

1 Colin F. Campbell, No. 004955
Geoffrey M. T. Sturr, No. 014063
2 Timothy J. Eckstein, No. 018321
Joseph N. Roth, No. 025725
3 Osborn Maledon, P.A.
2929 N. Central Avenue, Suite 2100
4 Phoenix, Arizona 85012-2793
(602) 640-9000
5 ccampbell@omlaw.com
gsturr@omlaw.com
6 teckstein@omlaw.com
jroth@omlaw.com

7 Attorneys for Plaintiff

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF MARICOPA**

10 Peter S. Davis, as Receiver of DenSco
Investment Corporation, an Arizona
11 corporation,

12 Plaintiff,

13 v.

14 US Bank, N.A., a national banking
organization; Hilda H. Chavez and John
15 Doe Chavez, a married couple; JP
Morgan Chase Bank, N.A., a national
16 banking organization; Samantha Nelson
f/k/a Samantha Kumbaleck and Kristofer
17 Nelson, a married couple; and Vikram
Dadlani and Jane Doe Dadlani, a
18 married couple,

19 Defendants.

No. CV2019-011499

THIRD AMENDED COMPLAINT

(Assigned to Hon. Daniel Martin)

20 For his Complaint against Defendants, Plaintiff Peter S. Davis, as the court-
21 appointed receiver of DenSco Investment Corporation (“Plaintiff” or “Receiver”),
22 alleges as follows.

23 **SUMMARY OF PLAINTIFF’S CLAIMS**

24 1. From July 2001 to July 2016, DenSco Investment Corporation
25 (“DenSco”) raised approximately \$85 million from investors. Among other things,
26

1 DenSco told its investors that (i) it would make short-term “hard money” loans to
2 “foreclosure specialists” who were buying foreclosed homes, and (ii) the loans would be
3 “secured through first position trust deeds” so that DenSco would, in the event a
4 borrower defaulted, recover the loaned funds by taking possession of the property.

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

10 3. In early 2014, Densco established new procedures to ensure Menaged
11 used its loans to acquire property that would be secured by first position loans by,
12 among other things, wiring monies to accounts that Menaged maintained with
13 Defendant US Bank, N.A. and Defendant JP Morgan Chase Bank, N.A., respectively,
14 and then having Menaged provide copies of cashier’s checks that on their face were to
15 be used to purchase specific properties. In the second fraud, Menaged evaded these
16 procedures by not using these checks for their intended purpose, immediately
17 redepositing them and converting the funds for his personal use.

18 4. Nearly every business day between January 2014 and June 2015, for more
19 than 1,400 transactions, Defendant banks, their named employees and their senior
20 managers substantially assisted, authorized, ratified, and recklessly tolerated Menaged’s
21 unlawful conduct.

22 5. Defendants knew that Menaged was in the business of purchasing
23 foreclosed properties, that Menaged had a fiduciary relationship with DenSco, and that
24 DenSco wired Menaged monies to issue as cashier’s checks for the specific purpose of
25 purchasing foreclosed properties on DenSco’s behalf.

26

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

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

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

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

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

1 **PARTIES, JURISDICTION, AND VENUE**

2 11. DenSco is an Arizona corporation that began operating in April 2001. Its
3 primary business was making short-term, high-interest loans to “foreclosure specialists”
4 who bought homes that were being foreclosed upon, usually through a trustee’s sale.
5 DenSco’s office was in Chandler, Arizona.

6 12. Denny Chittick (“Chittick”) was DenSco’s sole shareholder. He was the
7 Company’s only Director, served as its President, Vice President, Treasurer, and
8 Secretary, and was its only employee.

9 13. Plaintiff was appointed as DenSco’s Receiver in *Arizona Corporation*
10 *Commission v. DenSco Investment Corporation, an Arizona Corporation*, Maricopa
11 County Superior Court, Case No. CV2016-014142 (the “Receivership Court”). He has
12 obtained approval from the Receivership Court to pursue this action.

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

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

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

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.

1 Samantha Nelson was acting for the benefit of her marital community during the
2 relevant time period.

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

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

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

13 **MENAGED’S FRAUD SCHEMES**

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

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

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

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

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

4 26. In the first scheme (the “First Fraud”), which ended in the latter half of
5 2013, on multiple occasions, Menaged obtained loans from DenSco and another hard
6 money lender to acquire property being sold through a trustee’s sale that was intended
7 to be secured by that property. This resulted in DenSco being undersecured on multiple
8 loans and the DenSco Loan Proceeds being used by Menaged for other purposes.
9 Menaged was able to orchestrate the First Fraud in part because Chittick funded
10 DenSco’s loans by paying the proceeds directly to Menaged rather than the trustee or
11 escrow company conducting the trustee’s sale.

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

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
16 “cousin” had masterminded and perpetrated the First Fraud while he was distracted by
17 caring for his sick wife.

18 29. Chittick, believing Menaged’s story, agreed with Menaged that DenSco
19 would continue loaning money to Menaged’s entities so that DenSco and Menaged
20 could jointly and collaboratively “work out” the problem loans that resulted from the
21 conduct of Menaged’s cousin. DenSco relied upon Menaged’s representations that he
22 would use all future loans from DenSco for their intended purpose and would work
23 closely with DenSco to complete the “work out” plan. DenSco’s decision to put trust
24 and confidence in Menaged, and to rely upon him as a fiduciary to effectuate the “work
25 out” plan, is reflected in numerous written communications between Chittick and
26 Menaged that began in December 2013 and continued for years thereafter, as well as a

1 Term Sheet that DenSco, Menaged, Arizona Home Foreclosures, LLC and Easy
2 Investment, LLC signed in January 2014.

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

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

11 32. While DenSco continued to rely on Menaged's integrity and fidelity in
12 fulfilling the commitments that he and his entities had made to effectuate the "work out"
13 plan, in January 2014, Chittick, on Beauchamp's advice, took steps to protect DenSco
14 from any further misappropriation of its loan proceeds by requiring Menaged to
15 document his receipt and use of those loan proceeds, which DenSco had not previously
16 required. Specifically, DenSco agreed to continue wiring money to Menaged but
17 required Menaged to provide, for each loan made for a specific property, copies of: (i)
18 the individual cashier's check issued by Menaged's bank made payable to the respective
19 foreclosure trustee, with DenSco's name and the property address in the memo line, and
20 (ii) the corresponding receipt Menaged received from the trustee for the purchase of that
21 property.

22 33. Chittick, relying on, and trusting in Menaged, did not believe that
23 Menaged had perpetrated the First Fraud and continued to accept as true, Menaged's
24 stories about his wife's compromised health. Chittick understood that he owed
25 fiduciary duties to his investors, many of whom were family members or friends, to
26 recoup DenSco's losses from the First Fraud and to protect DenSco from further losses.

1 He relied on DenSco’s counsel, Beauchamp, in implementing these new procedures and
2 believed they would adequately protect DenSco from any further misappropriation of
3 loan proceeds. Chittick and DenSco continued to rely on Menaged’s integrity and
4 fidelity in fulfilling the commitments that Menaged and his entities had made to
5 effectuate the “work out” plan.

6 34. Menaged, however, fooled Chittick a second time and began a systematic
7 and comprehensive scheme to defraud DenSco by obtaining, but then redepositing,
8 cashier’s checks, and then creating false deeds, contracts and receipts documenting the
9 fictitious purchase of real estate at a trustee’s sale (the “Second Fraud”). As part of the
10 Second Fraud, Menaged obtained over 1,400 loans from DenSco beginning in January
11 2014. Menaged did not use these loan proceeds for their intended purpose—to purchase
12 real estate at a trustee’s sale.

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

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

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

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

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

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

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

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

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

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

17 55. Chavez and other US Bank employees printed on each check in the memo
18 line: "DenSco Payment [and address of the property]" or "DenSco [and address of the
19 property]".

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

23 57. Rather, Menaged or Castro took a photo of each check while at the US
24 Bank Branch, usually in the presence of Chavez or another US Bank employee. After
25 taking these photos, Menaged or Castro had Chavez or another US Bank employee re-
26 deposit the check into his Easy Investments account.

1 58. Upon information and belief, neither Chavez nor any US Bank employee
2 asked Menaged or Castro why, at least 40 times, they undertook to have US Bank draft
3 cashier's checks clearly and expressly intended to purchase from trustees specific
4 foreclosed homes as part of Menaged's business partnership with DenSco, take photos
5 of those checks and then immediately re-deposit them. A single such transaction lacks
6 any legitimate business or banking purpose. Forty or more of them, involving nearly \$7
7 million dollars, is inexplicable.

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

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
26

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

7 63. The US Bank Defendants were motivated to assist Menaged in these
8 transactions to keep Menaged as a banking customer, particularly one who maintained
9 accounts worth millions of dollars. On information and belief, by keeping Menaged’s
10 accounts at US Bank, Chavez, Wanta and other US Bank employees benefitted
11 personally in the form of additional compensation.

12 64. The US Bank Defendants kept silent as to Menaged’s scheme and
13 wrongful actions; they never informed DenSco about Menaged’s scheme and wrongful
14 actions.

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

17 **THE CHASE BANK DEFENDANTS KNEW OF, SUBSTANTIALLY ASSISTED,**
18 **AND RECKLESSLY TOLERATED MENAGED’S UNLAWFUL CONDUCT**

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

21 67. Menaged banked at Chase’s branch located at 8999 East Shea Boulevard,
22 Scottsdale, Arizona (the “Chase Branch”). Chase assigned a Private Client Banker,
23 Susan Lazar, to oversee Menaged’s accounts and facilitate his banking relationship with
24 Chase. Lazar communicated regularly with Menaged about his business, his
25 relationship with DenSco, and his banking activity at Chase.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25
26

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

4 84. Upon information and belief, on one occasion, Nelson asked Menaged
5 why he obtained and redeposited cashier’s checks, to which he responded:
6 “bookkeeping.” Nelson did not ask Menaged what he meant by “bookkeeping” or how
7 that related to his use of the cashier’s checks. Nelson further did not ask Menaged why
8 he was taking photos of each cashier’s check.

9 85. Upon information and belief, Nelson electronically filed in or about
10 April/May 2014 two unusual activity reports, she says, because (i) of the number and
11 amounts of the cashier’s checks Menaged was redepositing on a daily basis, (ii) “his
12 transactions were different,” and (iii) “the entire thing was unusual.”

13 86. Chase opened an internal investigative file in response to Nelson’s report.
14 Chase noted in that file that the report was for “money laundering concerns” and that
15 “further investigation [was] needed.” Upon information and belief, Chase performed no
16 further investigation, and Nelson did not file an additional report or conduct any further
17 inquiry.

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

22 88. Upon information and belief, neither Nelson, Dadlani nor any Chase
23 employee asked Menaged or Castro why, more than 1,344 times, they undertook to have
24 Chase draft cashier’s checks clearly and expressly intended to purchase from trustees
25 specific foreclosed homes as part of Menaged’s business partnership with DenSco, take
26 photos of those checks and immediately re-deposit them. A single such transaction

1 lacks any legitimate business or banking purpose. 1,344 of them, involving over \$300
2 million, is inexplicable.

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

10 90. The Chase Defendants knew that Menaged was taking photos of the
11 checks and had to have known that he was sending them to DenSco as proof that
12 DenSco's Loan Proceeds were being used for their intended purpose. And the Chase
13 Defendants knew that Menaged used the DenSco Loan Proceeds for his personal
14 benefit, as they assisted him in re-depositing these funds, obtaining large cash
15 withdrawals of the re-deposited funds, and transferring these funds to Menaged's
16 personal Chase accounts.

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

25 92. Upon information and belief, the Chase Defendants informed Menaged
26 that they were legally obligated to report to the government any cash transaction over

1 \$10,000 and that their internal processes would likely trigger a suspicious activity report
2 if a transaction was just under \$10,000, such that the Chase Defendants advised
3 Menaged to withdraw or deposit cash in amounts that would avoid either report being
4 made. Menaged followed this advice.

5 93. The Chase Defendants further knew of, assisted with, and recklessly
6 tolerated Menaged's misappropriation of the DenSco Loan Proceeds that had been
7 deposited in his AZHF account for, among other things, recreational gambling. Among
8 other things, the Chase Defendants (i) increased to approximately \$40,000 the spending
9 limit on Menaged's AZHF debit card to avoid Chase's fraud prevention department
10 flagging the account or declining the card, (ii) asked Chase's fraud prevention
11 department to remove suspensions or "flags" on the AZHF debit card due to the high
12 dollar amounts that were being charged at casinos, (iii) initiated outgoing wire transfers
13 and issued cashier's checks from Menaged's AZHF account to various casinos, and (iv)
14 confirmed with various casinos that these cashier's checks or wire transfers were
15 legitimate.

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

24 95. The Chase Defendants were motivated to assist Menaged in these
25 transactions to keep Menaged as a banking customer, particularly one who maintained
26 accounts worth millions of dollars. On information and belief, by keeping Menaged's

1 accounts at Chase, Lazar, Dadlani, Nelson, and other Chase employees benefitted
2 personally in the form of additional compensation.

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

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

7 **DISCOVERY OF THE SECOND FRAUD**

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

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

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

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

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

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

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

24 105. Chittick died unaware of the Second Fraud.

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

26

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

4 b. These representations were false.

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

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

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

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

13 g. DenSco relied on Menaged's representations.

14 h. DenSco's reliance was reasonable and justified under the
15 circumstances.

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

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

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

22 **COUNT TWO**
23 **(Aiding and Abetting Fraud: Chase, Nelson and Dadlani)**

24 118. Paragraphs 1 through 117 are incorporated by reference.

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

1 a. Menaged represented to DenSco that, through the use of the
2 individual cashier's checks issued by the Chase Defendants and fabricated trustees'
3 receipts, he was using the DenSco Loan Proceeds to purchase the Identified Properties.

4 b. These representations were false.

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

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

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

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

13 g. DenSco relied on Menaged's representations.

14 h. DenSco's reliance was reasonable and justified under the
15 circumstances.

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

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

19 121. The Chase Defendants substantially assisted or encouraged Menaged in
20 his fraud against DenSco.

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

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

24 123. Menaged exercised wrongful dominion over DenSco's property by re-
25 depositing and using on a personal basis the DenSco Loan Proceeds, in denial of
26 DenSco's rights.

1 chargeable under Arizona law, that are punishable for more than one year, and were
2 committed for financial gain. A.R.S. § 13-1802(A).

3 149. Menaged, Castro and others engaged in money laundering in the second
4 degree by transacting, transferring and receiving racketeering proceeds knowing they
5 were the proceeds of an offense, acts that are chargeable under Arizona law, that are
6 punishable for more than one year, and were committed for financial gain. A.R.S. § 13-
7 2317(B).

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

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

14 152. DenSco's damages were a reasonably foreseeably result of this pattern of
15 unlawful activity.

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

19 **COUNT EIGHT**
20 **(Civil Racketeering: Chase, Nelson and Dadlani)**

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

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

24 156. For each occasion where the DenSco Loan Proceeds were not used for
25 their intended purpose and instead re-deposited by Menaged for his personal use,
26

1 Menaged, Castro and others committed theft, money laundering, and engaged in a
2 scheme or artifice to defraud.

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

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

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

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

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

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

25
26

1 DATED this 19th day of March, 2021.

2 OSBORN MALEDON, P.A.

3
4 /s/ Geoffrey M. T. Sturr

5 Colin F. Campbell

6 Geoffrey M. T. Sturr

7 Timothy J. Eckstein

8 Joseph N. Roth

9 2929 N. Central Avenue, Suite 2100

10 Phoenix, AZ 85012-2793

11 Attorneys for Plaintiff

12 This document was electronically filed
13 and served via AZTurboCourt
14 this 19th day of March, 2021, on:

15 Honorable Daniel Martin
16 c/o Irene Jones, JA
17 Maricopa County Superior Court
18 101 West Jefferson, ECB-412
19 Phoenix, Arizona 85003
20 Irene.Jones@JBAZMC.Maricopa.Gov

21 Gregory J. Marshall
22 Amanda Z. Weaver
23 Bradley R. Pollock
24 SNELL & WILMER, LLP
25 One Arizona Center
26 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
gmarshall@swlaw.com
aweaver@swlaw.com
bpollock@swlaw.com

*Attorneys for Defendants U.S. Bank National
Association and Hilda H. Chavez*

1 Nicole Goodwin
2 Paul J. Ferak
3 Jonathan H. Claydon
4 GREENBERG TRAURIG
5 2375 E. Camelback Road #700
6 Phoenix, Arizona 85016
7 goodwinn@gtlaw.com
8 ferakp@gtlaw.com
9 claydonj@gtlaw.com

10 *Attorneys for Defendants JP Morgan Chase Bank, N.A., Samantha Nelson f/k/a*
11 *Samantha Kumbaleck, Kristofer Nelson, Vikram Dadlani, and Jane Doe Dadlani*

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
/s/ Lauren Dwyer
