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

20 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
21 **IN AND FOR THE COUNTY OF MARICOPA**

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

25 Plaintiff,

26 v.

27 U.S. BANK, NA. a national banking
28 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

**COMBINED STATEMENT OF
UNDISPUTED MATERIAL
FACTS IN SUPPORT OF THE
CHASE DEFENDANTS'
SEPARATE MOTIONS FOR
SUMMARY JUDGMENT**

(Assigned to the Hon. Dewain Fox)

1 Pursuant to Rule 56(c)(3)(A), Ariz. R. Civ. P., Defendants JPMorgan Chase, N.A.
2 (“Chase”), Samantha Nelson, f/k/a Samantha Kumbalek, (“Nelson”), Kristofer Nelson,
3 Vikram Dadlani (“Dadlani”) and Jane Doe Dadlani, (collectively, the “Chase
4 Defendants”) hereby submit this Statement of Undisputed Material Facts in Support of
5 their Motions for Summary Judgment (the “Motion”).

6 **STATEMENT OF FACTS**

7 **I. THE PARTIES**

8 1. DenSco Investment Corporation (“DenSco”) was an Arizona hard-money
9 lending corporation in operation from 2001-2016. (*Arizona Corp. Comm’n v. DenSco Inv.*
10 *Corp.*, Case No. CV2016-014142, Status Report of Receiver, at § 1 (Dec. 23, 2016), a
11 true and correct copy is attached hereto as **Exhibit 1**). Denny Chittick (“Chittick”) was
12 DenSco’s founder, and only director, employee and shareholder. (*Estate of Denny J.*
13 *Chittick*, Case No. PB 2016-051754, Notice of Claim Against Estate of Denny J. Chittick,
14 at 2 (Dec. 9, 2016), a true and correct copy is attached hereto as **Exhibit 2**; *see also, e.g.*
15 Nov. 1, 2013 DenSco website Company Management, a true and correct copy is attached
16 hereto as **Exhibit 3**; DenSco Articles of Organization and Articles of Amendment to
17 DenSco Articles of Incorporation, at JPMC-SOF_000015-16 (Apr. 30, 2001 and June 12,
18 2001), a true and correct copy is attached hereto as **Exhibit 4**). Chittick also served as
19 DenSco’s president and secretary. (Ex. 4 at JPMC-SOF_000017).

20 2. Peter S. Davis is a court-appointed receiver tasked with managing DenSco’s
21 estate after the Arizona Corporation Commission (“ACC”) charged DenSco with fraud in
22 connection with the offer or sale of securities in August 2016. (*Arizona Corp. Comm’n*
23 *v. DenSco Inv. Corp.*, Case No. CV2016-014142, Verified Complaint, at ¶¶ 19-23
24 (Aug. 17, 2016) (“ACC Action Verified Complaint”), a true and correct copy is attached
25 hereto as **Exhibit 5**). Specifically, the Receiver was appointed “to prevent waste and
26 dissipation of the assets of the Receivership Defendant to the detriment of investors,” and
27 authorized to “receive and collect any and all sums of money due or owing to the
28

1 Receivership Defendant.” (*Arizona Corp. Comm’n v. DenSco Inv. Corp.*, Case No.
2 CV2016-014142, Order Appointing Receiver, at ¶ 17 (Aug. 18, 2016), a true and correct
3 copy is attached hereto as **Exhibit 6**).

4 3. JPMorgan Chase, N.A. (“Chase”), is a financial institution that provided
5 depository account services to Arizona Home Foreclosures, LLC (“AZHF”) beginning
6 April 8, 2014. (Arizona Home Foreclosures Chase Account-Opening Documents, at
7 JPMC-SOF_000033, a true and correct copy is attached hereto as **Exhibit 7**).

8 4. Vikram Dadlani (“Dadlani”) was the branch manager from July 2014
9 through July 2015 at the Chase retail branch in Scottsdale, Arizona, where Yomtov
10 “Scott” Menaged (“Menaged”) banked for AZHF. (May 12, 2022 Dadlani Dep. Tr., at
11 11:13-19, a true and correct copy is attached hereto as **Exhibit 8**).

12 5. [REDACTED]
13 [REDACTED]
14 [REDACTED] (Oct. 25, 2022 Nelson Dep. Tr., at 72:10-23, a true and correct copy
15 is attached hereto as **Exhibit 9**). [REDACTED] (Dec. 5, 2019 Nelson
16 Clark Hill Dep. Tr., at 31:6-14, a true and correct copy is attached hereto as **Exhibit 39**).
17 She has had a long career at Chase: She began as a banker beginning in 2009, she was
18 promoted to assistant branch manager in 2011, and after briefly leaving Chase in 2017,
19 she returned to Chase as a branch manager in 2017. (Ex. 9, at 70:23-71:13; Ex. 39, at
20 19:8-14). She currently works for Chase as a branch review analyst, performing quality
21 assurance reviews for Chase branches. (Ex. 9, at 71:10- 72:3).

22 **II. UNDISPUTED MATERIAL FACTS ENTITLING THE CHASE**
23 **DEFENDANTS TO SUMMARY JUDGMENT**

24 **a. Chittick Discovers Loans to Menaged Violated Representations to**
25 **DenSco Investors.**

26 6. As a hard-money lender, DenSco made short-term, high-interest loans to
27 borrowers who bought homes that were being foreclosed upon, usually through a trustee’s
28 sale. (Ex. 1, at § 1; *see, e.g.*, Nov. 1, 2013 DenSco website Business Plan, a true and

1 correct copy is attached hereto as **Exhibit 10**; June 1, 2007 DenSco Private Offering
2 Memorandum (“2007 POM”), a true and correct copy is attached hereto as **Exhibit 11**).

3 7. Chittick, through DenSco, raised funds from investors to make these loans
4 and purported to pay out investor dividends from the interest earned on those loans. (Ex.
5 10; Ex. 11).

6 8. Many DenSco investors were Chittick’s family and friends, some of whom
7 planned to use their earnings from DenSco to fund their retirements. (Tr. of Chittick
8 Recorded Conversation with Menaged, at 114:14-19, 119:2-13, 122:22-123:11, a true and
9 correct copy is attached hereto as **Exhibit 12**).

10 9. In Private Offering Memoranda to investors and on DenSco’s website,
11 Chittick represented that DenSco loans were a low-risk, safe investment because Chittick:
12 **(1)** would make only first-position loans; **(2)** would not make loans exceeding a 70%
13 loan-to-value ratio; and **(3)** would maintain a diverse borrower base by “attempting to
14 ensure that one borrower will not comprise more than 10 to 15 percent of the total
15 portfolio.” (Ex. 1, at § 1; Oct. 31, 2013 DenSco website Lending Guidelines, a true and
16 correct copy is attached hereto as **Exhibit 13**; Ex. 11).

17 10. “Because the notes that DenSco sold were unsecured, the risk associated
18 with them depended substantially on” whether DenSco actually kept his promises to his
19 investors that it “had obtained a first lien position,” the loan-to-value ratio, and “the
20 diversity of DenSco’s borrowers.” (May 20, 2022 Expert Report of Mark R. Lee, at 5, a
21 true and correct copy is attached hereto as **Exhibit 14**).

22 11. Yomtov “Scott” Menaged (“Menaged”) was a Scottsdale, Arizona
23 foreclosure specialist and DenSco borrower beginning in 2007. (Jan. 7, 2014 Email
24 Chittick to Beauchamp and Menaged re the details, a true and correct copy is attached
25 hereto as **Exhibit 15**).

26 12. Menaged and his property-flipping business were featured on the Discovery
27 Channel reality television show “Property Wars.” (Jan. 18, 2023 Menaged Dep. Tr., at
28 178:19-180:3, a true and correct copy is attached hereto as **Exhibit 16**).

1 13. Over time, Menaged became one of DenSco’s primary borrowers. (Chittick
2 Investor Letter, at JPMC-SOF_000202, a true and correct copy is attached hereto as
3 **Exhibit 17**; Feb. 16, 2023 Expert Report of Andrew D. Richmond, at ¶70, a true and
4 correct copy is attached hereto as **Exhibit 18**.) By the end of 2013, nearly half of
5 DenSco’s loan portfolio was comprised of loans to Menaged. (*Id.*)

6 14. At latest, on November 27, 2013, Chittick “discovered that Menaged was
7 taking monies from DenSco without obtaining a first lien” on the properties Menaged had
8 told Chittick he would purchase. (Jan. 12, 2022 Receiver’s Response to Chase’s First Set
9 of Requests for Admissions (“RFA”), at Resp. 1, a true and correct copy is attached hereto
10 as **Exhibit 19**; Oct. 20, 2016 Menaged R. 2004 Dep. Tr., at 71:15-74:14, a true and correct
11 copy is attached hereto as **Exhibit 20**; Chittick DenSco 2013 Journals, at Nov. 27, 2013,
12 a true and correct copy is attached hereto as **Exhibit 21**).

13 15. Instead, Menaged “was obtaining two loans on properties” he purchased,
14 “one from DenSco and one from another hard money lender” (Ex. 19, at Response 1) and
15 placing two liens on each property to secure each loan (hereinafter “double-liening”).
16 (Ex. 15; Ex. 20, at 75:6-76:10, 78:10-79:1; Ex. 16, at 18:20-19:1).

17 16. As a result, the loans impacted by Menaged’s scheme were not secured by
18 a first-position deed of trust and would have a loan-to-value ratio exceeding 100%—all
19 in violation of the representations DenSco made to investors. (Ex. 15; July 2011 Private
20 Offering Memorandum (“2011 POM”), at JPMC-SOF_001054, a true and correct copy
21 is attached hereto as **Exhibit 82**).

22 17. Furthermore, according to DenSco’s QuickBooks files, loans to Menaged
23 accounted for approximately 43% of DenSco’s total loans as of November 1, 2013. (Ex.
24 18, at ¶ 70).

25 18. This double-liening practice was made possible only because—contrary to
26 standards typical for the hard-money lending industry—DenSco wired loan proceeds
27 directly to bank accounts controlled by Menaged. (Ex. 2, at 5; Jan. 9, 2014 Beauchamp
28 Email to Chittick re auction properties/paying trustee, a true and correct copy is attached

1 hereto as **Exhibit 22**. Compare with May 20, 2022 Expert Report of Jack W. Hilton, Sr,
2 at 5, 8, 9, a true and correct copy is attached hereto as **Exhibit 23**, (explaining prudent
3 hard money lenders verify a winning bid on a property before sending loan funds directly
4 to the foreclosure trustee). In a letter from June 2016, Chittick stated he had “operated
5 this way ever since I was given the ability to wire on line in 2003.” (Ex. 17, at JPMC-
6 SOF_000202).

7 19. DenSco had been notified of Menaged’s double-liening on at least two other
8 occasions prior to November 2013. First, Chittick received communications from Gregg
9 Reichman, a principal of Active Funding Group (another lender to Menaged), who had
10 uncovered DenSco liens on properties for which his company had also funded purchase-
11 money loans with Menaged. An email from Chittick to Mr. Menaged on
12 September 24, 2012, indicated that there were 5 fraudulent loans. (Sept. 24, 2012 Email
13 Between Chittick and Menaged Re: 5 Properties, a true and correct copy is attached hereto
14 as **Exhibit 74**).

15 20. Second, there was a lawsuit filed against DenSco by Freo Arizona (“Freo”)
16 for filing a fraudulent lien on property owned by Freo, and not Menaged or his entities,
17 in May 2013. (June 14, 2013 Email and Freo Arizona, LLC v. Easy Investments, LLC,
18 Active Funding, LLC, DenSco Investment Corp. et al., Complaint dated May 24, 2013, a
19 true and correct copy is attached hereto as **Exhibit 75**).

20 21. Despite Chittick’s discovery of Menaged’s double-liening fraud, DenSco
21 did not change these lending practices after November 2013. (Ex. 18, at ¶¶ 76-78).

22 22. The next day, Chittick “got an email from scott with the spreadsheet listing
23 the properties with the double liens against them.” (Ex. 21, at Nov. 28, 2013). “It makes
24 me sick to my stomach,” Chittick wrote. (*Id.*). The Receiver has admitted and agrees that
25 DenSco’s decision to continue conducting business with Menaged after learning of fraud in
26 November 2013 was unreasonable and improper. (Dec. 16, 2022 Davis Dep. Tr., at 37:23-
27 38:3; 163:13-164:18, a true and correct copy is attached hereto as **Exhibit 78**; *Davis v. Clark*
28 *Hill PLC, et al.*, Case No. CV2017-013832, Statement of Facts in Support of Motion for

1 Determination that Plaintiff Has Made a Prima Facie Case for Punitive Damages (Apr.
2 12, 2019), at ¶¶ 202-205, a true and correct copy is attached hereto as **Exhibit 79**; Ex. 22,
3 at JPMC-SOF_000298; Ex. 2, at JPMC-SOF_000009.)

4 **b. Chittick and Menaged Make a Plan to Conceal DenSco’s Losses
and the Fraud.**

5 23. Chittick became concerned that if DenSco’s investors discovered the
6 double-liening and resulting impairment or lack of security, they would pull their
7 investments from DenSco, and the company would collapse. (Ex. 24, at 207:25-208:23;
8 209:20-210:6; 211:16-212:23; Chittick DenSco 2014 Journals, at Feb. 20, 2014 at JPMC-
9 SOF_000346, a true and correct copy is attached hereto as **Exhibit 25**; Ex. 17, at JPMC-
10 SOF_000202).

11 24. Chittick did not investigate what happened to the funds he lent Menaged.
12 (Ex. 19 at Response 12.) He instead began strategizing a plan to attempt to resolve the
13 double-liening issue and conceal DenSco’s losses by entering a Forbearance Agreement
14 with Menaged without telling his investors about the fraud and the losses. (Ex. 17, at
15 JPMC-SOF_000204). In journal entries, Chittick wrote:

- 16 • “I talked to scott. He can’t get money from daddy, so *I’m going to have to*
17 *bank roll this whole solution*. I f*cking hate it but what else am I going to
18 do?” (Ex. 21, at December 5, 2013) (emphasis added).
- 19 • “[A]ll day long I had phone calls and emails for deals, payoffs. Then Scott
20 calls me, tells me this meeting with Dan on Monday is for four lenders that
21 bought the paper, they think they are in first position, I’m positions are invalid
22 and they want to foreclose on everything. This could be a nightmare. Scott
23 and I will talk again tomorrow or thursday or some point to figure this night
24 mare out! I worked until 11:30 catching up on everything. What looked like
25 was going to be a super profitable year, has turned out to be what could be the
26 collapse of my entire 14 years of work and my entire network. *I’m just not*
27 *prepared to watch it go away. I think we can work our way out of this*
28

1 *nightmare* if we just have everyone playing on the same side. I sure the h*ll
2 hope so.” (*Id.*, at December 31, 2013) (emphases added).

- 3 • “ ... I was up all night thinking about how to get out of this nightmare, raise
4 money and start paying off as many of the loans as possible even if I’m upside
5 down and six other ways to get them [the other lenders] to back off. ...we are
6 going to try to pay off four a week and as well as the other dozen or so in
7 escrow, in 30 days we’ll be able to chip a lot of this down” (Ex. 25, at Jan.
8 8, 2014, JPMC-SOF_000344).

9 25. On January 6, 2014, a law firm representing some of the other lenders from
10 whom Menaged had borrowed, and who held liens on the properties on which DenSco
11 also had recorded liens, delivered to Chittick a demand letter. (Jan. 6, 2014 Letter from
12 Miller to DenSco re Mortgage Recordation; Demand for Subordination, at JPMC-
13 SOF_000351-353, a true and correct copy is attached hereto as **Exhibit 26**). The letter
14 attached a list of 125 affected properties, and stated:

- 15 • “The Lenders made each of the Loans to the Borrower [Menaged] for the
16 specific purpose of providing purchase money financing The Lenders, in
17 each and every instance, deliberately advanced the loan proceeds pursuant to
18 certified funds delivered directly to the trustee and received a receipt from the
19 trustee confirming delivery of such funds. The Lenders, in each and every
20 instance, also promptly recorded deeds of trust confirming a senior lien
21 position on each of the Properties.”
- 22 • “The Lienholders recently learned that your company, Densco [sic], engaged
23 in a practice of recording a ‘mortgage’ on each of the Properties on or around
24 the same time as the Lenders were recording their senior deeds of trust. In each
25 and every instance, Densco’s recorded mortgage states that Densco provided
26 purchase money funding and that Densco’s loans are ‘evidenced by a check
27 payable’ to the trustee for each of the Properties. Thus, Densco is taking the
28 position in recorded documents that it provided a purchase money loan to the

1 Borrower with respect to each of the Properties.”

- 2 • “Presumably, Densco is taking the position that its alleged loan is senior to the
3 liens of the Lienholders with respect to each of the Properties. Of course, this
4 is a practical impossibility since, in each and every instance, only the Lenders
5 provided the applicable trustee with certified funds supporting the Borrower’s
6 purchase money acquisition for each of the Properties”
- 7 • “This demand letter provides Densco with an opportunity to immediately
8 clarify its position and rectify this situation. Because of the seriousness of this
9 situation, the Lenders are presenting their position as a formal demand on you
10 and Densco.”

11 26. The January 6, 2014 letter demanded that DenSco agree to subordinate its
12 loans to Menaged’s other lenders, and that if DenSco did not do so within five business
13 days, the lenders would commence litigation against DenSco. (Ex. 26, at JPMC-
14 SOF_000351-353).

15 27. After he learned about the double liening, Chittick and DenSco had a legal
16 obligation to disclose to his investors that his investments did not match up with his earlier
17 representations regarding lien position, loan-to-value ratio, and borrower diversity. (Ex.
18 14, at 5-11; 15).

19 28. Chittick never corrected these statements to reflect the actual composition
20 of his investment portfolio. (Mar. 14, 2015 Email from Chittick to Menaged Discussing
21 Legal Reporting Obligations, a true and correct copy is attached hereto as **Exhibit 77**).

22 29. DenSco continued soliciting new investments after learning the true nature
23 of his portfolio. (Various Investor Statements, a true and correct copy is attached hereto
24 as **Exhibit 28**).

25 30. DenSco’s conduct constituted fraud in connection with the offer or sale of
26 securities. (*See* Ex. 5; *see also* (Ex. 14, at 5-11, 15) (noting this “almost certainly”
27 amounted to securities fraud under federal law.))

28 31. On January 7, 2014, Chittick emailed his attorney, David Beauchamp

1 (“Beauchamp”) detailing an alternative plan he and Menaged had devised. (Ex. 15).

2 Chittick wrote:

- 3 • “I’ve been lending to Scott Menaged through a few different LLC’s and his
4 name since 2007. i’ve lent him 50 million dollars and i have never had a
5 problem with payment or issue that hasn’t been resolved.”
- 6 • “Because of our long term relationship, when Scott needed money, i would
7 wire the money to his account and he would pay the trustee. I do this same
8 thing with several borrowers and bidding co’s. ... i would record the RM the
9 day he paid for the property. then once the trustee’s deed was recorded, ...I
10 then would record my DOT [deed of trust]. this is a practice that i have done
11 for 14 years.”
- 12 • “ ... i would record the RM to muddy up title then record the DOT after the
13 trustee’s deed to ensure my first position lien.”
- 14 • “Scott and i spent a great amount of time creating a plan to fix this. Our plan is
15 simple, sell off the properties and pay off both liens with interest and make
16 everyone whole. Because many of the houses were bought in the first half of
17 last year. they are upside down Coming up with the short fall on all these
18 houses is a challenge , but we believe it’s doable. our plan is a combination of
19 injecting capital and extending cheaper money, along with continuing the
20 business as he’s run it for years, by flipping homes which will generate profits.”
- 21 • “i’ve been over this plan 100 times and the numbers and i truly believe this is
22 the right avenue to fix the problem. we have been proceeding with this plan
23 since November and we’ve already cleared up about 10% of the total \$’s in
24 question.”
- 25 • “i know that i can’t sign the subordination because that goes against everything
26 that i tell my investors.”
- 27 • “What we need is an agreement that as long as the other lenders are being paid
28 their interest and payoffs continue to come ... that no one initiates foreclosure

1 for obvious reasons, which will give us time to execute our plan.”

2 32. The lending procedures Chittick described deviated from industry
3 standards, including failing to verify the winning bid before sending the loan proceeds,
4 wiring loan proceeds directly to the foreclosure trustee, and promptly recording a first-
5 position deed of trust. (Ex. 23, at JPMC-SOF_000304, 307-308). The record evidence
6 gathered to date, including the Receiver’s own admissions, show that had Chittick wired the
7 loan funds directly to the foreclosure trustee, then Menaged’s fraud on DenSco could not have
8 occurred. (Ex. 19, at Response 5; Ex. 79, at ¶¶ 93, 180 (admitting “Chittick had been
9 grossly negligent in managing DenSco’s loan portfolio, by not complying with the terms
10 of the Mortgage, which called for DenSco to issue a check payable to the Trustee, and
11 instead wiring money to Menaged, trusting Menaged to actually use those funds to pay a
12 Trustee.”); Ex. 2, at JPMC-Receiver_0006507; Ex. 22, at JPMC-SOF_000298, *compare*
13 *with* Ex. 23, at SOF_000304, 307-308) (explaining prudent hard money lenders verify a
14 winning bid on a property before sending loan funds directly to the foreclosure trustee).)

15 33. DenSco failed to employ any procedures typical for the hard-money lending
16 industry to ensure that loans are properly secured, including ceasing direct payment of loan
17 funds to Menaged, or conducting title searches on properties Menaged purported to buy.
18 (Ex. 78, at 87:1-88:16, 153:7-16; 178:13-179:14). Had DenSco complied with any of
19 these industry standards, Menaged’s fraud could not have occurred either before or after
20 November 2013. (Ex. 79, at ¶¶ 97, 172-175 (admitting that “records available through the
21 Maricopa County Recorder’s website” allow the public to lookup deeds of trust “within
22 minutes,” and explaining additional information that could have been discovered
23 regarding double-liened properties based on DenSco’s business records)).

24 34. The Receiver has admitted and agrees that DenSco’s decision to continue
25 conducting business with Menaged after learning of fraud in November 2013 was
26 unreasonable and improper. (Ex. 78, at 37:23-38:3; 163:13-164:18; Ex. 79 at ¶¶ 202-205;
27 Ex. 2, at JPMC-SOF_000009).

28 35. Because of the double-liening fraud, DenSco became insolvent as of

1 December 31, 2012. (Arizona Corporation Commission v. DenSco Investment
2 Corporation, CV2016-014142, Petition No. 19, Petition for Ord. Establishing Claims
3 Procedures (Feb. 17, 2017), at ¶ 4, a true and correct copy is attached hereto as **Exhibit**
4 **70**; *See also* Ex. 19, at Response 8).

5 36. Chittick acknowledged in his journals that his plan would “put [him] in a
6 really sh*tty position LTV and concentration wise with Scott but as long as he does what
7 he says he’s going to do We can work ourselves out of this mess.” (Ex. 25, at JPMC-
8 SOF_000345).

9 37. On January 12, 2014, Chittick emailed Beauchamp again with more
10 information about his plan, which included raising money from DenSco investors to pay
11 off the amount owed to the other lenders. (Jan. 12, 2014 Emails between Chittick and
12 Beauchamp re Plan, a true and correct copy is attached hereto as **Exhibit 27**). Chittick
13 wrote that he “spent the day contacting every investor that has told me they want to give
14 me more money. i don’t have an answer on specifically how much i can raise, i’ll know
15 that in a day or two. ... if all goes well, I’ll have my money in total of rought [sic.] 5-6
16 million” in the next 10 business days, a total that included both new investments and other
17 existing DenSco funds. (*Id.*). He continued “if both scott and i can raise money, we
18 should be able to have this all done in 30 days easy.” (*Id.*). Beauchamp responded that
19 Chittick “should feel very honored that you could raise that amount of money that
20 quickly.” (*Id.*).

21 38. DenSco’s investor account statements show Chittick accepted \$818,000
22 from investors in December 2013 and January 2014. (Ex. 28).

23 39. Beginning in January 2014, Beauchamp worked with Chittick and with
24 Menaged’s attorney, Jeff Goulder, to memorialize Chittick and Menaged’s plan to pay
25 off the other lenders in the form of a Forbearance Agreement. *See* (Jan. 15, 2014 Various
26 Emails, a true and correct copy is attached hereto as **Exhibit 29**). Two goals Chittick,
27 Beauchamp, and Menaged discussed when creating the Forbearance Agreement were to:
28 **(1)** “do everything we can to keep” the double-liening scandal “out of litigation” so that

1 DenSco’s investors would not discover DenSco’s losses (Jan. 15, 2014 Emails between
2 Chittick, Menaged, and Beauchamp re Non Disclosure Agreement, a true and correct
3 copy is attached hereto as **Exhibit 30**) and (2) protect DenSco from litigation by DenSco
4 investors should they ever discover the double-liening (Feb. 9, 2014 Emails between
5 Chittick and Beauchamp re Status, a true and correct copy is attached hereto as **Exhibit**
6 **31**).

7 40. During this time, Chittick and Menaged often communicated without their
8 attorneys regarding the terms of the draft agreement. On at least two occasions, Chittick
9 indicated that the Forbearance Agreement was a formality, and that it would not strictly
10 dictate how they approached repaying Menaged’s other lenders. (Jan. 15, 2014 Email
11 Chittick to Menaged re discussing changes to workout doc, a true and correct copy is
12 attached hereto as **Exhibit 32**; Mar. 13, 2014 Email Chittick to Menaged re ok here it is,
13 a true and correct copy is attached hereto as **Exhibit 33**).

14 41. Menaged never fulfilled many of his obligations under the Forbearance
15 Agreement. (Ex. 18, at ¶¶ 60-61).

16 42. During the Forbearance Agreement negotiations, Beauchamp repeatedly
17 warned Chittick that because he wanted to avoid litigation, Chittick was making
18 concessions that prioritized Menaged’s interests over the best interests of DenSco’s
19 investors, thereby breaching Chittick’s fiduciary duties. *See, e.g.*, (Ex. 31; Feb. 4, 2014
20 Email Chittick to Beauchamp re Attached Redline of Forbearance Agreement, a true and
21 correct copy is attached hereto as **Exhibit 34**).

22 43. Despite Beauchamp’s warnings, Chittick persisted in making concessions
23 that favored Menaged. (Ex. 31).

24 44. The Forbearance Agreement specifically provided that DenSco “has
25 increased the Loan amount applicable to certain of the Properties referenced in Exhibit A
26 up to 120% of the loan-to-value (‘LTV’) ratio of the value of the respective Properties,”
27 (Apr. 16, 2014 Forbearance Agreement, at JPMC-SOF_000420, a true and correct copy
28 is attached hereto as **Exhibit 35**), which expressly contradicted the commitment DenSco

1 had made to its investors to “strive to” keep loan-to-value ratio below 15%, *see* (Ex. 82,
2 at JPMC-SOF_001054; Ex. 14, at 10-11).

3 45. Chittick never disclosed the increased loan-to-value ratio to DenSco’s
4 investors. (Mar. 14, 2015 Email from Chittick to Menaged Discussing Legal Reporting
5 Obligations, a true and correct copy is attached hereto as **Exhibit 77**).

6 46. The Forbearance Agreement reflected that, at the time of execution,
7 DenSco’s exposure to the double-liened properties was approximately \$6 million. (Ex.
8 18, at ¶ 21; Ex. 35, at JPMC-SOF_000430–433).

9 47. Although Chittick and Menaged did not execute the Forbearance
10 Agreement until April 16, 2014, (Ex. 35, at JPMC-SOF_000415) they had been working
11 together to pay off the other lenders beginning in November 2013. (*Id.*, at JPMC-
12 SOF_424). By the time the Forbearance Agreement was executed in mid-April 2014, the
13 concentration of loans to Menaged had increased by about \$13 million, to approximately
14 59% of DenSco’s total loans. (Ex. 18, at ¶ 70).

15 **c. DenSco Continues to Make Loans to Menaged Without Following**
16 **Industry-Standard Safeguards.**

17 48. From November 2013 until October 2015, DenSco continued to lend
18 Menaged funds to purchase new properties by directly wiring loan funds to Menaged.
19 (Ex. 19, at Responses 2, 3).

20 49. DenSco again elected not to implement industry-standard safeguards—
21 such as taking steps to verify where DenSco loan funds from the double-liened properties
22 went, conducting title searches on properties Menaged purported to buy, sending funds
23 to an escrow account or directly to the trustee—before making additional loans to
24 Menaged. (Ex. 19, at Responses 5, 10, 12, 14, 16; Ex. 23, at 8-9).

25 50. The Receiver has admitted that if Chittick and DenSco had implemented
26 these safeguards, Menaged could not have caused additional losses to DenSco after
27 November 2013. (Ex. 19, at Responses 5, 10, 12, 14, 16).

28 51. On or around January 2014, Chittick began requiring Menaged to purchase

1 cashier's checks with the DenSco loan funds intended for a specific property purchase;
2 the checks were made payable to the foreclosure trustee presiding over the sale. (Ex. 1,
3 at JPMC-SOF_000004; Ex. 16, at 27:1-11; Ex. 17, at JPMC-SOF_000205). Chittick
4 instructed Menaged to take a picture of the check and send it to Chittick for DenSco's
5 record, along with a copy of the trustee's receipt showing the property was purchased.
6 (Ex. 16, at 27:24-29:25; Ex. 17, at JPMC-SOF_000205).

7 52. The Receiver's investigation into DenSco's records revealed that many of
8 the trustee's receipts Menaged sent Chittick were fraudulent. (Nov. 2, 2015 Email
9 Anderson to Kaup and Davis re DenSco Receivership CV2016-014142 and In re: Yomtov
10 Menaged 2:16-bk-04268-PS, a true and correct copy is attached hereto as **Exhibit 36**).

11 53. In April 2014, Menaged opened a bank account for his company AZHF
12 with Chase. (Ex. 7).

13 54. During the time AZHF had an account with Chase, DenSco would wire loan
14 funds directly to the AZHF account. (Ex. 19, at Response 3; *see, e.g.*, May 5, 2022 Molina
15 Dep. Ex. 16, at JPMC-SOF_000642-643, a true and correct copy is attached hereto as
16 **Exhibit 44** (listing examples of DenSco wire transfers to AZHF account).

17 55. Menaged would email Chase branch staff a list of cashier's checks he
18 planned to purchase before he arrived at the branch in order to save time. (*See, e.g.*, Oct.
19 15, 2014 Email Menaged to Nelson and Dadlani re Tomorrow (Sample Email Requesting
20 Checks), a true and correct copy is attached hereto as **Exhibit 37**).

21 **d. No Chase Branch Employee Knew of the Ponzi Scheme.**

22 **i. Vikram Dadlani**

23 56. Dadlani was the branch manager at the Chase branch where Menaged
24 banked from July 2014 through July 2015. (Ex. 8, at 11:13-19). During this time, Dadlani
25 and Menaged had very little interaction. (Ex. 16, at 54:12-14). Dadlani did not recall
26 communicating with Menaged at any time on either Dadlani's business or personal phone
27 or on Dadlani's personal email or phone. (Dec. 12, 2019 Dadlani Clark Hill Dep. Tr.,
28 at 19:17-20:15, a true and correct copy is attached hereto as **Exhibit 38**). Dadlani had no

1 social or personal relationship with Menaged. (Ex. 38, at 146:18-19).

2 57. Menaged sometimes included Dadlani on emails requesting cashier's
3 checks. (*Id.*, at 78:4-83:24). It was not unusual for Dadlani to receive emails from bank
4 customers. (*Id.*, at 78:15-24).

5 58. Dadlani has no memory of personally preparing any checks for Menaged,
6 (Ex. 8, at 20:14-16) but recalled that he may have prepared some of the checks Menaged
7 requested in his emails or forwarded the emails to another employee to complete the
8 transactions (Ex. 38, at 90:13-18). Menaged would have obtained cashier's checks just
9 like any other customer would. (Ex. 8, at 27:12-22). The checks would not be stamped
10 "not used for intended purpose" before issuing the check to Menaged. (*Id.*, at 46:7-47:5).

11 59. Dadlani has no knowledge of the frequency of Menaged's cashier's check
12 purchases and redeposits. (Ex. 38, at 98:20-99:15). He similarly did not know the
13 purpose of Menaged's checks, nor did he know details about Menaged's business. (*Id.*,
14 at 109:15-20).

15 60. Dadlani did not know who Denny Chittick, DenSco, or Veronica Castro
16 were, nor did he know anything about Menaged's business operations or recall ever
17 discussing DenSco with Menaged. (*Id.*, at 19:6-8, 77:11-78:1; 83:6-9; 83:10-17; 141:21-
18 24).

19 61. Dadlani never knew of Menaged taking a picture of a cashier's check. (*Id.*,
20 at 100:12-19). Dadlani did not know of Menaged's fraud and did not suspect any issues
21 with Menaged's account at any time. (*See id.*, at 99:16-21, 102:23-103:15, 107:10-24
22 (noting that Menaged's actions and transactions were not unusual for a banking
23 customer)).

24 62. Dadlani was not aware of the specifics of Menaged's transactions. (*Id.*, at
25 148:3-9). He had no knowledge of any wire transfers between Menaged and DenSco, nor
26 was he aware that Menaged was receiving any loan funds from DenSco. (Ex. 8, at 107:23-
27 109:13). Dadlani also had no knowledge of Menaged's finances or financial condition.
28 (Ex. 38 at 128:3-5).

1 70. [REDACTED]
2 [REDACTED]
3 (Ex. 9, at 193:4-195:11). [REDACTED]
4 [REDACTED]
5 [REDACTED] (*Id.*,
6 at 193:4-195:11; Ex. 39, at 64:7-65:13). [REDACTED]
7 [REDACTED]
8 [REDACTED] (Ex. 39, at 28:20-29:5).

9 71. Nelson remembered Menaged would send her emails. (*Id.*, at 68:16-20).
10 She did not remember the content, but if they listed the cashier's checks he needed, it
11 would likely be so she could [REDACTED] into the system to
12 generate the checks. (Ex. 9, at 217:13-15). It was not unusual for customers to email her.
13 (Ex. 39, at 103:8-9).

14 72. Nelson testified that she remembered filling out withdrawal and deposit
15 slips before Menaged arrived at the bank to save time, but for the deposit slips, she would
16 only fill out his name and account number because she did not know what Menaged
17 planned to do with his checks. (*Id.*, at 85:23-86:3; 87:10-88:13). At some point in time,
18 Chase's policy changed and Menaged was required to begin signing his withdrawal slips
19 before Chase could print his cashier's checks. (Ex. 9, at 239:14-240:25; Ex. 39, at 99:17-
20 100:18).

21 73. When processing cashier's check purchases, Teller Express (Chase's
22 transaction-processing software) shows the teller processing the transaction only the
23 customer's name and the available balance. (Ex. 9, at 150:17-21). If the balance covers
24 the amount of the requested cashier's check, the teller could process the transaction. (*Id.*,
25 at 150:22-151:3).

26 74. Chase customers are permitted under Chase policy to redeposit cashier's
27 checks that they have purchased. (*Id.*, at 153:23-154:17; Ex. 39, at 81:18-23; 2014-2016
28 Chase Cashier's Check Acceptance Policies, at JPMC-SOF_000496, JPMC-

1 SOF_000504, JPMC-SOF_000513, JPMC-SOF_000522, JPMC-SOF_000531, JPMC-
2 SOF_000542, JPMC-SOF_000553, a true and correct copy is attached hereto as **Exhibit**
3 **41)** (all allowing cashier’s checks to be redeposited provided checks are endorsed “not
4 used for intended purposes”). Redeposited funds are immediately available. (Ex. 39, at
5 132:13-22).

6 75. Nelson remembered seeing Menaged take a picture of one cashier’s check.
7 (Ex. 9, at 164:14-18; 232:11-14; Ex. 39, at 92:3-14).

8 76. Nelson has no memory of lifting any holds on Menaged’s transactions
9 (Ex. 9, at 238:14-16), or verifying funds for him for third parties. (Ex. 39, at 129:24-
10 130:7).

11 77. Nelson had no knowledge of the details of the business relationship between
12 Menaged and DenSco. (Ex. 39, at 63:2-23, 69:12-23, 75:23-25, 77:2-5).

13 78. Nelson never communicated with Menaged on her personal email or phone.
14 (Ex. 39, at 13:13-18).

15 79. Menaged did not have a preexisting or personal relationship with Nelson.
16 (Ex. 16, at 187:2-25). The last time he saw her was when he last visited the 90th and Shea
17 Chase branch. (Jan. 18, 2023 Menaged Dep. Tr., at 194:5-13, a true and correct copy is
18 attached hereto as **Exhibit 83**).

19 80. Menaged never gave money or offered a bribe to Nelson. (Ex. 16 at 188:21-
20 22).

21 81. Menaged never told Nelson that Menaged was involved in fraudulent or
22 illegal activity, including the DenSco fraud. (*Id.*, at 189:1-8).

23 **iii. Susan Lazar**

24 82. Susan Lazar, Lazar, a Chase Private Client Banker, was responsible for
25 managing relationships with certain Chase customers that had \$250,000 or more in
26 deposits in their account balances. (Oct. 19, 2022 Lazar Dep. Tr., at 15:9-20, 61:13-21,
27 a true and correct copy is attached hereto as **Exhibit 42**).

28 83. Lazar opened a Chase business account for AZHF, ending in the numbers

1 [REDACTED] on April 8, 2014. (Ex. 7, at JPMC-SOF_000033). This account remained open
2 until November 20, 2016. (Feb. 16, 2023 Expert Report of Robert S. Pasley, at ¶ 15, a
3 true and correct copy is attached hereto as **Exhibit 43**). [REDACTED]
4 [REDACTED] (Ex. 44,
5 at JPMC-SOF_000654, 655, 658-659).

6 84. Although Lazar, and other Private Client Bankers, had access to
7 transactional information related to their customers, they do not have a comprehensive
8 view of all transaction activity related to each of her assigned clients. (Ex. 42, at 70:14-
9 18, 71:10-18).

10 85. Lazar would only look at a customer's banking activity sporadically, if
11 needed to respond to customer requests. (*Id.*, at 37:8-16).

12 86. Lazar was not aware of Menaged's purported fraud, as she had no
13 knowledge that Menaged was having cashier's checks issued and then redepositing them
14 into his account. (*Id.*, at 51:22-25).

15 87. Menaged did not know Lazar prior to opening an account at Chase, and he
16 did not have a personal relationship with her. (Ex. 16, at 211:22-212:1-9).

17 88. Menaged did not tell Lazar that he was engaged in fraud or that he was
18 doing anything illegal. (*Id.*, at 213:8-16).

19 89. Lazar went on maternity leave in December 2014, never returned to work
20 at Chase, and did not have any contact with Menaged after leaving her employment with
21 Chase. (*Id.*, at, 212:12-213:7).

22 **f. No Employee in Chase's Anti-Money Laundering Department**
23 **Knew of the DenSco/Menaged Fraud.**

24 90. [REDACTED]
25 [REDACTED] (Jan. 31, 2023 Hitt Dep. Tr., at 9:9-14:19, a true and correct
26 copy is attached hereto as **Exhibit 46**). [REDACTED]
27 [REDACTED] (*Id.*, at 44:11-
28 23).

- 1 91. [REDACTED]
2 [REDACTED] (*Id.*, at 37:8-12; *see also* Aug. 30, 2022 Stone Dep. Tr., at 28:21-29:5, a
3 true and correct copy is attached hereto as **Exhibit 47**). [REDACTED]
4 [REDACTED]
5 [REDACTED] (Ex. 46, 37:8-12, 114:5-8). [REDACTED]
6 [REDACTED]
7 [REDACTED] (*Id.*, at 37:8-12; Aug. 10, 2022 Edds Dep. Tr., at 12:10-
8 16, 13:1-8, a true and correct copy is attached hereto as **Exhibit 45**; Oct. 12, 2022 Johnson
9 Dep. Tr., at 31:24-32:6, 62:18-23, a true and correct copy is attached hereto as **Exhibit**
10 **48**).
11 92. [REDACTED]
12 [REDACTED] (Ex. 46, at 25:12-26:2).
13 93. [REDACTED]
14 [REDACTED] (Ex. 44, at JPMC-SOF_000641). [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] (*Id.*).
18 94. [REDACTED] (*Id.*, at JPMC-
19 SOF_000642; Ex. 43, at ¶ 118). [REDACTED]
20 [REDACTED]
21 [REDACTED] (Ex. 44, at JPMC-SOF_000642).
22 95. [REDACTED] (*See*
23 Ex. 44 at JPMC-SOF_000641-642).
24 96. [REDACTED]
25 [REDACTED] (*Id.*, at JPMC-SOF_000641-644).
26 97. [REDACTED]
27 [REDACTED] (*Id.*, at JPMC-SOF_000644-649).
28 98. [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] (*Id.*,
5 at JPMC-SOF_000654). [REDACTED]
6 [REDACTED] (*Id.*, at JPMC-SOF_000644-649).
7 99. [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED] (*Id.*, at JPMC-SOF_000650, 655, 660).
11 100. [REDACTED]
12 [REDACTED]
13 [REDACTED] (*Id.*, at JPMC-SOF_000650-654). [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] (*Id.*).
18 101. [REDACTED]
19 • [REDACTED]
20 [REDACTED]
21 • [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 (*Id.*, at JPMC-SOF_000000654). [REDACTED]
26 [REDACTED] (*Id.*, at JPMC-SOF_000653).
27 102. [REDACTED]
28 [REDACTED]

1 [REDACTED] (*Id.*, at JPMC-SOF_000655-659). [REDACTED]
2 [REDACTED]
3 [REDACTED] (*Id.*). [REDACTED]
4 [REDACTED]
5 [REDACTED] (*Id.*).

- 6 103. [REDACTED]
7 • [REDACTED]
8 • [REDACTED]
9 [REDACTED]
10 • [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 • [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 • [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 • [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 (*Id.*, JPMC-SOF_000658-659).

2 104. [REDACTED]

3 [REDACTED]
4 [REDACTED] (*Id.*, at JPMC-SOF_000660-665).

5 105. [REDACTED]

6 [REDACTED] (*Id.*, at
7 JPMC-SOF_000655-659). [REDACTED]

8 [REDACTED]
9 [REDACTED] (*Id.*).

10 106. [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED] [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 (Apr. 23, 2015 Email from B. Pearson to G. Bolling re Arizona Home
27 Foreclosures, LLC, a true and correct copy is attached hereto as **Exhibit 76**).

28 107. [REDACTED]

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• [REDACTED]
[REDACTED]

(Ex. 44, at JPMC-SOF_000663665).

108. [REDACTED]

[REDACTED]

[REDACTED] (May 5, 2022 Molina Dep. Tr., at 12:2-11, 17:24-18:5, 19:2-20:1, 22:9-23:3, 23:11-24:10, a true and correct copy is attached hereto as **Exhibit 80**).

109. [REDACTED]

[REDACTED] (Jan. 31, 2023 Hitt Dep. Ex.

1734, a true and correct copy is attached hereto as **Exhibit 81**).

110. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. 47, at 12:7-9; Ex. 48, at 10:10-14; Ex. 45, at 11:22-12:6; Aug. 25, 2022 Pritchett Dep. Tr., at 10:23-25, a true and correct copy is attached hereto as **Exhibit 49**).

1 **i. Chittick and Menaged Adjust Their Transactions to Avoid Suspicion.**

2 111. In October 2014, Menaged and Chittick began “netting” their payments to
3 each other instead of wiring back and forth the full amount owed on each individual loan.
4 (Ex. 18, at ¶ 24). Explained otherwise, Chittick and Menaged began calculating the
5 difference between the daily new loan funds DenSco was to advance to Menaged, and the
6 daily payments Menaged owed to DenSco, and they would wire each other the difference
7 between the two figures. (*Id.*, at ¶ 24).

8 112. They began this practice after Chittick told Menaged that his bank, Bank of
9 America, had expressed concerns about the high-dollar amount of activity in DenSco’s
10 accounts. (Ex. 25, at JPMC-SOF_000347). On December 1, 2014, (after DenSco
11 changed banks) Menaged and Chittick returned to their prior practice of wiring gross
12 amounts and loan payments to each other. (Ex. 18, at ¶ 24; Ex. 25, at JPMC-
13 SOF_000348-350).

14 113. By year-end 2014, 76% of DenSco’s loans were concentrated with
15 Menaged. (Ex. 18, at ¶ 70).

16 114. In early 2015, Menaged and Chittick began sending out “offers to
17 purchase,” which solicited short sales from homeowners because they needed to “get
18 more creative” to find enough properties for DenSco to lend on to finance the Forbearance
19 Agreement. (Ex. 20, at 146:11-147:16).

20 115. As early as April 2015, Chittick and DenSco began funding loans to
21 Menaged before any homeowners accepted an offer to purchase their properties. (Various
22 Mortgages, a true and correct copy is attached hereto as **Exhibit 50**). Chittick issued
23 mortgage notes to Menaged stating that “a loan has been obtained from DenSco
24 Investment Corporation ... for the purpose of making an offer for” a specific property.
25 (Ex. 50). The Receiver produced 105 DenSco mortgage notes documenting loans to
26 Menaged with this language. (Ex. 50).

27 116. This language was a departure from the language in the DenSco’s earlier
28 mortgage notes to Menaged, which stated that Menaged “acknowledges the receipt of the

1 proceeds of a loan from DenSco Investment Corporation ... as evidenced by check
2 payable to” the trustee, and that “[t]he loan was made to Borrower to purchase” real
3 property identified by its legal property description. (Apr. 10, 2014 Mortgage, a true and
4 correct copy is attached hereto as **Exhibit 51**).

5 117. Issuing loans for the purpose of making offers to purchase increased the
6 amount of funds that DenSco was transferring to Menaged, thereby increasing the amount
7 of interest that DenSco could collect from Menaged to pay down the balance owed under
8 the Forbearance Agreement. (Ex. 18, at ¶¶ 22-23).

9 118. The plan was for DenSco to issue the funds to Menaged for 30 days, charge
10 interest during that month, and then collect the principal with interest at the end of the
11 30 days if a seller did not accept the offer to purchase. (Sept. 23, 2019 Menaged Clark
12 Hill Dep. Tr., at 162:11-163:16, 175:1-8, a true and correct copy is attached hereto as
13 **Exhibit 24**; Ex. 18, at ¶ 22). In actuality, Menaged purchased few, if any, properties with
14 the funds that DenSco lent Menaged for these “offer-to-purchase” transactions. (Ex. 18,
15 at ¶ 23). He simply used the new loan proceeds to repay DenSco the interest he owed on
16 earlier loans. (Ex. 24, at 175:1-176:5; Ex. 18, at ¶¶ 22-23).

17 119. The practice of issuing loans for offers to purchase, rather than requiring
18 proof of property purchase before funding a hard-money loan flagrantly disregards
19 industry-standard practices for prudent hard money lenders, (*compare with* Ex. 23, at 4-
20 6, 8-9), and this practice prompted an investigation by the Arizona Attorney General into
21 DenSco (May 25, 2015 Email Chittick to Menaged re Menaged draft letter re consumer
22 complaints, a true and correct copy is attached hereto as **Exhibit 52**). Menaged drafted
23 Chittick’s response to the Attorney General inquiry. (*Id.*).

24 120. On June 11, 2015, Menaged emailed Chittick asking, “Have you been
25 getting less complaining calls since we changed the doc ...?” (June 11, 2015 Email
26 Chittick to Menaged re on the way 190,367.20, a true and correct copy is attached hereto
27 as **Exhibit 53**). Chittick responded “I haven’t had any from homeowners in a while. i
28 still get texts, emails and calls from other bidders, that do a title search and see the

1 recorded mortgage, which for some reason they don't see the release. i get those every
2 other day or so. ...not having the homeowners call me is great." (*Id.*).

3 **j. DenSco Becomes Short on Funds**

4 121. In July 2015, Chittick became concerned with DenSco's cash flow because
5 of the delay between when Menaged's payments to DenSco registered on his bank
6 account and when Chittick needed to wire additional funds to Menaged. (July 5, 2015
7 Email Chittick to Menaged re dollars and cents, a true and correct copy is attached hereto
8 as **Exhibit 55**):

- 9 • "we have to get the whole sale going down this week or i won't be able to fund
10 your requests. i'm running lower and lower on funds and this wholesale
11 number has climbed nearly a million dollars. i can't do it any more. uncle."
12 (Ex. 55, at JPMC-SOF_000822-823).
- 13 • "i'm having to keep such high balances just so i can cover the float!" (Ex. 55,
14 at JPMC-SOF_000819).
- 15 • The payments to Menaged were "impeding my ability to even operate. i've
16 turned away over 2 million dollars of deals that are my best borrowers. ... I had
17 told you this balance can't go to 24 or 25 million. now we are there. ... i don't
18 have the money anymore to keep this rising to the sky." (July 6, 2015 Email
19 Chittick to Menaged re last week or so, at JPMC-SOF_000816-817, a true and
20 correct copy is attached hereto as **Exhibit 54**).
- 21 • "you have 80% of my money. i can't do anything else. The more retail that get
22 sold you eat that cash up in two or three days. It doesn't matter where it comes
23 in our out the balance just keeps going up." (Ex. 54, at JPMC-SOF_000812).
- 24 • "[B]ecause of these huge checks, i have to keep the funds in the account to
25 cover the wires each day, you've taken 800k in 10 days, and i'm falling below
26 what the bank whill allow me to wire." (Ex. 54, at JPMC-SOF_000810-811).
- 27 • "I'm super low on cash, i'm geting nervous the bank is going to say i can't
28 wire on the deposit from last night." (July 7, 2015 Email Chittick to Menaged

1 re super low on cash, at JPMC-SOF_000824, a true and correct copy is attached
2 hereto as **Exhibit 56**).

3 122. On July 7, 2015, at Chittick's suggestion, Chittick and Menaged agreed to
4 "go back to sending just the difference" between what they owed each other each day.
5 (July 7, 2015 Email Chittick to Menaged re better for now, at JPMC-SOF_000829, a true
6 and correct copy is attached hereto as **Exhibit 57**; July 7, 2015 Email Chittick to Menaged
7 re have to adjust each day, a true and correct copy is attached hereto as **Exhibit 58**). If
8 Menaged's checks did not clear the same day, then Chittick suggested that the daily
9 payments "may not be a net number ... we will have to adjust each day." (Ex. 58 at
10 JPMC-SOF_000831). Chittick further commented, "I would like to get back to doing it
11 normally at some point but this is just another adjustment." (Ex. 58 at JPMC-
12 SOF_000831; Ex. 18, at ¶ 25 (analyzing Receiver's excel spreadsheet reflecting DenSco
13 and Menaged's Cash Disbursements and Receipts).

14 123. Despite Chittick and Menaged's adjustments, the wholesale balance
15 continued to climb. (July 31, 2015 Email Chittick to Menaged re FirstBank Alert –
16 Received, a true and correct copy is attached hereto as **Exhibit 59**).

17 **k. Chittick Doctors DenSco's Accounting Records to Make DenSco**
18 **Appear More Profitable and Conceal Losses**

19 124. On August 21, 2015, Chittick emailed Menaged to strategize a solution to
20 the high balance by changing DenSco's accounting methods. (Aug. 22, 2015 Email
21 Chittick to Menaged re where do you see wholesale number, a true and correct copy is
22 attached hereto as **Exhibit 60**). He wrote:

- 23 • "[I]ve had heart palpitation all day. hopefully this will make it go away. ...
24 one thing is i'm going to go back and apply interest payments to the workout.
25 I have to balance it based on trying to remain profitable, but not too much and
26 not too little. ... say i move \$250k down on the workout that i used to say was
27 interest payment. i would just move that interest to the work out spreadsheet
28 like we've been doing with the accrued interest that's not being paid now

1 anyway. worry about it later.” (Ex. 60, at JPMC-SOF_000846).

- 2 • “all payments that you make to work out, are 100% principle. it's more
3 important to lower the balance than receive interest. again, i have to balance it
4 out with trying to be profitable.” (Ex. 60, at JPMC-SOF_000849).
- 5 • “...i should modify my payoff [on a previously double-liened property] so that
6 no cash is needed to close and i'll just take a loss on this one and once again
7 just move it off balance sheet o the spreadsheet and worry about it later. ... i
8 might do that with the remaining ones [other previously double-liened
9 properties] too. i have to look at it, cuase it's in coordination with moving the
10 interest against hte work out wich make me more unprofitable. ... i don't know
11 i've not worked through the numbers. but i don't want to have a huge tax bill
12 and still have a huge balance on the work out. some kind of happy medium
13 along with keeping my accountant happy!” (Ex. 60, at JPMC-SOF_000850-
14 851).
- 15 • “i'm just losing the ability to function as a business. that's why I had to put the
16 brakes on it in july. there isn't enough money outside of what you have to turn
17 over to make a business run.” (Ex. 60, at JPMC-SOF_000851-852).

18 125. Menaged agreed to Chittick's plan, writing back “You moving the money
19 from Interest to Principle is a great Idea, Considering it is just moving over to the interest
20 workout and it will show a lower principal balance on the workout which is good for
21 many reasons You are not taking a loss for that interest, just going on a different
22 spreadsheet. There is no reason to pay real money to the IRS When that same money can
23 help the business.” (Ex. 60, at JPMC-SOF_000841).

24 126. In the same email thread, Chittick discussed soliciting new investments
25 from DenSco investors to bring in more cash to fund the work out:

- 26 • “i tried raising more money. my nieghbor the other go to guy for funds, simply
27 said, ‘i'm comfortable with the amount of money I ahve with you,’ which
28 means no. ... i went to as far as calling the guys in UT ... they are actually

1 considering it. their problem they want to give it to me for 30 days. which won't
2 work because once i put it in to the wholesale, the number never goes back
3 down and i'll never have money to give back to them. i told them i need a min
4 of 90 days" (Ex. 60, at JPMC-SOF_000847-848).

- 5 • "The only problem , is that like I said I can't get new investors, I can't give
6 them the documentation that is necessary. I am hoping the Utah guys will come
7 through." (Ex. 60, at JPMC-SOF_000840).
- 8 • "I am in so many violations with my current investors it's nuts." (Ex. 60, at
9 JPMC-SOF_000839).

10 127. On September 2, 2015, Chittick sent an email to Menaged with the subject
11 line "ok it's done," explaining how he had changed DenSco's accounting documents to
12 make DenSco appear more profitable. (Sept. 2, 2015 Email Chittick to Menaged re Okay,
13 it's done, a true and correct copy is attached hereto as **Exhibit 61**).

14 128. Chittick's alteration of DenSco's accounting methods involved failing to
15 accurately record losses DenSco had taken on short sales (properties sold for an amount
16 less than the outstanding debt). (Ex. 18, at ¶¶ 71,75). Instead of recording a loss on the
17 associated loan, DenSco would simply add the amount of the shortfall to Menaged's
18 unsecured "workout" balance owed to DenSco. (*Id.*, at ¶ 75). This practice treated the
19 loss as an asset in the form of an unsecured note instead of a loss lowering DenSco's
20 profitability, and resulted in an understatement of DenSco's loan loss expenses, and
21 overstatements of DenSco's profitability, assets and equity. (*Id.*, at ¶ 75).

22 129. On September 16, 2015, Chittick wrote Menaged that he was still short on
23 operating cash and asked Menaged if he could raise money "from some other people"
24 "use their funds to fund the wholesale biz with and give me back that money." (Sept. 16,
25 2015 Email Chittick to Menaged re more thoughts, at JPMC-SOF_000873-874, a true
26 and correct copy is attached hereto as **Exhibit 62**). He continued:

- 27 • "[I] can't operate with so little operating capital. not to mention trying to meet
28 interest payments and demands of my investors for return of their funds. if

1 someone else pops up and wants 500k, there would be no way i can return it in
2 the next 60 days at thsi point.” (Ex. 62, at JPMC-SOF_000874).

- 3 • “[I]f i can’t manage the business and keep my investors satisfied, i’m in peril.”
4 (Ex. 62, at JPMC-SOF_000874-875).
- 5 • “UT guys, i bugged them a few times, I got the ‘we’ll get back to you.’” (Ex.
6 62, at JPMC-SOF_000872).

7 130. By year-end 2015, 86% of DenSco’s loans were concentrated with
8 Menaged. (Ex. 18, at ¶ 70).

9 131. In total, Chittick accepted \$5,181,845.74 in new investments after
10 November 2013. (Ex. 28).

11 132. DenSco’s investor statements show that Chittick did not accept new
12 investments from an investor named the “Chittick Family Trust” after November 2013.
13 (Combined Chittick Family Trust DenSco Statements, a true and correct copy is attached
14 hereto as **Exhibit 63**).

15 **I. Chittick and Menaged’s Scheme Collapses.**

16 133. In October 2015, Chittick and Menaged stopped paying each other the net
17 difference between what they owed. (July 19, 2016 Email Chittick to Menaged re
18 question on interest paid on wholesale, a true and correct copy is attached hereto as
19 **Exhibit 64**). Menaged testified that from that point on, they just adjusted their books for
20 daily payments without exchanging any funds. (Ex. 24, at 173:21-174:19).

21 134. In an email dated June 14, 2016, Chittick sent Menaged a spreadsheet
22 detailing their payments to each other for the previous two years and stated: “i’m not sure
23 I want lawyers to see this. there has not been any activity since Oct of last yr. the total
24 interest owed is over a million, but i just defer it and move it to the M, so that every dollar
25 is adjust down the principle owed.” (June 15, 2016 Email Chittick to Menaged re I owe
26 u me 5/31/16, at JPMC-SOF_000900, a true and correct copy is attached hereto as
27 **Exhibit 65**). Regarding interest, Chittick “never calculated what you wanted which is
28 18% on all that is owed since the beginning. it's a waste of time to even spend the effort.”

1 (Ex. 65, at JPMC-SOF_000900).

2 135. Between November 2013, when Chittick learned of the double liening, and
3 December 31, 2015, DenSco had advanced over an additional **\$16 million** to Menaged
4 allegedly to cover the losses associated with the double-liened properties, while only
5 receiving approximately \$1.7 million in repayments from Menaged. (Ex. 18, at ¶¶ 21,
6 68-69).

7 136. On April 20, 2016, Menaged filed for personal bankruptcy. (*In re Yomtov*
8 *Scott Menaged*, Case No. 2:16-bk-04268, Voluntary Petition for Chapter 7 Bankruptcy
9 (Apr. 20, 2016), a true and correct copy is attached hereto as **Exhibit 66**). Chittick learned
10 about the petition two months later, on June 15, 2016. (Chittick DenSco 2016 Journals,
11 at JPMC-SOF_000911, a true and correct copy is attached hereto as **Exhibit 67**).

12 137. At some point after learning about the bankruptcy, Chittick and Menaged
13 discussed their fraud, and Chittick recorded the conversation. (*See generally*, Ex. 12).
14 During the conversation, Menaged discussed with Chittick that he never used most of the
15 cashier's checks he purchased from Chase for the loans DenSco funded for offers to
16 purchase. (Ex. 12, at 108:13-24). Because he "knew they were bad sales" "[w]ithin 24
17 hours," he would redeposit the checks into his account, then used the redeposited funds
18 to make principal and interest payments to DenSco on earlier loans. (*Id.*, at 109:3-9).

19 138. Menaged told Chittick that he had not listed DenSco as a creditor in his
20 bankruptcy petition, (*id.*, at 24:8), and they talked about how he had hidden \$31.8 million
21 from the bankruptcy court with a company called auction.com so that he could repay
22 Chittick (*id.*, at 5:5-19, 102:17-21). Menaged had also altered his company records to
23 match "all the checks and wires" in DenSco's records, (*id.*, at 49:17-50:8), "to protect
24 both of us, so there is no problem and we can move forward from this" (*id.*, at 3:5-8).

25 139. When Chittick talked about the trustee-sale receipts Menaged had sent
26 DenSco that corresponded his purported property purchases, Menaged replied "[I]f I have
27 to disclose those receipts, then I have to disclose everything. And then we're done." (*Id.*,
28 at 86:13-15). "[T]he only place that there could be a hole here is the receipts." (*Id.*, at

1 90:21-23).

2 140. Chittick acknowledged that Menaged’s plan to alter his company records
3 “violat[ed] all sorts of laws,” (*id.*, at 50:13-17), and again expressed fear that he would be
4 criminally prosecuted because of his knowledge of Menaged’s schemes:

- 5 • “They’re going to look at this ...as the trustee and go, this – DenSco can’t be
6 that stupid. ... So we went from a deficit of 5 million on the workout to 30 ...
7 And Denny’s – DenSco never sued you, never come after you, and he’s okay
8 with this?” (*Id.*, at 13:1-14).
- 9 • “[W]ith all the transactions recorded, all the checks going back and forth, the
10 wires going back and forth. No one’s going to believe the guy behind the money
11 was ignorant to whatever agreement you had with auction.com” (*Id.*, at
12 27:11-15).
- 13 • “You haven’t made any payments to me since October.” (*Id.*, at 110:10-12).
14 “Don’t you think someone’s going to question why I haven’t done anything
15 since October or since you filed bankruptcy?” (*Id.*, at 59:18-21).
- 16 • “They’ll – they’ll make it into a Ponzi scheme.” (*Id.*, at 29:11-12).
- 17 • “They’ll go after you criminally, and they’ll go after me criminally.” (*Id.*, at
18 19:14-15).
- 19 • “[A]n attorney would just salivate coming after me with a litany of charges, no
20 matter what my intentions were, no matter what my limited knowledge were –
21 was of this agreement that you have with auction.com or scam or whatever you
22 want to call it, I could claim as innocent as I want. Ignorance of – of the law or
23 ignorance of the situation doesn’t make you innocent and they pat you on the
24 back and say, okay, no problem.” (*Id.*, at 36:23-37:6).

25 141. Chittick further acknowledged he had not kept his promises to his investors
26 and expressed fear of investor lawsuits:

- 27 • “[T]he covenants in my memorandum say that I will not lend more than 10 or
28 15% ... to one borrower.” (*Id.*, at 47:20-48:2).

- 1 • “I have a \$14 million deficit from the workout that is unsecured. Now, I’ve got
2 28.1 out on this wholesale thing, which is unsecured. I haven’t recorded
3 anything since October. So I have broken what I said I would do. ... That makes
4 me culpable and liable, a fiduciary responsibility I have broken. I can’t go to
5 them and say, give me 60 days, and we’re going to figure ways through a
6 bankruptcy and auction.com is going to send me ... the \$30 million or \$35
7 million ...” (*Id.*, at 31:5-18).
- 8 • “My investors will come find a way of going after me, like you said, a Ponzi
9 scheme, misappropriation of funds, nine things I can’t even think of.” (*Id.*, at
10 74:1-4).
- 11 • “I failed to disclose to them” (*Id.*, at 79:21-22).

12 142. Throughout the conversation, Menaged told Chittick they needed to keep
13 agreeing to tell the same story about their Forbearance Agreement and transactions
14 involving offers-to-purchase in order to avoid criminal or civil prosecution, explaining “I
15 need to know if that is the f*cking version that we’re going with, because I’m trying to
16 also protect you. I can’t have different versions. I’m the one that’s going to be lying on
17 the hook I’m going to be lying to a federal – Jesus Christ, I – I can’t even think about
18 that. But I’m doing it because I’m – I – I’ve got to say you knew nothing.” (*Id.*, at 88:11-
19 20). Chittick told Menaged he did not have a better plan than what Menaged proposed.
20 (*Id.*, at 18:20-22).

21 143. On July 28, 2016, Chittick committed suicide. (*Arizona Corp. Comm’n v.*
22 *DenSco Inv. Corp.*, Case No. CV2016-014142, Preliminary Report of Peter S. Davis, as
23 Receiver of DenSco Investment Corporation (Sept. 19, 2016), at JPMC-SOF_000914, a
24 true and correct copy is attached hereto as **Exhibit 68**). In a note written to DenSco’s
25 investors, Chittick acknowledged that despite learning he was in violation of his
26 disclosures to his investors since November 2013, he nonetheless **(1)** failed to inform his
27 investors of the fraud, and **(2)** continued to solicit investments and extend credit to
28 Menaged, which resulted in even greater losses. (Ex. 17; *see also* Ex. 19, at Responses

1 5, 10, 12, 14, 16). Chittick confessed that he had not told his investors about Menaged’s
2 initial fraud because he was afraid of a “run on the bank” and “I know I made wrong
3 decisions.” (Ex. 17, at JPMC-SOF_000208).

4 **m. DenSco Is Charged and Plaintiff Is Appointed as Receiver.**

5 144. Following Chittick’s death, the court appointed the Receiver to wind up
6 DenSco’s affairs because DenSco, in collusion with Menaged, had defrauded hundreds
7 of investors. (Ex. 5).

8 145. The ACC Action Verified Complaint alleged that beginning “in about 2013,
9 DenSco started providing investor funds to a borrower without obtaining a first position
10 deed of trust on the real property.” (*Id.*, at ¶ 12). This was “contrary to the description”
11 of the types of loans described in DenSco’s “offering documents and website,” which
12 promised that loans purchased with investor funds would be in “First Position ONLY.”
13 (*Id.* ¶¶ 10, 12). DenSco further represented to investors in its POM and website that
14 DenSco would “maintain a loan-to-value ratio at 70% percent [sic.] or below in the
15 aggregate for all loans in the loan portfolio,” even though DenSco made loans to Menaged
16 at “100 percent of the loan-to-value” (*id.*, at ¶¶ 8, 10-11), and DenSco accepted investor
17 funds without disclosing to investors that “DenSco entered into a forbearance agreement
18 with [Menaged], [Menaged] had failed to make payments on previous loans and
19 [Menaged] was provided a large unsecured loan” (*id.*, at ¶ 15).

20 146. Based on these facts, the Arizona Corporation Commission (“ACC”)
21 charged DenSco with Fraud in Connection with the Offer or Sale of Securities and
22 requested the appointment of a receiver over DenSco. (*Id.*, at ¶¶ 19-23).

23 147. In support of its request for a receiver, the ACC maintained four key
24 misrepresentations by DenSco: “(1) misrepresenting to investors that DenSco would loan
25 up to 70% of the value of the property, when in fact, with at least one borrower, DenSco
26 provided \$28 million in loans at 100 percent of the value of the property; (2) failing to
27 disclose to investors that many loans were not secured with a first position deed of trust;
28 (3) failing to disclose to investors after October 2015, that at least one borrower had failed

1 to make payments on over \$28 million in loans; and (4) failing to disclose to investors
2 that DenSco provided over a \$14 million unsecured loan” to Menaged. (*Arizona*
3 *Corporation Commission v. DenSco Investment Corporation*, CV2016-014142, Mem. In
4 Support of Application for Preliminary Injunction and Appointment of Receiver (Aug.
5 17, 2016), at 6, a true and correct copy is attached hereto as **Exhibit 69**).

6 148. After his appointment, the Receiver admitted that “after a partial financial
7 reconstruction of DenSco, the Receiver determined that as of December 31, 2012, DenSco
8 became insolvent and *essentially became a Ponzi Scheme as DenSco’s assets were*
9 *insufficient to pay the necessary interest and principal payments to DenSco’s investors.*”
10 (Ex. 70, ¶ 4 (emphasis added); *see also* Ex. 19, at Response 8).

11 149. Thus, during the entire period after Chittick learned of the double-liening
12 scheme “DenSco’s insolvency forced DenSco to rely on operating income and new
13 DenSco investor deposits to make principal and interest payments to existing DenSco
14 investors.” (Ex. 70, at ¶ 4). In other words, “DenSco ... *essentially became a Ponzi*
15 *Scheme as DenSco’s assets were insufficient to pay the necessary interest and principal*
16 *payments to DenSco’s investors.*” (Ex. 70, at ¶ 4) (emphasis added).

17 150. The Receiver filed fraudulent transfer lawsuits to recover payments made
18 to DenSco’s own investors. In at least two of the complaints, the Receiver admits that
19 DenSco was insolvent by December 31, 2012, so payments to investors after this date
20 were made “in furtherance of a Ponzi scheme.” (*Davis v. Fischer Family Holdings, LLC,*
21 *et al.*, CV2018-052830, Complaint (July 20, 2018), at ¶20, a true and correct copy is
22 attached hereto as **Exhibit 71**; *Davis v. Thomas P. Smith, et al.*, CV2019-057398,
23 Complaint (Dec. 27, 2019), at ¶18, a true and correct copy is attached hereto as **Exhibit**
24 **72**; *Arizona Corp. Comm’n v. DenSco Inv. Corp.*, Case No. CV2016-014142, Petition No.
25 96 for Ord. Approving Agreement Between the Receiver and the Smith Defs. (Jul. 10,
26 2020), a true and correct copy is attached hereto as **Exhibit 73** (“[D]espite being
27 insolvent, DenSco knowingly continued to raise new money from investors, which was
28 utilized to pay DenSco’s obligations to its existing investors. With a clear pattern of

1 DenSco raising and utilizing new investor money to pay older DenSco investors, the
2 Receiver determined that after December 31, 2012, DenSco operated as a Ponzi
3 investment scheme.”)).

4 151. The Receiver’s filings in Chittick’s Probate case also admit that Chittick
5 had “actual knowledge” that DenSco had been defrauded from November 27, 2013, but
6 that Chittick nonetheless “continued to accept moneys for investors into DenSco, and
7 continued to make loans to Menaged and his related entities, adding to the liabilities of
8 DenSco which could not be met.” (Ex. 2, at JPMC-Receiver_0006507). Yet Chittick
9 still made cash distributions to himself and his minor children totaling nearly \$700,000
10 after that date. (*Id.*, at JPMC-Receiver_0006504 (“In other words, Chittick caused
11 DenSco to redeem Chittick’s shares of DenSco stock ... during a time period when the
12 true value of the shares of stock would have been worthless, or nearly worthless, given
13 that DenSco had been defrauded out of millions of dollars.”)).

14 152. In his responses to Chase’s Requests for Admission, the Receiver has
15 conceded that Chittick discovered Menaged was taking monies from DenSco without
16 obtaining liens in late November 2013 (Ex. 19, at Response 1), and that despite learning
17 of Menaged’s fraud, DenSco continued to fund loans directly to Menaged after
18 November 2013. (*Id.*, at Responses 2, 3).

19 153. The Receiver has also admitted that Chittick breached his duties to DenSco
20 and its investors by concealing, prior to his death, the first fraud from DenSco’s investors
21 and by concealing how his lending practices did not conform to the then current version
22 of the Private Offering Memorandum,” and that Chittick’s agreement to enter the
23 Forbearance Agreement with Menaged after learning of his fraud in November 2013 was
24 not in the best interests of DenSco or its investors. (Ex. 19, at Responses 17-19).

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RESPECTFULLY SUBMITTED this 31st day of May, 2023.

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ORIGINAL of the foregoing e-filed with the Clerk of Court this 31 day of May 2023.

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Hon. Dewain Fox

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