the
19 DenSco Loan Proceeds were being used for their intended purpose. And the US Bank
20 Defendants knew that Menaged used the DenSco Loan Proceeds for his personal benefit
21 and for the benefit of his other businesses, as they assisted him in obtaining large cash
22 withdrawals of the re-deposited funds and transferring those funds to his personal US
23 Bank accounts, and were otherwise aware that he used these funds to pay off personal
24 credit card debt and to fund unrelated business activities.

25 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
26 as to the truth of the allegations in Paragraph 60, which therefore has the effect of a denial
27 pursuant to Ariz. R. Civ. P. 8(c)(5).
28

1 61. Upon information and belief, Menaged requested and the US Bank
2 Defendants agreed to change US Bank policies at the US Bank Branch, keeping on hand
3 as much as \$20,000 in cash to accommodate Menaged's withdrawal requests.

4 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
5 as to the truth of the allegations in Paragraph 61, which therefore has the effect of a denial
6 pursuant to Ariz. R. Civ. P. 8(c)(5).

7 62. Upon information and belief, the US Bank Defendants violated their
8 internal policies by not requiring a several-day hold period on redeposited funds, making
9 them immediately available to Menaged.

10 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
11 as to the truth of the allegations in Paragraph 62, which therefore has the effect of a denial
12 pursuant to Ariz. R. Civ. P. 8(c)(5).

13 63. The US Bank Defendants were motivated to assist Menaged in these
14 transactions to keep Menaged as a banking customer, particularly one who maintained
15 accounts worth millions of dollars. On information and belief, by keeping Menaged's
16 accounts at US Bank, Chavez, Wanta and other US Bank employees benefitted personally
17 in the form of additional compensation.

18 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
19 as to the truth of the allegations in Paragraph 63, which therefore has the effect of a denial
20 pursuant to Ariz. R. Civ. P. 8(c)(5).

21 64. The US Bank Defendants kept silent as to Menaged's scheme and wrongful
22 actions; they never informed DenSco about Menaged's scheme and wrongful actions.

23 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
24 as to the truth of the allegations in Paragraph 64, which therefore has the effect of a denial
25 pursuant to Ariz. R. Civ. P. 8(c)(5).

26 65. Without the substantial assistance of the US Bank Defendants, Menaged
27 could not have defrauded DenSco of more than \$7 million in DenSco Loan Proceeds.
28

1 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
2 as to the truth of the allegations in Paragraph 65, which therefore has the effect of a denial
3 pursuant to Ariz. R. Civ. P. 8(c)(5).

4 66. From April 2014 through at least November 2016, Menaged and AZHF
5 banked with Chase.

6 **RESPONSE:** Nelson admits that AZHF had an account with Chase. Nelson lacks
7 knowledge and information sufficient to form a belief as to the truth of the remaining
8 allegations in Paragraph 66, which therefore has the effect of a denial pursuant to Ariz.
9 R. Civ. P. 8(c)(5).

10 67. Menaged banked at Chase's branch located at 8999 East Shea Boulevard,
11 Scottsdale, Arizona (the "Chase Branch"). Chase assigned a Private Client Banker, Susan
12 Lazar, to oversee Menaged's accounts and facilitate his banking relationship with Chase.
13 Lazar communicated regularly with Menaged about his business, his relationship with
14 DenSco, and his banking activity at Chase.

15 **RESPONSE:** Nelson admits only that Menaged banked at Chase's branch located
16 at 8999 East Shea Boulevard, Scottsdale, Arizona. Nelson lacks knowledge and
17 information sufficient to form a belief as to the truth of the remaining allegations in
18 Paragraph 67, which therefore has the effect of a denial pursuant to Ariz. R. Civ. P.
19 8(c)(5).

20 68. From April 2014 through at least November 2016, Defendants Nelson and
21 Dadlani worked at Chase as the assistant manager and/or manager at the Chase Branch.
22 They committed the wrongful acts set forth below while conducting official Chase
23 business. Lazar and other Chase employees, including higher-level employees who
24 managed and supervised Nelson and Dadlani, were aware and ratified their conduct.

25 **RESPONSE:** Nelson admits only that she worked at Chase as an assistant branch
26 manager. Nelson denies the remaining allegations that pertain to her. Nelson lacks
27 knowledge and information sufficient to form a belief as to the truth of the remaining
28

1 allegations in Paragraph 68, which therefore has the effect of a denial pursuant to Ariz.
2 R. Civ. P. 8(c)(5).

3 69. Upon information and belief, Lazar and Defendants Nelson and Dadlani
4 were Menaged's main contacts at Chase.

5 **RESPONSE:** Nelson admits that she assisted customers at the branch, including
6 Menaged, in her role as a Chase employee. Nelson lacks knowledge and information
7 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 69,
8 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

9 70. Chase, Nelson, and Dadlani may be referred to as "the Chase Defendants."

10 **RESPONSE:** Paragraph 70 does not call for a response. To the extent Paragraph
11 70 does call for a response, Nelson admits that Plaintiff has created this definition.

12 71. Menaged regularly told the Chase Defendants that, through AZHF, he was
13 in the business of purchasing foreclosed homes from public auctions.

14 **RESPONSE:** Nelson denies the allegations in Paragraph 71.

15 72. Menaged further told the Chase Defendants about his business relationship
16 with DenSco and that DenSco funded these transactions, lending money to AZHF for the
17 purpose of buying foreclosed homes.

18 **RESPONSE:** Nelson denies the allegations in Paragraph 72.

19 73. On information and belief, Nelson told Menaged that she was interested in
20 purchasing a home that he acquired through this process.

21 **RESPONSE:** Nelson denies the allegations in Paragraph 73.

22 74. Between April 10, 2014 and June 22, 2015, DenSco wired to Menaged's
23 AZHF account \$323,638,517 in DenSco Loan Proceeds for the purpose of issuing
24 cashier's checks to purchase 1,344 separate Identified Properties.

25 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
26 as to the truth of the allegations in Paragraph 74, which therefore has the effect of a denial
27 pursuant to Ariz. R. Civ. P. 8(c)(5).
28

1 75. The Chase Defendants knew the source of these monies as each wire
2 transfer included the name of the originator -- "DenSco Investment Corp" -- the entity the
3 Chase Defendants knew was the funding source for Menaged's AZHF home foreclosure
4 business.

5 **RESPONSE:** Nelson denies the allegations in Paragraph 75.

6 76. Approximately 96% of all deposits in Menaged's AZHF account consisted
7 of the DenSco Loan Proceeds wired to Menaged to purchase the Identified Properties.

8 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
9 as to the truth of the allegations in Paragraph 76, which therefore has the effect of a denial
10 pursuant to Ariz. R. Civ. P. 8(c)(5).

11 77. Nearly every weekday between April 2014 and June 2015, Menaged
12 emailed the Chase Defendants for assistance in converting to cashier's checks for the
13 purchase of the Identified Properties the monies DenSco had wired or was wiring into the
14 AZHF account.

15 **RESPONSE:** Nelson admits that, during the time that Menaged banked with
16 Chase, he at times sent emails to Chase, seeking assistance in obtaining cashier's checks.
17 Nelson lacks knowledge and information sufficient to form a belief as to the truth of the
18 remaining allegations in Paragraph 77, which therefore has the effect of a denial pursuant
19 to Ariz. R. Civ. P. 8(c)(5).

20 78. In these emails, Menaged provided the Chase Defendants a list of the
21 Identified Properties for which he purported to have submitted the winning bid, the name
22 of the trustee, the purchase price, and the property address.

23 **RESPONSE:** Nelson admits that, during the time that Menaged banked with
24 Chase, he at times sent emails to Chase, seeking assistance in obtaining cashier's checks.
25 Nelson lacks knowledge and information sufficient to form a belief as to the truth of the
26 remaining allegations in Paragraph 78, which therefore has the effect of a denial pursuant
27 to Ariz. R. Civ. P. 8(c)(5).

1 79. Menaged directed the Chase Defendants and other Chase employees to
2 prepare cashier's checks for each of the Identified Properties.

3 **RESPONSE:** Nelson admits that, during the time that Menaged banked with
4 Chase, he at times sent emails to Chase, seeking assistance in obtaining cashier's checks.
5 Nelson lacks knowledge and information sufficient to form a belief as to the truth of the
6 remaining allegations in Paragraph 79, which therefore has the effect of a denial pursuant
7 to Ariz. R. Civ. P. 8(c)(5).

8 80. Menaged directed the Chase Defendants and other Chase employees to
9 include on each check the name of the trustee, the purchase price, and in the memo line:
10 "DenSco Payment [and address of the property]" or "DenSco [and address of the
11 property]".

12 **RESPONSE:** Nelson admits that, during the time that Menaged banked with
13 Chase, he at times sent emails to Chase that contained information to be inserted on a
14 memo line on a cashier's check. Nelson lacks knowledge and information sufficient to
15 form a belief as to the truth of the remaining allegations in Paragraph 80, which therefore
16 has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

17 81. The Chase Defendants knew that Menaged did not use the 1,344 cashier's
18 checks for their intended and obvious purpose -- the payment to the trustee for the
19 purchase of real property described on each check -- because they were at all times willing
20 to, and in fact did, almost immediately redeposit those funds so that Menaged could use
21 them for other purposes.

22 **RESPONSE:** Nelson denies the allegations in Paragraph 81.

23 82. Nearly every weekday between April 2014 and June 2015, Menaged or
24 Castro would physically go into the Chase Bank Branch where they would receive the
25 cashier's checks the Chase Defendants had prepared for that day. Menaged or Castro
26 would, usually in the presence of Nelson, Dadlani or another Chase employee, take a
27 photo of each cashier's check, after which Nelson, Dadlani or another Chase employee
28 would re-deposit the check in Menaged's AZHF account.

1 **RESPONSE:** Nelson denies the allegations in Paragraph 82.

2 83. For each of the 1,344 checks, which totaled \$311,241,842, Menaged did not
3 use the check for its intended purpose – the payment to the trustee for the purchase of real
4 property described on each check.

5 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
6 as to the truth of the allegations in Paragraph 83, which therefore has the effect of a denial
7 pursuant to Ariz. R. Civ. P. 8(c)(5).

8 84. Upon information and belief, on one occasion, Nelson asked Menaged why
9 he obtained and redeposited cashier's checks, to which he responded: "bookkeeping."
10 Nelson did not ask Menaged what he meant by "bookkeeping" or how that related to his
11 use of the cashier's checks. Nelson further did not ask Menaged why he was taking photos
12 of each cashier's check.

13 **RESPONSE:** Nelson denies the allegations in Paragraph 84.

14 85. Upon information and belief, Nelson electronically filed in or about
15 April/May 2014 two unusual activity reports, she says, because (i) of the number and
16 amounts of the cashier's checks Menaged was redepositing on a daily basis, (ii) "his
17 transactions were different," and (iii) "the entire thing was unusual."

18 **RESPONSE:** Nelson admits only that she submitted two unusual activity reports.
19 Nelson denies the remaining allegations in Paragraph 85.

20 86. Chase opened an internal investigative file in response to Nelson's report.
21 Chase noted in that file that the report was for "money laundering concerns" and that
22 "further investigation [was] needed." Upon information and belief, Chase performed no
23 further investigation, and Nelson did not file an additional report or conduct any further
24 inquiry.

25 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
26 as to the truth of the allegations in Paragraph 86, which therefore has the effect of a denial
27 pursuant to Ariz. R. Civ. P. 8(c)(5).

1 87. Upon information and belief, Nelson did not share her concerns with
2 Dadlani or any other employee at the Chase Branch, as she felt she need do nothing more
3 than file two reports in response to which, to the best of her knowledge, nothing further
4 was done.

5 **RESPONSE:** Nelson denies the allegation in Paragraph 87.

6 88. Upon information and belief, neither Nelson, Dadlani nor any Chase
7 employee asked Menaged or Castro why, more than 1,344 times, they undertook to have
8 Chase draft cashier's checks clearly and expressly intended to purchase from trustees
9 specific foreclosed homes as part of Menaged's business partnership with DenSco, take
10 photos of those checks and immediately re-deposit them. A single such transaction lacks
11 any legitimate business or banking purpose. 1,344 of them, involving over \$300 million,
12 is inexplicable.

13 **RESPONSE:** Nelson denies the allegations in Paragraph 88.

14 89. Menaged or Castro would email to DenSco each cashier's check photo as
15 proof of the transaction. Menaged or Castro would later create false trustee's sale receipts
16 for each transaction that included information from the cashier's check connected to the
17 same fictitious transactions. Menaged or Castro emailed these receipts to DenSco, as well.
18 Chittick relied upon the photographs of the cashier's checks and accepted these photos
19 and sales receipts as confirmation that the DenSco Loan Proceeds were being used for
20 their intended purpose.

21 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
22 as to the truth of the allegations in Paragraph 89, which therefore has the effect of a denial
23 pursuant to Ariz. R. Civ. P. 8(c)(5).

24 90. The Chase Defendants knew that Menaged was taking photos of the checks
25 and had to have known that he was sending them to DenSco as proof that DenSco's Loan
26 Proceeds were being used for their intended purpose. And the Chase Defendants knew
27 that Menaged used the DenSco Loan Proceeds for his personal benefit, as they assisted
28

1 him in re-depositing these funds, obtaining large cash withdrawals of the re-deposited
2 funds, and transferring these funds to Menaged's personal Chase accounts.

3 **RESPONSE:** Nelson denies the allegations in Paragraph 90.

4 91. Upon information and belief, shortly after Menaged began deploying this
5 scheme through the Chase Defendants in April 2014, and in recognition of the fact that
6 Menaged was every weekday having Chase issue and immediately re-deposit multiple
7 cashier's checks, each for hundreds of thousands of dollars, Nelson or another Chase
8 employee began stamping on the back of each check the words "Not Used For Intended
9 Purposes". The Chase Defendants told Menaged they would stamp each check with those
10 words unless he communicated to them before coming into the Chase Branch his intent
11 to not immediately re-deposit the check.

12 **RESPONSE:** Nelson denies the allegations in Paragraph 91.

13 92. Upon information and belief, the Chase Defendants informed Menaged that
14 they were legally obligated to report to the government any cash transaction over \$10,000
15 and that their internal processes would likely trigger a suspicious activity report if a
16 transaction was just under \$10,000, such that the Chase Defendants advised Menaged to
17 withdraw or deposit cash in amounts that would avoid either report being made. Menaged
18 followed this advice.

19 **RESPONSE:** Nelson denies the allegations in Paragraph 92.

20 93. The Chase Defendants further knew of, assisted with, and recklessly
21 tolerated Menaged's misappropriation of the DenSco Loan Proceeds that had been
22 deposited in his AZHF account for, among other things, recreational gambling. Among
23 other things, the Chase Defendants (i) increased to approximately \$40,000 the spending
24 limit on Menaged's AZHF debit card to avoid Chase's fraud prevention department
25 flagging the account or declining the card, (ii) asked Chase's fraud prevention department
26 to remove suspensions or "flags" on the AZHF debit card due to the high dollar amounts
27 that were being charged at casinos, (iii) initiated outgoing wire transfers and issued
28

1 cashier's checks from Menaged's AZHF account to various casinos, and (iv) confirmed
2 with various casinos that these cashier's checks or wire transfers were legitimate.

3 **RESPONSE:** Nelson denies the allegations in Paragraph 93.

4 94. Upon information and belief, the Chase Defendants knew of, assisted, and
5 recklessly tolerated Menaged's unlawful use of the DenSco Loan Proceeds by not
6 following their own policies and procedures, including (i) regularly violating Chase's
7 multi-day hold policy before wire-transferred funds can be withdrawn, (ii) systematically
8 overriding the 5-7 day hold policy for the funds of re-deposited cashier's checks, and (iii)
9 contravening Chase's policy requiring an account holder to sign in person the
10 documentation for a cashier's check, and issuing them in response to Menaged's emails.

11 **RESPONSE:** Nelson denies the allegations in Paragraph 94.

12 95. The Chase Defendants were motivated to assist Menaged in these
13 transactions to keep Menaged as a banking customer, particularly one who maintained
14 accounts worth millions of dollars. On information and belief, by keeping Menaged's
15 accounts at Chase, Lazar, Dadlani, Nelson, and other Chase employees benefitted
16 personally in the form of additional compensation.

17 **RESPONSE:** Nelson denies the allegations in Paragraph 95.

18 96. The Chase Defendants kept silent as to Menaged's scheme and wrongful
19 actions; they never informed DenSco about Menaged's scheme and wrongful actions.

20 **RESPONSE:** Nelson denies the allegations in Paragraph 96.

21 97. Without the substantial assistance of the Chase Defendants, Menaged could
22 not have defrauded DenSco of more than \$300 million in DenSco Loan Proceeds.

23 **RESPONSE:** Nelson denies the allegations in Paragraph 97.

24 98. In April 2016, Menaged filed for Chapter 7 bankruptcy.

25 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
26 as to the truth of the allegations in Paragraph 98, which therefore has the effect of a denial
27 pursuant to Ariz. R. Civ. P. 8(c)(5).
28

1 99. At the time, Menaged, AZHF and Easy Investments owed DenSco
2 approximately \$44 million in loans.

3 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
4 as to the truth of the allegations in Paragraph 99, which therefore has the effect of a denial
5 pursuant to Ariz. R. Civ. P. 8(c)(5).

6 100. When Chittick learned of the bankruptcy filings, he confronted Menaged,
7 who falsely said that the money owed to DenSco was safe and was being held at
8 Auction.com, an online marketplace for foreclosure buyers.

9 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
10 as to the truth of the allegations in Paragraph 100, which therefore has the effect of a
11 denial pursuant to Ariz. R. Civ. P. 8(c)(5).

12 101. Menaged further lied and told Chittick that Menaged would be able to
13 retrieve the money from Auction.com and repay DenSco when the bankruptcy action was
14 discharged.

15 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
16 as to the truth of the allegations in Paragraph 101, which therefore has the effect of a
17 denial pursuant to Ariz. R. Civ. P. 8(c)(5).

18 102. Menaged warned Chittick not tell anyone about the Auction.com
19 arrangement because the bankruptcy court would, if it learned of the funds, attempt to
20 pull them into the Chapter 7 action.

21 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
22 as to the truth of the allegations in Paragraph 102, which therefore has the effect of a
23 denial pursuant to Ariz. R. Civ. P. 8(c)(5).

24 103. Menaged also threatened Chittick that if he told anyone about Auction.com,
25 Menaged would testify that Chittick was complicit in the First Fraud and knew all along
26 that DenSco's loans were unsecured.

1 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
2 as to the truth of the allegations in Paragraph 103, which therefore has the effect of a
3 denial pursuant to Ariz. R. Civ. P. 8(c)(5).

4 104. On July 28, 2016, Chittick committed suicide.

5 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
6 as to the truth of the allegations in Paragraph 104, which therefore has the effect of a
7 denial pursuant to Ariz. R. Civ. P. 8(c)(5).

8 105. Chittick died unaware of the Second Fraud.

9 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
10 as to the truth of the allegations in Paragraph 105, which therefore has the effect of a
11 denial pursuant to Ariz. R. Civ. P. 8(c)(5).

12 106. The Receiver was appointed on August 18, 2016.

13 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
14 as to the truth of the allegations in Paragraph 106, which therefore has the effect of a
15 denial pursuant to Ariz. R. Civ. P. 8(c)(5).

16 107. On August 23, 2016, the Receiver obtained a document that vaguely
17 referenced how DenSco had altered its lending practices with Menaged and his entities in
18 January 2014. The Receiver immediately began investigating all funds DenSco had
19 loaned to Menaged, discovering that Menaged had not used the DenSco Loan Proceeds
20 for their intended purpose -- to purchase the Identified Properties.

21 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
22 as to the truth of the allegations in Paragraph 107, which therefore has the effect of a
23 denial pursuant to Ariz. R. Civ. P. 8(c)(5).

24 108. On or about October 3, 2016, the Receiver obtained selected documents
25 from a forensic image of Menaged's computers and cellphone, which included some
26 email communication with Chase employees.

1 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
2 as to the truth of the allegations in Paragraph 108, which therefore has the effect of a
3 denial pursuant to Ariz. R. Civ. P. 8(c)(5).

4 109. On October 20, 2016, the Receiver deposed Menaged.

5 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
6 as to the truth of the allegations in Paragraph 109, which therefore has the effect of a
7 denial pursuant to Ariz. R. Civ. P. 8(c)(5).

8 110. On November 7 and 8, 2016, the Receiver issued subpoenas to US Bank
9 and to Chase, who began to produce responsive documents.

10 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
11 as to the truth of the allegations in Paragraph 110, which therefore has the effect of a
12 denial pursuant to Ariz. R. Civ. P. 8(c)(5).

13 111. In the spring and summer of 2017, the Receiver performed a complete
14 forensic recreation of Menaged's banking activity.

15 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
16 as to the truth of the allegations in Paragraph 111, which therefore has the effect of a
17 denial pursuant to Ariz. R. Civ. P. 8(c)(5).

18 112. On December 8, 2017, counsel for the Receiver interviewed Menaged who
19 testified under oath regarding the Second Fraud and his involvement with US Bank and
20 Chase.

21 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
22 as to the truth of the allegations in Paragraph 112, which therefore has the effect of a
23 denial pursuant to Ariz. R. Civ. P. 8(c)(5).

24 113. Menaged testified at that time that, before he went into the Chase Branch to
25 sign for the cashier's checks and deposit, Nelson stamped on the back of the cashier's
26 checks "Not Used for Purposes Intended" or something similar, and further wrote on the
27 back of each check the AZHF account number to expedite Menaged's redeposit of the
28 DenSco Loan Proceeds.

1 **RESPONSE:** Nelson lacks knowledge and information sufficient to form a belief
2 as to the truth of the allegations in Paragraph 113, which therefore has the effect of a
3 denial pursuant to Ariz. R. Civ. P. 8(c)(5).

4 **COUNT ONE**
5 **(Aiding and Abetting Fraud: US Bank; Chavez)**

6 114. Paragraphs 1 through 113 are incorporated by reference.

7 **RESPONSE:** Paragraph 114 does not call for a response from Nelson. To the
8 extent a response is required, Nelson re-asserts and incorporates herein her responses to
9 Paragraphs 1 through 113 above.

10 115. Menaged engaged in fraudulent conduct that caused DenSco harm. In
11 particular:

12 a. Menaged represented to DenSco that, through the use of the
13 individual cashier's checks issued by the US Bank Defendants and fabricated trustees'
14 receipts, he was using the DenSco Loan Proceeds to purchase the Identified Properties.

15 b. These representations were false.

16 c. These representations were material, as DenSco relied on them to
17 conclude that Menaged had purchased the Identified Properties.

18 d. Menaged knew these representations were false and intended that
19 DenSco would act upon them in the manner Menaged reasonably intended.

20 e. DenSco, in fact, continued to act upon these representations, as it
21 wired Menaged additional DenSco Loan Proceeds to purchase new Identified Properties.

22 f. DenSco did not know Menaged's representations were false.

23 g. DenSco relied on Menaged's representations.

24 h. DenSco's reliance was reasonable and justified under the
25 circumstances.

26 i. As a result, DenSco suffered damages for which it is entitled to
27 compensation. In particular:

RESPONSE: Paragraph 115 states a legal conclusion to which no response is required. To the extent a response is required, Nelson lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 115, which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

116. The US Bank Defendants knew that Menaged was engaging in such conduct.

RESPONSE: Nelson lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 116, which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

117. The US Bank Defendants substantially assisted or encouraged Menaged in his fraud against DenSco.

RESPONSE: Nelson lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 117, which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

COUNT TWO

(Aiding and Abetting Fraud: Chase, Nelson and Dadlani)

118. Paragraphs 1 through 117 are incorporated by reference.

RESPONSE: Paragraph 118 does not call for a response from Nelson. To the extent a response is required, Nelson re-asserts and incorporates herein her responses to Paragraphs 1 through 117 above.

119. Menaged engaged in fraudulent conduct that caused DenSco harm. In particular:

- a. Menaged represented to DenSco that, through the use of the individual cashier's checks issued by the Chase Defendants and fabricated trustees' receipts, he was using the DenSco Loan Proceeds to purchase the Identified Properties.
- b. These representations were false.
- c. These representations were material, as DenSco relied on them to conclude that Menaged had purchased the Identified Properties.

1 d. Menaged knew these representations were false and intended that
2 DenSco would act upon them in the manner Menaged reasonably intended.

3 e. DenSco, in fact, continued to act upon these representations, as it
4 wired Menaged additional DenSco Loan Proceeds to purchase new Identified Properties.

5 f. DenSco did not know Menaged's representations were false.

6 g. DenSco relied on Menaged's representations.

7 h. DenSco's reliance was reasonable and justified under the
8 circumstances.

9 i. As a result, DenSco suffered damages for which it is entitled to
10 compensation.

11 **RESPONSE:** Paragraph 119 states a legal conclusion to which no response is
12 required. To the extent a response is required, Nelson lacks knowledge and information
13 sufficient to form a belief as to the truth of the allegations in Paragraph 119, which
14 therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

15 120. The Chase Defendants knew that Menaged was engaging in such conduct.

16 **RESPONSE:** Nelson denies the allegations in Paragraph 120.

17 121. The Chase Defendants substantially assisted or encouraged Menaged in his
18 fraud against DenSco.

19 **RESPONSE:** Nelson denies the allegations in Paragraph 121.

20 **COUNT THREE**
21 **(Aiding and Abetting Conversion: US Bank and Chavez)**

22 122. Paragraphs 1 through 121 are incorporated by reference.

23 **RESPONSE:** Count Three was dismissed by the Court's Under Advisement
24 Ruling, dated September 13, 2021, as to Defendants US Bank and Chavez. As such,
25 Paragraph 122 does not require a response from Nelson.

26 123. Menaged exercised wrongful dominion over DenSco's property by
27 repositing and using on a personal basis the DenSco Loan Proceeds, in denial of
28 DenSco's rights.

1 **RESPONSE:** Count Four was dismissed by the Court's Under Advisement
2 Ruling, dated September 13, 2021, as to Defendants Chase, Nelson and Dadlani. As such,
3 Paragraph 128 does not require a response from Nelson.

4 129. The Chase Defendants knew that Menaged was engaging in such conduct.

5 **RESPONSE:** Count Four was dismissed by the Court's Under Advisement
6 Ruling, dated September 13, 2021, as to Defendants Chase, Nelson and Dadlani. As such,
7 Paragraph 129 does not require a response from Nelson.

8 130. The Chase Defendants substantially assisted or encouraged Menaged in his
9 conversion against DenSco.

10 **RESPONSE:** Count Four was dismissed by the Court's Under Advisement
11 Ruling, dated September 13, 2021, as to Defendants Chase, Nelson and Dadlani. As such,
12 Paragraph 130 does not require a response from Nelson.

13 131. By reason of this conduct, DenSco was damaged.

14 **RESPONSE:** Count Four was dismissed by the Court's Under Advisement
15 Ruling, dated September 13, 2021, as to Defendants Chase, Nelson and Dadlani. As such,
16 Paragraph 131 does not require a response from Nelson.

17 **COUNT FIVE**

18 **(Aiding and Abetting Breach of Fiduciary Duty: US Bank and Chavez)**

19 132. Paragraphs 1 through 131 are incorporated by reference.

20 **RESPONSE:** Count Five was dismissed by the Court's Under Advisement
21 Ruling, dated September 13, 2021, as to Defendants US Bank and Chavez. As such,
22 Paragraph 132 does not require a response from Nelson.

23 133. Menaged, through his business relationship with DenSco, owed fiduciary
24 duties to DenSco.

25 **RESPONSE:** Count Five was dismissed by the Court's Under Advisement
26 Ruling, dated September 13, 2021, as to Defendants US Bank and Chavez. As such,
27 Paragraph 133 does not require a response from Nelson.

28 134. Menaged breached his fiduciary duties to DenSco.

1 **RESPONSE:** Count Five was dismissed by the Court's Under Advisement
2 Ruling, dated September 13, 2021, as to Defendants US Bank and Chavez. As such,
3 Paragraph 134 does not require a response from Nelson.

4 135. The US Bank Defendants knew that Menaged breached his fiduciary duties
5 to DenSco.

6 **RESPONSE:** Count Five was dismissed by the Court's Under Advisement
7 Ruling, dated September 13, 2021, as to Defendants US Bank and Chavez. As such,
8 Paragraph 135 does not require a response from Nelson.

9 136. The US Bank Defendants substantially assisted or encouraged Menaged in
10 the breach of his fiduciary duties to DenSco.

11 **RESPONSE:** Count Five was dismissed by the Court's Under Advisement
12 Ruling, dated September 13, 2021, as to Defendants US Bank and Chavez. As such,
13 Paragraph 136 does not require a response from Nelson.

14 137. By reason of this conduct DenSco was damaged.

15 **RESPONSE:** Count Five was dismissed by the Court's Under Advisement
16 Ruling, dated September 13, 2021, as to Defendants US Bank and Chavez. As such,
17 Paragraph 137 does not require a response from Nelson.

18 **COUNT SIX**

19 **(Aiding and Abetting Breach of Fiduciary Duty: Chase, Nelson and Dadlani)**

20 138. Paragraphs 1 through 137 are incorporated by reference.

21 **RESPONSE:** Count Six was dismissed by the Court's Under Advisement Ruling,
22 dated September 13, 2021, as to Defendants Chase, Nelson and Dadlani. As such,
23 Paragraph 138 does not require a response from Nelson.

24 139. Menaged, through his business relationship with DenSco, owed fiduciary
25 duties to DenSco.

26 **RESPONSE:** Count Six was dismissed by the Court's Under Advisement Ruling,
27 dated September 13, 2021, as to Defendants Chase, Nelson and Dadlani. As such,
28 Paragraph 139 does not require a response from Nelson.

2 **RESPONSE:** Count Six was dismissed by the Court’s Under Advisement Ruling,
3 dated September 13, 2021, as to Defendants Chase, Nelson and Dadlani. As such,
4 Paragraph 140 does not require a response from Nelson.

141. The Chase Defendants knew that Menaged breached his fiduciary duties to DenSco.

7 **RESPONSE:** Count Six was dismissed by the Court’s Under Advisement Ruling,
8 dated September 13, 2021, as to Defendants Chase, Nelson and Dadlani. As such,
9 Paragraph 141 does not require a response from Nelson.

10 142. The Chase Defendants substantially assisted or encouraged Menaged in the
11 breach of his fiduciary duties to DenSco.

12 **RESPONSE:** Count Six was dismissed by the Court’s Under Advisement Ruling,
13 dated September 13, 2021, as to Defendants Chase, Nelson and Dadlani. As such,
14 Paragraph 142 does not require a response from Nelson.

15 143. By reason of this conduct, DenSco was damaged.

16 **RESPONSE:** Count Six was dismissed by the Court’s Under Advisement Ruling,
17 dated September 13, 2021, as to Defendants Chase, Nelson and Dadlani. As such,
18 Paragraph 143 does not require a response from Nelson.

19 **COUNT SEVEN**
20 **(Civil Racketeering: US Bank and Chavez)**

21 144. Paragraphs 1 through 143 are incorporated by reference.

RESPONSE: Count Seven was dismissed as to Defendant US Bank by the Court's Under Advisement Ruling, dated September 13, 2021. Paragraph 144 does not call for a response from Nelson. To the extent a response is required, Nelson re-asserts and incorporates herein her responses to Paragraphs 1 through 143 above.

145. Menaged, Castro and others engaged in a pattern of unlawful activity for
the purpose of financial gain.

1 **RESPONSE:** Count Seven was dismissed as to Defendant US Bank by the Court's
2 Under Advisement Ruling, dated September 13, 2021. Nelson lacks knowledge and
3 information sufficient to form a belief as to the truth of the allegations in Paragraph 145,
4 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

5 146. For each occasion where the DenSco Loan Proceeds were not used for their
6 intended purpose and instead were re-deposited by Menaged for his personal use,
7 Menaged, Castro and others committed theft, money laundering, and engaged in a scheme
8 or artifice to defraud.

9 **RESPONSE:** Count Seven was dismissed as to Defendant US Bank by the Court's
10 Under Advisement Ruling, dated September 13, 2021. Nelson lacks knowledge and
11 information sufficient to form a belief as to the truth of the allegations in Paragraph 146,
12 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

13 147. Each theft, act of money laundering, and act in furtherance of the scheme
14 and artifice to defraud had the same purpose, the same participants and the same victim.

15 **RESPONSE:** Count Seven was dismissed as to Defendant US Bank by the Court's
16 Under Advisement Ruling, dated September 13, 2021. Nelson lacks knowledge and
17 information sufficient to form a belief as to the truth of the allegations in Paragraph 147,
18 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

19 148. Menaged, Castro and others engaged in theft by, without lawful authority,
20 knowingly controlling DenSco's property with the intent to deprive DenSco of that
21 property and by converting for an unauthorized term DenSco's property, acts that are
22 chargeable under Arizona law, that are punishable for more than one year, and were
23 committed for financial gain. A.R.S. § 13-1802(A).

24 **RESPONSE:** Count Seven was dismissed as to Defendant US Bank by the Court's
25 Under Advisement Ruling, dated September 13, 2021. Nelson lacks knowledge and
26 information sufficient to form a belief as to the truth of the allegations in Paragraph 148,
27 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).
28

1 149. Menaged, Castro and others engaged in money laundering in the second
2 degree by transacting, transferring and receiving racketeering proceeds knowing they
3 were the proceeds of an offense, acts that are chargeable under Arizona law, that are
4 punishable for more than one year, and were committed for financial gain. A.R.S. § 13-
5 2317(B).

6 **RESPONSE:** Count Seven was dismissed as to Defendant US Bank by the Court's
7 Under Advisement Ruling, dated September 13, 2021. Nelson lacks knowledge and
8 information sufficient to form a belief as to the truth of the allegations in Paragraph 149,
9 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

10 150. Menaged, Castro and others engaged in a scheme or artifice to defraud
11 DenSco by knowingly obtaining a benefit by means of false or fraudulent pretenses,
12 representation, promises or material omissions, acts that are chargeable under Arizona
13 law, that are punishable for more than one year, and were committed for financial gain.
14 A.R.S. § 13-2310.

15 **RESPONSE:** Count Seven was dismissed as to Defendant US Bank by the Court's
16 Under Advisement Ruling, dated September 13, 2021. Nelson lacks knowledge and
17 information sufficient to form a belief as to the truth of the allegations in Paragraph 150,
18 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

19 151. This pattern of unlawful activity caused DenSco's damages.

20 **RESPONSE:** Count Seven was dismissed as to Defendant US Bank by the Court's
21 Under Advisement Ruling, dated September 13, 2021. Nelson lacks knowledge and
22 information sufficient to form a belief as to the truth of the allegations in Paragraph 151,
23 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

24 152. DenSco's damages were a reasonably foreseeable result of this pattern of
25 unlawful activity.

26 **RESPONSE:** Count Seven was dismissed as to Defendant US Bank by the Court's
27 Under Advisement Ruling, dated September 13, 2021. Nelson lacks knowledge and
28

1 information sufficient to form a belief as to the truth of the allegations in Paragraph 152,
2 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

3 153. The US Bank Defendants, including high managerial agents, authorized,
4 ratified, and recklessly tolerated the conduct of Menaged, Castro and others and are
5 therefore liable for it. A.R.S. § 13-2314.04(L).

6 **RESPONSE:** Count Seven was dismissed as to Defendant US Bank by the Court's
7 Under Advisement Ruling, dated September 13, 2021. Nelson lacks knowledge and
8 information sufficient to form a belief as to the truth of the allegations in Paragraph 153,
9 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

10 **COUNT EIGHT**
11 **(Civil Racketeering: Chase, Nelson and Dadlani)**

12 154. Paragraphs 1 through 153 are incorporated by reference.

13 **RESPONSE:** Count Eight was dismissed as to Defendant Chase by the Court's
14 Under Advisement Ruling, dated September 13, 2021. Nelson re-asserts and incorporates
15 herein her responses to Paragraphs 1 through 153 above.

16 155. Menaged, Castro and others engaged in a pattern of unlawful activity for
17 the purpose of financial gain.

18 **RESPONSE:** Count Eight was dismissed as to Defendant Chase by the Court's
19 Under Advisement Ruling, dated September 13, 2021. Nelson denies the allegations in
20 Paragraph 155 insofar as they pertain to her. Nelson lacks knowledge and information
21 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 155,
22 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

23 156. For each occasion where the DenSco Loan Proceeds were not used for their
24 intended purpose and instead re-deposited by Menaged for his personal use, Menaged,
25 Castro and others committed theft, money laundering, and engaged in a scheme or artifice
26 to defraud.

27 **RESPONSE:** Count Eight was dismissed as to Defendant Chase by the Court's
28 Under Advisement Ruling, dated September 13, 2021. Nelson denies the allegations in

1 Paragraph 156 insofar as they pertain to her. Nelson lacks knowledge and information
2 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 156,
3 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

4 157. Each theft, act of money laundering and part of the scheme and artifice to
5 defraud had the same purpose, the same participants and the same victim.

6 **RESPONSE:** Count Eight was dismissed as to Defendant Chase by the Court's
7 Under Advisement Ruling, dated September 13, 2021. Nelson denies the allegations in
8 Paragraph 157 insofar as they pertain to her. Nelson lacks knowledge and information
9 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 157,
10 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

11 158. Menaged, Castro and others engaged in theft by, without lawful authority,
12 knowingly controlling DenSco's property with the intent to deprive DenSco of that
13 property and by converting for an unauthorized term DenSco's property, acts that are
14 chargeable under Arizona law, that are punishable for more than one year, and were
15 committed for financial gain. A.R.S. § 13-1802(A).

16 **RESPONSE:** Count Eight was dismissed as to Defendant Chase by the Court's
17 Under Advisement Ruling, dated September 13, 2021. Nelson denies the allegations in
18 Paragraph 158 insofar as they pertain to her. Nelson lacks knowledge and information
19 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 158,
20 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

21 159. Menaged, Castro and others engaged in money laundering in the second
22 degree by transacting, transferring and receiving racketeering proceeds knowing they
23 were the proceeds of an offense and by intentionally or knowingly evading reporting
24 requirements through structuring transactions and by causing Chase to fail to file required
25 reports for transfers over \$10,000, acts that are chargeable under Arizona law, that are
26 punishable for more than one year, and were committed for financial gain. A.R.S. § 13-
27 2317(B).

1 **RESPONSE:** Count Eight was dismissed as to Defendant Chase by the Court's
2 Under Advisement Ruling, dated September 13, 2021. Nelson denies the allegations in
3 Paragraph 159 insofar as they pertain to her. Nelson lacks knowledge and information
4 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 159,
5 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

6 160. Menaged, Castro and others engaged in a scheme or artifice to defraud
7 DenSco by knowingly obtaining a benefit by means of false or fraudulent pretenses,
8 representation, promises or material omissions, acts that are chargeable under Arizona
9 law, that are punishable for more than one year, and were committed for financial gain.
10 A.R.S. § 13-2310.

11 **RESPONSE:** Count Eight was dismissed as to Defendant Chase by the Court's
12 Under Advisement Ruling, dated September 13, 2021. Nelson denies the allegations in
13 Paragraph 160 insofar as they pertain to her. Nelson lacks knowledge and information
14 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 160,
15 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

16 161. This pattern of unlawful activity caused DenSco's damages.

17 **RESPONSE:** Count Eight was dismissed as to Defendant Chase by the Court's
18 Under Advisement Ruling, dated September 13, 2021. Nelson denies the allegations in
19 Paragraph 161 insofar as they pertain to her. Nelson lacks knowledge and information
20 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 161,
21 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

22 162. DenSco's damages were a reasonably foreseeably result of this pattern of
23 unlawful activity.

24 **RESPONSE:** Count Eight was dismissed as to Defendant Chase by the Court's
25 Under Advisement Ruling, dated September 13, 2021. Nelson denies the allegations in
26 Paragraph 162 insofar as they pertain to her. Nelson lacks knowledge and information
27 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 162,
28 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

1 163. The Chase Defendants, including high managerial agents, authorized,
2 ratified and recklessly tolerated the conduct of Menaged, Castro and others and are
3 therefore liable for it. A.R.S. § 13-2314.04(L).

4 **RESPONSE:** Count Eight was dismissed as to Defendant Chase by the Court's
5 Under Advisement Ruling, dated September 13, 2021. Nelson denies the allegations in
6 Paragraph 163 insofar as they pertain to her. Nelson lacks knowledge and information
7 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 163,
8 which therefore has the effect of a denial pursuant to Ariz. R. Civ. P. 8(c)(5).

9 **DENIAL OF ALLEGATIONS AND AFFIRMATIVE DEFENSES**

10 Except as expressly and specifically admitted above, Nelson denies each and every
11 allegation contained in the Third Amended Complaint. Nelson hereby sets forth her
12 Affirmative Defenses to the Third Amended Complaint. By listing any matter as a
13 defense, Nelson does not assume the burden of proof or any other burden if such burden
14 would be on the Receiver filing this matter on behalf of DenSco under applicable law.
15 Nelson reserves the right to add to, delete from, and/or modify its affirmative defenses as
16 this matter proceeds and its investigation continues.

17 **First Affirmative Defense**

18 The Receiver lacks standing to bring its claim. Any purported injury alleged herein
19 was to DenSco's investors, not DenSco itself. Thus, the third-party tort theory of liability
20 asserted here belongs to those investors, and not the Receiver, who stands in DenSco's
21 shoes, not DenSco's investors' shoes. Because the Receiver stands in the shoes of a
22 tarnished entity that benefitted from an alleged Ponzi scheme, he lacks standing to bring
23 third-party claims for aiding and abetting on behalf of the entity because the corporation
24 cannot be said to have suffered an injury from the scheme it helped to perpetrate.

25 **Second Affirmative Defense**

26 The Receiver's claim is barred by the applicable three-year statute of limitations,
27 which accrued no later than December 2014, after DenSco discovered Menaged's alleged
28 fraud.

Third Affirmative Defense

The Receiver's claim is barred in whole or in part by the doctrine of laches, as DenSco's delay in filing until 2019 constitutes an at least five-year delay in asserting its purported claim.

Fourth Affirmative Defense

The Receiver's claim is barred in whole or in part by the doctrine of waiver. DenSco waived any tort claim against Nelson by assenting to the conduct alleged herein during the time Menaged banked with Chase.

Fifth Affirmative Defense

The Receiver's claim is barred in whole or in part by the doctrine of acquiescence. DenSco acquiesced to the conduct alleged herein during the time that Menaged banked with Chase.

Sixth Affirmative Defense

The Receiver's claim is barred in whole or in part by the doctrine of estoppel. Plaintiff's claim inequitably and improperly repudiates DenSco's knowing and intelligent assent to Nelson's conduct alleged herein during the time Menaged banked with Chase.

Seventh Affirmative Defense

The Receiver's claim is barred in whole or in part by the doctrine of unclean hands. Any injury alleged herein was due in whole or in part to DenSco's own misconduct and mismanagement of investor funds.

Eighth Affirmative Defense

The Receiver's claim is barred in whole or in part by the doctrine of *in pari delicto*. Any injury alleged herein is at least equally the fault of DenSco's own misconduct and mismanagement of funds.

Ninth Affirmative Defense

The Receiver's claim is barred in whole or in part by the doctrine of comparative fault. Any injury alleged herein was caused, at least in part, by DenSco's own misconduct and mismanagement of funds.

Tenth Affirmative Defense

The Receiver's claim is barred in whole or in part by the doctrine of assumption of risk. In continuing to engage with Menaged after discovering that Menaged was using DenSco Loan Proceeds for his personal benefit, DenSco assumed the risks attendant to that continued engagement, including the potential that Menaged would injure DenSco investors by continuing to use DenSco Loan Proceeds for his personal benefit.

Eleventh Affirmative Defense

The Receiver's claim is barred in whole or in part by the doctrine of fraud, as its sole director and shareholder, Denny Chittick, acted in concert with the underlying alleged fraudster.

Twelfth Affirmative Defense

The Receiver's claim is barred based on the admissions and other statements made or adopted by the Receiver in the other court filings by the Receiver, including, without limitation, those admissions that demonstrate that the Receiver cannot state an aiding and abetting claim because there is no viable underlying tort of fraud. Given the Receiver's admissions concerning DenSco and Chittick's knowledge of Menaged's conduct, DenSco could never have reasonably relied on any purported representations by Menaged concerning transactions and/or cashier's checks at Chase.

Thirteenth Affirmative Defense

The Receiver's claim may be barred in whole or in part by the doctrines of res judicata, estoppel, issue preclusion, and/or claim preclusion to the extent that they and/or any issues relating thereto have been previously decided in any related state court proceeding.

WHEREFORE, Nelson prays for the following relief:

- A. Dismissal of all claims, with prejudice;
- B. Nelson's costs (A.R.S. § 12-341);
- C. Nelson's costs and attorneys' fees pursuant to A.R.S. § 13- 2314.04(A);
and

1 D. Such other relief that the Court deems just and proper.

2 RESPECTFULLY SUBMITTED this 8th day of October 2021.

3 GREENBERG TRAURIG, LLP

4 By: /s/ Nicole M. Goodwin

5 Nicole M. Goodwin

6 Paul J. Ferak (*pro hac vice*)

7 Jonathan H. Claydon (*pro hac vice*)

8 *Attorneys for Defendant Samantha Nelson f/k/a*
9 *Samantha Kumbalek*

10 ORIGINAL of the foregoing e-filed with the
11 Clerk of Court this 8th day of October 2021.

12 COPY of the foregoing electronically
13 distributed this 8th day of October 2021 to:

14 Hon. Daniel Martin

15 COPY of the foregoing served via
16 TurboCourt e-Service and E-Mail this 8th
day of October 2021 to:

17 Colin F. Campbell

18 Geoffrey M. T. Sturr

19 Timothy J. Eckstein

20 Joseph N. Roth

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/s/ Carolyn Smith

Employee, Greenberg Traurig