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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.

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

Defendants.

No. CV2017-013832

**PLAINTIFF'S NOTICE OF FILING  
UNREDACTED COPIES OF  
PREVIOUSLY FILED DOCUMENTS  
THAT CITE MENAGED'S  
DEPOSITION**

(Assigned to the Honorable  
Daniel Martin)

In a recent order, the Court confirmed that Yomtov Scott Menaged's attempt to designate his entire September 2019 deposition transcript as confidential was ineffective. (Order dated 1/27/2020.) Therefore, Menaged's deposition may be cited in publicly filed documents in this case, and there is no longer a need to redact such documents.

The Receiver previously filed documents in this case that cite Menaged's deposition and therefore contain redactions:

1. On 10/18/2019, the Receiver filed a Reply and Cross-Response in support of his motion for partial summary judgment on In Pari Delicto, and an

1 accompanying Controverting Statement of Facts. Menaged's deposition was  
2 cited in **CSOF Ex. 3** thereto.

3 2. On 1/10/2020, the Receiver filed a Response to Defendants' Motion for  
4 Summary Judgment re Aiding & Abetting. Menaged's deposition was cited on  
5 **pages 6-7, 9, 11, 14-15** therein.

6 3. On 1/10/2020, the Receiver filed a Response to Defendants' Motion for  
7 Summary Judgment on Joint & Several Liability. Menaged's deposition was  
8 cited on **pages 4-6, 8-9** therein.

9 4. On 1/10/2020, the Receiver filed a Controverting Statement of Facts  
10 accompanying his Responses to Defendants' Motions for Summary Judgment.  
11 Menaged's deposition was cited on **pages 92, 104, 110-114, 138-139** therein,  
12 and in **CSOF Ex. 188** thereto.

13 In light of the Court's recent order, the Receiver now files unredacted copies of those  
14 documents as exhibits to this notice. *See* Ariz. R. Civ. P. 5.4(f)(1)(c) (party may file  
15 "unredacted copy" of document when court denies request to file under seal); *cf.* Ariz. R.  
16 Civ. P. 5.4(g)(5) (court may enter "order making the document . . . part of the public  
17 record" when there is no response to notice of lodging). Specifically:

18 1. **Exhibit A** hereto is an unredacted copy of CSOF Ex. 3 to the Controverting  
19 Statement of Facts accompanying the Receiver's 10/18/2019 Reply and Cross-  
20 Response in support of his motion for partial summary judgment on In Pari  
21 Delicto.

22 2. **Exhibit B** hereto is an unredacted copy of the Receiver's 1/10/2020 Response  
23 to Defendants' Motion for Summary Judgment re Aiding & Abetting.

24 3. **Exhibit C** hereto is an unredacted copy of the Receiver's 1/10/2020 Response  
25 to Defendants' Motion for Summary Judgment on Joint & Several Liability.

26 4. **Exhibit D** hereto is an unredacted copy of the Receiver's 1/10/2020  
27 Controverting Statement of Facts accompanying his Responses to Defendants'  
28 Motions for Summary Judgment, without exhibits.

5. **Exhibit E** hereto is an unredacted copy of CSOF Ex. 188 to the Receiver's 1/10/2020 Controverting Statement of Facts accompanying his Responses to Defendants' Motions for Summary Judgment.

RESPECTFULLY SUBMITTED this 31st day of January, 2020.

OSBORN MALEDON, P.A.

By /s/Joshua M. Whitaker  
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This document was electronically filed  
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Honorable Daniel Martin\*  
Maricopa County Superior Court  
101 West Jefferson, ECB-412  
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# **EXHIBIT A**

(Unredacted copy of CSOF Ex. 3 to the Controverting Statement of Facts accompanying the Receiver's 10/18/2019 Reply and Cross-Response in support of his motion for partial summary judgment on In Pari Delicto)

SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

PETER S. DAVIS, as Receiver of )  
DenSco Investment Corporation, an )  
Arizona corporation, )

Plaintiff, )

vs. ) NO. CV2017-013832

CLARK HILL, PLC, a Michigan limited ) \*\*\*CONFIDENTIAL\*\*\*  
liability company; DAVID G. )  
BEAUCHAMP and JANE DOE BEAUCHAMP, )  
husband and wife, )

Defendants. )

\*\*\*\*\*

ORAL DEPOSITION OF

YOMTOV SCOTT MENAGED

SEPTEMBER 24, 2019

Volume 2 OF 2

\*\*\*\*\*

ORAL DEPOSITION of YOMTOV SCOTT MENAGED,  
produced as a witness at the instance of the Defendants  
and duly sworn, was taken in the above-styled and  
numbered cause on September 24, 2019, from 8:17 a.m. to  
3:42 p.m., at the La Tuna Federal Correction  
Institution, Anthony, Texas, pursuant to the Arizona  
Rules of Civil Procedure.

Reported by:

Rhonda McCay, CSR, CCR, RPR, CLR

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1 Q. What can you recall?

2 A. As I testified prior, we came up with an  
3 agreement on how we were going to clean up this mess.  
4 Denny decided to -- based on certain factors, to pay off  
5 some of these lenders. He already started executing  
6 that. He wanted me to go with him to the attorney to  
7 discuss all of this.

8 And although he was doing it, he wanted  
9 legal advice to make sure how we were going to  
10 memorialize all that transpired and how to legally deal  
11 with it. Although, he was doing it already, and he was  
12 putting liens on these properties, additional liens. So  
13 let me back up so there's no confusion.

14 Let's just assume that Active Funding was  
15 owed a hundred thousand dollars and Denny was owed -- so  
16 Denny decides to go ahead and pay off Active Funding on  
17 123 Main Street. What Denny does is he goes and records  
18 a second lien on his own property. So now he has a  
19 first and a second to memorialize the payment that he  
20 made to Active Funding Group.

21 So there will always be that second lien on  
22 there. So there may be one, two -- sometimes Denny  
23 would put three or four liens on a property  
24 memorializing the money that went out.

25 So the big question to Dave Beauchamp was,

1 really, once -- once he does that, is there anything  
2 further that he needed to do to make sure everything was  
3 valid and correct?

4 Q. Okay. We'll get to that in a second.

5 So, chronologically, we've already talked  
6 about Exhibit 942. That's the letter that was sent --  
7 that was hand-delivered to Mr. Chittick on January 6th.

8 A. I recall that.

9 Q. Did Mr. Chittick give you a copy of this?

10 A. He did.

11 Q. Do you remember any discussions you had with  
12 Mr. Chittick about this group of lenders?

13 A. I do.

14 Q. What do you recall discussing?

15 Again, I want to keep this before you went  
16 in to meet with Mr. Beauchamp. If you have a memory.

17 A. We discussed what he was going to do. He said  
18 that he couldn't, according to his investment memorandum  
19 or POM, he was not allowed to subordinate, and that was  
20 his major concern, was violating the POM.

21 So he said, "I couldn't do what they want  
22 me to do. I would prefer to just pay them off."

23 Q. Anything else?

24 A. We discussed lien positions at that time. We  
25 looked at everything. We asked a title company to send



1 little while.

2 Me and Denny stayed in the conference room.

3 He, probably about 15 minutes later, he  
4 came back, and said, "Okay. So how do you see this  
5 whole thing playing itself out?"

6 Denny explained the plan of what you just  
7 discussed on that email to him.

8 He asked how long we thought we could get  
9 this whole thing resolved.

10 Denny said less than a year.

11 Denny -- David Beauchamp asked how we would  
12 keep this from the investors for that long a period of  
13 time.

14 Denny said his books looked fine. His  
15 accounting looked fine. His accounting didn't reference  
16 him being in first or second position. So everything  
17 looked perfect.

18 Beauchamp was sweating a little bit more.

19 Ultimately, he said -- we talked about the  
20 forbearance agreement. Beauchamp recommended that we  
21 get a forbearance agreement.

22 Denny asked what the point was.

23 He explained it was to memorialize  
24 everything that had taken place.

25 Denny asked if that had to get out to his

1 investors.

2                   Beauchamp said, no, it did not, but it was  
3 something that would summarize, basically, our agreement  
4 that we were making in that room -- in the conference  
5 room that day.

6                   Go ahead.

7           Q.   Anything else you can remember?

8           A.   No.

9           Q.   Let me step back at the beginning. Did  
10 Mr. Beauchamp say anything to you at the outset of the  
11 meeting about -- did he ask whether you had a lawyer?

12          A.   Yes. I'm sure he did.

13          Q.   What did you tell him?

14          A.   That I did not.

15          Q.   Okay. Did he say anything at all to you or to  
16 Mr. Chittick about the attorney-client privilege, the  
17 fact that you were not a client and you were in a  
18 meeting with his client? Anything at all at the  
19 beginning of the meeting about your presence in the  
20 meeting?

21          A.   No. Not that I recall.

22          Q.   There's -- I've seen a reference in an email --  
23 and I'll show you in a minute -- an email going to spam.  
24 Do you remember a conversation where -- anything about  
25 this meeting where Mr. Beauchamp indicated he hadn't

1 could be worked through relatively quickly?

2 A. When you say "worked through," you mean pay off  
3 that group of lenders?

4 Q. Correct.

5 A. Yes.

6 Q. He goes on to say -- sorry -- I thank you for  
7 clarifying it.

8 He then says, two paragraphs down, "Then  
9 that should leave us with just me and Gregg on all of  
10 Scott's loans. Gregg has confirmed with Scott and has  
11 told me, as long as he gets his interest and payoffs  
12 come, he's happy, which he should be, because he claims  
13 he's run title on every loan and he's in first position  
14 on all of them but two of the loans."

15 So am I correct in understanding that the  
16 plan was to pay off the Diethelm group first, and then  
17 work through the Active Funding loans?

18 A. Yes.

19 Q. And then it says "The plan that Scott and I  
20 sent forth to you in my email that went to spam folder  
21 would then be pursued to pay off these loans that I'm 95  
22 percent LTV and to pay off Gregg's loans." Correct?

23 A. Yes.

24 Q. Did you have a discussion, either -- part of  
25 the plan that you agreed to with Mr. Chittick would be

1 for DenSco to loan more money to you so you could  
2 generate profits to pay off the double-encumbered  
3 properties; is that right?

4 A. Yes.

5 Q. Did you have a conversation with Mr. Chittick  
6 about changing the procedures for DenSco advancing  
7 monies to you that would involve -- you testified to us  
8 a little earlier -- I'm just trying to put a context on  
9 here. You testified earlier about Mr. Beauchamp  
10 recommending that you provide a copy of the cashier's  
11 check. Do you recall that?

12 MR. DeWULF: Object to form.

13 A. Yes.

14 Q. (BY MR. STURR) Did that conversation take  
15 place in the meeting on January 9 with Mr. Beauchamp?

16 MR. DeWULF: Object to form.

17 A. I don't recall when it took place.

18 Q. (BY MR. STURR) Let me show you -- maybe this  
19 will help your recollection. I'm going to show you what  
20 has been previously marked as Exhibit 36. You are not  
21 copied on the email, but I want to put this in context,  
22 Mr. Menaged.

23 Exhibit 36 begins with an email from Denny  
24 Chittick to Mr. Beauchamp on January 9. That's the  
25 evening of the meeting that you and he had with

1 Mr. Beauchamp, okay?

2 He says "If I cut a cashier's check and  
3 take it to the trustee myself, I don't get a receipt  
4 that DenSco paid for it."

5 And then he says, in the next paragraph, "I  
6 could wire Scott the money. He could produce a  
7 cashier's check that says remitter is DenSco, and it  
8 would have the same exact effect as if I got a cashier's  
9 check that said I'm the remitter."

10 Do you recall having a conversation with  
11 Mr. Chittick in which he told you that he had received  
12 advice from Mr. Beauchamp about obtaining a copy of a  
13 cashier's check?

14 A. Yes.

15 MR. DeWULF: Object to form.

16 Q. (BY MR. STURR) What do you recall about the  
17 conversation?

18 MR. DeWULF: Object to form.

19 A. He said that he wanted -- on every property, he  
20 should have a copy of the check that was used to pay the  
21 trustee.

22 Q. (BY MR. STURR) And do you have a memory of  
23 when you had that conversation with Mr. Chittick?

24 A. I don't.

25 Q. Did he say why he wanted to have the copy of

1 the cashier's check?

2 A. He did not.

3 Q. You testified earlier that no hard money lender  
4 other than DenSco would give money, in your experience,  
5 directly to a borrower, correct?

6 A. Correct.

7 Q. Did you believe that this practice of having  
8 you provide a copy of a cashier's check was different  
9 than what other hard money lenders would require?

10 A. Ask that again.

11 Q. Were you surprised that after what had been  
12 discovered because of the double encumbering -- and you  
13 testified that occurred because funds were given  
14 directly to you -- did it surprise you that DenSco  
15 continued to wire money directly to you on the  
16 understanding you would provide a copy of the cashier's  
17 check?

18 MR. DeWULF: Object to form.

19 Q. (BY MR. STURR) Did that seem to you to be an  
20 unusual practice for a hard money lender?

21 MR. DeWULF: Object to form.

22 A. Yes.

23 Q. (BY MR. STURR) Did that practice, Mr. Menaged,  
24 in any way enable or allow you to take the activities  
25 that had been described in this case that you referred

1 to as the second fraud?

2 MR. DeWULF: Object to form.

3 A. Yes.

4 MR. DeWULF: Object to form.

5 Q. (BY MR. STURR) I want to move on as quickly as  
6 I can, Mr. Menaged. We talked yesterday about a terms  
7 sheet. I want to mark a couple of documents and talk to  
8 you about how that developed.

9 So a meeting with Mr. Menaged -- with  
10 Mr. Beauchamp was January 9. The following week you had  
11 some communications with Mr. Beauchamp. I'm going to  
12 hand you what has been marked as Exhibit 155.

13 Exhibit 155 is an email that begins with an  
14 email from you to Mr. Beauchamp and Mr. Beauchamp's  
15 response to you and a subsequent exchange. Do you see  
16 that?

17 A. Yes.

18 Q. At this point in time, had you retained  
19 Mr. Goulder to represent you?

20 A. I believe this was the day I retained him.

21 Q. And Mr. -- the bottom, Mr. -- you state "Dave,  
22 I understand the other side wants to know my agreement  
23 with my friend who will provide some capital." And you  
24 state "I will be able to borrow up to a million dollars  
25 as a personal loan with a balloon in December of '15."

1           Q. Do you remember whose language -- this is from  
2 your attorney. But was there a discussion at that  
3 meeting about a confidentiality provision?

4           A. There was.

5           Q. What do you remember about who asked for it  
6 first?

7           A. Jeff Goulder I believe asked for it first.

8           Q. And do you recall if Mr. Beauchamp said  
9 anything on that?

10          A. He was okay with it. He was okay with it.

11          Q. All right.

12          A. There wasn't a big fight to it is what I'm  
13 saying. I don't remember.

14          Q. I'll try to move as fast as I can.

15                        So now this was Mr. Goulder's email. This  
16 is February 25.

17                        It appears from the file that -- and I  
18 think you testified to this yesterday -- while these  
19 discussions between Mr. Goulder and Mr. Beauchamp were  
20 going on, you and Mr. Chittick were still exchanging  
21 ideas about the workout plan?

22          A. Yes.

23          Q. So I want to show you what was previously  
24 marked -- let me mark this.

25                        (Exhibit 1150 marked)



1 Q. This is going to be 1150. Mr. Menaged, I have  
2 handed you what is marked as 1150. This is an email  
3 that -- it wasn't sent to you, but I'm using it because  
4 I want to see if you have a recollection of what  
5 Mr. Chittick said about your discussions.

6 It's a February 25 email from Mr. Chittick  
7 and Mr. Beauchamp. And it says "Scott and I have been  
8 talking about how do we eliminate as many as these loans  
9 as fast as possible." And he talks about the benefit  
10 for doing that.

11 He goes on to ask some questions. Take a  
12 minute to read through it.

13 A. Go ahead. Keep talking.

14 Q. He goes on to ask some questions about how to  
15 secure advance -- it sounds like advancing additional  
16 money to you to sell off the properties faster.

17 And he says -- go to the very second to the  
18 last paragraph. "He" -- that's a reference to you.  
19 "He's throwing out all sorts of ideas in how this could  
20 be done. I would be willing to release the UCC if he  
21 was able to secure the funds and use them to pay some of  
22 these loans. We've got about three more ideas, but what  
23 both of us are really concerned about is that when I  
24 tell my investors the situation, they request their  
25 money back, I want to be able to say this was the

1 problem, we've eliminated this much of the problem and  
2 this is what is left. I want to be able to say what is  
3 left is as small as possible."

4 That's consistent with what you've  
5 testified to. You had that type of conversation with  
6 Mr. Chittick on numerous occasions?

7 MR. DeWULF: Object to form.

8 A. Yes.

9 Q. (BY MR. STURR) Do you recall having a  
10 discussion around this time about getting an additional  
11 advance from DenSco so you could buy more properties?

12 A. Yes.

13 Q. Let me -- I want to ask you about your memory,  
14 but let me show you another email that may relate to the  
15 same period. This is previously marked as 362, and this  
16 is an email exchange between Mr. Chittick and  
17 Mr. Beauchamp, February 26.

18 And he begins by saying "I just talked to  
19 Scott for 90 minutes," and then there's some commentary  
20 about how to amend the forbearance agreement. And then,  
21 in the third paragraph, there's another discussion about  
22 selling all of these properties to accelerate the  
23 process.

24 A. Yes.

25 Q. Does this refresh your memory that, in late

1 February, there was a discussion about advancing --  
2 DenSco advancing additional monies to you to more  
3 quickly get through the workout process?

4 A. I do remember that.

5 Q. What do you remember about that?

6 A. Everything I've been testifying to this whole  
7 day. I mean, he was going to advance more money for me  
8 to purchase more properties, and the profits from  
9 that -- a portion of that would go towards the balances  
10 owed.

11 Q. The reason I'm asking this, Mr. Menaged, this  
12 is different than what was in the term sheet. So we are  
13 now at a new term, correct?

14 A. Yes. I don't remember, though, how that  
15 changed or when that changed.

16 Q. That's why I want to show it to you. Because  
17 one of the things you testified to yesterday was --  
18 looking back in hindsight, looking back in 2016, you  
19 thought you were doing the right things in 2014 to work  
20 out the problem, but that 18 percent interest became an  
21 unbearable burden for you. I'm paraphrasing. Is that  
22 correct?

23 A. Yes.

24 Q. So I'm trying to pinpoint, in the course of  
25 your negotiation with DenSco, when that term was added

1 because it appears to me that it was an additional term  
2 as you went along.

3 I'm not asking a question. I just want to  
4 explain where we are.

5 So if I could -- let me show you one more  
6 exhibit. This is Exhibit 366, and this is an email,  
7 again, from Mr. Chittick to Mr. Beauchamp reporting on a  
8 conversation with you.

9 February 27, 2014, he says -- with respect  
10 to the forbearance agreement, it says "Scott agreed to  
11 the three paragraphs," paren, "after Jeff left. We  
12 eliminate the release paragraph Jeff added, and only  
13 give release once problem is over."

14 A. Okay.

15 Q. And then he says "We have a separate promissory  
16 note. Can't give you the terms or numbers right now,  
17 but basically he's agreeing to pay back any shortage on  
18 any loan that gets paid off as we sell these properties  
19 that are in question. There will be monthly interest  
20 and principal payments scheduled."

21 Is this consistent with your memory that  
22 you and Mr. Chittick got to a point where you agreed to  
23 sign a promissory note for additional monies to be used  
24 in the workout?

25 A. Yes.

1 Q. And my next question to you -- again, I'm going  
2 to put this in context for now. This was in late  
3 February. I'm going to hand you what's been marked as  
4 Exhibit 368.

5 Exhibit 368 is an email that Mr. Chittick  
6 sent to Mr. Beauchamp on March 4, 2014. Just take a  
7 minute to look at it. I'm looking at the bottom part of  
8 the email, not Mr. Beauchamp's response.

9 A. Okay.

10 Q. Mr. Chittick reported to Mr. Beauchamp, quote,  
11 "He" -- that's a reference to you -- "says he's not  
12 going to have Jeff review because Jeff already told him  
13 not to sign anything."

14 Is that -- did you tell Mr. Chittick in  
15 early March that you were not going to have Mr. Goulder  
16 review any documents any further?

17 A. I'm pretty sure that this was about the time  
18 that Jeff was no longer representing me, that I released  
19 him.

20 Q. And, again, without disclosing privileged  
21 information -- I want to be clear about this -- you  
22 released him. So he was no longer acting as your  
23 counsel in early March 2014?

24 A. In this matter, no.

25 Q. In this matter.

1                   So this information that Mr. Chittick  
2   conveyed to Mr. Beauchamp is correct?   "He's not going  
3   to have Jeff review."

4           A.   Correct.

5           Q.   Okay.   Again, I don't want to get into  
6   privileged communication that you had with Mr. Goulder.  
7   At this point forward, Mr. Menaged, you didn't have  
8   counsel in finalizing the forbearance agreement?

9           A.   Correct.

10          Q.   To the best of your knowledge, did  
11   Mr. Beauchamp know that you did not have counsel as of  
12   March 14th going forward?

13                   MR. DeWULF:   Object to form.

14          A.   He did.

15          Q.   (BY MR. STURR)   He did.

16                   I'm going to show you what was previously  
17   marked as Exhibit 370.   And this is a document you  
18   didn't receive, Mr. Menaged, but it's an email that  
19   Mr. Beauchamp sent to Mr. Chittick on March 7, 2014, of  
20   changes to the forbearance agreement.

21          A.   Okay.

22          Q.   And if you look on page -- the page that's  
23   numbered CH0002961.

24          A.   Okay.

25          Q.   There's a paragraph under 7A.   Do you see that?

1 MR. DeWULF: 370?

2 MR. STURR: 2961, John.

3 THE WITNESS: 370.

4 MR. DeWULF: I missed that. 2961.

5 Q. (BY MR. STURR) I'm on section 7. Do you see  
6 that?

7 A. Yes.

8 Q. A has a lot of new underlining. It's  
9 underlined. It's new text. Do you understand that?

10 A. Yes.

11 Q. I see that there's what appears to be a new  
12 section. It says "The additional funds by lender to  
13 borrower shall be evidenced by a new loan, jointly and  
14 severally, borrower and guarantor, in an amount up to  
15 blank million, which loan is to provide for multiple  
16 advances earning 18 percent, et cetera, payable on or  
17 before February 1, 2016." Do you see that?

18 A. Yes.

19 Q. Does that reflect that, as of this time, early  
20 March 2014, you and Mr. Chittick had agreed that DenSco  
21 would advance additional funds to you payable at 18  
22 percent interest?

23 A. Yes.

24 Q. I'm going to hand you what was previously  
25 marked as -- do you have a memory, Mr. Menaged, after

1 you discharged Mr. Goulder in, I assume, early March  
2 2014, were you receiving information from Mr. Chittick  
3 that he received from Mr. Beauchamp?

4 A. Yes.

5 Q. Was he forwarding -- what did you receive --  
6 what information were you receiving?

7 A. Most of it -- I mean, any emails that Beauchamp  
8 would send to Denny, I believe, a good majority of those  
9 I saw. They were forwarded to me.

10 Q. Okay. Let me take a quick look at -- take a  
11 look at Exhibit 371, if you would.

12 Exhibit 371 is a document that came from  
13 Clark Hill's files. It's an email from Denny Chittick  
14 to David Beauchamp. It's an email exchange, actually.

15 And if you go to the second page, the one  
16 that's marked 6875, do you see that it says  
17 "confidentiality"?

18 A. Yes.

19 Q. This is Mr. Chittick recording -- or stating  
20 "only time I can disclose info is if I'm legally  
21 requirement by investors. He wants me to not say a word  
22 unless I'm legally required to, because the reputation  
23 of his investors and buyers, clients, et cetera, could  
24 be harmed."

25 A. Yes.



1 Q. Is that something you asked for at that time?

2 A. Yes.

3 Q. And then, on the first page -- I'm going to not  
4 take any more time on that.

5 Now, if I could -- so you had a  
6 communication with Mr. Chittick about confidentiality,  
7 correct?

8 A. Yes.

9 Q. Now, I'm going to hand you Mr. Beauchamp's  
10 notes from a telephone conversation that occurred on  
11 March 11, 2014. I've handed you what has been marked as  
12 Exhibit 372.

13 A. Yes.

14 Q. This is a document that came from Clark Hill's  
15 files.

16 And I'm reading from the top, Mr. Menaged.  
17 It says "TCW Denny Chittick. Scott is on the other  
18 line. Go through issues and then have conference call  
19 of the three people." Do you see that?

20 A. Yes.

21 Q. And below that, the term "confidentiality"  
22 appears. Do you see that?

23 A. Yes.

24 Q. And then below that, Mr. Beauchamp wrote  
25 "Conference call with Denny Chittick and Scott Menaged."

1 Do you see that?

2 A. Yes.

3 Q. These are notes of a call that Mr. Beauchamp  
4 had with you and Mr. Chittick, which one of the topics  
5 was confidentiality. Is this the call you were  
6 recalling where you heard Mr. Beauchamp make statements  
7 about confidentiality and disclosures to investors?

8 A. Yes.

9 Q. I know you testified about that previously, but  
10 do these notes refresh your memory in any way in  
11 addition to what you've already testified to that  
12 Mr. Beauchamp said during that call?

13 A. No. This is as I remember it.

14 Q. Just to be clear, your understanding from this  
15 call was Mr. Beauchamp was advising Mr. Chittick that  
16 the information needed to be disclosed to investors but  
17 could be delayed? The disclosure could be delayed.

18 MR. DeWULF: Object to form.

19 A. He said that, yes, the investors needed to be  
20 aware of this, but, yes, it could be delayed, and  
21 ultimately, if the problem was completely resolved  
22 without disclosing to the investors, well, then, there  
23 was no reason to have to disclose it.

24 Q. (BY MR. STURR) At this time -- we're now --  
25 this is March 11, 2014, and you brought this up before,

1 question on this. This draft was sent on March 20,  
2 2014, correct?

3 A. Yes.

4 Q. In paragraph -- what is now paragraph 6F on  
5 page 3701 --

6 A. Yes, sir.

7 Q. -- states that borrower would pay approximately  
8 1 million on or about March 20, 2014, correct?

9 A. Yes.

10 Q. And that had not occurred?

11 A. No.

12 Q. In the interest of time, Mr. Menaged, I am not  
13 going to ask you much about the forbearance agreement.  
14 You've already testified about that.

15 Do you have any memory of the -- strike  
16 that. See if I can wrap up. I have a few more  
17 questions and I'll be done.

18 You were asked about Exhibit 550 yesterday.

19 A. Okay.

20 Q. And that was the email exchange that you and  
21 Mr. Chittick had in March of 2015 regarding his planned  
22 lunch or coffee with Mr. Beauchamp. Do you recall that?

23 A. I do.

24 Q. What I'd like to know is, do you have a memory  
25 of speaking with Mr. Chittick after the lunch to hear

1 his account of what occurred?

2 A. Yes.

3 Q. What is your memory?

4 A. He said that David was very happy with the  
5 progress that we made. He was happy everything was  
6 going in the right direction. He was glad that -- that  
7 they didn't have to alarm the investors. Denny was  
8 grateful that he left him alone for so long.

9 And I think Mr. Beauchamp's -- the big --  
10 the main reason why he wanted to meet with him, to begin  
11 with, was just to kind smooth the waters over a little  
12 bit. Denny wasn't happy about all these legal fees. He  
13 felt he was just milking -- milking this whole thing.  
14 And so he just kind of wanted to get his friendship back  
15 with him.

16 Q. Did Mr. Chittick ever tell you that  
17 Mr. Beauchamp had fired him as a client in May of 2014?

18 A. That Mr. Chittick -- that Denny fired  
19 Mr. Beauchamp?

20 Q. No, no. Let me go back.

21 Did Denny ever tell you, any time before  
22 March of 2015, which is when Mr. Beauchamp and  
23 Mr. Chittick met for lunch -- did he tell you that  
24 Mr. Beauchamp had resigned as DenSco's security lawyers  
25 because Denny wouldn't follow his advice?

1 A. Absolutely not.

2 Q. I'm going to --

3 A. In fact, there were a lot of emails between me  
4 and Denny where Denny was shocked that he had not heard  
5 from Mr. Beauchamp for a long period of time. He said,  
6 "Wow. This guy must love me by leaving me alone for a  
7 while to continue to let the process go through." He  
8 wouldn't be looking for a call or an email from  
9 Mr. Beauchamp if he resigned as his counsel.

10 Q. I want to go back to your memory of that  
11 conversation that you had with Mr. Chittick after his  
12 meeting with Mr. Beauchamp. And I'm going to quote from  
13 a 2015 journal that Mr. Chittick maintained that's been  
14 marked as Exhibit 22.

15 He wrote "I had lunch with Dave  
16 Beauchamp" -- on March 24, 2015, "I had lunch with Dave  
17 Beauchamp. I was nervous he was going to put a lot of  
18 pressure on me. However, he was thrilled to know where  
19 we were at. And I told him, by April 15, we'll be down  
20 to 16 properties with seconds on them, and by the end of  
21 June, we hope to have all retail houses sold by then and  
22 just doing wholesale."

23 Is that consistent with your memory of your  
24 conversation with Mr. Chittick?

25 MR. DeWULF: Object to form.

1           A.   That was exactly my conversation.

2           Q.   (BY MR. STURR)  "He said he would give me 90  
3   days.  I just hope we can sell them all by then and darn  
4   near be done with it.  I'm going to slow down the whole  
5   memorandum process too.  Gives us as much time as  
6   possible to get things in better order."

7                   Is that consistent with what he told you in  
8   that --

9                   MR. DeWULF:  Object to form.

10          A.   Yes.

11          Q.   (BY MR. STURR)  Now, as of March of 2014, where  
12   were you and DenSco in the workout?

13          A.   I can't -- I really don't know as far as dollar  
14   figures at that period of time.

15          Q.   There's a reference to --

16          A.   I think most of the properties were paid off  
17   to -- I know all the properties were paid off to the Dan  
18   Diethelm group.  I think most of the properties were  
19   paid off to AFG.  A handful left maybe.  That's where I  
20   think we were at.

21          Q.   And I'm still trying to understand how  
22   auction.com fits in.  Explain that to me.  What was your  
23   connection to auction.com, and when did that  
24   relationship arise?


25          A.   I didn't have a relationship with auction.com.

C E R T I F I C A T E

STATE OF TEXAS )  
COUNTY OF EL PASO )

I, Rhonda McCay, Certified Shorthand Reporter in  
and for the State of Texas, State of New Mexico and  
Registered Professional Reporter, hereby certify that  
this transcript is a true record of the said  
proceedings, and that said transcription is done to the  
best of my ability.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this  
1st of October, 2019.

  
Rhonda McCay, CSR, CCR, RPR  
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Date Of Expiration: 1/31/2021  
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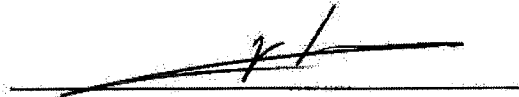
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1 I, YOMTOV SCOTT MENAGED, have read the  
2 foregoing deposition and hereby affix my signature that  
3 same is true and correct, except as noted above.

4

5



6

YOMTOV SCOTT MENAGED

7

THE STATE OF \_\_\_\_\_)

8

COUNTY OF \_\_\_\_\_)

9

10 Before me, \_\_\_\_\_, on this  
11 day personally appeared YOMTOV SCOTT MENAGED known to me  
12 (or proved to me under oath or through \_\_\_\_\_)  
13 (description of identity card or other document) to be  
14 the person whose name is subscribed to the foregoing  
15 instrument and acknowledged to me that they executed the  
16 same for the purposes and consideration therein  
17 expressed.

18

Given under my hand and seal of office this

19

\_\_\_\_\_ day of \_\_\_\_\_, 2019.

20

21

NOTARY PUBLIC IN AND FOR  
THE STATE OF \_\_\_\_\_

22

23

24

My commission expires: \_\_\_\_\_

25

# **EXHIBIT B**

(Unredacted copy of the Receiver's 1/10/2020 Response to Defendants'  
Motion for Summary Judgment re Aiding & Abetting)

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Attorneys for Plaintiff

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.

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

Defendants.

No. CV2017-013832

**PLAINTIFF'S RESPONSE TO  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT RE AIDING  
& ABETTING**

(Assigned to the Honorable  
Daniel Martin)

(Oral Argument Requested)

1        There is ample evidence that Defendants Clark Hill and David Beauchamp aided  
2 and abetted Denny Chittick in breaching fiduciary duties owed to DenSco and its  
3 investors. The Receiver explained much of this evidence already, in a motion for  
4 determination of a prima facie case for punitive damages for aiding and abetting breaches  
5 of fiduciary duty, which the Court granted. The Court need not revisit the issue.

6        Nevertheless, the Receiver takes this opportunity to highlight evidence that  
7 (1) Clark Hill and Beauchamp knew Chittick was breaching fiduciary duties to DenSco  
8 and its investors, and (2) Clark Hill and Beauchamp substantially assisted these breaches.

9        **I. THE COURT ALREADY DECIDED THIS ISSUE.**

10        Months ago, the Receiver moved for a determination that he has presented a prima  
11 facie case for punitive damages for aiding and abetting breaches of fiduciary duty.  
12 (“Prima Facie Case Motion,” filed 4/12/2019.) Defendants opposed the motion, arguing  
13 that there was no evidence that they “aided and abetted” Chittick’s breaches of fiduciary  
14 duty to DenSco and its investors. (Resp. filed 5/13/2019, at 5-11.) Specifically,  
15 Defendants argued that they did not “know” Chittick was breaching his duties, nor did  
16 they “substantially assist” him. (*Id.*) But the Court granted the Prima Facie Case Motion,  
17 finding that the Receiver “has presented a *prima facie* case that Defendants aided and  
18 abetted Mr. Chittick’s breaches of fiduciary duty.” (Order dated 11/18/2019.)

19        That finding forecloses Defendants’ present motion. Defendants are arguing,  
20 again, that they did not “know” Chittick was breaching his fiduciary duties, nor did they  
21 “substantially assist” him. (Mot. at 7-17.) Because the Receiver has presented a prima  
22 facie case of aiding and abetting, Defendants cannot obtain summary judgment on this  
23 claim. *See Hydroculture, Inc. v. Coopers & Lybrand*, 174 Ariz. 277, 283 (App. 1992)  
24 (explaining that “a defendant can obtain summary judgment when the plaintiff is  
25 unprepared to establish a prima facie case”). The Court need not revisit this issue.<sup>1</sup>

---

26        <sup>1</sup> Indeed, under the law of the case doctrine, the Court *should not* revisit the issue.  
27 *See Dancing Sunshines Lounge v. Indus. Comm’n of Arizona*, 149 Ariz. 480, 482 (1986)  
28 (court’s decision is “law of the case” in subsequent proceedings when issues and evidence  
are substantially the same).

1 **II. DEFENDANTS IGNORE GENUINE DISPUTES OF MATERIAL FACT.**

2 In any event, summary judgment must be denied because this case is full of  
3 genuine disputes of material fact. *See* Ariz. R. Civ. P. 56(a). Defendants ignore key  
4 evidence and draw inferences favoring themselves even though a jury could reasonably  
5 conclude otherwise. The Receiver explains these disputes more fully in the Controverting  
6 Statement of Facts accompanying this brief (“CSOF”). Below are some highlights.

7 **A. The jury can conclude that Clark Hill and Beauchamp aided and**  
8 **abetted Chittick’s breaches of fiduciary duty by intentionally not**  
9 **updating the expired written disclosure to DenSco investors.**

10 Before 2013, DenSco issued written disclosures called Private Offering  
11 Memoranda (“POMs”) to its investors every two years, based on Beauchamp’s advice.  
12 (CSOF ¶¶ 82-84.) Beauchamp knew that the vast majority of DenSco’s investors  
13 purchased two-year promissory notes and “rolled over” their investments by purchasing  
14 a new two-year note when their existing note matured. (*Id.* ¶¶ 89-90.)

15 Beauchamp prepared DenSco’s POMs in 2003, 2005, 2007, 2009, and 2011.  
16 (CSOF ¶¶ 83, 85.) Each POM assured investors that the POM would be updated every  
17 two years. (*Id.* ¶¶ 95, 99.) Each POM also warned investors that the only disclosures  
18 they could rely on were written updates to the POM itself. (*Id.* ¶ 100.)

19 The 2011 POM expired on July 1, 2013. Beauchamp never prepared an updated  
20 POM. (CSOF ¶¶ 97-98, 107.) Beauchamp claims that this was because Chittick asked  
21 him to stop working on the POM, during an August 2013 phone call. (DSOF ¶ 21.) But  
22 Beauchamp’s account is contradicted by several documents, such as a December 2013  
23 email in which Chittick *scolded* Beauchamp for not having updated the POM yet. (CSOF  
24 ¶¶ 122, 177-78, 179-82, 197, 202, 221-24.) The jury can therefore reject Beauchamp’s  
25 account and can conclude, instead, that Beauchamp was responsible for failing to update  
26 the 2011 POM.

27 But suppose the jury believes Beauchamp. Even then, the jury can conclude that  
28 Defendants’ aiding and abetting began in 2013. Clark Hill and Beauchamp knew that, in

1 the six months after the 2011 POM expired in July 2013, many DenSco investors were  
2 going to purchase new promissory notes. (CSOF ¶¶ 143, 148, 188-190, 230-232.)  
3 Indeed, as Beauchamp wrote in a June 20, 2013 email, DenSco “*has approximately 60*  
4 *investor notes that are scheduled to expire in the next 6 months (and to probably be*  
5 *rolled over into new notes).*” (*Id.* ¶ 143 (emphasis added).) Clark Hill and Beauchamp  
6 also knew that Chittick’s fiduciary duties required updating the POM every two years  
7 before selling new promissory notes. (*Id.* ¶¶ 82-84, 89-90, 95-100, 109, 140, 143, 199-  
8 200, 224-29.)

9 Thus, even if the jury believes Beauchamp’s claim that Chittick asked him to stop  
10 working on the POM, the jury can still conclude that Beauchamp’s agreement to do so  
11 was a knowing and substantial assistance of Chittick’s breaches of fiduciary duty.

12 **B. The jury can conclude that Clark Hill and Beauchamp, upon learning**  
13 **of the First Fraud, advised Chittick that he could delay disclosing the**  
14 **fraud to investors while continuing to raise money, and knew that he**  
15 **was doing so.**

16 Beauchamp admits that he learned of the multi-million-dollar double-lien “First  
17 Fraud” against DenSco by January 7, 2014. (DSOF ¶ 29.)<sup>2</sup> Beauchamp claims that, upon  
18 learning of the fraud, he told Chittick not to raise or roll over investor funds without “full  
19 disclosure” of the fraud to investors. (*Id.*) Relatedly, Beauchamp claims that he thought  
20 Chittick was making “verbal disclosures” of the fraud to investors. (*Id.*) But both of  
21 these claims rely, again, on Beauchamp’s account of what happened. (DSOF ¶ 37.) The  
22 jury can reject Beauchamp’s account, because the evidence contradicts it. For example:

- 23 **1. The advice Beauchamp claims to have given—that Chittick needed to disclose the**  
24 **fraud before raising money—is not documented anywhere. (CSOF ¶¶ 340-43.)**

---

25 <sup>2</sup> The jury can conclude that Beauchamp was on notice of the problem as early as  
26 June 2013, when Chittick emailed him a complaint filed by Freo Arizona LLC alleging  
27 that Menaged’s entities had attempted to secure two mortgages with a single property.  
28 (CSOF ¶¶ 149-61.) Upon receiving that complaint, Beauchamp emailed Chittick: “We  
will need to disclose this in POM.” (*Id.* ¶ 155.) But Beauchamp never investigated the  
allegations or disclosed them in any updated POM. (*Id.* ¶¶ 114-15, 166-70.)

- 1       2. Many documents show that Chittick was *not* disclosing the fraud while continuing  
2       to raise money, and that Clark Hill and Beauchamp knew this. For example:
- 3       a. On January 10, 2014, Beauchamp spoke with Chittick on the phone, and  
4       Beauchamp's notes state: "***Denny does not want to talk to his investors until***  
5       ***he is ready*** – will not take long." (CSOF ¶ 349 (emphasis added).)
- 6       b. That same day, Chittick wrote in his corporate journal: "***I can raise money***  
7       ***according to Dave.***" (CSOF ¶ 350 (emphasis added).)
- 8       c. On January 12, 2014, Chittick told Beauchamp in an email that he had "spent  
9       the day contacting every investor that has told me they want to give me more  
10      money" and expected to raise ***between \$5 and \$6 million*** in the next ten days.  
11      Beauchamp responded: "***You should feel very honored that you could raise***  
12      ***that amount of money that quickly.***" (CSOF ¶¶ 351-52 (emphasis added).)
- 13      d. On February 21, 2014, Beauchamp spoke with Chittick, and his notes state:  
14      "***cannot be ready to tell everything.***" (CSOF ¶ 357 (emphasis added).)
- 15      e. That same day, Chittick wrote in his corporate journal: "I talked to Dave . . . .  
16      ***We talked about telling my investors; we are going to put that off as long as***  
17      ***possible*** so that we can improve the situation as much as possible." (CSOF  
18      ¶ 312 (emphasis added).)
- 19      f. On February 25, 2014, Chittick told Beauchamp in an email: "what both of us  
20      are really concerned about is that ***when [I] tell my investors the situation, they***  
21      ***request their money back.***" (CSOF ¶ 314 (emphasis added).)
- 22      g. On March 13, 2015, Chittick wrote in his corporate journal: "I got an email  
23      from Dave my attorney wanting to meet. ***He gave me a year to straighten***  
24      ***stuff out. We'll see what pressure I'm under to report now.***" (CSOF ¶ 381  
25      (emphasis added).)
- 26      h. On March 24, 2015, after meeting with Beauchamp, Chittick wrote in his  
27      corporate journal: "I had lunch with Dave Beauchamp. . . . ***He said he would***  
28      ***give me 90 days. . . . I'm going to slow down the whole memorandum process***

1           *too. Give us as much time as possible to get things in better order.*” (CSOF  
2           ¶ 383 (emphasis added).)

3           i. In a suicide note to his sister, Chittick explained: *“I talked Dave my attorney*  
4           *into allowing me to continue without notifying my investors.* Shame on him.  
5           He shouldn’t have allowed me. *He even told me once I was doing the right*  
6           *thing.*” (CSOF ¶ 410 (emphasis added).)

7           3. Menaged testified that, during a January 9, 2014 meeting, Beauchamp learned that  
8           Chittick was *not* going to disclose the fraud to investors:

9                   Q. Did Mr. Beauchamp say anything when you were in the room about  
10                  Denny’s obligation to disclose that this problem had occurred in his lending  
11                  practices?

12                  A. He did. *He said to him, “We need to draft a letter to the investors to advise*  
13                  *them of the situation.”*

14                               *And Denny said, “That’s not happening.”*

15                               And he said, “Why is that?”

16                               And he said, “Because there will be a run on the bank and then at that  
17                               point I can’t pay off all these loans, and so I’m going to take care of the problem  
18                               myself.” . . .

19                               *And then at that point Beauchamp said, “Well, okay, if that’s what*  
20                               *we’re going to do, then we definitely need to work very closely on this*  
21                               *forbearance agreement to protect you from fraud,* protect you from the  
22                               Arizona Corporate Commission, protect you from the AG’s office.”

23                               (CSOF ¶ 347(a) (emphasis added).)

24           4. Menaged testified that, during the January 9, 2014 meeting, Beauchamp agreed  
25           that *he* would not disclose the fraud to investors, despite his obligation to do so:

26                   Q. Did Mr. Beauchamp ever say to Denny, while you were in the room or  
27                  present, that he, Mr. Beauchamp, had an obligation to alert Denny’s investors  
28                  of what happened?

                  A. . . . Yes. *He said, “You do understand that you’re putting me in a very*  
                  *awkward and bad position, because I do have an obligation to advise the*  
                  *investors.”*



1                    *And Denny said, "I didn't under -- I didn't know that, but I would*  
2                    *appreciate it if you did not advise anybody and just prepare this agreement*  
3                    *so we can move on from this."*

4                    *And at that point I knew that he was not advising the investors,*  
5                    *because Beauchamp said, "Okay, Denny, I will do what you want."*

6 (CSOF ¶ 347(b) (emphasis added).)

- 7  
8 5. Menaged testified that, during the January 9, 2014 meeting, Beauchamp asked  
9 Chittick how he planned to "keep" the fraud "from the investors":

10 Q. What is your memory of what Mr. Beauchamp said in that meeting?

11 A. . . . He asked how long we thought we could get this whole thing resolved.

12 Denny said less than a year.

13 Denny -- *David Beauchamp asked how we would keep this from the*  
14 *investors for that long a period of time.*

15 *Denny said his books looked fine. His accounting looked fine. His*  
16 *accounting didn't reference him being in first or second position. So*  
17 *everything looked perfect.*

18 (CSOF ¶ 347(c) (emphasis added).)

- 19 6. Menaged testified that, during a March 11, 2014 phone call, Beauchamp again  
20 advised Chittick that he could "delay" disclosure to investors, perhaps indefinitely:

21 Q. Just to be clear, your understanding from this call was Mr. Beauchamp was  
22 advising Mr. Chittick that the information needed to be disclosed to investors  
23 but could be delayed? The disclosure could be delayed.

24 Mr. DeWulf: Object to form.

25 A. *He said that, yes, the investors needed to be aware of this, but, yes, it could*  
26 *be delayed, and ultimately, if the problem was completely resolved without*  
27 *disclosing to the investors, well, then, there was no reason to have to disclose*  
28 *it.*

(CSOF ¶ 361 (emphasis added).)

7. Menaged testified that Beauchamp "agreed" with Chittick to delay disclosure to  
investors, because "Beauchamp didn't know how to disclose" what had happened:

1 Q. Did he [Chittick] ever share with you what he was going to tell his investors  
2 for the year to 18 months about what was going on with the company?

3 A. . . . There's something that he's supposed to be filing or that his attorney is  
4 supposed to be filing every year or every two years. That's the only thing he  
5 was concerned about, that he was late on it.

6 *I do know that Beauchamp was on him about – “Hey, we’ve got to do*  
7 *this. We’ve got to do this.” And then ultimately agreed with him, “Okay,*  
8 *yes. For the sake of everything, we’ll just kind of let this go a little longer.”*  
9 *Because Chittick’s thing was – “I don’t want the investors to know.”*

10 Q. . . . But Mr. Beauchamp was saying, “You need to tell your investors?”

11 A. *In the beginning, he said he needs to tell the investors. Then his lawyers*  
12 *agreed, “Yes, let’s give this another eight months. Let’s give this another 12*  
13 *months. Let’s give this another 15 months.” He kept extending it.*

14 *Then, “Hey, you’re in violation, but, okay, we’ll push this a little*  
15 *longer, a little longer,” because Beauchamp didn’t know how to disclose this.*

16 (CSOF ¶ 348 (emphasis added).)

17 8. Additional evidence contradicts Beauchamp’s assertion that he thought Chittick  
18 was giving “verbal disclosures” to investors about the fraud. For example:

19 a. DenSco’s longstanding practice was to give **written** disclosures to investors in  
20 the form of POMs, not verbal disclosures. (CSOF ¶¶ 82-84, 385(a).)

21 b. DenSco’s POMs, which Beauchamp prepared, warned investors that the **only**  
22 disclosures they could rely on were written updates, not verbal disclosures.  
23 (CSOF ¶¶ 100, 385(b).)

24 c. Beauchamp himself admitted that if Chittick had been raising money from  
25 investors, “**something much more formal**” than verbal disclosures would have  
26 been necessary. (CSOF ¶ 385(c) (emphasis added).)

27 d. The jury can use common sense: If Chittick had been disclosing the fraud to  
28 the investors, they would not have continued investing. (CSOF ¶ 385(d).)  
Indeed, the investors have so testified. (CSOF ¶¶ 385(e), 407.)

Unfortunately, Chittick followed Beauchamp’s advice and did not disclose the fraud to

1 DenSco's investors while continuing to raise money. The investors did not learn of the  
2 fraud until years later, after Chittick committed suicide. (CSOF ¶ 407.)

3 Based on this and other evidence, the jury can conclude that Clark Hill and  
4 Beauchamp advised Chittick that he could delay disclosing the fraud (and otherwise delay  
5 updating the expired POM) while continuing to raise money, and knew he was doing so.

6 **C. The jury can conclude that Clark Hill and Beauchamp, upon learning**  
7 **of the First Fraud, actively developed a work-out plan with Chittick**  
8 **and Menaged, which they knew ran contrary to DenSco's interests.**

9 Clark Hill and Beauchamp not only advised Chittick that he could delay disclosing  
10 the fraud, but actively developed a work-out plan with Chittick and Menaged which they  
11 knew ran contrary to DenSco's interests. Clark Hill and Beauchamp try to minimize their  
12 role in that process by making two claims. First, they claim that the plan was already  
13 formed by the time they got involved and all they did was "document" it. (Mot. at 9-11.)  
14 Second, they claim that they thought the plan was "in DenSco's best interests." (*Id.*) But  
15 again, the jury can reject these claims, because evidence contradicts them.

16 **1. The jury can conclude that Clark Hill and Beauchamp actively**  
17 **developed, and substantially modified, the work-out plan with**  
18 **Chittick and Menaged.**

19 On January 7, 2014, Chittick told Beauchamp that he and Menaged had made a  
20 "plan" to work out of the double-lien problem caused by the First Fraud. (CSOF ¶¶ 248,  
21 257-63.) At that time, the plan was simple: Menaged would sell each double-liened  
22 property to pay off both lenders—DenSco and the other lender with a lien—but the other  
23 lender would be paid first, with interest, while DenSco would let its interest accrue. (*Id.*  
24 ¶¶ 257-58.) Menaged would contribute \$4 to \$5 million of his own money to the  
25 endeavor, and DenSco would loan Menaged another \$1 million and increase its loan-to-  
26 value ratios up to 95% of property values. (*Id.* ¶¶ 257-58, 285.)

27 On January 9, 2014, Beauchamp met with Chittick and Menaged. According to  
28 Menaged, it was *Beauchamp* who proposed a formal agreement:

1 So he [Beauchamp] then left the room. I remember he said he needed to --  
2 or I remember he said he needed to go downstairs and get fresh air and clean  
3 up, and which he did, because he was a mess. His shirt was all wet, and it  
really was disgusting.

4 And then he came back up, came back upstairs. *He said, "Okay, I have had*  
5 *some time to relax and think about the situation," he said, "and here's*  
6 *what we're going to do: We are going to draw up an agreement to protect*  
*you and Denny from the situation."*

7 (CSOF ¶ 347(d) (emphasis added).) The purpose of Beauchamp's proposed agreement,  
8 according to Menaged, was not only to "memorialize everything that had taken place,"  
9 but also to "*summarize, basically, our agreement that we were making in that room --*  
10 *in the conference room that day.*" (CSOF ¶ 347(e) (emphasis added).)

11 After the January 9, 2014 meeting, Beauchamp spent *three months* developing  
12 what eventually became a 24-page "Forbearance Agreement," which Chittick and  
13 Menaged signed on April 16, 2014. (CSOF ¶¶ 286-337.) To track his work, Beauchamp  
14 opened a new matter in Clark Hill's accounting system called "work out of lien issue."  
15 (*Id.* ¶ 291.) Beauchamp spent 274.8 billable hours on this matter from January 2014  
16 through April 2014. (*Id.* ¶ 293.)<sup>3</sup> During those 274.8 hours, Beauchamp did much more  
17 than "document" a pre-existing agreement. He continually advised Chittick and  
18 negotiated with Menaged (and sometimes Menaged's lawyer) about the *content* of the  
19 agreement. (*See, e.g., id.* ¶¶ 292, 295-332, 408, 411.)

20 As a result, the initial "plan" that Chittick had described to Beauchamp changed  
21 dramatically. Menaged recalled: "We were back and forth and back and forth, day in  
22 and day out, month in and month out, and *continuing to make changes along the way.*"  
23 (CSOF ¶ 294 (emphasis added).) These changes were so frequent that Menaged told  
24 Chittick, in an April 2014 email, that signing the agreement would help "*not to have*  
25 *Dave change it again and again with every move we make.*" (*Id.* (emphasis added).)

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27 <sup>3</sup> At Beauchamp's direction, other Clark Hill attorneys also worked on this matter  
28 during that time, adding 54.9 hours. In total, Clark Hill billed DenSco \$136,190.00 for  
329.7 hours of work on this matter from January 2014 through April 2014 alone. (*Id.*)

1 For example, here are three ways in which the initial “plan” changed:

- 2       **1.** The initial “plan” was for Menaged to pay off the other lenders and contribute  
3       \$4 to \$5 million of his own money. But the final Forbearance Agreement merely  
4       required Menaged to use “good faith efforts” to do so. (CSOF ¶ 338(a).) That  
5       change was made because Beauchamp and Chittick told Menaged that he only  
6       needed to use “best efforts.” As Menaged recalled:

7               I said that I would make my best effort to do so, and in front of Beauchamp  
8               and DenSco I did explain to him -- *what they both told me, both of them told*  
9               *me was, “Hey, this is all really best efforts. You do your best, but we’re going*  
10              *into this forbearance agreement. It’s protecting everyone. End of story.”*

11              (*Id.* (emphasis added).)

- 12       **2.** The initial “plan” was for DenSco to loan Menaged another \$1 million and  
13       increase its loan-to-value ratios up to 95% of property values. But the final  
14       Forbearance Agreement required DenSco to loan Menaged another \$6 million and  
15       increase its loan-to-value ratios up to 120% of property values. (CSOF ¶ 338(b).)  
16       Beauchamp discussed this change with Chittick by email in March 2014, and he  
17       approved the change even though he knew Chittick had not told investors about  
18       it. He told Chittick: *“I completely agree that it makes a lot of sense, but I am*  
19       *concerned about the disclosure to your investors.”* (*Id.* (emphasis added).)

- 20       **3.** The initial “plan” was silent on what DenSco should tell investors. But the final  
21       Forbearance Agreement included a confidentiality provision requiring DenSco to  
22       use “good faith efforts to *limit such disclosure as much as legally possible*  
23       pursuant to the applicable SEC Regulation D disclosure rules.” (CSOF ¶ 338(c)  
24       (emphasis added).) Beauchamp discussed this change with Chittick via email in  
25       March 2014, and he approved the change even though he knew Chittick had not  
26       told investors about it. He told Chittick: “I have done a complete re-write of the  
27       Confidentiality section . . . . *With respect to timing, we are already very late in*  
28       *providing information to investors about this problem and the resulting material*

1           *changes from your business plan.”* (*Id.* (emphasis added).)

2       With these and other changes, Beauchamp approved the final Forbearance Agreement.  
3       As Chittick later wrote to his sister: “Dave, my lawyer, negotiated the work out  
4       agreement and endorsed the plan.” (CSOF ¶ 411.)

5           Based on this and other evidence, the jury can conclude that Clark Hill and  
6       Beauchamp actively developed, and substantially modified, the work-out plan with  
7       Chittick and Menaged. They did not just “document” it. As Menaged testified: “the  
8       lawyers are the ones that put it together.” (CSOF ¶ 294.)

9                           **2.     The jury can conclude that Clark Hill and Beauchamp knew**  
10                          **that the work-out plan with Chittick and Menaged ran contrary**  
11                          **to DenSco’s interests.**

12           Clark Hill and Beauchamp’s client was DenSco, not Chittick. Their engagement  
13       letter specified that they were representing DenSco only, not Chittick in any capacity.  
14       (CSOF ¶¶ 194-95.) Yet the work-out plan that Clark Hill and Beauchamp developed was  
15       not intended to benefit DenSco. Instead it was intended to benefit Chittick and  
16       Beauchamp, in breach of Chittick’s duties to DenSco and investors.

17           Key to the work-out plan was that no one would disclose the First Fraud or the  
18       work-out plan itself to DenSco’s investors, at least not for a while. As explained above,  
19       Beauchamp agreed to this part of the plan during the January 9, 2014 meeting, and acted  
20       accordingly. (*See* Part II.B above.) Plainly, non-disclosure was contrary to DenSco’s  
21       interests. Chittick had a fiduciary duty to disclose material information to DenSco’s  
22       investors, as was done in 2003, 2005, 2007, 2009, and 2011, so that investors could make  
23       informed decisions. Clark Hill and Beauchamp knew this. (*See* Part II.A above.)

24           Instead, non-disclosure was intended to serve Chittick’s and Beauchamp’s own  
25       interests. Chittick had an interest in preventing investors from learning that his lending  
26       practices had led to the First Fraud. And Beauchamp had an interest in preventing  
27       investors from learning that he had failed to update the 2011 POM before it expired on  
28       July 1, 2013, which he knew had been causing investors to invest based on increasingly

1 outdated and false information. (See Parts II.A and II.B above.)

2 Other parts of the work-out plan ran contrary to DenSco's interests too, and Clark  
3 Hill and Beauchamp knew this.<sup>4</sup> For example:

- 4 1. Having Menaged pay off the other lenders before DenSco would, in effect,  
5 subordinate DenSco's liens to those of the other lenders. (CSOF ¶ 339(a).) That  
6 would violate DenSco's promise to investors that its loans were in "first position,"  
7 as stated in the 2011 POM which Beauchamp drafted. (*Id.*)
- 8 2. Having Menaged merely use "good faith efforts" to contribute his own money and  
9 pay off the other lenders would, in effect, enable him to avoid paying off the other  
10 lenders. Indeed, that was Menaged's explanation for why he did not follow  
11 through: "Like I said, it was best effort. My best effort couldn't deliver those  
12 funds." (CSOF ¶ 339(b).)
- 13 3. Requiring DenSco to loan Menaged another \$6 million and increase its loan-to-  
14 value ratios up to 120% of property values would violate DenSco's promises to  
15 investors that (a) DenSco would attempt to "ensure that one borrower will not  
16 comprise more than 10 to 15 percent of the total portfolio," and (b) DenSco's loan-  
17 to-value guidelines were "not intended to exceed 70%." These promises were  
18 stated in the 2011 POM which Beauchamp drafted. (CSOF ¶ 339(c).)

19 Moreover, Beauchamp's claim that he thought the work-out plan was in DenSco's  
20 interests contradicts what *he said* at the time. (See, e.g., CSOF ¶¶ 299-320.) For example,  
21 he told Menaged at the January 9, 2014 meeting that the agreement was "***to protect you***  
22 ***and Denny from the situation.***" (CSOF ¶ 347(d) (emphasis added).) And he told  
23 Chittick in a February 9, 2014 email that the agreement "has to have the necessary and  
24 essential terms ***to protect you from potential litigation from investors and third parties.***"  
25 (CSOF ¶ 304 (emphasis added).)

26 Based on this and other evidence, the jury can conclude that Clark Hill and

---

27  
28 <sup>4</sup> Expert Neil Wertlieb observes that it is "unclear" how the Forbearance Agreement  
was supposed to benefit DenSco at all. (CSOF ¶ 339.)

1 Beauchamp knew that the work-out plan they developed would not benefit DenSco but  
2 would instead serve Chittick's and Beauchamp's own interests in covering up their  
3 misdeeds, in breach of Chittick's fiduciary duties to DenSco and its investors.

4 **D. The jury can conclude that Clark Hill and Beauchamp, upon learning**  
5 **of the First Fraud, advised Chittick that he could continue giving loan**  
6 **money directly to Menaged rather than to a trustee, which led to the**  
7 **Second Fraud.**

8 Defendants admit that Chittick's method of giving DenSco's loan money directly  
9 to Menaged rather than to a trustee contradicted DenSco's loan documents and led to the  
10 First Fraud and Second Fraud. (Mot. at 2-3, 11-12.) But Defendants claim there is "no  
11 evidence" that they knew Chittick continued to use this method after the First Fraud came  
12 to light, or that they approved it. (*Id.* at 12.)

13 Yes, there is. Evidence shows that Clark Hill and Beauchamp advised Chittick  
14 that he could continue giving loan money directly to Menaged, as long as Menaged  
15 provided written confirmation that the funds were then given to a trustee. For example:

- 16 1. In a recorded conversation, Chittick told Menaged that Beauchamp "*agreed that*  
17 *it was okay that I wired it to you, as long as you provided copies of the check.*"  
(CSOF ¶ 400(a) (emphasis added).)
- 18 2. Menaged testified: "*Beauchamp told [Chittick] that if you were going to continue*  
19 *to wire the borrower, to get a copy of the check,* or something like that." (CSOF  
20 ¶ 400(b) (emphasis added).)
- 21 3. In a suicide note to DenSco's investors, Chittick wrote: "I talked to Dave about  
22 this in January and *he was in agreement with it as long as I received copies of*  
23 *checks and receipts showing that I was the one paying the trustee.*" (CSOF  
24 ¶ 399(a) (emphasis added).)
- 25 4. In a suicide note to his sister, Chittick wrote: "We went to Dave, and *he gave*  
26 *some constraints on how we were to operate.* I have all the documentation. *I*  
27 *received copies of checks made out to trustees, receipts from the trustees.*"  
28



1 (CSOF ¶ 399(b) (emphasis added).)

2 Thus, the jury can conclude that Clark Hill and Beauchamp expressly approved the  
3 lending practice that led to the Second Fraud.

4 **E. The jury can conclude that Clark Hill and Beauchamp did not**  
5 **terminate their representation of DenSco in May 2014.**

6 Defendants claim that they terminated representation of DenSco in May 2014.  
7 (Mot. at 6.) That claim is essential to their defense. Even their own expert admits that  
8 they had a “mandatory duty to withdraw” in May 2014. (CSOF ¶ 442.)

9 But the jury can reject Defendants’ claim. Evidence shows that Clark Hill and  
10 Beauchamp did *not* terminate representation in May 2014, but instead just stopped their  
11 work and gave Chittick time to deal with the mess. The Receiver described much of this  
12 evidence in the Prima Facie Case Motion (at 12-15), as explained in the Controverting  
13 Statement of Facts. (See CSOF ¶¶ 433-45.) After the Prima Facie Case Motion was  
14 filed, *more* evidence came to light contradicting the May 2014 termination claim:

- 15 1. On June 26, 2014, Beauchamp’s secretary emailed a list of his “Active Matters”  
16 while he was out of the office. This list included the “*work out of lien issue*”  
17 matter and the “*POM*” matter for DenSco, which Beauchamp delegated to another  
18 Clark Hill attorney to handle in his absence. (CSOF ¶ 446(a) (emphasis added).)
- 19 2. On July 30, 2016, Beauchamp emailed the managing partner and resident assistant  
20 general counsel of his office, informing them that the sole owner of DenSco, “a  
21 client,” had committed suicide. The managing partner asked: “*Are there any*  
22 *irregularities with his fund?*” Instead of advising his managing partner that  
23 DenSco was a former client terminated over two years ago, Beauchamp replied,  
24 incredulously: “*Not that I am aware of.*” (CSOF ¶ 446(b) (emphasis added).)
- 25 3. Menaged testified that Beauchamp did *not* terminate the representation:

26 Q. . . . Did Denny ever tell you, any time before March of 2015, which is when  
27 Mr. Beauchamp and Mr. Chittick met for lunch -- did he tell you that Mr.  
28 Beauchamp had resigned as DenSco’s security lawyers because Denny  
wouldn’t follow his advice?

1           A. *Absolutely not. . . . In fact, there were a lot of emails between me and*  
2           *Denny where Denny was shocked that he had not heard from Mr.*  
3           *Beauchamp for a long period of time. He said, “Wow, this guy must love me*  
4           *by leaving me alone for a while to continue to let the process go through.”*  
5           *He wouldn’t be looking for a call or an email from Mr. Beauchamp if he*  
6           *resigned as his counsel.*

7           (CSOF ¶ 446(c) (emphasis added).)

8           Based on this and other evidence, the jury can conclude that Clark Hill and Beauchamp  
9           continued representing DenSco (and thus continued aiding and abetting Chittick’s  
10          breaches of fiduciary duty) well after May 2014.<sup>5</sup>

### 11          **III. DEFENDANTS’ LEGAL AUTHORITIES ARE INAPPOSITE.**

12          Defendants not only ignore genuine disputes of material fact, but also ignore  
13          relevant principles of Arizona law and rely on inapposite cases.

#### 14          **A. The seminal Arizona case on aiding and abetting is *Wells Fargo Bank*, 15          which Defendants largely ignore.**

16          The seminal Arizona case on aiding and abetting is *Wells Fargo Bank v. Ariz.*  
17          *Laborers, Teamsters & Cement Masons Local No. 395 Pension*, 201 Ariz. 474 (2002).  
18          Although Defendants cite this case, they ignore several of its principles.

19          **First**, to evaluate an aiding-and-abetting claim, the facts must be viewed  
20          holistically. This is because facts may be “unremarkable taken in isolation,” but when  
21          “taken together,” present “a jury issue on the question of aiding-and-abetting liability.”  
22          *Wells Fargo Bank*, 210 Ariz. at 488 ¶ 47 (quoting *Metge v. Baehler*, 762 F.2d 621, 630  
23          (8th Cir. 1985)). Thus, the analytical approach in Defendants’ motion is misguided.  
24          Defendants take a divide-and-conquer approach, separately analyzing specific acts and

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25          <sup>5</sup> After Chittick’s suicide, Clark Hill and Beauchamp attempted to cover up their  
26          misdeeds by, among other things, (1) representing DenSco and Chittick’s Estate despite  
27          clear conflicts of interest, (2) emailing DenSco’s investors without disclosing the fraud  
28          or the work-out plan, (3) urging DenSco’s investors not to seek the appointment of a  
29          receiver, and (4) falsely telling the Receivership Court that Beauchamp represented  
30          Chittick personally. (See CSOF ¶¶ 413-58.) The jury can view these coverup attempts  
31          as additional evidence that Clark Hill and Beauchamp “knew” Chittick was breaching  
32          fiduciary duties, and that they “substantially assisted” these breaches.

1 concluding that none was aiding and abetting. (Mot. at 9-17.) But the jury will be asked,  
2 instead, whether Defendants' acts, "taken together," were aiding and abetting.

3 **Second**, the "knowledge" and "substantial assistance" elements of aiding and  
4 abetting are not strict. Knowledge "may be inferred from the circumstances," and "[a]  
5 showing of actual and complete knowledge of the tort is not uniformly necessary." *Wells*  
6 *Fargo Bank*, 210 Ariz. at 485 ¶ 36, 488 ¶ 45. Similarly, "substantial assistance" is  
7 assistance that "makes it 'easier' for the violation to occur." *Id.* at 489 ¶ 54 (quoting  
8 *Aetna Cas. & Sur. Co. v. Leahey Const. Co.*, 219 F.3d 519, 537 (6th Cir. 2000)).

9 **Third**, a jury is often needed to resolve fact issues in this context. In *Wells Fargo*  
10 *Bank*, there was evidence that a bank knew its client had made false representations to a  
11 third party, and that the bank adopted a strategy to avoid having the third party learn what  
12 it knew about its client. 210 Ariz. at 488 ¶ 45. The Arizona Supreme Court reversed the  
13 trial court's summary judgment, holding that the "facts raise inferences sufficient to take  
14 the issue to the jury." *Id.* at 490 ¶ 58. So too here.

15 **B. It does not matter when Chittick began breaching his fiduciary duties.**

16 Defendants suggest that Chittick began breaching fiduciary duties before Clark  
17 Hill and Beauchamp got involved. (Mot. at 4-5.) That claim is not only disputed, but  
18 irrelevant. Aiding and abetting a breach of fiduciary duty can occur "after a breach has  
19 begun." *Cal X-Tra v. W.V.S.V. Holdings, L.L.C.*, 229 Ariz. 377, 407 ¶ 101 (App. 2012).

20 **C. Dawson is inapposite.**

21 For the "knowledge" element of aiding and abetting, Defendants rely on *Dawson*  
22 *v. Withycombe*, 216 Ariz. 84 (App. 2007). But that case is inapposite. **First**, that case  
23 went to trial. The dispute on appeal was whether the trial court acted correctly *after* the  
24 evidence was presented to the jury. *Id.* at 94 ¶¶ 16-18, 102 ¶ 49. Here, Defendants are  
25 trying to keep the jury from hearing the evidence at all.

26 **Second**, *Dawson* involved a claim of aiding and abetting fraud, and the plaintiff  
27 presented no evidence that the defendants were "even aware" of the fraudulent scheme.  
28 *Id.* at 102-03 ¶¶ 49-52. Here, there is ample evidence that Defendants were aware that

1 Chittick was breaching fiduciary duties to DenSco and its investors, as explained above.

2 **D. Schatz is inapposite.**

3 For the “substantial assistance” element, Defendants rely on *Schatz v. Rosenberg*,  
4 943 F.2d 485 (4th Cir. 1991). That case is inapposite. **First**, that case involved claims  
5 under federal securities law and Maryland law, not Arizona law. *Id.* at 489. In Arizona,  
6 generally “lawyers have no special privilege against civil suit,” so “a lawyer is subject to  
7 liability to a client or nonclient when a nonlawyer would be in similar circumstances.”  
8 *Chalpin v. Snyder*, 220 Ariz. 413, 424 ¶¶ 44-45 (App. 2008) (citations omitted).

9 **Second**, *Schatz* involved an allegation that a law firm aided and abetted its client  
10 in defrauding a third party. 943 F.2d at 489-98. As a result:

- 11 • The law firm owed no special duties to the victim (a third party).
- 12 • The law firm did owe special duties to the person it aided (its client).

13 These facts were critical to the court’s decision. *Id.* at 489-98. Here, in contrast, Clark  
14 Hill aided and abetted someone who was not its client (Chittick) in breaching fiduciary  
15 duties toward its client (DenSco). As a result:

- 16 • Clark Hill owed special duties to the victim (DenSco and its investors).
- 17 • Clark Hill did not owe special duties to the person whom it aided (Chittick).

18 Whereas the law firm in *Schatz* was like a shepherd who helps his sheep evade a wolf,  
19 Clark Hill was like a shepherd who helps a wolf steal his sheep!

20 **Third**, the law firm in *Schatz* merely “papered the deal” between its client and a  
21 third party, playing the role of “scrivener.” 943 F.3d at 496-97. Here, Clark Hill, among  
22 other things, advised Chittick that he could delay disclosure to investors while continuing  
23 to raise money, and actively developed a work-out plan with Chittick and Menaged that  
24 it knew ran contrary to DenSco’s interests. Clark Hill was far more than a “scrivener.”

25 **IV. CONCLUSION.**

26 The Court should deny Defendants’ motion for summary judgment.

1 RESPECTFULLY SUBMITTED this 10th day of January, 2020.

2 OSBORN MALEDON, P.A.

3  
4 By /s/Joshua M. Whitaker

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14 Maricopa County Superior Court  
15 101 West Jefferson, ECB-412  
Phoenix, Arizona 85003

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# **EXHIBIT C**

(Unredacted copy of the Receiver's 1/10/2020 Response to Defendants'  
Motion for Summary Judgment on Joint & Several Liability)

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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.

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

Defendants.

No. CV2017-013832

**PLAINTIFF'S RESPONSE TO  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT ON JOINT  
& SEVERAL LIABILITY**

(Assigned to the Honorable  
Daniel Martin)

(Oral Argument Requested)

1        There is ample evidence that Defendants Clark Hill and David Beauchamp  
2 “consciously agreed” with Denny Chittick and Scott Menaged to breach fiduciary duties  
3 to DenSco and investors, and thus acted “in concert” with them for purposes of A.R.S.  
4 § 12-2506(D)(1). For example: In January 2014, Beauchamp agreed with Chittick and  
5 Menaged to hide a multi-million-dollar fraud from DenSco’s investors, even though he  
6 knew the investors were continuing to invest based on a long-outdated disclosure. And  
7 in the following months, Beauchamp worked tirelessly with Chittick and Menaged to  
8 develop a “work-out plan” which he knew ran contrary to DenSco’s interests and instead  
9 served Chittick’s and his own personal interests.<sup>1</sup>

10        Defendants tell a different story. They try to portray Beauchamp as a lawyer who  
11 intended to protect DenSco and did not know what Chittick and Menaged were doing.  
12 But the jury can reject this portrayal and conclude, instead, that Beauchamp acted “in  
13 concert” with Chittick and Menaged to breach fiduciary duties.

14 **I.        DEFENDANTS IGNORE GENUINE ISSUES OF MATERIAL FACT.**

15        Summary judgment must be denied because this case is filled with genuine  
16 disputes of material fact. *See* Ariz. R. Civ. P. 56(a). Defendants ignore key evidence and  
17 draw inferences favoring themselves even though a jury could reasonably conclude  
18 otherwise. The Receiver explains these disputes more fully in the Controverting  
19 Statement of Facts accompanying this brief (“CSOF”) and in the concurrently filed  
20 Response to Defendants’ Motion for Summary Judgment re Aiding & Abetting  
21 (“Response re Aiding & Abetting”). Below are some highlights.

22        **A.        The jury can conclude that Clark Hill and Beauchamp consciously**  
23 **agreed with Chittick not to update the expired written disclosure to**  
24 **DenSco investors, even though they knew that investors were**  
**continuing to invest.**

25        Before 2013, DenSco issued written disclosures called Private Offering  
26 Memoranda (“POMs”) to its investors every two years, based on Beauchamp’s advice.

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27 <sup>1</sup>        These are just examples. As explained below, Clark Hill and Beauchamp also  
28 entered into other conscious agreements, some of which were with Chittick only.



1 (CSOF ¶¶ 82-84.) Beauchamp knew that the vast majority of DenSco's investors  
2 purchased two-year promissory notes and "rolled over" their investments by purchasing  
3 a new two-year note when their existing note matured. (*Id.* ¶¶ 89-90.)

4 Beauchamp prepared DenSco's POMs in 2003, 2005, 2007, 2009, and 2011.  
5 (CSOF ¶¶ 83, 85.) Each POM assured investors that the POM would be updated every  
6 two years. (*Id.* ¶¶ 95, 99.) Each POM also warned investors that the only disclosures  
7 they could rely on were written updates to the POM itself. (*Id.* ¶ 100.)

8 The 2011 POM expired on July 1, 2013. But Beauchamp never prepared an  
9 updated POM. (CSOF ¶¶ 97-98, 107.) Beauchamp claims that this was because Chittick  
10 asked him to stop working on the POM, during an August 2013 phone call. (DSOF ¶ 21.)  
11 That claim is contradicted by the record. (*See* Response re Aiding & Abetting at 2.)

12 But even if the jury believes that Chittick asked Beauchamp to stop working on  
13 the POM, the jury can conclude that Beauchamp consciously agreed to do so even though  
14 he knew that DenSco's investors were continuing to invest. Clark Hill and Beauchamp  
15 knew that, in the six months after the 2011 POM expired in July 2013, many DenSco  
16 investors would purchase new promissory notes. (CSOF ¶¶ 143, 148, 188-190, 230-232;  
17 *see* Response re Aiding & Abetting at 2-3.) Clark Hill and Beauchamp also knew that  
18 Chittick's fiduciary duties required updating the POM every two years *before* selling new  
19 promissory notes. (*Id.* ¶¶ 82-84, 89-90, 95-100, 109, 140, 143, 199-200, 224-29.)

20 Thus, the jury can conclude that Beauchamp consciously agreed with Chittick to  
21 stop working on the POM, in breach of Chittick's fiduciary duties.

22 **B. The jury can conclude that Clark Hill and Beauchamp, upon learning**  
23 **of the First Fraud, consciously agreed with Chittick and Menaged to**  
24 **hide the fraud from DenSco's investors, even though they knew that**  
**investors were continuing to invest.**

25 Beauchamp admits that he learned of the massive "First Fraud" against DenSco  
26 by January 7, 2014. (DSOF ¶ 29.)<sup>2</sup> Beauchamp met with Chittick and Menaged two  
27

28 <sup>2</sup> The parties disagree on when exactly Beauchamp learned of the First Fraud. (*See*  
Response re Aiding & Abetting at 3 n.2.)

1 days later, on January 9, 2014. (DSOF ¶ 33.) The jury can conclude that, at that meeting,  
2 Beauchamp consciously agreed with Chittick and Menaged to hide the fraud from  
3 DenSco's investors. Evidence shows that the following things happened at that meeting:

- 4 **1. Beauchamp learned that Chittick was *not* planning to disclose the fraud to**  
5 **investors.** Here is how Menaged recalls that discussion:

6 Q. Did Mr. Beauchamp say anything when you were in the room about  
7 Denny's obligation to disclose that this problem had occurred in his lending  
8 practices?

9 A. He did. *He said to him, "We need to draft a letter to the investors to advise*  
10 *them of the situation."*

11 *And Denny said, "That's not happening."*

12 And he said, "Why is that?"

13 And he said, "Because there will be a run on the bank and then at that  
14 point I can't pay off all these loans, and so I'm going to take care of the problem  
myself." . . .

15 *And then at that point Beauchamp said, "Well, okay, if that's what*  
16 *we're going to do, then we definitely need to work very closely on this*  
17 *forbearance agreement to protect you from fraud, protect you from the*  
Arizona Corporate Commission, protect you from the AG's office."

18 (CSOF ¶ 347(a) (emphasis added).)

- 19 **2. Beauchamp agreed that *he* would not disclose the fraud to investors, even though**  
20 **he had a separate obligation to do so.** Here is how Menaged recalls that discussion:

21 Q. Did Mr. Beauchamp ever say to Denny, while you were in the room or  
22 present, that he, Mr. Beauchamp, had an obligation to alert Denny's investors  
23 of what happened?

24 A. . . . Yes. *He said, "You do understand that you're putting me in a very*  
25 *awkward and bad position, because I do have an obligation to advise the*  
*investors."*

26 *And Denny said, "I didn't under -- I didn't know that, but I would*  
27 *appreciate it if you did not advise anybody and just prepare this agreement*  
28 *so we can move on from this."*

1                    *And at that point I knew that he was not advising the investors,*  
2                    *because Beauchamp said, “Okay, Denny, I will do what you want.”*

3                    (CSOF ¶ 347(b) (emphasis added).)

- 4                    3. Beauchamp asked Chittick how they planned to “keep” the fraud “from the  
5                    investors.” Here is how Menaged recalls that discussion:

6                    Q. What is your memory of what Mr. Beauchamp said in that meeting?

7                    A. . . . He asked how long we thought we could get this whole thing resolved.

8                    Denny said less than a year.

9                    Denny -- *David Beauchamp asked how we would keep this from the*  
10                    *investors for that long a period of time.*

11                    *Denny said his books looked fine. His accounting looked fine. His*  
12                    *accounting didn’t reference him being in first or second position. So*  
13                    *everything looked perfect.*

14                    (CSOF ¶ 347(c) (emphasis added).)

15                    In addition, evidence from after the January 9, 2014 meeting confirms that Beauchamp  
16                    consciously agreed with Chittick and Menaged to hide the fraud from DenSco’s investors,  
17                    even though he knew investors were continuing to invest. For example:

- 18                    1. On January 10, 2014, Beauchamp spoke with Chittick on the phone, and  
19                    Beauchamp’s notes state: *“Denny does not want to talk to his investors until he*  
20                    *is ready* – will not take long.” (CSOF ¶ 349 (emphasis added).)
- 21                    2. That day, Chittick wrote in his corporate journal: *“I can raise money according*  
22                    *to Dave.”* (CSOF ¶ 350 (emphasis added).)
- 23                    3. On January 12, 2014, Chittick told Beauchamp in an email that he had “spent the  
24                    day contacting every investor that has told me they want to give me more money”  
25                    and expected to raise *between \$5 and \$6 million* in the next ten days. Beauchamp  
26                    responded: *“You should feel very honored that you could raise that amount of*  
27                    *money that quickly.”* (CSOF ¶¶ 351-52 (emphasis added).)
- 28                    4. On February 21, 2014, Beauchamp spoke with Chittick, and his notes state:

1 “cannot be ready to tell everything.” (CSOF ¶ 357 (emphasis added).)

- 2 5. That day, Chittick wrote in the journal: “I talked to Dave . . . . *We talked about*  
3 *telling my investors; we are going to put that off as long as possible* so that we  
4 can improve the situation as much as possible.” (CSOF ¶ 312 (emphasis added).)
- 5 6. On February 25, 2014, Chittick told Beauchamp in an email: “what both of us are  
6 really concerned about is that *when [I] tell my investors the situation, they request*  
7 *their money back.*” (CSOF ¶ 314 (emphasis added).)
- 8 7. On March 11, 2014, Beauchamp advised Chittick that he could “delay” disclosure  
9 to investors, perhaps indefinitely. Here is how Menaged recalls the conversation:

10 Q. Just to be clear, your understanding from this call was Mr. Beauchamp was  
11 advising Mr. Chittick that the information needed to be disclosed to investors  
12 but could be delayed? The disclosure could be delayed.

13 Mr. DeWulf: Object to form.

14 A. *He said that, yes, the investors needed to be aware of this, but, yes, it could*  
15 *be delayed, and ultimately, if the problem was completely resolved without*  
16 *disclosing to the investors, well, then, there was no reason to have to disclose*  
17 *it.*

(CSOF ¶ 361 (emphasis added).)

- 18 8. On March 13, 2015, Chittick wrote in the journal: “I got an email from Dave my  
19 attorney wanting to meet. *He gave me a year to straighten stuff out. We’ll see*  
20 *what pressure I’m under to report now.*” (CSOF ¶ 381 (emphasis added).)
- 21 9. On March 24, 2015, after meeting with Beauchamp, Chittick wrote in the journal:  
22 “I had lunch with Dave Beauchamp. . . . *He said he would give me 90 days. . . .*  
23 *I’m going to slow down the whole memorandum process too. Give us as much*  
24 *time as possible to get things in better order.*” (CSOF ¶ 383 (emphasis added).)
- 25 10. In a suicide note to his sister, Chittick explained: “*I talked Dave my attorney into*  
26 *allowing me to continue without notifying my investors.* Shame on him. He  
27 shouldn’t have allowed me. *He even told me once I was doing the right thing.*”  
28 (CSOF ¶ 410 (emphasis added).)

1 Indeed, Menaged recalled that Beauchamp repeatedly “agreed” with Chittick to delay  
2 disclosure to investors:

3 Q. Did he [Chittick] ever share with you what he was going to tell his  
4 investors for the year to 18 months about what was going on with the  
5 company?

6 A. . . . There’s something that he’s supposed to be filing or that his  
7 attorney is supposed to be filing every year or every two years. That’s the  
8 only thing he was concerned about, that he was late on it.

9 *I do know that Beauchamp was on him about – “Hey, we’ve got to  
10 do this. We’ve got to do this.” And then ultimately agreed with him, “Okay,  
11 yes. For the sake of everything, we’ll just kind of let this go a little longer.”  
12 Because Chittick’s thing was – “I don’t want the investors to know.”*

13 Q. . . . But Mr. Beauchamp was saying, “You need to tell your investors?”

14 A. *In the beginning, he said he needs to tell the investors. Then his  
15 lawyers agreed, “Yes, let’s give this another eight months. Let’s give this  
16 another 12 months. Let’s give this another 15 months.” He kept extending  
17 it.*

18 *Then, “Hey, you’re in violation, but, okay, we’ll push this a little  
19 longer, a little longer,” because Beauchamp didn’t know how to disclose  
20 this.*

21 (CSOF ¶ 348 (emphasis added).)

22 Unfortunately, the agreement to hide the fraud from DenSco’s investors fulfilled  
23 its purpose. Investors did not learn of the fraud until years later, after Chittick committed  
24 suicide and the Receiver was appointed. (CSOF ¶ 407.) The investors have testified that,  
25 had they known the truth, they would not have continued investing. (*Id.*)<sup>3</sup>

26 From this and other evidence, the jury can conclude that Clark Hill and  
27 Beauchamp consciously agreed with Chittick and Menaged to hide the fraud from  
28 DenSco’s investors, despite knowing that investors were continuing to invest.

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<sup>3</sup> Clark Hill and Beauchamp have elsewhere claimed that they thought Chittick was giving “verbal disclosures” to investors about the fraud. That claim is contradicted by the above evidence and other evidence. (See Response re Aiding & Abetting at 7.)

1           **C.     The jury can conclude that Clark Hill and Beauchamp, upon learning**  
2           **of the First Fraud, consciously agreed with Chittick and Menaged to**  
3           **develop a work-out plan which they knew ran contrary to DenSco's**  
4           **interests.**

5           Clark Hill and Beauchamp also agreed with Chittick and Menaged to develop a  
6           “work-out plan” which they knew was contrary to DenSco’s interests. Clark Hill and  
7           Beauchamp try to minimize their role in this process with two claims. First, they claim  
8           that the plan was formed before they got involved, so all they did was “document” it.  
9           (Mot. at 5-6, 11.) Second, they claim that they were trying to “protect” DenSco. (*Id.* at  
10          6, 12-13.) But the jury can reject these claims, because evidence contradicts them.

11                   **1.     The jury can conclude that Clark Hill and Beauchamp actively**  
12                   **developed, and substantially modified, a work-out plan with**  
13                   **Chittick and Menaged.**

14           On January 7, 2014, Chittick told Beauchamp that he and Menaged had made a  
15           “plan” to work out of the double-lien problem caused by the First Fraud. (CSOF ¶¶ 248,  
16           257-63.) At that time, the plan was simple: Menaged would sell each double-liened  
17           property to pay off both lenders—DenSco and the other lender with a lien—but the other  
18           lender would be paid first, with interest, while DenSco would let its interest accrue. (*Id.*  
19           ¶¶ 257-58.) Menaged would contribute \$4 to \$5 million of his own money to the  
20           endeavor, and DenSco would loan Menaged another \$1 million and increase its loan-to-  
21           value ratios up to 95% of property values. (*Id.* ¶¶ 257-58, 285.)

22           On January 9, 2014, Beauchamp met with Chittick and Menaged to flesh out the  
23           plan. According to Menaged, it was *Beauchamp* who proposed a formal agreement:

24                   So he [Beauchamp] then left the room. I remember he said he needed to --  
25                   or I remember he said he needed to go downstairs and get fresh air and clean  
26                   up, and which he did, because he was a mess. His shirt was all wet, and it  
27                   really was disgusting.

28                   And then he came back up, came back upstairs. *He said, “Okay, I have had  
some time to relax and think about the situation,” he said, “and here’s  
what we’re going to do: We are going to draw up an agreement to protect  
you and Denny from the situation.”*

1 (CSOF ¶ 347(d) (emphasis added).) The purpose of Beauchamp’s proposed agreement,  
2 according to Menaged, was not only to “memorialize everything that had taken place,”  
3 but also to “*summarize, basically, our agreement that we were making in that room --*  
4 *in the conference room that day.*” (CSOF ¶ 347(e) (emphasis added).)

5 After the January 9, 2014 meeting, Beauchamp spent *three months* developing  
6 what eventually became a 24-page “Forbearance Agreement,” which Chittick and  
7 Menaged signed on April 16, 2014. (CSOF ¶¶ 286-337.) Beauchamp spent 274.8 hours  
8 on this project during that time. (See Response re Aiding & Abetting at 9 & n.3.)  
9 Beauchamp did much more than “document” a pre-existing agreement. He continually  
10 advised Chittick and negotiated with Menaged (and sometimes Menaged’s lawyer) about  
11 the *content* of the agreement. (See, e.g., CSOF ¶¶ 292, 295-332, 408, 411.)

12 Moreover, Beauchamp’s work led to dramatic changes to the initial “plan” that  
13 Chittick had described. Menaged recalled: “We were back and forth and back and forth,  
14 day in and day out, month in and month out, and *continuing to make changes along the*  
15 *way.*” (CSOF ¶ 294 (emphasis added).) These changes were so frequent that Menaged  
16 told Chittick, in an April 2014 email, that signing the agreement would help “*not to have*  
17 *Dave change it again and again with every move we make.*” (*Id.* (emphasis added).)  
18 For example, here are three ways in which the initial “plan” changed:

- 19 1. The initial “plan” was for Menaged to pay off the other lenders and contribute  
20 \$4 to \$5 million of his own money. But the final Forbearance Agreement merely  
21 required Menaged to use “good faith efforts” to do so. (See Response re Aiding  
22 & Abetting at 10.)
- 23 2. The initial “plan” was for DenSco to loan Menaged another \$1 million and  
24 increase its loan-to-value ratios up to 95% of property values. But the final  
25 Forbearance Agreement required DenSco to loan Menaged another \$6 million and  
26 increase its loan-to-value ratios up to 120% of property values. (See *id.* at 10.)
- 27 3. The initial “plan” was silent on what DenSco should tell investors. But the final  
28 Forbearance Agreement included a confidentiality provision requiring DenSco to

1 use “good faith efforts to *limit such disclosure as much as legally possible*  
2 pursuant to the applicable SEC Regulation D disclosure rules.” (*See id.* at 10-11.)  
3 With these and other changes, Beauchamp approved the final Forbearance Agreement.  
4 As Chittick later wrote to his sister: “Dave, my lawyer, negotiated the work out  
5 agreement and endorsed the plan.” (CSOF ¶ 411.)

6 Based on this and other evidence, the jury can conclude that Clark Hill and  
7 Beauchamp actively developed, and substantially modified, the work-out plan with  
8 Chittick and Menaged. They did not just “document” it. As Menaged testified: “the  
9 lawyers are the ones that put it together.” (CSOF ¶ 294.)

10 **2. The jury can conclude that Clark Hill and Beauchamp knew**  
11 **that the work-out plan with Chittick and Menaged ran contrary**  
12 **to DenSco’s interests.**

13 Clark Hill and Beauchamp’s client was DenSco, not Chittick. Their engagement  
14 letter specified that they were representing DenSco only, not Chittick in any capacity.  
15 (CSOF ¶¶ 194-95.) Yet the work-out plan that Clark Hill and Beauchamp developed was  
16 not intended to benefit DenSco. Instead it was intended to benefit Chittick and  
17 Beauchamp, in breach of Chittick’s duties to DenSco and investors.

18 Key to the work-out plan was that no one would disclose the First Fraud or the  
19 work-out plan itself to DenSco’s investors, at least not for a while. As explained above,  
20 Beauchamp agreed to this part of the plan during the January 9, 2014 meeting, and acted  
21 accordingly. (*See Part I.B above.*) Plainly, non-disclosure was contrary to DenSco’s  
22 interests. Chittick had a fiduciary duty to disclose material information to DenSco’s  
23 investors, as was done in 2003, 2005, 2007, 2009, and 2011, so that investors could make  
24 informed decisions. Clark Hill and Beauchamp knew this. (*See Part I.A above.*)

25 Instead, non-disclosure was intended to serve Chittick’s and Beauchamp’s own  
26 interests. Chittick had an interest in preventing investors from learning that his lending  
27 practices had led to the First Fraud. And Beauchamp had an interest in preventing  
28 investors from learning that he had failed to update the 2011 POM before it expired on



1 July 1, 2013, which he knew had been causing investors to invest based on increasingly  
2 outdated and false information. (See Parts I.A and I.B above.)

3 Other parts of the work-out plan ran contrary to DenSco's interests too, and Clark  
4 Hill and Beauchamp knew this.<sup>4</sup> For example:

- 5 1. Having Menaged pay off other lenders before DenSco would, in effect,  
6 subordinate DenSco's liens, which would violate DenSco's promise that its loans  
7 were in first position. (See Response re Aiding & Abetting at 12.)
- 8 2. Having Menaged merely use "good faith efforts" to contribute his own money and  
9 pay off the other lenders would, in effect, enable him to avoid paying off the other  
10 lenders. (See *id.*)
- 11 3. Requiring DenSco to loan Menaged another \$6 million and increase its loan-to-  
12 value ratios up to 120% of property values would violate DenSco's promises to  
13 investors regarding the diversity and security of its loan portfolio. (See *id.*)

14 Moreover, Beauchamp's claim that he thought the work-out plan was in DenSco's  
15 interests contradicts what *he said* at the time. (See, e.g., CSOF ¶¶ 299-320.) For example,  
16 he told Menaged that the agreement was "*to protect you and Denny from the situation.*"  
17 (CSOF ¶ 347(d) (emphasis added).) And he told Chittick in a February 9, 2014 email  
18 that the agreement "has to have the necessary and essential terms *to protect you from*  
19 *potential litigation from investors and third parties.*" (CSOF ¶ 304 (emphasis added).)

20 Based on this and other evidence, the jury can conclude that Clark Hill and  
21 Beauchamp knew that the work-out plan they developed would not benefit DenSco but  
22 would instead serve Chittick's and Beauchamp's own interests in covering up their  
23 misdeeds, in breach of Chittick's fiduciary duties to DenSco and its investors.

24 **D. The jury can conclude that Clark Hill and Beauchamp, after learning**  
25 **of the First Fraud, consciously agreed with Chittick and Menaged that**  
26 **Chittick could continue giving DenSco's loan money directly to**  
27 **Menaged rather than a trustee.**

28 <sup>4</sup> Expert Neil Wertlieb observes that it is "unclear" how the Forbearance Agreement  
was supposed to benefit DenSco at all. (CSOF ¶ 339.)

1 By January 2014, Clark Hill and Beauchamp knew that one cause of the First  
2 Fraud was that Chittick had given loan money directly to Menaged instead of a trustee,  
3 in violation of DenSco's promises to investors. (DSOF ¶¶ 3-4, 30.) But the "work-out  
4 plan" required DenSco to continue loaning to Menaged. (See Part I.C above.) Thus,  
5 Clark Hill and Beauchamp agreed with Chittick and Menaged that Chittick could  
6 continue giving DenSco's loan money directly to Menaged, as long as Menaged provided  
7 written confirmation that the money was then given to a trustee. For example:

- 8 1. In a recorded conversation, Chittick told Menaged that Beauchamp "***agreed that***  
9 ***it was okay that I wired it to you, as long as you provided copies of the check.***"  
10 (CSOF ¶ 400(a) (emphasis added).)
- 11 2. Menaged testified: "***Beauchamp told [Chittick] that if you were going to continue***  
12 ***to wire the borrower, to get a copy of the check,*** or something like that." (CSOF  
13 ¶ 400(b) (emphasis added).)
- 14 3. In a suicide note to DenSco's investors, Chittick wrote: "I talked to Dave about  
15 this in January and ***he was in agreement with it as long as I received copies of***  
16 ***checks and receipts showing that I was the one paying the trustee.***" (CSOF  
17 ¶ 399(a) (emphasis added).)
- 18 4. In a suicide note to his sister, Chittick wrote: "We went to Dave, and ***he gave***  
19 ***some constraints on how we were to operate.*** I have all the documentation. ***I***  
20 ***received copies of checks made out to trustees, receipts from the trustees.***"  
21 (CSOF ¶ 399(b) (emphasis added).)

22 Thus, the jury can conclude that Clark Hill and Beauchamp consciously agreed with  
23 Chittick and Menaged as to the lending practice that led to the Second Fraud.<sup>5</sup>

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27 <sup>5</sup> The jury can also conclude that Clark Hill and Beauchamp continued representing  
28 DenSco for years after the First Fraud, and they attempted to cover up their misdeeds  
after Chittick's suicide. (See Response re Aiding & Abetting at 14-15 & n.5.)

1 **II. THE JURY SHOULD DECIDE WHETHER DEFENDANTS “ACTED IN**  
2 **CONCERT” WITH CHITTICK AND MENAGED.**

3 The fact disputes in this case raise a triable question as to whether Clark Hill and  
4 Beauchamp “acted in concert” with Chittick and Menaged under A.R.S. § 12-2506(D)(1).

5 **A. The jury can conclude that Clark Hill and Beauchamp “consciously**  
6 **agreed” with Chittick and Menaged (and, at times, with Chittick only)**  
7 **to breach Chittick’s fiduciary duties to DenSco and its investors.**

8 “Acting in concert” requires “entering into a conscious agreement to pursue a  
9 common plan or design to commit an intentional tort.” A.R.S. § 12-2506(F)(1). As  
10 Defendants point out, a “conscious agreement” is similar to a civil conspiracy, in which  
11 two or more persons “agree to accomplish an unlawful purpose or to accomplish a lawful  
12 objective by unlawful means, causing damages.” (Mot. at 9-10 (quoting *Wells Fargo*  
13 *Bank v. Ariz. Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund*,  
14 201 Ariz. 474, 489 (2002))). A conspiracy “may be inferred from the nature of the acts,  
15 the relationship of the parties, the interests of the conspirators, or other circumstances.”  
16 *Mohave Elec. Co-op., Inc. v. Byers*, 189 Ariz. 292, 306 (App. 1997) (citation omitted).

17 As explained above, the jury can conclude that:

- 18 **1.** In 2013, Clark Hill and Beauchamp “consciously agreed” with Chittick not to  
19 update the expired written disclosure to DenSco investors, even though they knew  
20 that investors were continuing to invest. (Part I.A above.)
- 21 **2.** Starting on January 9, 2014, Clark Hill and Beauchamp “consciously agreed” with  
22 Chittick and Menaged to hide the First Fraud from DenSco’s investors, even  
23 though they knew that investors were continuing to invest. (Part I.B above.)
- 24 **3.** Starting on January 9, 2014, Clark Hill and Beauchamp “consciously agreed” with  
25 Chittick and Menaged to develop a “work-out plan” which they knew ran contrary  
26 to DenSco’s interests. (Part I.C above.)
- 27 **4.** After January 9, 2014, Clark Hill and Beauchamp “consciously agreed” with  
28 Chittick and Menaged that Chittick could continue giving DenSco’s loan money

1 directly to Menaged, in violation of DenSco’s loan documents. (Part I.D above.)  
2 Each of these was a conscious agreement to breach Chittick’s fiduciary duties to DenSco  
3 and its investors, including duties of loyalty, care, and disclosure.<sup>6</sup>

4 Defendants’ arguments are mostly limited to the third agreement listed above, and  
5 mostly based on disputed factual claims. (Mot. at 8-13.) First, Defendants claim that all  
6 they did was “memorialize” a work-out plan that Chittick and Menaged had “already  
7 substantially agreed upon and partially performed,” while “attempting to provide  
8 additional protection for DenSco.” (Mot. at 11-12.) But the jury can reject those claims  
9 and can conclude, instead, that Clark Hill and Beauchamp played an active role in  
10 developing and modifying the work-out plan, and that Clark Hill and Beauchamp  
11 intended to protect Chittick and Beauchamp, not DenSco. (See Part I.C above.)<sup>7</sup>

12 Second, Defendants claim that they negotiated the work-out plan “against  
13 Menaged who was represented by counsel for the majority of the negotiation.” (Mot. at  
14 12-13.) But the jury can conclude otherwise. Although Beauchamp was against *some* of  
15 Menaged’s proposals in the negotiation, Beauchamp agreed to *many others*, including  
16 (1) having Menaged pay off other lenders before DenSco, (2) having Menaged merely  
17 use “good faith efforts” to contribute money and pay off other lenders, (3) increasing  
18 DenSco’s loans to Menaged, (4) increasing the loan-to-value ratios of DenSco’s loans to  
19 Menaged, and (5) adding a confidentiality provision limiting DenSco’s disclosure to  
20 investors. (See Part I.C above.) Similarly, although Menaged was represented by counsel  
21 for *some* of the negotiations, he was *not* represented during crucial times, including the  
22 January 9, 2014 meeting and after February 25, 2014. (CSOF ¶¶ 280-85, 313, 322.)

23 Third, Defendants claim that they tried to protect DenSco by advising Chittick to  
24

---

25 <sup>6</sup> The Receiver explained these duties in the Prima Facie Case Motion (at 7-8).

26 <sup>7</sup> Moreover, it does not matter whether Chittick and Menaged entered into an  
27 agreement before Clark Hill and Beauchamp did. See 15A C.J.S. *Conspiracy* § 23 (Dec.  
28 2019) (“To render a person civilly liable for injuries resulting from a conspiracy of which  
he or she is a member, it is not necessary that the person join the conspiracy at the time  
of its inception . . .”).

1 “make disclosures” to investors. (Mot. at 13.) But the jury can reject that claim and  
2 conclude, instead, that Clark Hill and Beauchamp advised Chittick that he could *delay*  
3 disclosing to investors even though he was raising money. (*See* Part I.B above.)

4 Defendants’ legal authorities are inapposite. They rely on an unpublished Ninth  
5 Circuit case in which construction workers claimed that the government “acted in  
6 concert” with a subcontractor to harm them. *Denson v. U.S.*, 104 F.3d 365 (9th Cir.  
7 1996). But in that case, there was no evidence of any agreement to commit an intentional  
8 tort; rather, the government merely agreed “to provide a safe work site.” *Id.* Here, in  
9 contrast, the jury can conclude that Clark Hill and Beauchamp entered into a conscious  
10 agreement with Chittick and Menaged to breach Chittick’s fiduciary duties.<sup>8</sup>

11 **B. The jury can conclude that Clark Hill and Beauchamp were**  
12 **“substantially certain” that their actions would cause DenSco’s**  
13 **investors to invest based on materially inaccurate information and**  
14 **would otherwise harm DenSco.**

15 “Acting in concert” applies to only intentional torts. A.R.S. § 12-2506(F)(1).  
16 Thus, an agreement to do something negligent or reckless is not enough. To act in  
17 concert, persons must be “substantially certain” that their actions will have a harmful  
18 consequence. *Mein ex rel. Mein v. Cook*, 219 Ariz. 96, 100 ¶ 17 (App. 2008).

19 Here, the jury can conclude that:

- 20 1. Clark Hill and Beauchamp were “substantially certain” that DenSco’s investors  
21 would not know about the First Fraud or other material facts even though they  
22 were continuing to invest. (Parts I.A and I.B above.)
- 23 2. Clark Hill and Beauchamp were “substantially certain” that, if DenSco’s investors  
24 had known about the First Fraud or other material facts, they would not have  
25 continued investing. As Chittick told Beauchamp: if investors find out, “there

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26 <sup>8</sup> Defendants also cite *Richards v. Badger Mut. Ins. Co.*, 297 Wis. 2d 699 (App.  
27 2006), which is inapposite. There, a 31-year-old bought alcohol for a 19-year-old, who  
28 then drove while drunk and killed someone. *Id.* at 704. Again, there was no evidence  
that the 31-year-old “agreed” with the 19-year-old to drive while drunk. *Id.* at 719.

1 will be a run on the bank.” (Part I.B above.)

2 3. Clark Hill and Beauchamp were “substantially certain” that the work-out plan they  
3 developed would be contrary to DenSco’s interests. (Part I.C above.)

4 4. Clark Hill and Beauchamp were “substantially certain” that Chittick would  
5 continue giving DenSco’s loan money directly to Menaged, in violation of  
6 DenSco’s promises to investors. (Part I.D above.)

7 Each of these is a harmful consequence that Clark Hill and Beauchamp were substantially  
8 certain of and therefore intended.

9 Defendants’ counter-arguments are either irrelevant or based on fact disputes.  
10 First, Defendants argue that they did not know about the First Fraud until after it occurred  
11 and did not know about the Second Fraud until after Chittick’s suicide. (Mot. at 14.)  
12 That argument misconstrues the Receiver’s claims. The Receiver is not claiming that  
13 Clark Hill and Beauchamp consciously agreed to commit the First Fraud or the Second  
14 Fraud. Rather, the Receiver is claiming that Clark Hill and Beauchamp consciously  
15 agreed to breach Chittick’s fiduciary duties to DenSco and its investors.

16 Second, Defendants claim that they did not know their actions would “result in the  
17 financial losses that DenSco experienced.” (Mot. at 15-16.) But that claim is based on  
18 fact disputes, such as the following:

- 19 • Defendants claim that they did not know Menaged would “fail to perform” under  
20 the Forbearance Agreement. (Mot. at 15.) But the jury can conclude that, by  
21 merely requiring Menaged to use “good faith efforts,” they intentionally enabled  
22 him not to perform. (*See* Part I.C above.) Besides, DenSco’s own obligations  
23 under the Forbearance Agreement violated its promises to investors. (*See id.*)
- 24 • Defendants claim that they did not know Chittick would “continu[e] to wire the  
25 funds directly to Menaged.” (Mot. at 15.) But the jury can conclude otherwise,  
26 based on evidence that Defendants agreed to this method. (*See* Part I.D above.)
- 27 • Defendants claim that the work-out plan was “meant to remedy the damages  
28 associated with the First Fraud.” (Mot. at 16.) But the jury can conclude

1 otherwise, based on evidence that Defendants intended to protect Chittick and  
2 Beauchamp, not DenSco. (*See* Part I.C above.)  
3 Moreover, apart from fact disputes, Defendants’ claim is irrelevant because “acting in  
4 concert” does not require that they knew, in advance, the “financial losses” DenSco  
5 would incur. Rather, “acting in concert” requires only that they agreed to an intentional  
6 tort and thus were substantially certain of a harmful consequence. *Mein*, 219 Ariz. at 101  
7 ¶ 17; *see also, e.g., Granewich v. Harding*, 329 Or. 47, 59 (1999) (allegations that lawyers  
8 entered into agreement with corporation’s directors to breach fiduciary duties sufficed to  
9 state claim for “joint liability on the part of defendant lawyers as persons acting in  
10 concert”); Restatement (Third) of Torts: Liab. for Econ. Harm § 27 TD, cmt. c (2018)  
11 (“The defendant held liable as part of the conspiracy must have intended to bring about  
12 *the tortious wrong* that was the subject of the agreement.” (emphasis added)).<sup>9</sup>

13 Here, the jury can conclude that Defendants were substantially certain that their  
14 actions would cause DenSco’s investors to invest based on expired and materially  
15 inaccurate disclosures and otherwise harm DenSco, as explained above. Defendants’  
16 actions were thus “intentional” under A.R.S. § 12-2506(F)(1).<sup>10</sup>

17 **C. The jury can conclude that Clark Hill and Beauchamp “actively took**  
18 **part” in Chittick’s breaches of fiduciary duty.**

19 “Acting in concert” also requires “actively taking part” in the agreed-upon  
20 intentional tort. A.R.S. § 12-2506(F)(1). The jury can conclude that Clark Hill and  
21 Beauchamp “actively took part” in Chittick’s breaches of fiduciary duty because:

- 22 **1. Clark Hill and Beauchamp intentionally did not update the POM that expired in**  
23

---

24 <sup>9</sup> For example, in *Mein*, two drivers agreed to race while intoxicated, and one of  
25 them lost control and injured someone. 219 Ariz. at 97-98 ¶¶ 3-4. The other driver was  
26 not “acting in concert” because, though he agreed to do something reckless, he did not  
27 agree to any intentional tort. *Id.* at 98-103 ¶¶ 9-35. Here, in contrast, the jury can  
28 conclude that Clark Hill and Beauchamp agreed to an intentional tort.

<sup>10</sup> Of course, *damages* cannot be calculated until financial losses are known. But  
intentional torts do not require advance knowledge of damages. That is the point of the  
eggshell skull rule, for example. Restatement (Second) of Torts § 461, cmt. b (1965).

- 1           2013, even though they had prepared the previous POMs and knew that DenSco's  
2           investors relied on the POMs and were continuing to invest. (Part I.A above.)
- 3           **2.** Clark Hill and Beauchamp agreed to hide the First Fraud from DenSco's investors  
4           and advised Chittick that he could delay disclosure of the First Fraud while  
5           continuing to raise money. (Part I.B above.)
- 6           **3.** Clark Hill and Beauchamp actively developed a "work-out plan" which they knew  
7           ran contrary to DenSco's interests. (Part I.C above.)
- 8           **4.** Clark Hill and Beauchamp advised Chittick that he could continue giving  
9           DenSco's loan money directly to Menaged, in violation of DenSco's loan  
10          documents. (Part I.D above.)

11 Each of these acts is evidence that Clark Hill and Beauchamp played an active role.

12           Defendants argue that the evidence shows only that they "aided and abetted"  
13 Chittick's breaches of fiduciary duty, which is not enough for "acting in concert." (Mot.  
14 at 16-17.) That argument is both factually disputed and legally unsound. Factually, the  
15 jury can conclude that Clark Hill and Beauchamp not only "substantially assisted"  
16 Chittick's breaches of fiduciary duty (for aiding and abetting), but also "actively took  
17 part" in them (for acting in concert). (*See* Parts I.A, I.B, I.C, I.D above.) And legally,  
18 evidence of "aiding and abetting" often *also* happens to be evidence of "acting in  
19 concert," even though the elements of each are different. *See, e.g., Dube v. Likins*, 216  
20 Ariz. 406, 413 ¶ 15 (App. 2007) (describing aiding and abetting as "[s]imilar[]" to civil  
21 conspiracy); Restatement (Third) of Torts: Liab. for Econ. Harm § 27 TD, cmt. a (2018)  
22 ("Many claims of conspiracy can also be viewed as cases of aiding and abetting.").<sup>11</sup>

#### 23 **IV. CONCLUSION.**

24           The Court should deny Defendants' motion for summary judgment.

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26 <sup>11</sup> Defendants also assert that the "only intentional tort" alleged is aiding and  
27 abetting. (Mot. at 16-17.) But breach of fiduciary duty is an intentional tort too. *See,*  
28 *e.g., Zastrow v. Journal Commc'ns, Inc.*, 291 Wis. 2d. 426, 448-50 (2006) ("[I]f a trustee  
does not make a full disclosure of material facts to a beneficiary, that conduct is a breach  
of the trustee's duty of loyalty. The law concludes this breach is intentional.").



1 RESPECTFULLY SUBMITTED this 10th day of January, 2020.

2 OSBORN MALEDON, P.A.

3  
4 By /s/Joshua M. Whitaker

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14 Maricopa County Superior Court  
15 101 West Jefferson, ECB-412  
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# **EXHIBIT D**

(Unredacted copy of the Receiver's 1/10/2020 Controverting Statement of Facts accompanying his Responses to Defendants' Motions for Summary Judgment, without Exhibits)

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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.

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

Defendants.

No. CV2017-013832

**PLAINTIFF'S CONTROVERTING  
STATEMENT OF FACTS AND  
ADDITIONAL FACTS, IN  
OPPOSITION TO DEFENDANTS'  
MOTIONS FOR SUMMARY  
JUDGMENT ON (1) AIDING AND  
ABETTING AND (2) JOINT AND  
SEVERAL LIABILITY**

(Assigned to the Honorable  
Daniel Martin)

(Oral Argument Requested)

1 Pursuant to Rule 56(c) of the Arizona Rules of Civil Procedure, the Receiver  
2 responds to Defendants' Statement of Facts in Support of their Motions for Summary  
3 Judgment on (1) Aiding and Abetting and (2) Joint and Several Liability, by:

- 4 · Identifying which of Defendants' 70 fact paragraphs are controverted, precluding  
5 summary judgment in favor of Defendants (CSOF ¶¶ 1-70), and  
6
- 7 · Identifying additional facts that further establish a genuine dispute, precluding  
8 summary judgment in favor of Defendants (CSOF ¶¶ 71-468).

9  
10 **PLAINTIFF'S CONTROVERTING STATEMENT OF FACTS**

11 (CSOF ¶¶ 1-70)

12 **DSOF ¶ 1:** DenSco Investment Corporation ("DenSco") is a company that was  
13 solely owned and managed by Denny Chittick. DenSco began operations in 2001 and  
14 operated continually until Chittick's suicide in late July 2016. DenSco did not have any  
15 directors, officers, or employees other than Chittick. DSOF Exh. 1, 2011 DenSco Private  
16 Offering Memorandum (Exh. 432) at BC\_002921 and BC\_002960; DSOF Exh. 2,  
17 Expert Report of Neil J. Wertlieb at p. 42 (describing DenSco as "One-Man Shop").

18 **Receiver's Response (CSOF ¶ 1): Undisputed.**

19 **DSOF ¶ 2:** DenSco focused on the "hard money lending" business in Arizona.  
20 DenSco made high interest short-term loans to borrowers, who used DenSco's funds to  
21 buy residential properties. The purchasers generally improved the properties (with  
22 physical improvements or by placing renters in them) and then "flipped" them at a profit.  
23 DenSco represented to its investors in its POMs that these loans were secured by first  
24 position deeds of trust on the properties purchased by the borrower, and that the  
25 company would maintain a diverse borrower base, with no more than 10-15% of  
26 DenSco concentrated with any one borrower. DSOF Exh. 1, 2011 DenSco Private  
27 Offering Memorandum (Exh. 432) at BC\_002924 and BC\_002957.  
28

1           **Receiver's Response (CSOF ¶ 2): Objection: Incomplete.** The Receiver does  
2 not dispute that the 2011 POM, which is the only evidence cited in DSOF ¶ 2, contained  
3 the two specific representations identified in DSOF ¶ 2. The Receiver affirmatively  
4 asserts, however, that the 2011 POM contained other representations as well, including  
5 that DenSco intended to minimize risk by having a loan to value ratio of 50% to 65%.  
6 (*See* CSOF ¶¶ 86-100 below.) The Receiver also affirmatively asserts that Beauchamp  
7 was aware of these and other representations in the 2011 POM and was aware that they  
8 became untrue, yet did not draft an updated POM and instead advised Chittick to have  
9 DenSco pursue a course of action that violated those representations and delayed further  
10 disclosures to investors. (*See* CSOF ¶¶ 170-388 below.)  
11

12           **DSOF ¶ 3:** DenSco's Receipt and Mortgage document expressly stated that  
13 DenSco was funding its loan to the borrower by delivering loan funds to the trustee.  
14 DSOF Exh. 3, Sample DenSco Mortgage (Exh. 0027).

15           **Receiver's Response (CSOF ¶ 3): Controverted in part.** The statement in  
16 DSOF ¶ 3 slightly mischaracterizes the evidence. According to the evidence cited in  
17 DSOF ¶ 3, DenSco's form of mortgage simply stated that DenSco was delivering funds  
18 "as evidenced by check payable to" the trustee. The Receiver affirmatively asserts that  
19 Beauchamp was aware of the statements made in DenSco's form of mortgage because  
20 Beauchamp had advised DenSco regarding its lending practices and documents. (*See*  
21 CSOF Ex. 187 at pg. 14; *see also, e.g.,* CSOF ¶ 301 below.)  
22

23           **DSOF ¶ 4:** It is standard practice in the "hard money lending" industry to fund  
24 loans requested by borrowers to a trustee. DSOF Exh. 4, Reichmann Depo. Tr. at 20:14-  
25 21; DSOF Exh. 5, Gould Depo. Tr. at 79:24-80:14.

26           **Receiver's Response (CSOF ¶ 4): Controverted in part.** The portion of  
27 Reichmann's deposition transcript cited in DSOF ¶ 4 merely states that Reichmann  
28

1 himself gives the loans to the trustee, not that it is standard. The portion of Gould's  
2 deposition transcript cited in DSOF ¶ 4 is not included in Defendants' exhibits.

3  
4 **DSOF ¶ 5:** DenSco's business practice, however, was to lend money to  
5 borrowers by providing the funds directly to them, rather than to a trustee, thereby  
6 trusting the borrower to make proper use of the money. DSOF Exh. 6, January 7, 2014  
7 email from Chittick to Beauchamp at DIC0007135-7138; DSOF Exh. 7, Plaintiff's  
8 Seventh Supplemental Disclosure Statement at ¶ 222.a.

9 **Receiver's Response (CSOF ¶ 5): Controverted in part.** The evidence cited  
10 in DSOF ¶ 5 does not establish that Chittick used this lending method with respect to  
11 all of DenSco's borrowers.

12 **DSOF ¶ 6:** DenSco financed its business by raising money from investors.  
13 DenSco issued general obligation notes at interest rates that varied depending on the  
14 maturity date. The notes were not directly tied to or secured by any specific properties  
15 DenSco was financing, or by any other security. DSOF Exh. 1, 2011 DenSco Private  
16 Offering Memorandum at BC\_002945.

17 **Receiver's Response (CSOF ¶ 6): Undisputed.**

18  
19 **DSOF ¶ 7:** Almost all of DenSco's investors were friends, family members or  
20 business acquaintances of Chittick. DSOF Exh. 8, June 17, 2013 email from Beauchamp  
21 to R. Wang (Exh. 117).

22 **Receiver's Response (CSOF ¶ 7): Undisputed.**

23 **DSOF ¶ 8:** David Beauchamp is an attorney at Clark Hill PLC who represents  
24 clients in the areas of corporate law, securities, venture capital, and private equity.  
25 DSOF Exh. 9, D. Beauchamp CV (Exh. 3). He began providing securities advice to  
26 DenSco in the early 2000s, while he was a partner at the law firm Gammage & Burnham.  
27 DSOF Exh. 10, Defendants' Eighth Supplemental Disclosure Statement at p. 6.  
28 Beauchamp did discrete work on behalf of DenSco over the years including: (1) drafting

1 DenSco's Private Offering Memoranda ("POM") and related investors documents; (2)  
2 advising DenSco regarding Blue Sky laws and state and federal securities reporting and  
3 filing requirements; (3) advising DenSco as to the rules and regulations promulgated by  
4 state financial and lending authorities; and (4) advising DenSco regarding the  
5 applicability of mortgage broker regulations. *Id.* at p. 4.

6 **Receiver's Response (CSOF ¶ 8): Controverted in part.** The evidence cited  
7 in DSOF ¶ 8 establishes that Beauchamp did not just do "discrete work" for DenSco  
8 over the years, but was DenSco's "securities counsel." (DSOF Ex. 10 at 4.)

9  
10 **DSOF ¶ 9:** The POMs were updated typically every two years in June based on  
11 information provided by Chittick. DSOF Exh. 1, 2011 DenSco Private Offering  
12 Memorandum (Exh. 432) at BC\_002913; DSOF Exh. 11, Beauchamp Depo. Tr. at  
13 256:22 – 257:3.

14 **Receiver's Response (CSOF ¶ 9): Controverted in part.** The Receiver does  
15 not dispute that the POMs were updated every two years before 2013. However,  
16 although DenSco provided POMs to investors in 2003, 2005, 2007, 2009, and 2011, it  
17 did not provide POMs to investors thereafter. This was because DenSco relied on its  
18 counsel, Beauchamp, to draft POMs, and Beauchamp failed to do this after 2011, despite  
19 knowing that many of the representations in the 2011 POM became untrue and therefore  
20 exposed DenSco to civil and criminal liability. (*See* CSOF ¶¶ 107-338 below.) Instead  
21 of drafting an updated POM and ensuring that DenSco made adequate disclosures to  
22 investors, Beauchamp advised Chittick to have DenSco continue raising money from  
23 investors and enter into an arrangement with Menaged that would delay disclosures to  
24 investors and cover up Beauchamp's own negligence in failing to draft an updated POM.  
25 (*See id.*)

26 **DSOF ¶ 10:** One of DenSco's most prolific borrowers was Yomtov "Scott"  
27 Menaged. DenSco began lending money to Menaged and various entities he controlled  
28

1 in 2007. According to Chittick, DenSco had lent Menaged “50 million dollars” between  
2 2007 and January 7, 2014. DSOF Exh. 6.

3 **Receiver’s Response (CSOF ¶ 10): Undisputed.**

4 **DSOF ¶ 11:** In September 2012 another hard money lender, Active Funding  
5 Group, LLC (“AFG”), learned that Menaged had placed deeds of trust in favor of both  
6 AFG and DenSco on multiple properties, jeopardizing lien priorities. AFG told Chittick  
7 about the issue. DSOF Exh. 4, Reichman Depo. Tr. at 65:15-66:21, 69:3-5, 70:23-73:5;  
8 DSOF Exh. 12, September 21, 2012 email from Chittick to Menaged (Exh. 487) at R-  
9 RFP-Response000916; DSOF Exh. 13, September 21, 2012 emails between Reichman  
10 and Menaged (Exh. 488); DSOF Exh. 14, September 24, 2012 email from Chittick to  
11 Menaged (Exh. 491). Chittick was unperturbed by the revelation. DSOF Exh. 4,  
12 Reichman Depo. Tr. at 67-68.

13 **Receiver’s Response (CSOF ¶ 11): Controverted in part.** The evidence cited  
14 in DSOF ¶ 11 does not make clear what AFG told Chittick “about the issue.” Nor does  
15 the evidence in DSOF ¶ 11 support the claim that Chittick was “unperturbed.” In fact,  
16 Chittick told Menaged: “we’ve got to get this straightened out today.” (See DSOF Ex.  
17 14.) The portion of Reichmann’s deposition transcript cited in DSOF ¶ 11 is not in  
18 Defendants’ exhibits.

19 **DSOF ¶ 12:** Chittick subsequently increased DenSco’s outstanding loan balance  
20 to Menaged and his entities six-fold by the end of 2013. DenSco’s outstanding loan  
21 balance to Menaged increased from \$4.65 million outstanding at the end of 2012 to  
22 \$28.5 million outstanding at the end of 2013, such that loans to Menaged made up half  
23 of DenSco’s loan portfolio. DSOF Exh. 15, Expert Report of David R. Perry at pp. 5, 9,  
24 10.

25 **Receiver’s Response (CSOF ¶ 12): Controverted in part.** The pages of David  
26 Perry’s expert report cited in DSOF ¶ 12 are not in Defendants’ exhibits.  
27  
28



1           **DSOF ¶ 13:** On January 7, 2014, Chittick sent Beauchamp an email stating,  
2 among other things, that “I’ve been lending to Scott Menaged through a few different  
3 LLC’s and his name since 2007. [I]’ve lent him 50 million dollars and [I] have never  
4 had a problem with payment or issue that hasn’t been resolved.” DSOF Exh. 6.

5           **Receiver’s Response (CSOF ¶ 13): Undisputed.**

6           **DSOF ¶ 14:** At the time Chittick sent the January 7, 2014 email to Beauchamp,  
7 over \$30 million of the cumulative total of \$50 million lent to Mr. Menaged had been  
8 lent in the last year, \$28.5 million was outstanding as of December 31, 2013, and \$12.7  
9 million of the \$28.5 million outstanding had been lent more than six months ago and  
10 was in default. Exh. 15, Expert Report of David R. Perry at p. 10.

11           **Receiver’s Response (CSOF ¶ 14): Controverted in part.** The page of David  
12 Perry’s expert report cited in DSOF ¶ 14 is not in Defendants’ exhibits.  
13

14           **DSOF ¶ 15:** In May 2013, DenSco was sued by a company named FREO  
15 Arizona, LLC (“Freo”). The complaint named all persons and entities that had recorded  
16 an interest in the property as defendants, including DenSco. The other defendants  
17 included, but were not limited to, Easy Investments, LLC – an entity controlled by  
18 Menaged – and AFG. The lawsuit recited that Easy Investments had purchased a  
19 property at a trustee’s sale using a DenSco loan, but that the property had been purchased  
20 previously by Freo. DSOF Exh. 16, Partial Freo Complaint and accompanying June 14,  
21 2013 email from Chittick to Beauchamp (Exh. 111).

22           **Receiver’s Response (CSOF ¶ 15): Undisputed.**

23           **DSOF ¶ 16:** Chittick informed Beauchamp of the Freo lawsuit in early June  
24 2013. He sent Beauchamp the first four pages of the complaint and wrote: “I have a  
25 borrower, to which i’ve done a ton of business with, million in loans and hundreds of  
26 loans for several years, he’s getting sued along with me. He bought a property at auction,  
27 was issued a trustee’s deed, I put a loan on it. Evidently the trustee had already sold it  
28

1 before the auction and received money on it . . . .” Chittick did not ask Beauchamp to  
2 take any action with respect to the Freo lawsuit, writing instead that he “just wanted  
3 [Beauchamp] to be aware of it.” Chittick further informed Beauchamp that “Easy  
4 Investments, had his attorney working on it, I’m ok to piggy back with his attorney to  
5 fight it[.]” *Id.* The Receiver alleges that the Freo lawsuit put Beauchamp on notice that  
6 there were systemic issues with DenSco’s lending procedures. DSOF Exh. 2, Expert  
7 Report of Neil J. Wertlieb at p. 50-51 (describing DenSco as “One-Man Shop”).

8 **Receiver’s Response (CSOF ¶ 16): Controverted in part.** In the email quoted  
9 in DSOF ¶ 16, Chittick *did* ask Beauchamp to take action – namely, “talk to [Menaged’s]  
10 attorney.” Chittick gave Beauchamp the attorney’s contact info. (DSOF Ex. 16.)  
11 Beauchamp failed to follow up. (*See* CSOF ¶¶ 110-14, 149-169 below.)

12 **DSOF ¶ 17:** Chittick forwarded the email he sent to Beauchamp to Menaged  
13 and told Menaged that “I’m going to keep [Beauchamp] from running up any unessary  
14 [sic] bills, just talk to your guy and hadn [sic] if off ot [sic] him.” DSOF Exh. 17, June  
15 14, 2013 email from Chittick to Menaged at CH\_REC\_CHI\_0060457.

16 **Receiver’s Response (CSOF ¶ 17): Undisputed.**

17  
18 **DSOF ¶ 18:** Beauchamp informed Chittick that the fact of the Freo lawsuit  
19 would have to be disclosed in a revised POM that Beauchamp was working on, to which  
20 Chittick responded “1 sentence should suffice!” DSOF Exh. 18, June 14, 2013 email  
21 exchange between Chittick to Beauchamp (Exh. 113); DSOF Exh. 2 Expert Report of  
22 Neil J. Wertlieb at p. 10.

23 **Receiver’s Response (CSOF ¶ 18): Controverted in part.** The evidence cited  
24 in DSOF ¶ 18 does not show that Beauchamp merely informed Chittick that “the fact of  
25 the Freo lawsuit” is all that needed to be disclosed in the revised POM.

26 **DSOF ¶ 19:** DenSco’s POMs provided short explanations as to whether  
27 collateral was foreclosed on, or if loans did not yield a profit. The POM would then  
28

1 provide an explanation as to how that particular loan loss affected the company. DSOF  
2 Exh. 1, 2011 DenSco Private Offering Memorandum at BC\_002956-BC\_002959.

3 **Receiver's Response (CSOF ¶ 19): Undisputed.**

4 **DSOF ¶ 20:** A motion for summary judgment was granted in favor of Easy  
5 Investments on December 6, 2013. SOF Exh. 19, Minute Entry (CV 2013-007663).

6 **Receiver's Response (CSOF ¶ 20): Objection: Irrelevant. Otherwise**  
7 **undisputed**, except to note that the ruling cited in DSOF ¶ 20 resolved other issues  
8 beyond granting summary judgment for Easy Investments.  
9

10 **DSOF ¶ 21:** Beauchamp started updating the 2011 POM in May 2013, met with  
11 Chittick to discuss revisions, and continued to make edits to it through July 2013. DSOF  
12 Exh. 20, May – July 2013 Bryan Cave invoices (Exhs. 132, 133, and 139). Ultimately,  
13 Chittick failed to provide that the business and financial information needed to update  
14 the POM. DSOF Exh. 11, Beauchamp Depo. Tr. at 74:16 – 75:2, 287:22-24, 289:18-22.  
15 After Beauchamp left Bryan Cave and joined Clark Hill, Chittick requested that  
16 Beauchamp stop work on the 2013 POM update in August 2013. *Id.*

17 **Receiver's Response (CSOF ¶ 21): Controverted.** Beauchamp belatedly  
18 began updating the 2011 POM at Chittick's prompting, but he never finished it because,  
19 among other things, he was preoccupied with finding a new job after Bryan Cave  
20 decided to let him go. Chittick repeatedly prompted Beauchamp to finish updating the  
21 2011 POM, but Beauchamp never did so. Chittick did not ask Beauchamp to stop  
22 working on the update. The failure to update the 2011 POM rests squarely on  
23 Beauchamp's shoulders. Worse, Beauchamp knew that DenSco investors were  
24 continuing to invest even after the 2011 POM expired in July 2013. That is why he later  
25 helped develop a "work-out plan," to try to cover up his failure. (*See, e.g., CSOF ¶¶*  
26 *107-232.*)  
27  
28

1       **DSOF ¶ 22:** In November 2013, Chittick again learned that multiple properties  
2 purchased with DenSco loans were not secured in the first position. Menaged told  
3 Chittick that entities owned by him had double liened additional properties with loans  
4 from both DenSco and other hard money lenders, and that almost all of DenSco’s loans  
5 were at issue. According to Menaged, his wife had become critically ill and he had  
6 turned the day-to-day operations of his companies over to his cousin. The cousin  
7 requested loans for the same property from multiple lenders, and both lenders recorded  
8 deeds of trust. The cousin then absconded with the funds lent to Menaged’s entities.  
9 DSOF Exh. 38, Receiver’s Dec. 23, 2016 Status Report at p. 7-9; DSOF Exh. 6. The  
10 Receiver refers to this as the “First Fraud.” DSOF Exh. 38, Receiver’s Dec. 23, 2016  
11 Status Report at 7-9.

12       **Receiver’s Response (CSOF ¶ 22): Controverted in part.** The evidence cited  
13 in DSOF ¶ 22 does not establish that Menaged told Chittick, in November 2013, that  
14 “almost all of DenSco’s loans were at issue.”

15       **DSOF ¶ 23:** Menaged told other hard money lenders involved in the First Fraud  
16 similar stories. DSOF Exh. 4, Reichmann Depo. Tr. at 142:3-13 (Menaged explained  
17 that he “had an employee . . . a Jamaican woman who was running part of his business,  
18 and he had her fired a couple of weeks ago, and that what he was able to determine, was  
19 that he thinks there may be a theft issue and that she was responsible for the theft . . .  
20 .”). Reichman believed Menaged’s story and continued to believe he was a good  
21 businessman. *Id.* at 42:1-14 and 92:24-95:4.

22       **Receiver’s Response (CSOF ¶ 23): Controverted in part.** The “Jamaican  
23 woman” story that Menaged told to Reichmann is notably different from the “cousin”  
24 story that Menaged told to Chittick, which is additional evidence that if Beauchamp had  
25 advised Chittick to investigate the matter, the truth would have been revealed. (*See,*  
26 *e.g.,* CSOF ¶¶ 267-85.) Most of the portions of Reichmann’s deposition transcript cited  
27 in DSOF ¶ 23 are not in Defendants’ exhibits.  
28

1           **DSOF ¶ 24:** Without any attorney advice, Menaged and Chittick devised a plan  
2 in November and December 2013 to resolve the double liens. DSOF Exh. 21, Expert  
3 Report of David B. Weekly at ¶ 6 (“When Chittick learned about the double  
4 encumbering of loans, he and Menaged created a plan in an attempt to resolve the  
5 issue.”); DSOF Exh. 2, Expert Report of Neil J. Wertlieb at p. 15 (“Mr. Chittick and Mr.  
6 Menaged Create the ‘Plan’”); DSOF Exh. 4, Reichmann Depo. Tr. 144:25 – 145:3  
7 (Menaged told Reichmann that “Denny had agreed to become a partner with him in his  
8 wholesale business, so he would participate in profits from the wholesale business to  
9 reduce his exposure on the lending side.”).

10           **Receiver’s Response (CSOF ¶ 24): Controverted in part.** Although the initial  
11 plan was devised by Menaged and Chittick, the ultimate plan was developed largely by  
12 Clark Hill and Beauchamp. (*See, e.g.*, CSOF ¶¶ 280-339.)

13           **DSOF ¶ 25:** Chittick called Beauchamp on December 18, 2013 and mentioned  
14 that Menaged had double liened a few properties, but that the issue was being resolved.  
15 He provided no further details regarding the scope and extent of the First Fraud. DSOF  
16 Exh. 21, December 2013 Clark Hill invoice (Exh. 6); DSOF Exh. 22, Beauchamp’s  
17 response to Interrogatory No. 5.

18           **Receiver’s Response (CSOF ¶ 25): Controverted in part.** There is no  
19 documentation of what was discussed on the December 18, 2013 call, and especially no  
20 documentation that Chittick told Beauchamp that “the issue was being resolved.”  
21

22           **DSOF ¶ 26:** On January 6, 2014, Bob Miller, an attorney with the law firm  
23 Bryan Cave Leighton Pasiner (then known as Bryan Cave LLP), sent Chittick a letter  
24 on behalf of various lenders subject to the First Fraud (the “Bryan Cave Demand  
25 Letter”). The letter asserted that the lenders had advanced purchase money loans directly  
26 to trustees to buy more than 50 properties out of foreclosure, and had recorded deeds of  
27 trust to evidence their first position security interest. DenSco, however, had likewise  
28

1 recorded mortgages evidencing its purchase money loans for the same properties. DSOF  
2 Exh. 23 Bryan Cave Demand Letter (Exh. 942) at DIC0008607.

3 **Receiver's Response (CSOF ¶ 26): Undisputed.**

4 **DSOF ¶ 27:** The Bryan Cave Demand Letter (1) asserted that DenSco's claimed  
5 interest was a "practical and legal impossibility since . . . only the Lenders provided the  
6 applicable trustee with certified funds supporting the Borrowers purchase money  
7 acquisition for each of the Properties," (2) demanded that DenSco subordinate its  
8 alleged interests to their interests, and (3) threatened to bring claims for fraud and  
9 conspiracy to defraud, negligent misrepresentation, and wrongful recordation. *Id.*

10 **Receiver's Response (CSOF ¶ 27): Undisputed.**

11 **DSOF ¶ 28:** In a telephone call with Beauchamp the day the Bryan Cave demand  
12 letter was sent, Chittick explained that he and Menaged had "already fixed about 6  
13 loans." DSOF Exh. 24, January 6, 2014 notes of Beauchamp (Exh. 143).

14 **Receiver's Response (CSOF ¶ 28): Controverted in part.** The evidence cited  
15 in DSOF ¶ 28 does not show that Chittick "and Menaged" had fixed 6 loans.

16 **DSOF ¶ 29:** The next day, Chittick emailed Beauchamp and explained for the  
17 first time that the issue in the Bryan Cave Demand Letter had arisen because of  
18 Menaged's cousin. The email also explained that Chittick and Menaged had developed  
19 a plan to fix the problem and outlined the broad terms of the plan. Chittick explained to  
20 Beauchamp that "Scott and I spent a great amount of time creating a plan to fix this. Our  
21 plan is simple, sell off the properties and pay off both liens with interest and make  
22 everyone whole." The plan also involved both DenSco loaning Menaged an additional  
23 \$1 million and Menaged "bringing in 4-5 million dollars over the next 120 days . . . ."  
24 Chittick explained to Beauchamp that "i've been over this plan 100 times and the  
25 numbers and i truly believe this is the right avenue to fix the problem. we have been  
26 proceeding with this plan since November and we've already cleared up about 10% of  
27  
28

1 the total \$'s in question.” DSOF Exh. 6. *See also* DSOF Exh. 25, Menaged Depo. Tr. at  
2 134-135. Chittick’s email to Beauchamp on January 7, 2014 was the first time that  
3 Beauchamp was made aware of the First Fraud. DSOF Exh. 7, Plaintiff’s Seventh  
4 Supplemental Disclosure Statement at ¶¶ 122, 128, 130.

5 **Receiver’s Response (CSOF ¶ 29): Controverted in part.** Beauchamp had  
6 been put on notice of the double-lien problem as early as June 2013, but had failed to  
7 act. (*See* CSOF ¶¶ 110-14, 149-169 below.) The summary of the initial “plan” as stated  
8 in DSOF ¶ 29 is incomplete. And although the initial plan was devised by Menaged and  
9 Chittick, the ultimate plan was developed largely by Clark Hill and Beauchamp. (*See,*  
10 *e.g.*, CSOF ¶¶ 280-339.)

11 **DSOF ¶ 30:** Chittick’s email also explained that DenSco’s general business  
12 practice was to lend money directly to borrowers to purchase properties, rather than  
13 funding the loan to the trustee. DSOF Exh. 6.

14 **Receiver’s Response (CSOF ¶ 30): Controverted in part.** The evidence cited  
15 in DSOF ¶ 30 does not establish that it was DenSco’s “general business practice” to  
16 lend money directly to borrowers.

17 **DSOF ¶ 31:** On January 9, 2014, Chittick sent Beauchamp an email that appears  
18 to question the need or value of providing loans funds directly to a trustee. Beauchamp  
19 responded to Chittick that the process he was suggesting was “a procedure that does not  
20 work.” DSOF Exh. 26, January 9, 2014 email exchange between Beauchamp to Chittick  
21 (Exh. 147).

22 **Receiver’s Response (CSOF ¶ 31): Controverted in part.** Beauchamp’s  
23 response was: “Let me see what the other lenders got from the Trustee and we can make  
24 a better decision. There is either another way to do it or someone described a procedure  
25 that does not work.” (DSOF Ex. 26.) Later, Beauchamp advised Chittick that he could  
26 continue sending money directly to Menaged. (*See, e.g.*, CSOF ¶¶ 389-404 below.)  
27  
28

1       **DSOF ¶ 32:** Beauchamp repeatedly advised Chittick that he needed to fund  
2 DenSco's loans directly to a trustee to safeguard DenSco's money and its preferred lien  
3 priority. DSOF Exh. 11, Beauchamp Depo. Tr. at 358:18-19; 359-361; DSOF 25,  
4 Menaged Dep. Tr. at 239:1-9; DSOF Exh. 10, Defendants' Eighth Supplemental  
5 Disclosure Statement at p. 27.

6       **Receiver's Response (CSOF ¶ 32): Controverted in part.** The cited portions  
7 of Menaged's deposition transcript are not in Defendants' exhibits (although other  
8 portions are). Defendants are relying on Beauchamp's own self-serving account of what  
9 happened, whereas the evidence shows that in fact Beauchamp advised Chittick that he  
10 could continue sending money directly to Menaged. (*See, e.g.,* CSOF ¶¶ 389-404  
11 below.)

12       **DSOF ¶ 33:** On January 9, 2014, Beauchamp met with both Chittick and  
13 Menaged regarding the First Fraud. In that meeting, Chittick and Menaged once again  
14 asserted that Menaged's cousin was responsible for the double liening problem and that  
15 issues with 10% of the double liened properties had been resolved "in [the] last 45 days."  
16 DSOF Exh. 27, January 9, 2014 notes of Beauchamp (Exh. 145).

17       **Receiver's Response (CSOF ¶ 33): Controverted in part.** The description of  
18 the January 9, 2014 meeting in DSOF ¶ 33 leaves out important details, such as the fact  
19 that Beauchamp expressly agreed with Chittick and Menaged to hide the First Fraud  
20 from DenSco's investors. (*See, e.g.,* CSOF ¶¶ 346-348 below.)

21       **DSOF ¶ 34:** Chittick had already started advancing money to Menaged pursuant  
22 to their workout plan before he ever alerted Clark Hill as to any issues. DSOF Exh. 28,  
23 Receiver Analysis of \$1 million workout loan.

24       **Receiver's Response (CSOF ¶ 34): Objection: Irrelevant.** Neither aiding  
25 and abetting, nor acting in concert, requires that the defendants all agree on something  
26 at the same time. **Also, controverted in part.** Although the initial plan was devised by  
27  
28



1 Menaged and Chittick, the ultimate plan was developed largely by Clark Hill and  
2 Beauchamp. (*See, e.g.*, CSOF ¶¶ 280-339.)

3  
4 **DSOF ¶ 35:** Beauchamp asked Chittick if he had vetted Menaged’s “cousin”  
5 story. Chittick assured Beauchamp that he had. DSOF Exh. 11, Beauchamp Depo. Tr.  
6 at 335:18-22.

7 **Receiver’s Response (CSOF ¶ 35): Controverted.** The assertion in DSOF ¶  
8 35 relies entirely on Beauchamp’s self-serving account. Nothing in the extensive  
9 documentary record in this case supports that assertion.

10 **DSOF ¶ 36:** Beauchamp advised Chittick that the plan devised by Chittick and  
11 Menaged should be documented in writing. DSOF Exh. 29, January 15, 2014 email from  
12 Beauchamp to Chittick (Exh. 175) (“We still need to get Scott to sign the Term sheet  
13 and then the Forbearance Agreement to protect DenSco as we proceed.”) and DSOF  
14 Exh. 30, February 7, 2014 email from Beauchamp to Chittick (Exh. 343) (advising  
15 Chittick that he needs to have “a sworn set of facts that you can rely upon.”).

16 **Receiver’s Response (CSOF ¶ 36): Controverted in part.** Although the initial  
17 plan was devised by Menaged and Chittick, the ultimate plan was developed largely by  
18 Clark Hill and Beauchamp. (*See, e.g.*, CSOF ¶¶ 280-339.)

19  
20 **DSOF ¶ 37:** Beauchamp also instructed Chittick to make oral disclosures about  
21 the First Fraud to any DenSco investors who had decided to make new or roll over  
22 investments. DSOF Exh. 11, Beauchamp Depo. Tr. at 78:15 – 79:6, 158:24 – 159:4,  
23 159:14 – 160:7; 172:7-21. Such oral disclosures are permitted under Regulation D of  
24 the Securities Act of 1933. DSOF Exh. 31, Expert Report of Kevin Olson at p. 7-8;  
25 DSOF Exh. 2 at p. 38 (“Disclosures that are provided to investors in a private placement  
26 offering are *typically* contained in a written document . . . .”) (emphasis added).

27 **Receiver’s Response (CSOF ¶ 37): Controverted.** The assertion that  
28 Beauchamp instructed Chittick to make “oral disclosures” relies entirely on

1 Beauchamp's self-serving account and is contradicted by the evidence. (*See, e.g.*, CSOF  
2 ¶¶ 340-385.)

3  
4 **DSOF ¶ 38:** Chittick understood that he had an obligation to disclose the First  
5 Fraud. He told Menaged on February 11, 2014 that DenSco had not "taken any new  
6 investors, so if I do, i have to disclose a lotto [sic] to them, which is all about you!"  
7 DSOF Exh. 32, February 11, 2014 from Chittick to Menaged (Exh. 548).

8 **Receiver's Response (CSOF ¶ 38): Controverted.** The evidence shows that  
9 Beauchamp advised Chittick that he could delay disclosure to investors, perhaps  
10 indefinitely. (*See, e.g.*, CSOF ¶¶ 340-385.) Moreover, the assertion in DSOF ¶ 38, even  
11 if construed favorably to Defendants, does not show that Chittick understood he had an  
12 obligation to disclose the First Fraud to *existing* investors whose investments would roll  
13 over.

14 **DSOF ¶ 39:** Beauchamp also reminded Chittick that DenSco had to fund loans  
15 to trustees directly, rather than the borrowers themselves. DSOF Exh. 11, Beauchamp  
16 Depo. Tr. at 358:18-19; 359-361; DSOF Menaged Dep. Tr. at 239:1-9. Chittick averred  
17 that he understood that the procedure was incorrect and that he would fix it moving  
18 forward. DSOF Exh. 11, Beauchamp Depo. Tr. at 364:17-24. Clark Hill believed that  
19 representation. DSOF Exh. 33, Schenck Depo. Tr. at 106:22-107:3 (testifying that  
20 "[Clark Hill] did not know what Denny was going to . . . still go[] forward with his  
21 practices.").

22 **Receiver's Response (CSOF ¶ 39): Controverted.** Beauchamp advised  
23 Chittick that he could continue sending money directly to Menaged. (*See, e.g.*, CSOF  
24 ¶¶ 389-404 below.)

25  
26 **DSOF ¶ 40:** A Term Sheet was executed by Menaged and Chittick on  
27 approximately January 17, 2014 that broadly outlined the plan devised by Menaged and  
28 Chittick. The key points of the Term Sheet were that:

- a. Menaged agreed to pay off any shortfall on the loans as the double-encumbered properties were sold or refinanced by borrowing \$1 million from a third party and liquidating assets worth \$4-5 million;
- b. Menaged agreed to obtain a \$10 million life insurance policy naming DenSco as the beneficiary;
- c. Menaged admitted that the DenSco loans were secured by deeds of trust that were intended to be in a first lien position; and
- d. DenSco agreed to loan up to \$1 million to Menaged for purposes of purchasing and flipping or renting additional properties, with all profits used to pay off the loans on the double-encumbered properties.

DSOF Exh. 34, Term Sheet (Exh. 192).

**Receiver's Response (CSOF ¶ 40): Controverted in part.** Although the initial plan was devised by Menaged and Chittick, the ultimate plan was developed largely by Clark Hill and Beauchamp. (*See, e.g.*, CSOF ¶¶ 280-339.) Clark Hill and Beauchamp got involved more than a week before the Term Sheet was executed and helped develop the substance of the Term Sheet. (*See id.*) Moreover, Clark Hill and Beauchamp continued to be involved for the next several months and helped develop a 24-page Forbearance Agreement, which was substantially different from the Term Sheet. (*See id.*)

**DSOF ¶ 41:** Prior to signing the Term Sheet, Beauchamp advised Chittick not to accept many of the terms in the Term Sheet recommended by Menaged because they were “not in your legal best interest.” DSOF Exh. 35, January 16, 2014 email exchange between Beauchamp and Chittick at DIC0006221 – DIC0006222.

**Receiver's Response (CSOF ¶ 41): Controverted in part.** Beauchamp advised Chittick against only a few terms, not “many.” Moreover, Beauchamp's stated interest in protecting Chittick is additional evidence that he was not interested in protecting his actual client, DenSco. (*See, e.g.*, CSOF ¶¶ 280-339.)

1           **DSOF ¶ 42:** Notwithstanding Beauchamp’s advice to the contrary, DenSco  
2 executed the Term Sheet and Beauchamp began preparing a more formal Forbearance  
3 Agreement. Beauchamp believed the Forbearance Agreement would be completed  
4 before the end of January. DSOF Exh. 36, January 21, 2014 email from Beauchamp to  
5 Chittick at DIC0006528 (“I am just very concerned about the payoffs getting so far  
6 ahead of the documentation. I have authorized the preparation of the Forbearance  
7 Agreement and the related documents. Under normal circumstances, this should be  
8 finalized and signed before your advance all of this additional money. We plan to get  
9 the documents to you and Scott later this week. Hopefully, we can get the documents  
10 signed later this week.”).

11           **Receiver’s Response (CSOF ¶ 42): Controverted.** There is no evidence that  
12 Beauchamp advised Chittick not to execute the Term Sheet or pursue the Forbearance  
13 Agreement on behalf of DenSco. In fact, Beauchamp was actively involved in, and  
14 approved, both processes. (*See, e.g.*, CSOF ¶¶ 280-339.)

15           **DSOF ¶ 43:** Menaged retained Jeffrey Goulder at Stinson Morrison to negotiate  
16 the Forbearance Agreement on his behalf. DSOF Exh. 37, January 15, 2014 email  
17 exchange between Beauchamp and Chittick (Exh. 165) and January 13, 2014 email from  
18 Menaged to Beauchamp (Exh. 155) (“I am meeting with my attorney wed at 1030 am.  
19 I will discuss with him about what to provide and what not to. Me, you and Denny are  
20 on the same side here, I just know you can’t advise me legally so I asked to meet with  
21 my attorney.”).

22           **Receiver’s Response (CSOF ¶ 43): Controverted in part.** Although Menaged  
23 retained Goulder for part of the negotiations, he did not retain Goulder for the crucial  
24 parts, such as the January 9, 2014 meeting and after February 25, 2014. (*See* CSOF ¶¶  
25 280-85, 313, 322.)  
26  
27  
28

1       **DSOF ¶ 44:** While negotiating the Forbearance Agreement, Beauchamp  
2 repeatedly pushed back on edits requested by Menaged, his counsel, and Chittick, and  
3 reminded Chittick of DenSco's fiduciary duties to its investors:

- 4       a.     February 4, 2014: **"AT YOUR REQUEST, I DID NOT INCLUDE**  
5             **ANY HARSH OR SIGNIFICANTLY PRO-LENDER**  
6             **PROVISIONS. . . .** You can help and have helped Scott, but you cannot  
7             OBLIGATE DenSco to further help Scott, because that would breach  
8             your fiduciary duty to your investors." DSOF Exh. 40, February 4, 2014  
9             email from Beauchamp to Chittick at DIC0006673.
- 10       b.    February 7, 2014: "this agreement needs to not only protect [Menaged]  
11             from having this agreement used as evidence of fraud against him in a  
12             litigation, the agreement needs to comply with Denny's fiduciary  
13             obligations to his investors . . . ." DSOF Exh. 41, February 7, 2014  
14             email from Beauchamp to Goulder (Exh. 343).
- 15       c.    February 9, 2014: "you are limited in what risk or liability you can  
16             assume. Your fiduciary duty to your investors makes this a difficult  
17             balancing act." DSOF Exh. 42, February 9, 2014 email from  
18             Beauchamp to Chittick at DIC0006708.
- 19       d.    February 14, 2014: "[Menaged's attorney] clearly thinks he can force  
20             you to agree to accept a watered down agreement and give up  
21             substantial rights that you should not have to give up. Unfortunately, it  
22             is not your money. It is your investors' money. So you have a fiduciary  
23             duty." DSOF Exh. 43, February 14, 2014 email from Beauchamp to  
24             Chittick (Exh. 75).
- 25       e.    February 25, 2014: "[Menaged's attorney's] demands and changes have  
26             pretty much killed your ability to sign the Forbearance Agreement,  
27             which I believe [Menaged's attorney] wanted form the very beginning."  
28

DSOF Exh. 44, February 25, 2014 email from Beauchamp to Chittick (Exh. 360).

f. March 13, 2014: “In order to comply with the specific securities disclosure requirements, I left \_\_\_\_ (blank) the amount of time for Scott to be able to review and comment upon the proposed disclosure (suggest 48 hours) and I did not give him the right to disapprove and block what you can or cannot disclose. DenSco and you as the promoter of DenSco’s offering have to make the decisions as to what is to be disclosed or not. With respect to timing, we are already **very late** in providing information to your investors about this problem and the resulting material changes from your business plan. We cannot give Scott and his attorney any time to cause further delay in getting this Forbearance Agreement finished and the necessary disclosure prepared and circulated.” DSOE Exh. 45, March 13, 2014 email from Beauchamp to Chittick (Exh. 383).

**Receiver’s Response (CSOF ¶ 44): Controverted in part.** Although Beauchamp pushed back on some of Menaged’s proposals, he accepted many others. (See, e.g., CSOF ¶¶ 280-339.) Moreover, the fact that Beauchamp was wringing his hands about Chittick’s fiduciary duties to investors is additional evidence that Beauchamp *knew* that he was helping Chittick breach those duties. After all, Beauchamp advised Chittick that he could delay disclosure to investors, notwithstanding those duties. (See, e.g., CSOF ¶¶ 340-385.)

**DSOF ¶ 45:** Beauchamp sought counsel from other Clark Hill lawyers regarding Menaged’s demands for protections in the event of a bankruptcy filing. DSOE Exh. 46, February 20, 2014 email from Beauchamp to R. Gordon, K. Wakim and J. Applebaum (Exh. 356).

**Receiver’s Response (CSOF ¶ 45): Undisputed.**

1           **DSOF ¶ 46:** The Forbearance Agreement was also delayed several months  
2 because Chittick refused to provide Clark Hill with accurate information regarding the  
3 extent and scope of the First Fraud subject to the Forbearance Agreement, despite Clark  
4 Hill’s repeated requests for such information. For example, Clark Hill asked Chittick on  
5 February 3, 2014 to “list all of the properties affected by this double-funding with  
6 separate sublists showing the properties that have already been resolved” in a document  
7 that would be appended as Exhibit A to the Forbearance Agreement. Chittick responded  
8 that he wouldn’t have a complete list for another three weeks, to which Clark Hill  
9 replied, “We need to know the list that existed when this problem was first recognized  
10 and you started to correct it in November and the changes since that time until the  
11 Forbearance Agreement is signed.” DSOF Exh. 47, February 3, 2014 email exchange  
12 between Beauchamp and Chittick (Exh. 329). Chittick did not provide any detail  
13 regarding the balance of loans subject to the First Fraud until March 21, 2014. DSOF  
14 Exh. 48, March 21, 2014 email from Chittick to Beauchamp (Exh. 392). But even then,  
15 the detail provided by Chittick was incorrect and underestimated the true balance of  
16 loans subject to the Forbearance Agreement. DSOF Exh. 49, Authorization to Update  
17 Forbearance Agreement at DIC0005823; DSOF Exh. 11, Beauchamp Depo. Tr. at  
18 177:22-178:1.

19           **Receiver’s Response (CSOF ¶ 46): Controverted in part.** The main reason  
20 the Forbearance Agreement took several months to write was that it was a complex and  
21 evolving document subject to negotiations, which Clark Hill and Beauchamp actively  
22 participated. (*See, e.g.*, CSOF ¶¶ 280-339.)

23           **DSOF ¶ 47:** Throughout the negotiation of the Forbearance Agreement, Chittick  
24 and Menaged complained about lawyers and the edits Beauchamp was making to the  
25 Forbearance Agreement:

- 26           a.       February 3, 2014: Chittick writes to Menaged regarding the efforts to  
27                      draft a Forbearance Agreement, and asks if Menaged had “put a call in  
28

1 to [his attorney] to get him on the phone with [Beauchamp] and pound  
2 through” what Chittick refers to as “their language arts assignment”.

3 DSOF Exh. 50, February 3, 2014 email from Chittick to Menaged at  
4 CH\_REC\_MEN\_0027814.

5 b. February 7, 2014: Regarding revisions to the draft Forbearance  
6 Agreement, Chittick states “after any changes we agree to and make,  
7 david will amek [sic] them them [sic]. I tell david to send it to jeff, you  
8 tell jeff, the terms are agreeable between us, and they can only fix the  
9 spelling!” DSOF Exh. 51, February 7, 2014 email from Chittick to  
10 Menaged at CH\_REC\_MEN\_0027218.

11 c. February 14, 2014: Chittick and Menaged complain amongst  
12 themselves that “these lawyers are trying to prevent progress” and  
13 increase their fees. DSOF Exh. 52, February 14, 2014 email from  
14 Chittick to Menaged at CH\_REC\_MEN\_0026600.

15 d. February 15, 2014: Chittick again emails Menaged regarding his  
16 frustration with Beauchamp for wanting to know what Menaged’s  
17 “points of contention” are with respect to the draft Forbearance  
18 Agreement. Chittick complains that “attorneys’ sole purpose is to self  
19 perserverance [sic].” DSOF Exh. 53, February 15, 2014 email from  
20 Chittick to Menaged at CH\_REC\_MEN\_0026580.

21 **Receiver’s Response (CSOF ¶ 47): Objection: Irrelevant. Also,**  
22 **controverted in part.** Chittick’s complaints were motivated by the fact that Clark Hill  
23 and Beauchamp were racking up a huge bill. Indeed, Clark Hill billed DenSco for 329.7  
24 hours of attorney work on this matter from January 2014 through April 2014 alone, for  
25 a bill of \$136,190.00. (See CSOF ¶ 293.)

26 **DSOF ¶ 48:** Menaged has confirmed that Chittick disliked lawyers and the fees  
27 associated with them. DSOF Exh. 25, Menaged Depo. Tr. at 38:13-16.  
28



1           **Receiver's Response (CSOF ¶ 48): Objection: Irrelevant. Also,**  
2 **controverted in part.** The evidence cited in DSOF ¶ 48 simply shows that Menaged  
3 said: "I know he wasn't happy when he got the bill."

4           **DSOF ¶ 49:** Chittick repeatedly shared privileged communications between  
5 Beauchamp and DenSco with Menaged:

- 6           a.     February 4, 2014: Chittick writes to Menaged that he "would forward  
7                 you three emails dave sent me tonight, but the summary is basically, it's  
8                 become a battle," to which Menaged responds "I will call you in an hour  
9                 or so." DSOF Exh. 54, February 4, 2014 email from Chittick to  
10                Menaged at CH\_REC\_MEN\_0027591.
- 11           b.     February 5, 2014: Chittick writes to Menaged that he had directed  
12                 Beauchamp to "make some concenssions [sic] that you and I agreed  
13                 to. . . ." DSOF Exh. 55, February 5, 2014 email from Chittick to  
14                 Menaged at CH\_REC\_MEN\_0027482.
- 15           c.     February 8, 2014: Chittick writes email to Menaged titled "david" and  
16                 summarizes conversation between Beauchamp and Chittick. DSOF Exh.  
17                 56, February 8, 2014 email from Chittick to Menaged at  
18                 CH\_REC\_MEN\_0027195.

19           **Receiver's Response (CSOF ¶ 49): Controverted in part.** If a client shares a  
20 communication, then it is by definition not privileged.

21           **DSOF ¶ 50:** Menaged has confirmed that Chittick revealed protected  
22 communications from Beauchamp regularly. DSOF Exh. 25, Menaged Depo. Tr. at  
23 38:13-16.

24           **Receiver's Response (CSOF ¶ 50): Controverted in part.** The evidence cited  
25 in DSOF ¶ 50 does not support the assertion therein. The evidence cited in DSOF ¶ 50  
26 is just the part of Menaged's deposition where he talks about how Chittick "wasn't  
27 happy when he got the bill."  
28

1       **DSOF ¶ 51:** The Forbearance Agreement became effective on April 14, 2014.  
2 Prior to signing the agreement, Menaged told Chittick that he had signed it “even though  
3 it is not anymore a true understanding of what we are doing. . . . So lots of this is no  
4 longer valid or True [sic], but I signed it so at least you have it for and not to have Dave  
5 Change [sic] it again and again with every move we make.” DSOF Exh. 57, April 3,  
6 2014 email from Menaged to Chittick at CH\_REC\_CHI\_0068720.

7       **Receiver’s Response (CSOF ¶ 51): Controverted in part.** The evidence cited  
8 in DSOF ¶ 51 does not establish when the Forbearance Agreement became effective.

9       **DSOF ¶ 52:** The Forbearance Agreement addressed the following points:

- 10       a. Menaged identified the facts that led to the double lien issue and the  
11 scope of the issue;  
12       b. Menaged acknowledged his obligation to discharge the liens of the  
13 others lenders;  
14       c. Menaged and his entities agreed to pay off the double-encumbered loans  
15 by liquidating additional assets, renting or selling real estate, recovering  
16 stolen funds, and obtaining \$4.2 million in outside financing;  
17       d. Menaged agreed to provide additional security and guarantees,  
18 including a \$10 million life insurance policy naming DenSco as  
19 beneficiary; and  
20       e. DenSco agreed to extend up to \$6 million in additional financing to  
21 Menaged (and defer the collection of interest on defaulted loans) for  
22 purposes of purchasing and flipping or renting additional properties,  
23 with all profits used to pay off the loans on the double-encumbered  
24 properties.

25       DSOF Exh. 58, Forbearance Agreement at DIC0008036.

26       **Receiver’s Response (CSOF ¶ 52): Objection: Incomplete. Also,**  
27 **controverted in part.** The Forbearance Agreement was a complex 24-page document  
28

1 hammered out over the course of more than three months between Beauchamp, Chittick,  
2 and Menaged. (*See, e.g.*, CSOF ¶¶ 280-399.) The five-point summary in DSOF ¶ 52 is  
3 both materially incomplete and materially inaccurate. (*See id.*)

4       **DSOF ¶ 53:** Chittick ultimately lent Menaged more than \$14 million under the  
5 Forbearance Agreement. DSOF Exh. 15, Expert Report of David R. Perry at p. 13.

6       **Receiver's Response (CSOF ¶ 53): Controverted in part.** The cited page of  
7 David Perry's expert report is not in Defendants' exhibits.  
8

9       **DSOF ¶ 54:** After the Forbearance Agreement was signed, an Authorization To  
10 Update the Forbearance Agreement was executed to correct the loan balance subject to  
11 the First Fraud. DSOF Exh. 59, April 18, 2014 email exchange between Beauchamp and  
12 Chittick (Exh. 97A and Exh. 98).

13       **Receiver's Response (CSOF ¶ 54): Controverted in part.** The evidence cited  
14 in DSOF ¶ 54 does not show whether, or when, the Authorization to Update was  
15 executed.

16       **DSOF ¶ 55:** Clark Hill also began to immediately update the 2011 POM.  
17 Schenck emailed a draft of the 2014 POM to Beauchamp on May 14, 2014. The draft  
18 included a description of the First Fraud and Forbearance Agreement. DSOF Exh. 60  
19 May 14, 2014 email from Schenck to Beauchamp with 2014 POM attached (Exh. 101).  
20 The draft had numerous blanks that required information from DenSco, and included  
21 numerous comments and questions for Chittick. *Id.*

22       **Receiver's Response (CSOF ¶ 55): Controverted.** Clark Hill certainly did not  
23 "begin to immediately" update the 2011 POM. That had expired *nearly a year earlier*  
24 because of Beauchamp! And Beauchamp repeatedly advised Chittick that he could  
25 delay updating the POM. (*See* CSOF ¶¶ 107-362 below.) Clark Hill's effort in May  
26 2014 was a far-too-late, and only half-hearted, effort. (*See, e.g.*, CSOF ¶¶ 363-375  
27 below.) Worse, the draft emailed from Schenck to Beauchamp was only a "first draft."  
28

1 (CSOF ¶ 369 below.) It said nothing about, for example, Chittick's gross negligence in  
2 managing DenSco's lending practices. (CSOF ¶ 379 below.)

3  
4 **DSOF ¶ 56:** Beauchamp provided the draft 2014 POM to Chittick and requested  
5 that he at least approve the description of the double lien issue and the workout. Chittick  
6 refused. Beauchamp terminated DenSco as a securities client in May 2014 and stopped  
7 performing securities work for DenSco. DSOF Exh. 11, Beauchamp Depo. Tr. at  
8 121:20-122:4, 164:1-14; DSOF Exh. 33, Schenck Depo Tr. at 111:5-112:12. Chittick  
9 represented at that time that he was in the process of obtaining new counsel. DSOF Exh.  
10 11, Beauchamp Depo. Tr. at 212:13-16.

11 **Receiver's Response (CSOF ¶ 56): Controverted.** Chittick never refused to  
12 approve the description of the double lien issue and the workout in the draft 2014 POM,  
13 nor did Beauchamp terminate representation of DenSco in any way in May 2014. Both  
14 of these claims by Defendants are contradicted by the weight of the evidence. (*See*  
15 CSOF ¶¶ 369-84, 433-466 below.)

16 **DSOF ¶ 57:** Clark Hill continued to do limited work related to the Authorization  
17 To Update the Forbearance Agreement in June 2014, necessitated by Chittick's failure  
18 to provide accurate, up-to-date information regarding the double lien properties.  
19 DSOF Exh. 59.

20 **Receiver's Response (CSOF ¶ 57): Controverted in part.** The evidence cited  
21 in DSOF ¶ 57 is an email dated April 18, 2014, which says nothing about what Clark  
22 Hill, or anyone, did in June 2014.

23  
24 **DSOF ¶ 58:** Chittick and Menaged purposely delayed sending Clark Hill the  
25 necessary paperwork until mid-June. DSOF Exh. 61, email exchanges between  
26 Beauchamp, Chittick and Menaged at CH\_REC\_CHI\_0012589,  
27 CH\_REC\_CHI\_0012644 and CH\_REC\_CHI\_0012840. The update to the Forbearance  
28

1 Agreement was signed on June 18, 2014. DSOF Exh. 62, Authorization to Update  
2 Forbearance Documents (Exh. 410).

3 **Receiver's Response (CSOF ¶ 58): Controverted in part.** The evidence cited  
4 in DSOF ¶ 58 does not establish that Chittick and Menaged "purposely delayed" sending  
5 the necessary paperwork.

6 **DSOF ¶ 59:** Clark Hill did no further work on behalf of DenSco until 2016. At  
7 that point, Chittick informed Beauchamp that DenSco had issued an updated POM.  
8 DSOF Exh. 11, Beauchamp Depo. Tr. at 230:4-8.

9 **Receiver's Response (CSOF ¶ 59): Controverted.** Beauchamp met with  
10 Chittick to discuss DenSco's problems in 2015. (See CSOF ¶¶ 376-84 below.) There  
11 is no evidence of Beauchamp's self-serving assertion that Chittick told him DenSco had  
12 issued an updated POM.

13 **DSOF ¶ 60:** Beginning on January 22, 2014, while the Forbearance Agreement  
14 was being negotiated, Menaged began perpetrating another fraud on DenSco, known as  
15 the "Second Fraud" according to the Receiver. DSOF Exh. 38, Receiver's Dec. 23, 2016  
16 Status Report at 7-9. That Second Fraud gave rise to nearly all of the damages attributed  
17 to Clark Hill in this case. DSOF Exh. 21, Expert Report of David B. Weekly at ¶ 44.

18 **Receiver's Response (CSOF ¶ 60): Controverted in part.** The Second Fraud  
19 was not the sole cause of the damages attributed to Clark Hill. Had Beauchamp properly  
20 advised DenSco rather than aid and abet Chittick's breaches of fiduciary duty, these  
21 damages would not have occurred. (See, e.g., CSOF ¶ 407 below.)

22 **DSOF ¶ 61:** Pursuant to the Second Fraud, DenSco would loan money to  
23 Menaged to purchase properties and Menaged would create fictitious documents that  
24 would give the impression that Menaged had purchased the properties. Menaged would  
25 first utilize his banks (US Bank and Chase Bank) to obtain cashiers' checks made out to  
26 various trustees, take pictures of those checks to prove to Chittick that they had been  
27  
28

1 issued, and immediately redeposit the funds back into his personal accounts. Menaged  
2 would then falsify trustee sales receipts to makes it look like Menaged purchased the  
3 property. DSOF Exh. 63, Complaint (CV2019-011499). Menaged procured more than  
4 1,300 checks for \$319 million dollars through this Second Fraud. *Id.* at ¶¶ 63, 117. The  
5 Receiver acknowledges in its lawsuit against the various banks that participated in the  
6 Second Fraud that “[b]ut for [the banks’] substantial assistance, Menaged could not have  
7 scammed DenSco out of tens-of-millions of dollars.” *Id.* at Introduction.

8 **Receiver’s Response (CSOF ¶ 61): Controverted in part.** The Second Fraud  
9 was not the sole cause of the damages attributed to Clark Hill. Had Beauchamp properly  
10 advised DenSco rather than aid and abet Chittick’s breaches of fiduciary duty, these  
11 damages would not have occurred. (*See, e.g.*, CSOF ¶ 407 below.)

12 **DSOF ¶ 62:** Menaged claims that Chittick knew that Menaged was not  
13 purchasing properties after January 9, 2014. DSOF Exh. 25, Menaged Depo. Tr. at 152-  
14 153.

15 **Receiver’s Response (CSOF ¶ 62): Controverted in part.** The evidence cited  
16 in DSOF ¶ 62 does not support the assertion therein. Menaged did not remember when  
17 he told Chittick that he was not actually purchasing properties, but knows that it “had to  
18 be after the forbearance agreement was signed” because the Second Fraud “was not  
19 happening until after -- until after we discussed everything with [Beauchamp].” DSOF  
20 Ex. 25 at 153:4-16.)

21 **DSOF ¶ 63:** Chittick committed suicide on July 28, 2016. DSOF Exh. 64,  
22 Complaint (CV 2017-013832).

23 **Receiver’s Response (CSOF ¶ 63): Undisputed.**

24 **DSOF ¶ 64:** On December 9, 2016, the Receiver filed a Notice of Claim Against  
25 Estate of Denny J. Chittick that charged Chittick with responsibility for more than \$45  
26 million in losses DenSco experienced because of the frauds perpetrated by Menaged.  
27  
28

DSOF Exh. 65, Notice of Claim Against Estate of Denny J. Chittick. The Receiver specifically alleged that Chittick was at fault for “aiding and abetting [Menaged] in his torts against DenSco,” defrauding DenSco and its investors, and committing “gross negligence” through his reckless lending practices. *Id.* The Receiver also alleged that over time, Chittick had taken millions of dollars out of DenSco after he learned about the double-liening issue. *Id.*

**Receiver’s Response (CSOF ¶ 64): Controverted in part.** The Receiver does not dispute that he filed a Notice of Claim against the Estate of Denny Chittick on December 9, 2016, but disputes DSOF ¶ 64 to the extent it purports to summarize the Receiver’s Notice of Claim.

**DSOF ¶ 65:** The Receiver ultimately settled with the Chittick Estate for between \$1.8 and \$3.0 million. DSOF Exh. 66, Petition to Approve Settlement Agreement Between Receiver, Shawna Chittick Heuer, Individually And As Personal Representative of Estate of Denny J. Chittick, Paul Theut As Guardian Ad Litem for Ty and Dillon Chittick and Ranasha Chittick at ¶ 37.

**Receiver’s Response (CSOF ¶ 65): Undisputed.**

**DSOF ¶ 66:** Menaged was indicted in the United States District Court, District of Arizona, for Wire Fraud, Aggravated Identity Theft, Conspiracy to Defraud, and Forfeiture related to the Second Fraud in October 2017. DSOF Exh. 67, Indictment (CR-17-00680-PHXGMS(MHB)). He ultimately pled guilty to Conspiracy to Commit Bank Fraud, Aggravated Identity Theft, and Money Laundering Conspiracy and was sentenced to 17 years in federal prison. DSOF Exh. 68, Judgment In A Criminal Case (CR-17-00680-PHX-GMS(MHB)). As part of his plea, Menaged admitted that he “defrauded DenSco by embezzling millions of dollars without purchasing properties with the loans obtained from DenSco” by using “completely fabricated” documents. DSOF Exh. 69, Plea Agreement (CR-17-00680-PHXGMS(MHB)). Menaged also pled guilty to defrauding Wells Fargo and Synchrony Bank out of \$2.1 million, a fraud

1 Menaged perpetrated “largely to obtain cash quickly after” his fraud against DenSco  
2 “no longer provided the defendant with a source of cash.” *Id.*

3 **Receiver’s Response (CSOF ¶ 66): Undisputed.**

4 **DSOF ¶ 67:** On or about August 4, 2017, Menaged and his wife consented to  
5 the entry of a nondischargeable civil judgment in favor of the Receiver for \$31 million.  
6 The Receiver agreed to reduce the amount Menaged and his wife owed DenSco by  
7 whatever it collected from other parties. DSOF Exh. 70, Receiver’s Petition For Order  
8 Approving Settlement Agreement With Yomtov Scott Menaged and Francine Menaged  
9 at ¶ 33 and accompanying Judgment. The Receiver also obtained a cooperation  
10 agreement from Menaged. *Id.*

11 **Receiver’s Response (CSOF ¶ 67): Controverted in part.** The evidence cited  
12 in DSOF ¶ 67 does not establish that the Receiver unconditionally “agreed to reduce the  
13 amount Menaged and his wife owed DenSco by whatever it collected from other  
14 parties.”

15 **DSOF ¶ 68:** The Receiver filed suit against Clark Hill on October 16, 2017 and  
16 alleged claims for legal malpractice and aiding and abetting Chittick’s breach of  
17 fiduciary duties. DSOF Exh. 64.

18 **Receiver’s Response (CSOF ¶ 68): Undisputed.**

19 **DSOF ¶ 69:** The Receiver alleges that Clark Hill is jointly and severally liable  
20 with Menaged and Chittick for the damages resulting to DenSco under A.R.S. § 12-  
21 2506. Specifically, the Receiver asserts that Clark Hill is jointly and severally liable  
22 with Menaged and Chittick because: (1) “Clark Hill initially advised DenSco that it did  
23 not need to disclose material facts to investors while a forbearance agreement was drawn  
24 up”; (2) “Clark Hill negotiated and recommended a forbearance agreement between  
25 DenSco and Menaged that itself was a breach of fiduciary duty to DenSco’s investors”  
26 because it “subordinat[ed] DenSco’s debt to other hard money lenders and was a fig leaf  
27  
28



1 to fool investors that DenSco was working itself out of an overwhelming debt”; and (3)  
2 “Clark Hill sat quietly by and allowed DenSco over a year to work itself out of the  
3 Menaged fraud problem – telling Chittick that DenSco could do so without disclosing a  
4 thing to investors.” Those enumerated acts constitute “multiple acts of aiding and  
5 abetting” according to the Plaintiff, making “Clark Hill jointly and severally liable with  
6 both Chittick and Menaged for damages” because the three “acted in concert to create  
7 an agreement that on its face and in practice subordinated Densco’s [sic] notes into  
8 junior positions.” DSOF Exh. 7, Plaintiff’s Seventh Supplemental Disclosure Statement  
9 at p. 125-26; DSOF Exh. 71, May 13, 2019 letter from Campbell to Bae.

10 **Receiver’s Response (CSOF ¶ 69): Controverted in part.** The Receiver  
11 admits that he has alleged that Clark Hill is jointly and severally liable with Menaged  
12 and Chittick under A.R.S. § 12-2506 and admits that DSOF ¶ 69 accurately quotes the  
13 evidence cited therein. The Receiver disputes any inference that the May 13, 2019 letter  
14 to SoJin Bae was intended to limit the Receiver’s grounds for claiming joint and several  
15 liability. The pages of Plaintiff’s Seventh Supplemental Disclosure Statement cited in  
16 DSOF ¶ 69 are not in Defendants’ exhibits.

17 **DSOF ¶ 70:** The Receiver alleges that Clark Hill aided and abetted Chittick  
18 breaching his fiduciary duties to DenSco in no less than 11 different ways Chittick.  
19 DSOF Exh. 7, Plaintiff’s Seventh Supplemental Disclosure Statement at p. 115-19.

20 **Receiver’s Response (CSOF ¶ 70): Controverted in part.** The pages of  
21 Plaintiff’s Seventh Supplemental Disclosure Statement cited in DSOF ¶ 69 are not in  
22 Defendants’ exhibits. However, the Receiver generally agrees that he has alleged that  
23 Clark Hill aided and abetted Chittick’s breaches of fiduciary duty to DenSco in a  
24 multitude of ways.  
25  
26  
27  
28

1 **PLAINTIFF'S ADDITIONAL STATEMENT OF FACTS**

2 (CSOF ¶¶ 71-468)

3  
4 **A. Background Facts for the Period April 2001 to September 2011**

5 **1. DenSco's Formation and Operations Through 2003**

6 **71.** DenSco was established in April 2001 as an Arizona corporation. (*See*  
7 *Complaint in Arizona Corporation Commission v. DenSco Investment Corporation*  
8 *(Case No. CV 2016-014142)* at pg. 1, Beauchamp Dep. Exhibit 292, attached as **CSOF**  
9 **Ex. 1.**)

10 **72.** Denny Chittick formed DenSco to make short-term loans to companies  
11 buying or investing in real estate. DenSco used money raised from investors to make  
12 those loans. (*See* DenSco's Confidential Private Offering Memorandum dated July 1,  
13 2011 (the "2011 POM") at pg. 40, Beauchamp Dep. Exhibit 432, attached as **CSOF**  
14 **Ex. 2;** printout of the "Company Management" page from DenSco website dated  
15 June 17, 2013, Beauchamp Dep. Exhibit 115, attached as **CSOF Ex. 3.**)

16 **73.** Chittick was the sole shareholder, director, officer, and employee of  
17 DenSco. (*See* 2011 POM at pgs. 40-41, Beauchamp Dep. Exhibit 432, attached as  
18 **CSOF Ex. 2.**)

19 **74.** From April 2001 through June 2011, [DenSco] engaged in 2,622 loan  
20 transactions. (*See* 2011 POM at pg. 1, Beauchamp Dep. Exhibit 432, attached as **CSOF**  
21 **Ex. 2.**)

22 **75.** DenSco made high-interest loans with defined loan-to-value ratios to  
23 residential property remodelers, who purchased houses through foreclosure sales all of  
24 which were secured by real estate deeds of trust ('Trust Deeds') recorded against  
25 Arizona residential properties. (*See* 2011 POM at pg. 1, Beauchamp Dep. Exhibit 432,  
26 attached as **CSOF Ex. 2.**)

27 **76.** Chittick raised money from investors by issuing general obligation notes  
28 (the "Notes") at variable interest rates. The Notes were secured by a general pledge of

all assets owned by or later acquired by DenSco. (*See* 2011 POM at pg. (i), Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2.**)

**77.** DenSco's largest assets were the Trust Deeds, which were intended to be secured through first-position trust deeds. (*See* 2011 POM at pg. (i), Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2.**)

## **2. Beauchamp Was DenSco's Securities Lawyer**

### **a. DenSco First Hired Beauchamp in 2003 to Advise the Company on Securities Law Issues.**

**78.** David Beauchamp is an attorney. He describes himself as practicing primarily in the areas of corporate law, securities, venture capital and private equity transactions. (*See* Beauchamp bio, Schenck Dep. Exhibit 3, attached as **CSOF Ex. 4.**)

**79.** Beauchamp started providing securities advice to DenSco in the early 2000s, while he was a partner at the law firm Gammage & Burnham. (*See* Defs.' Initial Rule 26.1 Disclosure Statement ("Defs.' Initial Disclosure") at pg. 3, ln. 2-4, Schenck Dep. Exhibit 4, attached as **CSOF Ex. 5.**)

**80.** DenSco followed Beauchamp as a client when he left Gammage & Burnham to join the law firm Bryan Cave in March 2008, and again when Beauchamp left Bryan Cave to join Clark Hill in September 2013. (*See* Defs.' Initial Disclosure at pg. 3, ln. 4-6, Schenck Dep. Exhibit 4, attached as **CSOF Ex. 5.**)

**81.** Beauchamp has stated in his Rule 26.1 Statement that his work for DenSco included drafting private offering memoranda for distribution to investors of DenSco in compliance with law, and advising on securities reporting requirement. (*See* Defs.' Initial Disclosure at pgs. 3-4, Schenck Dep. Exhibit 4, attached as **CSOF Ex. 5.**)

### **b. Beauchamp Prepared Private Offering Memoranda that DenSco Issued to Investors in 2003, 2005, 2007, 2009, and 2011 to Sell Promissory Notes.**

**82.** Beauchamp advised DenSco regarding Private Offering Memoranda ("POMs"), which DenSco generally updated every two years. (*See* Defs.' Initial Disclosure at pg. 5, ln. 2-3, Schenck Dep. Exhibit 4, attached as **CSOF Ex. 5.**)

1           **83.**     DenSco issued POMs in 2003, 2005, 2007, 2009, and 2011, which  
2 DenSco used to sell promissory notes to investors (*See* Defs.’ Initial Disclosure at pg.  
3 5, ln. 2-3, Schenck Dep. Exhibit 4, attached as **CSOF Ex. 5.**)

4           **84.**     Mr. Beauchamp testified that it was his practice to revise the POM every  
5 two years based on a suggestion “made by a former SEC official, that given the nature  
6 of this industry, two years would be an appropriate time. However, if something  
7 material happened before then, you need to tell your client this has to be disclosed.”  
8 (*See* Beauchamp Dep. Transcript at 256:22-257:3, attached as **CSOF Ex. 6.**)

9           **85.**     The process of preparing POMs in 2007, 2009, and 2011 took between  
10 one and three months.

11                 a.     Beauchamp began working on a POM in early May 2007, after a  
12 May 3, 2007 meeting with Chittick, and completed his work in approximately  
13 thirty days. (*See* Beauchamp’s handwritten notes dated May 3, 2007, attached as  
14 **CSOF Ex. 7**; Beauchamp’s handwritten notes dated June 1, 2007, attached as  
15 **CSOF Ex. 8**; DenSco’s Confidential Private Offering Memorandum dated June  
16 1, 2007 (the “2007 POM”), Beauchamp Dep. Exhibit 432, attached as **CSOF**  
17 **Ex. 15.**)

18                 b.     Beauchamp began working on a POM in April 2009, after an  
19 April 9, 2009 meeting with Chittick, and completed his work in approximately  
20 ninety days. (*See* Beauchamp’s handwritten notes dated April 9, 2009, attached  
21 as **CSOF Ex. 9**; Beauchamp’s handwritten notes dated April 17, 2009, attached  
22 as **CSOF Ex. 10**; Beauchamp’s handwritten notes dated June 30, 2009, attached  
23 as **CSOF Ex. 11**; E-mail exchange between Beauchamp and Chittick re POM,  
24 dated July 6, 2009, attached as **CSOF Ex. 12**; DenSco’s Confidential Private  
25 Offering Memorandum dated July 1, 2009 (the “2009 POM”), Beauchamp Dep.  
26 Exhibit No. 431, attached as **CSOF Ex. 14.**)

27                 c.     Beauchamp began working on a POM in April 2011, after an  
28 April 13, 2011 meeting with Chittick, and completed his work in approximately

1 ninety days. (*See* Beauchamp’s handwritten notes dated April 13, 2011, attached  
2 as **CSOF Ex. 13**; 2011 POM, Beauchamp Dep. Exhibit 432, attached as **CSOF**  
3 **Ex. 2**; E-mail exchange between Beauchamp, Chittick, M. Parsons, dated July  
4 18, 2011, attached as **CSOF Ex. 16**.)

5 **c. The Terms of the POMs Beauchamp Prepared**

6 **(1) DenSco Sold Promissory Notes**

7 **86.** In the POMs it issued in 2007, 2009, and 2011, DenSco offered to sell  
8 investors promissory notes of \$50,000 or more with the following durations and interest  
9 rates: six months at 8%; one year at 10%; and two to five years at 12%. The notes  
10 were “paid ‘interest only’ during the terms, with principal payable only at maturity.”  
11 Investors had the ability to “have interest paid monthly, quarterly, or at maturity.” (*See*  
12 2011 POM at pgs. 2, 17, 45-46, Beauchamp Dep. Exhibit 432, attached as **CSOF Ex.**  
13 **2**.)

14 **87.** Each POM stated that “[a]lthough the Company intends to use its good  
15 faith efforts to accommodate written requests from an investor to prepay any Note prior  
16 to maturity and the Company has in fact been able to satisfy such requests in a timely  
17 manner with interest paid in full, the Company has no obligation to do so and the  
18 investor has no right to require the Company to redeem the Note prior to maturity.”  
19 (*See* 2011 POM at pg. 47, Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2**).

20 **88.** By completing and signing a Subscription Agreement, investors specified  
21 the amount of the promissory note they wished to purchase, the term of the note, and  
22 how they wished to be paid interest. (*See* Subscription Agreement, Bunger Dep.  
23 Exhibit No. 621, attached as **CSOF Ex. 17**.)

24 **89.** Beauchamp knew that the vast majority of DenSco’s investors purchased  
25 two-year promissory notes. For example, Beauchamp’s notes reflect that Chittick told  
26 him during a May 3, 2007 meeting that 90% of the promissory notes DenSco had issued  
27  
28

1 to investors were two-year notes. (See Beauchamp's handwritten notes dated May 3,  
2 2007, attached as **CSOF Ex. 202.**)

3 **90.** Beauchamp also knew that the vast majority of DenSco's investors did  
4 not redeem their promissory notes when those notes matured, and instead "rolled over"  
5 their investments by executing a subscription agreement and buying a new promissory  
6 note when a previous promissory note matured. As Beauchamp wrote in a June 15,  
7 2007 e-mail to Richard Carney, who was then doing "Blue Sky" work for DenSco,  
8 "DenSco has regular sales of roll-over investments" and an "ongoing roll-over of the  
9 existing investors every 6 months or so." (See Email to R. Carney dated June 15, 2007,  
10 attached as **CSOF Ex. 18.**)

11 **(2) The Promissory Notes Were Represented to Be**  
12 **Safe, Secure Investments.**

13 **91.** In the POMs it issued in 2007, 2009 and 2011, DenSco made a number  
14 of representations about its business practices that were intended to give existing and  
15 potential investors the impression that the promissory notes sold by DenSco were safe,  
16 secure investments. (See 2007 POM at pgs. 36-37, Beauchamp Dep. Exhibit 430,  
17 attached as **CSOF Ex. 15**; 2009 POM at pgs. 34-37, Beauchamp Dep. Exhibit 431,  
18 attached as **CSOF Ex. 14**; and 2011 POM at pgs. 36-39, Beauchamp Dep. Exhibit 432,  
19 attached as **CSOF Ex. 2.**)

20 **92.** For example, the POM that DenSco issued in 2011 stated that:

21 a. DenSco had sold promissory notes worth \$25.9 million to  
22 new and existing investors since 2001, and "ha[d] never defaulted on either  
23 interest or principal" on any of those notes. (See 2011 POM at pg. 36,  
24 Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2.**)

25 b. "All real estate loans funded by [DenSco] have been and  
26 are intended to be secured through first position trust deeds." (See 2011 POM at  
27 pg. 36, Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2.**)  
28

1 c. DenSco would “attempt to maintain a diverse [loan]  
2 portfolio . . . by seeking a large borrowing base” and by “attempting to ensure  
3 that one borrower will not comprise more than 10 to 15 percent of the total  
4 portfolio.” (See 2011 POM at pgs. 10, 37, Beauchamp Dep. Exhibit 432,  
5 attached as **CSOF Ex. 2.**)

6 d. DenSco “intend[ed] to maintain general loan-to-value  
7 guidelines that currently range from 50 percent to 65 percent, (but it is not  
8 intended to exceed 70%), to help protect the Company’s portfolio of loans.” (See  
9 2011 POM at pg. 10, Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2.**)

10 e. “Because of these varying degrees of diversification, the  
11 relatively short duration of each of the loans, and management’s knowledge of  
12 the Phoenix metropolitan market, [DenSco’s] management anticipates that it  
13 will not experience a significant amount of losses.” (See 2011 POM at pg. 10,  
14 Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2**; see also Expert Report  
15 of Fenix Financial Forensics LLC at pgs. 2-10, attached as **CSOF Ex. 190.**)

16 f. DenSco’s “objective is to have sufficient cash coming in  
17 from Trust Deed payoffs to be able to redeem all Notes as they come due and  
18 maintain reserves without any need to sell assets or issue new Notes to repay the  
19 earlier maturing Notes.” (See 2011 POM at pg. 6, Beauchamp Dep. Exhibit 432,  
20 attached as **CSOF Ex. 2.**)

21 **93.** The POMs DenSco issued to existing and potential investors in 2007,  
22 2009, and 2011 each included a “Prior Performance” section which summarized the  
23 dollar value of promissory notes sold in preceding years, the number of loans made in  
24 each year, the value of those loans, the value of the property securing those loans, and  
25 losses incurred in each of those years. (See 2007 POM at pgs. 32-35, Beauchamp Dep.  
26 Exhibit 430, attached as **CSOF Ex. 15**; 2009 POM at pgs. 34-37, Beauchamp Dep.  
27 Exhibit 431, attached as **CSOF Ex. 14**; and 2011 POM at pgs. 36-39, Beauchamp Dep.  
28 Exhibit 432, attached as **CSOF Ex. 2.**)

94. The Prior Performance section in each POM concluded with a statement that was intended to give existing and potential investors the impression that the promissory notes sold by DenSco were safe, secure investments: “Each and every Noteholder has been paid the interest and principle due to that Noteholder in accordance with the respective terms of the Noteholder’s Notes. Despite any losses incurred by the Company from its borrowers, no Noteholder has sustained any diminished return or loss on their investment in a Note from [DenSco].” (*See* 2007 POM, Beauchamp Dep. Exhibit 430, attached as **CSOF Ex. 15**; 2009 POM at pg. 37, Beauchamp Dep. Exhibit 431, attached as **CSOF Ex. 14**; and 2011 POM at pg. 39, Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2**.)

**(3) The 2007, 2009 and 2011 POMs Were Each in Effect for Two Years, But Were Never Updated by DenSco, And Beauchamp Did Not Advise DenSco To Do So.**

**95.** Each POM that DenSco issued to existing and potential investors in 2007, 2009, and 2011 stated that DenSco “intends to offer [promissory notes for sale] on a continuous basis until the earlier of (a) the sale of the maximum offering,” which was \$50 million, “or (b) two years from the date of this memorandum.” They went on to state that DenSco “reserves the right to amend, modify and/or terminate this offering.” (See 2011 POM at pg. 2, Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2.**)

**96.** DenSco's records do not reflect that it ever told existing and potential investors that "the maximum offering proceeds" offered through the 2007, 2009, and 2011 POMs had been raised, or that it had terminated any of those offerings.

97. The files that Beauchamp maintained, and the billing statements issued to DenSco by his respective law firms, do not reflect that Beauchamp ever advised DenSco to “[k]eep[] the information in the [POMs DenSco issued in 2007, 2009 and 2011] current” by issuing updates to those POMs during the two-year period each of those POMs was in effect. (*See* Clark Hill Invoice to DenSco for Jan. 2014 Work (“Jan. 2014 Invoice”), Schenck Dep. Exhibit 6, attached as **CSOF Ex. 20**; Clark Hill Invoice



1 to DenSco for Feb. 2014 Work (“Feb. 2014 Invoice”), Schenck Dep. Exhibit 7, attached  
2 as **CSOF Ex. 21**; Clark Hill Invoice to DenSco for Mar. 2014 Work (“Mar. 2014  
3 Invoice”), Schenck Dep. Exhibit 9, attached as **CSOF Ex. 22**; Clark Hill Invoice to  
4 DenSco for Apr. 2014 Work (“Apr. 2014 Invoice”), Schenck Dep. Exhibit 10, attached  
5 as **CSOF Ex. 23**; Clark Hill Invoice to DenSco for May 2014 Work (“May 2014  
6 Invoice”), Schenck Dep. Exhibit 11, attached as **CSOF Ex. 24**; Clark Hill Invoice to  
7 DenSco for June 2014 Work (“June 2014 Invoice”), Schenck Dep. Exhibit 12, attached  
8 as **CSOF Ex. 25**; Clark Hill Invoice to DenSco for July 2014 Work (“July 2014  
9 Invoice”), Schenck Dep. Exhibit 13, attached as **CSOF Ex. 26**; Clark Hill Invoice to  
10 DenSco for Mar. 2016 Work (“Mar. 2016 Invoice”), Schenck Dep. Exhibit 14, attached  
11 as **CSOF Ex. 27**; Clark Hill Invoice to DenSco for Apr. 2016 Work (“Apr. 2016  
12 Invoice”), Schenck Dep. Exhibit 15, attached as **CSOF Ex. 28**; Clark Hill Invoice to  
13 DenSco for May 2016 Work (“May 2016 Invoice”), Schenck Dep. Exhibit 16, attached  
14 as **CSOF Ex. 29**; Clark Hill Invoice to DenSco for June 2016 Work (“June 2016  
15 Invoice”), Schenck Dep. Exhibit 17, attached as **CSOF Ex. 30**; Clark Hill Invoice to  
16 DenSco for Aug. 2016 Work (“Aug. 2016 Invoice”), Schenck Dep. Exhibit 18, attached  
17 as **CSOF Ex. 31**; Clark Hill Invoice to DenSco for Sept. 2016 Work (“Sept. 2016  
18 Invoice”), Schenck Dep. Exhibit 19 attached as **CSOF Ex. 32**; Bryan Cave Invoice to  
19 DenSco for April 2013 Work (“Apr. 2013 Invoice”), Beauchamp Dep. Exhibit 106A,  
20 attached as **CSOF Ex. 33**; Bryan Cave Invoice to DenSco for May 2013 Work (“May  
21 2013 Invoice”), Beauchamp Dep. Exhibit 119, attached as **CSOF Ex. 34**; Bryan Cave  
22 Invoice to DenSco for June 2013 Work (“June 2013 Invoice”), Beauchamp Dep.  
23 Exhibit 132, attached as **CSOF Ex. 35**; Bryan Cave Invoice to DenSco for July 2013  
24 Work (“July 2013 Invoice”), Beauchamp Dep. Exhibit 133, attached as **CSOF Ex. 36**;  
25 Bryan Cave Invoice to DenSco for Aug. 2013 Work (“Aug. 2013 Invoice”), Beauchamp  
26 Dep. Exhibit 139, attached as **CSOF Ex. 37**.)

27       **98.**     As a result, the POM that was dated June 1, 2007 expired on June 1,  
28 2009; the POM that was dated July 1, 2009 expired on July 1, 2011; and the POM that

1 was dated July 1, 2011 expired on July 1, 2013. (See Expert Report of Neil Wertlieb at  
2 pgs. 59-60, attached as **CSOF Ex. 187.**)

3 **99.** The POMs DenSco issued to existing and potential investors in 2007,  
4 2009, and 2011 each stated that “[i]n order to continue offering the Notes during this  
5 [two-year] period, [DenSco] will need to update this Memorandum from time to time.”  
6 Each POM went on to state that

7 Keeping the information in the Memorandum current will cause the  
8 Company to incur additional costs. *A failure to update this Memorandum*  
9 *as required could result in the Company being subject to a claim under*  
10 *Section 10b-5 of the Security Act for employing a manipulative or*  
11 *deceptive practice in the sale of securities, subjecting [DenSco], and*  
possibly the management of [DenSco], to claims from regulators and  
investors. In addition, an investor might seek to have the sale of the Notes  
hereunder rescinded which would have a serious adverse effect on  
[DenSco’s] operations. (Emphasis added.)

12 (See 2011 POM at pg. 24, Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2.**)

13 **100.** Each POM that DenSco issued in 2007, 2009, and 2011 prominently  
14 warned potential purchasers of DenSco’s promissory notes that “NO PERSON HAS  
15 BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY  
16 REPRESENTATIONS CONCERNING THE COMPANY OTHER THAN AS  
17 CONTAINED IN THIS CONFIDENTIAL PRIVATE OFFERING MEMORANDUM,  
18 AND IF GIVEN OR MADE, SUCH OTHER INFORMATION OR  
19 REPRESENTATIONS MUST NOT BE RELIED UPON.” (See 2011 POM at pg. (v),  
20 Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2.**)

21 **(4) In Preparing the 2011 POM, Beauchamp Failed**  
22 **to Investigate a “Red Flag” About DenSco’s**  
**Lending Practices.**

23 **101.** The Prior Performance section of the POM DenSco issued in 2011  
24 concluded with the same positive statement about DenSco’s lending activities and the  
25 absence of losses on promissory notes that was made in earlier POMs:

26 Since inception through June 30, 2011, [DenSco] has participated in  
27 2622 loans, with an average amount of \$116,000, with the highest loan  
being \$800,000 and lowest being \$12,000. The aggregate amount of loans  
28 funded is \$306,786,893 with property valued totaling \$470,411,170. . .  
These loans have borne interest rates of 18% per annum. The interest rate

1 paid to noteholders has ranged from 8% to 12% per annum through such  
2 date. Each and every Noteholder has been paid the interest and principle  
3 due to that Noteholder in accordance with the respective terms of the  
4 Noteholder's Notes. Despite any losses incurred by the Company from its  
5 borrowers, no Noteholder has sustained any diminished return or loss on  
6 their investment in a Note from [DenSco].

(See 2011 POM at pg. 39, Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2.**)

7 **102.** But the information disclosed in the 2011 POM's Prior Performance  
8 section clearly raised a "red flag" about DenSco's lending activities. Among the  
9 information disclosed in that section was the following.

| <i>Year</i>       | <i>Notes Sold</i> | <i>Loans Made</i> | <i>Yearly Loan Amount</i> |
|-------------------|-------------------|-------------------|---------------------------|
| 2001              | \$500,000         | 37                | \$8,378,000               |
| 2002              | \$930,000         | 69                | \$5,685,000               |
| 2003              | \$1,550,000       | 124               | \$11,673,000              |
| 2004              | \$2,450,000       | 185               | \$19,907,000              |
| 2005              | \$2,670,000       | 236               | \$34,955,700              |
| 2006              | \$2,800,000       | 215               | \$34,468,100              |
| 2007              | \$2,400,000       | 272               | \$42,579,634              |
| 2008              | \$3,000,000       | 304               | \$38,864,660              |
| 2009              | \$2,100,000       | 412               | \$41,114,707              |
| 2010              | \$2,800,000       | 390               | \$37,973,097              |
| 2011 (to 6/30/11) | \$4,700,000       | 378               | \$36,187,995              |

(See 2011 POM at pgs. 36-37, Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2.**)

18 **103.** This information raised a red flag because Chittick was DenSco's sole  
19 employee. In addition to selling promissory notes, making interest payments, and  
20 issuing statements to investors, Chittick was the only person who was conducting due  
21 diligence and underwriting and documenting DenSco's loans. He was also responsible  
22 for collecting loan payments and ensuring compliance with loan agreements. (See  
23 Expert Report of Neil Wertlieb, attached as **CSOF Ex. 187.**)

24 **104.** Since 2009, when the previous POM had been issued, Chittick made more  
25 than one loan a day: 412 in 2009; 390 in 2010; and 378 in just the first six months of  
26 2011. (See 2011 POM at pgs. 36-37, Beauchamp Dep. Exhibit 432, attached as **CSOF**  
27 **Ex. 2.**)

1           **105.** Any concerns about DenSco's lending practices would have been  
2 heightened by the increased amount of money Chittick had raised in the first half of  
3 2011 (\$1.9 million more than the \$2.8 million that had been raised in all of 2010), and  
4 the overall amount of money DenSco had raised since 2001 through the sale of  
5 promissory notes (\$26.9 million as of June 30, 2011). (*See* 2011 POM at pgs. 36-37,  
6 Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2.**)

7           **106.** Beauchamp overlooked this red flag and would later overlook other red  
8 flags.

9           **B. Events That Occurred in the Four Months Before Beauchamp Joined  
10 Clark Hill in September 2013.**

11           **107.** The POM that DenSco issued in July 2011 expired on July 1, 2013.  
12 DenSco did not issue a POM in July 2013, or at any time after July 2013, to replace the  
13 POM that expired on July 1, 2013.

14           **108.** Between May 9 and July 1, 2013, Beauchamp took some preliminary  
15 steps to prepare a new POM but did not begin drafting a new POM. He also failed to  
16 conduct the due diligence that a reasonable securities lawyer would have undertaken.  
17 (*See* May 2013 Invoice, Beauchamp Dep. Exhibit 119, attached as **CSOF Ex. 34**; June  
18 2013 Invoice, Beauchamp Dep. Exhibit 132, attached as **CSOF Ex. 35**; July 2013  
19 Invoice, Beauchamp Dep. Exhibit 133, attached as **CSOF Ex. 36.**)

20           **109.** The July 1, 2013 deadline for updating the 2011 POM was known to Mr.  
21 Beauchamp, as he was the one who prepared the 2011 POM and advised DenSco with  
22 respect to such matters. (*See* Beauchamp's handwritten notes dated May 9, 2013,  
23 Beauchamp Dep. Exhibit 107, attached as **CSOF Ex. 40**; Email from Beauchamp to E.  
24 Sipes dated June 25, 2013, Beauchamp Dep. Exhibit 125, attached as **CSOF Ex. 41**;  
25 and Email from Beauchamp to E. Sipes dated July 1, 2013, Beauchamp Dep. Exhibit  
26 129, attached as **CSOF Ex. 42.**)

1           **110.** On June 14, 2013, Chittick emailed Beauchamp to alert him that a lawsuit  
2 had been filed against DenSco (the “Freo Lawsuit”) and included the first four pages of  
3 the complaint. (See Beauchamp Dep. Exhibit 111, attached as **CSOF Ex. 43.**)

4           **111.** Chittick stated that DenSco was being sued along with one of its  
5 borrowers – a borrower that DenSco “had done a ton of business with, millions in loans  
6 and hundreds of loans for several years. Chittick cc’ed the borrower in question:  
7 Yomtov “Scott” Menaged. (See Beauchamp Dep. Exhibit 111, attached as **CSOF Ex.**  
8 **43.**)

9           **112.** The Freo Lawsuit put Beauchamp on notice that DenSco’s 2011 POM  
10 may be materially misleading because, if the allegations in the complaint were correct,  
11 DenSco was not following the methodology and procedures stated in the 2011 POM  
12 for funding its loans. (See Plaintiff’s Fifth Disclosure Statement at ¶ 121, Davis Dep.  
13 Exhibit 541, attached as **CSOF Ex. 44**; and Email from Chittick to Beauchamp dated  
14 June 14, 2013, Beauchamp Dep. Exhibit 111, attached as **CSOF Ex. 43.**)

15           **113.** Chittick also informed Beauchamp that Menaged’s attorney was working  
16 on the defense of the Freo Lawsuit, and that Chittick intended to “piggy back” on his  
17 borrower’s defense. (See Email from Chittick to Beauchamp dated June 14, 2013,  
18 Beauchamp Dep. Exhibit 112, attached as **CSOF Ex. 45.**)

19           **114.** Mr. Beauchamp took no action with respect to the Freo Lawsuit. He  
20 testified that he did not speak to the borrower’s attorney, Mr. Goulder, at this time. (See  
21 Beauchamp Dep. Transcript at 240:9-19, attached as **CSOF Ex. 6.**)

22           **115.** Although Mr. Beauchamp did some work on an updated POM in July and  
23 August of 2013 (after the 2011 POM had expired), he was also preoccupied with  
24 changing law firms. (See July 2013 Invoice, Beauchamp Dep. Exhibit 133, attached as  
25 **CSOF Ex. 36**; and Aug. 2013 Invoice, Beauchamp Dep. Exhibit 139, attached as  
26 **CSOF Ex. 37.**)

27           **1. Beauchamp Was Asked to Leave Bryan Cave in June 2013 and**  
28           **Left the Firm in August 2013.**

1           **116.** One apparent reason for Beauchamp’s inattention to DenSco’s need for a  
2 new POM was that he spent the summer months looking for a new job. (*See* Beauchamp  
3 Dep. Transcript at 46:4–47:4, attached as **CSOF Ex. 6.**)

4           **117.** Shortly after June 4, 2013, Beauchamp was informed by Bryan Cave’s  
5 management committee that the firm wanted to end its relationship with Beauchamp  
6 and that he would need to find a new law firm where he could practice law. (*See*  
7 Beauchamp Dep. Transcript at 38:25–44:14, attached as **CSOF Ex. 6.**)

8           **118.** Bryan Cave’s decision understandably was not well received by  
9 Beauchamp. As he wrote in a January 15, 2014 email to his former partner Bob Miller  
10 explaining why he did not wish to attend a meeting at Bryan Cave’s offices, “[m]y last  
11 few months [at Bryan Cave] were more than a little difficult and I do not want to go  
12 back to that.” (*See* Beauchamp Dep. Exhibit 162, attached as **CSOF Ex. 46.**)

13           **119.** Beauchamp finalized the terms of his employment at Clark Hill by mid-  
14 to late-August 2013. (Beauchamp Dep. Transcript at pp. 44:5–47:4, attached as **CSOF**  
15 **Ex. 6.**)

16           **120.** Beauchamp’s notes reflect that he spoke to Chittick on August 26, 2013  
17 and told him that “BC will be sending a letter to Denny & letting Denny decide if he  
18 wants files kept at BC or moved to CH.” (*See* Beauchamp’s handwritten notes dated  
19 Aug. 26, 2013, Beauchamp Dep. Exhibit 134, attached as **CSOF Ex. 47.**)

20           **121.** On August 30, 2013, Beauchamp sent Chittick by email a letter that he  
21 and Jay Zweig, the managing partner of Bryan Cave’s Phoenix office, both signed,  
22 informing DenSco that Beauchamp would be leaving Bryan Cave effective August 31,  
23 2013, and that Beauchamp would be joining Clark Hill. (*See* Letter dated Aug. 30,  
24 2013, Beauchamp Dep. Exhibit 135, attached as **CSOF Ex. 48.**)

25                   **2. During the Month of May 2013, Beauchamp Performed**  
26                   **Minimal Work to Prepare a New POM.**

27           **122.** The files that Beauchamp maintained at Bryan Cave and Bryan Cave’s  
28 billing statements reflect that Chittick had to prompt Beauchamp to start working on a

1 new POM in 2013. (*See* July 2013 Invoice, Beauchamp Dep. Exhibit 133, attached as  
2 **CSOF Ex. 36**; and Aug. 2013 Invoice, Beauchamp Dep. Exhibit 139, attached as  
3 **CSOF Ex. 37**.)

4           a.       On March 17, 2013, Chittick sent Beauchamp an email proposing  
5 to meet in April to begin working on an updated private offering memorandum.  
6 (*See* Email from Chittick to Beauchamp dated March 17, 2013, attached as  
7 **CSOF Ex. 49**.)

8           b.       On May 1, 2013, Chittick sent another email to Beauchamp which  
9 stated: “it’s the year we have to do the update on the memorandum, when do you  
10 want to start?” (*See* Email from Chittick to Beauchamp dated May 1, 2013,  
11 Beauchamp Dep. Exhibit 105A, attached as **CSOF Ex. 50**.)

12           c.       Beauchamp responded by email that day and scheduled a meeting  
13 for May 9, 2013. (*See* Email from Beauchamp to Chittick dated May 1, 2013,  
14 Beauchamp Dep. Exhibit 105A, attached as **CSOF Ex. 50**.)

15       **123.**   Beauchamp caused a new matter to be established in Bryan Cave’s  
16 accounting and filing systems for the preparation of a 2013 POM which identified  
17 DenSco as Bryan Cave’s client. (*See* May 2013 Invoice, Beauchamp Dep. Exhibit 119,  
18 attached as **CSOF Ex. 34**.)

19       **124.**   When the matter was opened, Bryan Cave established a “due diligence”  
20 file for a 2013 POM. (*See* Beauchamp Dep. Exhibit 136, attached as **CSOF Ex. 51**.)

21       **125.**   Before the May 9, 2013 meeting, Beauchamp prepared or caused to be  
22 prepared a draft private offering memorandum dated “May \_\_, 2013” (the “draft 2013  
23 POM”). (*See* Beauchamp Dep. Exhibit 106, attached as **CSOF Ex. 52**; Beauchamp  
24 Dep. Exhibit 124, attached as **CSOF Ex. 53**.)

25       **126.**   With the exception of the title page, the draft 2013 POM was a duplicate  
26 of a preliminary draft of the 2011 POM, which Bryan Cave attorney Gus Schneider had  
27 sent to Chittick on June 15, 2011 at Beauchamp’s direction, when Schneider and  
28

1 Beauchamp were working on the 2011 POM. (*See* Schenck Dep. Exhibit 100, attached  
2 as **CSOF Ex. 54**; Beauchamp Dep. Exhibit 106, attached as **CSOF Ex. 52**).

3 **127.** During the May 9 meeting, Beauchamp took a few notes and apparently  
4 underlined or circled a few passages in the draft 2013 POM. (*See* Beauchamp's  
5 handwritten notes dated May 9, 2013, Beauchamp Dep. Exhibit 107, attached as **CSOF**  
6 **Ex. 40**.)

7 **128.** Beauchamp's notes reflect that Chittick told him during the meeting that  
8 DenSco had as of that date raised over \$50 million from 75 to 80 investors who  
9 collectively held 114 accounts. (*See* Beauchamp's handwritten notes dated May 9,  
10 2013, Beauchamp Dep. Exhibit 107, attached as **CSOF Ex. 40**).

11 **129.** Beauchamp stopped working on the draft 2013 POM after learning how  
12 much money DenSco had raised since the 2011 POM. As he would later tell Bryan  
13 Cave partner Elizabeth Sipes through a June 25, 2013 email: "We stopped the updating  
14 when we were told that the investments from the investors had jumped to approximately  
15 \$47.5 million. Given that significant increase, I have been asking for help to determine  
16 what other federal or state laws might be applicable." (*See* Beauchamp Dep. Exhibit  
17 125, attached as **CSOF Ex. 41**.)

18 **130.** According to Bryan Cave's billing statement, the only work Beauchamp  
19 performed during May 2013 on the draft 2013 POM was for less than thirty minutes of  
20 "[w]ork on issues and follow-up" on May 10 and less than thirty minutes of "[w]ork on  
21 issues and information for Private Offering Memorandum" on May 31, 2013. (*See* May  
22 2013 Invoice, Beauchamp Dep. Exhibit 119, attached as **CSOF Ex. 34**.)

23 **3. During June 2013, Beauchamp Learned From Another Bryan**  
24 **Cave Lawyer That DenSco's Website Violated Federal**  
**Securities Laws.**

25 **131.** Although Beauchamp learned on May 9, 2013 that DenSco had nearly  
26 \$50 million of investor loans and told his Bryan Cave colleagues that he stopped  
27 working on the draft 2013 POM when he learned of that fact so that he could investigate  
28



1 what federal or state laws were implicated by the substantial increase in DenSco's sales  
2 of promissory notes, Beauchamp waited until June 10, 2013 before seeking assistance  
3 from other Bryan Cave attorneys. (*See* Beauchamp's handwritten notes dated May 9,  
4 2013, Beauchamp Dep. Exhibit 107, attached as **CSOF Ex. 40**; May 2013 Invoice,  
5 Beauchamp Dep. Exhibit 119, attached as **CSOF Ex. 34**; Beauchamp Dep. Transcript  
6 at 258:13-260:14, attached as **CSOF Ex. 6**.)

7           a.       On June 10, 2013, Beauchamp sent an email to Ken Henderson,  
8 an attorney in Bryan Cave's New York City office, copied to William Seabaugh,  
9 an attorney in Bryan Cave's St. Louis office. (*See* Beauchamp Dep. Exhibit 108,  
10 attached as **CSOF Ex. 55**.)

11           b.       His email stated, in part: DenSco "is a client which makes high  
12 interest loans (18% with no other fees) secured by first lien position against real  
13 estate. . . . DenSco has previously had aggregate investor loans outstanding at  
14 approximately \$16 to \$18 million from its investors. We are starting the process  
15 to update and renew DenSco's private offering memo (renew it every two years)  
16 and we have now been advised that DenSco now has almost \$47 million in  
17 aggregate investor loans outstanding." (*See* Beauchamp Dep. Exhibit 108,  
18 attached as **CSOF Ex. 55**.)

19           c.       Beauchamp said he was seeking "guidance or direction" as to  
20 whether DenSco, with close to \$50 million of investor funds, was subject to  
21 certain federal securities acts and regulations. (*See* Beauchamp Dep. Exhibit  
22 108, attached as **CSOF Ex. 55**.)

23           d.       Henderson suggested by email that Beauchamp confer with Robert  
24 Pedersen, an attorney in Bryan Cave's New York City office, and Elizabeth  
25 Sipes, an attorney in Bryan Cave's Denver office. (*See* Beauchamp Dep. Exhibit  
26 108, attached as **CSOF Ex. 55**.)

27       **132.** On June 11, 2013, Beauchamp sent an email to Chittick which stated:  
28 "How many investors hold notes from DenSco? We are trying to determine what

1 exclusions DenSco could qualify for with respect to the other applicable federal  
2 statutes. I do not have that number in my notes.” (See Beauchamp Dep. Exhibit 110,  
3 attached as **CSOF Ex. 56.**)

4 **133.** Chittick responded by email that day, telling Beauchamp DenSco had 114  
5 individual accounts, held by approximately 80 families. (See Beauchamp Dep. Exhibit  
6 110, attached as **CSOF Ex. 56.**)

7 **134.** On June 17, 2013, Beauchamp received an email from Pedersen.  
8 Pedersen noted that he had reviewed DenSco’s website, and had asked Randy Wang,  
9 an attorney in Bryan Cave’s St. Louis office, whether DenSco was in compliance with  
10 the Securities Act of 1933. Pedersen wrote: “Randy questioned whether in the DenSco  
11 Investment Corp. case, the existence of, and/or statements made on, the DenSco  
12 [website] which I had brought to his attention, made the transaction exemption  
13 unavailable to DenSco. In any event you may wish to discuss further with Randy.” (See  
14 Beauchamp Dep. Exhibit 114, attached as **CSOF Ex. 57.**)

15 **135.** Beauchamp then printed information from DenSco’s website, which  
16 included a section captioned “Investor Requirements” that purported to provide an  
17 “abbreviated description” of “legal definitions” found in the 2011 POM and related  
18 subscription agreement, including a definition of accredited investor. (See printouts of  
19 DenSco website dated June 17, 2013, Beauchamp Dep. Exhibit 115, attached as **CSOF**  
20 **Ex. 3.**)

21 **136.** Although Beauchamp had been representing DenSco since 2003, and his  
22 files reflect that he regularly reviewed DenSco’s website, it was another Bryan Cave  
23 lawyer, with no prior involvement in Bryan Cave’s representation, who immediately  
24 identified this significant issue. (See Beauchamp’s handwritten notes dated June 17,  
25 2013, Beauchamp Dep. Exhibit 116, attached as **CSOF Ex. 58**; see also Beauchamp  
26 Dep. Transcript at 276:5-277:23, attached as **CSOF Ex. 6.**)

27 **137.** Beauchamp wrote an email to Wang on June 17, 2013, which stated:  
28 “With respect to the client’s statements on its website, I was not aware that the client

1 had added his personal description of what is an eligible ‘accredited investor’ to the  
2 DenSco website. I will have him take it down. I also have a call into him to ask when  
3 he added that language. Previously, his website was just for potential borrowers and  
4 for existing investors. It included his view of the real estate lending market and  
5 explained the status of any properties that DenSco had commenced or might have to  
6 commence a Trustee Sale to take ownership of the security for a loan. Given his  
7 ‘layman’s description of an accredited investor’ on the website, does that constitute  
8 general solicitation, which will cause the offering to no longer qualify under Regulation  
9 D? If so, can we discuss what we need to tell him that he needs to do to resolve the loss  
10 of his exempt security status?” (See Beauchamp Dep. Exhibit 114, attached as **CSOF**  
11 **Ex. 57.**)

12       **138.** Beauchamp’s notes reflect that he spoke to Wang on June 17, 2013. (See  
13 Beauchamp’s handwritten notes dated June 17, 2013, Beauchamp Dep. Exhibit 116,  
14 attached as **CSOF Ex. 58.**)

15       **139.** Beauchamp’s notes also reflect that he spoke to Chittick on June 17, 2013.  
16 (See Beauchamp’s handwritten notes dated June 17, 2013, attached as **CSOF Ex. 203.**)

17       **140.** After talking to Chittick, Beauchamp sent an email to Wang on June 17,  
18 2013, which stated, in part: “I talked to Denny Chittick, the owner of DenSco. Denny  
19 has already had the website modified. Denny also reviewed the list of his investors  
20 (there are only 114 individual investors from approx 80 families). All of his investors  
21 were either family or friends (or verified referrals from family or friends). . . . According  
22 to his note schedule, Denny has approximately 60 investor notes that are scheduled to  
23 expire in the next six months, so he would prefer to not be shut down and have to return  
24 all of that investment money to his investors until he could commence operations  
25 again.” (See Beauchamp Dep. Exhibit 117, attached as **CSOF Ex. 59.**)

26       **141.** Beauchamp received an email from Chittick late in the day on June 17,  
27 2013, through which Chittick forwarded his email exchange with a vendor confirming  
28 that information regarding interest rates offered for promissory notes and the entire

1 “Investor Requirements” section had been removed from DenSco’s website. (See Email  
2 from Chittick to Beauchamp dated June 17, 2013, part of Beauchamp Dep. Exhibit 118,  
3 attached as **CSOF Ex. 60.**)

4 **142.** Beauchamp spoke to Wang on June 18, 2013. His notes reflect that Wang  
5 “does not have a clean path for the private placement” and that he and Beauchamp  
6 discussed a number of “judgment calls” which were described in Beauchamp’s notes  
7 as follows: (i) “whether website constitutes ‘General Solicitation’ – probably yes”; (ii)  
8 “would a waiver of Right of Rescission be helpful – probably not → that just resolves  
9 the individual claim + not the offering itself”; (iii) “would starting a new company be  
10 helpful – probably not – still would be integrated offering.” Beauchamp’s notes  
11 concluded by stating “Randy does not have a solution” and a list of the names of other  
12 Bryan Cave attorneys Beauchamp should contact. (See Beauchamp’s handwritten notes  
13 dated June 18, 2013, Beauchamp Dep. Exhibit 120, attached as **CSOF Ex. 61.**)

14 **143.** On June 20, 2013, Beauchamp sent an email to Bryan Cave attorneys  
15 Henderson, Wang, Robert Endicott in the firm’s St. Louis office, and Garth Jensen in  
16 the firm’s Denver office. Beauchamp’s email stated, in part:

17 DenSco “is a client which makes high interest loans (18% with no other  
18 fees) secured by first lien position against Arizona real estate. . . . As part  
19 of our due diligence for this offering, we reviewed the client’s website. On  
20 its website, the client lists several pieces of information concerning Arizona  
21 real estate, but the client has also added Denny Chittick’s personal  
22 description of who or what is an eligible ‘accredited investor.’ In addition,  
23 the website also referenced the interest rate paid by DenSco to its investors.  
24 *After we advised the client that this could be deemed to be “general  
25 solicitation” in violation of Regulation D, the client immediately took  
26 down these references from its website. . . . Randy and I are concerned that  
27 if this information on the website is deemed to constitute ‘general  
28 solicitation’ then the offering will no longer qualify under Regulation D. .  
29 . . According to his note schedule, Denny has approximately 60 investor  
30 notes that are scheduled to expire in the next 6 months (and to probably  
31 be rolled over into new notes), so he would prefer to not be shut down and  
32 to have to return all of that investment money to his investors until he  
33 could commence operations again. Issue: Does anyone have any  
34 suggestion or thoughts that we can advise the client (short of closing down  
35 its business for six months) that he needs to do to resolve the loss of his  
36 exempt security status?” (Emphasis added.)*

1 (See Beauchamp Dep. Exhibit 122, attached as **CSOF Ex. 62.**)

2 **144.** Henderson and Wang responded to Beauchamp's email on June 20, 2013,  
3 discussing when the "'JOBS Act' requirement that the SEC eliminate the general  
4 solicitation requirement for all accredited investors offerings [would] become  
5 effective[.]" (See Beauchamp Dep. Exhibit 122, attached as **CSOF Ex. 62.**)

6 **145.** On June 25, 2013, Beauchamp sent an email to Sipes which stated, in  
7 part: "Attached is the previous POM for the client which has only had the date changed.  
8 We stopped the updating when we were told that the investments from the investors  
9 had jumped to approximately \$47.5 million. Given that significant increase, I have  
10 been asking for help to determine what other federal or state laws might be applicable.  
11 Bob Pederson of NY has said that the Trust Indenture Act will not be applicable so long  
12 as the client is under the Regulation D, Rule 506 exemption. The other big issues [that]  
13 have waited for your help to discern [is] if we need to comply with the Investment  
14 Advisors Act of 1940 and the Registered Investment Advisors requirements." (See  
15 Beauchamp Dep. Exhibit 125, attached as **CSOF Ex. 41.**)

16 **146.** Beauchamp spoke to Sipes on June 27, 2013. Beauchamp's notes reflect  
17 that Sipes told him the 2011 POM had incorrectly referenced an exemption under the  
18 Investment Company Act, that she was considering other issues, and that she would  
19 follow up by email. (See Beauchamp's handwritten notes dated June 27, 2013,  
20 Beauchamp Dep. Exhibit 126, attached as **CSOF Ex. 63.**)

21 **147.** Beauchamp spoke to Chittick on June 27, 2013. Beauchamp's notes  
22 reflect that he shared with Chittick the information he had received from Sipes. (See  
23 Beauchamp's handwritten notes dated June 27, 2013, Beauchamp Dep. Exhibit 127,  
24 attached as **CSOF Ex. 64.**)

25 **148.** Chittick sent Beauchamp an email on June 27, 2013 to again confirm that  
26 the requested changes to the website had been completed. He added, "Oh ya I just took  
27 in another 1.1 million yesterday." (See Beauchamp Dep. Exhibit 128, attached as **CSOF**  
28 **Ex. 65.**)

1                   **4. During June 2013, Beauchamp Learned That Representations**  
2                   **Made In the 2011 POM About DenSco's Lending Practices**  
3                   **Were Materially Misleading But Failed to Conduct any**  
4                   **Investigation Of DenSco's Lending Practices.**

5                   **149.** Beauchamp received an email from Chittick on June 14, 2013.

6                   **150.** Chittick's email, which was copied to Yomtov "Scott" Menaged, said, in  
7 part: "I have a borrower, to which I've done a ton of business with, million[s] in loans  
8 and hundreds of loans for several years[.] [H]e's getting sued along with me. . . . Easy  
9 Investments [] has his attorney working on it[.] [I]'m okay to piggy back with his  
10 attorney to fight it[.] Easy Investments [is] willing to pay the legal fees to fight it. I  
11 just wanted you to be aware of it, and talk to his attorney, [whose] contact info is  
12 below." (See Beauchamp Dep. Exhibit 111, attached as **CSOF Ex. 43.**)

13                   **151.** Chittick's email included a forwarded email from Menaged which  
14 provided contact information for his attorney, Jeffrey J. Goulder. (See Beauchamp Dep.  
15 Exhibit 111 at DIC0000055, attached as **CSOF Ex. 43.**)

16                   **152.** Copies of a summons, the first four pages of a complaint, a certificate of  
17 compulsory arbitration, and a lis pendens were attached to the email. (See Beauchamp  
18 Dep. Exhibit 111 at DIC0000059-69, attached as **CSOF Ex. 43.**)

19                   **153.** Menaged responded to the email by telling Beauchamp in an email to  
20 "bill me for your services and utilize my attorney for anything you may need." (See  
21 Beauchamp Dep. Exhibit 112, attached as **CSOF Ex. 45.**)

22                   **154.** The complaint and other documents Beauchamp received identified by  
23 street address and legal description the foreclosed home at issue in the lawsuit; they  
24 also identified the names of the former owners. (See Beauchamp Dep. Exhibit 111 at  
25 DIC0000069, attached as **CSOF Ex. 43.**)

26                   **155.** After reviewing these documents, Beauchamp sent an email to Chittick  
27 on June 14, 2013 which said: "***We will need to disclose this in POM.***" (Emphasis  
28 added.) (See Beauchamp Dep. Exhibit 113, attached as **CSOF Ex. 66.**)

1           **156.** Bryan Cave’s billing records reflect that Beauchamp billed DenSco for  
2 30 minutes of time on June 14, 2013 devoted to “[e]mail to D. Chittick regarding need  
3 to disclose pending litigation in Private Offering Memorandum; review email from D.  
4 Chittick; review requirements.” (See June 2013 Invoice, Beauchamp Dep. Exhibit 132,  
5 attached as **CSOF Ex. 35.**)

6           **157.** The complaint had been filed in Maricopa County Superior Court by Freo  
7 Arizona, LLC against DenSco; Easy Investments, LLC; Active Funding Group, LLC;  
8 Ocwen Loan Servicing, LLC; and another defendant. (See Beauchamp Dep. Exhibit  
9 111 at DIC0000059, attached as **CSOF Ex. 43.**)

10           **158.** According to the excerpt of the complaint that Beauchamp received,

11               a. A home in Peoria, Arizona was to be sold at a trustee’s sale. (See  
12 Beauchamp Dep. Exhibit 111 at DIC0000063-65, attached as **CSOF Ex. 43.**)

13               b. Freo claimed to have purchased the home on March 18, 2013,  
14 before the date of the scheduled trustee’s sale, by paying Ocwen Loan Servicing  
15 the payoff amount for the mortgage, and that the sale was documented in a  
16 warranty deed that had been recorded with the Maricopa County Recorder’s  
17 Office. (*Id.*)

18               c. Ocwen failed to timely instruct the trustee to cancel the trustee’s  
19 sale. (*Id.*)

20               d. On March 22, 2013, *Easy Investments* acquired the property at a  
21 trustee’s sale, and then “*attempted to encumber the property with deeds of trust*  
22 *to Active [Funding Group] and DenSco.*” (Emphasis added.) (*Id.*)

23               e. Freo filed its lawsuit to establish that it owned the property free  
24 and clear of liens asserted by Active Funding Group and DenSco. (*Id.*)

25           **159.** The *Freo* complaint put Beauchamp on notice that DenSco’s 2011 POM  
26 was materially misleading because DenSco was not following the “proper method and  
27 procedures for funding a loan” which, according to Beauchamp’s interrogatory  
28 answers, were described in the 2011 POM as including ““due diligence to verify certain

1 information in connection with funding a Trust Deed” and “conduct[ing] a due  
2 diligence review by . . . verifying the documentation.” (See Beauchamp’s Responses  
3 to Plaintiff’s First Set of Non-Uniform Interrogatories at pg. 6, Beauchamp Dep.  
4 Exhibit 422, attached as **CSOF Ex. 67**.)

5 **160.** It was apparent from the *Freo* complaint that Chittick had not conducted  
6 any due diligence before loaning money to Easy Investments to acquire this particular  
7 home, since the property had been sold, according to public records, five days before a  
8 trustee’s sale. Under such circumstances, the loan funded by DenSco could not have  
9 been a loan “intended to be secured through [a] first position trust deed[,]” as DenSco  
10 had represented in the 2011 POM. (See Beauchamp Dep. Exhibit 111, attached as  
11 **CSOF Ex. 43**; see also 2011 POM at pg. 37, Beauchamp Dep. Exhibit 432, attached as  
12 **CSOF Ex. 2**.)

13 **161.** It was also apparent from the *Freo* complaint that Chittick had not  
14 exercised appropriate care in loaning money to Easy Investments, since Freo alleged  
15 that Easy Investments had “attempted to encumber the property with deeds of trust to  
16 Active [Funding Group] and DenSco.” That allegation called into question both the  
17 due diligence Chittick had employed in selecting Easy Investments as a borrower and  
18 the practices Chittick followed in funding loans made by DenSco. (See Beauchamp  
19 Dep. Exhibit 111 at DIC0000064, ¶20, attached as **CSOF Ex. 43**.)

20 **162.** Although the files Beauchamp maintained and Bryan Cave’s billing  
21 records reflect that the only actions Beauchamp took after receiving Chittick’s June 14,  
22 2013 email were to spend 30 minutes to “review email from D. Chittick” and to send  
23 “[e]mail to D. Chittick regarding need to disclose pending litigation in Private Offering  
24 Memorandum,” Beauchamp claims in Defendants’ initial disclosure statement (at 6-7)  
25 that he did more than that. (See June 2013 Invoice, Beauchamp Dep. Exhibit 132 at  
26 BC\_003082-83, attached as **CSOF Ex. 35**; Defs.’ Initial Rule 26.1 Disclosure  
27 Statement at pgs. 6-7, Schenck Dep. Exhibit 4, attached as **CSOF Ex. 5**.)



1           **163.** Beauchamp claims that after reviewing the *Freo* complaint, he “advised  
2 Mr. Chittick . . . that Mr. Chittick needed to fund DenSco’s loans directly to the trustee  
3 or escrow company conducting the sale, rather than provide loan funds directly to the  
4 borrower, to ensure that DenSco’s deed of trust was protected.” This is an admission  
5 by Beauchamp that he knew in June 2013 that the 2011 POM was materially  
6 misleading. (*See* Defs.’ Initial Rule 26.1 Disclosure Statement at pgs. 6-7, Schenck  
7 Dep. Exhibit 4, attached as **CSOF Ex. 5.**)

8           **164.** Beauchamp goes on to say in Defendants’ initial disclosure statement that  
9 “Mr. Chittick, however, explained to Mr. Beauchamp that this was an isolated incident  
10 with a borrower, Menaged, whom Mr. Chittick described in his email as someone he  
11 had ‘done a ton of business with . . . hundreds of loans for several years . . . .’” (*See*  
12 Defs.’ Initial Rule 26.1 Disclosure Statement at pgs. 6-7, Schenck Dep. Exhibit 4,  
13 attached as **CSOF Ex. 5.**)

14           **165.** If a jury believes that Beauchamp actually had this discussion with  
15 Chittick, despite the absence of any email, note, or billing record to support  
16 Beauchamp’s claim, it should conclude that Beauchamp decided not to take any steps  
17 to investigate Chittick’s admission that DenSco had lax lending practices, or was  
18 preoccupied with his efforts to find a new law firm and did not take the time to do so.  
19 (*See* June 2013 Invoice, Beauchamp Dep. Exhibit 132, attached as **CSOF Ex. 35**; July  
20 2013 Invoice, Beauchamp Dep. Exhibit 133, attached as **CSOF Ex. 36**; and Aug. 2013  
21 Invoice, Beauchamp Dep. Exhibit 139, attached as **CSOF Ex. 37.**)

22           **166.** Beauchamp did not conduct an investigation of the allegations in the *Freo*  
23 lawsuit regarding DenSco’s lending practices, or of DenSco’s lending practices  
24 generally, in June 2013 (before the 2011 POM expired on July 1, 2013) or at any time  
25 thereafter. (*See* Beauchamp Dep. Transcript at 240:9-19, attached as **CSOF Ex. 6**; June  
26 2013 Invoice, Beauchamp Dep. Exhibit 32, attached as **CSOF Ex. 35**; and Defs.’ Initial  
27 Rule 26.1 Disclosure Statement at pgs. 6-7, Schenck Dep. Exhibit 4, attached as **CSOF**  
28 **Ex. 5.**)

1           **167.** If Beauchamp had investigated the allegations in the *Freo* complaint, he  
2 would have found within minutes, by reviewing records available through the Maricopa  
3 County Recorder's website relating to the property described in the *Freo* lawsuit: (i) a  
4 Deed of Trust and Security Agreement With Assignment of Rents given by Easy  
5 Investments in favor of Active Funding Group, that Menaged had signed on March 25,  
6 2013; and (ii) a Deed of Trust and Assignment of Rents given by Easy Investments in  
7 favor of DenSco, that Menaged had signed on April 2, 2013. Both signatures were  
8 witnessed by the same notary public. (*See generally* Maricopa County Recorder's  
9 website, <https://recorder.maricopa.gov/recdocdata/> ; *see also* Deed of Trust and  
10 Security Agreement With Assignment of Rents signed March 25, 2013, Beauchamp  
11 Dep. Exhibit 103, attached as **CSOF Ex. 68**; Deed of Trust and Assignment of Rents  
12 signed April 2, 2013, Beauchamp Dep. Exhibit 104, attached as **CSOF Ex. 69**.)

13           **168.** Those documents confirmed the allegation in the *Freo* complaint that  
14 DenSco was not in first position on a loan it had made to Easy Investments. (*See*  
15 Beauchamp Dep. Exhibit 103, attached as **CSOF Ex. 68**, and Beauchamp Dep. Exhibit  
16 104, attached as **CSOF Ex. 69**.)

17           **169.** Those documents also showed that Menaged had purposefully borrowed  
18 money, first from Active Funding and then from DenSco, using the same property as  
19 security, since he had personally signed both the Active Funding deed of trust and the  
20 DenSco deed of trust before a notary. (*Id.*)

21                   **5. During July and August 2013, Beauchamp Took Minimal**  
22                   **Steps to Prepare a New POM.**

23           **170.** After failing to do any investigation of the allegations in the *Freo* lawsuit  
24 or of DenSco's lending practices generally, an apparently distracted Beauchamp took  
25 minimal steps in July and August 2013 to prepare a new POM. (*See* Beauchamp Dep.  
26 Transcript at 240:9-19, attached as **CSOF Ex. 6**; June 2013 Invoice, Beauchamp Dep.  
27 Exhibit 132, attached as **CSOF Ex. 35**; Defs.' Initial Rule 26.1 Disclosure Statement  
28 at pgs. 6-7, Schenck Dep. Exhibit 4, attached as **CSOF Ex. 5**.)

1           **171.** On July 1, 2013, Beauchamp received an email from Sipes which stated,  
2 in part, that she didn't believe DenSco would be considered an investment advisor  
3 under the Investment Company Act or the Investment Advisers Act and did not believe  
4 DenSco needed to limit the number of accredited investors to whom it offered  
5 promissory notes. (*See* Beauchamp Dep. Exhibit 129, attached as **CSOF Ex. 42.**)

6           **172.** On July 10, 2013, Beauchamp forwarded to Chittick a news report that  
7 the SEC had just decided to end the ban on general solicitation. (*See* Beauchamp Dep.  
8 Exhibit 130A, attached as **CSOF Ex. 70.**)

9           **173.** Bryan Cave's billing statements reflect that between July 12, 2013 and  
10 July 31, 2013, Beauchamp recorded time to "revise disclosure in Private Offering  
11 Memorandum" and "[w]ork on and revise Private Offering Memorandum" and had  
12 additional time entries to "[w]ork on revisions to Private Offering Memorandum" or  
13 "[w]ork on issues for Private Offering Memorandum." (*See* July 2013 Invoice,  
14 Beauchamp Dep. Exhibit 133, attached as **CSOF Ex. 36.**)

15           **174.** But the only document in Bryan Cave's file that reflects any revisions  
16 Beauchamp made to the draft of a 2013 POM is a draft containing several of his  
17 handwritten edits. They included a note on the cover of the draft to "revise to new  
18 version for B/L purposes," but no blacklined draft of a 2013 POM exists in Bryan  
19 Cave's file. (*See* Beauchamp Dep. Exhibit 130, attached as **CSOF Ex. 71.**)

20           **175.** Bryan Cave's billing records reflect that the only work Beauchamp  
21 performed on the draft 2013 POM during August 2013 was to exchange emails on  
22 August 6, 2013 with Jensen asking for a form subscription agreement to comply with  
23 changes to Rule 506. (*See* Aug. 2013 Invoice, Beauchamp Dep. Exhibit 139, attached  
24 as **CSOF Ex. 37.**)

25           **176.** When Beauchamp left Bryan Cave in August 2013, the "due diligence"  
26 file for the draft 2013 POM contained only three documents: (1) a June 18, 2013 article  
27 captioned "Determining whether a company is an investment company"; (2) a printout  
28 from DenSco's website dated June 17, 2013; and (3) a July 28, 2010 article captioned

1 “Private Fund Investors Advisors Registration Act of 2010: New Law Changes  
2 Regulatory Framework for Alternative Investment Advisors.” (See Beauchamp Dep.  
3 Exhibit 136, attached as **CSOF Ex. 51.**)

4 **177.** Beauchamp’s notes reflect that he left a voicemail message for Chittick  
5 on August 26, 2013 regarding “need to work on the latest version of POM that Denny  
6 has w/ the prior experience charts. Need to discuss timing and update.” (See  
7 Beauchamp’s handwritten notes dated Aug. 26, 2013, Beauchamp Dep. Exhibit 134,  
8 attached as **CSOF Ex. 47.**)

9 **178.** His notes go on to reflect that he spoke to Chittick on August 26, 2013  
10 and that he “explained delay w/ POM,” discussed the “need to get copy of Denny’s  
11 latest POM & make changes to it,” and discussed that “BC will be sending a letter to  
12 Denny & letting Denny decide if he wants files kept at BC or moved to CH.” (*Id.*)

13 **6. Beauchamp Now Claims That Chittick Was Responsible for**  
14 **His Failure to Prepare a New POM Before He Left Bryan**  
15 **Cave, But His Claim is at Odds With the Documentary**  
**Record.**

16 **179.** In Defendants’ initial disclosure statement (at 5), Beauchamp claims that  
17 he “was never able to finalize the 2013 POM” because of Chittick. He says that  
18 “[a]lthough [he] asked for updated investment, loan and financial information regarding  
19 DenSco, Mr. Chittick stalled on providing the information, preferring to wait until after  
20 he scaled down the amount outstanding to investors.” (See Defs.’ Initial Rule 26.1  
21 Disclosure Statement, Schenck Dep. Exhibit 4, attached as **CSOF Ex. 5.**)

22 **180.** But Beauchamp’s claim has absolutely no support in the documentary  
23 record and is at odds with that record. Not only is there nothing in Bryan Cave’s files  
24 reflecting that Beauchamp asked Chittick for information that was not provided or that  
25 Chittick engaged in “stalling” tactics, but the files reflect that Chittick promptly gave  
26 Beauchamp the information he requested, and followed Beauchamp’s advice, such as  
27 when Chittick promptly changed DenSco’s website after Beauchamp told him to do so.  
28

1 (See Email from Chittick to Beauchamp on June 27, 2013, Beauchamp Dep. Exhibit  
2 128, attached as **CSOF Ex. 65.**)

3 **181.** Moreover, the corporate journal Chittick maintained for 2013 (the “2013  
4 Corporate Journal”) does not reflect any entries by Chittick about requests from  
5 Beauchamp for information or his declination to provide that information. (See 2013  
6 Corporate Journal, Schenck Dep. Exhibit 20, attached as **CSOF Ex. 72.**)

7 **182.** The only reference in the 2013 Corporate Journal to the preparation of  
8 the 2013 POM is a June 17, 2013 entry which stated: “I am going back and forth with  
9 David about how to circumvent this 50 million issue on size.” That entry is consistent  
10 with Beauchamp’s communications of the same date as to whether DenSco had  
11 engaged in general solicitation, an issue which, as noted above, was resolved on  
12 July 10, 2013. (See 2013 Corporate Journal at RECEIVER\_00020, Schenck Dep.  
13 Exhibit 20, attached as **CSOF Ex. 72.**)

14 **7. A Distracted Beauchamp, After Failing to Prepare a New**  
15 **POM by July 1, 2013, Did Not Advise DenSco to Stop Selling**  
16 **Promissory Notes Until a New POM Was Issued.**

17 **183.** By its terms, the 2011 POM expired on July 1, 2013. (See 2011 POM,  
18 Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2.**)

19 **184.** There is no evidence in the documentary record that Beauchamp, with  
20 one foot out Bryan Cave’s door, ever advised DenSco that it could not sell any new  
21 promissory notes after July 1, 2013 until it issued a new POM, and Beauchamp does  
22 not claim that he did so.

23 **185.** Beauchamp, preoccupied with finding a new law firm where he could  
24 continue to practice law, failed to give that advice, even though he knew, as he told his  
25 Bryan Cave colleagues in a June 20, 2013 email, that DenSco had “approximately 60  
26 investor notes that are scheduled to expire in the next 6 months (and to probably be  
27 rolled over into new notes).” (See Beauchamp Dep. Exhibit 122, attached as **CSOF Ex.**  
28 **62.**)

1           **186.** And while Beauchamp claims in Defendants’ initial disclosure statement  
2 (at 7) that “[p]rior to his departure” from Bryan Cave, he “repeatedly made clear to  
3 DenSco and Mr. Chittick that they needed to update DenSco’s POM,” there is no  
4 documentary support for that claim. (*See generally* July 2013 Invoice, Beauchamp Dep.  
5 Exhibit 133, attached as **CSOF Ex. 36**; Aug. 2013 Invoice, Beauchamp Dep. Exhibit  
6 139, attached as **CSOF Ex. 37**.)

7           **187.** Even if a jury believes that Beauchamp actually gave that advice, despite  
8 the absence of any supporting documents, the advice fell short of an explicit instruction  
9 that no sales could be made until a new POM was prepared. Without that instruction,  
10 Chittick was effectively told that DenSco could indefinitely delay “updating” its POM  
11 while continuing to sell promissory notes.

12                           **8. Because of Beauchamp’s Inattention, Chittick Caused DenSco**  
13                           **to Sell Approximately \$3.3 Million of Promissory Notes Before**  
14                           **Beauchamp Left Bryan Cave.**

15           **188.** Because Beauchamp failed to prepare a new POM by July 1, 2013 and  
16 failed to tell Chittick that DenSco could not sell promissory notes until a new POM was  
17 issued, Chittick caused DenSco, during July and August 2013, to sell promissory notes  
18 to some of the “approximately 60 investor[s]” whose notes Beauchamp knew were  
19 “scheduled to expire in the next 6 months (and to probably be rolled over into new  
20 notes).” (*See* Beauchamp Dep. Exhibit 122, attached as **CSOF Ex. 62**.)

21           **189.** In each case, an investor who had purchased a two-year promissory note  
22 in 2011, which expired in July or August 2013, purchased a new two-year promissory  
23 note. Those sales, which total \$2,337,653.47, are summarized in the following chart.

24

| Investor               | Amount    | Date    |
|------------------------|-----------|---------|
| Jeff Phalen            | \$100,000 | 7/1/13  |
| Gary Thompson          | \$250,000 | 7/3/13  |
| Kaylene Moss           | \$10,000  | 7/12/13 |
| Branson & Sandra Smith | \$250,000 | 7/13/13 |

28

|                      |              |         |
|----------------------|--------------|---------|
| Ralph Kaiser IRA     | \$170,653.47 | 7/17/13 |
| Jimmy Trainor        | \$122,000    | 7/22/13 |
| Russ Grisswold IRA   | \$50,000     | 7/24/13 |
| William Alber        | \$60,000     | 7/28/13 |
| Carol Wellman        | \$50,000     | 7/28/13 |
| Tom Smith            | \$400,000    | 8/2/13  |
| GE Seigford          | \$70,000     | 8/2/13  |
| GE Seigford          | \$40,000     | 8/2/13  |
| Carysn Smith         | \$10,000     | 8/2/13  |
| McKenna Smith        | \$10,000     | 8/3/13  |
| Gary Thompson        | \$145,000    | 8/3/13  |
| Carol & Mike Wellman | \$25,000     | 8/5/13  |
| Stacy Grant IRA      | \$75,000     | 8/8/15  |
| GE Seigford          | \$50,000     | 8/18/15 |
| Tom Smith            | \$400,000    | 8/24/15 |
| Dale Hickman         | \$50,000     | 8/30/15 |

**190.** In addition to these “rollover” promissory note sales, Chittick caused DenSco to sell \$926,567 of new promissory notes to existing and new investors during July and August 2013. Those sales are summarized in the following chart.

| Investor        | Amount    | Date    | Maturity |
|-----------------|-----------|---------|----------|
| Laurie Weiskopf | \$100,000 | 7/10/13 | 7/10/15  |
| Carol McDowell  | \$100,000 | 7/3/13  | 7/3/15   |
| Kevin Potempa   | \$100,000 | 7/29/13 | 1/26/16  |
| Wayne Ledet     | \$30,567  | 8/23/13 | 8/23/15  |
| Tom Smith       | \$500,000 | 8/26/13 | 2/26/15  |
| Kirk Fischer    | \$70,000  | 8/26/13 | 8/26/18  |

|               |          |         |         |
|---------------|----------|---------|---------|
| Carsyn Smith  | \$8,000  | 8/26/13 | 8/26/15 |
| McKenna Smith | \$8,000  | 8/26/13 | 8/26/15 |
| Averill Cate  | \$10,000 | 8/29/13 | 8/29/14 |

**C. Facts Regarding Clark Hill's Representation of DenSco in 2013**

**1. In September 2013, Beauchamp Brought DenSco to Clark Hill as a New Client and Clark Hill Agreed to Prepare a New POM.**

**191.** On September 11 and 12, 2013, Beauchamp exchanged emails with Chittick about taking steps to have certain DenSco files transferred from Bryan Cave to Clark Hill: "AZ Practice Review"; "Blue Sky Issues"; "Garnishments"; "General Corporate"; and "2011 and 2013 Private Offering." (*See* Beauchamp Dep. Exhibit 136A, attached as **CSOF Ex. 73.**)

**192.** On September 12, 2013, Beauchamp sent Chittick an engagement letter, which Chittick signed and returned that day. (*See* Email from Beauchamp to Chittick dated Sept. 12, 2013, Beauchamp Dep. Exhibit 137, attached as **CSOF Ex. 74**; Email from Chittick to Beauchamp dated Sept. 12, 2013, Beauchamp Dep. Exhibit 138, attached as **CSOF Ex. 75.**)

**193.** The letter, which was captioned "Representation of DenSco Investment Corporation," stated that it would "serve[] to record the terms of [Clark Hill's] engagement to represent DenSco Investment Corporation (the 'Client'), with regard to the legal matters transferred to Clark Hill PLC from Bryan Cave LLP." (*See* Beauchamp Dep. Exhibit 137, attached as **CSOF Ex. 74.**)

**194.** Clark Hill's engagement letter, like those Beauchamp had sent DenSco when he was at Gammage & Burnham and Bryan Cave, identified DenSco as Clark Hill's client. (*See* Beauchamp Dep. Exhibit 138 at DIC0008653, attached as **CSOF Ex. 75.**)



1       **195.** But Clark Hill’s engagement letter went further, and expressly stated that  
2 Clark Hill was representing only DenSco, and was not representing Chittick in any  
3 capacity. (*See* Beauchamp Dep. Exhibit 137, attached as **CSOF Ex. 74.**)

4           a. The letter stated that it was “supplemented by our Standard Terms  
5 of Engagement for Legal Services, attached, which are incorporated in this letter  
6 and apply to this matter and the other matter(s) for which you engage us.” (*Id.* at  
7 CH\_0000804.)

8           b. The “Standard Terms of Engagement for Legal Services” included  
9 a section called “Whom We Represent.” That section stated: “The . . . entity  
10 whom we represent is the . . . entity identified in our engagement letter and does  
11 not include any . . . employees, officers, directors, shareholders of a corporation  
12 . . . unless our engagement letter expressly provides otherwise.” (*Id.* at  
13 CH\_0000806, attached as **CSOF Ex. 74.**)

14       **196.** Even though this engagement letter clearly and expressly stated that Clark  
15 Hill represented only DenSco and was not also representing Chittick, Clark Hill and  
16 Beauchamp say in their initial disclosure statement (at 3) that “Chittick understood that  
17 Mr. Beauchamp, as an incident to Mr. Beauchamp’s representation of DenSco, was also  
18 representing Mr. Chittick in his capacity as president of DenSco.” (*See* Defs.’ Initial  
19 Disclosure, Schenck Dep. Exhibit 4, attached as **CSOF Ex. 5.**)

20       **197.** On September 13, 2013, Beauchamp took steps to open a new matter for  
21 DenSco in Clark Hill’s accounting and filing systems that was mis-identified as “2003  
22 Private Offering Memorandum.” Beauchamp’s notes stated that the file was being  
23 opened to “[f]inish 2013 POM for client. Started POM update at Bryan Cave.” (*See*  
24 Beauchamp Dep. Exhibit 138 at DIC0008653, DIC0008656, attached as **CSOF Ex.**  
25 **75.**)

26       **198.** Beauchamp opened this file, obligating Clark Hill to provide securities  
27 advice to DenSco and to diligently and promptly “finish [the] 2013 POM,” knowing  
28 that the 2011 POM had expired on July 1, 2013, no new POM had been issued, and that

1 as of June 20, 2013, “[a]ccording to [Chittick’s] note schedule, [DenSco] ha[d]  
2 approximately 60 investor notes that are scheduled to expire in the next 6 months (and  
3 to probably be rolled over into new notes).” (*See* Email from Beauchamp to R. Wang  
4 et al. dated June 20, 2013, Beauchamp Dep. Exhibit 122, attached as **CSOF Ex. 62**;  
5 Beauchamp Dep. Exhibit 138 at DIC0008653, DIC0008656, attached as **CSOF Ex.**  
6 **75.**)

7                   **2. According to Clark Hill’s Records the Firm Did No Work**  
8                   **Whatsoever on a New POM During the Months of September,**  
9                   **October, November, and December 2013.**

10           **199.** Clark Hill’s records show that neither Beauchamp nor any other Clark  
11 Hill attorney performed *any* work on a new POM during September, October, or  
12 November 2013.

13           **200.** The records also show that neither Beauchamp nor any other Clark Hill  
14 attorney even attempted to contact Chittick about the new POM. (*See* Jan. 2014 Invoice,  
15 Schenck Dep. Exhibit 6, attached as **CSOF Ex. 20**; Sept. 2016 Invoice, Schenck Dep.  
16 Exhibit 19, attached as **CSOF Ex. 32.**)

17                   **a. On December 18, 2013, Chittick Asked Beauchamp By**  
18                   **Email Why the New POM Had Not Been Finished.**

19           **201.** The first time entry in Clark Hill’s billing records relating to a new POM  
20 is a twelve-minute entry by Beauchamp on December 18, 2013 to “review email;  
21 telephone conversation with D. Chittick; review POM.” (*See* Jan. 2014 Invoice,  
22 Schenck Dep. Exhibit 6, attached as **CSOF Ex. 20.**)

23           **202.** The email referenced in that time entry is an email that Chittick sent to  
24 Beauchamp on December 18, 2013, saying “since you’ve moved, we’ve never finished  
25 the update on the memorandum. Warren is asking where it is.”<sup>1</sup> (*See* Beauchamp Dep.  
26 Exhibit 139A, attached as **CSOF Ex. 76.**)

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27           <sup>1</sup> Chittick was apparently referring to Warren Bush, an investor who had  
28 reviewed and commented on a draft of the 2011 POM, and had communicated with  
Beauchamp about that draft.

1           **203.** Beauchamp did not send Chittick a response to that email.

2           **204.** There are no notes in Clark Hill's files made by Beauchamp that  
3 summarized his December 18, 2013 call with Chittick. (*See* Beauchamp Dep. Exhibit  
4 139A, attached as **CSOF Ex. 76**; Jan. 2014 Invoice, Schenck Dep. Exhibit 6, attached  
5 as **CSOF Ex. 20**; Defs.' Initial Disclosure at pg. 7, ln. 17-26, Schenck Dep. Exhibit 4,  
6 attached as **CSOF Ex. 5**.)

7           **205.** Beauchamp apparently asked Chittick during that call to send him a copy  
8 of the 2011 POM, since Chittick emailed Beauchamp an electronic copy of the final  
9 2011 POM during the late morning of December 18, 2013. Beauchamp promptly  
10 responded, saying simply "[t]hank you. Have a wonderful holiday season." (*See* Email  
11 from Beauchamp to Chittick dated Dec. 18, 2013, Beauchamp Dep. Exhibit 140,  
12 attached as **CSOF Ex. 77**.)

13           **206.** Beauchamp forward Chittick's e-mail to his secretary that afternoon,  
14 asking her to "put this on our system for DenSco Investment Corporation/2013 POM."  
15 (*See* Beauchamp Dep. Exhibit 141, attached as **CSOF Ex. 78**.)

16                           **b. Clark Hill Claims That Beauchamp Learned During the**  
17                           **December 18, 2013 Call With Chittick About Problems**  
18                           **in DenSco's Loan Portfolio, but Clark Hill Did Nothing**  
                              **to Investigate Those Problems Nor Did It Begin**  
                              **Preparing a New POM.**

19           **207.** In their initial disclosure statement (at 7), Clark Hill and Beauchamp  
20 make claims about Beauchamp's December 18, 2013 telephone call with Chittick that  
21 are at odds with Clark Hill's file, including its billing statement. They allege that  
22 Chittick told Beauchamp "he had run into an issue with some of his loans with  
23 Menaged, and specifically, that properties securing a few DenSco loans were each  
24 subject to a second deed of trust competing for priority with DenSco's deed of trust."  
25 (*See* Defs.' Initial Disclosure at pg. 7, ln. 17-26, Schenck Dep. Exhibit 4, attached as  
26 **CSOF Ex. 5**.)

1           **208.** Clark Hill and Beauchamp claim that, “[a]fter briefly discussing the  
2 allegedly limited double lien issue, Mr. Chittick emphasized to Mr. Beauchamp that  
3 Mr. Chittick wanted to avoid litigation with other lenders. Mr. Chittick, however, did  
4 not request any advice or help. Accordingly, Mr. Beauchamp suggested that Mr.  
5 Chittick develop and document a plan to resolve the double liens, and nothing more  
6 came of the conversation.” (See Defs.’ Initial Disclosure at pg. 7, ln. 22-26, Schenck  
7 Dep. Exhibit 4, attached as **CSOF Ex. 5.**)

8           **209.** Lastly, Clark Hill and Beauchamp claim that during the telephone  
9 conversation “Mr. Beauchamp reminded Mr. Chittick that he still needed to update  
10 DenSco’s private offering memorandum.” (See Defs.’ Initial Disclosure at pg. 7, ln.  
11 21-22, Schenck Dep. Exhibit 4, attached as **CSOF Ex. 5.**)

12           **210.** No document in Clark Hill’s file, such as the handwritten notes that  
13 Beauchamp consistently and regularly kept to record his telephone conversations and  
14 meetings with Chittick, exists.

15           **211.** The 2013 Corporate Journal does not have any entries by Chittick  
16 reflecting that he had such a conversation with Beauchamp in December 2013. (See  
17 2013 Corporate Journal, Schenck Dep. Exhibit 20, attached as **CSOF Ex. 72.**)

18           **212.** If a jury were to believe Beauchamp’s claim that he had such a  
19 conversation with Chittick on December 18, 2013, despite the lack of evidence, it could  
20 only conclude that Clark Hill and Beauchamp were negligent by:

21               a. Failing to immediately investigate the information Beauchamp  
22 received about the Menaged loan problem, since Clark Hill had an affirmative  
23 duty to diligently and timely prepare a new POM, having agreed to do so in  
24 September 2013; and

25               b. Failing to expressly instruct Chittick that DenSco could not sell  
26 *any* promissory notes, since the 2011 POM had expired and a new POM had not  
27 yet been issued.  
28

1           **213.** Moreover, if a jury were to believe Beauchamp's claim that he had such  
2 a conversation with Chittick on December 18, 2013, despite the lack of evidence, it  
3 could only conclude that, by merely "reminding" Chittick that DenSco needed to  
4 "update" the 2011 POM, knowing that one-half of its investors would be "rolling over"  
5 promissory notes during the last six months of 2013, Beauchamp effectively advised  
6 Chittick that DenSco could indefinitely delay "updating" the 2011 POM while  
7 continuing to sell promissory notes.

8                   **3.     Although Clark Hill Did Nothing in December 2013 to Prepare**  
9                   **a New POM and Investigate Problems in DenSco's Loan**  
10                  **Portfolio, It Devoted Time That Month to Advising DenSco**  
                  **About Possibly Expanding its Business to Florida.**

11           **214.** In Chittick's December 18, 2013 email to Beauchamp, Chittick wrote,  
12 after asking about the status of Clark Hill's work on a new POM, about his plans to  
13 expand DenSco's business to Florida. He wrote: "[I]'ve got two of my best borrowers  
14 moving to F[L][.] [T]hey are begging me to look at lending in FL. [I] don't know  
15 anything about the market there, but [I] trust these guys. [I]'ve done 20 million with  
16 them over the past 5 yrs. [I]s it easy to find out the challenges, issues, etc with me  
17 lending there?" (See Beauchamp Dep. Exhibit 139A, attached as **CSOF Ex. 76.**)

18           **215.** While Beauchamp did nothing in response to Chittick's question about  
19 the status of a new POM, he immediately forwarded Chittick's e-mail to Clark Hill  
20 attorney Daniel Schenck, asking "[w]ill you have time to do the research for Florida or  
21 should I find someone else?" (See Schenck Dep. Exhibit 30, attached as **CSOF Ex. 80.**)

22           **216.** On December 18, 2013, Beauchamp recorded time to "[r]eview email and  
23 outline Florida research." (See Jan. 2014 Invoice at CH\_0002310, Schenck Dep.  
24 Exhibit 6, attached as **CSOF Ex. 20.**)

25           **217.** Between December 20 and December 23, 2013, both Beauchamp and  
26 Schenck recorded time to conducting research and analysis on "Florida broker issues,"  
27 "hard money regulatory lender requirements in Florida," and "Florida lending  
28

1 licenses.” (See Jan. 2014 Invoice at CH\_0002310, Schenck Dep. Exhibit 6, attached as  
2 **CSOF Ex. 20.**)

3 **218.** On December 23, 2013, Beauchamp recorded 42 minutes of time to  
4 “[r]eview Florida research from D. Schenck; discuss research and follow up with D.  
5 Schenck; email to D. Chittick.” (See Jan. 2014 Invoice at CH\_0002310, Schenck Dep.  
6 Exhibit 6, attached as **CSOF Ex. 20.**)

7 **219.** On Christmas Eve, December 24, 2013, Beauchamp sent Chittick an  
8 email which stated: “Happy Holidays! Quick Status: Based on a review of the Florida  
9 statutes, you would be considered a ‘Mortgage Lender’ which requires a license in  
10 Florida. The Florida government office that regulates ‘Mortgage Lender’ [sic] has been  
11 difficult to reach, but we will try again on Thursday. I want to confirm if you might be  
12 able to qualify for a limited license to operate in Florida and check a few other  
13 questions.” (See Schenck Dep. Exhibit 31, attached as **CSOF Ex. 79.**)

14 **220.** On December 26 and 30, 2013, Beauchamp and Schenck recorded time  
15 to obtaining information from the Florida Office of Financial Regulation and other  
16 information relevant to Chittick’s December 18, 2013 inquiry about expanding  
17 DenSco’s lending operations to Florida. (See Jan. 2014 Invoice at CH\_0002310,  
18 Schenck Dep. Exhibit 6, attached as **CSOF Ex. 20.**)

19 **4. Clark Hill Blames Chittick for Its Failure to Prepare a New**  
20 **POM in 2013.**

21 **221.** In their initial disclosure statement (at 7), Clark Hill and Beauchamp  
22 blame Chittick for their failure to do anything to prepare a new POM, which Clark Hill  
23 agreed to undertake in early September 2013. They say that after Chittick signed Clark  
24 Hill’s engagement letter on September 12, 2013 and directed Bryan Cave to transfer  
25 certain files to Clark Hill, “...Mr. Beauchamp never heard from Mr. Chittick regarding  
26 the unfinished 2013 POM, or any other matter, until December 2013.” (See Defs.’  
27 Initial Disclosure at pg. 7, ln. 13-15, Schenck Dep. Exhibit 4, attached as **CSOF Ex. 5.**)  
28

1           **222.** When he was deposed, Beauchamp offered a new excuse for Clark Hill's  
2 failure to do any work on a new POM. He testified that Clark Hill did nothing to prepare  
3 a new POM for DenSco because Chittick instructed him, as a condition of signing Clark  
4 Hill's engagement letter, that Clark Hill not do any work on a new POM "until I'm  
5 ready to go," and Beauchamp agreed. (*See* Beauchamp Dep. Transcript at pg. 295:10-  
6 19, attached as **CSOF Ex. 6.**)

7           **223.** Beauchamp did not include this material limitation on Clark Hill's  
8 representation in the engagement letter he asked DenSco to sign. (*See* Beauchamp Dep.  
9 Exhibit 137, attached as **CSOF Ex. 74.**)

10           **224.** When Clark Hill agreed to abide by Chittick's request, neither  
11 Beauchamp nor any other Clark Hill attorney separately advised Chittick that DenSco  
12 could not sell any promissory notes until DenSco had authorized Clark Hill to prepare  
13 a new POM and had issued the POM.

14                   **5. Clark Hill Was Negligent By Failing to Instruct DenSco That**  
15                   **it Could Not Sell Any Promissory Notes Until a New POM Was**  
16                   **Issued, and Clark Hill Aided and Abetted Chittick in**  
17                   **Breaching Fiduciary Duties He Owed DenSco by Following**  
                      **Chittick's Instructions to Not Prepare a New POM for**  
                      **DenSco, Knowing DenSco Was Continuing its Business**  
                      **Operations and Selling Rollover Promissory Notes.**

18           **225.** Clark Hill was negligent by never advising Chittick that DenSco could  
19 not sell any promissory notes until it had issued a new POM.

20           **226.** The evidence that will be presented to a jury will establish that if Clark  
21 Hill had done so, DenSco would have followed that advice and worked diligently with  
22 Clark Hill to prepare a new POM so that it could resume selling promissory notes.

23                   a. Among other evidence is Clark Hill and Beauchamp's admission  
24 in their initial disclosure statement (at 4), that "[o]ver the years, Mr. Chittick  
25 showed himself to be a trustworthy and savvy businessman, and a good client.  
26 . . . Despite complaining about the cost of legal services, Mr. Chittick appeared  
27 to follow Mr. Beauchamp's advice and provided information when asked for it."  
28

1 (See Defs.' Initial Disclosure at pg. 4, ln. 19-21, Schenck Dep. Exhibit 4,  
2 attached as **CSOF Ex. 5**.)

3 b. Moreover, approximately six weeks before Clark Hill was  
4 retained, DenSco had immediately followed Bryan Cave's advice to modify its  
5 website, and Bryan Cave's files reflect that Chittick was prepared to cause  
6 DenSco to refund all investor loans if that was necessary to correct the "general  
7 solicitation" problem Bryan Cave had identified. (See Email from Beauchamp  
8 to R. Wang dated June 17, 2013, Beauchamp Dep. Exhibit 117, attached as  
9 **CSOF Ex. 59**; Email from Chittick to Beauchamp dated June 27, 2013,  
10 Beauchamp Dep. Exhibit 128, attached as **CSOF Ex. 65**; Beauchamp Dep.  
11 Transcript at pp. 285:19-286:7, attached as **CSOF Ex. 6**.)

12 **227.** Beauchamp, by testifying that Clark Hill did not work on a new POM in  
13 2013 because Chittick conditioned DenSco's execution of the firm's engagement letter  
14 on Clark Hill's agreement to not perform any work on a new POM until Chittick was  
15 "ready to go" -- when he and Clark Hill knew that one-half of DenSco's investors would  
16 "roll over" their investments and purchase new promissory notes during the last six  
17 months of 2013 -- has admitted that from the moment DenSco retained Clark Hill in  
18 September 2013, Clark Hill aided and abetted Chittick in breaching fiduciary duties  
19 Chittick owed DenSco. (See Beauchamp Dep. Transcript at 299:2-302:6, attached as  
20 **CSOF Ex. 6**.)

21 **228.** Between September and December 2013, Clark Hill substantially assisted  
22 Chittick in breaching his fiduciary duties to DenSco by:

23 a. accepting DenSco as a client for purposes of preparing a new  
24 POM, and then abiding by Chittick's instruction to not do any work on that  
25 POM, knowing DenSco was continuing its business operations, including the  
26 sale of promissory notes;



1           b.       failing to appropriately advise DenSco about, and investigate facts  
2       regarding, DenSco's loan portfolio because Chittick was allegedly "dealing"  
3       with those problems; and

4           c.       advising Chittick that DenSco could indefinitely delay the  
5       issuance of an "update" to the 2011 POM.

6       **229.** The ongoing sale of "roll over" and new promissory notes was necessary  
7       for DenSco to continue its business operations, and Clark Hill enabled DenSco to obtain  
8       investor funds for a four-month period without making adequate disclosures to those  
9       investors, exposing DenSco to substantial liability to its investors. (*See* Beauchamp  
10      Dep. Transcript at 189:15-193:12, attached as **CSOF Ex. 6.**)

11           **6. During the First Four Months of Clark Hill's Representation**  
12           **of DenSco, the Firm Aided and Abetted Chittick's Breach of**  
13           **Fiduciary Duty to DenSco When He Caused DenSco to Sell**  
              **Approximately \$8.5 Million of Promissory Notes in Violation**  
              **of the Securities Laws.**

14       **230.** As a result of Clark Hill's and Beauchamp's conduct, Chittick caused  
15       DenSco between September and December 2013 to sell promissory notes to some of  
16       the "approximately 60 investor[s]" whose promissory notes Beauchamp knew were  
17       "scheduled to expire [during the last six months of 2013] (and to probably be rolled  
18       over into new notes)." (*See* Email from Beauchamp to R. Wang dated June 17, 2013,  
19       Beauchamp Dep. Exhibit 117, attached as **CSOF Ex. 59**; Beauchamp Dep. Transcript  
20       at 277:24-278:24, attached as **CSOF Ex. 6.**)

21       **231.** In each case, an investor who had purchased a two-year promissory note  
22       in 2011, which expired in September, October, November, or December 2013,  
23       purchased a new two-year promissory note. Those sales, which total \$4,148,162.79,  
24       are summarized in the following chart.

25

| Investor              | Amount    | Date   |
|-----------------------|-----------|--------|
| Van Butler            | \$50,000  | 9/1/13 |
| Arden & Nina Chittick | \$100.000 | 9/1/13 |

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|-------------------------|-----------|----------|
| Carysn Smith            | \$10,000  | 9/2/13   |
| Michael & Diana Gumbert | \$100,000 | 9/8/13   |
| Kaylene Moss            | \$10,000  | 9/8/13   |
| McKenna Smith           | \$10,000  | 9/8/13   |
| Glen Davis              | \$20,000  | 9/12/13  |
| Averill Cate, Jr.       | \$10,000  | 9/13/13  |
| Craig Brown             | \$25,000  | 9/20/13  |
| Judy & Gary Siegford    | \$40,000  | 9/20/13  |
| Bill & Jean Locke       | \$15,000  | 9/25/13  |
| Bill & Jean Locke       | \$30,000  | 9/25/13  |
| Ralph Hey               | \$60,000  | 9/29/13  |
| Michael & Diana Gumbert | \$100,000 | 9/30/13  |
| Mary Kent               | \$100,000 | 10/1/13  |
| Jim McArdle             | \$100,000 | 10/3/13  |
| Caro McDowell           | \$100,000 | 10/7/13  |
| Jeff Phalen             | \$20,000  | 10/14/13 |
| Jeff Phalen             | \$20,000  | 10/14/13 |
| Jeff Phalen – IRA       | \$200,000 | 10/18/13 |
| Brian Imdieke           | \$250,000 | 10/19/13 |
| Bill Hughes – IRA       | \$314,700 | 10/24/13 |
| Judy Hughes – IRA       | \$14,300  | 10/24/13 |
| Manual A. Lent – IRA    | \$40,000  | 10/25/13 |
| Dave Preston            | \$60,000  | 10/26/13 |
| Michael & Diana Gumbert | \$100,000 | 11/1/13  |
| Jolene Page             | \$50,000  | 11/1/13  |
| Stanley Scholz – IRA    | \$50,000  | 11/5/13  |
| Wade Underwood          | \$50,000  | 11/5/13  |

|                       |              |          |
|-----------------------|--------------|----------|
| Paul A. Kent          | \$112,161.79 | 11/9/13  |
| Scott D. Detota       | \$50,000     | 11/14/13 |
| Tom Smith             | \$800,000    | 11/21/13 |
| Mary Kent             | \$100,000    | 11/21/13 |
| Les Jones             | \$100,000    | 11/21/13 |
| Vince & Sharry Muscat | \$200,000    | 11/23/13 |
| Lillian Lent – IRA    | \$17,000     | 11/25/13 |
| Jolene Page           | \$50,000     | 12/1/13  |
| Gary Thompson         | \$20,000     | 12/4/13  |
| Kennen Burkhart       | \$150,000    | 12/15/13 |
| Mo & Sam Chittick     | \$50,000     | 12/20/13 |
| Jolene Page           | \$200,000    | 12/22/13 |
| Brian Imdieke         | \$250,000    | 12/23/13 |

**232.** In addition to these “rollover” promissory note sales, Chittick caused DenSco to sell \$4,029,066.71 of new promissory notes to existing and new investors during September, October, November and December 2013. Those sales are summarized in the following chart.<sup>2</sup>

| Investor            | Amount    | Date    |
|---------------------|-----------|---------|
| Ralph Hey           | \$15,000  | 9/6/13  |
| Marvin & Pat Miller | \$900,000 | 9/9/13  |
| Marvin & Pat Miller | \$100,000 | 9/9/13  |
| Marvin & Pat Miller | \$706,000 | 9/10/13 |
| Ross Dupper         | \$800,000 | 9/13/13 |
| Jeff Phalen – IRA   | \$150,000 | 9/17/13 |

<sup>2</sup> Each note was a two-year note, except those marked with an \*, which were one-year notes, and the note marked with \*\*, which matured on 3/31/14.

|                         |              |            |
|-------------------------|--------------|------------|
| Michael Zones           | \$500,000    | 9/24/13    |
| Erin Carrick – Trust    | \$200,066.71 | 9/27/13    |
| Averill Cate            | \$10,000     | 10/15/13   |
| Jemma Kopel             | \$100,000    | 11/14/13   |
| Averill Cate            | \$10,000     | 11/15/13*  |
| Brian Odenthal – IRA    | \$8,000      | 12/1/13    |
|                         |              |            |
| Averill Cate            | \$10,000     | 12/15/13*  |
| Brian & Janice Odenthal | \$20,000     | 12/19/13   |
| Steven Bunger           | \$500,000    | 12/20/13** |

(See Receiver's Status Report dated Dec. 23, 2016, Exhibit A to Davis Dep. Exhibit 479, attached as **CSOF Ex. 84.**)

**D. Facts Regarding Clark Hill's Representation of DenSco During 2014**

**1. Clark Hill Learned During the First Week of January 2014 That DenSco Had Suffered a Substantial Loan Loss Because of Chittick's Mismanagement and Failure to Follow the Lending Procedures DenSco Had Told Its Investors It Would Follow.**

**233.** On Sunday, January 5, 2014, Beauchamp received an email from Chittick asking if he had time to meet with him during the coming week. (See Email from Chittick to Beauchamp dated Jan. 5, 2014, attached as **CSOF Ex. 85.**)

**a. On January 6, 2014, Beauchamp Received a Demand Letter That Called into Question 52 Loans DenSco Had Made to Menaged.**

**234.** On Monday, January 6, 2014, Beauchamp received an email from Chittick which stated: "read the first two pages, then give me a call." Attached to the email was a three-page demand letter from Bryan Cave attorney Robert J. Miller; Exhibit A, a list of 52 properties; and two subordination agreements. (See Beauchamp Dep. Exhibit 142, attached as **CSOF Ex. 86.**)

1           **235.** The letter was written on behalf of Azben Limited, LLC; Geared Equity,  
2 LLC; and 50780, LLC (the “Lienholders”). It asserted that Geared Equity, 50780, and  
3 Sell Wholesale Funding, LLC (the “Lenders”) had each loaned money to Arizona Home  
4 Foreclosures, LLC and Easy Investments, LLC, and that the loans Sell Wholesale  
5 Funding had made were subsequently assigned to Azben. (*See* Beauchamp Dep. Exhibit  
6 142 at CH\_0000829, attached as **CSOF Ex. 86.**)

7           **236.** Exhibit A to the letter identified, with reference to specific loan numbers  
8 and street addresses, 52 loans that the Lenders had made to Easy Investments and  
9 Arizona Home Foreclosures to acquire 52 homes at trustee sales. (*See* Beauchamp Dep.  
10 exhibit 142 at CH\_0000832, attached as **CSOF Ex. 86.**)

11           **237.** The letter asserted that the Lenders’ loans had been made by “certified  
12 funds delivered directly to the trustee” and secured by “promptly recorded deeds of  
13 trust confirming a senior lien position on each of the Properties.” (*See* Beauchamp Dep.  
14 Exhibit 142 at CH\_0000829, attached as **CSOF Ex. 86.**)

15           **238.** The letter went on to assert that DenSco had “engaged in a practice of  
16 recording a ‘mortgage’ on each of the [52 properties] on around the same time as the  
17 Lenders were recording their senior deeds of trust” and that *each such mortgage falsely*  
18 *stated that DenSco had “provided purchase money funding” and that its “loans are*  
19 *‘evidenced by a check payable’ to the trustee for each of the Properties.*” (Emphasis  
20 added.) (*Id.*)

21           **239.** The letter asserted that DenSco could not claim to be in a senior lien  
22 position on those properties “since in each and every instance, only the Lenders  
23 provided the applicable trustee with certified funds supporting the Borrower’s purchase  
24 money acquisition for each of the Properties.” (*See* Beauchamp Dep. Exhibit 142 at  
25 CH\_0000830, attached as **CSOF Ex. 86.**)

26           **240.** The letter demanded that DenSco sign subordination agreements  
27 acknowledging that it did not have a first position lien on any of the 52 properties, and  
28 said that if DenSco refused to do so, the Lienholders would assert claims against

1 DenSco for fraud and conspiracy to defraud; negligent misrepresentation; and wrongful  
2 recordation pursuant to A.R.S. § 33-420. (*Id.*)

3       **241.** The letter included “two forms of subordination agreement – one form  
4 document applies to the Azben loans and the other form applies to the loans of Geared  
5 Equity, LLC and 50780, LLC.” A footnote stated that “[p]roperty addresses and other  
6 ‘form’ information will need to be included in each subordination agreement. My firm  
7 will only commence preparing a subordination agreement for each loan when written  
8 confirmation is provided that DenSco has unconditionally agreed to execute each  
9 subordination agreement in the form enclosed herein.” (*Id.*)

10                   **b. On January 6, 2014, Beauchamp Reviewed the Demand**  
11                   **Letter, Which Provided Clear Evidence That Chittick**  
12                   **Had Breached His Fiduciary Duties to DenSco and**  
                      **Exposed DenSco to Substantial Financial Loss.**

13       **242.** Beauchamp spoke to Chittick by telephone that day, after receiving the  
14 letter. Beauchamp’s notes from that call state that Chittick told him DenSco’s “largest  
15 borrower” – who Beauchamp knew or should have known from the *Freo* lawsuit he  
16 had received in June 2013 was Menaged – “had a guy working in his office and was  
17 getting 2 loans on each property,” and that Chittick and Menaged “had already fixed  
18 about 6 loans.” The notes reflect that Beauchamp planned to meet with Chittick on  
19 Thursday, January 9, 2014. (*See* Beauchamp’s handwritten notes dated Jan. 6, 2014,  
20 Beauchamp Dep. Exhibit 143, attached as **CSOF Ex. 87.**)

21       **243.** Clark Hill’s billing records reflect that Beauchamp billed 2.4 hours on  
22 January 6, 2014 to “[r]eview, work on and respond to several emails; review statutory  
23 references; telephone conversation with office of D. Chittick [a reference to having left  
24 a voice-mail message for Chittick, since he worked alone from his home office];  
25 telephone conversation with D. Chittick regarding demand letter, issues, background  
26 information and requirements; review notes and statute requirements; review  
27 documents.” (*See* Jan. 2014 Invoice at CH\_0002313, Schenck Dep. Exhibit 6, attached  
28 as **CSOF Ex. 20.**)

1       **244.** From the demand letter alone, Beauchamp knew that:

2           a. Chittick had failed to follow the lending procedures called for by  
3 the Receipt and Mortgage document Beauchamp had approved in 2007. That  
4 document called for DenSco's borrower to present a check payable to the  
5 Trustee. It was evident from the demand letter that DenSco had not done so.  
6 DenSco could not have issued 52 checks payable to Trustees, since the letter  
7 asserted that the Lenders had issued checks to the Trustees when they acquired  
8 those 52 properties. (*See* Beauchamp Dep. Exhibit 142 at CH\_0000829-830,  
9 attached as **CSOF Ex. 86.**)

10          b. DenSco's borrowers, Arizona Home Foreclosures and Easy  
11 Investments – which were both owned by Menaged – had obtained 52 loans from  
12 the Lenders and 52 loans from DenSco, that were to be secured by the same 52  
13 properties. If, as the Lenders claimed, they had actually paid a Trustee for each  
14 property, DenSco had effectively made 52 unsecured loans and the disposition  
15 of those monies was unknown.

16          c. The potential financial impact on DenSco was substantial.  
17 Beauchamp knew from the 2011 POM that DenSco's average loan amount was  
18 \$116,000, so that DenSco's potential losses from the 52 loans, if the loan  
19 proceeds could not be traced and recovered, was \$6 million or more, or  
20 approximately 13% of the \$47 million that Beauchamp understood DenSco had  
21 raised from investors as of June 2013. (*See* Expert Report of Fenix Financial  
22 Forensics LLC at pgs. 2-10, attached as **CSOF Ex. 190**; 2011 POM, Beauchamp  
23 Dep. Exhibit 432, attached as **CSOF Ex. 2.**)

24       **245.** Beauchamp could have easily conducted a limited investigation to  
25 evaluate the claims in the demand letter that the Lenders were in first position on each  
26 of the 52 properties, or to assess the information he had received during his telephone  
27 call with Chittick that "a guy working in [Menaged's] office . . . was getting 2 loans  
28 on each property." (*See* Beauchamp Dep. Exhibit 142, attached as **CSOF Ex. 86.**)

1       **246.** Beauchamp could have done so by searching for publicly recorded  
2 documents that were identified in the two subordination agreements attached to the  
3 demand letter. (*See* Beauchamp Dep. Exhibit 142 at CH\_0000834 - 848, attached as  
4 **CSOF Ex. 86.**)

5           a. The first of those subordination agreements identified, by  
6 reference to the instrument number assigned by the Maricopa County Recorder  
7 (2013-0832534), the Mortgage DenSco had recorded on September 16, 2013 on  
8 the property at issue. The subordination agreement also identified, by reference  
9 to a recorded instrument number (2013-0833010), the deed of trust that Sell  
10 Wholesale Funding, LLC had recorded on September 16, 2013 for the same  
11 property. (*See* Schenck Dep. Exhibit 28, attached as **CSOF Ex. 88.**)

12           b. In January 2014, the Maricopa County Recorder's Office had a  
13 free "Recorded Document Search" function. The same tool is available today.  
14 (*See* generally <https://recorder.maricopa.gov/recdocdata/> .)

15           c. If Beauchamp had used that tool, two brief searches would have  
16 shown that the DenSco Mortgage (2013-0832534) was signed by Menaged  
17 before a notary on September 16, 2013, and that Menaged also signed the Sell  
18 Wholesale Funding deed of trust (2013-0833010) before a notary on  
19 September 16, 2013. Those searches would also have identified the property in  
20 question as 977 S. Colonial Drive in Gilbert, Arizona. (*See* Schenck Dep. Exhibit  
21 29, attached as **CSOF Ex. 89.**)

22           Those two documents show that Menaged, not "a guy working in his  
23 office," had secured both loans. (*See* Schenck Dep. Exhibit 28, attached as  
24 **CSOF Ex. 88**; Schenck Dep. Exhibit 29, attached as **CSOF Ex. 89**; Beauchamp  
25 Dep. Exhibit 143, attached as **CSOF Ex. 87**; Beauchamp Dep. Transcript at  
26 320:3-322:8, attached as **CSOF Ex. 6.**)

27           d. The second of the subordination agreements attached to the  
28 demand letter identified, by reference to a recorded instrument number (2013-



0717135), the Mortgage DenSco had recorded on August 6, 2013 on the property at issue. The subordination agreement also identified, by reference to a recorded instrument number (2013-0721399), the deed of trust that Geared Equity, LLC had recorded on August 7, 2013 for the same property. (*See* Beauchamp Dep. Exhibit 142, attached as **CSOF Ex. 86**; *see also* Geared Equity Deed of Trust at RECEIVER\_001117, attached as **CSOF Ex. 90**.)

e. If Beauchamp had used the Recorded Document Search tool, two brief searches would have shown that the DenSco Mortgage (2013-0717135) was signed by Menaged before a notary on August 6, 2013, and that Menaged also signed the Sell Wholesale Funding deed of trust (2013-0721399) before a notary on August 6, 2013. Those searches would have identified the property in question as 39817 Messner Way in Anthem, Arizona.

(*See* <https://recorder.maricopa.gov/recdocdata/>)

f. Those two documents show that Menaged, not “a guy working in his office,” had secured both loans. (*See* Beauchamp Dep. Exhibit 143, attached as **CSOF Ex. 87**.)

**247.** As for the remaining 49 properties on Exhibit A to the demand letter, Beauchamp could have, either by himself or through a paralegal, quickly discovered that in each case, Menaged, and not “a guy working in his office,” had signed the documents at issue. (*See* Beauchamp Dep. Exhibit 142, attached as **CSOF Ex. 86**; Beauchamp Dep. Exhibit 143, attached as **CSOF Ex. 87**.)

a. This could have been done by using a free search function on the Maricopa County Assessor’s Office website that allows anyone to search for property records using a street address (such as those given in Exhibit A to the demand letter), or other means of customary due diligence. The Assessor’s website provides a link to a recorded instrument on the Maricopa County Recorder’s Office website for each property, and that information could have in turn been used to quickly locate both the deed of trust recorded by the Lenders

1 and DenSco's competing Mortgage by using the Recorded Document Search  
2 tool. (See <https://recorder.maricopa.gov/recdocdata/>)

3 b. Such a search, which would take less than five minutes for each  
4 property, would produce records showing that for each of the 49 properties,  
5 Menaged had signed both a DenSco Mortgage and another lender's deed of trust  
6 before a notary, providing further evidence that Menaged, not "some guy  
7 working in his office," had secured all of the loans in question, and had  
8 purposefully defrauded DenSco. (See Beauchamp Dep. Exhibit 143, attached as  
9 **CSOF Ex. 87.**)

10 c. **On January 7, 2014, Clark Hill Received an Email From**  
11 **Chittick in Which He Admitted That He Had Grossly**  
12 **Mismanaged DenSco's Loan Portfolio, Failed to**  
13 **Comply With the Lending Practices Disclosed in the**  
**2011 POM, and Caused DenSco to Suffer Substantial**  
**Losses.**

14 **248.** On Tuesday, January 7, 2014, Beauchamp received an email from  
15 Chittick, copied to Menaged, which contained information relevant to the demand letter  
16 and said that Chittick was bringing Menaged to the planned January 9, 2014 meeting.  
17 (See Beauchamp Dep. Exhibit 144, attached as **CSOF Ex. 91.**)

18 **249.** Chittick's email said that DenSco had, since 2007, loaned \$50 million to  
19 "a few different LLC's" controlled by Menaged. Beauchamp knew or should have  
20 known that those companies included the two entities identified in the demand letter:  
21 Easy Investments (a defendant in the June 2013 *Freo* lawsuit) and Arizona Home  
22 Foreclosures. (See Beauchamp Dep. Exhibit 144 at CH\_0005916, attached as **CSOF**  
23 **Ex. 91.**)

24 **250.** Chittick's email said that "[b]ecause of our long term relationship, *when*  
25 *[Menaged] needed money, [I] would wire the money to his account and he would pay*  
26 *the trustee*" (emphasis added), Menaged would sign a Mortgage that referenced the  
27 payment to the trustee, and Chittick would cause the Mortgage to be recorded. (See  
28 Beauchamp Dep. Exhibit 144 at CH\_0005917, attached as **CSOF Ex. 91.**)

1       **251.** Chittick attached to his email a form of Mortgage, Deed of Trust, and  
2 Note Secured by Deed of Trust that he routinely used in making loans to Menaged,  
3 which Chittick described as “docs you have reviewed and have been reviewed by a guy  
4 at your last law firm, maybe two firms ago in 2007.” (*Id.*)

5       **252.** Chittick’s email confirmed what was evident from the demand letter, and  
6 brought home the red flags Beauchamp had missed when he prepared the 2011 POM  
7 and when he reviewed the *Freo* lawsuit six months earlier:

8           a. Chittick had been grossly negligent in managing DenSco’s loan  
9 portfolio, by not complying with the terms of the Mortgage, which called for  
10 DenSco to issue a check payable to the Trustee, and instead wiring money to  
11 Menaged, trusting Menaged to actually use those funds to pay a Trustee.

12           b. Chittick’s admitted practice of giving DenSco’s funds directly to  
13 Menaged, rather than paying them directly to a Trustee through a check made  
14 payable to the Trustee, made the statements in the 2011 POM about DenSco’s  
15 lending practices materially misleading.

16 (*See* Beauchamp Dep. Exhibit 142, attached as **CSOF Ex. 86**; Beauchamp Dep. Exhibit  
17 144, attached as **CSOF Ex. 91.**)

18       **253.** Chittick’s reference to “docs you have reviewed and have been reviewed  
19 by a guy at your last law firm, maybe two firms ago in 2007” suggested that Chittick  
20 might blame Beauchamp for the problems DenSco now faced because of DenSco’s use  
21 of those documents. (*See* Beauchamp Dep. Exhibit 144 at CH\_0005917, attached as  
22 **CSOF Ex. 91.**)

23       **254.** Chittick’s email went on to say that Menaged had told him in November  
24 2013 that DenSco had been defrauded by Menaged’s “cousin,” who allegedly worked  
25 with Menaged in managing Easy Investments and Arizona Home Foreclosures.  
26 Menaged claimed that his “cousin” had “receiv[ed] the funds from [DenSco], then  
27 request[ed] them from . . . other lenders [who] cut a cashiers check for the agreed upon  
28 loan amount . . . [took] it to the trustee and . . . then record[ed] a [deed of trust]

1 immediately.” (See Beauchamp Dep. Exhibit 144 at CH\_0005918, attached as **CSOF**  
2 **Ex. 91.**)

3       **255.** Chittick explained that “sometimes” DenSco had recorded its mortgage  
4 before another lender’s deed of trust was recorded, but in other cases it had not. (*Id.*)

5       **256.** According to Chittick, “[t]he cousin absconded with the funds.  
6 [Menaged] figured this out in mid November. He came to me and told me what was  
7 happening. He said he talked to the other lenders and they agreed that this was a mess,  
8 and as long as they got their interest and were being paid off they wouldn’t foreclose,  
9 sue or anything else.” (*Id.*)

10       **257.** Chittick went on to describe the “plan” that he and Menaged had been  
11 executing since November: to “sell off the properties and pay off both liens with interest  
12 and make everyone whole.” He acknowledged that there were “short falls” on each  
13 property, representing the difference between the value of the property and the  
14 combined amount of the two loans, and that “[c]oming up with the short fall on all these  
15 houses is a challenge, but we believe it is doable. Our plan is a combination of injecting  
16 capital and extending cheaper money.” (See Beauchamp Dep. Exhibit 144 at  
17 CH\_0005918-19, attached as **CSOF Ex. 91.**)

18       **258.** Chittick described the basic terms of the agreement with the “other  
19 lenders” as including the following: (1) “all lenders will be paid their interest, except  
20 [DenSco], I’m allowing [its] interest to accrue”; (2) DenSco is “extending [Menaged]  
21 a million dollars against a home at 3%”; and (3) Menaged would contribute “4-5 million  
22 dollars” of his own money. (See Beauchamp Dep. Exhibit 144 at CH\_0005918–5919,  
23 attached as **CSOF Ex. 91.**)

24       **259.** Chittick claimed that he and Menaged had “already cleared up about 10%  
25 of the total \$’s in question” with the “other lenders.” (See Beauchamp Dep. Exhibit 144  
26 at CH\_0005919, attached as **CSOF Ex. 91.**)

27       **260.** As for the “gentleman who handed me the paperwork” – a reference to a  
28 person affiliated with one of the three entities identified in the demand letter – Chittick

1 wrote that he “believes because he physically paid the trustee that he is in first position,  
2 but agrees it’s messy. [H]e wants me to subordinate to him, no matter who recorded  
3 first. [W]e have paid off one of his loans, you’ll see on this list Pratt – paid in full, I’ve  
4 attached the hud-1 and you can see that it shows me in first position versus his belief.  
5 [N]ow that’s one title agent[’]s opinion, [I] understand that’s not settling [a] legal  
6 dispute on who’s in first or second.” (*Id.*)

7       **261.** Chittick went on to state: “*I know that [I] can’t sign the subordination*  
8 *[agreement] because that goes against everything that [I] tell [DenSco’s] investors.*”  
9 (Emphasis added.) (*See* Beauchamp Dep. Exhibit 144 at CH\_0005920, attached as  
10 **CSOF Ex. 91.**)

11       **262.** He also wrote that “there are several other lenders waiting to see what [I]  
12 do[.] [I]f I sign with this group, they want to have me sign for them too.” (*Id.*)

13       **263.** Chittick concluded his email by stating “[w]hat we need is an agreement  
14 that as long as the other lenders are being paid their interest and payoffs continue to  
15 come . . . that no one initiates foreclosure for obvious reasons, which will give us time  
16 to execute our plan.” (*Id.*)

17                   **d. On January 7 and 8, 2014, Beauchamp Reviewed the**  
18                   **Demand Letter and Chittick’s January 6, 2014 Email,**  
19                   **Including a Review of “Lien Dispute Information.”**

20       **264.** Clark Hill’s billing records reflect that Beauchamp billed 1.8 hours on  
21 January 7, 2014 to “[r]eview legislative history for purchase money security interest;  
22 review documents and follow-up information” and “telephone conversation with office  
23 of D. Chittick,” which was a reference to having left a voicemail message for Chittick.  
24 (*See* Jan. 2014 Invoice at CH\_0002313, Schenck Dep. Exhibit 6, attached as **CSOF Ex.**  
25 **20.**)

26       **265.** Clark Hill’s billing records reflect that Beauchamp billed 1.7 hours on  
27 January 8, 2014 to “[r]eview information from D. Chittick; review and outline follow-  
28 up questions; prepare for meeting; review lien dispute information.” (*Id.*)

1       **266.** As of January 8, 2014, Beauchamp knew that:

2               a. Chittick had breached fiduciary duties he owed DenSco by causing  
3 it to sell promissory notes to investors during the four months that had passed  
4 since DenSco's September 2013 retention of Clark Hill without first issuing the  
5 new POM that Clark Hill had been retained to prepare, but had not prepared at  
6 Chittick's instruction;

7               b. Chittick had breached fiduciary duties he owed DenSco through  
8 grossly negligent lending practices;

9               c. the scope of DenSco's financial exposure was greater than the 52  
10 properties identified in the demand letter, since it included the "other lenders"  
11 with whom Menaged had reached an informal agreement in November 2013 (*see*  
12 Expert Report of Fenix Financial Forensic LLC at pgs. 2-10, attached as **CSOF**  
13 **Ex. 190**);

14              d. investors who had purchased promissory notes since Clark Hill's  
15 September 2013 retention had not been told of (1) the *Freo* lawsuit, (2) DenSco's  
16 grossly deficient lending practices, (3) DenSco's concentration of loans made to  
17 one borrower, Menaged, (4) DenSco's November 2013 discovery of the fraud  
18 allegedly perpetrated by Menaged's "cousin," or (5) Chittick's "plan" to help  
19 Menaged by "injecting capital" to pay off the loans of other lenders on properties  
20 that Menaged's companies had allegedly purchased with DenSco's funds,  
21 allowing interest on DenSco's loans to accrue, and lending Menaged \$1 million  
22 at 3% interest;

23              e. Chittick was unwilling to cause DenSco to accept the losses his  
24 gross negligence had caused by signing the subordination agreements attached  
25 to the demand letter, "because that goes against everything that [he] tell[s]  
26 [DenSco's] investors," or to make any disclosure to DenSco's investors while  
27 he and Menaged pursued their plan.

1 (See Beauchamp Dep. Exhibit 144, attached as **CSOF Ex. 91**; Beauchamp Dep. Exhibit  
2 142, attached as **CSOF Ex. 86**; Beauchamp Dep. Exhibit 143 attached as **CSOF Ex.**  
3 **87**; Jan. 2014 Invoice at CH\_0002313, Schenck Dep. Exhibit 6, attached as **CSOF Ex.**  
4 **20**.)

5       **267.** Beauchamp also knew from his January 6 review of the demand letter and  
6 the hours he had devoted on January 7 and 8 to analyzing Chittick's email and other  
7 information he had received from Chittick, that Menaged's "cousin" story was  
8 implausible and that by accepting the story without investigation and planning to  
9 continue DenSco's lending relationship with Menaged, Chittick was breaching his  
10 fiduciary duties to DenSco. (See Jan. 2014 Invoice at CH\_0002313, Schenck Dep.  
11 Exhibit 6, attached as **CSOF Ex. 20**; Beauchamp Dep. Exhibit 142, attached as **CSOF**  
12 **Ex. 86**.)

13       **268.** In addition to the information provided in the subordination agreements  
14 and the list of the other 52 properties identified in the demand letter, Beauchamp should  
15 have also reviewed the information attached to Chittick's January 6, 2014 email  
16 regarding a loan for which Chittick claimed DenSco was in first position. (See  
17 Beauchamp Dep. Exhibit 142 at CH\_0000829-830, attached as **CSOF Ex. 86**;  
18 Beauchamp Dep. Exhibit 144, attached as **CSOF Ex. 91**.)

19       **269.** If Beauchamp had used the information in the settlement statement  
20 attached to Chittick's email to investigate Chittick's claim that DenSco was in first  
21 position with respect to the "Pratt" property, he could have used the Recorded  
22 Document Search tool on the website maintained by Maricopa County Recorder's  
23 Office. (See Beauchamp Dep. Exhibit 144, attached as **CSOF Ex. 91**.)

24       **270.** A few brief searches would have confirmed Chittick's claim that DenSco  
25 was the first to record: DenSco's Mortgage was recorded on September 17, 2013 as  
26 instrument number 2013-0837513, while Geared Equity's deed of trust was recorded  
27 on September 19, 2013 as instrument number 2013-0842640. (See Schenck Dep.  
28

1 Exhibit 29, attached as **CSOF Ex. 89**; Geared Equity Deed of Trust at  
2 RECEIVER\_001117, attached as **CSOF Ex. 90**.)

3 **271.** But those two documents would also have shown that Menaged signed  
4 each document before a notary on September 17, 2013, making clear that Menaged, not  
5 his “cousin,” had secured both loans. (*See* Schenck Dep. Exhibit 29, attached as **CSOF**  
6 **Ex. 89**; Geared Equity Deed of Trust at RECEIVER\_001122, attached as **CSOF Ex.**  
7 **90**.)

8 **272.** Moreover, because the demand letter claimed that Geared Equity had  
9 delivered funds to the Trustee, and Chittick had admitted he had not, the question  
10 remained as to where DenSco’s funds had gone and whether they could be recovered.  
11 (*See* Beauchamp Dep. Exhibit 142, attached as **CSOF Ex. 86**; Beauchamp Dep. Exhibit  
12 144, attached as **CSOF Ex. 91**.)

13 **2. Clark Hill Failed to Properly Advise DenSco.**

14 **a. After Receiving the Demand Letter and Chittick’s**  
15 **January 6 Email, Beauchamp Should Have Insisted on**  
16 **Meeting with Chittick Alone So That He Could Advise**  
17 **Chittick of the Actions He Was Required to Take to**  
**Protect DenSco From Further Harm, But Beauchamp**  
**Failed to Do So.**

18 **273.** Beauchamp, as DenSco’s attorney, should have recognized that he had an  
19 obligation to meet privately with Chittick, without Menaged present, to confirm  
20 relevant facts, and advise Chittick, as DenSco’s President, of the actions DenSco  
21 needed to take and the consequences to DenSco if it failed to do so. (*See* Expert Report  
22 of Neil Wertlieb at pgs. 40, 55, 62-63, attached as **CSOF Ex. 187**.)

23 **274.** While the specific actions Beauchamp should have taken on January 8,  
24 2014 is the subject of expert testimony, those actions would have included the  
25 following:

26 **a.** Telling Chittick he should not bring Menaged to their scheduled  
27 January 9, 2014 meeting;  
28



1           b.     Telling Chittick that DenSco's sale of promissory notes since  
2     July 1, 2013 to investors exposed DenSco and Chittick to civil and criminal  
3     liability;

4           c.     Telling Chittick that DenSco should not have sold any notes  
5     without first issuing a new POM and should not use the proceeds of sales made  
6     since July 1, 2013 until the investors who bought those notes had been given a  
7     new POM and afforded an opportunity to rescind those transactions;

8           d.     Telling Chittick that DenSco could not sell any new promissory  
9     notes until Clark Hill was able to conduct an adequate investigation of DenSco's  
10    lending practices and other material information and a new POM had been  
11    issued;

12          e.     Telling Chittick that DenSco should immediately cease doing  
13    business with Menaged based on the implausibility of the "cousin" story and the  
14    readily available public records discussed above;

15          f.     Telling Chittick that, at a minimum, DenSco should not have any  
16    further business dealings with Menaged until it had investigated the true facts of  
17    the alleged fraud by Menaged's "cousin";

18          g.     Telling Chittick that after discovering the true facts about  
19    Menaged's dealings with DenSco (whether through a review of public records  
20    or some other investigation), DenSco should rescind all lending agreements it  
21    had made with Menaged since November 2013 on the grounds of fraud in the  
22    inducement, and seek to enforce its remedies for all other loans that Menaged  
23    had obtained through fraud; and

24          h.     Telling Chittick that DenSco had to assess the impact of the fraud  
25    on DenSco's financial position, and if that assessment resulted in a finding that  
26  
27  
28

1 DenSco was insolvent, DenSco had to consider duties owed to its investors and  
2 other creditors in making all business decisions.<sup>3</sup>

3 (*See* Expert Report of Neil Wertlieb at pgs. 57-67, attached as **CSOF Ex. 187.**)

4 **275.** This advice should have been documented in writing.

5 **276.** If Chittick declined to follow the advice, Beauchamp should have  
6 threatened to withdraw from representing DenSco, which may have caused Chittick to  
7 relent and follow the advice. (*See* Expert Report of Neil Wertlieb at pg. 67, attached as  
8 **CSOF Ex. 187.**)

9 **277.** Beauchamp did not tell Chittick he should not bring Menaged to the  
10 planned January 9, 2014 meeting and did not give the advice described above. (*See*  
11 Expert Report of Neil Wertlieb at pgs. 40, 55, 62-63, attached as **CSOF Ex. 187.**)

12 **278.** The Receiver intends to offer evidence at trial establishing that if  
13 Beauchamp had taken these actions, Chittick would have caused DenSco to follow that  
14 advice. (*See, e.g.,* Defs.' Initial Disclosure at pg. 4, ln. 17-21, Schenck Dep. Exhibit 4,  
15 attached as **CSOF Ex. 5**; Expert Report of Neil Wertlieb, attached as **CSOF Ex. 187.**)

16 **279.** Evidence of Chittick's long professional relationship with Beauchamp  
17 and numerous instances of Chittick following Beauchamp's legal advice establish that  
18 if Beauchamp had properly advised DenSco during the first week of January 2014,  
19 Chittick would have caused DenSco to: (i) stop selling promissory notes; (ii) terminate  
20 its relationship with Menaged and his companies; (iii) pursue its remedies against  
21 Menaged and his companies; and (iv) explore whether DenSco could survive as a going  
22 concern or would have to liquidate. Such evidence includes:

23 a. Clark Hill and Beauchamp's admission in their initial disclosure  
24 statement (at 4), that "[o]ver the years, Mr. Chittick showed himself to be a  
25 trustworthy and savvy businessman, and a good client. . . . Despite complaining  
26

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27 <sup>3</sup> DenSco was indisputably insolvent in January 2014, as Chittick's statements  
28 to Beauchamp at the time made clear and as the Receiver was able to determine after  
reviewing DenSco's QuickBooks records.

1 about the cost of legal services, Mr. Chittick appeared to follow Mr.  
2 Beauchamp's advice and provided information when asked for it." (*See* Defs.'  
3 Initial Disclosure at pg. 4, ln. 17-25, Schenck Dep. Exhibit 4, attached as **CSOF**  
4 **Ex. 5.**)

5 b. Moreover, only six months earlier, DenSco had immediately  
6 followed Bryan Cave's June 2013 advice to modify its website, and Bryan  
7 Cave's files reflect that Chittick was prepared to cause DenSco to refund all  
8 investor loans if that was necessary to correct the "general solicitation" problem  
9 Bryan Cave had identified. (*See* Beauchamp Dep. Exhibit 128, attached as  
10 **CSOF Ex. 65**; Beauchamp Dep. Exhibit 117, attached as **CSOF Ex. 59**;  
11 Beauchamp Dep. Exhibit 116, attached as **CSOF Ex. 58**; Beauchamp Dep.  
12 Exhibit 115, attached as **CSOF Ex. 3**; Beauchamp Dep. Exhibit 114, attached as  
13 **CSOF Ex. 57.**)

14 **3. During the January 9, 2014 Meeting with Chittick and**  
15 **Menaged, Beauchamp Learned That DenSco Faced an Even**  
16 **Larger Financial Exposure as a Result of Chittick's**  
17 **Mismanagement Than the Exposure Presented by the**  
**Demand Letter, And Chittick Wanted to Try to Cover Up His**  
**Mismanagement By Pursuing a "Work Out" Plan With**  
**Menaged.**

18 **280.** Clark Hill's billing records reflect that Beauchamp billed 4.3 hours on  
19 January 9, 2014 to "[p]repare for and meeting with D. Chittick and S. Menages [sic];  
20 review and work on notes from meeting and outline follow-up; review and respond to  
21 several emails; review documents and information." (*See* Jan. 2014 Invoice at  
22 CH\_0002313, Schenck Dep. Exhibit 6, attached as **CSOF Ex. 20.**)

23 **281.** Beauchamp's notes from the January 9, 2014 meeting reflect that Chittick  
24 and Menaged confirmed that DenSco faced exposure from both the Lienholders  
25 identified in the January 6, 2014 demand letter and other lenders, including Active  
26 Funding Group. (*See* Beauchamp's handwritten notes dated Jan. 9, 2014, Beauchamp  
27 Dep. Exhibit 145, attached as **CSOF Ex. 92.**)  
28

1           **282.** According to Beauchamp’s notes, the number of loans made by DenSco  
2 that were not in first position and were either unsecured or under-secured was between  
3 100 and 125. Based on that information and the 2011 POM’s average loan amount of  
4 \$116,000, Beauchamp knew or should have known that DenSco’s loans to Menaged  
5 represented a potential loss of between \$11.6 and \$14.5 million, or between 25% and  
6 30% of the \$47 million that Beauchamp understood DenSco had raised as of June 2013.  
7 (*Id.*)

8           **283.** Beauchamp’s notes from the January 9, 2014 meeting also reflect that  
9 Chittick did not know what had happened to as much as \$14.5 million that DenSco had  
10 loaned to Menaged, and that Chittick was not taking any meaningful steps to investigate  
11 the loss and seek to recover those funds. The notes state: “What happened to the  
12 money? -- Will pursue something or his cousin a but trying to determine where the  
13 money has gone.” (*Id.*)

14           **284.** Beauchamp’s notes from the January 9, 2014 meeting also reflect that,  
15 although the money DenSco previously loaned Menaged was missing and Chittick had  
16 taken no steps to investigate the circumstances under which the loan losses had occurred  
17 and their impact on DenSco, Chittick and Menaged had agreed to pursue a “work out”  
18 of the loan losses caused by Chittick’s gross mismanagement of DenSco’s lending  
19 practices. (*Id.*)

20           **285.** Beauchamp’s notes from the January 9, 2014 meeting also reflect that the  
21 “work-out plan” would involve increasing the loan-to-value ratios of DenSco’s loans  
22 up to 95% of property values, contrary to DenSco’s promises to investors in the 2011  
23 POM. (*Id.*)

24           **4. After the January 9, 2014 Meeting, Clark Hill Helped Chittick**  
25           **Breach Fiduciary Duties He Owed to DenSco and Negligently**  
26           **Advised DenSco About the Practices It Should Follow in**  
              **Continuing to Loan Money to Menaged.**

27           **286.** After the January 9, 2014 meeting, Clark Hill helped Chittick breach  
28 fiduciary duties he owed DenSco by negotiating a “work-out plan” and ultimately a

1 “Forbearance Agreement” that was not in DenSco’s interest and was instead intended  
2 to cover up Chittick’s mismanagement of DenSco’s lending practices and protect  
3 Chittick from potential claims by DenSco’s investors. (*See, e.g.*, Beauchamp Dep.  
4 Exhibit 168, attached as **CSOF Ex. 93**; Beauchamp Dep. Exhibit 360, attached as  
5 **CSOF Ex. 94**; Beauchamp Dep. Exhibit 361, attached as **CSOF Ex. 95**; Beauchamp  
6 Dep. Exhibit 362, attached as **CSOF Ex. 96**; Beauchamp Dep. Exhibit 363, attached as  
7 **CSOF Ex. 97**; Beauchamp Dep. Exhibit 364, attached as **CSOF Ex. 98**.)

8       **287.** Clark Hill also helped Chittick breach fiduciary duties by advising  
9 Chittick that DenSco could continue to raise money from investors while Chittick was  
10 implementing his “work-out plan,” and that DenSco could indefinitely delay issuing a  
11 new POM until Chittick felt comfortable doing so. (*See, e.g.*, Beauchamp Dep. Exhibit  
12 350, attached as **CSOF Ex. 81**; Beauchamp Dep. Exhibit 168, attached as **CSOF Ex.**  
13 **93**; Beauchamp Dep. Transcript at pp. 405:5-408:9, attached as **CSOF Ex. 6**.)

14       **288.** These actions served Chittick’s interests, who hoped to delay telling his  
15 investors about the problem until he had addressed the financial harm, and to delay or  
16 avoid making disclosures to DenSco’s investors about the Forbearance Agreement and  
17 how it came to be put in place. (*See* Expert Report of Neil Wertlieb, attached as **CSOF**  
18 **Ex. 187**.)

19       **289.** Similarly, Clark Hill and Beauchamp, having failed to properly advise  
20 Chittick in September 2013 that DenSco could not sell promissory notes without first  
21 issuing a new POM, and having agreed with Chittick to indefinitely delay work on the  
22 POM, similarly saw the “work-out plan” and Forbearance Agreement as an opportunity  
23 to cover up their negligence and potentially mitigate their exposure. (*See, e.g.*,  
24 Beauchamp Dep. Exhibit 360, attached as **CSOF Ex. 94**; Beauchamp Dep. Exhibit 361,  
25 attached as **CSOF Ex. 95**; Beauchamp Dep. Exhibit 362, attached as **CSOF Ex. 96**;  
26 Beauchamp Dep. Exhibit 363, attached as **CSOF Ex. 97**; Beauchamp Dep. Exhibit 364,  
27 attached as **CSOF Ex. 98**; Beauchamp Dep. Exhibit 350, attached as **CSOF Ex. 81**;  
28 Beauchamp Dep. Transcript at pgs. 405:5-408:9, attached as **CSOF Ex. 6**.)

1           **290.** At the same time that it was negotiating the “work-out plan” and the  
2 Forbearance Agreement, which obligated DenSco to continue loaning money to  
3 Menaged, Clark Hill failed to properly advise DenSco about how the loans should be  
4 made. (*See* Expert Report of Neil Wertlieb at pgs. 13-19, attached as **CSOF Ex. 187.**)

5                   **5. Clark Hill Aided and Abetted Chittick’s Breach of Fiduciary**  
6 **Duties Owed DenSco by Developing and Negotiating a “Work-**  
7 **Out Plan” and Forbearance Agreement Between January and**  
8 **April 2014 That Was Not in DenSco’s Interests and Was**  
9 **Intended by Clark Hill to Cover Up Chittick’s**  
10 **Mismanagement of DenSco’s Lending Practices and Protect**  
11 **Chittick From Claims by DenSco’s Investors.**

12           **291.** On January 10, 2014, Beauchamp opened a “new matter” for DenSco in  
13 Clark Hill’s accounting and filing systems that was called “work-out of lien issue” to  
14 develop and implement the initial “work-out plan” Chittick and Menaged had devised.<sup>4</sup>  
15 (*See* Jan. 2014 Invoice at CH\_0002312, Schenck Dep. Exhibit 6, attached as **CSOF**  
16 **Ex. 20**; Beauchamp Dep. Transcript at pp. 405:5-408:9, attached as **CSOF Ex. 6**).

17           **292.** Over the next three months, Beauchamp helped develop and negotiate the  
18 “work-out plan” and a Forbearance Agreement that was not in DenSco’s interests and  
19 was instead, as Beauchamp said multiple times in writing, intended to protect Chittick  
20 from potential claims by his investors by making it appear that the loan losses DenSco  
21 faced were caused by Menaged, rather than by Chittick’s gross mismanagement of  
22 DenSco’s lending practices, and that Chittick had taken appropriate steps to protect  
23 DenSco’s interests. (*See, e.g.,* Beauchamp Dep. Exhibit 168 attached as **CSOF Ex. 93**;  
24 Schenck Dep. Exhibit 97, attached as **CSOF Ex. 99**; Beauchamp Dep. Transcript at  
25 373:21-376:8, attached as **CSOF Ex. 6**.)

26           **293.** Clark Hill and Beauchamp billed DenSco for 329.7 hours of attorney  
27 work on this “work-out of lien issue” from January 2014 through April 2014 alone, for  
28 a bill of \$136,190.00. The vast majority of those hours—274.8—were spent by  
Beauchamp personally. (*See* Jan. 2014 Invoice, Schenck Dep. Exhibit 6, attached as

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<sup>4</sup> A few days later, on January 14, 2014, Beauchamp opened a “new matter” for DenSco in Clark Hill’s accounting and file systems that was called “business matters.”

1 **CSOF Ex. 20**; Feb. 2014 Invoice, Schenck Dep. Exhibit 7, attached as **CSOF Ex. 21**;  
2 Mar. 2014 Invoice, Schenck Dep. Exhibit 9, attached as **CSOF Ex. 22**; Apr. 2014  
3 Invoice, Schenck Dep. Exhibit 10, attached as **CSOF Ex. 23**.)

4 **294.** As a result of Clark Hill and Beauchamp's work, the initial "work-out  
5 plan" that Chittick and Menaged had devised changed dramatically. As Menaged  
6 recalled, "We were back and forth and back and forth, day in and day out, month in and  
7 month out, and *continuing to make changes along the way*." (Emphasis added.)  
8 (Menaged Dep. Transcript at 380:18-20, attached as **CSOF Ex. 188**.) These changes  
9 were so frequent that Menaged told Chittick, in an email on April 3, 2014, that signing  
10 the Forbearance Agreement would help "*not to have Dave change it again and again*  
11 *with every move we make*." (Menaged Dep. Exhibit 1141, attached as **CSOF Ex. 204**.)  
12 As Menaged later explained, "the lawyers are the ones that put it together." (Menaged  
13 Dep. Transcript at 194:17-24, attached as **CSOF Ex. 188**.)

14 a. **In January 2014, Beauchamp Negotiated the Terms of**  
15 **a Nondisclosure Agreement and a Non-Binding Term**  
16 **Sheet.**

17 **295.** During the week of January 12, 2014, Beauchamp prepared a  
18 nondisclosure agreement and a non-binding term sheet. Beauchamp negotiated with  
19 Menaged's attorney, Jeff Goulder, over the term sheet. (See Schenck Dep. Exhibit 43,  
20 attached as **CSOF Ex. 100**; Schenck Dep. Exhibit 45, attached as **CSOF Ex. 101**;  
21 Schenck Dep. Exhibit 40 at DIC0007013, attached as **CSOF Ex. 102**; Schenck Dep.  
22 Exhibit 39, attached as **CSOF Ex. 103**; Beauchamp Dep. Exhibit 422 at pg. 10, ln. 7-  
16, attached as **CSOF Ex. 67**.)

23 **296.** Beauchamp also communicated with Bryan Cave attorney Bob Miller,  
24 who withdrew from representing his clients on January 16, 2014 because of a conflict  
25 issue raised by Beauchamp and the scope of the consent DenSco would give Bryan  
26 Cave. (See Schenck Dep. Exhibit 44, attached as **CSOF Ex. 104**.)  
27  
28

1           **297.** Chittick (for DenSco) and Menaged signed the nondisclosure agreement  
2 and term sheet on Friday, January 17, 2014. The term sheet was nonbinding, but  
3 contemplated that DenSco would advance additional funds to Menaged, some of which  
4 would be used to pay off (by February 28, 2014) the loans held by the lenders  
5 represented by Bryan Cave. The term sheet also outlined the initial elements of a  
6 Forbearance Agreement and a process to resolve the claims of the other competing  
7 lenders. (*See* Beauchamp Dep. Exhibit 192 at DIC0007522 and DIC0007525, attached  
8 as **CSOF Ex. 105.**)

9                           **b. During February 2014, Beauchamp Negotiated the**  
10                           **Terms of the Forbearance Agreement With Menaged's**  
11                           **Counsel, Repeatedly Stating That the Agreement Was**  
                              **Needed to Protect Chittick's, Rather Than DenSco's**  
                              **Interests.**

12           **298.** During the first week of February, Beauchamp began negotiating with  
13 Goulder over the terms of a Forbearance Agreement. (*See* Schenck Dep. Exhibit 70,  
14 attached as **CSOF Ex. 106.**)

15           **299.** It is evident from Beauchamp's communications with Chittick and  
16 Goulder during February 2014 that Clark Hill was looking out for Chittick's interests,  
17 rather than the interests of DenSco and its investors. (*See* Schenck Dep. Exhibit 70,  
18 attached as **CSOF Ex. 106**; Beauchamp Dep. Exhibit 168, attached as **CSOF Ex. 93**;  
19 Beauchamp Dep. Exhibit 191, attached as **CSOF Ex. 107.**)

20           **300.** One example of Clark Hill's misplaced loyalty to Chittick is a February  
21 4, 2014 email that Beauchamp sent to Chittick, which said:

22           Before we all get into a room, you and I need to make sure we have a clear  
23 understanding of what you can do and what you cannot do without going to  
24 all of your investors for approval. We have a deal that works for you and  
25 your investors and is fair to [Menaged]. Now [Goulder] is trying to better  
26 the deal for [Menaged]. But you already have been more than generous  
27 trying to help [Menaged] out of [Menaged's] problem. Again, *this goes back*  
28 *to [Goulder] not acknowledging that this is [Menaged's] problem and*  
*instead insisting that this is your problem because you did not make sure*  
*that [Menaged] handled the loans properly and that you did not take the*  
*necessary actions so that DenSco had a first lien on each property. . . .*



1 *[Goulder] is trying to have you think that you have significant*  
2 *responsibility for creating this problem as opposed to this being created by*  
3 *[Menaged's] cousin working for [Menaged]. . . . [Goulder] is trying to make*  
4 *you feel that you are guilty so you have to assume a significant responsibility*  
5 *in the agreement to share [Menaged's] problem, but nobody stole the money*  
6 *from you. You can help and have helped [Menaged], but you cannot*  
7 *OBLIGATE DenSco to further help [Menaged], because that would breach*  
8 *your fiduciary duty to your investors.*

9 (Emphasis added.) (See Beauchamp Dep. Exhibit 337, attached as **CSOF Ex. 108.**)

10 **301.** And in an email Beauchamp sent to Goulder on Friday, February 7, 2014  
11 Beauchamp wrote:

12 *Based on your previous changes, the Forbearance Agreement would be*  
13 *prima facia evidence that Denny Chittick had committed securities fraud*  
14 *because the loan documents he had [Menaged] sign did not comply with*  
15 *DenSco's representations to DenSco's investors in its securities offering*  
16 *documents. Unfortunately, this agreement needs to not only protect*  
17 *[Menaged] from having this agreement used as evidence of fraud against him*  
18 *in litigation, the agreement needs to comply with Denny's fiduciary*  
19 *obligation to his investors as well as not become evidence to be used against*  
20 *Denny for securities fraud. . . . We wanted the document to set forth the*  
21 *necessary facts for Denny to satisfy his securities obligations to his investors*  
22 *(including that the original loans had to have been written and secured by a*  
23 *first lien on real property and that the workout agreed to by Denny complied*  
24 *with his workout authorization) without having [Menaged] admit to facts that*  
25 *could cause trouble to him. . . . To try to balance the respective interests, I*  
26 *have inserted sections from the loan documents into the Forbearance*  
27 *Agreement. Referencing the language of the Loan Documents is needed to*  
28 *satisfy Denny's fiduciary obligations, but I have also modified the other*  
*provisions so that the Borrower is not admitting that it was required to*  
*provide first lien position in connection with the loans. (Emphasis added.)*

(Emphasis added.) (See Schenck Dep. Exhibit 70 attached as **CSOF Ex. 106.**)

**302.** In an email exchange on Sunday, February 9, 2014, Beauchamp told  
Chittick “[p]lease understand that you are limited in what risk or liability you can  
assume. Your fiduciary duty to your investors makes this a difficult balancing act.”  
(See Beauchamp Dep. Exhibit 345 at DIC0006703, attached as **CSOF Ex. 109.**)

**303.** Chittick's response was that he “trusts that we are in balance and I have  
even more confidence that [Menaged] and I can solve this problem without issue and

1 we never have to use the document that we've worked so long on getting completed."  
2 (See Beauchamp Dep. Exhibit 345 at DIC0006702, attached as **CSOF Ex. 109**.)

3 **304.** Beauchamp responded: "Your point is understood. If possible, please  
4 recognize and understand that *you will 'use' the document even if you and [Menaged]*  
5 *never refer to it again. It has to have the necessary and essential terms to protect you*  
6 *from potential litigation from investors and third parties.*" (Emphasis added.) (*Id.*)

7 **305.** In his notes from a February 11, 2014 call with Chittick, which touched  
8 on the status of Chittick's and Menaged's plan to pay off loans on the double-escrowed  
9 properties, Beauchamp wrote "'Material Disclosure' – exceeds 10% of the overall  
10 portfolio." But in his discussions with Chittick about requests from Goulder for further  
11 concessions, including an agreement not to pursue civil claims for fraud, Beauchamp's  
12 focus was on protecting Chittick's interests, including protecting him from a potential  
13 investor claim. (See Beauchamp Dep. Exhibit 347, attached as **CSOF Ex. 110**;  
14 Beauchamp Dep. Exhibit 337, attached as **CSOF Ex. 108**.)

15 **306.** In a February 14, 2014 email to Chittick, Beauchamp wrote:

16 [Goulder] clearly thinks he can force you to agree to accept a watered down  
17 agreement and give up substantial rights that you should not have to give up.  
18 Unfortunately, it is not your money. It is your investors' money. So you  
19 have a fiduciary duty. . . . *[Menaged] is the one responsible for this and not*  
20 *you.* He failed to put out the proper protection systems in place so his cousin  
21 could not do what his cousin did. . . . *[Menaged's] actions to comply with*  
22 *the terms of this agreement will have a big effect on whether or not you*  
23 *have to deal with a third party lawsuit filed against you in court.* In this  
24 situation, you can have an action brought against you by any of the other  
25 lenders, and/or by any of your investors. . . . In addition, *you could also face*  
26 *an action by the SEC or by the Securities Division of the ACC if an investor*  
27 *is able to convince someone in a prosecutor's office that you somehow*  
28 *assisted [Menaged] to cover up this fraud or you were guilty of gross*  
*negligence by failing to perform adequate due diligence (on behalf of your*  
*investors' money) to determine what was going on.* . . . [Y]our duty and  
obligation is not to be fair to [Menaged], but to completely protect the rights  
of your investors. I am sorry if [Menaged] is hurt through this, but  
[Menaged's] hurt will give [Menaged] the necessary incentive to go after his  
cousin. Your job is to protect the money that your investors have loaned to  
DenSco.

(Emphasis added.) (*See* Schenck Dep. Exhibit 75, at DIC0006804-6805, attached as **CSOF Ex. 111.**)

**307.** Beauchamp advised Chittick not to make any further concessions. Beauchamp then sought input from bankruptcy lawyers within Clark Hill about the risks DenSco would face if Chittick were to agree to the concessions Goulder sought with respect to a potential civil fraud claim. (*See* Schenck Dep. Exhibit 80, attached as **CSOF Ex. 112.**)

**308.** Chittick ultimately followed Beauchamp's advice, and the concessions sought by Goulder were not included in the final Forbearance Agreement. (*See* Beauchamp Dep. Exhibit 402, attached as **CSOF Ex. 113.**)

**309.** On February 20, 2014, Beauchamp met with Chittick, Menaged and Goulder to discuss the Forbearance Agreement. As Chittick described the meeting in the DenSco journal for 2014 (the "2014 Corporate Journal"), Beauchamp and Goulder "were no better in person then they were in email. David lost his temper more than once. We went back and forth for 3 hours. We broke up and came together, finally we are down to one point about the release. The lawyers are trying to word it to make each other happy." (*See* 2014 Corporate Journal at RECEIVER\_000051, Schenck Dep. Exhibit 21, attached as **CSOF Ex. 82.**)

**310.** It appears from Chittick's February 20, 2014 entry in the 2014 Corporate Journal that in this meeting Beauchamp learned of the full extent of DenSco's exposure to Menaged. Chittick wrote:

I told David the dollars today, he about shit a brick. I explained to him how I got there and how far we have come and how much better we are today then in November. Though I'm not sure he understands that. My balance sheet isn't looking much better, but it will start to swing in the right direction in the next 30 days. ***I'm more concerned about telling my investors and their reaction to the problem. I have to tell them and hope they stick with me. If I get a run on the bank I'm in deep shit. I won't be able to fund new deals, I won't be able to payoff investors and won't be able to support [Menaged]. The whole thing crators.***

(Emphasis added.) (*Id.*)

1           **311.** Beauchamp's notes from that day contain a summary of DenSco's  
2 exposure to Menaged. They state: "Approx. \$31 MM outstanding to [Menaged's]  
3 entities – total fund up to \$62-63 MM. Problem loans down to about \$17 MM for 122  
4 loans." (See Beauchamp Dep. Exhibit 352 at DIC0005446, attached as **CSOF Ex. 114.**)

5           **312.** Chittick's February 21, 2014 entry in the 2014 Corporate Journal has a  
6 consistent summary of the advice he received from Beauchamp:

7           I talked to Dave, he found out what we already suspected; there is no way we  
8 can give what [Menaged] wants. I'm not sure where this will lead us. *We*  
9 *talked about telling my investors; we are going to put that off as long as*  
10 *possible so that we can improve the situation as much as possible.* We've  
11 got another 15 more that are closing next few weeks. We could be close to  
12 under a 100 problem loans within a month. I just have to keep telling myself  
13 I'm doing the right thing to fix it, no matter how much anxiety I have over  
14 this issue.

15 (Emphasis added.) (See 2014 Corporate Journal at RECEIVER\_000051, Schenck Dep.  
16 Exhibit 21, attached as **CSOF Ex. 82.**)

17           **313.** During the last week of February 2014, discussions with Goulder on the  
18 Forbearance Agreement ended after Goulder sent Beauchamp a revised draft on  
19 February 25, 2014. (See Beauchamp Dep. Exhibit 361, attached as **CSOF Ex. 95.**)

20           **314.** Chittick sent Beauchamp an email that day describing his ongoing  
21 discussions with Menaged about taking a different approach to the double encumbrance  
22 problem by having DenSco advance additional monies to Menaged so that Menaged  
23 could sell homes more quickly:

24           [H]e's throwing out all sorts of ideas in how this can be done. [I] would be  
25 willing to release the UCC if he was able to secure the funds and use them to  
26 pay some of these loans. [W]e've got about 3 more ideas, *but what both of us*  
27 *are really concerned about is that when [I] tell my investors the situation, they*  
28 *request their money back. [I] want to be able to say, this was the problem,*  
*we've eliminated this much of the problem and this is what is left. [I] want to*  
*be able to say what is left is as small as possible.*

(Emphasis added.) (See Beauchamp Dep. Exhibit 360 at DISC0006758, attached as  
**CSOF Ex. 94.**)

1           **315.** Beauchamp responded by saying “[g]ood ideas and probably something  
2 *we need to work on*” in light of the breakdown of discussions on the Forbearance  
3 Agreement. (Emphasis added.) (*Id.*)

4           **316.** Chittick sent Beauchamp an email the following day, February 26, 2014  
5 describing his continuing discussions with Menaged. He wrote:

6           [W]hat if [Menaged] just starts selling everything . . . [I] take losses[.] [A]long  
7 with the several million that [Menaged’s] going to bring in from outside sources,  
8 we wipe the whole thing out in, name a time frame, 90 days. [T]o secure the  
9 loss, [Menaged] signs a promissory note with terms of repayment. [W]hat  
10 happens? [I] take a huge hit to my books, but [I] get the money back in my  
11 hands. [I]’m no longer in violation of anything with my investors. [I]’m in  
12 possession of money that now [I] can put to work with new loans that are actually  
13 paying me interest versus right now that [I]’m having no interest coming in. [O]r  
14 I can return the money to investors if I can’t put it to work. [F]rom a P/L  
15 standpoint it looks horrible, but at least [I] have the majority of the money back  
16 except maybe 2-4 million. [Menaged] agrees to pay me interest and principle  
17 [sic] back every month for whatever I write off[,] which fills in that hole. [I] put  
18 the money I get back to work and make money on it, that fills the hole. *[I]  
19 [would] rather take the loss short term now, and get working on trying to make  
20 the money work th[a]n drag this thing out over a year or more. . . . [I] don’t  
have anything in my docs that say I have to be profitable. [I] see this is a  
negative year obviously, but [I]’ll be profitable next year; the problem is  
gone[.]* [Menaged] will be paying me back interest and principle [sic] for the  
loss that I took. [N]ow I know there are 100 legal things here, *but now I’m  
thinking this is the best way to get the problem solved from a fiduciary  
standpoint.* . . . [I] know this may sound crazy, but [I] can’t come up with  
anything else that will bring an end to this situation quickly. [T]ime is crucial.  
[L]et me know your thoughts.

21 (Emphasis added.) (*See* Beauchamp Dep. Exhibit 362 at DIC0006687-6688, attached  
22 as **CSOF Ex. 96**; Beauchamp Dep. Exhibit 363, attached as **CSOF Ex. 97.**)

23           **317.** Beauchamp’s email response was: “*Good ideas.* Can we talk later today  
24 to clarify a few things?” (Emphasis added.) Beauchamp also told Clark Hill attorney  
25 Bill Price, who emailed him to say that the release provision in Goulder’s latest draft of  
26 the Forbearance Agreement was unacceptable, that “[t]here is another possibility to  
27 resolve this,” on which Beauchamp would be focusing his attention. (*See* Beauchamp  
28

1 Dep. Exhibit 362 at DIC0006686, attached as **CSOF Ex. 96**; Beauchamp Dep. Exhibit  
2 364 attached as **CSOF Ex. 98**.)

3 **318.** Chittick's DenSco entry in the 2014 Corporate Journal for February 26,  
4 2014 contains a consistent summary of his discussions with Menaged and Beauchamp:

5 We've decided it's better to sell these properties as quickly as possible, take  
6 the losses and move on. [Menaged] will sign a promissory note, it frees up  
7 from paying interest, I take a big hit, . . . and we move on. *It will take me 2*  
8 *years to get back to profitability I'm guessing. This may allow me not to do*  
9 *what David wants me to do, I don't know. I never got to talk to him. But*  
10 *what we are doing isn't going to work fast enough and we'll have a big hill*  
11 *to climb in the end.* I'm just so sick over this I can't function.

12 (Emphasis added.) (See Schenck Dep. Exhibit 21 at RECEIVER\_000052, attached as  
13 **CSOF Ex. 82**.)

14 **319.** Beauchamp's notes reflect that he discussed the proposed new plan with  
15 Chittick the following day, February 27, 2014. They state, in part:

16 Denny explained procedure and Denny is taking all of the shortfall.  
17 [Menaged] wants this resolved. Denny wants this resolved because Denny  
18 is losing money to make payments to his investors if DenSco is not getting  
19 paid interest from [Menaged]. Denny willing to take loss this year -- so  
20 DenSco can return cash to investors and reduce interest obligation. *How to*  
21 *write this up for investors -- discussed. Do we still need Forbearance Agmt.*  
22 *- yes but will be less problematic. Will need Forbearance Agmt. to explain*  
23 *procedures and protect Denny for future revisions.* Will need multiple  
24 advance not (unsecured) so DenSco can advance cash on house w/ double  
25 loans to be sold.

26 (Emphasis added.) (See Beauchamp Dep. Exhibit 365, attached as **CSOF Ex. 115**.)

27 **320.** Chittick's entry in the 2014 Corporate Journal for that day is consistent  
28 with Beauchamp's notes. It states, in part: "I talked to [Menaged] again, he agreed to  
everything this morning on how to work this out. I talked to David, he thinks its fine.  
So we are done. . . . [N]ow we just need to get this signed and start working towards  
selling these houses." (See Schenck Dep. Exhibit 21, at RECEIVER\_000052, attached  
as **CSOF Ex. 82**.)

1                   c.     **During March 2014, Beauchamp Continued to**  
2                   **Negotiate the Terms of the Forbearance Agreement But**  
3                   **Did So With Menaged, Communicating With Him**  
4                   **Through Chittick.**

5           **321.** Beauchamp had a telephone conversation with Chittick on March 3,  
6 2014. Chittick's entry in the 2014 Corporate Journal that day says, in part: "David  
7 called me telling me of ad lib info to scare me about dealing with [Menaged]. I can't  
8 control what others are saying in the lawyer community. I have to get this done so that  
9 I have something in writing and do the best deal that I can do." (See Schenck Dep.  
10 Exhibit 21 at RECEIVER\_000053, attached as **CSOF Ex. 82.**)

11           **322.** Chittick sent Beauchamp an email on March 4, 2014 in apparent response  
12 to that conversation. It stated, in part:

13           About what you said, I have no idea of the timing of that person you  
14 [mentioned] as to when he spoke to [Goulder] about our situation. I don't  
15 doubt perhaps that he was positioning himself in some way; seems logical  
16 for him to think that way. However, *now that [Menaged] has agreed to sign*  
17 *the terms sheet that we originally agreed to, allowing you to write it, he says*  
18 *he's not going to have [Goulder] review because [Goulder] already told*  
19 *him not to sign anything.* Plus he's signing the promissory note which also  
20 confirms the situation . . . in not so many words. But the fraud occurred and  
21 he's taking responsibility for it. . . . *You probably have the only chance in*  
22 *your career to write an agreement without conflicting counsel.* You can  
23 write it to our liking and in our best interests. *We CYA as broad as the Grand*  
24 *Canyon.* I think that is pretty advantageous.

25 (Emphasis added.) (Beauchamp Dep. Exhibit 368, attached as **CSOF Ex. 116.**)

26           **323.** Beauchamp's response was: "*Your thoughts make sense*, but we still  
27 need an agreement that works." (Emphasis added.) (*Id.*)

28           **324.** Beauchamp sent Chittick a draft of the Forbearance Agreement on  
March 7, 2014. (See Beauchamp Dep. Exhibit 370, attached as **CSOF Ex. 117.**)

**325.** Chittick gave him comments on March 10, 2014, one of which reflected  
Chittick's and Menaged's request to modify the draft's confidentiality provision. As  
Chittick described it in an email to Beauchamp: "*Only time I can disclose info is if*  
*I'm legally required by investors. He wants me to not say a word unless I'm legally*

1 *required to*, because the reputation with his investors and buyers, clients etc. could be  
2 harmed.” (Emphasis added.) (See Beauchamp Dep. Exhibit 371 at DIC0006875,  
3 attached as **CSOF Ex. 118**.)

4 **326.** In his email response, Beauchamp wrote: “The confidentiality change is  
5 a problem, because who makes the decision if the disclosure is required? *I had*  
6 *language that you could disclose if such disclosure is reasonably needed to be*  
7 *disclosed to your investors or if a governmental agency requires such disclosure*  
8 *(after you give [Menaged] notice and an opportunity to get the agency to change its*  
9 *mind).* Those are standard confidentiality exceptions. *I will look at them again to see*  
10 *if there is anything we can do to make it tighter.*” (Emphasis added.) (See Beauchamp  
11 Dep. Exhibit 371 at DIC0006875, attached as **CSOF Ex. 118**.)

12 **327.** Beauchamp’s notes reflect that he had a telephone conference with both  
13 Chittick and Menaged on March 11, 2014, to discuss the release and confidentiality  
14 provisions of the Forbearance Agreement. (See Beauchamp Dep. Exhibit 372, attached  
15 as **CSOF Ex. 119**.)

16 **328.** During that same call, Beauchamp, Chittick, and Menaged discussed the  
17 terms of a \$ 1 million “workout loan.” (*Id.*)

18 **329.** On March 13, 2014, Beauchamp conferred with Chittick about the  
19 security for the loans DenSco would be advancing to Menaged. He also revised the  
20 confidentiality section of the Forbearance Agreement, sending the section to Chittick  
21 in an email which stated, in part: “*I have done a complete re-write of the*  
22 *Confidentiality section. . . . In order to comply with the specific securities disclosure*  
23 *requirements, I left \_\_\_\_ (blank) the amount of time for [Menaged] to be able to*  
24 *review and comment upon the proposed disclosure (suggest 48 hours)* and I did not  
25 give him the right to disapprove and block what you can or cannot disclose. DenSco  
26 and you as the promoter of DenSco’s offering have to make the decisions as to what is  
27 to be disclosed or not.” (Emphasis added.) (See Beauchamp Dep. Exhibit 383, attached  
28 as **CSOF Ex. 120**.)



1           **330.** Between March 14 and March 20, 2014, Beauchamp communicated with  
2 Chittick about revisions to the Forbearance Agreement, relying on Chittick to convey  
3 drafts to Menaged and communicating with Menaged through Chittick. (See  
4 Beauchamp Dep. Exhibit 385, attached as **CSOF Ex. 121**; Beauchamp Dep. Exhibit  
5 386, attached as **CSOF Ex. 122**; Beauchamp Dep. Exhibit 387, attached as **CSOF Ex.**  
6 **123**; Beauchamp Dep. Exhibit 388, attached as **CSOF Ex. 124**; Beauchamp Dep.  
7 Exhibit 389, attached as **CSOF Ex. 125**; Beauchamp Dep. Exhibit 390, attached as  
8 **CSOF Ex. 126**; Beauchamp Dep. Exhibit 391 attached as **CSOF Ex. 127**.)

9           **331.** One of the topics Beauchamp discussed with Chittick was his plans to  
10 loan funds to Menaged and the impact of those loans, including loans up to 120% of  
11 property value. Beauchamp stated that he *“completely agree[s] that [the proposed*  
12 *lending plan] makes a lot of sense, but I am concerned about the disclosure to your*  
13 *investors.”* (Emphasis added.) (See Beauchamp Dep. Exhibit 387, attached as **CSOF**  
14 **Ex. 123**.)

15           **332.** Chittick’s entry in the 2014 Corporate Journal for March 20, 2014 stated,  
16 in part: “[Menaged] finally agreed to [the] agreement. That’s done. I have to do some  
17 numbers to fill in the blanks, but otherwise it’s ready to be signed. *I have no idea if it*  
18 *will ever be used, but David assured me I’m in a good position.”* (Emphasis added.)  
19 (See Schenck Dep. Exhibit 21, attached as **CSOF Ex. 82**.)

20                           **d. The Forbearance Agreement Was Signed in April 2014.**

21           **333.** The Forbearance Agreement was signed by Chittick (for DenSco) and  
22 Menaged (for himself and his entities) on April 16, 2014. (See Beauchamp Dep. Exhibit  
23 402, attached as **CSOF Ex. 113**.)

24           **334.** Under the Forbearance Agreement, Menaged agreed to pay off the loans  
25 of DenSco and other lenders by, inter alia, (i) liquidating various assets, (ii) renting or  
26 selling real estate assets, (iii) attempting to recover the missing funds that his cousin  
27 allegedly stole, and (iv) obtaining \$4.2 million in outside financing. (*Id.*)  
28

1           **335.** In turn, *DenSco agreed to, inter alia, (i) increase its loans to Menaged*  
2 *on certain properties up to 120% of the loan-to-value ratio, (ii) loan Menaged up to*  
3 *\$5 million more, at 18% interest, (iii) loan Menaged up to \$1 million more, at 3%*  
4 *interest, and (iv) defer the collection of interest on loans that Menaged had already*  
5 *defaulted on. (Id.)*

6           **336.** The Forbearance Agreement included a schedule of the loans DenSco had  
7 made to Menaged, members of his family, Easy Investments, and Arizona Home  
8 Foreclosures, including loans DenSco made between December 2013 and April 15,  
9 2014. *Those loans totaled \$37,456,620.47, well over half of the aggregate amounts*  
10 *DenSco had raised from investors. (See Beauchamp Dep. Exhibit 402 at DIC0010745-*  
11 *10749, attached as CSOF Ex. 113.)*

12           **337.** The confidentiality provision in the Forbearance Agreement permitted  
13 DenSco to disclose information “as may be necessary for [DenSco] to disclose to  
14 [DenSco’s] current or future investors” subject to the following limitations:

15           *[DenSco] agrees to use its good faith efforts to limit such disclosure as*  
16 *much as legally possible* pursuant to the applicable SEC Regulation D  
17 disclosure rules, which limitation is intended to have [DenSco] only  
18 describe: 1. the multiple Loans secured by the same Properties which  
19 created the Loans Defaults; 2. the work-out plan pursuant to this  
20 Agreement in connection with the steps to be taken to resolve the Loans  
21 Defaults; 3. the work-out plan shall also include disclosing the previous  
22 additional advances that [DenSco] has made and the additional advances  
23 that are intended to be made by [DenSco] to Borrower pursuant to this  
24 Agreement in connection with increases in the loan amount of certain  
25 specific Loans (up to 120% of the LTV of the applicable Property being  
26 used as security for that Loan), the additional advances pursuant to both the  
27 Additional Loan and the Additional Funds Loan; and 4. the cumulative  
28 effect that all of such additional advances to Borrower will have on  
[DenSco’s] business plan that [DenSco] has previously disclosed to its  
investors in [DenSco’s] private offering documents and which [DenSco]  
committed to follow, including the overall LTV loan ratios for all of  
[DenSco’s] outstanding loans to its borrowers in the aggregate and the  
concentration of all of [DenSco’s] outstanding loans among all of its  
borrowers. Further, [DenSco] will use its good faith efforts not to include  
the names of Borrower, Guarantor, or New Guarantor in [DenSco’s]  
disclosure material. [DenSco] will also provide Borrower with a copy of

1 the applicable disclosure prior to dissemination to [DenSco's] investors and  
2 allow Borrower to have 48 hours to review and comment upon such  
3 disclosure.

4 (Emphasis added.) (*See* Beauchamp Dep. Exhibit 402 at DIC0010741, attached as  
5 **CSOF Ex. 113.**)

6 **338.** The signed Forbearance Agreement differed from Chittick's and  
7 Menaged's initial "work-out plan" in many substantive ways. (*Compare* Beauchamp  
8 Dep. Exhibit 144, attached as **CSOF Ex. 91**, and Beauchamp Dep. Exhibit 145,  
9 attached as **CSOF Ex. 92**, with Beauchamp Dep. Exhibit 402, attached as **CSOF Ex.**  
10 **113.**) In addition to what is described above, here are three examples:

11 a. Whereas the initial "plan" was for Menaged to pay off the other  
12 lenders and contribute \$4 to \$5 million of his own money, the signed  
13 Forbearance Agreement merely required Menaged to use "good faith efforts" to  
14 do so. (*Compare* Beauchamp Dep. Exhibit 144, attached as **CSOF Ex. 91**, with  
15 Beauchamp Dep. Exhibit 402 at § 6(A), 6(H), attached as **CSOF Ex. 113.**)

16 That change was made because Beauchamp and Chittick told Menaged  
17 that he only needed to use his "best efforts." As Menaged recalled:

18 I said that I would make my best effort to do so, and in front of  
19 Beauchamp and DenSco I did explain to him -- *what they both told*  
20 *me, both of them told me was, "Hey, this is all really best efforts.*  
21 *You do your best, but we're going into this forbearance agreement.*  
22 *It's protecting everyone. End of story."*

23 (Emphasis added.) (*See* Menaged 2004 Exam Transcript at 118:19–119:3,  
24 Menaged Dep. Exhibit 1145, attached as **CSOF Ex. 189.**)<sup>5</sup>

25  
26 <sup>5</sup> The Rule 2004 Examination of Menaged occurred as part of a bankruptcy  
27 proceeding on October 20, 2016. Later, Menaged was deposed in this case on  
28 September 23, 2019. At the deposition, Menaged confirmed that his testimony in the  
Rule 2004 Examination was truthful. A copy of the transcript of the Rule 2004  
Examination was then marked as an exhibit. (*See* Menaged Dep. Transcript at 293:9-  
15, attached as **CSOF Ex. 188.**)

1           b.       Whereas the initial “plan” was for DenSco to loan Menaged  
2 another \$1 million and increase its loan-to-value ratios up to 95% of property  
3 values, the signed Forbearance Agreement required DenSco to loan Menaged  
4 another \$6 million and increase its loan-to-value ratios up to 120% of property  
5 values. (*Compare* Beauchamp Dep. Exhibit 144, attached as **CSOF Ex. 91**, and  
6 Beauchamp Dep. Exhibit 145, attached as **CSOF Ex. 92**, with Beauchamp Dep.  
7 Exhibit 402 at § 7(A), 7(B), attached as **CSOF Ex. 113**.)

8           Beauchamp discussed this change with Chittick by email on March 17,  
9 2014. (*See* CSOF ¶¶ 330-32 above.) Beauchamp approved the change even  
10 though he knew Chittick had not told investors about it. He told Chittick: “*I*  
11 *completely agree that it makes a lot of sense, but I am concerned about the*  
12 *disclosure to your investors.*” (Emphasis added.) (*See* Beauchamp Dep. Exhibit  
13 387, attached as **CSOF Ex. 123**.)

14           c.       Whereas the initial “plan” was silent on what DenSco should  
15 disclose to investors, the signed Forbearance Agreement included a  
16 confidentiality provision requiring DenSco to use “good faith efforts to *limit*  
17 *such disclosure as much as legally possible* pursuant to the applicable SEC  
18 Regulation D disclosure rules.” (*Compare* Beauchamp Dep. Exhibit 144,  
19 attached as **CSOF Ex. 91**, with Beauchamp Dep. Exhibit 402 at § 18, attached  
20 as **CSOF Ex. 113**.)

21           Beauchamp discussed this change with Chittick by email on March 13,  
22 2014. (*See* CSOF ¶¶ 325-29 above.) Beauchamp approved the change even  
23 though he knew Chittick had not told investors about it. He told Chittick: “I  
24 have done a complete re-write of the Confidentiality section. . . . *With respect*  
25 *to timing, we are already very late in providing information to investors about*  
26 *this problem and the resulting material changes from your business plan.*”  
27 (Emphasis added.) (*See* Beauchamp Dep. Exhibit 383, attached as **CSOF Ex.**  
28 **120**.)

1           **339.** The signed Forbearance Agreement also ran contrary to DenSco's  
2 interests in many ways, and Clark Hill and Beauchamp knew this. Indeed, as expert  
3 Neil Wertlieb observes, it is "unclear" how the Forbearance Agreement was supposed  
4 to benefit DenSco at all. (Expert Report of Neil Wertlieb at 19, attached as **CSHOF**  
5 **Ex. 187.**) In addition to what is described above, here are three examples:

6           a. Having Menaged pay off the other lenders before DenSco would,  
7 in effect, subordinate DenSco's liens to those of the other lenders. (*See*  
8 Expert Report of Neil Wertlieb at pgs. 19, 59 attached as **CSOF Ex. 187.**)  
9 That would violate DenSco's promise to investors that its loans were in  
10 first position, as stated in the 2011 POM which Beauchamp drafted. (*See*  
11 2011 POM at pg. 36, Beauchamp Dep. Exhibit 432, attached as **CSOF**  
12 **Ex. 2**; Beauchamp Dep. Exhibit 122, attached as **CSOF Ex. 62.**)

13           b. Having Menaged merely use "good faith efforts" to contribute his  
14 own money and pay off the other lenders would, in effect, enable him to  
15 avoid paying off the other lenders altogether. Indeed, that was Menaged's  
16 explanation for why he did not follow through: "Like I said, it was best  
17 effort. My best effort couldn't deliver those funds." (*See* Menaged 2004  
18 Exam Transcript at 119:4-9, Menaged Dep. Exhibit 1145, attached as  
19 **CSOF Ex. 189.**)

20           c. Requiring DenSco to loan Menaged another \$6 million and  
21 increase its loan-to-value ratios up to 120% of property values would  
22 violate DenSco's promises to investors that (a) DenSco would attempt to  
23 "ensure than one borrower will not comprise more than 10 to 15 percent  
24 of the total portfolio," and (b) DenSco's loan-to-value guidelines were  
25 "not intended to exceed 70%." These promises were stated in the 2011  
26 POM which Beauchamp drafted. (*See* 2011 POM at pgs. 10, 37,  
27 Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2**; Beauchamp Dep.  
28

Exhibit 47, attached as **CSOF Ex. 110**; Beauchamp Dep. Exhibit 357, attached as **CSOF Ex. 132**.)

**6. Clark Hill Advised Chittick That DenSco Could Continue Selling Promissory Notes Without First Issuing a New POM, and that DenSco Could Indefinitely Delay Issuing a New POM.**

**340.** Clark Hill and Beauchamp claim in their initial disclosure statement (at 10-11) that Beauchamp advised Chittick “during his January 9, 2014 meeting with Mr. Chittick” and repeatedly thereafter that: (a) DenSco was not permitted to take new money without full disclosure to the investor lending the money; (b) DenSco was not permitted to roll over existing investments without full disclosure to the investor rolling over the money; and (c) DenSco needed to update its POM and make full disclosure to all its investors. (*See* Defs.’ Initial Disclosure at pg. 10, ln. 14-19, Schenck Dep. Exhibit 4, attached as **CSOF Ex. 5**.)

**341.** A jury will be asked to find that this claim is an after-the-fact untruth.

**342.** There are no documents, such as notes, emails or letters, which reflect that Beauchamp *ever* gave that advice.

**343.** The documents in the file instead show that Beauchamp told Chittick that DenSco could sell promissory notes, and that DenSco could put off preparing a new POM while Chittick pursued his “work out” plan. (*See* Beauchamp Dep. Exhibit 350, attached as **CSOF Ex. 81**; Beauchamp Dep. Exhibit 168, attached as **CSOF Ex. 93**; Beauchamp Dep. Transcript at pp. 405:5-408:9, attached as **CSOF Ex. 6**; Beauchamp Dep. Exhibit 145, attached as **CSOF Ex. 92**; Jan. 2014 Invoice at CH\_0002312, Schenck Dep. Exhibit 6, attached as **CSOF Ex. 20**.)

**344.** Moreover, Beauchamp admitted in his deposition that he knew Chittick had caused DenSco to sell promissory notes but claims that he understood Chittick did so only after making disclosures to each investor who purchased a promissory note. (*See* Beauchamp Dep. Transcript at pp. 78:8-83:23, attached as **CSOF Ex. 6**.)

1           **345.** Clark Hill and Beauchamp make a similar claim in their initial disclosure  
2 statement (at 11) that “Mr. Chittick assured Mr. Beauchamp repeatedly that he was  
3 making the requisite disclosures to investors on an as needed basis, and that he had  
4 informed a select group of investors as to the double lien issue and the proposed  
5 workout.” (See Defs.’ Initial Disclosure at pg. 11, ln. 7-9, Schenck Dep. Exhibit 4,  
6 attached as **CSOF Ex. 5.**)

7                           **a. In early January 2014, Clark Hill Advised DenSco It**  
8                           **Could Sell Promissory Notes Without First Issuing a**  
9                           **New POM.**

10           **346.** Chittick’s entry for January 9, 2014 in the 2014 Corporate Journal says  
11 nothing about having been instructed by Beauchamp that DenSco could not sell  
12 promissory notes. The entry states, in part: “Scott and I met with David. He never  
13 read my email. We spent two hours. . . . He’s going to contact the lawyer tomorrow  
14 and let us know.” (See 2014 Corporate Journal at RECEIVER\_000045, Schenck Dep.  
15 Exhibit 21, attached as **CSOF Ex. 82.**)

16           **347.** According to Menaged, the following things happened at the January 9,  
17 2014 meeting:

18                           a. Beauchamp learned that Chittick was *not* planning to disclose the  
19 recently discovered fraud to DenSco’s investors. Menaged testified:

20                           Q. Did Mr. Beauchamp say anything when you were in the room  
21 about Denny’s obligation to disclose that this problem had occurred  
22 in his lending practices?

23                           A. He did. *He said to him, “We need to draft a letter to the*  
24 *investors to advise them of the situation.”*

25   *And Denny said, “That’s not happening.”*

26   And he said, “Why is that?”

27   And he said, “Because there will be a run on the bank and then  
28 at that point I can’t pay off all these loans, and so I’m going to take  
care of the problem myself.”

*And Beauchamp said, his attorney said, “Okay, I don’t want*

1 *to know about it then, if that's what you're doing. I think that you*  
2 *should advise the investors."*

3 And then Denny continued to tell him, "Look, you have to  
4 understand the position. The position is, that if I advise the investors  
5 and they all come back to me and ask for their money back, then I'm  
6 going to be in a bad position where I'm not going to be able to pay  
these other loans, and then I'm not going to have full control of the  
properties."

7 *And then at that point Beauchamp said, "Well, okay, if that's*  
8 *what we're going to do, then we definitely need to work very closely*  
9 *on this forbearance agreement to protect you from fraud, protect*  
10 *you from the Arizona Corporate Commission, protect you from the*  
11 *AG's office."*

12 (Emphasis added.) (See Menaged Rule 2004 Exam Transcript at 98:7–99:11,  
13 Menaged Dep. Exhibit 1145, attached as **CSOF Ex. 189**.)

14 b. Beauchamp agreed that *he* would not disclose the fraud to  
15 DenSco's investors, even though he had an independent obligation to do so.  
Menaged testified:

16 Q. Did Mr. Beauchamp ever say to Denny, while you were in the  
17 room or present, that he, Mr. Beauchamp, had an obligation to alert  
Denny's investors of what happened?

18 A. He did.

19 Q. And do you recall what he said?

20 A. Yes. *He said, "You do understand that you're putting me in*  
21 *a very awkward and bad position, because I do have an obligation*  
22 *to advise the investors."*

23 *And Denny said, "I didn't under -- I didn't know that, but I*  
24 *would appreciate it if you did not advise anybody and just prepare*  
25 *this agreement so we can move on from this."*

26 *And at that point I knew that he was not advising the*  
27 *investors, because Beauchamp said, "Okay, Denny, I will do what*  
28 *you want."*



1 (Emphasis added.) (See Menaged Rule 2004 Exam Transcript at 99:18–100:8,  
2 Menaged Dep. Exhibit 1145, attached as **CSOF Ex. 189.**)

3 c. Beauchamp asked Chittick how they planned to “keep” the fraud  
4 “from the investors.” Menaged testified:

5 Q. What is your memory of what Mr. Beauchamp said in that  
6 meeting?

7 A. . . . He asked how long we thought we could get this whole  
8 thing resolved.

9 Denny said less than a year.

10 Denny -- *David Beauchamp asked how we would keep this*  
11 *from the investors for that long a period of time.*

12 *Denny said his books looked fine. His accounting looked*  
13 *fine. His accounting didn’t reference him being in first or second*  
14 *position. So everything looked perfect.*

15 (Emphasis added.) (See Menaged Dep. Transcript at 317:3–318:8, attached as  
16 **CSOF Ex. 188.**)

17 d. Beauchamp proposed entering into a formal agreement. Menaged  
18 testified:

19 So he [Beauchamp] then left the room. I remember he said he needed  
20 to -- or I remember he said he needed to go downstairs and get fresh  
21 air and clean up, and which he did, because he was a mess. His shirt  
22 was all wet, and it really was disgusting.

23 And then he came back up, came back upstairs. *He said, “Okay, I*  
24 *have had some time to relax and think about he situation,” he said,*  
25 *“and here’s what we’re going to do: We are going to draw up an*  
26 *agreement to protect you and Denny from the situation.”*

27 (Emphasis added.) (See Menaged Rule 2004 Exam Transcript at 96:5-14,  
28 Menaged Dep. Exhibit 1145, attached as **CSOF Ex. 189.**)

e. The purpose of the formal agreement proposed by Beauchamp,  
according to Menaged, was not only to “memorialize everything that had taken  
place,” but also to “*summarize, basically, our agreement that we were making*

1 *in that room -- in the conference room that day.*” (Emphasis added.) (See  
2 Menaged Dep. Transcript at 318:19–319:5, attached as **CSOF Ex. 188.**)

3 **348.** Thereafter, according to Menaged, Beauchamp repeatedly “agreed” with  
4 Chittick to delay disclosure to investors, because Beauchamp “didn’t know how to  
5 disclose” what had happened. Menaged testified:

6 Q. Did he [Chittick] ever share with you what he was going to tell his  
7 investors for the year to 18 months about what was going on with the  
8 company?

9 A. . . . There’s something that he’s supposed to be filing or that his  
10 attorney is supposed to be filing every year or every two years. That’s  
11 the only thing he was concerned about, that he was late on it.

12 *I do know that Beauchamp was on him about – “Hey, we’ve got*  
13 *to do this. We’ve got to do this.” And then ultimately agreed with him,*  
14 *“Okay, yes. For the sake of everything, we’ll just kind of let this go a*  
15 *little longer.” Because Chittick’s thing was – “I don’t want the*  
16 *investors to know.”*

17 Q. . . . But Mr. Beauchamp was saying, “You need to tell your investors?”

18 A. *In the beginning, he said he needs to tell the investors. Then his*  
19 *lawyers agreed, “Yes, let’s give this another eight months. Let’s give*  
20 *this another 12 months. Let’s give this another 15 months.” He kept*  
21 *extending it.*

22 *Then, “Hey, you’re in violation, but, okay, we’ll push this a little*  
23 *longer, a little longer,” because Beauchamp didn’t know how to*  
24 *disclose this.*

25 (Emphasis added.) (Menaged Dep. Transcript at 205:23–207:2, attached as **CSOF Ex.**  
26 **188.**)

27 **349.** Beauchamp’s handwritten notes from a call with Chittick on Friday,  
28 January 10, 2014 state, in part, “Need to get back up plan in place. *Denny does not*  
*want to talk to his investors until he is ready* – will not take long.” (Emphasis added.)  
(See Beauchamp Dep. Exhibit 157, attached as **CSOF Ex. 128.**)

**350.** Chittick’s entry for that date in the 2014 Corporate Journal states, in part,  
“at 5pm Dave called, said they would give us time to clean it up. I talked to Scott; he

1 is going to try to bring in money. *I can raise money according to Dave.*” (Emphasis  
2 added.) (See 2014 Corporate Journal at RECEIVER\_000045, Schenck Dep. Exhibit 21,  
3 attached as **CSOF Ex. 82.**)

4       **351.** On Sunday, January 12, 2014, Chittick sent Beauchamp an email which  
5 stated, in part, *“I’ve spent the day contacting every investor that has told me they want*  
6 *to give me more money. I don’t have an answer on specifically how much I can raise;*  
7 *I’ll know that in a day or two.”* (Emphasis added.) He went on to say that between  
8 new money, current cash on hand, and pending real estate closings, he would have  
9 *between \$5 and \$10 million* in the next ten days. His email summarized the outline of  
10 the plan he and Menaged had discussed the previous Friday, which included, for the  
11 group of lenders represented by Bryan Cave: (i) identifying all properties in which  
12 another party claimed an interest; (ii) providing that information to an escrow agent;  
13 (iii) buying out the other parties as cash was put into escrow; and (iv) memorializing  
14 the arrangement through a term sheet and a written contract. *“[I]f both Scott and I can*  
15 *raise enough money,* we should be able to have this all done in 30 days easy, less than  
16 three weeks would be my goal.” (Emphasis added.) As for the other lenders, Chittick  
17 stated that the plan was to pay them off as Menaged was able to raise additional capital.  
18 Chittick concluded the email by stating, *“that’s my plan, shoot holes in it.”* (Emphasis  
19 added.) (See Beauchamp Dep. Exhibit 150, attached as **CSOF Ex. 129.**)

20       **352.** Beauchamp responded in an email sent later that day which stated, in part,  
21 *“[y]ou should feel very honored that you could raise that amount of money that*  
22 *quickly.* I will outline a few thoughts tomorrow and get back to you.” (Emphasis  
23 added.) (*Id.*)

24       **353.** The “few thoughts” that Beauchamp conveyed the next day were  
25 questions about the sources from whom Menaged would raise money. Beauchamp did  
26 not tell Chittick that DenSco could not raise new money by selling promissory notes  
27 without first issuing a new POM. (See Beauchamp Dep. Exhibit 151, attached as **CSOF**  
28 **Ex. 130.**)

1                                   **b.     During February, March, and April 2014, While the**  
2                                   **Forbearance Agreement Was Negotiated, Clark Hill**  
3                                   **Advised Chittick That DenSco Could Delay Issuing a**  
4                                   **New POM.**

5           **354.** After telling Chittick that DenSco could continue selling promissory  
6 notes without first issuing a new POM, Beauchamp would periodically tell Chittick that  
7 a new POM eventually had to be issued to reveal information about DenSco's  
8 operations, but let Chittick believe the issuance of the POM could be delayed. (*See*  
9 Beauchamp Dep. Transcript at pp. 78:8-83:23, attached as **CSOF Ex. 6.**)

10           **355.** In a February 4, 2014 email that Beauchamp sent to Chittick, Beauchamp  
11 wrote that the Forbearance Agreement would need to be described in a document "that  
12 you HAVE to provide to your investors." (*See* Beauchamp Dep. Exhibit 336, attached  
13 as **CSOF Ex. 131.**)

14           **356.** Chittick's February 7, 2014 entry in the 2014 Corporate Journal states, in  
15 part, "I was on the phone with David and [Menaged] off and on trying to find middle  
16 ground in this crap to make this agreement final. *Now [D]avid is telling me I have to*  
17 *tell my investors.*" (*See* 2014 Corporate Journal at RECEIVER\_000049, Schenck Dep.  
18 Exhibit 21, attached as **CSOF Ex. 82.**)

19           **357.** Beauchamp's notes reflect that he discussed with Chittick on February  
20 21, 2014 DenSco's upcoming annual meeting, which was scheduled for March 8. He  
21 wrote: "*cannot be ready to tell everything.*" (Emphasis added.) (*See* Beauchamp Dep.  
22 Exhibit 357, attached as **CSOF Ex. 132.**)

23           **358.** Beauchamp's notes went on to reflect his thoughts about what might  
24 eventually be disclosed to investors. He wrote: "What to put into notice to the investors.  
25 [E]xplain concentration to Scott to help Scott package homes to sell to a Hedge Fund  
26 in \$5M groups. [T]he problem was discovered but to resolve the loans with double  
27 leverage came up with a plan, but that required DenSco to make higher leveraged loans.  
28 DenSco also made advances on new homes purchased." (*Id.*)

1           **359.** Beauchamp's notes also show that he knew the workout plan was  
2 increasing the loan-to-value ratios on many of DenSco's loans far above what DenSco  
3 had disclosed to investors in any previous POM. For example, he wrote: "30 loans are  
4 now at 95% LTV." (*Id.*)

5           **360.** The entry Chittick made in the 2014 Corporate Journal for March 11,  
6 2014 states, in part: "*David changed and said now I have to tell my investors.*  
7 [Menaged] and I are going to try to fix this mess in 30 days and that way it will be a  
8 minor issue." (Emphasis added.) (See 2014 Corporate Journal at RECEIVER\_000054,  
9 Schenck Dep. Exhibit 21, attached as **CSOF Ex. 82.**)

10           **361.** Menaged recalled that, on the March 11, 2014 call, although Beauchamp  
11 advised Chittick that the information needed to be disclosed to investors, Beauchamp  
12 advised that the disclosure could be "delayed," perhaps indefinitely. Menaged testified:

13           Q. Just to be clear, your understanding from this call was Mr. Beauchamp  
14 was advising Mr. Chittick that the information needed to be disclosed to  
15 investors but could be delayed? The disclosure could be delayed.

16           Mr. DeWulf: Object to form.

17           A. *He said that, yes, the investors needed to be aware of this, but, yes,*  
18 *it could be delayed, and ultimately, if the problem was completely*  
19 *resolved without disclosing to the investors, well, then, there was no*  
20 *reason to have to disclose it.*

(Menaged Dep. Transcript at 374:14-23, attached as **CSOF Ex. 188.**)

21           **362.** In a March 13, 2014 email to Chittick regarding the inclusion in the  
22 Forbearance Agreement of a confidentiality provision that Menaged had sought,  
23 Beauchamp wrote: "With respect to timing, we are already very late in providing  
24 information to your **investors about this problem and the resulting material changes**  
25 **to your business plan. We cannot give [Menaged] and his attorney any time to**  
26 **cause further delay in getting this Forbearance Agreement finished and the**  
27 **necessary disclosure prepared and circulated."** (Emphasis in original.) (See  
28 Beauchamp Dep. Exhibit 383, attached as **CSOF Ex. 120.**)

1                   c.     **In May 2014, Clark Hill Made a Half-Hearted Effort to**  
2                             **Prepare a New POM and Then, at Chittick's Request,**  
3                             **Stopped Working on the New POM and Advised**  
4                             **Chittick That DenSco Could Continue to Put Off**  
                              **Issuing a New POM While Chittick Pursued His "Work**  
                              **Out" Plan.**

5           **363.** Chittick's entry in the 2014 Corporate Journal for April 16, 2014 reflected  
6 the signing of the Forbearance Agreement and concludes: "I'll send it up to David and  
7 then he and I can start on the memorandum." (*See* 2014 Corporate Journal at  
8 RECEIVER\_000059, Schenck Dep. Exhibit 21, attached as **CSOF Ex. 82.**)

9           **364.** Beauchamp's notes show that he had a call with Chittick on April 24,  
10 2014. Those notes reflect that Beauchamp knew that DenSco's total loans to Menaged  
11 were approximately \$36 million in principal, with a \$5 million note (of which  
12 approximately \$1.78 million was principal), and a \$1 million note (of which  
13 approximately \$915,000 was principal). (*See* Beauchamp Dep. Exhibit 406, attached  
14 as **CSOF Ex. 133.**)

15           **365.** Under the heading "POM update" he noted that 186 loans were double-  
16 encumbered when the workout started, which was down to 94 loans, representing \$12.3  
17 million of principal, as of that date, which was down from a previous balance of  
18 approximately \$25 million. (*Id.*)

19           **366.** That same day, Chittick sent Beauchamp by email another copy of the  
20 2011 private offering memorandum. (*See* Schenck Dep. Exhibit 99, attached as **CSOF**  
21 **Ex. 134.**)

22           **367.** It appears from the Clark Hill file that Beauchamp gave a printed copy of  
23 the memorandum to Schenck with a handwritten note asking him to mark up the  
24 memorandum and add "updates/forbearance, etc." (*See* Schenck Dep. Exhibit 100,  
25 attached as **CSOF Ex. 54.**)

26           **368.** Beauchamp's handwritten notes and documents in the file reflect that  
27 some research was done on May 13, 2014 on "Dodd Frank and regulation." (*See* May  
28

1 2014 Invoice at CH\_0005226, Schenck Dep. Exhibit 11, attached as **CSOF Ex. 24**;  
2 Beauchamp Dep. Exhibit 107, attached as **CSOF Ex. 40**.)

3 **369.** On May 14, 2014, Schenck sent Beauchamp by email a redline of a draft  
4 private offering memorandum and a separate document with comments, some of which  
5 were for Beauchamp's attention. Schenck's email concluded by asking Beauchamp to  
6 "let me know what changes you prefer before this draft is sent to Denny." His time  
7 entry describes the document as a "first draft." (See Schenck Dep. Exhibit 101, attached  
8 as **CSOF Ex. 19**; May 2014 Invoice at CH\_0005226, Schenck Dep. Exhibit 11,  
9 attached as **CSOF Ex. 24**.)

10 **370.** The document with comments contained, in the "Prior Performance"  
11 section, a discussion of the terms of the Forbearance Agreement, with limited  
12 information about the circumstances that gave rise to it and a narrative that accepted,  
13 as accurate and reliable, Menaged's "cousin" story: "According to the Foreclosure  
14 Debtors, an agent of the Foreclosure Debtors had secured the Outside Loans without  
15 the Foreclosure Debtors' knowledge." The draft said nothing about Chittick's gross  
16 negligence in managing DenSco's lending practices by giving funds directly to  
17 Menaged, rather than to a Trustee. (See Schenck Dep. Exhibit 101 at pg. 39, attached  
18 as **CSOF Ex. 19**.)

19 **371.** Clark Hill's time records reflect that Beauchamp billed 30 minutes of  
20 time to "review revisions to POM and work on same." (See May 2014 Invoice at  
21 CH\_0005226, Schenck Dep. Exhibit 11, attached as **CSOF Ex. 24**.)

22 **372.** But there is nothing in the Clark Hill file to reflect that Beauchamp  
23 actually made any revisions to this first draft. (See Beauchamp Dep. Transcript at  
24 201:12-202:10, attached as **CSOF Ex. 6**.)

25 **373.** Neither the Clark Hill file nor Clark Hill's billing statement reflect that  
26 Beauchamp ever sent the draft POM to Chittick or discussed it with him. (See May  
27 2014 Invoice, Schenck Dep. Exhibit 11, attached as **CSOF Ex. 24**.)  
28

1           **374.** Clark Hill’s files show that the firm simply stopped work on a new POM  
2 in mid-May 2014. (*Id.*)

3           **375.** Entries by Chittick in the 2014 Corporate Journal shortly thereafter reflect  
4 that Chittick had decided not to issue a new POM at that time, and to continue selling  
5 promissory notes while he pursued his “work-out” plan before making a disclosure to  
6 investors. Clark Hill decided to abide by Chittick’s instruction, just as the firm had  
7 agreed in September 2013 to prepare a new POM and then followed Chittick’s  
8 instruction not to work on the new POM until Chittick was ready to issue it. (*See* 2014  
9 Corporate Journal, Schenck Dep. Exhibit 21, attached as **CSOF Ex. 82.**)

10           a. The July 2, 2014 entry states, in part: “We are making progress,  
11 just too damn slow, *but I’m sure much quicker than David expected us to do.*”  
12 (Emphasis added.) (2014 Corporate Journal at RECEIVER\_000069, Schenck  
13 Dep. Exhibit 21, attached as **CSOF Ex. 82.**)

14           b. The July 25, 2014 entry states, in part: “My time is running out on  
15 updating my private placement memorandum and notifying my investors.”  
16 (2014 Corporate Journal at RECEIVER\_000072, Schenck Dep. Exhibit 21,  
17 attached as **CSOF Ex. 82.**)

18           c. The July 31, 2014 entry states, in part: “It’s all going in the right  
19 direction, just not sure if it’s going fast enough. *As long as David doesn’t bug*  
20 *me, I feel like we are doing the right thing.*” (Emphasis added.) (2014 Corporate  
21 Journal at RECEIVER\_000073, Schenck Dep. Exhibit 21, attached as **CSOF**  
22 **Ex. 82.**)

23           **376.** Clark Hill’s blessing of Chittick’s plan to continue pursuing a work out  
24 plan without telling DenSco’s investors is reflected in Beauchamp’s dealings with  
25 Chittick the following March. (*See* Beauchamp Dep. Exhibit 411, attached as **CSOF**  
26 **Ex. 135**; 2015 Corporate Journal at RECEIVER\_000101, Schenck Dep. Exhibit 22,  
27 attached as **CSOF Ex. 136.**)  
28



1           **377.** On March 13, 2015, Beauchamp sent Chittick an email which stated, in  
2 part:

3           I would like to meet for coffee or lunch (at no charge to you) so we can sit  
4 down and talk about how things have progressed for you since last year. I  
5 would also like to listen to you about your concerns, and frustration with how  
6 the forbearance settlement and the documentation process was handled. I  
7 have thought back to it a lot and I have second guessed myself concerning  
8 several steps in the overall process, ***but I wanted to protect you as much as***  
9 ***I could. When I felt that your frustration had reached a very high level, I***  
10 ***stopped calling you about how things were going so that you did not feel I***  
11 ***was just trying to add more attorney's fees.*** I planned to call you after about  
12 30 days, but then I let it slip all of last year because I kept putting it off. I  
13 even have tried to write you several different emails, but I kept erasing them  
14 before I could send them. I acknowledge that you were justifiably frustrated  
15 and upset with the expense and how the other lenders (and [Menaged] at  
16 times) seemed to go against you as you were trying to get things resolved last  
17 year for [Menaged]. I have tried to let time pass so that we can discuss if you  
18 are willing to move beyond everything that happened and still work with me.  
19 If not, I would like you to know that I still respect you, what you have done  
20 and would still like to consider you a friend. You stood up for [Menaged]  
21 when he needed it and I truly believe it was more than just a business decision  
22 on your part. Hopefully, you will respond to this email and we can try to talk  
23 and catch up.

24 (Emphasis added.) (Beauchamp Dep. Exhibit 411, attached as **CSOF Ex. 135.**)

25           **378.** Chittick responded “[s]ure, give me some options on when to meet.” (*Id.*)

26           **379.** Chittick forwarded Beauchamp’s email to Menaged, who wrote,  
27 “[s]chedule coffee in 18 months when our balance is close to nothing.” (*See* Beauchamp  
28 Dep. Exhibit 412, attached as **CSOF Ex. 137.**)

**380.** Chittick responded: ***“I figure it’s a miracle he left me alone this long!”***  
(Emphasis added.) (*Id.*)

**381.** In his entry that day in the corporate journal Chittick maintained for 2015  
(the “2015 Corporate Journal”), Chittick wrote: ***“I got an email from Dave my attorney***  
***wanting to meet. He gave me a year to straighten stuff out. We’ll see what pressure***  
***I’m under to report now.”*** (Emphasis added.) (*See* 2015 Corporate Journal at  
RECEIVER\_000101, Schenck Dep. Exhibit 22, attached as **CSOF Ex. 136.**)

1           **382.** Chittick had lunch with Beauchamp on March 24, 2015. (See Beauchamp  
2 Dep. Transcript at pp. 225:4-226:13, attached as **CSOF Ex. 6**; 2015 Corporate Journal  
3 at RECEIVER\_000102, Schenck Dep. Exhibit 22, attached as **CSOF Ex. 136**.)

4           **383.** Chittick's entry in the 2015 Corporate Journal for that date states:

5           I had lunch with Dave Beauchamp. I was nervous he was going to put a lot of  
6 pressure on me. However, *he was thrilled to know where we were at and I told*  
7 *him by April 15<sup>th</sup>, we'll be down to 16 properties with seconds on them, and*  
8 *by the end of June we hope to have all the retail houses sold by then and just*  
9 *doing wholesale. He said he would give me 90 days.* (Emphasis added.) I just  
10 hope we can sell them all by then and darn near be done with it. *I'm going to*  
11 *slow down the whole memorandum process too. Give us as much time as*  
12 *possible to get things in better order.*

(Emphasis added.) (2015 Corporate Journal at RECEIVER\_000102, Schenck Dep.  
Exhibit 22, attached as **CSOF Ex. 136**.)

13           **384.** Chittick's entry in the 2015 Corporate Journal for June 18, 2015 states, in  
14 part: "[Menaged] tried to enlarge the wholesale number saying, well I'm paying down  
15 the workout, I can use that for the wholesale. I'm not letting him. That number needs  
16 to start dropping! *I have to get his number falling, or it's going to be hell with Dave.*"  
17 (Emphasis added.) (See 2015 Corporate Journal at RECEIVER\_000112, Schenck Dep.  
18 Exhibit 22, attached as **CSOF Ex. 136**.)

19                           **d. Clark Hill Knew that Chittick Was Not Making**  
20                           **Appropriate Oral Disclosures to DenSco's Investors.**

21           **385.** At times in this case, Clark Hill has suggested that it thought Chittick was  
22 making oral disclosures to investors before raising money from them. The jury will be  
23 asked to reject that suggestion because, among other things:

24           a. As explained above, DenSco's longstanding practice, based on  
25 Beauchamp's advice, was to give *written* disclosures to investors in the form of  
26 POMs, not oral disclosures.

1           b. As explained above, DenSco's POMs, which Beauchamp  
2 prepared, warned investors that the *only* disclosures they could rely on were  
3 written updated to the POM itself, not oral disclosures.

4           c. Beauchamp himself testified that if Chittick had been raising  
5 money from investors, "***something much more formal***" than oral disclosures  
6 would have been necessary. (Emphasis added.) (See Beauchamp Dep.  
7 Transcript at 161:7-24, attached as **CSOF Ex. 6.**)

8           d. The jury can use common sense. Beauchamp would have known  
9 that, if Chittick had been giving full and appropriate disclosures to investors,  
10 they would not have continued investing. (See Expert Report of Neil Wertlieb  
11 at pg. 24, attached as **CSOF Ex. 187.**)

12           e. As explained below, DenSco's investors have testified that if they  
13 had known about the fraud or the work-out plan, they would not have continued  
14 investing.

15                           **e. With Clark Hill's Assistance, Chittick Caused DenSco to**  
16                           **Sell Approximately \$5 Million of Promissory Notes**  
17                           **Between January and May 2014 Without First Issuing a**  
                              **New POM.**

18           **386.** During the months of January through May 2014, DenSco sold  
19 \$5,000,008.00 of new promissory notes to the following investors, which were all two-  
20 year notes unless otherwise indicated.

21

| Investor             | Amount    | Date    |
|----------------------|-----------|---------|
| Brian & Carla Wenig  | \$15,000  | 1/3/14  |
| Dale Hickman         | \$150,000 | 1/13/14 |
| Carol & Mike Wellman | \$30,000  | 1/14/14 |
| Carol Wellman        | \$10,000  | 1/14/14 |
| Jolene Page          | \$150,000 | 1/14/14 |
| Marvin & Pat Miller  | \$200,000 | 1/15/14 |

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|                     |           |                      |
|---------------------|-----------|----------------------|
| Marvin & Pat Miller | \$100,000 | 1/15/14              |
| Mark & Debbie Wenig | \$50,000  | 1/24/14              |
| Kirk Fischer        | \$600,000 | 1/29/14 <sup>6</sup> |
| Brian Imdieke       | \$500,000 | 2/11/14 <sup>7</sup> |
| Ryan Baughman       | \$300,000 | 2/11/14              |
| Kaylene Moss        | \$10,000  | 3/5/14               |
| Ryan Baughman       | \$300,000 | 4/1/14 <sup>8</sup>  |
| Wayne Ledet         | \$30,000  | 4/7/14               |
| Alexandra Bunger    | \$850,000 | 5/1/14               |
| Cassidy Bunger      | \$850,000 | 5/1/14               |
| Connor Bunger       | \$850,000 | 5/1/14               |
| Bill Hughes         | \$6,500   | 5/1/14               |
| Bill Hughes -- IRA  | \$6,500   | 5/1/14               |

(See Receiver's Status Report dated Dec. 23, 2016, Exhibit A to Davis Dep. Exhibit 479, attached as **CSOF Ex. 84**.)

**387.** DenSco's sale of those promissory notes was necessary for DenSco to continue its business operations, and Clark Hill enabled DenSco to obtain investor funds during that five-month period without making adequate disclosures to those investors, exposing DenSco to substantial liability for those sales. (See 2015 Corporate Journal at RECEIVER\_000101, Schenck Dep. Exhibit 22, attached as **CSOF Ex. 136**; Beauchamp Dep. Exhibit 406, attached as **CSOF Ex. 133**; Beauchamp Dep. Exhibit 414, attached as **CSOF Ex. 138**.)

**388.** There were also additional promissory note sales after May 2014.

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<sup>6</sup> Five-year note.

<sup>7</sup> Six-month note.

<sup>8</sup> Three-month note.

1                   **7. In Addition to Aiding and Abetting Chittick's Breach of**  
2                   **Fiduciary Duties, Clark Hill Also Negligently Advised Chittick**  
3                   **That DenSco Could Continue Giving Loan Proceeds to**  
4                   **Menaged, Rather Than Paying Them Directly to a Trustee.**

5                   **389.** As of January 9, 2014, Clark Hill knew that Chittick had been grossly  
6 negligent in managing DenSco's lending operations by giving tens of millions of loan  
7 proceeds to Menaged, rather than paying them directly to a Trustee. (*See* Beauchamp  
8 Dep. Exhibit 144, attached as **CSOF Ex. 91.**)

9                   **390.** Clark Hill knew that this practice violated the terms of the Mortgage  
10 document Clark Hill knew DenSco routinely employed to document loans, which stated  
11 that the "The undersigned borrower ("Borrower") acknowledges receipt of the proceeds  
12 of a loan from DenSco Investment Corporation ("Lender") in the sum of \$\_\_\_\_\_,  
13 *as evidenced by check payable to: \_\_\_\_\_ ("Trustee").* (Emphasis added.) (*See*  
14 Schenck Dep. Exhibit 27, attached as **CSOF Ex. 139**; Schenck Dep. Exhibit 29,  
15 attached as **CSOF Ex. 89.**)

16                   **391.** Clark Hill also knew that this practice was an extraordinary breach of the  
17 representations in DenSco's POMs. As Beauchamp has admitted in interrogatory  
18 answers, DenSco's POMs represented that DenSco employed appropriate due diligence  
19 and loan procedures in making loans. An essential part of those loan procedures was  
20 that "every mortgage evidencing a property purchase made with a DenSco loan stated  
21 that the check purchasing the property was made to the Trustee." (*See* Beauchamp Dep.  
22 Exhibit 422 at pg. 6, ln. 17-19, attached **CSOF Ex. 67.**)

23                   **392.** Clark Hill also knew, from Beauchamp's January 9, 2014 meeting with  
24 Chittick and Menaged, that Chittick's failure to follow those loan procedures had  
25 exposed DenSco to a substantial potential loss of between \$11.6 and \$14.5 million, or  
26 between 25% and 30% of the \$47 million that Beauchamp understood DenSco had  
27 raised as of June 2013. (*See* Beauchamp Dep. Exhibit 145, attached as **CSOF Ex. 92.**)  
28

1           **393.** And Clark Hill knew that those potential losses resulted from Chittick's  
2 dealings with one borrower, Scott Menaged. (See Beauchamp Dep. Exhibit 144,  
3 attached as **CSOF Ex. 91**; Beauchamp Dep. Exhibit 145, attached as **CSOF Ex. 92**.)

4           **394.** After Clark Hill learned, through Beauchamp's January 9, 2014 meeting  
5 with Chittick and Menaged, that Chittick intended to cause DenSco to continue loaning  
6 money to Menaged, Clark Hill should have issued immediate, clear written advice to  
7 Chittick that: (1) DenSco must adhere to the lending practices identified in its POMs  
8 and referenced in the Mortgage – i.e., disbursing loan proceeds directly to a Trustee,  
9 through a check (as the Mortgage contemplated) or a wire transfer; and (2) never  
10 disbursing loan proceeds directly to Menaged (or any other borrower) under any  
11 circumstances. (See Expert Report of Neil Wertlieb at pgs. 8-17, attached as **CSOF Ex.**  
12 **187**.)

13           **395.** Clark Hill had the opportunity to give that advice when Beauchamp  
14 received an email from Chittick during the evening of January 9, 2014, in which  
15 Chittick posed the following question:

16           If [I] [obtain] a cashier's check and take it to the trustee myself, [I] don[t]  
17 get a receipt that DenSco [p]aid for it. [I] get a receipt saying that X  
18 property was paid for, for X \$'s vested in borrower's name. [DenSco's]  
19 name doesn't appear on it. [O]ther than having a cashier's check receipt  
20 saying [DenSco] made a check out for it, there isn't anything from the  
21 trustee saying that it was [DenSco's] check. ***[I] could wire [Menaged] the***  
22 ***money, he could produce a cashier's check that says remitter is DenSco***  
23 ***and it would have the exact same [e]ffect as if [I] got [a] cashier's check***  
***that said [DenSco's] the remitter.*** . . . [P]ut aside the logistics for a second,  
what proof or what guarantee is there by me cutting the check and handing  
it to [S]uzy at the trustee[']s office rather than my borrowers? [I] know [I]  
must be missing something. (Emphasis added.)

24 (See Beauchamp Dep. Exhibit 147, at CH\_0001502, attached as **CSOF Ex. 140**.)

25           **396.** Clark Hill failed to tell Chittick that he could not "wire Menaged the  
26 money" because: (1) doing so was contrary to representations in the POM and the terms  
27 of the Mortgage; (2) doing so had previously exposed DenSco to a potential loss of  
28 between \$11.6 and \$14.5 million; and (3) Menaged could not, given obvious questions

1 about the veracity of his “cousin” story, be trusted. (See Beauchamp Dep. Transcript at  
2 79:19-83:23, attached as **CSOF Ex. 6**; Beauchamp Dep. Exhibit 147, attached as **CSOF**  
3 **Ex. 140**; Defs.’ Initial Disclosure, Schenck Dep. Exhibit 4, attached as **CSOF Ex. 5**.)

4 **397.** Beauchamp instead responded in an email that night in which he said:  
5 *“Let me see what the other lenders got from the Trustee and we can make a better*  
6 *decision.* There is either another way to do it or someone described a procedure that  
7 does not work.” (Emphasis added.) (See Beauchamp Dep. Exhibit 147 at CH\_0001502,  
8 attached as **CSOF Ex. 140**.)

9 **398.** On January 17, 2014, Beauchamp told two other lawyers at Clark Hill,  
10 Dan Schenck and Bob Anderson, who specialized in real estate lending, that the firm  
11 needed to review “the demand letter from Bryan Cave asserting the claim from the other  
12 lenders” – i.e., that DenSco had fraudulently filed 52 Mortgage documents claiming  
13 that 52 Trustees had been paid to purchase properties at a Trustee’s sale when no such  
14 payment had occurred -- and “[i]f this claim has any merit, [Clark Hill] need[ed] to  
15 advise DenSco to change its internal procedures.” But neither Beauchamp, Schenck,  
16 nor Anderson undertook that analysis. (See Schenck Dep. Exhibit 53, attached as **CSOF**  
17 **Ex. 141**.)

18 **399.** Beauchamp later advised Chittick that DenSco could continue wiring  
19 money to Menaged, trusting Menaged to pay the loan proceeds to a Trustee, so long as  
20 Menaged provided written confirmation that he had done so. As Chittick wrote in July  
21 2016:

22 a. “Going back to December of 2013, . . . [Menaged] knew he had to  
23 make money to help cover the deficit [that] would be created by the double  
24 encumbered properties and shortage that would be created at the time of  
25 disposition. He wanted time to still fund him buying properties at auction and  
26 flipping them, wholesaling them, etc. *I talked to Dave about this in January*  
27 *[2014] and he was in agreement with it as long as I received copies of checks*  
28

1       *and receipts showing that I was paying the trustee.*” (Emphasis added.) (See  
2       Beauchamp Dep. Exhibit 414 at DIC0009472, attached as **CSOF Ex. 138.**)

3               b.       “Dave, my lawyer, negotiated the work out agreement and  
4       endorsed the plan. Then when [Menaged] said hey, let me buy some  
5       foreclosures, flip them, wholesale them, etc. so I can make money. *All the other*  
6       *lenders wouldn’t lend to him. I needed him to make money now more than*  
7       *ever before. We went to Dave, and he gave some constraints on how we were*  
8       *to operate.* I have all the documentation. I received copies of checks made out  
9       to trustees, receipts from the trustees. I had all my docs signed. I recorded my  
10      mortgages. I had evidence of insurance, and I did everything.” (Emphasis  
11      added.) (See Beauchamp Dep. Exhibit 415 at DIC0009485, attached as **CSOF**  
12      **Ex. 38.**)

13      **400.** The fact that Beauchamp advised Chittick that DenSco could continue  
14      wiring money to Menaged is also corroborated by other evidence. For example:

15              a.       In an audio-recorded conversation in July 2016, Chittick told  
16      Menaged that Beauchamp “*agreed that it was okay that I wired it to you, as*  
17      *long as you provided copies of the check.*” (Emphasis added.) (See Transcript  
18      of July 7, 2016 Audio-Recorded Conversation at 131:5-1, attached as **CSOF Ex.**  
19      **205.**)

20              b.       Menaged testified: “*Beauchamp told [Chittick] that if you were*  
21      *going to continue to wire the borrower, to get a copy of the check,* or something  
22      like that.” (Emphasis added.) (See Menaged 2004 Exam Transcript at 165:7-9,  
23      attached as **CSOF Ex. 189.**)

24      **401.** Clark Hill and Beauchamp claim in their initial disclosure statement, and  
25      Beauchamp claimed when he was deposed, that Clark Hill had advised Chittick in  
26      January 2014 that it should not give loan proceeds to Menaged and should instead give  
27      them to a Trustee. But a jury will find that this is yet another after-the-fact untruth. No  
28      documents in Clark Hill’s file – not a letter, email, note or time entry – reflect that the



1 advice was ever given. Moreover, Beauchamp's deposition testimony that he relied on  
2 Anderson to give that advice to Chittick and understood it had been given is belied by  
3 Anderson's deposition testimony, who said he had not done so. (*See* Beauchamp Dep.  
4 Transcript at pp. 252:17-255:15; 352:11-364:16, attached as **CSOF Ex. 6**; Anderson  
5 Dep. Transcript at pp. 17:5-30:5, attached as **CSOF Ex. 142**.)

6 **402.** A jury will reject Clark Hill's claim and find that DenSco followed  
7 Beauchamp's negligent advice to Chittick that DenSco could continue its long-standing  
8 practice of giving loan proceeds directly to Menaged, trusting him to use those funds  
9 only to pay a Trustee for property that would be fully secured, with DenSco in first  
10 position. As a result, Menaged continued to have direct access to DenSco's funds,  
11 despite the tens of millions of dollars of losses that practice had caused DenSco, which  
12 put Menaged in a position to misappropriate those funds, just as he had misappropriated  
13 the loan proceeds DenSco had given him in previous years. (*See* Expert Report of Neil  
14 Wertlieb, attached as **CSOF Ex. 187**; Expert Report of Fenix Financial Forensic LLC  
15 at pgs. 2-10, attached as **CSOF Ex. 190**.)

16 **403.** As a direct consequence of Clark Hill's negligence, DenSco suffered  
17 substantial losses. (*Id.*)

18 **404.** If Clark Hill had instead advised Chittick that DenSco could never give  
19 loan proceeds to Menaged and must instead independently cause those funds to be  
20 delivered to a Trustee, Chittick would have followed that advice. Indeed, Chittick  
21 acknowledged in his January 9, 2014 email that he "must be missing something." (*See*  
22 Schenck Dep. Exhibit 36 at CH\_0001503, attached as **CSOF Ex. 39**.)

23 **E. Response to 2016 ADFI Investigation**

24 **405.** In March 2016, Chittick asked Beauchamp to help DenSco respond to  
25 another investigation by the Arizona Department of Financial Institutions. Beauchamp  
26 worked on the matter during March, April, May, and June 2016, billing his time to a  
27 "General" matter he had established in January 2013. As with previous inquiries by  
28

1 ADFI, Clark Hill argued that DenSco should not be licensed and regulated by ADFI,  
2 which would have included a review of DenSco's lending procedures. (See June 2016  
3 Invoice, Schenck Dep. Exhibit 17, attached as **CSOF Ex. 30**; Schenck Dep. Exhibit 18,  
4 attached as **CSOF Ex. 31**; August 2016 Invoice, Schenck Dep. Exhibit 14, attached as  
5 **CSOF Ex. 27**; April 2016 Invoice, Schenck Dep. Exhibit 15, attached as **CSOF Ex.**  
6 **28**; May 2016 Invoice, Schenck Dep. Exhibit 16, attached as **CSOF Ex. 29**.)

7 **F. Chittick's Suicide**

8 **406.** Chittick committed suicide on July 28, 2016. (See Beauchamp Dep.  
9 Exhibit 323 at pg. 1, attached as **CSOF Ex. 143**.)

10 **407.** DenSco's investors did not learn about Menaged's fraud, what caused it,  
11 or the "work-out plan" that Chittick, Menaged, and Clark Hill and Beauchamp  
12 developed, until after Chittick committed suicide and the Receiver was appointed. Had  
13 the investors known the truth, they would not have continued investing. (See Bunger  
14 Dep. Transcript at 146:19–150:13, attached as **CSOF Ex. 191**; Burdett Dep. Transcript  
15 at 122:10–123:8, attached as **CSOF Ex. 192**; D. Davis Dep. Transcript at 53:12–55:8,  
16 attached as **CSOF Ex. 193**; Dupper Dep. Transcript at 77:9-25, attached as **CSOF Ex.**  
17 **194**; Imdieke Dep. Transcript at 108:3–120:21, attached as **CSOF Ex. 195**; Kent Dep.  
18 Transcript at 104:4–107:14, attached as **CSOF Ex. 196**; Miller Dep. Transcript at  
19 59:23–63:9, attached as **CSOF Ex. 197**; Siegford Dep. Transcript at 45:17-22, attached  
20 as **CSOF Ex. 198**; Swirtz Dep. Transcript at 64:9–65:12, attached as **CSOF Ex. 199**;  
21 Thompson Dep. Transcript at 178:11–184:15, attached as **CSOF Ex. 200**; Tuttle Dep.  
22 Transcript at 108:6–109:8, attached as **CSOF Ex. 201**.)

23 **408.** Shortly before his death, Chittick wrote an "Investor" letter that was  
24 never sent to DenSco's investors but was among the business records obtained by the  
25 Receiver. Among the statements in that letter are the following:

26 Why didn't I let all of you know what was going on at any point? It was pure  
27 fear. . . . I have 100 investors. I had no idea what everyone would do or want  
28 to do or how many would just sue, justifiably. ***I also feared that there would  
be a classic run on the bank. . . I truly believe we had a plan that would***

1       *allow me to continue to operate, my investors would receive their interest*  
2       *and redemptions as a normal course of business, and the rest of my*  
3       *portfolio was performing. Dave blessed this course of action.* We signed  
this workout agreement and began executing it.

4       (Emphasis added.) (See Beauchamp Dep. Exhibit 414, attached as **CSOF Ex. 138.**)

5       **409.** The letter also stated:

6       Going back to December of 2013, . . . [Menaged] knew he had to make  
7       money to help cover the deficit [that] would be created by the double  
8       encumbered properties and shortage that would be created at the time of  
9       disposition. He wanted time to still fund him buying properties at auction  
10      and flipping them, wholesaling them, etc. *I talked to Dave about this in*  
*January [2014] and he was in agreement with it as long as I received copies*  
*of checks and receipts showing that I was paying the trustee.*

11      (Emphasis added.) (See Beauchamp Dep. Exhibit 414 at DIC0009472, attached as  
12      **CSOF Ex. 138.**)

13      **410.** Chittick also wrote a detailed letter to his sister, Shawna Heuer (aka Iggy),  
14      shortly before his death. He wrote:

15      *[Beauchamp] let me get the workout signed[,] not tell the investors[,] and*  
16      *try to fix the problem. That was a huge mistake. . . . Dave did a workout*  
17      *agreement with [Menaged], we were executing to it and making headway,*  
18      *yet Dave never made me tell the investors. . . . I talked Dave my attorney*  
19      *into allowing me to continue without notifying my investors. Shame on*  
*him. He shouldn't have allowed me. He even told me once I was doing*  
*the right thing.*

20      (Emphasis added.) (See Beauchamp Dep. Exhibit 415 at DIC0009482 and  
21      DIC0009484, attached as **CSOF Ex. 38.**)

22      **411.** The letter also stated:

23      *Dave, my lawyer, negotiated the work out agreement and endorsed the*  
24      *plan.* Then when [Menaged] said hey, let me buy some foreclosures, flip  
25      them, wholesale them, etc. so I can make money. *All the other lenders*  
26      *wouldn't lend to him. I needed him to make money now more than ever*  
27      *before. We went to Dave, and he gave some constraints on how we were to*  
28      *operate. I have all the documentation. I received copies of checks made*  
*out to trustees, receipts from the trustees.* I had all my docs signed. I  
recorded my mortgages. I had evidence of insurance, and I did everything.

1 (Emphasis added.) (See Beauchamp Dep. Exhibit 415 at DIC0009485, attached as  
2 **CSOF Ex. 38.**)

3 **412.** This “Iggy Letter” also contained detailed information about actions  
4 Chittick had taken in managing DenSco’s affairs, including the location of funds and  
5 how he had transferred funds. (Beauchamp Dep. Exhibit 415, attached as **CSOF Ex.**  
6 **38.**)

7 **G. After Chittick’s Death, Clark Hill Agreed to Represent Both DenSco**  
8 **and Chittick’s Estate, Despite an Unconsentable Conflict.**

9 **413.** According to Clark Hill’s billing records, Beauchamp learned of  
10 Chittick’s suicide on Saturday, July 30, 2016, through a telephone call with Robert  
11 Koehler and Shawna Heuer. Beauchamp billed his time for that call to the “Business  
12 Matters” file he had caused to be established on January 14, 2014. (See August 2016  
13 Invoice at CH\_0008045, Schenck Dep. Exhibit 18, attached as **CSOF Ex. 31.**)

14 **414.** Robert Koehler was identified in the 2011 POM, under the heading  
15 “Contingency Plan in the Event of Death or Disability of Mr. Chittick,” as the person  
16 with whom Chittick had entered into a written agreement “to provide or arrange for any  
17 necessary services for the Company” upon Chittick’s death or disability. (See 2011  
18 POM at pg. 41, Beauchamp Dep. Exhibit 432, attached as **CSOF Ex. 2.**)

19 **415.** According to Beauchamp’s notes from his July 30, 2016 telephone  
20 conversation with Koehler and Heuer, he was told that Chittick had sent him a letter  
21 with instructions and a detailed letter to Koehler. Beauchamp wrote that he needed “to  
22 get both letters & discuss how to deal w/ this.” (See Beauchamp Dep. Exhibit 416,  
23 attached as **CSOF Ex. 144.**)

24 **416.** On Sunday, July 31, 2016, Beauchamp exchanged emails with Koehler  
25 about scheduling a meeting with Koehler and Heuer the following afternoon. (See  
26 Email chain between Beauchamp and Koehler at DIC0011907-11908, attached as  
27 **CSOF Ex. 145.**)

1           **417.** Later that day, Beauchamp exchanged emails with Heuer in which  
2 Beauchamp approved an email Heuer had drafted to send to DenSco's investors which  
3 stated, in part, "[a] meeting with Denny's attorney is planned for Monday, August 1st,  
4 to form a course of action." (*See* Beauchamp Dep. Exhibit 420, attached as **CSOF Ex.**  
5 **146.**)

6           **418.** Heuer sent the e-mail to DenSco investors during the evening of July 31,  
7 2016, forwarding a copy to Beauchamp, who thanked her for doing so. (*Id.*)

8           **419.** Heuer sent Beauchamp before their August 1st meeting a copy of  
9 Chittick's Investor Letter, and gave him at the meeting or in a meeting the following  
10 day a copy of the Iggy Letter. (*See* Beauchamp Dep. Exhibit 414, attached as **CSOF**  
11 **Ex. 138**; Beauchamp Dep. Exhibit 415, attached as **CSOF Ex. 38**; Beauchamp Dep.  
12 Transcript at 86:23-87:13, attached as **CSOF Ex. 6.**)

13           **420.** During the August 1st meeting, Beauchamp agreed that Clark Hill would  
14 represent DenSco, reporting to Heuer, and also represent Heuer in her capacity as the  
15 personal representative of the Estate of Denny Chittick. (*See* Beauchamp Dep.  
16 Transcript at pp. 464:9-466:19, attached as **CSOF Ex. 6**; Beauchamp Dep. Exhibit 206,  
17 attached as **CSOF Ex. 147**; Beauchamp Dep. Exhibit 207, attached as **CSOF Ex. 148.**)

18           **421.** On August 2, 2016, Beauchamp and other Clark Hill attorneys met with  
19 Heuer. (*See* Beauchamp Dep. Exhibit 211, attached as **CSOF Ex. 149.**)

20           **422.** On August 4, 2016, Clark Hill initiated a probate proceeding and  
21 continued to act as counsel for the Estate of Chittick until August 12, 2016. (*See*  
22 Beauchamp Dep. Exhibit 216, attached as **CSOF Ex. 150.**)

23           **423.** Clark Hill should not have agreed to represent DenSco after Chittick's  
24 death and should have instead terminated the representation because Clark Hill knew,  
25 based on its own conduct since September 2013 and knowledge of Chittick's conduct,  
26 that DenSco had potential claims against the firm. (*See* Expert Report of Neil Wertlieb  
27 at pgs. 49-50, attached as **CSOF Ex. 187.**)

1       **424.** Clark Hill should not have agreed to represent the Estate of Chittick  
2 because Clark Hill knew, based on its knowledge of Chittick's conduct, that DenSco  
3 had substantial claims against Chittick's Estate for Chittick's gross negligence in  
4 managing DenSco's affairs. Indeed, in this litigation Clark Hill has identified the Estate  
5 as a non-party at fault and seeks to blame Chittick for DenSco's losses. Moreover, soon  
6 after his appointment, the Receiver filed a Notice of Claim in Probate Court against the  
7 Estate, based in part on Chittick's gross mismanagement of DenSco and multiple  
8 breaches of fiduciary duties Chittick owed DenSco. (*See* Expert Report of Neil Wertlieb  
9 at pgs. 64-67, attached as **CSOF Ex. 187.**)

10       **425.** A jury can assume that Clark Hill agreed to continue representing DenSco  
11 and jointly represent the Estate of Chittick because it saw those representations as a  
12 means to protect itself from liability. The firm's conduct during the months of August,  
13 September, and October 2016 provides further evidence that this was Clark Hill's  
14 objective. (*Id.*)

15       **H. Between August 1 and August 18, 2016, Clark Hill Effectively Ran**  
16       **DenSco's Day-to-Day Affairs.**

17       **426.** After Chittick's death, Beauchamp, in coordination with Heuer, managed  
18 the day-to-day operations of DenSco until the Receiver was appointed on August 18,  
19 2016. (*See, e.g.,* Beauchamp Dep. Exhibit 206, attached as **CSOF Ex. 147**; Beauchamp  
20 Dep. Exhibit 214, attached as **CSOF Ex. 151**; Beauchamp Dep. Exhibit 218, attached  
21 as **CSOF Ex. 152**; Beauchamp Dep. Exhibit 223, attached as **CSOF Ex. 153**;  
22 Beauchamp Dep. Exhibit 233, attached as **CSOF Ex. 154**; Beauchamp Dep. Exhibit  
23 234, attached as **CSOF Ex. 155**; Beauchamp Dep. Exhibit 240, attached as **CSOF Ex.**  
24 **156**; Beauchamp Dep. Exhibit 241, attached as **CSOF Ex. 157**; Beauchamp Dep.  
25 Exhibit 242, attached as **CSOF Ex. 158**; Beauchamp Dep. Exhibit 243, attached as  
26 **CSOF Ex. 159**; Beauchamp Dep. Exhibit 244, attached as **CSOF Ex. 160**; Beauchamp  
27 Dep. Exhibit 418, attached as **CSOF Ex. 161**; Beauchamp Dep. Exhibit 419, attached  
28 as **CSOF Ex. 162**; Beauchamp Dep. Exhibit 420, attached as **CSOF Ex. 146.**)

1           **427.** Beauchamp opened a “Business Wind Down” file to which he charged  
2 his time. (*See* August 2016 Invoice at CH\_0008033, Schenck Dep. Exhibit 18, attached  
3 as **CSOF Ex. 31.**)

4           **428.** During that time period, Beauchamp communicated with investors and  
5 representatives of the Securities Division of the Arizona Corporation Commission (the  
6 “ACC”), which investigated securities law violations by DenSco and initiated on  
7 August 17, 2016 a lawsuit alleging that DenSco had violated securities laws and sought  
8 the appointment of a receiver. (*See* August 2016 Invoice at CH\_0008034-8041,  
9 Schenck Dep. Exhibit 18, attached as **CSOF Ex. 31.**)

10           **429.** Although Clark Hill knew that as securities counsel to DenSco it faced  
11 potential claims by the ACC, by DenSco’s receiver, and/or by DenSco’s investors, it  
12 continued to represent DenSco.

13           **430.** Clark Hill authored several communications to DenSco’s investors  
14 between August 1 and August 12, 2016, which failed to disclose information in Clark  
15 Hill’s possession about (1) Clark Hill’s role as DenSco’s securities counsel,  
16 (2) Chittick’s mismanagement of DenSco’s lending practices, (3) Chittick’s decision,  
17 based on Clark Hill’s advice, to postpone the issuance of a new POM while still selling  
18 promissory notes, (4) Chittick’s goals in documenting the Forbearance Agreement,  
19 (5) the actions Clark Hill had taken to assist Chittick, or (6) Clark Hill’s negligent  
20 advice to Chittick about DenSco’s continued lending to Menaged. (*See* Aug. 2016  
21 Invoice at CH\_0008034-8041, Schenck Dep. Exhibit 18, attached as **CSOF Ex. 31**;  
22 Beauchamp Dep. Exhibit 168, attached as **CSOF Ex. 93**; Beauchamp Dep. Exhibit 360,  
23 attached as **CSOF Ex. 94**; Beauchamp Dep. Exhibit 361, attached as **CSOF Ex. 95**;  
24 Beauchamp Dep. Exhibit 362, attached as **CSOF Ex. 96**; Beauchamp Dep. Exhibit 363,  
25 attached as **CSOF Ex. 97**; Beauchamp Dep. Exhibit 364, attached as **CSOF Ex. 98.**)

26           **431.** Clark Hill also failed to provide that information to the ACC. (*See*  
27 Beauchamp Dep. Transcript at pp. 155:21-156:16, attached as **CSOF Ex. 6.**)  
28

1           **432.** The investor communications Clark Hill drafted also suggested that  
2 DenSco and its investors would not be well served if a receiver were appointed. For  
3 example, in the first email Beauchamp sent to DenSco investors on August 3, 2016, he  
4 wrote:

5           [T]he problem with DenSco's Troubled Loans developed over time and it  
6 will take some time to understand those Troubled Loans [and] how those  
7 loans came into existence. . . . If whoever is in charge of DenSco does not  
8 work with the Investors, then DenSco will either be put into bankruptcy or  
9 have a Receiver appointed, which will incur costs on behalf of the Investors  
10 and that will significantly reduce what will be available to return to the  
11 Investors. For example, *one of the recent reports concerning liquidation*  
12 *of companies owing money to investors indicated that the costs associated*  
13 *with a bankruptcy or a Receiver can reduce the amount to be paid to*  
14 *investors by almost half or even a much more significant reduction. . . .*  
15 *[W]e would like to keep DenSco out of a protracted bankruptcy or a*  
16 *contentious Receivership proceeding.* As indicated above, various studies  
17 have shown that the third party costs and legal and other professional fees  
18 and costs and the inherent delays in bankruptcy and/or Receivership  
19 proceedings can consume more than 35% of the available money that  
20 should or would otherwise be available to be returned to Investors.

21 (Emphasis added.) (See Beauchamp Dep. Exhibit 213, attached as **CSOF Ex. 163**;  
22 Beauchamp Dep. Transcript at 472:9-476:4, attached as **CSOF Ex. 6**.)

23           **I. Beginning on August 15, 2016, Clark Hill Sought to Conceal Its**  
24 **Negligence and the Assistance It Gave Chittick in His Breach of**  
25 **Fiduciary Duties by Falsely Claiming It Had Terminated Its**  
26 **Representation of DenSco, and Continues to Claim, Without Any**  
27 **Supporting Records, That It Did So.**

28           **433.** During its investigation of potential securities law violations by DenSco,  
the ACC sought documents from Clark Hill about the firm's work for DenSco.  
(Beauchamp Dep. Transcript at pp. 155:21-156:16, attached as **CSOF Ex. 6**.)

**434.** It was during that investigation that Clark Hill claimed for the first time  
that it had terminated its representation of DenSco because Chittick allegedly refused  
to follow the firm's advice.

**435.** Clark Hill has made inconsistent claims about the alleged termination of  
its representation of DenSco since August 2016 and continues to claim that the



1 termination occurred despite the absence of any records to support the claim, and  
2 records that are inconsistent with the claim. (See Beauchamp Dep. Transcript at 158:9-  
3 161:24; 180:7-183:22; 195:11-199:14, attached as **CSOF Ex. 6.**)

4 **436.** The claim was first made on August 15, 2016, when ACC investigator  
5 Gary Clapper sent Beauchamp an email which stated, in part: “Can you please get a  
6 copy of the forbearance agreement. Since the offering document is updated every two  
7 years can you please get copies of all of them.” (See Beauchamp Dep. Exhibit 283 at  
8 DIC0011375, attached as **CSOF Ex. 164.**)

9 **437.** Beauchamp responded: “I only have access to some of DenSco’s files.  
10 Despite my requests, Denny Chittick did not request for all of DenSco’s previous files  
11 to be transferred to me. In addition, *Denny stopped our efforts to do an updated*  
12 *offering memorandum in 2013*, so the initial work on that was never finished. Denny  
13 also *did not engage us to prepare an amendment to the offering document or to*  
14 *prepare a new disclosure document despite several conversations about that issue.*”  
15 (Emphasis added.) (See Beauchamp Dep. Exhibit 283 at DIC0011373, attached as  
16 **CSOF Ex. 164.**)

17 **438.** In an August 17, 2016 declaration, Beauchamp stated that “[i]n late 2014  
18 or 2015, I ended my formal relationship with Mr. Chittick and DenSco.” (See  
19 Beauchamp Dep. Exhibit 297 at pg. 2 ¶7, attached as **CSOF Ex. 165.**)

20 **439.** In an August 21, 2016 email to DenSco investor Rob Brinkman,  
21 Beauchamp first wrote that “*my law firm started preparing the 2013 POM, but we*  
22 *were put on hold.* After the Forbearance Agreement was signed by Scott Menaged, *we*  
23 *started to amend the 2013 draft POM, but we stopped and withdrew as securities*  
24 *counsel for DenSco. Denny was supposed to get other counsel and finish the POM*  
25 *in 2014, but I do not know if that did happen.*” (Emphasis added.) In a follow-up  
26 email to Brinkman, he wrote that “[t]he 2013 POM was never finalized due to attorney  
27 client protected issues that I have been instructed not to discuss.” (Emphasis added.)  
28 (See Beauchamp Dep. Exhibit 305, attached as **CSOF Ex. 166.**)

1           **440.** In a February 8, 2017 email to the Receiver’s counsel, Beauchamp made  
2 the following unsolicited statement: “Please note that my previous reference to  
3 ‘securities work’ was for work done PRIOR to when *my firm terminated doing any*  
4 *securities or other legal work for DenSco when Denny Chittick refused to send the*  
5 *amended Private Offering Memorandum to his investors.* The amended Private  
6 Offering Memorandum that we wanted to be sent described the Forbearance Agreement  
7 and the changes to the lending criteria and security ratios that DenSco was to follow  
8 when making its loans to Borrowers. *I believe that we terminated our representation*  
9 *in approximately July 2014.”* (Emphasis added.) (See Sifferman Dep. Exhibit 457,  
10 attached as **CSOF Ex. 167.**)

11           **441.** Clark Hill now claims that the firm terminated the representation in May  
12 2014, stating in Defendants’ initial disclosure statement (at 15) that

13           Mr. Chittick . . . refused to provide the necessary information to complete  
14 the POM and refused to approve the description of the workout or the  
double lien issue. . . .

15           ***In May 2014***, Mr. Beauchamp handed Mr. Chittick a physical copy of the  
16 draft POM and asked him what Mr. Chittick’s specific issues were with the  
17 disclosure. Mr. Chittick responded that there was nothing wrong with the  
18 disclosure, he was simply not ready to make any kind of disclosures to his  
19 investors at this stage. Mr. Beauchamp again explained that Mr. Chittick  
20 had no choice in the matter and that he had a fiduciary duty to his investors  
21 to make these disclosures. Mr. Chittick would not budge. ***Faced with an***  
22 ***intransigent client who was now acting contrary to the advice Mr.***  
23 ***Beauchamp was providing, and with concerns that Mr. Chittick may not***  
24 ***have been providing any disclosures to anyone since January 2014, Mr.***  
25 ***Beauchamp informed Mr. Chittick that Beauchamp and Clark Hill could***  
26 ***not and would not represent DenSco any longer.*** Mr. Beauchamp also  
27 told Chittick that he would need to retain new securities counsel, not only  
28 to provide the proper disclosure to DenSco’s investors, but to protect  
DenSco’s rights under the forbearance agreement. Mr. Chittick suggested  
that he has already started that process and was speaking with someone  
else.

(See Defs.’ Initial Disclosure at pg. 15, ln. 3-20, Schenck Dep. Exhibit 4, attached as  
**CSOF Ex. 5.**)

1           **442.** The claim that Clark Hill terminated representation in May 2014 is  
2 essential to their defense. Beauchamp admits that he knew, by that time, that Chittick  
3 was committing a securities violation. (*See* Beauchamp Dep. Transcript at 161:15–  
4 162:9, attached as **CSOF Ex. 6.**) Even their own expert admits that Clark Hill had a  
5 “mandatory duty to withdraw” in May 2014. (Rhodes Dep. Transcript at 185:12–187:2,  
6 attached as **CSOF Ex. 206.**)

7           **443.** But there is not a single document in Clark Hill’s file to support this  
8 claim, such as a termination letter that law firms commonly send when ending a client  
9 relationship and especially when a law firm believes a client is disregarding advice  
10 given by the firm. (*See* Beauchamp Dep. Transcript at 158:9-161:24; 180:7-183:22;  
11 195:11-199:14 attached as **CSOF Ex. 6.**)

12           **444.** Moreover, Clark Hill makes this claim despite numerous documents in  
13 its files reflecting that Clark Hill never terminated the representation and continued to  
14 represent DenSco after May 2014. Those documents include:

15           a. Documents generated in June 2014 which reflected work Clark  
16 Hill performed to amend the Forbearance Agreement and correct errors the firm  
17 had made when the Forbearance Agreement was signed in April 2014. Chittick  
18 and Menaged signed those documents on June 18, 2014. (*See, e.g.,* Beauchamp  
19 Dep. Exhibit 140, attached as **CSOF Ex. 77**; Beauchamp Dep. Exhibit 141,  
20 attached as **CSOF Ex. 78**; Beauchamp Dep. Exhibit 142, attached as **CSOF Ex.**  
21 **86**; Beauchamp Dep. Exhibit 143, attached as **CSOF Ex. 87**; Beauchamp Dep.  
22 Exhibit 144, attached as **CSOF Ex. 91**; Beauchamp Dep. Exhibit 338, attached  
23 as **CSOF Ex. 168**; Beauchamp Dep. Exhibit 339, attached as **CSOF Ex. 169**;  
24 Beauchamp Dep. Exhibit 340, attached as **CSOF Ex. 170**; Beauchamp Dep.  
25 Exhibit 334, attached as **CSOF Ex. 186**; Beauchamp Dep. Exhibit 410, attached  
26 as **CSOF Ex. 171.**)

27           b. In May, June, July, and August 2014, Beauchamp sent Chittick  
28 billing statements for work performed for DenSco through transmittal letters that

1 stated: “Thank you again for allowing Clark Hill and me to provide legal  
2 services to DenSco Investment Corporation. If you have any question or if we  
3 can assist you with any other matter(s), please let me know.” (See April 2014  
4 Invoice, Schenck Dep. Exhibit 10, attached as **CSOF Ex. 23**; May 2014 Invoice,  
5 Schenck Dep. Exhibit 11, attached as **CSOF Ex. 24**; June 2014 Invoice, Schenck  
6 Dep. Exhibit 12, attached as **CSOF Ex. 25**.)

7 c. As noted above, when Chittick asked Clark Hill to respond to the  
8 ADFI inquiry in March 2016, Beauchamp billed his time to the “General” matter  
9 Clark Hill had established in January 2014. (See June 2016 Invoice, Schenck  
10 Dep. Exhibit 17, attached as **CSOF Ex. 30**; Aug. 2016 Invoice, Schenck Dep.  
11 Exhibit 18, attached as **CSOF Ex. 31**; Mar. 2016 Invoice, Schenck Dep. Exhibit  
12 14, attached as **CSOF Ex. 27**; Apr. 2016 Invoice, Schenck Dep. Exhibit 15,  
13 attached as **CSOF Ex. 28**; May 2016 Invoice, Schenck Dep. Exhibit 16, attached  
14 as **CSOF Ex. 29**.)

15 d. As noted above, after Chittick’s death, Beauchamp billed his time  
16 to the “Business Matters” file Clark Hill had established in January 2014. (See  
17 Aug. 2016 Invoice, Schenck Dep. Exhibit 18, attached as **CSOF Ex. 31**; Sept.  
18 2016 Invoice, Schenck Dep. Exhibit 19, attached as **CSOF Ex. 32**.)

19 e. On June 22, 2017, approximately six months before this lawsuit  
20 was filed, Clark Hill submitted two proofs of claim to the Receiver, seeking  
21 \$53,820.00 for work performed between June 1, 2016 and August 17, 2016, and  
22 \$23,046.00 for work performed between August 18, 2016 and September 30,  
23 2016. Clark Hill claimed in an accompanying affidavit that “[i]n 2016 and  
24 earlier, the Firm represented DenSco Investment Corporation,” providing  
25 “general business advice and representation,” and that “[a]fter the death of  
26 DenSco’s principal, in July 2016, the Firm transitioned the subject matter of its  
27 work to advice and guidance to DenSco to assist in winding down its business.”  
28 (Emphasis added.) Clark Hill did not claim then that it had terminated its

1 representation of DenSco at any previous time. (*See* Beauchamp Dep. Exhibit  
2 425, attached as **CSOF Ex. 172.**)

3 **445.** In claiming that Clark Hill had, in fact, terminated its representation of  
4 DenSco in May 2014 – a claim verified by Clark Hill’s General Counsel – Clark Hill  
5 concealed material information it should have disclosed pursuant to Rule 26.1. It was  
6 only after the Receiver’s counsel served written discovery on Clark Hill that Clark Hill  
7 disclosed that it did not close until May 2018 – *after* receiving the Receiver’s written  
8 discovery – the files Clark Hill had opened in September 2013 to prepare a new POM  
9 and in January 2014 for the “lien workout.” The files established for DenSco’s  
10 “General” and “Business Matters” were never closed and remain open. (*Id.*)

11 **446.** Additional evidence has recently come to light, which further undermines  
12 Clark Hill’s claim that it terminated representation in May 2014. For example:

13 a. On June 26, 2014, Beauchamp’s secretary emailed a list of  
14 “Beauchamp’s Active Matters” while Beauchamp was out of the office. This  
15 list included the “*work out of lien issue*” matter for DenSco and a “*POM*” matter  
16 for DenSco, which Beauchamp delegated to another Clark Hill attorney to  
17 handle in his absence. (Emphasis added.) (*See* Email from L. Grove to Clark  
18 Hill attorneys dated June 26, 2014, attached as **CSOF Ex. 207.**)

19 b. On July 30, 2016, Beauchamp emailed the managing partner and  
20 resident assistant general counsel of his office, informing them that the sole  
21 owner of DenSco, “a client,” had committed suicide. The managing partner  
22 asked: “*Are there any irregularities with his fund?*” Instead of advising his  
23 managing partner that DenSco was a former client terminated over two years  
24 ago, Beauchamp replied, incredulously: “*Not that I am aware of.*” (Emphasis  
25 added.) (*See* Email from Beauchamp to D. Davis and M. Sifferman dated July  
26 30, 2016, attached as **CSOF Ex. 208.**)

27 c. Menaged affirmatively testified that Beauchamp did *not* terminate  
28 the representation:

1 Q. . . . Did Denny ever tell you, any time before March of 2015,  
2 which is when Mr. Beauchamp and Mr. Chittick met for lunch -- did  
3 he tell you that Mr. Beauchamp had resigned as DenSco's security  
lawyers because Denny wouldn't follow his advice?

4 A. *Absolutely not.*

5 Q. I'm going to --

6 A. *In fact, there were a lot of emails between me and Denny  
7 where Denny was shocked that he had not heard from Mr.  
8 Beauchamp for a long period of time. He said, "Wow, this guy must  
9 love me by leaving me alone for a while to continue to let the process  
10 go through." He wouldn't be looking for a call or an email from  
11 Mr. Beauchamp if he resigned as his counsel.*

12 (Emphasis added.) (See Menaged Dep. Transcript at 387:21–388:9, attached as  
13 CSOF Ex. 188.)

14 **J. Clark Hill Colluded With the Estate of Chittick to Prevent the  
15 Receiver From Obtaining Material Information.**

16 **447.** Clark Hill did not internally consider the conflicts created by its joint  
17 representation of DenSco and the Chittick Estate until an investor raised the issue on  
18 August 10, 2016. (See Beauchamp Dep. Exhibit 434, attached as **CSOF Ex. 173.**)

19 **448.** Clark Hill referred Heuer to lawyers whom Clark Hill believed would  
20 aggressively protect the Estate from potential claims by investors and the Receiver –  
21 Beauchamp's former colleagues at Gammage & Burnham: James Polese and Kevin  
22 Merritt. (See Beauchamp Dep. Exhibit 278, attached as **CSOF Ex. 174.**)

23 **449.** Clark Hill then began colluding with Gammage & Burnham to protect the  
24 Chittick Estate and Clark Hill from the Receiver. (Beauchamp Dep. Exhibit 435,  
25 attached as **CSOF Ex. 175**; Beauchamp Dep. Exhibit 436, attached as **CSOF Ex. 176**;  
26 Heuer Dep. Exhibit 447, attached as **CSOF Ex. 177**; Sifferman Dep. Exhibit 465,  
27 attached as **CSOF Ex. 178**; Sifferman Dep. Exhibit 466, attached as **CSOF Ex. 179**;  
28 Sifferman Dep. Exhibit 468 attached as **CSOF Ex. 180.**)

1           **450.** Among other evidence of such collusion are emails exchanged between  
2 Polese, Merrick and Beauchamp about seeking the appointment of a receiver other than  
3 the Receiver. (*Id.*)

4           **451.** Moreover, shortly before the August 18, 2016 hearing at which the  
5 Receiver was appointed, Beauchamp, with the assistance and approval of Clark Hill's  
6 Assistant General Counsel, prepared a declaration for the Estate to submit to the  
7 Receivership Court which Beauchamp has since acknowledged falsely stated that Clark  
8 Hill had jointly represented DenSco and Chittick individually. (*See* Beauchamp Dep.  
9 Exhibit 297 attached as **CSOF Ex. 165.**)

10           **452.** During the August 18, 2016 hearing, neither Beauchamp nor Clark Hill's  
11 Assistant General Counsel corrected false statements by the Estate's counsel to the  
12 effect that Clark Hill had jointly represented DenSco and Chittick personally. (*See*  
13 Beauchamp Dep. Transcript at 140:21-143:12, attached as **CSOF Ex. 6.**)

14           **453.** That claim was integral to the Estate's successful effort to obtain  
15 language in the Order appointing the Receiver which recognized the existence of a  
16 spurious joint representation claim and materially limited the Receiver's ability to  
17 promptly and efficiently obtain relevant records from Clark Hill's files. (Beauchamp  
18 Dep. Transcript at 122:8-127:1, attached as **CSOF Ex. 6.**)

19           **454.** The Estate and Clark Hill used the Order as an excuse to decline to  
20 provide the Receiver with immediate access to relevant records, such as the Iggy Letter,  
21 and to "slow walk" Clark Hill's production of its files to the Receiver. (*Id.*)

22           **455.** The Receiver's counsel sent a letter demanding the immediate production  
23 of the files on August 29, 2016. Clark Hill did not produce them until October 13,  
24 2016, and only after making multiple demands. During this time period, Clark Hill's  
25 Office of General Counsel was actively involved and directed the firm's response to the  
26 Receiver's demands. (*See* Sifferman Dep. Exhibit 463, attached as **CSOF Ex. 181.**)

27           **456.** In the interim, Clark Hill and the Estate continued using the false claim  
28 that Clark Hill had jointly represented DenSco and Chittick personally to delay

1 providing relevant information to the Receiver. (*See* Beauchamp Dep. Exhibit 297,  
2 attached as **CSOF Ex. 165.**)

3 **457.** The Estate also proposed, with Clark Hill’s implicit consent, a “common  
4 interest” agreement between the Estate, DenSco (represented by Clark Hill), and the  
5 Receiver, which falsely stated that because of the alleged joint representation by Clark  
6 Hill of DenSco and Chittick personally, the Estate, DenSco and the Receiver had a  
7 common interest in defending lawsuits that investors might pursue.

8 **458.** After finally receiving Clark Hill’s files in October 2016, the Receiver  
9 discovered critical documents, such as the Iggy Letter, that the Estate had sought to  
10 prevent the Receiver from obtaining under a claim of personal privilege. That  
11 document contained information that was material to claims the Receiver later brought  
12 against the Estate of Chittick. Without the document, the Receiver had been required  
13 to devote substantial resources to independently discovering information contained in  
14 the Iggy Letter. (*See* Beauchamp Dep. Exhibit 415, attached as **CSOF Ex. 38.**)

15 **K. Actions Taken by the Receiver**

16 **459.** After his appointment, the Receiver took possession of and analyzed  
17 DenSco’s books and records, issuing a preliminary report on September 19, 2016. (*See*  
18 Beauchamp Dep. Exhibit 323, attached as **CSOF Ex. 143.**)

19 **460.** On December 9, 2016, the Receiver filed a notice of claim in the probate  
20 court against the Estate of Denny Chittick, asserting, inter alia, claims that Chittick had  
21 breached fiduciary duties owed DenSco. (*See* Davis Dep. Exhibit 480, attached as  
22 **CSOF Ex. 182.**)

23 **461.** The Estate issued a notice of disallowance of the claim on February 3,  
24 2017.

25 **462.** On December 23, 2016, the Receiver issued a status report. That report  
26 contains, among other things, the Receiver’s conclusion that DenSco was insolvent in  
27  
28



1 January 2014. (*See* Receiver’s Status Report dated Dec. 23, 2016, Exhibit A to Davis  
2 Dep. Exhibit 479, attached as **CSOF Ex. 84.**)

3 **463.** The Receiver monitored and took part in a bankruptcy proceeding that  
4 Menaged initiated. Among other things, the Receiver’s counsel conducted an  
5 examination of Menaged, and the Receiver filed an adversary complaint and a  
6 complaint to determine nondischargeability, and obtained a judgment against Menaged.  
7 (*Id.*)

8 **464.** On June 22, 2017, Clark Hill submitted two proofs of claim to the  
9 Receiver, which are discussed above. (*See* Beauchamp Dep. Exhibit 425, attached as  
10 **CSOF Ex. 172.**)

11 **465.** On September 14, 2017, the Receiver filed a petition with the  
12 Receivership Court seeking to file this action. The petition was granted on October 10,  
13 2017. (*See* Order attached as **CSOF Ex. 183.**)

14 **466.** On September 25, 2017, the Receiver filed in the Receivership Court  
15 Petition No. 37 – Petition for Approval of Receiver’s Final Recommendations  
16 Approving Claims in DenSco Receivership, in which the Receiver recommended that  
17 Clark Hill’s claims be denied “because the Receiver has determined that Clark Hill had  
18 a conflict of interest that precluded it from performing the legal services without  
19 violating fiduciary duties to DenSco. Despite providing Clark Hill with notice of the  
20 Receiver’s recommendation of the denial of its two claims and a copy of the Claims  
21 Report, Clark Hill failed to object or respond to the Receiver’s recommendation that  
22 their two non-investor claims submitted by Clark Hill be denied.” The Petition was  
23 granted on October 27, 2017. (*See* Petition No. 37 and Order attached as **CSOF Ex.**  
24 **184.**)

25 **467.** This action was filed on October 16, 2017.

26 **468.** On December 22, 2017, the Receiver issued a status report describing the  
27 status of the receivership. (*See* Receiver’s Status Report dated Dec. 22, 2017, Exhibit  
28 A to Davis Dep. Exhibit 534, attached as **CSOF Ex. 185.**)

1           RESPECTFULLY SUBMITTED this 10th day of January, 2020.

2                           OSBORN MALEDON, P.A.

3  
4           By /s/ Joshua M. Whitaker  
5                   Colin F. Campbell  
6                   Geoffrey M. T. Sturr  
7                   Joseph N. Roth  
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10                  Phoenix, Arizona 85012-2793

11                           Attorneys for Plaintiff

12           This document was electronically filed  
13           and copy delivered\*/e-served via the  
14           AZTurboCourt eFiling system  
15           this 10th day of January, 2020, on:

16           Honorable Daniel Martin\*  
17           Maricopa County Superior Court  
18           101 West Jefferson, ECB-412  
19           Phoenix, Arizona 85003

20           John E. DeWulf  
21           Marvin C. Ruth  
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              Attorneys for Defendants

/s/Karen McClain  
              8358779

# **EXHIBIT E**

(Unredacted copy of CSOF Ex. 188 to the Receiver's 1/10/2020  
Controverting Statement of Facts accompanying his Responses to  
Defendants' Motions for Summary Judgment)

SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

PETER S. DAVIS, as Receiver of )  
DenSco Investment Corporation, an )  
Arizona corporation, )  
 )  
Plaintiff, )  
 )  
vs. ) NO. CV2017-013832  
 )  
CLARK HILL, PLC, a Michigan limited ) \*\*\*CONFIDENTIAL\*\*\*  
liability company; DAVID G. )  
BEAUCHAMP and JANE DOE BEAUCHAMP, )  
husband and wife, )  
 )  
Defendants. )

\*\*\*\*\*

ORAL DEPOSITION OF  
YOMTOV SCOTT MENAGED  
SEPTEMBER 23, 2019  
Volume 1 OF 2

\*\*\*\*\*

ORAL DEPOSITION of YOMTOV SCOTT MENAGED,  
produced as a witness at the instance of the Defendants  
and duly sworn, was taken in the above-styled and  
numbered cause on September 23, 2019, from 9:09 a.m. to  
3:42 p.m., at the La Tuna Federal Correction  
Institution, Anthony, Texas, pursuant to the Arizona  
Rules of Civil Procedure.

Reported by:

Rhonda McCay, CSR, CCR, RPR, CLR

A P P E A R A N C E S

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ALSO PRESENT:

Dr. Erin Nelson

I N D E X

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1           Q. I know -- and there are a bunch of emails --  
2   and we'll go through them, but not today. I think we  
3   are going to wrap up with that fairly soon.

4           A. Yeah.

5                       MR. DeWULF: Are you all right with that,  
6   Geoff?

7                       MR. STURR: We can do this off the record.

8                       (Discussion off the record)

9           Q. (BY MR. DeWULF) So as it related to this  
10   dynamic between lawyers and clients, et cetera -- and we  
11   talked earlier about this -- in your view, was  
12   Mr. Chittick deferring to you in terms of what this  
13   agreement ought to say?

14          A. No.

15          Q. Was it a mutual agreement between you and him?

16          A. Yes.

17          Q. But it sounds like the lawyers didn't have a  
18   lot of say in how this thing ended up?

19                       MR. STURR: Object, form.

20          A. I wouldn't say that. I wouldn't say the  
21   lawyers didn't have -- the lawyers are the ones that put  
22   it together. And then, if there was a word here or a  
23   paragraph here or something that needed to be modified,  
24   Denny would bring it up to David.

25          Q. (BY MR. DeWULF) So one of the issues -- did

1 tax returns are looking better and better every year.

2 Q. That's because of false financials, right?

3 A. That would be correct.

4 MR. STURR: Form, foundation.

5 Q. (BY MR. DeWULF) Well, did Mr. Chittick tell  
6 you that he thought he could just perpetuate this false  
7 representation of the money making money -- or the  
8 company making money when it wasn't?

9 A. I believe -- Mr. Chittick said that he was  
10 going to continue -- that this was going to continue  
11 until we came out of our hole.

12 Q. "This was going to continue"?

13 A. That the reason that this forbearance agreement  
14 never had to come to light is because eventually we  
15 would be out of this mess.

16 Q. Did he ever share with you -- I think you  
17 mentioned in terms of the time frame -- remember, when  
18 we talked about that, you thought maybe it could be done  
19 in 90 days, maybe six months. And then the length of  
20 time it took, I think you said a year to 18 months,  
21 right? Do you recall that?

22 A. Yes.

23 Q. Did he ever share with you what he was going to  
24 tell his investors for the year to 18 months about what  
25 was going on with the company?



1           A. Chittick never -- there's an annual report that  
2 is supposed to be filed when you're a hard money lender.  
3 I don't know if that's part of the 1031 or the SEC or  
4 whatever regulations he was a part of. I'm trying to  
5 think what the word is. Investor memorandum maybe.

6                       There's something that he's supposed to be  
7 filing or that his attorney is supposed to be filing  
8 every year or every two years. That's the only thing he  
9 was concerned about, that he was late on it.

10                      I do know that Beauchamp was on him  
11 about -- "Hey, we've got to do this. We've got to do  
12 this." And then ultimately agreed with him, "Okay, yes.  
13 For the sake of everything, we'll just kind of let this  
14 go a little longer." Because Chittack's thing was -- "I  
15 don't want the investors to know."

16           Q. Chittick wanted his investors to know?

17           A. Did not.

18           Q. Did not. But Mr. Beauchamp was saying, "You  
19 need to tell your investors"?

20           A. In the beginning, he said he needs to tell the  
21 investors. Then his lawyers agreed, "Yes, let's give  
22 this another eight months. Let's give this another 12  
23 months. Let's give this another 15 months." He kept  
24 extending it.

25                      Then, "Hey, you're in violation, but, okay,

1 we'll push this a little longer, a little longer,"  
2 because Beauchamp didn't know how to disclose this.

3 Q. What you've just described, that is, what the  
4 lawyer is saying, is that what Mr. Chittick is telling  
5 you that his lawyer is telling him?

6 A. That's what he told me that his lawyer -- I  
7 actually feel like I even saw emails about it.

8 Q. What I'm trying to determine is whether you  
9 were ever present when Mr. Beauchamp said that or  
10 whether this is Mr. Chittick telling you that?

11 A. No. I just saw the forwarded emails to me.

12 Q. His lawyer is saying -- let me step back.

13 Mr. Chittick is telling you that the lawyer  
14 is telling him, "You can wait for a while in terms  
15 of" -- or he can wait a while to tell the investors  
16 about the forbearance agreement?

17 A. Not about the forbearance agreement but about  
18 filing his -- whatever that is that he has to file every  
19 year. I can't remember right now the name. I have it  
20 written down. I can't remember the name. Investor  
21 memorandum or investor -- it's something that's supposed  
22 to be filed.

23 Q. Let me break this down. I think I can help  
24 you.

25 So there is a document -- and it's called a

SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

PETER S. DAVIS, as Receiver of )  
DenSco Investment Corporation, an )  
Arizona corporation, )  
 )  
Plaintiff, )

vs. )

NO. CV2017-013832

CLARK HILL, PLC, a Michigan limited )  
liability company; DAVID G. )  
BEAUCHAMP and JANE DOE BEAUCHAMP, )  
husband and wife, )  
 )  
Defendants. )

\*\*\*CONFIDENTIAL\*\*\*

\*\*\*\*\*

ORAL DEPOSITION OF

YOMTOV SCOTT MENAGED

SEPTEMBER 24, 2019

Volume 2 OF 2

\*\*\*\*\*

ORAL DEPOSITION of YOMTOV SCOTT MENAGED,  
produced as a witness at the instance of the Defendants  
and duly sworn, was taken in the above-styled and  
numbered cause on September 24, 2019, from 8:17 a.m. to  
3:42 p.m., at the La Tuna Federal Correction  
Institution, Anthony, Texas, pursuant to the Arizona  
Rules of Civil Procedure.

Reported by:

Rhonda McCay, CSR, CCR, RPR, CLR

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1                   And you've testified before in your 2004  
2 exam about that meeting.

3           A. I was going to say I'd like to just refer to  
4 that testimony. Nothing has changed.

5           Q. I'm happy to do that. Would you be comfortable  
6 looking at the testimony rather than having me read it  
7 to you?

8           A. I don't care. Yeah. Sure.

9           Q. Mr. Menaged, did you testify truthfully in that  
10 examination?

11          A. Yes.

12          Q. I'm going to mark as Exhibit 1145, a copy of  
13 Mr. Menaged's testimony that he gave in the 2004  
14 Examination on October 20, 2016.

15                   (Exhibit 1145 marked)

16          Q. Did you get a chance to review the transcript  
17 after you testified?

18          A. I don't recall.

19          Q. Turn to page -- it's a little hard to see, but  
20 in the bottom-right corner, you'll see where it says  
21 pages 70 to 73.

22          A. Okay.

23          Q. On page 71, beginning on line 19, you were  
24 questioned about whether you met with Mr. Chittick on  
25 November 27, 2013. You agreed you did?

1 said? Who spoke first? If you can remember.

2 A. I don't remember who spoke first.

3 Q. What is your memory of what Mr. Beauchamp said  
4 in that meeting?

5 A. I remember him sweating profusely, meaning  
6 David Beauchamp.

7 I remember him asking Denny why he would  
8 ever wire to a borrower instead of complying with the  
9 loan agreement terms which says that he will pay the  
10 trustee directly. He referred to him -- himself, David  
11 Beauchamp, drafting that agreement for DenSco.

12 I remember Denny telling him -- telling him  
13 that this was a normal practice for him with many  
14 different borrowers.

15 I also believe -- I don't believe. I do  
16 know that I remember Denny telling Beauchamp that he has  
17 told him about this in the past.

18 Beauchamp, I think, said he didn't recall  
19 having a conversation with him about this.

20 Beauchamp asked what the solution was, and  
21 what he was going to tell his investors.

22 Denny said he was not going to. He had no  
23 intention of telling his investors anything.

24 Beauchamp said he needed to go get some  
25 water to think about things. He left the room for a

1 little while.

2 Me and Denny stayed in the conference room.

3 He, probably about 15 minutes later, he  
4 came back, and said, "Okay. So how do you see this  
5 whole thing playing itself out?"

6 Denny explained the plan of what you just  
7 discussed on that email to him.

8 He asked how long we thought we could get  
9 this whole thing resolved.

10 Denny said less than a year.

11 Denny -- David Beauchamp asked how we would  
12 keep this from the investors for that long a period of  
13 time.

14 Denny said his books looked fine. His  
15 accounting looked fine. His accounting didn't reference  
16 him being in first or second position. So everything  
17 looked perfect.

18 Beauchamp was sweating a little bit more.

19 Ultimately, he said -- we talked about the  
20 forbearance agreement. Beauchamp recommended that we  
21 get a forbearance agreement.

22 Denny asked what the point was.

23 He explained it was to memorialize  
24 everything that had taken place.

25 Denny asked if that had to get out to his



1 investors.

2                   Beauchamp said, no, it did not, but it was  
3 something that would summarize, basically, our agreement  
4 that we were making in that room -- in the conference  
5 room that day.

6                   Go ahead.

7           Q. Anything else you can remember?

8           A. No.

9           Q. Let me step back at the beginning. Did  
10 Mr. Beauchamp say anything to you at the outset of the  
11 meeting about -- did he ask whether you had a lawyer?

12          A. Yes. I'm sure he did.

13          Q. What did you tell him?

14          A. That I did not.

15          Q. Okay. Did he say anything at all to you or to  
16 Mr. Chittick about the attorney-client privilege, the  
17 fact that you were not a client and you were in a  
18 meeting with his client? Anything at all at the  
19 beginning of the meeting about your presence in the  
20 meeting?

21          A. No. Not that I recall.

22          Q. There's -- I've seen a reference in an email --  
23 and I'll show you in a minute -- an email going to spam.  
24 Do you remember a conversation where -- anything about  
25 this meeting where Mr. Beauchamp indicated he hadn't

1 Do you see that?

2 A. Yes.

3 Q. These are notes of a call that Mr. Beauchamp  
4 had with you and Mr. Chittick, which one of the topics  
5 was confidentiality. Is this the call you were  
6 recalling where you heard Mr. Beauchamp make statements  
7 about confidentiality and disclosures to investors?

8 A. Yes.

9 Q. I know you testified about that previously, but  
10 do these notes refresh your memory in any way in  
11 addition to what you've already testified to that  
12 Mr. Beauchamp said during that call?

13 A. No. This is as I remember it.

14 Q. Just to be clear, your understanding from this  
15 call was Mr. Beauchamp was advising Mr. Chittick that  
16 the information needed to be disclosed to investors but  
17 could be delayed? The disclosure could be delayed.

18 MR. DeWULF: Object to form.

19 A. He said that, yes, the investors needed to be  
20 aware of this, but, yes, it could be delayed, and  
21 ultimately, if the problem was completely resolved  
22 without disclosing to the investors, well, then, there  
23 was no reason to have to disclose it.

24 Q. (BY MR. STURR) At this time -- we're now --  
25 this is March 11, 2014, and you brought this up before,

1 Mr. Chittick to Mr. Beauchamp, dated March 13, 2014, in  
2 which he's conveying a call he had with you.

3 A. Yes.

4 Q. Do you see that?

5 A. Yes.

6 Q. It's a reference to you may be able to get  
7 inventory financing at 78 percent of value, et cetera.  
8 Does this refresh your election -- your recollection,  
9 rather, on what you and he were talking about at that  
10 point?

11 A. It really doesn't. I don't remember.

12 Q. Okay. Mr. Chittick wrote "I know we keep  
13 changing the way we are doing this, but ignoring some of  
14 the legal stuff, we are trying to figure out the best  
15 way to do this for us."

16 Is that fair? Is that your sense of what  
17 was going on at this time?

18 A. Yes. We were back and forth and back and  
19 forth, day in and day out, month in and month out, and  
20 continuing to make changes along the way.

21 Q. Let me hand you what was previously marked as  
22 Exhibit 384.

23 Exhibit 384 is an email exchange that  
24 Mr. Chittick and Mr. Beauchamp had regarding the  
25 confidentiality provision of the forbearance agreement

1 his account of what occurred?

2 A. Yes.

3 Q. What is your memory?

4 A. He said that David was very happy with the  
5 progress that we made. He was happy everything was  
6 going in the right direction. He was glad that -- that  
7 they didn't have to alarm the investors. Denny was  
8 grateful that he left him alone for so long.

9 And I think Mr. Beauchamp's -- the big --  
10 the main reason why he wanted to meet with him, to begin  
11 with, was just to kind smooth the waters over a little  
12 bit. Denny wasn't happy about all these legal fees. He  
13 felt he was just milking -- milking this whole thing.  
14 And so he just kind of wanted to get his friendship back  
15 with him.

16 Q. Did Mr. Chittick ever tell you that  
17 Mr. Beauchamp had fired him as a client in May of 2014?

18 A. That Mr. Chittick -- that Denny fired  
19 Mr. Beauchamp?

20 Q. No, no. Let me go back.

21 Did Denny ever tell you, any time before  
22 March of 2015, which is when Mr. Beauchamp and  
23 Mr. Chittick met for lunch -- did he tell you that  
24 Mr. Beauchamp had resigned as DenSco's security lawyers  
25 because Denny wouldn't follow his advice?

1           A. Absolutely not.

2           Q. I'm going to --

3           A. In fact, there were a lot of emails between me  
4 and Denny where Denny was shocked that he had not heard  
5 from Mr. Beauchamp for a long period of time. He said,  
6 "Wow. This guy must love me by leaving me alone for a  
7 while to continue to let the process go through." He  
8 wouldn't be looking for a call or an email from  
9 Mr. Beauchamp if he resigned as his counsel.

10          Q. I want to go back to your memory of that  
11 conversation that you had with Mr. Chittick after his  
12 meeting with Mr. Beauchamp. And I'm going to quote from  
13 a 2015 journal that Mr. Chittick maintained that's been  
14 marked as Exhibit 22.

15                       He wrote "I had lunch with Dave  
16 Beauchamp" -- on March 24, 2015, "I had lunch with Dave  
17 Beauchamp. I was nervous he was going to put a lot of  
18 pressure on me. However, he was thrilled to know where  
19 we were at. And I told him, by April 15, we'll be down  
20 to 16 properties with seconds on them, and by the end of  
21 June, we hope to have all retail houses sold by then and  
22 just doing wholesale."

23                       Is that consistent with your memory of your  
24 conversation with Mr. Chittick?

25                       MR. DeWULF: Object to form.