Nicole M. Goodwin, SBN 024593
goodwinn@gtlaw.com
Adrianna Griego Gorton, SBN 031836
gortona@gtlaw.com
GREENBERG TRAURIG, LLP
2375 East Camelback Road, Suite 800
Phoenix, Arizona 85016
T: (602) 445-8000
F: (602) 445-8100

Paul J. Ferak (*pro hac vice*)
ferakp@gtlaw.com
Jonathan H. Claydon (*pro hac vice*)
claydonj@gtlaw.com
GREENBERG TRAURIG, LLP
77 West Wacker Drive, Suite 3100
Chicago, IL 60601
T: (312) 456-8400
F: (312) 456-8435

Attorneys for Defendants JPMorgan Chase Bank, N.A., 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 JPMORGAN CHASE BANK, N.A.'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

(Assigned to the Hon. Dewain Fox)

(Oral Argument Requested)

Though the Receiver spills much ink trying to manufacture factual disputes and citing irrelevant cases, the Receiver cannot avoid the dispositive effect of three crucial admissions he made and cannot dispute: (1) Chittick knew "that Menaged was taking monies from DenSco without obtaining a first lien" (i.e. failing to fulfill the parties' agreements) by November 2013;[1] (2) [redacted];[2] and (3) Chittick was complicit with and aided Menaged's fraud.[3] Given these admissions, there is no dispute of material fact that allows this matter to survive. Because the Receiver admits that Chittick had knowledge of and was complicit in the fraud, the Receiver lacks standing to bring claims on behalf of an entity that participated in the fraud. These admissions mandate the conclusion that the limitations period has run. And because the Receiver admits it was unreasonable for Chittick to ever rely on Menaged after November 2013, there is no underlying tort to support an aiding and abetting claim. Finally, there is no evidence that any Chase employee had actual knowledge of Menaged's fraud or assisted it. The Receiver's litigation gamesmanship aside, there is no basis for this matter to continue.

ARGUMENT

A. The Receiver Lacks Standing to Bring Any of His Claims Against Chase.

Under Arizona law, receivers stand in the shoes of the entity they represent and inherit only the causes of action available to that entity subject to the defenses that could be raised against that entity. (Mot. 9-12). The Receiver argues that Chittick's actions cannot be attributed to him because the defense of *in pari delicto* cannot be raised against a receiver. (MSJ Opposition ("Opp.") 11-12). The Receiver's argument, however, relies on *Scholes v.*

---

[1] *See* CSOF Ex. 19 at Resp. 1.

[2] *See* CSOF Ex. 78, at 37:23-38:3 [redacted]

[3] *See* CSOF Ex. 2 at JPMC-Receiever_0006507 ("Chittick was aware of the fraud committed against DenSco, by Menaged, at least by November 27, 2013. Despite his actual knowledge of the fraud by Menaged, Chittick continued to accept moneys for investors into DenSco, and continued to make loans to Menaged and his related entities, adding to the liabilities of DenSco which could not be met.")

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

Lehmann, 56 F.3d 750 (7th Cir. 1995), which dealt only with fraudulent transfer claims and does not apply here. The Receiver also argues that Chittick and DenSco were not involved in Menaged's fraudulent scheme, but that assertion is belied by the Receiver's binding admissions.

1. The Receiver's Cited Authority Does Not Establish Standing.

Scholes and the other cases cited by the Receiver hold that a receiver has standing to bring fraudulent transfer claims against those who received payouts from a Ponzi scheme. *See Wiand v. Lee*, 753 F.3d 1194, 1197, 1202-03 (11th Cir. 2014) (receiver had standing to bring "'clawback actions' … to recover profits from investors in a Ponzi scheme"); *Scholes*, 56 F.3d at 753-55 (receiver had standing to bring fraudulent conveyance claims). These cases are inapposite because the Chase Defendants do not challenge the Receiver's standing to bring fraudulent transfer claims. Rather, the Chase Defendants attack the Receiver's standing to bring a common law aiding and abetting claim directly arising out of the fraud carried out by Menaged and joined by Chittick.

The Eleventh Circuit rejected the Receiver's argument in the seminal case governing receiver standing—*Isaiah v. JPMorgan Chase Bank, N.A.*, 960 F.3d 1296 (11th Cir. 2020). *Isaiah* recognized receiver standing to bring fraudulent transfer claims, but differentiated between fraudulent transfer claims to recover funds from Ponzi-scheme "winners" and tort claims against third-parties brought on behalf of the receivership entity. *Id* at 1303 n.3, 1310 n.10. Specifically, *Isaiah* held that because "the Receivership Entities were wholly dominated by persons engaged in wrongdoing … the Ponzi schemers' torts cannot properly be separated from the Receivership Entities, and the Receivership Entities cannot be said to have suffered any injury from the Ponzi scheme that the Entities themselves perpetrated." *Id.* at 1307. DenSco, like the entity in *Isaiah*, was dominated by a single person engaged in wrongdoing. (Chase Combined Statement of Undisputed Facts "CSOF" §§ II.b-c, i-l). Therefore, the Receiver "lacks standing to assert, on behalf of [DenSco], claims against JPMC for allegedly aiding and abetting [Menaged's] . . . fraud." *Isaiah*, 960 F.3d at 1308.

In any event, *Scholes*, which predates *Isaiah* by 25 years, does not stand for the

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

proposition that the *in pari delicto* defense cannot be raised against a receiver. In *Knauer v. Jonathon Roberts Fin. Group, Inc.*, the Seventh Circuit rejected an identical argument, holding that the *in pari delicto* doctrine defeated the receiver's "claim[s] for tort damages from entities that derived no benefit from the [fraud], but that were allegedly partly to blame for [its] occurrence." 348 F.3d 230, 236 (7th Cir. 2003). The court explained that in such a scenario "*Scholes* [is] less pertinent than the general Indiana rule that the receiver stands precisely in the shoes of the corporations for which he has been appointed." *Id.* In Arizona, receivers likewise "stand[] in the shoes of the entity [they] represent[]" and inherit only the "'rights, causes and remedies … which were available to'" that entity. *Gravel Res. of Ariz. v. Hills*, 217 Ariz. 33, 38, 170 P.3d 282, 287 (Ariz. Ct. App. 2007).[4] The Receiver cannot maintain an action that DenSco itself cannot bring.

2. There Is No Genuine Issue of Material Fact Concerning DenSco and Chittick's Knowledge of and Participation in Menaged's Fraud.

Given the Receiver's admissions, there is no question of fact that DenSco was a participant in Menaged's fraud. The Receiver filed numerous reports and pleadings conceding that DenSco was an insolvent Ponzi scheme by December 2012. (CSOF ¶¶ 148-150). The Receiver filed a claim against the Chittick estate that Chittick was liable for "common law fraud" and "aiding and abetting Yomtov Scott Menaged in his torts against DenSco." (*Id.* ¶ 151; CSOF Ex. 2 at JPMC-SOF_000010). "The Receiver is bound by the factual admissions in his pleadings." *Davis v. US Bank, N.A. et al.*, Slip. op. at pp. 9-10, n.2 (citing *Brentson v. Wholesale, Inc. v. Az. Pub. Serv. Co.*, 166 Ariz 519, 522, 803 P.2d 930, 933 (Ct. App. 1990) (Sept. 10, 2021)). In light of these and other binding admissions, the Receiver's disregard of undisputed evidence at this stage must be rejected wholesale.

[4] The Receiver also cites *FDIC v. O'Melveny & Myers*, 61 F.3d 17 (9th Cir. 1995). This case is criticized for not considering "the general rule that a receiver occupies no better position than that which was occupied by the party for whom it acts." *FDIC v. Refco Grp.*, 989 F. Supp. 1052, 1088 (D. Col. 1997) ("*O'Melveny's* conclusion that under California law the FDIC is not barred by certain equitable defenses is tenuous.").

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

That fact aside, the Receiver's Controverting Statement of Facts and Evidentiary Objections ("RSOF") and Opposition fails to refute the uncontroverted facts showing—even separate from the Receiver's admissions—that Chittick participated in the fraud.

First, the Receiver makes various evidentiary objections asserting that Chittick's statements are inadmissible—despite the fact that Receiver cites Chittick's journal entries and emails in his statement of facts. (*See, e.g.*, RSOF ¶¶ 8, 19, 24, 29). These objections are baseless. The Receiver does not argue that the evidence cannot be produced in admissible form, which is all Arizona law requires. *Funguy Studio LLC v. Dalo Ventures LLLP*, 2015 Ariz. Super. LEXIS 1852, at *2 (Ariz. Super. Ct. Oct. 12, 2015) ("But the evidence presented by the parties must be admissible **or able to be produced in admissible form.**") (emphasis added). Further, statements made by Chittick are admissible, as he is an unavailable witness and the statements are against his interest. *See* Ariz. R. Evid. 804(b)(3). Emails between Chittick and Menaged are admissible because they show their state of mind, including their motives, intentions, and plans, and they were made in connection with DenSco's regularly conducted business activities and while they worked together to hide the DenSco Ponzi scheme and defraud others. *See id.* 803(3),(6).

Second, in disregard of his unequivocal admissions that Chittick was aware of and participated in the fraud, the Receiver nevertheless disputes Chittick's knowledge of Menaged's scheme. But the Receiver does nothing other than reiterate that Chittick ***may*** not have been aware of ***some of*** Menaged's conduct. (*See* RSOF ¶¶ 142, 148, 149). This is insufficient to stave off summary judgment—and certainly not on this record. In addition to admissions, the Chase Defendants have identified numerous Chittick emails and journal entries confirming Chittick's knowledge, none clearer than Chittick's admission that by December 2014 he knew that "all along [he] had been an unwitting[] accomplice in some kind of fraud." (CSOF Ex. 17 at JPM-SOF00206).

Third, the Receiver argues that Chittick and Menaged's fraudulent activity after Menaged stopped banking at Chase is irrelevant. (*See, e.g.*, RSOF ¶¶ 121, 122, 124-130)). But this argument has no basis, as Chittick admitted that he knew he was involved in

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

ongoing fraud in December 2014. Menaged continued banking with Chase until at least June 2015, with Chittick loaning him money and engaging in sham transactions. (CSOF Ex. 17 at JPM-SOF00206).

Finally, the Receiver argues that, because Chittick consulted with his lawyer, he could not have known of Menaged's fraud. (Opp. at 9). This argument has no bearing on Chittick's knowledge of or participation in the fraud or Chittick's justifiable reliance on Menaged. Regardless, this argument fails, as the Receiver must prove that Chittick justifiably relied on Menaged—not Clark Hill—and the undisputed evidence shows that Chittick chose to continue working with Menaged in December 2013, a month before he met with his attorney. (CSOF ¶¶ 31, 42). And even after that, Chittick himself chose to be an active participant and fraudster in the DenSco Ponzi scheme and cover-up he created.

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

The statute of limitation began running no later than December 2014, as the undisputed evidence shows that is when Chittick knew of Menaged's continued fraudulent activity. (CSOF Ex. 17 at JPM-SOF00206).[5] The Receiver argues that the statute of limitations has not run because "[t]he soonest a statute of limitations begins to run is when a receiver is appointed." (Opp. 12-13). The Receiver is incorrect.

The case law the Receiver cites for his argument relies on the doctrine of "adverse domination—which, when applicable, tolls the accrual of the statute of limitations for a corporate entity when it is controlled by a bad actor—to conclude that the statute of limitations could not begin running until a receiver was appointed. (*See* Opp. at 13) (citing, *Seaman v. Sedgwick*, 2011 WL 13393442, at *4 (C.D. Cal. Aug. 31, 2011) ("When a company is controlled by wrongdoers who fraudulently conceal their misdeeds from investors, the statute of limitations cannot begin to run until a receiver is appointed.")). The Receiver's reliance on these cases is yet another example of his flip-flopping. He cites cases

[5] There is no question that Chittick was fully aware of all aspects of Menaged's fraud by the time of their recorded phone conversation after Menaged filed for bankruptcy in April 2016. (CSOF ¶¶ 137-142). Chittick also admitted that he doctored DenSco's books and records to hide the losses. (*Id.* ¶¶ 124-126). That is more than passive participation.

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

invoking the adverse domination doctrine—which requires tortious conduct by Chittick—but maintains that Chittick was just a trusting victim. (Opp. 12-13). The Receiver cannot be permitted to maintain factually inconsistent positions.

That aside, the doctrine does not apply here. Adverse domination is subject to a basic exception—the widely-adopted "sole actor" rule, recognized in Arizona for over 50 years—whereby the agent's knowledge (Chittick's) is attributed to the principal (DenSco) when the agent, "although engaged in perpetrating [fraud] on his own account, is the sole representative of the principal." *Pearll v. Selective Life Ins. Co.*, 444 P.2d 443, 445 (1968) (internal citation and quotations omitted); *see also USACM Liquidating Tr. v. Deloitte & Touche*, 754 F.3d 645, 648 (9th Cir. 2014) (holding that "the adverse domination doctrine cannot be applied to toll the statute of limitations" because "[t]his premise is inconsistent with Nevada's sole actor rule."). It is undisputed that Chittick was the sole director and shareholder of DenSco. (*See* RSOF ¶ 4). That automatically triggers the sole actor exception to the adverse domination doctrine and precludes a tolling of the statute of limitations based on the doctrine of adverse domination. *See Pearll*, 444 P.2d at 445; *USACM*, 754 F.3d at 648.[6]

C. There is No Evidence to Establish Any Underlying Tort for the Aiding and Abetting Fraud Claim.

The Receiver admitted that [redacted] (CSOF Ex. 78 at 37:23-38:3). He also admitted

[6] The few non-adverse domination cases the Receiver cites are inapposite. In *FDIC v. Williams*, the FDIC brought claims under 12 U.S.C. § 1821, which provides that "the date on which the statute of limitations begins to run [] shall be . . . the date of the appointment of the Corporation as conservator or receiver[.]" 60 F. Supp. 3d 1209, 1212 (D. Utah 2014). Both *Wiand v. Meeker*, 572 F. App'x 689, 691 (11th Cir. 2014) and *Sale v. Jumbleberry Enterprises USA, Ltd.*, 2021 WL 7542953 (S.D. Fla. June 18, 2021) involved Florida Uniform Fraudulent Transfer Act ("FUFTA") claims. In *Meeker,* the court applied FUFTA's savings clause, which has been interpreted to allow receivers to bring fraudulent transfer claims within one year after appointment. *See* 572 F. App'x at 691-92. This case does not involve a fraudulent transfer claim. In *Sale*, the court relied on the evil zombie approach set forth in *Scholes*, which—as set forth above—should not apply here where the Receiver steps directly into the shoes of DenSco.

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

that [redacted] (*See id.* at 164:11-18). Ignoring these binding admissions, the Receiver argues that Chittick's reliance is a question of fact and that, even if it were not, Arizona's contributory fault law mandates this case proceed to trial. (Opp. 10-11, 13-15). Both arguments fail.

1) Chittick's Reliance Was Not Justifiable as a Matter of Law.

The Receiver argues that Chittick had no obligation to further investigate after learning of Menaged's fraud and that whether Chittick justifiably relied on a known fraudster's misrepresentations is an issue reserved for trial. But the very case that the Receiver primarily relies on puts the lie to that argument. In *Sun Life Assurance Co. of Canada (U.S.) v. Friendship Found., Inc.*, the court held that "[w]hen the facts are undisputed the Court may determine whether reliance was justified as a matter of law." 2010 WL 11519178, at *4 (D. Ariz. Apr. 13, 2010). And, the *Sun Life* court did just what the Receiver says this Court cannot do: it granted summary judgment in the defendants' favor, concluding that the plaintiff's reliance was not justified because the plaintiff "had notice of a potential problem" and, thus, had "responsibility to further investigate." *Id.* Here, the Receiver admits far more than that Chittick just had notice of a "potential problem," he admits that Chittick knew that Menaged was duping DenSco by November 2013, and admits that doing business thereafter was unreasonable. No more need be said. Summary judgment should be granted in the Chase Defendants' favor just as in *Sun Life*.

The Receiver's argument that Chittick's reliance was justified because Menaged provided assurances through the forbearance agreement is also wrong. To support this contention, the Receiver relies on *Dawson v. Withycombe*, where the court held that the plaintiff justifiably relied on the defendant's representations as to the priority of plaintiff's loan. 216 Ariz. 84, 94, 98, 163 P.3d 1034, 1044, 1048 (Ariz. Ct. App. 2007). Though the court noted that a defendant may not blame the plaintiff for relying on assurances once the plaintiff asks for them, the Receiver ignores the crucial fact that the plaintiff in *Dawson* had not already suffered a loss and did not have notice of a potential problem when requesting assurances. *See* 216 Ariz. at 98, 163 P.3d at 1048. The *Dawson* court was definitively **not**

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

presented with the very narrow question that is currently before this Court: whether Chittick's reliance was justified when he admittedly had knowledge that Menaged's company had defrauded DenSco of tens of millions of dollars.[7] Further narrowing this issue in this case is that the Receiver himself—the plaintiff bringing suit—has already agreed that it could never be reasonable for Chittick to act as he did. On this critical point, all parties before this Court are in agreement. There is nothing left for decision.

Beyond the admissions, it is undisputed Chittick was aware that, by January 2014, Menaged had fraudulently obtained as many as 125 loans from DenSco and squandered loan funds. (Mot. 14). Chittick had "notice of a potential problem" and a "responsibility to further investigate," which he easily could have done. *Sun Life*, 2010 WL 11519178 at *4. Accordingly, his reliance was not justified as a matter of law.[8]

2) The Receiver's Contributory Fault Argument Is Inapplicable.

The Receiver also argues that Arizona's contributory fault rules would require the claim be submitted to the jury. (Opp. 10-11). The Receiver is, yet again, mistaken.

First, the Receiver's reference to contributory fault misses the point. Contributory negligence is an affirmative defense and operates to "distribute[] responsibility, in proportion to the degree of fault attributable to the parties[.]" *Dykeman v. Engelbrecht*, 166 Ariz. 398, 401, 803 P.2d 119, 122 (Ariz. Ct. App. 1990). But, Chase is not arguing that the Receiver's recovery should be diminished due to DenSco's comparative fault. An aiding and abetting claim requires the commission of an underlying tort. *Wells Fargo Bank v. Ariz. Laborers, Teamsters, & Cement Masons Local No. 395 Pension Tr. Fund*, 201 Ariz. 474,

---

[7] The Receiver argues that Chittick's reliance was justifiable because his attorney blessed the forbearance agreement. This argument—unsupported by any authority—ignores that Chittick and Menaged already decided to continue their lending relationship prior to the involvement of Chittick's attorney. (*See* CSOF ¶¶ 23-24, 31).

[8] Whether reliance is justifiable also "depends on the complaining party's own information and intelligence." *Sun Life*, 2010 WL 11519178, at *4. The Receiver agrees that Chittick was operating in his field of expertise, thereby knowing the industry and the ways he could have been defrauded. *See In re Kirsh*, 973 F.2d 1454, 1458 (9th Cir. 1992) ("if a person [has] special knowledge, experience and competence he may not be permitted to rely on representations that an ordinary person would properly accept.").

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

485 ¶ 34, 38 P.3d 12, 23 (2002). Here, that underlying tort is fraud, an "essential element" of which "is actual, justifiable reliance on the alleged misrepresentation." *In re Gorilla Cos., LLC*, 454 B.R. 115, 118 (Bankr. D. Ariz. 2011). And, as the undisputed facts show, the Receiver **cannot** establish the essential element of justifiable reliance because Chittick could never have justifiably relied on Menaged representations after November 27, 2013, let alone after January 6, 2014. And, as one of the Receiver's own cases makes clear, it is justifiable reliance and not contributory negligence that matters for a fraud claim. *See In re Kirsh*, 973 F.2d at 1458. The Ninth Circuit's holding in *Kirsh* could not have been more explicit: "Lenders do not merely rely upon the representations of borrowers." *Id.* at 1461. (sophisticated creditor had not justifiably relied on the debtor's representations, because he had no excuse to rely on the debtor rather than obtaining a title report).

Second, the Receiver's contributory fault argument does not apply here. The Receiver relies on A.R.S. § 12-2506, which provides that "[i]n an action for **personal injury, property damage or wrongful death**, the liability of each defendant for damages is several only and is not joint." A.R.S. § 12-2506 (emphasis added). Section 12-2506 makes no references to fraud claims, and the Receiver does not seek recovery for property damage or an injury to or death of a human. *Fid. & Deposit Co. of Md. v. Bondwriter Sw., Inc.*, 228 Ariz. 84, 88, 263 P.3d 633, 637 (Ariz. Ct. App. 2011) ("§ 12-2506 is applicable to actions for 'personal injury, property damage or wrongful death[,]'" and holding that it is inapplicable where the claim "is not encompassed within this language.").

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

There is no record evidence demonstrating that Chase knew Menaged's conduct constituted a tort or that Chase substantially assisted Menaged. (Mot. at 14-17). The Receiver's Opposition fails to address these deficiencies.

1. No Chase Employee Had Actual Knowledge of the Scheme.

The Receiver does not have the evidence to prove his claim, so he instead argues for a lower evidentiary requirement.

First, the Receiver argues that Chase's "collective knowledge" can establish that it

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

had actual knowledge of Menaged's fraud. The Receiver's argument has been widely rejected; courts across the country have held that the "collective knowledge of all the corporation's officers and employees" will not suffice. *Southland Sec. Corp. v. INSpire Ins. Sols., Inc.*, 365 F.3d 353, 366 (5th Cir. 2004); *Rosemann v. St. Louis Bank*, 858 F.3d 488, 495 (8th Cir. 2017) ("[Defendant] cannot be found to have 'actual knowledge' … by piecing together all the facts known by different employees of the bank[.]"); *Musalli Factory for Gold & Jewelry v. JPMorgan Chase Bank, N.A.*, 261 F.R.D. 13, *24 n.11 (S.D.N.Y. 2009), aff'd, 382 F. App'x 107 (2d Cir. 2010) ("[T]his 'collective knowledge' claim is insufficient to establish actual knowledge … [plaintiff] may not use this principal to shore up a claim of essentially fraudulent conduct when it is unable to allege that any specific employee(s) had the requisite knowledge.").

Second, the Receiver asks the Court to apply a "willful blindness doctrine" despite conceding that no Arizona court has applied this doctrine to a civil case. (Opp. 17). Arizona law is clear: "The requisite degree of knowledge for an aiding and abetting claim is actual knowledge." *Hashimoto v. Clark*, 264 B.R. 585, 598 (D. Ariz. 2001); *Colson v. Maghami*, 2010 WL 2744682, at *8 (D. Ariz. July 9, 2010) (while "a Plaintiff need not prove that the defendant had actual knowledge of all of the details of the alleged fraud, a Plaintiff must still prove that the Defendant had actual knowledge that a fraud either 'had been' or 'would in fact' be committed.") (quoting *Dawson*, 216 Ariz. at 103). This Court should decline the Receiver's request to ignore established Arizona law.

That aside, the Receiver points to no record evidence establishing that any Chase employee "took deliberate action and consciously avoided confirming a high probability that the Bank's customer was obtaining cashier's checks, photographing them and then re-depositing the funds for a fraudulent purpose." *Davis v. US Bank, N.A., et al.*, Slip Op. at 4 (Aug. 8, 2022). [redacted] (Mot. 5-8). [redacted] (*Id.* 8.) There is

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

simply no evidence supporting a willful blindness theory, even if it were applied for the first time in Arizona and contrary to well settled law.

Finally, the Receiver fails to rebut the undisputed facts showing that Chase employees did not have actual knowledge of Menaged's fraud. The Receiver cannot demonstrate that Dadlani or Nelson knew of Menaged's fraud, so he has resorted to launching baseless attacks on their credibility. This is insufficient to create a material issue of fact necessitating trial. *Bodett v. Coxcom, Inc.*, 366 F.3d 736, 740 n.3 (9th Cir. 2004) ("A party cannot create a dispute of fact by simply questioning the credibility of a witness."); *Hernandez v. Roberts of Woodside*, 2022 WL 19315, at *11 (N.D. Cal. Jan. 3, 2022) ("[Nonmovant] cannot establish a triable issue of fact by attacking [movant's] credibility on the basis that during his deposition he did not recall specifics [from] almost eighteen months earlier."). He also argues that Chase's AML investigators should have discovered the fraud based on Menaged's suspicious transactions. [redacted] (Mot. 8). And, this argument also fails as a matter of law, as it is well established that red flags or suspicions are insufficient to demonstrate knowledge. *See Stern v. Charles Schwab & Co.*, 2010 WL 1250732, at *8 (D. Ariz. Mar. 24, 2010) ("[M]ere knowledge of suspicious activity is not enough. The defendant must be aware of the fraud.").

2. Chase Did Not Substantially Assist Menaged.

The Receiver makes no argument concerning the required element that Chase substantially assisted Menaged in the commission of his fraud. The Court should consider this argument conceded and grant summary judgment in Chase's favor. *See Ace Auto. Prods. v. Van Duyne*, 156 Ariz. 140, 143, 750 P.2d 898, 901 (Ariz. Ct. App. 1987) ("It is not incumbent upon the court to develop an argument for a party."). In any event, the Receiver has pointed to no facts demonstrating that Chase's provision of banking services was done with an "extraordinary economic motivation to aid in the fraud," as is required. *See Stern v. Charles Schwab & Co., Inc.*, 2009 WL 3352408, at *7-9 (D. Ariz. Oct. 16, 2009).

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

CONCLUSION

For all these reasons, this Court should enter summary judgment in favor of Chase.

RESPECTFULLY SUBMITTED this 6th day of September, 2023.

GREENBERG TRAURIG, LLP

By:*/s/ Nicole M. Goodwin*
Nicole M. Goodwin
Paul J. Ferak *(pro hac vice)*
Jonathan H. Claydon *(pro hac vice)*
Attorneys for Defendants JPMorgan Chase Bank, N.A., Samantha Nelson f/k/a Samantha Kumbaleck, Kristofer Nelson, Vikram Dadlani, and Jane Doe Dadlani

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000

ORIGINAL of the foregoing e-filed with the Clerk of Court this 6th day of September 2023.

COPY of the foregoing electronically distributed this 6th day of September 2023 to:

Hon. Dewain Fox

COPY of the foregoing served via TurboCourt e-Service and E-Mail this 6th day of September 2023 to:

Colin F. Campbell
Geoffrey M. T. Sturr
Timothy J. Eckstein
Joseph N. Roth
John S. Bullock
OSBORN MALEDON, P.A.
2929 N. Central Avenue, Suite 2100
Phoenix, AZ 85012
ccampbell@omlaw.com
gsturr@omlaw.com
teckstein@omlaw.com
jroth@omlaw.com
jbullock@omlaw.com
Attorneys for Plaintiff

/s/ Tammy Mowen
Employee, Greenberg Traurig

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016
(602) 445-8000