

Colin F. Campbell, No. 004955
Geoffrey M. T. Sturr, No. 014063
Joseph N. Roth, No. 025725
Joshua M. Whitaker, 032724
Osborn Maledon, P.A.
2929 N. Central Avenue, Suite 2100
Phoenix, Arizona 85012-2793
(602) 640-9000
ccampbell@omlaw.com
gsturr@omlaw.com
jroth@omlwa.com
jwhitaker@omlaw.com

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 OBJECTIONS AND
RESPONSES TO DEFENDANTS'
SECOND SET OF NON-UNIFORM
INTERROGATORIES**

Pursuant to Rule 33(b), Plaintiff Peter S. Davis, as the court-appointed receiver of DenSco Investment Corporation (the "Receiver"), responds to Defendants' Second Set of Non-Uniform Interrogatories as follows:

OBJECTIONS TO INSTRUCTIONS

1. Plaintiff objects to Defendants' Instructions to the extent they seek to impose obligations broader than or inconsistent with the Arizona Rules of Civil Procedure.

2. Plaintiff objects specifically to Instruction E, which states: "If You object to an Interrogatory as overbroad, respond to that request as if narrowed in such a way as to

1 render it not overbroad in Your opinion and state the extent to which You have narrowed
2 the request.” It is not Plaintiff’s obligation to fix overbroad interrogatories. Rather, it is
3 Defendants’ obligation to draft sufficiently narrow interrogatories in the first instance.
4 Plaintiff will disregard this instruction.

5 **OBJECTIONS TO DEFINITIONS**

6 1. Plaintiff objects to Defendants’ Definitions to the extent they seek to impose
7 obligations broader than or inconsistent with the Arizona Rules of Civil Procedure.

8 2. Plaintiff objects specifically to Definition A, which purports to define
9 “You” to include, inter alia, the Receiver’s attorneys. This definition is impermissibly
10 broad and unduly burdensome in that it calls for the Receiver to answer for both himself
11 and his counsel and to disclose information protected by the attorney-client privilege
12 and/or the work-product doctrine. The Receiver will disregard this definition and answer
13 in accordance with Rule 33(b)(2), which requires only that a party answer an
14 interrogatory, disclosing such information as may be available to the party.

15 **GENERAL OBJECTIONS**

16 1. Rule 33(a)(2) limits the number of interrogatories, which includes “[a]ny
17 discrete subpart to a non-uniform interrogatory,” to 40. Defendants’ First Set of Non-
18 Uniform Interrogatories, served January 26, 2018, contained 65 interrogatories, including
19 discrete subparts. Plaintiff objected to those interrogatories on the grounds that they
20 exceeded the maximum number of interrogatories established by Rule 33(a)(2) and,
21 without waiving that objection, answered those interrogatories. Defendants’ Second Set
22 of Non-Uniform Interrogatories states six additional interrogatories, bringing to 71 the
23 total number of interrogatories Defendants have served in this case (assuming
24 Interrogatory No. 25 is not deemed to have subparts), well beyond the maximum number
25 of interrogatories permitted by Rule 33(a)(2). Because these additional interrogatories are
26 not permitted by Rule 33(a)(2), Plaintiff need not answer them.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

To the extent Your response to any of Defendants' First Set of Requests for Admission is anything other than an unqualified admission, please state in detail all of the reasons and factual bases for the denial or failure to admit, and identify all documents supporting the denial or failure to admit.

1. This interrogatory and any subparts exceed the maximum number of interrogatories established by Rule 33(a)(2).

2. The requests that Plaintiff state in detail “all” reasons and factual bases for the denial or failure to admit, and identify “all” documents supporting the denial or failure to admit, are overly broad and unduly burdensome. *See, e.g., Steil v. Humana Kansas City, Inc.*, 197 F.R.D. 445 (D. Kan. 2000) (contention interrogatories which sought “every fact and document” upon which plaintiff based a contention was overly broad and unduly burdensome and should be limited to identification of the material or principal facts and documents supporting plaintiff’s factual contentions).

3. Many of the requests in the interrogatory are also unduly burdensome because at least some of the responsive information is in Defendants' possession, inasmuch as the actions at issue were taken by or involve Defendant David Beauchamp and/or persons at Bryan Cave or Clark Hill acting at his direction and would have been memorialized in records maintained by Bryan Cave or Clark Hill. This is true for at least Requests for Admission Nos. 1, 2, 4, 5, 7, 10, 11, 12, and 20.

Based on the foregoing objections, Plaintiff declines to respond to this Interrogatory.

Are you aware of any document that contains evidence that Mr. Beauchamp or anyone else at Clark Hill knew that Mr. Chittick was not making oral disclosures to

1 DenSco accredited investors regarding the “First Fraud,” as that term is used in the
2 expert report submitted by David Weekly of Fenix Financial Forensics, LLC, between
3 January 7, 2014 and June 1, 2014?

4 **Objections to Interrogatory No. 26**

5 1. This interrogatory exceeds the maximum number of interrogatories
6 established by Rule 33(a)(2).

7 2. The phrase “contains evidence of” is overly broad and unduly
8 burdensome. Evidence can vary widely in type, directness, and degree.

9 3. Evidence of what a person “knew” is especially broad and unduly
10 burdensome. Evidence of knowledge can vary especially widely in type, directness, and
11 degree.

12 **Response to Interrogatory No. 26**

13 Based on the foregoing objections, Plaintiff declines to respond to this
14 Interrogatory.

15 **INTERROGATORY NO. 27**

16 If you answered “yes” to Interrogatory No. 26, please list and identify each such
17 document.

18 **Objections to Interrogatory No. 27**

19 1. This interrogatory exceeds the maximum number of interrogatories
20 established by Rule 33(a)(2).

21 2. Plaintiff incorporates here the objections to Interrogatory No. 26.

22 3. The requests that Plaintiff identify “each” document that “contains
23 evidence of” the proposition in Interrogatory No. 26 is overly broad and unduly
24 burdensome. *See, e.g., Steil v. Humana Kansas City, Inc.*, 197 F.R.D. 445 (D. Kan.
25 2000) (contention interrogatories which sought “every fact and document” upon which
26 plaintiff based a contention was overly broad and unduly burdensome and should be
27 limited to identification of the material or principal facts and documents supporting
28 plaintiff’s factual contentions).

1 **Response to Interrogatory No. 27**

2 Based on the foregoing objections, Plaintiff declines to respond to this
3 Interrogatory.

4 **INTERROGATORY NO. 28**

5 Explain how the fact that Mr. Menaged signed and recorded loan documents
6 (such as a mortgage or deed of trust) from DenSco and from another hard money lender,
7 as set forth in Your Sixth Disclosure Statement (at ¶¶ 233-234), would have proven Mr.
8 Menaged's "cousin" story false.

9 **Objections to Interrogatory No. 28**

10 1. This interrogatory exceeds the maximum number of interrogatories
11 established by Rule 33(a)(2).

12 2. This Interrogatory misconstrues Paragraphs 233-234 of Plaintiff's
13 Sixth Disclosure Statement, which state as follows:

14 233. A few brief searches would have confirmed Chittick's claim
15 that DenSco was the first to record: DenSco's Mortgage was recorded on
16 September 18, 2013 as instrument number 2013-0837513, while Geared
17 Equity's deed of trust was recorded on September 19, 2013 as instrument
18 number 2013-0842640.

19 234. But those two documents would also have shown that
20 Menaged signed each document before a notary on September 17, 2013,
21 making clear that Menaged, not his "cousin," had secured both loans.

22 **Response to Interrogatory No. 28**

23 Based on the foregoing objections, Plaintiff declines to respond to this
24 Interrogatory.

25 **INTERROGATORY NO. 29**

26 Your expert, Neil Wertlieb, states in his report that Mr. Beauchamp's "threat to
27 withdraw" from representing DenSco would have either caused DenSco to immediately:
28 (i) update and correct disclosure to all investors or (ii) stop soliciting investors. Are you

1 aware of any evidence that supports the conclusion that DenSco would have either made
2 full disclosures to its investors or stopped soliciting investors had Defendants threatened
3 to withdraw at any time?

4 **Objections to Interrogatory No. 29**

5 1. This interrogatory exceeds the maximum number of interrogatories
6 established by Rule 33(a)(2).

7 2. Plaintiff objects to this Request as an improper means of seeking
8 discovery relating to the opinions of Plaintiff's disclosed standard-of-care expert, Neil
9 Wertlieb. As required by Rule 26.1, Plaintiff has disclosed an initial and rebuttal written
10 report authored by Mr. Wertlieb. Defendants have noticed Mr. Wertlieb's deposition for
11 October 17, 2019 and will have the opportunity then to pose this question. That
12 deposition is the only means authorized by the Rules for Defendants to question Mr.
13 Wertlieb about his opinions. *See* Rule 26(4)(A).

14 3. The phrase "any evidence that supports the conclusion" is overly
15 broad and unduly burdensome. Evidence can vary widely in type, directness, and
16 degree.

17 **Response to Interrogatory No. 29**

18 Based on the foregoing objections, Plaintiff declines to respond to this
19 Interrogatory.

20 **INTERROGATORY NO. 30**

21 If you answered "yes" to Interrogatory No. 31, please list and identify each such
22 evidence.

23 **Objections to Interrogatory No. 30**

24 1. This interrogatory exceeds the maximum number of interrogatories
25 established by Rule 33(a)(2).

26 2. Plaintiff incorporates here the objections to Interrogatory No. 29.

27 3. The requests that Plaintiff identify "each" evidence that "supports
28 the conclusion" described in Interrogatory No. 29 is overly broad and unduly

1 burdensome. *See, e.g., Steil v. Humana Kansas City, Inc.*, 197 F.R.D. 445 (D. Kan.
2 2000) (contention interrogatories which sought “every fact and document” upon which
3 plaintiff based a contention was overly broad and unduly burdensome and should be
4 limited to identification of the material or principal facts and documents supporting
5 plaintiff’s factual contentions).

6 **Response to Interrogatory No. 30**

7 Based on the foregoing objections, Plaintiff declines to respond to this
8 Interrogatory.

9 DATED this 16th day of October, 2019.

10 OSBORN MALEDON P.A.

11
12 By 

Colin F. Campbell
Geoffrey M. T. Sturr
Joseph N. Roth
Joshua M. Whitaker
2929 N. Central Avenue, Suite 2100
Phoenix, Arizona 85012-2793

16 Attorneys for Plaintiff

17
18
19 COPY of the foregoing mailed and e-mailed
this 16th day of October, 2019, to:

20 John E. DeWulf
21 Marvin C. Ruth
22 Vidula U. Patki
23 Coppersmith Brockelman PLC
2800 N. Central Avenue, Suite 1900
Phoenix, AZ 85004
24 *Attorneys for Defendants*

25 
26 8259785