

1 Colin F. Campbell, 004955
2 Geoffrey M. T. Sturr, 014063
3 Timothy J. Eckstein, 018321
4 Joseph N. Roth, 025725
5 OSBORN MALEDON, P.A.
6 2929 North Central Avenue, 21st Floor
7 Phoenix, Arizona 85012-2793
8 (602) 640-9000
9 ccampbell@omlaw.com
10 gsturr@omlaw.com
11 teckstein@omlaw.com
12 jroth@omlaw.com

13 Attorneys for Plaintiff

14
15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16
17 IN AND FOR THE COUNTY OF MARICOPA

18 Peter S. Davis, as Receiver of DenSco
19 Investment Corporation, an Arizona
20 corporation,

21 Plaintiff,

22 v.

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

Defendants

No. CV2019-011499

**PLAINTIFF’S RESPONSES TO THE
U.S. BANK DEFENDANTS’
REQUESTS FOR ADMISSION**

(Assigned to the Honorable
Daniel Martin)

Pursuant to Rule 36 of the Arizona Rules of Civil Procedure, Plaintiff responds to the U.S. Bank Defendants’ Requests for Admission as follows:

REQUEST FOR ADMISSION NO. 1:

Admit that no U.S. Bank employee was aware that Menaged was going to defraud DenSco prior to May 2014.

RESPONSE:

Plaintiff objects that the use of the word “aware” is vague. Otherwise, Deny.

1 **REQUEST FOR ADMISSION NO. 2:**

2 Admit that no U.S. Bank employee encouraged Menaged to defraud DenSco.

3 **RESPONSE:**

4 Plaintiff objects that the use of the word “encourage” is vague. Deny. By casting
5 a blind eye on Menaged’s conduct, U.S. Bank encouraged Menaged to continue his fraud.

6 **REQUEST FOR ADMISSION NO. 3:**

7 Admit that no U.S. Bank employee avoided, changed, or violated any of U.S
8 Bank’s policies or procedures disclosed in this case with respect to Menaged.

9 **RESPONSE:**

10 Deny.

11 **REQUEST FOR ADMISSION NO. 4:**

12 Admit that no U.S. Bank employee avoided, changed, or violated any of U.S.
13 Bank’s policies or procedures disclosed in this case in a way that substantially assisted
14 Menaged’s fraud.

15 **RESPONSE:**

16 Deny.

17 **REQUEST FOR ADMISSION NO. 5:**

18 Admit that no U.S. Bank employee received any payment or other consideration
19 from Menaged in exchange for any services related to the Easy Investments account.

20 **RESPONSE:**

21 Plaintiff objects that the use of the phrase “payment or other consideration from
22 Menaged” is vague. For example, if an employee received consideration in the sense of
23 employee bonuses or rewards or recognition for the handling of accounts that included
24 Menaged’s account, then deny. If an employee received kickbacks or money directly
25 from Menaged, then Plaintiff at this time lacks sufficient information or knowledge to
26 admit or deny. Discovery in this case is not yet completed. Plaintiff will supplement this
27 request for admission at the close of discovery.

28

1 **REQUEST FOR ADMISSION NO. 6:**

2 Admit that the conduct of U.S. Bank that you contend constitutes aiding and
3 abetting Menaged’s alleged fraud ended as of May 2014.

4 **RESPONSE:**

5 Plaintiff objects that the use of the phrase “conduct . . . you contend constitutes
6 aiding and abetting” is vague. For example, concealment and continued concealment is
7 conduct constituting aiding and abetting. Deny.

8 **REQUEST FOR ADMISSION NO. 7:**

9 Admit that Denny Chittick did not take any action to recover any of the funds
10 allegedly taken by Menaged’s cousin as described in Paragraphs 28 and 29 of the TAC.

11 **RESPONSE:**

12 Plaintiff objects that the use of the word “recover” in this context is vague. For
13 example, the forbearance agreement was an action to recover the funds. Deny.

14 **REQUEST FOR ADMISSION NO. 8:**

15 Admit that Denny Chittick did not take any action to confirm the truth of
16 Menaged’s story that Menaged’s cousin masterminded and perpetrated the “First Fraud”
17 as described in Paragraphs 28 and 29 of the TAC.

18 **RESPONSE:**

19 Admit. Plaintiff’s discovery in the Clark Hill action indicated that Chittick
20 believed Menaged but did not otherwise confirm the story.

21 **REQUEST FOR ADMISSION NO. 9:**

22 Admit that trustee deeds identifying Menaged as the purchaser or owner of the
23 Identified Properties were never recorded with the Recorder’s Office.

24 **RESPONSE:**

25 Plaintiff has produced its loan files and related documents for the U.S. Bank’s
26 issuance of certified checks not used for their intended purpose in furtherance of the
27 Menaged fraud. Admit that the DenSco loan files and related documents produced to
28

1 U.S. Bank contain documents that were not filed or recorded in the Maricopa County
2 Recorder's Office.

3 Plaintiff has not run a title search on each of the properties to determine if any
4 other document was filed related to the fraudulent transaction, and, can neither admit or
5 deny what was filed if a title search for each property was done for lack of information or
6 knowledge.

7 **REQUEST FOR ADMISSION NO. 10:**

8 Admit that deeds of trust identifying DenSco as having a first position secured
9 interest in the Identified Properties were never recorded in the Recorder's Office.

10 **RESPONSE:**

11 See Response to Request for Admission No. 9. Plaintiff objects to the Request in
12 that "first person secured interest" is vague. A first position secured interest is determined
13 by filing date rather than anything on the encumbrance.

14 Plaintiff has produced its loan files and related documents for the U.S. Bank's
15 issuance of certified checks not used for their intended purpose in furtherance of the
16 Menaged fraud. Admit that the loan files and related documents produced to U.S. Bank
17 contain documents that were not filed or recorded in the Maricopa County Recorder's
18 Office.

19 An unfiled document would not create any first person secured interest as to
20 another recorded filing filed by a person without knowledge of the DenSco transaction,
21 putting aside any issue of knowledge at to the other person.

22 Plaintiff has not run a title search on each of the properties to determine if any
23 other document was filed related to the fraudulent transaction, and, can neither admit or
24 deny what was filed if a title search for each property was conducted for lack of
25 information or knowledge.

26 **REQUEST FOR ADMISSION NO. 11:**

27 Admit that DenSco never contacted any of the trustees to confirm whether
28 Menaged had actually purchased the Identified Properties prior to May 2014.

1 **RESPONSE:**

2 Admit. Plaintiff's discovery in the Clark Hill case did not disclose any contact
3 between DenSco and a trustee selling an identified property; that is, the properties that
4 U.S. Bank issued certified checks for but were not used for their intended purpose.

5 **REQUEST FOR ADMISSION NO. 12:**

6 Admit that each of the loans made for the purchase of the Identified Properties was
7 repaid in full.

8 **RESPONSE:**

9 Plaintiff objects to the Request in that "paid in full" is vague. Menaged perpetrated
10 a Ponzi scheme on DenSco, using borrowing from one fraudulent transaction to repay
11 another prior fraudulent transaction. To the extent that Menaged repaid the loans pursuant
12 to a Ponzi scheme, that included fraudulent transactions and certificates of deposit not
13 used for their intended purpose, issued by both U.S. Bank and Chase Bank, admit that the
14 promissory notes were repaid in the context of the Ponzi scheme.

15 Deny any intended implication that DenSco did not suffer a loss from U.S. Bank's
16 participation in the Ponzi scheme and aiding and abetting the Ponzi scheme. Deny that
17 U.S. Bank can avoid liability by utilizing Ponzi funds created by Menaged from Chase
18 Bank to pay off loans that U.S. Bank aided and abetted Menaged to make with U.S. Bank
19 certified checks not used for their intended purpose.

20 **REQUEST FOR ADMISSION NO. 13:**

21 Admit that RECEIVER_00001-164 are records of a regularly conducted activity
22 within the meaning of Ariz. R. Evid. 803(6).

23 **RESPONSE:**

24 Plaintiff objects as the actual documents for this request are not attached to the
25 Request for Admissions. Plaintiff is uncertain which documents Defendant U.S. Bank is
26 referring to as multiple prefixes for discovery have been used in this case and the Clark
27 Hill case. In this case, Plaintiff has used an "R" prefix not a "Receiver" prefix.
28 Accordingly, Plaintiff lacks sufficient information to admit or deny. Plaintiff will

1 supplement upon production of the actual documents from Defendant that they are
2 seeking a foundation admission on.

3 **REQUEST FOR ADMISSION NO. 14:**

4 Admit that DenSCO did not advise its investors of the “First Fraud,” as described
5 in Paragraphs 28 and 29 of the TAC, prior to May 2014.

6 **RESPONSE:**

7 Admit. Plaintiff’s discovery in the Clark Hill case did not disclose any instance
8 where Chittick advised an investor of the First Fraud prior to May 2014.

9 DATED this 12th day of January 2022.

10 OSBORN MALEDON, P.A.

11 By  _____

12 Colin F. Campbell
13 Geoffrey M. T. Sturr
14 Timothy J. Eckstein
15 Joseph N. Roth
16 2929 North Central Avenue, 21st Floor
17 Phoenix, Arizona 85012-2793

18 Attorneys for Plaintiff

19 COPY of the foregoing served via email
20 this 12th day of January 2022, on:

21 Nicole Goodwin
22 GREENBERG TRAURIG, LLP
23 2375 East Camelback Road, Suite 700
24 Phoenix, Arizona 85016
25 goodwinn@gtlaw.com
26 hershbergera@gtlaw.com
27 aranat@gtlaw.com
28

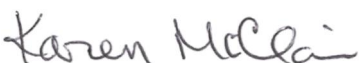
1 Paul J. Ferak
2 Jonathan H. Claydon
3 GREENBERG TRAURIG, LLP
4 77 West Wacker Drive, Suite 3100
5 Chicago, Illinois 60601
6 ferakp@gtlaw.com
7 claydonj@gtlaw.com

8 *Attorneys for Defendant JP Morgan Chase Bank, N.A.,
9 Samantha Nelson f/k/a Samantha Kumbalek,
10 Kristofer Nelson, Vikram Dadlani, and Jane Doe Dadlani*

11 Gregory J. Marshall
12 Amanda Z. Weaver
13 SNELL & WILMER, LLP
14 400 East Van Buren Street, Suite 1900
15 Phoenix, Arizona 85004-2202
16 gmarshall@swlaw.com
17 aweaver@swlaw.com
18 ehenry@swlaw.com
19 pdooley@swlaw.com

20 Kenneth C. Rudd
21 David B. Chenkin
22 ZEICHNER ELLMAN & KRAUSE LLP
23 1211 Avenue of the Americas, 40th Floor
24 New York, New York 10036
25 krudd@zeklaw.com
26 dchenkin@zeklaw.com

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

28 

9258614