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Samantha Nelson f/k/a Samantha Kumbaleck,
Kristofer Nelson, Vikram Dadlani, and Jane Doe Dadlani*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PETER S. DAVIS, as Receiver of DENSCO
INVESTMENT CORPORATION, an Arizona
corporation,

Plaintiff,

v.

U.S. BANK, NA. a national banking
organization; HILDA H. CHAVEZ and JOHN
DOE CHAVEZ, a married couple;
JPMORGAN CHASE BANK, N.A., a national
banking organization; SAMANTHA NELSON
f/k/a SAMANTHA KUMBALECK and
KRISTOFER NELSON, a married couple, and
VIKRAM DADLANI and JANE DOE
DADLANI, a married couple,
Defendants.

NO. CV2019-011499

**DEFENDANT VIKRAM DADLANI
AND JANE DOE DADLANI'S
REPLY IN SUPPORT OF THEIR
MOTION FOR SUMMARY
JUDGMENT**

(Assigned to the Hon. Dewain Fox)

(Oral Argument Requested)

1 The Opposition fails to identify any evidence showing that Mr. Dadlani, a branch
2 manager for a portion of the time that Menaged had Chase accounts, had actual knowledge
3 of Menaged's fraudulent activity and chose to assist Menaged in executing the fraud.
4 Without this evidence (which the Receiver has had seven years to identify after dragging
5 Mr. Dadlani and his wife into this case), there is no basis for the claims against Mr. Dadlani
6 and his wife to proceed any further. The Receiver's attempt to save his claims by resorting
7 to baseless attacks on Mr. Dadlani's credibility and desperately arguing for lower
8 evidentiary standards to apply are both telling and meritless. That the Receiver must rely on
9 such attacks, inapplicable standards, and unreasonable inferences that are not supported by
10 this exhaustively developed seven-year case record only further confirms that, as a matter
11 of Arizona law, summary judgment must be entered in favor of Mr. Dadlani and his wife.

12 **ARGUMENT**

13 **A. The Receiver Lacks Standing to Bring His Claims Against Mr. Dadlani.**

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

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

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

19 **C. There is No Evidence to Establish Any Underlying Tort to Support the Aiding 20 and Abetting Fraud Claim.**

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

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

24 **1. There Is No Evidence that Mr. Dadlani Had Actual Knowledge that 25 Menaged Was Engaged in Fraud.**

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

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

3 **First**, as a matter of law, the Receiver must show that Mr. Dadlani had actual
4 knowledge that Menaged was engaged in fraud. *See Stern v. Charles Schwab & Co.*, 2010
5 WL 1250732, at *8 (D. Ariz. Mar. 24, 2010) ("*Stern II*") ("aiding and abetting liability is
6 based on proof of scienter . . . the defendants must *know* that the conduct they are aiding
7 and abetting is a tort.") (quoting *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement*
8 *Masons Local No. 395 Pension Trust Fund*, 38 P.3d 12, 23 (Ariz. 2002)); *see also*
9 *Hashimoto v. Clark*, 264 B.R. 585, 598 (D. Ariz. 2001) ("The requisite degree of knowledge
10 for an aiding and abetting claim is actual knowledge."). Such evidence does not exist. Mr.
11 Dadlani testified [REDACTED]

12 [REDACTED]
13 [REDACTED] (Chase Combined Statement of Undisputed Facts "CSOF" ¶¶
14 61, 64). [REDACTED]

15 [REDACTED]
16 [REDACTED] (CSOF ¶¶ 60,
17 62). The Receiver has identified no evidence showing that Mr. Dadlani, through
18 investigation or otherwise, ever learned of any of the representations that Menaged
19 purportedly made to DenSco, let alone that Mr. Dadlani learned of the fraudulent scheme.
20 There is no evidence to warrant keeping Mr. Dadlani and his wife in the case.

21 Lacking evidence, the Receiver resorts to launching attacks on Mr. Dadlani's
22 credibility. But such a tactic is insufficient to create an issue of material fact necessitating a
23 trial. *Bodett v. Coxcom, Inc.*, 366 F.3d 736, 740 n.3 (9th Cir. 2004) ("A party cannot create
24 a dispute of fact by simply questioning the credibility of a witness."); *Comerica Bank v.*
25 *Mahmoodi*, 229 P.3d 1031, 1034 n.3 (Ariz. Ct. App. 2010) (rejecting challenges to a
26 witness's credibility; holding that "[a] party opposing a motion for summary judgment is
27 not entitled to proceed to trial on the mere hope that the jury will disbelieve uncontroverted
28

1 testimony.”). There is no evidence showing that Mr. Dadlani had actual knowledge of
2 Menaged’s fraud; therefore, Mr. Dadlani is entitled to summary judgment.

3 **Second**, the Receiver cannot rely on a lesser standard. The Receiver argues that
4 because Mr. Dadlani had access to Chase’s KYC database, Mr. Dadlani could have
5 reviewed Menaged’s banking activity, and the Receiver claims Menaged’s transactions
6 were “atypical,” therefore, Mr. Dadlani must have had knowledge of fraud. (Opp. 12-13).
7 But the fact that Mr. Dadlani *could have* learned of the fraud or that—in hindsight—there
8 was conduct that is now characterized as suspicious is irrelevant when assessing the
9 Receiver’s claims; evidence of actual knowledge of fraud is required. *Stern v. Charles*
10 *Schwab & Co.*, 2009 WL 3352408, at *7 (D. Ariz. Oct. 16, 2009) (“*Stern I*”) (“[M]ere
11 knowledge of suspicious activity is not enough. The defendant must be aware of the fraud.”)
12 (citing *Dawson v. Withycombe*, 216 Ariz. 84, 163 P.3d 1034 (Ariz. Ct. App. 2007)).

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

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

24 *Id.* at *8 (citing *Ariz. Laborers*, 201 Ariz. 474, 486-88, 38 P.3d at 24-26). The Arizona
25 Supreme Court held that “[t]his accumulation of evidence raises the inference that the Bank
26 knew Symington was engaged in false representations to the Funds.” *Ariz Laborers*, 201
27 Ariz. 474, 488, 38 P.3d at 26 (emphasis added).

1 Here, Mr. Dadlani had no knowledge whatsoever of what representations Menaged
2 made to Chittick, so there is no factual basis for an inference that Mr. Dadlani had
3 knowledge or awareness of Menaged's fraud. Given the absence of any proper basis for the
4 inferential leap the Receiver asks for, this request should be rejected. *See Federico v. Maric*,
5 224 Ariz. 34, 37-38, 226 P.3d 403, 406-07 (Ariz. Ct. App. 2010) (granting summary
6 judgment on aiding and abetting claim where plaintiff's "arguments go far beyond the
7 inferences that may be reasonably drawn by the facts presented"); *BAE Sys. Mobility &*
8 *Prot. Sys. v. Armorworks Enters.*, 2011 WL 1192987, at *11 (D. Ariz. Mar. 28, 2011)
9 (explaining that "an inference of knowledge will not be made lightly" and granting summary
10 judgment where evidence did not support inference of knowledge of the underlying fraud).

11 At most, all the Receiver can point to is evidence that Mr. Dadlani received some
12 emails from Menaged requesting cashier's checks that contained a reference to DenSco on
13 the memo line. (CSOF ¶ 57, CSOF Ex. 37). These emails contained only lists of properties
14 and amounts; there is no representation that Menaged was bidding on properties or using
15 DenSco loans to make purchases. (*See* CSOF ¶ 57, CSOF Ex. 37). To infer from Mr.
16 Dadlani's receipt of such emails that he had knowledge of a fraud scheme is unreasonable
17 and unjustified. In *Dawson*, the court rejected a request for such an inference. There, the
18 court held that the defendants' knowledge of a defrauder's poor financial condition and
19 dishonesty was not enough to satisfy the knowledge requirement for aiding and abetting:

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

26 *Dawson*, 216 Ariz. at 103, 163 P.3d at 1053. Just as in *Dawson*, there is no evidence that
27 Mr. Dadlani was "aware of the fraudulent scheme to procure [a] loan" and, therefore, "[t]o
28 infer awareness of the fraudulent scheme from [the Receiver's] characterization of what
[Mr. Dadlani] knew and thought is to pile inference upon inference, which stretches the
evidence presented beyond the bounds of circumstantial evidence." 216 Ariz. at 103, 163

1 P.3d at 1053; *see also Stern II*, 2010 WL 1250732 at *11 (“Where the circumstantial
2 evidence in *Arizona Laborers* showed that the bank actually knew that one of their partners
3 in the tri-party agreement was defrauding the other partner, the evidence in this case
4 provides no such knowledge and no such connection.”); *Heinert v. Bank of Am., N.A.*, 410
5 F. Supp. 3d 544, 550 (W.D.N.Y. 2019), *aff’d*, 835 F. App’x 627 (2d Cir. 2020) (knowledge
6 of frequent atypical transactions does not give rise to a “strong inference” of actual
7 knowledge that those customers are engaged in fraud).¹

8 **Third**, the Receiver’s attempt to apply the willful blindness doctrine—despite
9 conceding that no Arizona court has ever applied this doctrine to a civil case—must be
10 rejected. In response to this argument, Mr. Dadlani hereby adopts and incorporates by
11 references the argument set forth in Section D.1 of Chase’s contemporaneously filed Reply.

12 **2. There Is No Evidence that Mr. Dadlani Substantially Assisted Menaged**
13 **with Executing a Fraud.**

14 Substantial assistance requires a showing that the defendants conduct was “a
15 substantial factor in causing the [plaintiff’s] harm.” *Stern I*, 2009 WL 3352408, at *8. The
16 Receiver devotes a mere one sentence of the Opposition to this element, stating in
17 conclusory fashion that Mr. Dadlani substantially assisted Menaged “by making the scheme
18 even easier to conduct from his car window.” (Opp. 14). This argument is unsupported and
19 contrary to Arizona law which holds that “processing day-to-day transactions does not
20 constitute substantial assistance unless the bank has ‘extraordinary economic motivation to
21 aid in the fraud.’” *Stern I*, 2009 WL 3352408 at *8 (quoting *Az. Laborers*, 201 Ariz. at 489,
22 38 P.3d at 27). Menaged conducting transactions through the drive-through—just like every
23 other customer could do—is not “substantial assistance” under the law.

24 _____
25 ¹ The Receiver’s claim that Mr. Dadlani did not follow policy because he did not report
26 Mr. Menaged’s conduct as suspicious is unsupported and wrong. [REDACTED]

(Dep. Ex. 70;

(CSOF Ex. 91 at 69:11-19).

[REDACTED] (CSOF Ex. 86

28 at 123:2-16; 164:10-165:17). There is no evidence to the contrary.

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

13 The Receiver’s argument that Mr. Dadlani acted with “extraordinary economic
14 motivation” because he “had the opportunity to share in the branch profits via the 2014
15 Branch Profitability Incentive Plan” is also contrary to Arizona law. (Opp. 14 n.2). The
16 Receiver has no evidence that Mr. Dadlani obtained any benefit whatsoever from
17 Menaged’s account and fails to rebut the undisputed evidence put forth by Mr. Dadlani [REDACTED]

18 [REDACTED] t. (CSOF ¶ 65).²

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] (*Id.*). [REDACTED]

22 [REDACTED] (*Id.* at ¶ 67). There is no evidence that Menaged’s accounts

23 had any impact on Mr. Dadlani’s bonus and similarly no evidence to show “extraordinary
24

25 ² The Receiver indicates he disputes this fact, but provides no evidence creating a
26 genuine issue of fact. Accordingly, it should be deemed conceded. (Response ¶ 65;
27 Combined SOF § I); *GM Dev. Corp. v. Cmty. Am. Mortgage Corp.*, 165 Ariz. 1, 5, 795 P.2d
28 827, 831 (Ariz. Ct. App. 1990) (“If the opposing party fails to present, either by affidavit or
other competent evidence, facts which controvert the moving party’s affidavits, the facts
alleged by the moving party may be considered as true.”)

1 economic motivation.” *See Ariz. Laborers*, 201 Ariz. at 498, 38 P.3d at 27 (holding that the
2 bank had an extraordinary motivation when assisting in the fraud would ensure that the
3 customer would not default on a loan worth ten million dollars); *see also Stern I*, 2009 WL
4 3352408 at *8 (holding that “ordinary account fees and credit interest” are “not enough” to
5 establish extraordinary economic motivation).

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

7 **1. The Receiver’s Claim Is Barred Because It Involves Securities Fraud.**

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

11 **First**, the Receiver argues that *Sell v. Zions First Nation Bank*, 2006 WL 322469 (D.
12 Ariz. Feb. 9, 2006), is not applicable because it deals with the federal RICO statute. But,
13 Arizona courts “look to federal interpretation for guidance where the federal and state RICO
14 statutes contain similar provisions. *Hannosh v. Segal*, 235 Ariz. 108, 112, 328 P.3d 1049,
15 1053 (Ariz. Ct. App. 2014). The Receiver cannot identify any material difference between
16 the federal and Arizona statute because they are analogues. The federal RICO statute
17 provides that “no person may rely upon any conduct that would have been actionable as
18 fraud in the purchase or sale of securities,” *Sell*, 2006 WL 322469, at *6, and the Arizona
19 statute similarly provides that “[n]o person may rely on any conduct that would have been
20 actionable as fraud in the purchase or sale of securities to establish an action under this
21 section[.]” A.R.S. § 13-2314.04 (A). Accordingly, this Court should look to *Sell* and other
22 cases involving the federal RICO statute when analyzing the Receiver’s claim.

23 **Second**, the Receiver fails to demonstrate that Menaged’s fraud was not carried out
24 “in connection with” the sale of securities. He argues that Menaged himself was not selling
25 securities, (Opp. 18), but that does not matter. “[I]f the alleged conduct could form the basis
26 of a security fraud claim against any party—be it against, or on behalf of, the plaintiff,
27 defendants, or a non-party—it may not be fashioned as a civil RICO claim.” *Zohar CDO*
28 *2003-1, Ltd. v. Patriarch Partners, LLC*, 286 F. Supp. 3d 634, 645 (S.D.N.Y. 2017).

1 Further, the Supreme Court has recognized that the misappropriation of proceeds arising
2 from the sale of securities constitutes fraud under the Securities Exchange Act because the
3 “scheme to defraud and the sale of securities coincide[d].” *SEC v. Zandford*, 535 U.S. 813,
4 822 (2002). Here, Chittick and Menaged misappropriated funds that arose from the sale of
5 securities to DenSco investors, and they both participated in and covered up the scheme
6 through the end. (SOF §§ II.b-c, i-l). And it is undisputed that because of Chittick and
7 Menaged’s conduct, the Arizona Corporation Commission prosecuted DenSco for “Fraud
8 in Connection with the Offer and Sale of Securities.” (Mot. 13). Accordingly, the Receiver’s
9 RICO claim is barred under A.R.S. § 13-2314.04(A).

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

19 **2. The Receiver Does Not Show that Menaged’s Conduct Fits the Statutory**
20 **Definitions of Arizona’s Racketeering Statute.**

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

25 **First**, the Receiver argues Mr. Dadlani ignores that theft encompasses multiple forms
26 of misconduct. (PSMJ Reply 6). But the Receiver never identifies which specific offense
27 under A.R.S. § 13-1802(A) his claim is based upon or what evidence shows that such an
28 offense was committed. (*See id.*). In any event, all of the possibly pertinent definitions of

1 theft set forth in the statute involve “control” of the property of another or the “intent to
2 deprive” another person of their property. A.R.S. § 13-1802(A). This is exactly what was
3 addressed by the Court’s September 10, 2021 Order, which found that “[o]nce it deposited
4 the money into Menaged’s accounts, DenSco lost the right to control the funds.” (9/10/21
5 Order 7). Because DenSco voluntarily wired the funds, the conduct does not satisfy the
6 definition of theft or conversion.

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

19 **Third**, the Receiver contends that Mr. Dadlani’s “argument that Menaged’s
20 activities did not involve either ‘racketeering proceeds’ or ‘proceeds of an offense’ would
21 require finding that none of the funds he redirected from DenSco for his personal use . . .
22 were the results of any act involving an enumerated crime.” (PMSJ Reply 7). The Receiver,
23 again, ignores the legal issue. The Receiver must show that the “laundered funds” are
24 proceeds of a separate racketeering act. *In re US Currency In Amount of \$26,980.00*, 199
25 Ariz. 291, 298, 18 P.3d 85, 92 (Ariz. Ct. App. 2000) (state failed to prove money laundering
26 because it did not prove existence of an underlying drug operation, stating “Pima County
27 has not demonstrated that even the \$5,000 was racketeering proceeds.”). The Receiver
28 argues that the funds taken by Menaged must have been the fruits of a racketeering act, but

1 he makes no such factual showing. Further, the Receiver never addressed Mr. Dadlani's
2 argument that Menaged's transactions did not involve the use of forged or falsified checks.
3 (PMSJ Resp. 14).

4 **3. There Is No Evidence of Continuity.**

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

1 **4. There Is No Evidence Showing that Mr. Dadlani Had Knowledge or**
2 **Conscious Awareness of Menaged’s Scheme.**

3 The undisputed evidence establishes that Mr. Dadlani did not have knowledge or
4 awareness that Menaged was engaged in a criminal fraud. (*See* Mot. 5-6). The Receiver
5 nevertheless argues that in order to prove that Mr. Dadlani “ratified or recklessly tolerated
6 the unlawful conduct” under ARS § 13-2314.04(L), he is not required to establish
7 knowledge or awareness but must only satisfy a lesser standard based on a dictionary
8 definition of the word “recklessly” that purportedly requires something less than awareness
9 of a risk. (Opp. 16). The Receiver is once again mistaken. The term “recklessly” is defined
10 by Arizona statute meaning “that a person is *aware of* and *consciously* disregards a
11 substantial and unjustifiable risk that the result will occur or the circumstance exists.”
12 A.R.S. § 13-105.10(c). And though the Receiver makes no mention of the term
13 “ratification” in his Opposition, its legal definition also requires knowledge. *See, e.g.,*
14 *Bentley v. Slavik*, 663 F. Supp. 736, 740 (S.D. Ill. 1987) (“The concept of ratification
15 includes an understanding and full knowledge of the facts necessary to an intelligent
16 assent.”) (citing *Black’s Law Dictionary* (4th ed. 1968); *Strader v. Haley*, 216 Minn. 315,
17 326 (Minn. 1943) (Ratification occurs “where the party with full knowledge of all material
18 facts confirms, approves, or sanctions the other’s acts.”).³ As this plainly shows, to ratify or
19 recklessly tolerate the wrongful conduct of a third-party requires knowledge or conscious
20 awareness that the conduct is criminal in nature. Because—as set forth in the Motion and
21 above—there is no evidence in the record that Mr. Dadlani had awareness of Menaged’s
22 allegedly fraudulent representations to DenSco, summary judgment should be entered in
23 Mr. Dadlani’s favor.

24 **CONCLUSION**

25 For these reasons, this Court should enter summary judgment for Mr. Dadlani.

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

RESPECTFULLY SUBMITTED this 6th day of September, 2023.

GREENBERG TRAURIG, LLP

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Vikram Dadlani, and Jane Doe Dadlani*

1
2 ORIGINAL of the foregoing e-filed with the
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7 Hon. Dewain Fox

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