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Clerk of the Superior Court
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14 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
15 IN AND FOR THE COUNTY OF MARICOPA

16 Peter S. Davis, as Receiver of DenSco
17 Investment Corporation, an Arizona
18 corporation,

19 Plaintiff,

20 v.

21 Clark Hill PLC, a Michigan limited
22 liability company; David G. Beauchamp
23 and Jane Doe Beauchamp, husband and
24 wife,

25 Defendants.

No. CV 2017-013832

COMPLAINT

(Eligible for Commercial Court)

26 For his Complaint against Defendants Clark Hill PLC, David G. Beauchamp,
27 and Jane Doe Beauchamp, Plaintiff Peter S. Davis, as the court-appointed receiver of
28 DenSco Investment Corporation (“Plaintiff” or “Receiver”), alleges as follows.

SUMMARY OF PLAINTIFF’S CLAIMS

1. From July 2001 to July 2016, DenSco Investment Corporation (“DenSco”) raised approximately \$85 million from investors. DenSco’s investors were told (i) DenSco would use that money to make short-term “hard money” loans to “foreclosure specialists” who were buying foreclosed homes; (ii) the loans would

1 always be “secured through first position trust deeds,” so that DenSco would, in the
2 event a borrower defaulted, recover the loaned funds by taking possession of the
3 property; and (iii) DenSco would reduce risk “by attempting to ensure that one
4 borrower will not comprise more than 10 to 15 percent of the total portfolio.”

5 2. During that fifteen-year period, DenSco relied on attorney David G.
6 Beauchamp (“Beauchamp”) and the law firms with which he was affiliated for legal
7 advice.

8 3. In January 2014, Beauchamp and his law firm, Clark Hill PLC (“Clark
9 Hill”), learned that the promises DenSco had made to its investors were untrue and that
10 DenSco’s sole owner, shareholder, and operator, Denny Chittick (“Chittick”), had
11 grossly mismanaged DenSco. They were told that two companies controlled by
12 DenSco’s single largest borrower, Yomotov “Scott” Menaged (“Menaged”), had
13 fraudulently obtained from DenSco as many as 125 loans that were not secured by a
14 first-position deed of trust. They also learned that Menaged and his companies
15 accounted for 25% or more of DenSco’s total loan portfolio.

16 4. Clark Hill and Beauchamp were told that Chittick and Menaged had
17 agreed that DenSco would refrain from enforcing its current loan agreements with
18 Menaged and his companies, and would instead loan millions more to them, without
19 DenSco first investigating how the fraud had occurred, where DenSco’s money had
20 gone, and the impact of the fraud on DenSco’s financial position. They were also told
21 that Chittick planned to have DenSco raise new money from investors to fund efforts to
22 help Menaged “fix” the problem before disclosing to those investors the fraud, its effect
23 on DenSco, and the agreement Chittick and Menaged had made.

24 5. Clark Hill and Beauchamp were in a position to protect DenSco and its
25 investors from further harm. They should have advised DenSco to immediately cease
26 taking any new investor funds, investigate the circumstances of the fraud, assess the
27 Company’s options upon the completion of that investigation, and solicit new investor
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1 funds if, and only if, the solicitation was in DenSco's interests and adequate disclosures
2 were made. They did not.

3 6. If Clark Hill and Beauchamp had properly advised DenSco, an
4 investigation would have revealed that Menaged was a con man who had made up a
5 story about his "cousin" having committed the fraud. The investigation would have
6 also revealed that DenSco was insolvent as a result of Menaged's fraud. DenSco and
7 its investors would have been best served if DenSco had severed its relationship with
8 Menaged and taken all available steps to recover its losses from Menaged.

9 7. Clark Hill and Beauchamp instead breached fiduciary duties owed
10 DenSco and helped Chittick breach fiduciary duties he owed the Company. Knowing
11 that Chittick had not conducted any investigation of Menaged's "cousin" story, Clark
12 Hill and Beauchamp blessed and helped implement a "work out" agreement with
13 Menaged under which DenSco loaned millions more to the con man. They told
14 Chittick that DenSco could raise new money from investors to fund additional loans to
15 Menaged without first investigating the circumstances of the fraud, assessing its impact
16 on DenSco's financial position, and making disclosures to those investors.

17 8. Chittick, aided and abetted by Clark Hill and Beauchamp, breached his
18 fiduciary duties to DenSco and its investors by causing DenSco to: (i) make 2,712 new
19 loans to Menaged over the next two years for which DenSco has suffered losses in
20 excess of \$25 million; (ii) obtain more than \$15 million from investors who were never
21 told of Chittick's mismanagement of DenSco, Menaged's fraud, and the "work out"
22 agreement; and (iii) misdirect investors' money to fund the "work out," rather than use
23 the money as promised to investors when they invested.

24 9. After Chittick committed suicide in July 2016, Clark Hill and Beauchamp
25 ran the day-to-day operations of DenSco for a period of time. Despite Chittick's death,
26 Clark Hill and Beauchamp sought to conceal from the Receiver, DenSco's investors,
27 and others the fraud Menaged had committed before January 2014, their role in
28 Chittick's two-year attempt to cover up his mismanagement of DenSco that had

1 allowed the fraud to occur, and Chittick's misuse, with their assistance, of investor
2 funds after January 2014.

3 10. Plaintiff brings this action to recover compensatory damages for the
4 financial losses DenSco suffered as a result of Clark Hill's and Beauchamp's
5 negligence, breaches of fiduciary duty, and aiding and abetting Chittick's breaches of
6 fiduciary duty, as well as punitive damages. He also seeks an order requiring Clark Hill
7 to disgorge or forfeit all legal fees it charged DenSco while breaching fiduciary duties
8 owed DenSco.

9 **PARTIES, JURISDICTION, AND VENUE**

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

14 12. Defendant Clark Hill is a law firm, organized as a Michigan limited
15 liability company, which maintains offices in Scottsdale, Arizona, among other places.

16 13. Defendant Beauchamp is a lawyer and a member of Clark Hill; he joined
17 the firm in September 2013.

18 14. Clark Hill and Beauchamp had an attorney-client relationship with, and
19 provided legal services to, DenSco between September 2013 and September 2016.

20 15. Beauchamp is an Arizona resident who is married to Defendant Jane Doe
21 Beauchamp. Beauchamp was acting for the benefit of his marital community during
22 the relevant time period.

23 16. This Court has subject matter jurisdiction under Article VI, § 14 of the
24 Arizona Constitution and A.R.S. § 12-123. It has personal jurisdiction over Defendants
25 Clark Hill and Beauchamp because they provided professional services in Arizona to an
26 Arizona corporation.

1 17. Venue is proper in Maricopa County under A.R.S. § 12-401 because
2 Defendant Clark Hill does business in Maricopa County and Defendant Beauchamp is a
3 resident of Maricopa County.

4 **FACTUAL ALLEGATIONS**

5 18. DenSco is an Arizona corporation that began operating in April 2001.
6 DenSco's primary business was making short-term, high-interest loans to "foreclosure
7 specialists" who bought homes that were being foreclosed upon, usually through a
8 trustee's sale. DenSco's office was in Chandler, Arizona.

9 19. Chittick was DenSco's sole shareholder. He was the Company's only
10 Director, served as its President, Vice President, Treasurer, and Secretary, and was its
11 only employee.

12 20. Beauchamp began representing DenSco in 2002 or 2003.

13 21. From 2003 until September 2016, Beauchamp advised DenSco on general
14 business, litigation, securities law, and other legal matters.

15 22. In 2007, while he was a partner of Gammage & Burnham, PLLC,
16 Beauchamp participated in the preparation of, and advised DenSco regarding, the loan
17 documents that DenSco used in making loans to "foreclosure specialists" and other
18 borrowers. Those documents included a Mortgage, Note Secured by Deed of Trust, and
19 Deed of Trust and Assignment of Rents. The Mortgage was intended to serve as
20 evidence that DenSco had paid directly to a trustee the proceeds of a loan a borrower
21 had obtained from DenSco to buy property from the trustee at a trustee's sale. Because
22 there was often a delay in a trustee recording a trustee's deed after a trustee's sale,
23 DenSco recorded its Mortgage immediately after a trustee's sale had been completed to
24 establish its lien rights. Once a trustee's deed was recorded, DenSco would record its
25 Deed of Trust and Assignment of Rents. Beauchamp advised DenSco in 2007 and
26 thereafter that these documents and procedures would ensure that DenSco had a first
27 lien position on its loans.
28

1 23. Beauchamp also prepared private offering memoranda that DenSco used
2 to raise money from investors. Beauchamp did so in 2003, 2005, 2007, 2009, and 2011.

3 24. DenSco had fewer than 125 investors, who either had a personal
4 relationship with Chittick or had been referred to him by someone who did.

5 25. As the private offering memoranda Beauchamp prepared stated, DenSco
6 offered its investors “General Obligation Notes” that were “secured by a general pledge
7 of all assets owned by or later acquired by [DenSco],” with DenSco’s largest asset
8 being “the real estate deeds of trust (‘Trust Deeds’)” that secured the loans DenSco was
9 making to “foreclosure specialists” and others.

10 26. Given the importance of the Trust Deeds to DenSco’s investors, the
11 private offering memoranda Beauchamp prepared told investors that (i) “[a]ll real estate
12 loans funded by [DenSco] have been and are intended to be secured through first
13 position trust deeds”; (ii) Chittick, whom investors knew and trusted, “would
14 “analyz[e], negotiat[e], originat[e], purchas[e] and servic[e] Trust Deeds by himself”;
15 and (iii) DenSco would “strive to achieve a diverse borrower base by attempting to
16 ensure that one borrower will not comprise more than 10 to 15 percent of the total
17 portfolio.”

18 27. Each private offering memorandum issued by DenSco also contained a
19 “prior performance” section which summarized DenSco’s “history in raising money
20 from investors, the number of loans made, the aggregate amount of such loans, the
21 underlying values of the security for such loans and any problems with respect to such
22 loans.” The section concluded with a representation such as the one made in the July 1,
23 2011 private offering memorandum (the “2011 POM”): “Since inception through
24 June 30, 2011, the Company has participated in 2622 loans, . . . Each and every
25 Noteholder has been paid the interest and principle (sic) due to that Noteholder in
26 accordance with the respective terms of the Noteholder’s Notes. Despite any losses
27 incurred by the Company from its borrowers, no Noteholder has sustained any
28 diminished return or loss on their investment in a Note from the Company.”

1 28. The Notes DenSco sold to its investors were in specified amounts
2 (between \$50,000 and \$1 million) and paid varying rates of interest, depending on their
3 term. In the 2011 POM, for example, DenSco offered to pay 8% interest on a six-
4 month note, 10% on a one-year note, and 12% on a note of between two and five years.

5 29. As Beauchamp told a Gammage & Burnham lawyer in 2007, DenSco had
6 an “ongoing roll-over of the existing investors every six months or so,” with DenSco
7 offering to issue new Notes to investors as previous Notes expired.

8 30. Beauchamp knew that DenSco’s investors received monthly statements,
9 which depicted the Notes as stable, secure investments. The statements showed the
10 date of an investor’s initial purchase of a Note(s), the current maturity date(s), the
11 monthly payment of interest, a monthly balance with accrued interest, and a recap of
12 the amount of interest received in the current year and previous years on Notes that had
13 been “rolled over.”

14 31. Beauchamp advised DenSco that it was appropriate for DenSco to use
15 private offering memoranda that were designed to remain in effect for two years. The
16 2011 POM, for example, said that DenSco “intends to offer the Notes for placement on
17 a continuing basis until the earlier of (a) the sale of the maximum offering,” which was
18 \$50 million, “or (b) two years from the date of this memorandum,” i.e., until July 1,
19 2013. That memorandum, and previous memoranda, acknowledged DenSco’s ongoing
20 disclosure obligations under the securities laws, stating that “[i]n order to continue
21 offering the Notes during this period, [DenSco] will need to update this Memorandum
22 from time to time.” But Beauchamp never advised DenSco to update a private offering
23 memorandum during the two-year period a memorandum was in effect, and no
24 memorandum was ever amended to disclose new material facts or to correct any
25 information no longer current or true.

26 32. The 2011 POM was the last private offering memorandum DenSco
27 issued.

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1 33. Chittick distributed the 2011 POM to DenSco's investors through a
2 July 19, 2011 email (copied to Beauchamp) which stated, in part, "I update this
3 memorandum every two years. I work with David Beauchamp (securities attorney) to
4 review all the statues [sic] and laws in Arizona as it pertains to my business and all the
5 states that I have investors in. This is to ensure that I'm filing all the forms and
6 following all the rules . . ."

7 34. In June 2013, Beauchamp was a partner of Bryan Cave LLP.

8 35. Through a June 10, 2013 email, Beauchamp told Bryan Cave lawyers that
9 DenSco "is a client which makes high interest loans (18% with no other fees) secured
10 by first lien position against real estate. . . . DenSco has previously had aggregate
11 investor loans outstanding at approximately \$16 to \$18 million from its investors. We
12 are starting the process to update and renew DenSco's private offering memo (renew it
13 every two years) and we have now been advised that DenSco now has almost \$47
14 million in aggregate investor loans outstanding."

15 36. Although Bryan Cave had an "internal compliance procedure" requiring
16 Beauchamp to conduct "due diligence" on each of the statements made in the new
17 DenSco private offering memorandum he was preparing, Beauchamp did not do so.

18 37. Beauchamp did not seek to determine whether the representation in the
19 draft memorandum, that "[t]he Company continues to strive to achieve a diverse
20 borrower base by attempting to ensure that one borrower will not comprise more than
21 10 to 15 percent of the total portfolio," was accurate. Had he done so, Beauchamp
22 would have learned that as of July 1, 2013, approximately 30% of DenSco's loan
23 portfolio consisted of loans made to Menaged or companies he controlled.

24 38. Beauchamp knew, from his discussions with Chittick and the text of the
25 draft private offering memorandum he was preparing, that DenSco continued to
26 represent to investors that its loans were in first position. The draft memorandum, like
27 the 2011 POM, stated that "[a]ll real estate loans funded by the Company have been
28 and are intended to be secured through first position trust deeds." Beauchamp also

1 reviewed DenSco's website on June 17, 2013. The website stated, under a "Lending
2 Guidelines" heading: "First Position ONLY!"

3 39. Yet Beauchamp failed to perform any due diligence to determine whether
4 DenSco's loans were, in fact, in first position. Had he done so, Beauchamp would have
5 learned that as of July 1, 2013 \$6.48 million, or approximately 40% of the
6 approximately \$16.2 million of loans DenSco had made to Menaged and his companies
7 as of that date, were not in first position.

8 40. Not only did Beauchamp fail to conduct due diligence on DenSco's loan
9 portfolio, he ignored evidence of deficiencies in DenSco's lending practices when it
10 was handed to him. On June 14, 2013, Chittick sent Beauchamp by email a copy of a
11 complaint that had been filed in Arizona Superior Court by Freo Arizona, LLC. The
12 defendants were DenSco; one of Menaged's companies, Easy Investments, LLC; and
13 another "hard money" lender, Active Funding Group, LLC.

14 41. According to the complaint, Freo had acquired a foreclosed home at a
15 trustee's sale and filed its lawsuit to establish that it owned the property free and clear
16 of liens asserted by DenSco and Active Funding Group. The complaint and other
17 documents Beauchamp received identified by street address and legal description the
18 home at issue; they also identified the names of the former owners.

19 42. Chittick's transmittal email described Menaged, the owner of Easy
20 Investments, as a borrower that DenSco had "done a ton of business with, million[s] in
21 loans and hundreds of loans." He said that DenSco would "piggy back with
22 [Menaged's] attorney to fight" the lawsuit but wanted Beauchamp to be aware of the
23 litigation, and asked that he contact Menaged's attorney.

24 43. The complaint put Beauchamp on notice that DenSco was not in first
25 position on at least one of its loans. It expressly alleged that Easy Investments had
26 "attempted to encumber the property with deeds of trust to Active [Funding Group] and
27 DenSco," which put Beauchamp on notice that Menaged, one of DenSco's major
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1 borrowers, had obtained loans from both DenSco and another “hard money” lender,
2 each intended to be secured by the same property.

3 44. Beauchamp did nothing to investigate these facts and whether they were
4 indicative of a broader breakdown in DenSco’s underwriting practices.

5 45. If Beauchamp had sought to review records available through the
6 Maricopa County Recorder’s website relating to the property described in the Freo
7 lawsuit, he would have found: (i) a Deed of Trust and Security Agreement With
8 Assignment of Rents given by Easy Investments in favor of Active Funding Group, that
9 Menaged had signed on March 25, 2013; and (ii) a Deed of Trust and Assignment of
10 Rents given by Easy Investments in favor of DenSco, that Menaged had signed on
11 April 2, 2013. Both signatures were witnessed by a notary public.

12 46. Beauchamp did not complete an updated private offering memorandum
13 for DenSco before July 1, 2013, when the 2011 POM expired.

14 47. Beauchamp knew at the time, as he told another Bryan Cave attorney, that
15 DenSco had “approximately 60 investor notes that are scheduled to expire in the next 6
16 months.” Because DenSco had not updated the 2011 POM and did not issue a new
17 private offering memorandum in July 2013, Beauchamp knew that DenSco would be
18 accepting those “roll over” investments, and was likely to accept money from new
19 investors, without providing those investors with an up-to-date offering memorandum.

20 48. Through a letter dated August 30, 2013, DenSco was advised that
21 Beauchamp would be leaving Bryan Cave effective August 31, 2013 to join Clark Hill.

22 49. When Beauchamp moved his law practice to Clark Hill, DenSco retained
23 Clark Hill and became a client of the firm.

24 50. DenSco’s retention of Clark Hill was confirmed through a letter dated
25 September 12, 2013. The letter stated that DenSco had engaged Clark Hill to represent
26 it “with regard to the legal matters transferred to Clark Hill PLC from Bryan Cave
27 LLP.” Through an email exchange that day, Beauchamp and Chittick identified the
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1 transferred matters to include “general corporate” and files relating to the 2011 POM
2 and the new private offering memorandum Beauchamp had begun preparing in 2013.

3 51. Clark Hill’s engagement letter made clear that Clark Hill viewed DenSco
4 as its client, and had not agreed to also represent Chittick.

5 52. At DenSco’s request, Beauchamp opened a “new matter” in Clark Hill’s
6 accounting and filing systems on September 13, 2013 for work the firm would perform
7 in advising DenSco on securities law matters, including the preparation of a new private
8 offering memorandum.

9 53. Clark Hill and Beauchamp did not begin work on a new private offering
10 memorandum during the remaining months of 2013.

11 54. On Monday, January 6, 2014, Clark Hill and Beauchamp learned that as
12 many as 52 loans DenSco had made to two of Menaged’s companies – Easy
13 Investments (one of the defendants in the Freo lawsuit Chittick had sent Beauchamp in
14 June 2013) and Arizona Home Foreclosures – were not “secured through first position
15 trust deeds,” as stated in the 2011 POM, and as DenSco had claimed as recently as
16 June 17, 2013 on its website. They acquired that information through a demand letter
17 DenSco had received earlier that day from a law firm representing two companies that
18 had also made loans to Easy Investments and Arizona Home Foreclosures, and a third
19 company which had been assigned such loans, all of which were identified in the letter
20 as the “Lenders.” Chittick promptly sent the letter to Beauchamp.

21 55. The demand letter identified, with reference to specific loan numbers and
22 street addresses, 52 loans that the Lenders had made to Easy Investments and Arizona
23 Home Foreclosures to acquire foreclosed homes at trustee sales. The letter asserted that
24 the Lenders’ loans had been made by “certified funds delivered directly to the trustee”
25 and secured by “promptly recorded deeds of trust confirming a senior lien position on
26 each of the Properties.”

27 56. The demand letter went on to assert that DenSco had “engaged in a
28 practice of recording a ‘mortgage’ on each of the [52 properties] on around the same

1 time as the Lenders were recording their senior deeds of trust” and that each such
2 mortgage falsely stated that DenSco had “provided purchase money funding” and that
3 its “loans are ‘evidenced by a check payable’ to the trustee for each of the Properties.”
4 The letter asserted that DenSco could not claim to be in a senior lien position on those
5 properties “since in each and every instance, only the Lenders provided the applicable
6 trustee with certified funds supporting the Borrower’s purchase money acquisition for
7 each of the Properties.”

8 57. The letter demanded that DenSco sign subordination agreements
9 acknowledging that it did not have a first position lien on any of the 52 properties, and
10 said that if DenSco refused to do so, the companies would assert claims against DenSco
11 for fraud and conspiracy to defraud; negligent misrepresentation; and wrongful
12 recordation pursuant to A.R.S. § 33-420.

13 58. It should have been obvious to Beauchamp, in light of the allegations in
14 the Freo lawsuit he had received the previous June and the claims made in the demand
15 letter, that Easy Investments and Arizona Home Foreclosures had purposefully
16 obtained, for each of the 52 properties, a loan from one of the Lenders, and had then
17 obtained a second loan from DenSco that was supposed to be secured by the same
18 property.

19 59. Beauchamp spoke to Chittick by telephone on January 6, 2014.
20 Beauchamp’s notes from that call state that Chittick told him DenSco’s “largest
21 borrower” – Menaged – “had a guy working in his office and was getting 2 loans on
22 each property,” and that Chittick and Menaged “had already fixed about 6 loans.” The
23 notes reflect that Beauchamp planned to meet with Chittick on Thursday, January 9,
24 2014.

25 60. Clark Hill and Beauchamp recognized, or should have recognized, that
26 the claims made in the demand letter affected a material portion of DenSco’s loan
27 portfolio. They knew from the 2011 POM that DenSco’s average loan amount was
28 \$116,000, so that DenSco’s potential exposure for the 52 under-secured or unsecured

1 loans was likely to be approximately \$6 million or more, or approximately 13% of the
2 \$47 million that Beauchamp understood DenSco had raised from investors as of June
3 2013.

4 61. On January 7, 2014, Beauchamp received an email from Chittick, copied
5 to Menaged, which contained information relevant to the demand letter and said that
6 Chittick was bringing Menaged to the planned January 9 meeting.

7 62. Chittick's email said that DenSco had, since 2007, loaned \$50 million to
8 "a few different LLC's" controlled by Menaged. Among those limited liability
9 companies were Easy Investments and Arizona Home Foreclosures.

10 63. Chittick's email said that "[b]ecause of our long term relationship, when
11 [Menaged] needed money, [I] would wire the money to his account and he would pay
12 the trustee," Menaged would sign a Mortgage that referenced the payment to the
13 trustee, and Chittick would cause the Mortgage to be recorded.

14 64. Chittick's statement put Beauchamp on notice that Chittick had failed to
15 comply with the terms of the Mortgage document Beauchamp and Gammage &
16 Burnham had prepared in 2007, which called on DenSco to make payments directly to a
17 trustee, and that Chittick had allowed the fraud committed by Easy Investments and
18 Arizona Home Foreclosures to have occurred, by not paying loan proceeds directly to a
19 trustee, and instead wiring funds directly to Menaged.

20 65. Chittick's email went on to say that Menaged had told him in November
21 2013 that DenSco had been defrauded by Menaged's "cousin," who allegedly worked
22 with Menaged in managing Easy Investments and Arizona Home Foreclosures.
23 Menaged claimed that his "cousin" had "receiv[ed] the funds from [DenSco], then
24 request[ed] them from . . . other lenders [who] cut a cashiers check for the agreed upon
25 loan amount . . . [took] it to the trustee and . . . then record[ed] a [deed of trust]
26 immediately." Chittick explained that "sometimes" DenSco had recorded its mortgage
27 before another lender's deed of trust was recorded, but in other cases it had not.
28 According to Chittick, "[t]he cousin absconded with the funds."

1 66. It should have been obvious to Beauchamp, in light of the allegations in
2 the Freo lawsuit he had received the previous June and the claims made in the demand
3 letter, that Menaged's story about his "cousin" having perpetrated the fraud could be
4 called into doubt. Chittick's acceptance of the story, without conducting an
5 independent investigation, should have concerned Beauchamp.

6 67. Chittick's email said "I know that [I] can't sign the subordination
7 [agreement] because that goes against everything that [I] tell [DenSco's] investors."

8 68. Chittick concluded his email by telling Beauchamp that he and Menaged
9 had agreed upon a "plan to fix this," which included DenSco loaning additional monies
10 to Menaged, and a joint effort by DenSco and Menaged to raise funds to pay off the
11 senior liens on the double-encumbered properties.

12 69. Beauchamp met with Chittick and Menaged on Thursday, January 9,
13 2014.

14 70. Beauchamp learned in the January 9, 2014 meeting that there were
15 lenders in addition to the three companies identified in the January 6, 2014 demand
16 letter who held liens senior to DenSco's liens. According to Beauchamp's notes from
17 that meeting, the number of loans made by DenSco that were not in first position and
18 were either under-secured or unsecured was between 100 and 125. Based on that
19 information and the 2011 POM's average loan amount of \$116,000, Beauchamp knew
20 that DenSco had potentially lost between \$11.6 and \$14.5 million, representing between
21 25% and 30% of the \$47 million that Beauchamp understood DenSco had raised as of
22 June 2013. If Beauchamp had pressed Chittick for details during that meeting, he
23 would have learned that, as of November 2013, when Chittick first learned of the fraud,
24 186 loans, with a value of approximately \$25 million – more than 40% of DenSco's
25 total loan portfolio – were either under-secured or unsecured.

26 71. The information Beauchamp learned in the January 9, 2014 meeting
27 confirmed what was evident from the January 6, 2014 demand letter – that DenSco did
28 not have the diverse loan portfolio promised to investors in the 2011 POM, and had,

1 under Chittick's management, loaned at least 25% of its portfolio to Menaged and his
2 companies. If Beauchamp had pressed Chittick for details during that meeting, he
3 would have learned that, as of January 1, 2014, more than 45% of DenSco's loan
4 portfolio were loans to Menaged and his companies.

5 72. Beauchamp's notes from the January 9, 2014 meeting also reflect that he,
6 Chittick, and Menaged discussed how to implement Chittick's and Menaged's plan to
7 jointly raise funds to pay off the senior lenders on the double-encumbered properties
8 within a ninety-day period.

9 73. Based on the information Beauchamp received from Chittick before and
10 during the January 9, 2014 meeting, Clark Hill and Beauchamp should have promptly
11 advised Chittick that:

12 a. DenSco had to immediately cease accepting investor funds and
13 could not accept any money from investors on the basis of an out-of-date
14 offering memorandum they now knew contained material misrepresentations and
15 omitted material information;

16 b. before deciding whether additional investment should be solicited,
17 DenSco had to first investigate the circumstances under which the Menaged
18 entities had obtained loans from both DenSco and the lenders who claimed to
19 have senior liens;

20 c. before deciding whether additional investment should be solicited,
21 DenSco had to also investigate and assess the impact of the fraud on DenSco's
22 financial position; if the fraud had rendered DenSco insolvent or in the zone of
23 insolvency, then DenSco had to consider duties owed to its investors and other
24 creditors in making business decisions; and

25 d. if, after conducting those investigations and assessments, DenSco
26 decided that it was in DenSco's interest to loan additional monies to Menaged
27 and his companies, refrain from enforcing its rights and remedies against them,
28 and raise investor funds in the process, DenSco could only do so utilizing an

1 offering memorandum or other disclosure document that made appropriate
2 disclosures to investors.

3 74. Clark Hill and Beauchamp failed to do so.

4 75. Clark Hill and Beauchamp did not promptly advise Chittick that DenSco
5 had to immediately cease accepting investor funds and could not accept any money
6 from investors until a new disclosure document had been issued and provided to such
7 investors. Clark Hill and Beauchamp did not advise Chittick of the potential civil and
8 criminal liability he and DenSco faced if DenSco accepted investor funds without such
9 disclosure.

10 76. To the contrary, after Beauchamp and Chittick spoke by telephone on
11 January 10, 2014, Chittick wrote that Beauchamp told him "I can raise money."

12 77. Beauchamp's advice was also documented in an email exchange he had
13 with Chittick two days later, on January 12, 2014. Chittick said "if both Scott and [I]
14 can raise enough money, we should be able to have this all done in 30 days easy." He
15 told Beauchamp that he had "spent the day contacting every investor that has told me
16 they want to give me more money," and thought he could have \$5 to \$6 million within
17 the next ten business days. Rather than tell Chittick that DenSco must immediately
18 cease accepting or soliciting any investor money, and warn Chittick of his and
19 DenSco's potential civil and criminal liability if DenSco did so, Beauchamp gave his
20 approval of Chittick's plan, and told Chittick he "should feel very honored that you
21 could raise that amount of money that quickly."

22 78. Clark Hill and Beauchamp did not promptly advise Chittick that before
23 deciding whether additional investment should be solicited, DenSco had to first
24 investigate the circumstances under which the Menaged entities had obtained loans
25 from both DenSco and the lenders who claimed to have senior liens.

26 79. If an investigation had been conducted, easily accessible public records
27 would have revealed that Menaged's claim to have been victimized by his "cousin" was
28 false, and that Menaged himself had perpetrated a massive fraud on DenSco by taking

1 advantage of DenSco's lax lending practices and obtaining duplicate loans on more
2 than 100 properties.

3 80. Clark Hill and Beauchamp did not promptly advise Chittick that before
4 deciding whether additional investment should be solicited, DenSco had to also
5 investigate and assess the impact of the fraud on DenSco's financial position; nor did
6 they further advise DenSco that if the investigation and assessment resulted in a finding
7 that DenSco was insolvent or in the zone of insolvency, DenSco had to consider duties
8 owed to its investors and other creditors in making business decisions.

9 81. If an investigation and assessment of the fraud's impact had been
10 conducted, DenSco would have determined that the fraud had rendered the Company
11 insolvent.

12 82. If Clark Hill and Beauchamp had properly advised Chittick, then Chittick
13 would have caused DenSco to terminate its relationship with Menaged and his
14 companies, pursue its remedies against Menaged and his companies, and explore
15 whether DenSco could survive as a going concern or would have to liquidate.

16 83. Having failed to properly advise DenSco, Clark Hill and Beauchamp then
17 took actions that were not in DenSco's interest, but were instead intended to protect
18 Chittick.

19 84. They did so even though Chittick was not a client of Clark Hill, and
20 despite the glaring conflict between Chittick's interests and those of Clark Hill's only
21 client, DenSco.

22 85. On January 10, 2014, Beauchamp opened a "new matter" in Clark Hill's
23 accounting and filing systems captioned "work-out of lien issue."

24 86. Clark Hill and Beauchamp knew when that file was opened that Chittick
25 intended to breach fiduciary duties owed DenSco by: (i) accepting without questioning
26 Menaged's explanation that his "cousin" was responsible for the fraud committed by
27 Easy Investments and Arizona Home Foreclosures; (ii) failing to investigate the true
28 facts of the fraud; (iii) failing to assess the impact of the fraud on DenSco's financial

1 position; (iv) committing DenSco to loan millions more to Menaged and his companies
2 without conducting such an investigation and assessment; and (v) accepting and
3 soliciting funds from investors based on an out-of-date offering memorandum Clark
4 Hill and Beauchamp knew contained material misrepresentations and omitted material
5 information.

6 87. Clark Hill and Beauchamp went on to negotiate, first with Menaged's
7 lawyer and then with Menaged, a Term Sheet, which was signed on January 17, 2014, a
8 Forbearance Agreement, which was signed by Chittick (for DenSco) and Menaged on
9 or about April 16, 2014, and documents to memorialize additional loans DenSco made
10 to Menaged and his companies.

11 88. Clark Hill's and Beauchamp's misplaced devotion to Chittick's interests,
12 and disregard of the duties they owed to their only client, DenSco, was evidenced by
13 numerous statements Beauchamp made during the negotiation of the Forbearance
14 Agreement. For example, in a January 21, 2014 email, Beauchamp told Chittick the
15 Forbearance Agreement was needed to "give you protection if any of your investors
16 raise questions."

17 89. In response to revisions of a draft of the Forbearance Agreement that
18 Menaged's lawyer had made, Beauchamp wrote in a February 7, 2014 email: "Based
19 on your previous changes, the Forbearance Agreement would be prima facia evidence
20 that Denny Chittick had committed securities fraud because the loan documents he had
21 Scott sign did not comply with DenSco's representations to DenSco's investors in its
22 securities offering documents. Unfortunately, this agreement needs to not only protect
23 Scott from having this agreement used as evidence of fraud against him in litigation, the
24 agreement needs to comply with Denny's fiduciary obligation to his investors as well as
25 not become evidence to be used against Denny for securities fraud."

26 90. Another example of Clark Hill's and Beauchamp's misplaced devotion to
27 Chittick is Beauchamp's February 20, 2014 email to lawyers in Clark Hill's offices in
28 Michigan and Pennsylvania, seeking assistance on the Forbearance Agreement, in

1 which Beauchamp conflated DenSco and Chittick as the firm's client. Beauchamp
2 wrote: "Our client is an investment fund that has made approximately 185 loans to two
3 affiliated LLCs that are collectively referred to as Borrower. . . . Without any
4 additional documentation or any legal advice, our client has been reworking his loans
5 and deferring interest payments to assist Borrower/Guarantor to pay off some of the
6 duplicate loans. When we became aware of this issue, we advised our client that he
7 needs to have a Forbearance Agreement in place to evidence the forbearance and the
8 additional protections he needs."

9 91. These and other statements make plain that Clark Hill and Beauchamp
10 were aware that Chittick's conduct violated Chittick's duties to their client, DenSco,
11 and rather than seeking to vindicate DenSco's interest, they helped DenSco's unfaithful
12 agent Chittick cover up his wrongdoing.

13 92. The Forbearance Agreement included a schedule of the loans DenSco had
14 made to Menaged, members of his family, Easy Investments, and Arizona Home
15 Foreclosures, including loans DenSco made between December 2013 and April 15,
16 2014. Those loans totaled \$37,456,620.47, well over half of the aggregate amounts
17 DenSco had raised from investors.

18 93. Based on the January 9, 2014 "work out" agreement blessed by Clark Hill
19 and Beauchamp and the terms of the Forbearance Agreement that Clark Hill and
20 Beauchamp negotiated and documented, DenSco made 2,712 loans to Menaged and his
21 companies from January 2014 through June 2016, for which DenSco has suffered losses
22 in excess of \$25 million.

23 94. It was not until after the Forbearance Agreement was signed that Clark
24 Hill and Beauchamp took any steps to prepare an updated and corrected private offering
25 memorandum for DenSco. In mid-May 2014, Clark Hill prepared a preliminary draft of
26 that document. The draft reflected Clark Hill's belief that it represented both DenSco
27 and Chittick, despite the terms of Clark Hill's engagement letter and the unconsentable
28 conflict arising from Chittick's breach of fiduciary duties owed DenSco. The draft

1 stated, in part, that Clark Hill “represent[ed] the Company and its President.” Clark
2 Hill never sent that draft to DenSco and took no further steps to prepare a new private
3 offering memorandum for DenSco’s use.

4 95. DenSco never issued a new private offering memorandum but continued
5 to raise money from investors in return for promissory notes based on the out-of-date
6 2011 POM, which contained material misrepresentations and omitted material
7 information. DenSco received more than \$15 million from investors from January 2014
8 through June 2016.

9 96. Chittick committed suicide on July 28, 2016.

10 97. After Chittick’s death, Clark Hill and Beauchamp took over the day-to-
11 day management of DenSco, including communicating with investors, representatives
12 of the Securities Division of the Arizona Corporation Commission, and Plaintiff. In
13 those communications, Clark Hill and Beauchamp did not disclose material information
14 about their knowledge of the fraud committed by Menaged before January 2014;
15 DenSco’s lax lending practices and failure to follow its own lending documents which
16 allowed the fraud to occur; the negotiations which resulted in the Forbearance
17 Agreement; their role in its preparation; the continued lending to Menaged and his
18 companies contemplated by that agreement; their knowledge of DenSco’s solicitation
19 and receipt of investor funds after January 2014 based on the out-of-date and materially
20 misleading 2011 POM; the misuse of investment proceeds contrary to the
21 representations made to investors; and the general cover up of wrongdoing by Chittick.

22 CLAIMS FOR RELIEF

23 Count One 24 (Legal Malpractice)

25 98. Paragraphs 1 to 97 are incorporated herein.

26 99. Clark Hill and Beauchamp were DenSco’s lawyers.

27 100. While representing DenSco, Clark Hill and Beauchamp breached the
28 applicable standard of care.

1 101. While representing DenSco, Clark Hill and Beauchamp breached
2 fiduciary duties they owed to DenSco.

3 102. By failing to comply with the standard of care and breaching their
4 fiduciary duties, Clark Hill and Beauchamp caused injury to DenSco.

5 103. DenSco suffered resulting damage in an amount to be proven at trial.
6 Plaintiff's damages are liquidated. Plaintiff seeks prejudgment interest on the losses
7 suffered by DenSco as a result of certain loans made to Menaged and his companies.
8 Plaintiff also seeks prejudgment interest on all disgorged fees.

9
10 **Count Two**
(Aiding and Abetting Breach of Fiduciary Duties)

11 104. Paragraphs 1 to 97 are incorporated by reference.

12 105. As a director and officer of DenSco, Chittick owed fiduciary duties to
13 DenSco.

14 106. Chittick breached his fiduciary duties to DenSco.

15 107. Clark Hill and Beauchamp knew that Chittick intended to breach and in
16 fact breached his fiduciary duties to DenSco.

17 108. Clark Hill and Beauchamp, in breach of fiduciary duties they owed to
18 DenSco, aided and abetted Chittick in his breach of fiduciary duties to DenSco.

19 109. By reason of Chittick's breach of fiduciary duty, DenSco was injured.

20 110. DenSco suffered resulting damage in an amount to be proven at trial.
21 Plaintiff's damages are liquidated. Plaintiff seeks prejudgment interest on the losses
22 suffered by DenSco as a result of certain loans made to Menaged and his companies.
23 Plaintiff also seeks prejudgment interest on all disgorged fees.

24 WHEREFORE, Plaintiff prays:

- 25 a. For an award of compensatory damages against Clark Hill and
26 Beauchamp for their negligence, breaches of fiduciary duty, and aiding
27 and abetting Chittick's breaches of fiduciary duty;

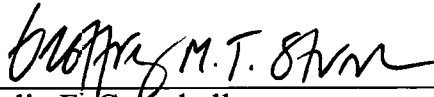
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- b. For an order requiring Clark Hill to disgorge and pay to Plaintiff all attorneys' fees DenSco paid to Clark Hill for work performed on or after January 9, 2014;
- c. For an award of punitive damages;
- d. For an award of prejudgment interest;
- e. For costs incurred herein, pursuant to A.R.S. § 12-341; and
- f. For such other relief as may be equitable to the Court.

DATED this 16th day of October, 2017.

OSBORN MALEDON, P.A.

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