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8
9 **SUPERIOR COURT OF ARIZONA**
10 **COUNTY OF MARICOPA**

11 Peter S. Davis, as Receiver of DenSco
Investment Corporation, an Arizona
12 corporation,

13 Plaintiff,

14 v.

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

17 Defendants.

No. CV2017-013832

**DEFENDANTS' FIFTH
SUPPLEMENTAL RULE 26.1
DISCLOSURE STATEMENT**

18 Defendants Clark Hill PLC, David G. Beauchamp and Jane Doe Beauchamp
19 (collectively, "Defendants") **supplement their** initial disclosure statement according to
20 Arizona Rule of Civil Procedure 26.1. Defendants reserve the right to amend or supplement
21 this disclosure statement as discovery progresses. **Supplements are in bold.**

22 This case is in its infancy and thus the content of this disclosure statement is
23 preliminary and subject to supplementation, amendment, explanation, change and
24 amplification. Because the parties have just commenced discovery, there may be
25 information, documents, and materials related to the various allegations and defenses set forth
26 in the pleadings of which Defendants are presently unaware. Defendants note that they do

1 not currently have access to all potentially relevant documents of the Plaintiff, or third parties,
2 and that this disclosure statement is based upon information currently available to
3 Defendants. Nothing in this disclosure statement is intended to be an admission of fact, an
4 affirmation of the existence of any document, or an agreement with or an acceptance of any
5 legal theory or allegation. The information set forth below is provided without waiving (1)
6 the right to object to the use of such information for any purpose in this or any other action
7 due to applicable privilege (including the work-product and attorney-client privileges),
8 materiality, or any other appropriate grounds; (2) the right to object to any request involving
9 or relating to the subject matter of the information in this disclosure statement; or (3) the right
10 to revise, correct, supplement or clarify any of the information provided below. If any part
11 of this statement is ever read to the jury, fairness would require that the jury be read this
12 introductory statement and any supplementation, amendments, explanation, changes or
13 amplifications which may occur or be filed subsequent to this disclosure statement.

14 Defendants also incorporate by reference into this disclosure statement all
15 interrogatory answers, responses to requests for production, responses to requests for
16 admission, other discovery and disclosure statements and supplements thereto in this action,
17 and all transcripts of any deposition taken in this action and any exhibits thereto.

18 **I. FACTUAL BASIS OF CLAIMS AND DEFENSES.**

19 **A. Retention/Scope of Work**

20 For more than 35 years, since graduating with honors from the University of Michigan
21 Law School in 1981, David Beauchamp has represented his clients in the areas of corporate
22 law, securities, venture capital, and private equity with distinction and integrity.

23 One of those clients was DenSco Investment Corporation (“DenSco”), a company
24 solely owned and managed by Denny Chittick. DenSco raised money from investors by
25 issuing general obligation notes to those investors at interest rates that varied depending on
26 the note’s maturity date. DenSco then invested those funds primarily by making high interest

1 short-term loans to borrowers buying residential properties out of foreclosure, which loans
2 were intended to be secured by deeds of trusts on those properties. Mr. Beauchamp started
3 providing securities advice to DenSco in the early 2000s, while he was a partner at the law
4 firm Gammage & Burnham. DenSco followed Mr. Beauchamp as a client when he left
5 Gammage to join the law firm Bryan Cave in March 2008, and again when Mr. Beauchamp
6 left Bryan Cave to join Clark Hill in September 2013.

7 Although the various firms' engagement letters with DenSco only specifically
8 identified DenSco as the client, DenSco could not operate or engage with legal counsel
9 except through its president and sole owner, Mr. Chittick. DenSco had no other employees;
10 Mr. Chittick was responsible for all aspects of DenSco's business, and Mr. Chittick
11 understood that Mr. Beauchamp, as an incident to Mr. Beauchamp's representation of
12 DenSco, was also representing Mr. Chittick in his capacity as president of DenSco. The
13 investors understood that as well. The private offering memoranda DenSco provided state
14 that "legal counsel to the Company will represent the interests solely of the Company and its
15 President, and will not represent the interests of any investor."

16 Shortly after Mr. Chittick's death, and in the midst of a chaotic time dealing with the
17 fallout of his passing, Mr. Beauchamp stated in an August 10, 2016 letter to an Arizona
18 Corporation Commission subpoena to Mr. Chittick that he had "not previously represented
19 Denny Chittick" and that the ACC would need to request the personal information it sought,
20 including Mr. Chittick's personal tax returns, from counsel for Mr. Chittick's estate. To the
21 extent that Mr. Beauchamp's statement was not clear or that any clarification was necessary,
22 Mr. Beauchamp averred in an August 17, 2016 declaration under oath that he represented
23 DenSco and "Mr. Chittick as the President of DenSco." Mr. Beauchamp did not represent
24 Mr. Chittick outside of his role as a corporate officer at DenSco.

25 Until mid- 2013, Mr. Beauchamp's work as DenSco's securities counsel included,
26 among other things, drafting DenSco's Private Offering Memoranda and related investor

1 documents; advising DenSco regarding Blue Sky laws and state and federal securities
2 reporting and filing requirements; advising DenSco as to the rules and regulations
3 promulgated by state financial and lending authorities; and advising DenSco regarding the
4 applicability of mortgage broker regulations. At times, it would also involve answering
5 DenSco's questions regarding its Reg D filings and obligations. Although Mr. Beauchamp
6 helped DenSco file its first set of Reg D documents in 2003, Mr. Chittick told Mr.
7 Beauchamp thereafter that he did not want to pay a lawyer to review and file the Reg D
8 documents, and that Mr. Chittick would take on that responsibility himself. That was not a
9 surprising request, as Mr. Chittick repeatedly instructed Mr. Beauchamp to keep legal fees
10 to a minimum. Consequently, although Mr. Beauchamp's paralegal initially helped Mr.
11 Chittick understand the filing process and obtain access to the EDGAR filing site, in
12 accordance with his client's wishes Mr. Beauchamp did not review DenSco's Reg D filings.

13 The scope of Mr. Beauchamp's representation of DenSco and its president was
14 narrow. Further, the relationship was friendly, but professional. Mr. Beauchamp did not go
15 to dinner or vacation with Mr. Chittick or his family. They did not play golf or otherwise
16 socialize together.

17 Over the years, Mr. Chittick showed himself to be a trustworthy and savvy
18 businessman, and a good client. He was devoted to his business and investors, many of
19 whom were friends and family. Despite often complaining about the cost of legal services,
20 Mr. Chittick appeared to follow Mr. Beauchamp's advice and provided information when
21 asked for it. Further, Mr. Beauchamp understood that DenSco utilized an outside accountant,
22 David Preston, to review DenSco's books and records and file its tax returns. At no point
23 did Mr. Beauchamp serve as DenSco's general corporate counsel, nor was Mr. Beauchamp
24 engaged to review or approve DenSco financial statements or tax returns or to investigate
25 borrowers.

26 B. The Private Offering Memoranda

1 Mr. Beauchamp advised DenSco regarding its Private Offering Memoranda
2 (“POMs”), which DenSco generally updated every two years. He helped draft the 2003,
3 2005, 2007, 2009, and 2011 POMs. The POMs, however, had similar provisions and
4 generally described DenSco’s historical performance based on information provided by Mr.
5 Chittick; set forth Mr. Chittick’s authority to determine DenSco’s “major business decisions
6 and policies”, and to make, amend, or deviate from those policies in Mr. Chittick’s sole
7 discretion; and set forth DenSco’s aspirational lending standards (including its intent to
8 “maintain a loan-to-value ratio below 70%” for both individual trust deeds DenSco
9 purchased and the aggregate loan portfolio, as well as its intent to “achieve a diverse
10 borrower base” with no borrower comprising more than 10-15% of the portfolio).

11 In early summer 2013, Mr. Beauchamp advised DenSco that it needed to update its
12 2011 POM given the passage of time and changes in the scope of DenSco’s fund raising. In
13 particular, based on Mr. Chittick’s representations to Mr. Beauchamp, DenSco either had or
14 would soon eclipse the \$50 million maximum offering set forth in the 2011 POM.
15 Consequently, Mr. Beauchamp began drafting revisions to the 2011 POM, which included
16 updates to the maximum offering and updates on DenSco’s performance to date, among other
17 revisions. Mr. Beauchamp, however, was never able to finalize the 2013 POM. Although
18 Mr. Beauchamp asked for updated investment, loan and financial information regarding
19 DenSco, Mr. Chittick stalled on providing the information, preferring to wait until after he
20 scaled down the amount outstanding to investors. Mr. Beauchamp repeatedly advised
21 DenSco that an update was necessary irrespective of DenSco’s plans regarding the
22 outstanding amount of its offerings, but Mr. Chittick continued to delay.

23 C. The FREO Lawsuit

24 On May 24, 2013, Easy Investments, an entity owned by Yomtov “Scott” Menaged
25 (“Menaged”), DenSco, and Ocwen Loan Servicing, were sued by FREO Arizona, LLC
26 (“FREO”) regarding liens recorded by Easy Investments in favor of DenSco and Active

1 Funding Corporation, on a parcel of property. In a June 14, 2013 email from Mr. Chittick to
2 Mr. Beauchamp, Mr. Chittick explained that Easy Investments had purchased a property at
3 a trustee's sale using a DenSco loan, which had apparently been previously purchased by
4 FREO, leading to a dispute. A review of the partial Complaint provided to Mr. Beauchamp
5 confirms Mr. Chittick's description. According to its allegations, the loan servicer, Ocwen,
6 failed to cancel a trustee's sale and release the deed of trust after FREO had paid off the debt
7 and acquired the property, thereby allowing Easy Investments to purchase the property again
8 with DenSco's funds. Contrary to the allegations in the Receiver's Complaint, the FREO
9 lawsuit did not concern lien priority or double lien issues. Moreover, a review of the docket
10 reveals that Easy Investments prevailed in the FREO lawsuit when the Court granted
11 summary judgment in favor of Easy Investments and against both FREO and Ocwen (for
12 breach of its duties) on December 6, 2013.

13 Further, although Mr. Chittick forwarded a portion of the Complaint to Mr.
14 Beauchamp, Mr. Chittick did not ask Mr. Beauchamp to represent DenSco in the litigation;
15 nor did he ask Mr. Beauchamp to investigate the factual allegations in the Complaint. To
16 the contrary, he expressly stated that he merely wanted Mr. Beauchamp to "be aware" of the
17 lawsuit. Consequently, although Mr. Beauchamp ran the matter through Bryan Cave's
18 conflict system pursuant to standard firm procedure, Mr. Beauchamp did not represent
19 DenSco in the litigation and did not conduct any further investigation into its merits given
20 his client's instruction not to get involved.

21 Mr. Beauchamp did, however, explain to Mr. Chittick that this lawsuit would need to
22 be disclosed in DenSco's 2013 POM. In addition, Mr. Beauchamp advised Mr. Chittick, as
23 he had done previously, that Mr. Chittick needed to fund DenSco's loans directly to the
24 trustee or escrow company conducting the sale, rather than provide loan funds directly to the
25 borrower, to ensure that DenSco's deed of trust was protected. Mr. Chittick, however,
26 explained to Mr. Beauchamp that this was an isolated incident with a borrower, Menaged,

1 whom Mr. Chittick described in his email as someone he had “done a ton of business
2 with...hundreds of loans for several years....”

3 **D. Mr. Beauchamp leaves Bryan Cave, hears nothing from Mr. Chittick for**
4 **months.**

5 Mr. Beauchamp left Bryan Cave at the end of August 2013. Prior to his departure,
6 Mr. Beauchamp had repeatedly made clear to DenSco and Mr. Chittick that they needed to
7 update DenSco’s POM. On August 30, 2013, Mr. Beauchamp and Bryan Cave sent Mr.
8 Beauchamp’s clients, including DenSco, a joint separation letter informing them that Mr.
9 Beauchamp was joining Clark Hill effective as of September 1, 2013. The letter invited
10 those clients to either request the transition of their files to Mr. Beauchamp or affirmatively
11 request that the files remain at Bryan Cave. Mr. Chittick initially agreed to transfer a portion
12 of DenSco’s files to Clark Hill, but aside from DenSco’s authorization letter, Mr. Beauchamp
13 never heard from Mr. Chittick regarding the unfinished 2013 POM, or any other matter, until
14 December 2013.

15 **E. DenSco contacts Mr. Beauchamp in late 2013, slowly reveals scope of**
16 **Menaged issues over several months**

17 In December 2013, Mr. Chittick contacted Mr. Beauchamp for the first time in
18 months. He told Mr. Beauchamp over the phone that he had run into an issue with some of
19 his loans to Menaged, and specifically, that properties securing a few DenSco loans were
20 each subject to a second deed of trust competing for priority with DenSco’s deed of trust.
21 Mr. Beauchamp reminded Mr. Chittick that he still needed to update DenSco’s private
22 offering memorandum. After briefly discussing the allegedly limited double lien issue, Mr.
23 Chittick emphasized to Mr. Beauchamp that Mr. Chittick wanted to avoid litigation with
24 other lenders. Mr. Chittick, however, did not request any advice or help. Accordingly, Mr.
25 Beauchamp suggested that Mr. Chittick develop and document a plan to resolve the double
26 liens, and nothing more came of the conversation.

1 Mr. Chittick vastly understated the scope of the problem. On January 6, 2014,
2 Attorney Bob Miller at Bryan Cave sent Mr. Chittick a letter on behalf of various lenders
3 (the “Miller Lenders”). The letter asserted that the Miller Lenders had advanced purchase
4 money loans directly to trustees to buy more than 50 properties out of foreclosure, and had
5 recorded deeds of trust to evidence their first position security interest. DenSco, however,
6 had likewise recorded mortgages evidencing its purported purchase money loans for the same
7 properties. The Miller Lenders asserted that DenSco’s claimed interest was a “practical and
8 legal impossibility since...only the Lenders provided the applicable trustee with certified
9 funds supporting the Borrowers purchase money acquisition for each of the Properties,”
10 demanded that DenSco subordinate its alleged interests to their interests, and threatened to
11 bring claims for fraud, negligent misrepresentation, and wrongful recordation.

12 It seems unlikely that the issue with the Miller Lenders was a surprise to Mr. Chittick.
13 Although Mr. Chittick’s business journals contain hearsay and present questions regarding
14 admissibility, they suggest that Menaged had told Mr. Chittick about the double lien issue in
15 November 2013, and had explained that the issue could affect every property Menaged had
16 purchased using DenSco funds going back as far as 2011. Further, as set forth below, Mr.
17 Chittick and Menaged had apparently already reached an agreement on how to deal with the
18 double lien issue in November 2013 as well. Mr. Chittick, however, failed to provide that
19 information to Mr. Beauchamp in December. Nor did he immediately provide Mr.
20 Beauchamp with the full scope of the problem, or reveal the procedure he had agreed to with
21 Menaged to resolve that problem, in December or early January.

22 Instead, Mr. Chittick sent the Miller letter to Mr. Beauchamp on January 6, 2014 with
23 nothing more than a sparse request for Mr. Beauchamp to “read the first two pages.” The
24 next day, Mr. Chittick provided Mr. Beauchamp a more expansive, if incomplete,
25 explanation. In his email, Mr. Chittick stated that he had lent Menaged a total of \$50 million
26 since 2007 and that he’d “never had a problem with payment or issue that hasn’t been

1 resolved.” Mr. Chittick asserted, however, that Menaged’s wife had become critically ill in
2 the past year, and that Menaged had turned the day-to-day operations of his companies over
3 to his cousin. According to Mr. Chittick, the cousin would receive loan funds directly from
4 DenSco, then request loans for the same property from another lender, including the Miller
5 Lenders. The other lenders, who had funded their loans directly to the trustee, would record
6 their deed of trust, as would DenSco, leaving DenSco in second position. The cousin,
7 unfortunately, then purportedly absconded with the funds DenSco lent directly to Menaged.
8 This “double lien” issue consequently jeopardized DenSco’s secured position and its loan-
9 to-value ratios. Mr. Chittick feared that a lawsuit with the Miller Lenders would jeopardize
10 DenSco’s entire enterprise.

11 According to Mr. Chittick’s email, Menaged purportedly found out about his cousin’s
12 scam in November and revealed the fraud to Mr. Chittick at the time. Yet rather than consult
13 legal counsel, Mr. Chittick worked out a plan to fix the double lien issue with Menaged. The
14 initial plan included DenSco paying off the other lenders. That required additional capital,
15 which Menaged and Mr. Chittick agreed would come from DenSco lending Menaged an
16 additional \$1 million and Menaged investing additional capital, including \$4-\$5 million from
17 the liquidation of other assets, as set forth in a term sheet DenSco and Menaged signed after
18 having already put their plan into effect. As the scope of the problem appeared to grow, Mr.
19 Chittick and Menaged agreed to terms of an expanded plan, which included further
20 investment from both DenSco and Menaged, who would also continue to flip and rent homes
21 to raise the necessary profits needed to pay off the other lenders.

22 Unbeknownst to Mr. Beauchamp, and according to Mr. Chittick’s January 7, 2014
23 email, DenSco and Menaged had already been “proceeding with this plan since November
24 [2013].” That is corroborated by the Receiver, who asserts that Mr. Chittick lent \$1 million
25 to Menaged to further their private workout plan in December 2013. In other words, by the
26 time Mr. Chittick approached Mr. Beauchamp with a partial disclosure of the issues in late

1 2013 and early 2014, Mr. Chittick had already agreed to a business plan with Menaged to
2 work out the double lien problems, and had already advanced Menaged significant sums
3 pursuant to that agreement. As Mr. Beauchamp explained in a February 20, 2014 email to
4 his colleagues, Mr. Chittick “without any additional documentation or any legal advice...has
5 been reworking his loans and deferring interest payments to assist Borrower...When we
6 became aware of this issue, we advised our client that he needs to have a Forbearance
7 Agreement in place to evidence the forbearance and the additional protections he needs.”

8 1. Mr. Beauchamp tells DenSco it cannot accept new funds or roll over
9 prior funds.

10 After receiving Mr. Chittick’s January 7, 2014 email, Mr. Beauchamp was alarmed
11 that DenSco may be taking on new investors or rolling over prior investments without
12 disclosing the double lien issue or the workout to which Mr. Chittick and Menaged had
13 agreed. Mr. Beauchamp’s advice to Mr. Chittick regarding disclosures Mr. Chittick had to
14 make to investors was immediate, clear, practical, consistent with his practice and
15 experience, and consistent with the standard of care: (a) DenSco was not permitted to take
16 new money without full disclosure to the investor lending the money; (b) DenSco was not
17 permitted to roll over existing investments without full disclosure to the investor rolling over
18 the money; and (c) DenSco needed to update its POM and make full disclosure to all its
19 investors. Mr. Beauchamp provided this advice to DenSco starting with his January 9, 2014
20 meeting with Mr. Chittick, and repeated it routinely over the next few months.

21 Mr. Beauchamp was also concerned about the source and use of the funds needed to
22 effectuate the Menaged-Chittick workout. Yet, as Mr. Chittick explained, the funds for the
23 \$1 million loan (which Mr. Chittick funded prior to engaging Clark Hill) and an additional
24 \$5 million loan Mr. Chittick and Menaged eventually agreed to as part of the workout, would
25 come from (a) Mr. Chittick’s investment of additional funds out of his retirement account,
26 (b) Mr. Chittick’s personal \$1.5 million line of credit, and (c) DenSco’s working capital

1 raised as loans to other borrowers paid off. Again, and at all times Mr. Beauchamp, advised
2 Mr. Chittick that he could not obtain new investor funds or roll over prior investments
3 without full disclosure. Mr. Beauchamp also repeatedly insisted that Mr. Chittick revise his
4 out-of-date POM to provide disclosure to all his investors. Mr. Chittick, however, insisted
5 that DenSco first document the forbearance agreement so that Mr. Chittick would have a
6 plan to show his investors.

7 Further, Mr. Chittick assured Mr. Beauchamp repeatedly that he was making the
8 requisite disclosures to investors on an as needed basis, and that he had informed a select
9 group of investors as to the double lien issue and proposed workout. That would be in
10 keeping with Mr. Chittick's prior approach to business. As far as Mr. Beauchamp knew, and
11 as Mr. Chittick had previously told him, Mr. Chittick indeed had a select group of investors
12 to whom he turned for advice and approval when confronted with important business
13 decisions, such as, for example, diversifying his investments into different types of
14 properties. Mr. Chittick told Mr. Beauchamp that he was seeking such advice from what Mr.
15 Chittick described as an "advisory council." And again, while the letters Mr. Chittick
16 appears to have authored prior to his passing contain hearsay and present questions regarding
17 admissibility, they include various statements suggesting that Mr. Chittick may have
18 previously told (and received approval from) a select group of investors that he was investing
19 specifically with Menaged, that he was increasing his loan concentration with Menaged
20 above the 10-15% concentration threshold suggested in his POMs, and that his lending
21 process involved funding loans directly to borrowers, rather than a trustee or escrow account.

22 There was no reason for Mr. Beauchamp to question whether Mr. Chittick was in fact
23 providing disclosures to limited investors. Moreover, over the more than decade long strong
24 professional relationship Mr. Beauchamp had developed with Mr. Chittick, Mr. Chittick had
25 proven himself to be a trustworthy client with a strong history of sharing information and
26 making prudent decisions.

1 2. Mr. Beauchamp advises DenSco to enter into a forbearance agreement.

2 Beginning in early January, and over the course of several meetings and telephone
3 conversations with Mr. Chittick, Mr. Beauchamp convinced Mr. Chittick that if he was going
4 to keep doing business with Menaged (and Mr. Chittick never wavered from his insistence
5 on working his way out of the double lien issue with Menaged), DenSco should at least
6 document the issues and workout plan in a forbearance agreement. Entering into a
7 forbearance agreement was sound, practical advice and consistent with the standard of care,
8 particularly where Mr. Chittick and Menaged had already implemented their own workout
9 plan. As Mr. Beauchamp repeatedly explained to Mr. Chittick, the forbearance agreement
10 would, among other things, (a) clarify and set forth the facts that led to the double lien issue,
11 (b) clarify and set forth the scope of the issue with the borrower, (c) acknowledge Mr.
12 Menaged's defaults under his loan documents with DenSco, as well as the amount and
13 validity of any debt owed to DenSco, (d) obtain additional written commitments from
14 Menaged and his entities to fund the workout Mr. Chittick and Menaged had already agreed
15 to; and (e) obtain additional security and other protections from Menaged and his entities to
16 protect DenSco and its investors. Mr. Beauchamp was crystal clear with Mr. Chittick all of
17 this would need to be disclosed to DenSco's investors. Other protections Mr. Beauchamp
18 advocated for, including additional admissions of fault and fraud by Menaged to protect
19 DenSco in the event of a bankruptcy filing by Menaged or his entities, were eventually
20 stricken from the agreement at Menaged and Mr. Chittick's insistence, and over Mr.
21 Beauchamp's objections.

22 Mr. Beauchamp had previously drafted and negotiated countless forbearance
23 agreements. He reasonably anticipated that documenting DenSco's forbearance would take
24 2-3 weeks. Negotiating the forbearance agreement, however, turned out to be more difficult
25 than Mr. Beauchamp could have reasonably imagined. For one, Menaged and his counsel
26 repeatedly insisted on edits and revisions that served only to undermine DenSco's fiduciary

1 duty to its investors. Mr. Beauchamp repeatedly had to undo changes proffered by Menaged
2 or Jeff Goulder, Menaged's attorney, and often by Mr. Chittick at Menaged's direction, in
3 order to protect DenSco's investors. For example, Menaged (and Mr. Goulder) attempted to
4 restrict the type of information that could be disclosed to investors, attempted to obtain
5 releases for Menaged related to his defaults and conduct, and refused to provide additional
6 security or information regarding that additional security. Mr. Beauchamp repeatedly pushed
7 back on these efforts and advised DenSco and Mr. Chittick, both in writing and verbally, that
8 they had fiduciary duties to DenSco's investors, which included disclosure obligations. *See*
9 *e.g.*, February 4, 2014 email from Mr. Beauchamp to Mr. Chittick ("you cannot obligate
10 DenSco to further help Scott, because that would breach your fiduciary duty to your
11 investors"); February 14, 2014 email from Mr. Beauchamp to Mr. Chittick ("[Goulder]
12 clearly thinks he can force you to agree to accept a watered down agreement and give up
13 substantial rights that you should not have to give up. Unfortunately, it is not your money.
14 It is your investors' money. So you have a fiduciary duty"); March 13, 2014 email from Mr.
15 Beauchamp to Mr. Chittick ("we cannot give Scott and his attorney any time to cause further
16 delay in getting this Forbearance Agreement finished and the necessary disclosure prepared
17 and circulated").

18 In addition to Menaged and his counsel's constant revisions, the number of loans
19 affected by the double lien issue also kept growing. The number of loans Mr. Chittick
20 asserted were in issue grew from December 2013 to January 2014, and then grew again from
21 January 2014 to February 2014. This resulted in constant changes to the revised workout
22 documents, as well as to Menaged and Mr. Chittick's agreement regarding the manner in
23 which to fund the workout. Mr. Chittick, however, maintained, despite multiple inquiries
24 from Mr. Beauchamp, that he had run the calculations and projections and was confident his
25 plan with Menaged would work. Mr. Chittick also told Mr. Beauchamp that he had gone
26 over those projections with his "advisory council." As Mr. Chittick described it to Mr.

1 Beauchamp, it was a cash flow issue, not a payment issue, and that with Menaged's
2 additional investments, the workout would succeed.

3 Nevertheless, Mr. Beauchamp at one point became concerned enough at Menaged's
4 intransigence and the apparent influence he held over Mr. Chittick, that he reached out to
5 third parties in late January 2014 to inquire about Menaged. Those third parties informed
6 him that Menaged was generally someone to be distrusted and not someone to do business
7 with. Mr. Beauchamp attempted to persuade Mr. Chittick of this during several heated
8 conversations, but Mr. Chittick ignored these admonitions, explaining that while Menaged
9 could be sharp and off-putting, Menaged had always performed on DenSco's loans in the
10 past, and had stood by Mr. Chittick in tough times. Despite Mr. Beauchamp's efforts, Mr.
11 Chittick could not be convinced to cut ties with Menaged.

12 **F. Mr. Beauchamp terminates representation of DenSco and Mr. Chittick.**

13 When Mr. Beauchamp agreed to represent DenSco with respect to Menaged, Mr.
14 Beauchamp made clear that Mr. Chittick had to immediately update DenSco's POM and
15 make full disclosure to its investors regarding the double lien issues, the workout with
16 Menaged, and the potential implications thereof on DenSco's finances and the investors'
17 investments. Mr. Chittick always acknowledged that responsibility and agreed to make the
18 full disclosure once the forbearance agreement was properly documented. As the
19 forbearance neared completion, Mr. Beauchamp and his associate, Daniel Schenk, began
20 drafting the updated POM in April and May 2014. Specifically, the draft 2014 POM would
21 have: provided a description of the forbearance agreement (including all the parties' funding
22 obligations), the reason it was necessary, and its effect on DenSco's books; updated
23 DenSco's goals for intended loan-to-value ratios; updated the descriptions regarding
24 DenSco's loan funding and securitizations procedures; updated the number of loan defaults
25 triggering foreclosures; and amended the descriptions regarding DenSco's borrower base,
26 among other things. Further, Mr. Beauchamp explained that the updated POM would need

1 to be accompanied with a cover letter or other communication highlighting the major
2 material changes, including the double lien issue and resulting workout agreement, to ensure
3 that investors were fully informed. Mr. Chittick, however, refused to provide the necessary
4 information to complete the POM and refused to approve the description of the workout or
5 the double lien issue, despite his prior acknowledgement that he would need to make full
6 disclosure to all of his investors about DenSco (as he had been doing through POMs and
7 newsletters since 2003).

8 In May 2014, Mr. Beauchamp handed Mr. Chittick a physical copy of the draft POM
9 and asked him what Mr. Chittick's specific issues were with the disclosure. Mr. Chittick
10 responded that there was nothing wrong with the disclosure, he was simply not ready to make
11 any kind of disclosures to his investors at this stage. Mr. Beauchamp again explained that
12 Mr. Chittick had no choice in the matter and that he had a fiduciary duty to his investors to
13 make these disclosures. Mr. Chittick would not budge. Faced with an intransigent client
14 who was now acting contrary to the advice Mr. Beauchamp was providing, and with concerns
15 that Mr. Chittick may not have been providing any disclosures to anyone since January 2014,
16 Mr. Beauchamp informed Mr. Chittick that Beauchamp and Clark Hill could not and would
17 not represent DenSco any longer. Mr. Beauchamp also told Chittick that he would need to
18 retain new securities counsel, not only to provide the proper disclosure to DenSco's
19 investors, but to protect DenSco's rights under the forbearance agreement. Mr. Chittick
20 suggested that he had already started that process and was speaking with someone else.

21 Thereafter, Mr. Beauchamp and Clark Hill ceased providing DenSco with securities
22 advice. Mr. Chittick accepted that, but asked that Mr. Beauchamp clean up some small issues
23 with the forbearance agreement before ending the relationship entirely. Other than
24 addressing those small forbearance agreement issues in June and July, Clark Hill stopped
25 working with DenSco or Mr. Chittick in any capacity until 2016, when Mr. Chittick
26 requested that Mr. Beauchamp assist with a very limited issue involving an audit by the

1 Arizona Department of Financial Institutions - work Mr. Beauchamp had previously
2 performed for DenSco and that Mr. Chittick characteristically believed could be done most
3 cost-effectively by Mr. Beauchamp rather than by a new lawyer with no background on the
4 issue.

5 **G. Menaged continues to perpetrate fraud on DenSco, which only grows in**
6 **scale.**

7 During the time that he represented it regarding securities matters, Mr. Beauchamp (a)
8 repeatedly advised DenSco that it had to make full disclosure to its investors and then
9 terminated his relationship as securities counsel for DenSco when DenSco refused, (b)
10 explained that DenSco would need to retain new counsel after Mr. Beauchamp withdrew to
11 provide proper disclosures and monitor the forbearance, and (c) repeatedly reminded Mr.
12 Chittick that he needed to fund loans directly to a trustee or escrow company, rather than to
13 the borrower. Mr. Chittick ignored Mr. Beauchamp's advice. It is unclear if DenSco ever
14 engaged or even talked to new counsel. It appears Mr. Chittick never issued an updated POM,
15 a fact which could not have gone unnoticed by DenSco's sophisticated investors, who had
16 gotten used to regular updates from DenSco, not only through updated POMs, but through
17 monthly newsletters and periodic investor meetings. It is quite clear that Mr. Chittick
18 continued to loan funds directly to Menaged in direct contravention of Mr. Beauchamp's
19 repeated advice.

20 Nevertheless, the brazen scope of Menaged's efforts to defraud DenSco was not
21 foreseeable. After several years of bilking DenSco and others out of millions of dollars,
22 Menaged was eventually arrested. The United States Department of Justice first charged
23 Menaged with defrauding various banks through his purported furniture stores. Menaged used
24 fabricated receipts of purchases made at the furniture store to obtain credit from banks using
25 the names of, and personal identification information of, individuals who had recently died.
26 He would then incur millions of dollars in fraudulent charges on those fake

1 accounts. Incredibly, Menaged acknowledged in his plea agreement that he had perpetrated
2 the bank fraud in order to get cash to continue defrauding DenSco.

3 The Department of Justice then also charged Menaged with money laundering with
4 respect to the DenSco fraud. In his plea agreement, Menaged admitted that from January 2014
5 through June 2016, he embezzled millions of dollars without purchasing properties with the
6 loans obtained from Densco. He explained that Densco would wire money to purchase
7 properties directly to Menaged who, in turn, would send Densco “an image of a bank cashier’s
8 check and a copy of a Trustee Certificate of Sale Receipt.” No sales, however, actually took
9 place. Menaged would simply redeposit the cashier’s check into his account and create bogus
10 receipts for the purchase of the property. Between January 2013 and June 2016, Menaged
11 admitted he obtained 2,172 loans from DenSco totaling approximately \$734,484,440.67. Yet,
12 of the 2,712 loans made by DenSco, only 96 involved actual property transactions. Menaged
13 supposedly used the remaining 2,616 loans for personal expenses, gambling trips, and transfers
14 to his family members and associates. Menaged would also utilize new loans from DenSco to
15 pay back outstanding DenSco loans to conceal the embezzlement. Menaged was sentenced to
16 17 years in jail. As First Assistant U.S. Attorney Elizabeth Strange stated, the “lengthy
17 sentence is a fitting punishment for his egregious crimes.”

18 Menaged shamelessly duped Mr. Chittick. Documents and recordings suggest that
19 Menaged never invested any money into the workout plan. He never obtained any money from
20 Israel despite purportedly making numerous trips to the country for that very purpose, blatantly
21 lied that funds that could have been used to fund the workout were tied up in his divorce
22 proceedings, and ultimately invented a non-existent investment scheme involving
23 “auction.com” which Menaged falsely claimed was retaining most of DenSco’s money (to go
24 along with his fabrication of the fraudulent cousin and terminally ill wife). Sadly, Mr. Chittick
25 bought into all of Menaged’s lies until his last days.

26 Discovery is continuing. Defendants may supplement.

II. LEGAL THEORIES OF CLAIMS AND DEFENSES.

A. Plaintiff's claims

Legal Malpractice

Receiver asserts that Defendants, in their representation of DenSco, committed malpractice and breached fiduciary duties owed to DenSco. Legal malpractice requires proof of the existence of a duty, breach of duty, that defendant's breach was the actual and proximate cause of damages, and the "nature and extent" of those damages. *Glaze v. Larsen*, 207 Ariz. 26, 29 ¶ 12 83 P.3d 26, 29 (Ariz. 2004) (citations and quotations omitted).

Receiver cannot prove breach of duty, actual and proximate cause, or resulting damages. To prove breach of duty, Receiver will need to demonstrate that Defendants deviated from the professional standard of care. *Phillips v. Clancy*, 152 Ariz. 415, 418, 733 P.2d 300, 303 (App. 1986). Defendants' advice and conduct in representing DenSco and, in doing so, representing Mr. Chittick as president of DenSco, was consistent with Defendants' practice and experience, and consistent with the standard of care. Thus, Defendants did not breach their duties to DenSco. Receiver will also need to prove that if Defendants had not purportedly breached the standard of care, that DenSco would not have suffered injury. *Id.* Whatever harm befell DenSco was not an actual or foreseeable result of the advice provided by Defendants. Thus, Receiver's malpractice claim fails.

Aiding and Abetting Breach of Fiduciary Duties

Receiver asserts that Defendants aided and abetted Mr. Chittick in breaching his fiduciary duties to DenSco. Claims of aiding and abetting require proof that: (1) the primary tortfeasor must commit a tort that caused injury to the plaintiff; (2) the defendant must know that the primary tortfeasor's conduct constitutes a breach of duty; (3) the defendant must substantially assist or encourage the primary tortfeasor in the achievement of that breach and (4) there must be a causal relationship between the defendant's assistance or encouragement

1 and the primary tortfeasor's commission of the tort. *Wells Fargo Bank v. Az. Laborers,*
2 *Teamsters and Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 485 (Ariz.
3 2002); *Sec. Title Agency, Inc. v. Pope*, 219 Ariz. 480, 491 (App. 2008). Importantly, "[b]ecause
4 aiding and abetting is a theory of secondary liability, the party charged with the tort must have
5 knowledge of the primary violation." *Wells Fargo*, 201 Ariz. at 485.

6 It is unclear from the Complaint what actions the Receiver asserts constitute a breach
7 of Mr. Chittick's fiduciary duties to DenSco. In any event, as set forth above, Defendants'
8 advice and conduct in representing DenSco were consistent with the applicable standard of
9 care. Defendants did not "substantially assist or encourage" Mr. Chittick in breaching his
10 duties to DenSco, Defendants did not have knowledge of Mr. Chittick's purported "primary
11 violation," nor is there a causal relationship between Defendants' representation of DenSco
12 and Mr. Chittick's purported tortious conduct with respect to DenSco. Further, as set forth
13 above, whatever harm befell DenSco was not an actual or foreseeable result of Defendants'
14 actions or inactions.

15 **B. Affirmative Defenses**

16 *Statute of Limitations*

17 Both the legal malpractice claim and the aiding and abetting claim have a two-year
18 statute of limitations. See A.R.S. §12-542(1) (An action "[f]or injuries done to the person of
19 another" shall be commenced and prosecuted within two years after the cause of action accrues,
20 and not afterward"). Receiver, who stands in the shoes of DenSco, did not file the Complaint
21 in this action until October 16, 2017, which was well outside the statute of limitations. DenSco,
22 and potentially the Investors, could have discovered at least as of Summer 2014, that DenSco's
23 loans to Menaged (or his entities) and DenSco's lending practices with respect to Menaged,
24 could give rise to potential causes of action against Mr. Chittick or his agents. Consequently,
25 because the statute of limitations ran, at the latest, in the Summer of 2016, the Complaint is
26 barred in its entirety.

1 *In pari delicto* and *unclean hands*

2 Arizona law recognizes the doctrine of *in pari delicto*. *Brand v. Elledge*, 89 Ariz. 200,
3 205, 360 P.2d 213, 217 (1961) (quoting *Furman v. Furman*, 34 N.Y.S.2d 699, 704 (N.Y. Sup.
4 Ct. 1941), *aff'd*, 40 N.E.2d 643 (N.Y. 1942)). *In pari delicto* is an affirmative defense by which
5 a party is barred from recovering damages if his losses are substantially caused by activities
6 the law forbade him to engage in.” *Stewart v. Wilmington Trust SP Servs., Inc.*, 112 A.3d 271,
7 301–02 (Del. Ch.), *aff'd*, 126 A.3d 1115 (Del. 2015) (quotation omitted). The defense may
8 be raised against a receiver. *Id.* (“no cogent reason for sparing the innocent Receiver the effect
9 of *in pari delicto* while equally innocent stockholders or policyholders would be barred from
10 relief in the derivative context”); *Knauer v. Jonathon Roberts Fin. Grp., Inc.*, 348 F.3d 230,
11 236 (7th Cir. 2003) (affirming dismissal of the receiver’s claims against the broker dealers,
12 concluding that they were barred by the defense of *in pari delicto*).

13 Here, to the extent there are claims against the Defendants, DenSco, into whose shoes
14 the Receivers steps, bears fault for damages about which it complains. Thus, the Receiver’s
15 claims are barred by doctrine of *in pari delicto* and, to the extent it specifically seeks equitable
16 relief, by the related doctrine of *unclean hands*.

17
18 *Laches*

19 A claim is barred by laches when the delay in bringing the claim is “unreasonable under
20 the circumstances” given “the party’s knowledge of his or her right” and “any change in
21 circumstances caused by the delay has resulted in prejudice to the other party sufficient to
22 justify denial of relief.” *Mathieu v. Mahoney*, 174 Ariz. 456, 459, 851 P.2d 81, 84 (1993).
23 Receiver seeks to recover potentially millions of dollars in alleged damages resulting from
24 loans Mr. Chittick made to Menaged. DenSco would have been aware of the harms that could
25 befall DenSco and its investors as a result of DenSco’s loans to, and lending practices with,
26 Menaged, by Summer 2014 at the latest. DenSco’s inaction for several years, up through the

1 death of Mr. Chittick, to seek relief against any potential third party for harms suffered by
2 DenSco was unreasonable in light of DenSco's knowledge. Because the Receiver steps into
3 DenSco's shoes, the claims are barred.

4
5 *Setoff*

6 Clark Hill filed a proof of claim in the DenSco Receivership for unpaid fees incurred
7 by Clark Hill on behalf of DenSco after Mr. Chittick's death. The Receiver improperly denied
8 the claim on the basis of an alleged conflict of interest. To the extent Defendants are found to
9 owe Plaintiff anything, that debt must be reduced any sums Plaintiff owes Clark Hill.

10 **Additional defenses:**

- 11 • Third parties, including Mr. Chittick and Menaged, over whom Defendants
12 have no authority or control, are at fault for any damages suffered.
- 13 • Densco, in to whose shoes the Receiver steps, is at fault for any damages
14 suffered.
- 15 • Densco, in to whose shoes the Receiver steps, assumed the risk of any actions
16 taken or not taken by DenSco or Mr. Chittick. *Hildebrand v. Minyard*, 16 Ariz.
17 App. 583, 585, 494 P.2d 1328, 1330 (1972) ("A plaintiff who by contract or
18 otherwise expressly agrees to accept a risk of harm arising from the defendant's
19 negligent or reckless conduct cannot recover for such harm") (*quoting*
20 *Restatement (Second) of Torts* § 496(B) (1965)).
- 21 • Receiver cannot demonstrate proximate cause or loss causation because
22 Defendants are not the actual or proximate cause of any damages suffered.
- 23 • Any damages suffered were the result of intervening or superseding events or
24 causes over which the Defendants had no control and were not legally
25 responsible.
- 26 • Receiver's claims are barred by doctrines of waiver and estoppel.

1
2 Discovery is continuing. Defendants may supplement.

3 **III. WITNESSES.**

4 Because no discovery has taken place, Defendants have not yet identified all persons it
5 may call as witnesses at trial, but reserves the right to call any of the following persons to
6 testify as a witness at trial:

- 7
8 1. David Beauchamp
9 c/o Coppersmith Brockelman, PLC
2800 N. Central Avenue, Suite 1900
Phoenix, Arizona 85004

10
11 Mr. Beauchamp is expected to testify regarding the allegations in the Complaint and
12 his representation of DenSco and of Mr. Chittick in his capacity as president of DenSco.

- 13 2. Peter Davis, Receiver of DenSco Investment Corporation
14 c/o Osborn Maledon, P.A.
2929 N. Central Avenue, Suite 2100
15 Phoenix, Arizona 85012

16 Mr. Davis is expected to testify regarding the allegations in the Complaint; the
17 Receiver's evaluations, analyses, and determinations regarding all aspects of DenSco's
18 finances, including, but not limited to, DenSco's loans, lending practices, record keeping,
19 financial transactions, and solvency; the Receiver's maintenance of any DenSco or Chittick
20 records or property, including, but not limited to, electronic records, websites, and email
21 communications; the Receiver's communications with third parties related to DenSco,
22 including communications with financial institutions, investors, and accountants and other
23 professionals; the Receiver's determinations regarding the Receiver's evaluation and analysis
24 regarding the potential fault, liability, or culpability of any third party with respect to any
25 losses suffered by DenSco, including, but not limited, to Chase Bank, U.S. Bank, Yomtov
26 Menaged, Active Funding Group, LLC, and/or Gregg Seth Reichman.

1 3. Any witnesses disclosed by other parties.

2 4. Any witnesses that become known through discovery.

3 5. Custodian or other foundational witnesses necessary to admit exhibits.

4 Discovery is continuing. Defendants may supplement.

5 **IV. ADDITIONAL PERSONS WHO MAY HAVE RELEVANT INFORMATION.**

6 1. Yomtov “Scott” Menaged

7 Scott Menaged is expected to have knowledge regarding all aspects of any personal,
8 financial, or business dealings he may have had with DenSco and Mr. Chittick; all aspects of
9 the fraud(s) he perpetrated on DenSco and Mr. Chittick, either directly, or through one of his
10 entities, including, but not limited to, Easy Investments, LLC, Arizona Home Foreclosures,
11 LLC, Furniture King, LLC, and Scott’s Fine Furniture; all aspects of actions or conduct
12 related to his criminal indictment, plea bargain, or sentencing in the United States District
13 Court for the District of Arizona; his communications with DenSco and Mr. Chittick; and his
14 communications with Mr. Beauchamp.

15
16 2. PMK Easy Investments, LLC
17 10510 East Sunnyside Drive
18 Scottsdale, AZ 85259

19 *See Description for Scott Menaged.*

20 3. PMK Arizona Home Foreclosures, LLC
21 7320 West Bell Road
22 Glendale, AZ 85308

23 *See Description for Scott Menaged.*

24 4. PMK Furniture King, LLC
25 3200 North Central Avenue
26 Suite 2460
 Phoenix, AZ 85012

1
2 *See* Description for Scott Menaged.

3 5. PMK Scott's Fine Furniture

4 *See* Description for Scott Menaged.

5 6. Veronica Castro aka Veronica Gutierrez Reyes
6 c/o Thomas W. Warshaw Attorney at Law
7 33147 North 71st Way
8 Scottsdale, AZ 85266

9 Ms. Castro is expected to have knowledge regarding Menaged's personal, financial, or
10 business dealings with DenSco and Mr. Chittick; the fraud(s) Menaged perpetrated on
11 DenSco and Mr. Chittick, either directly, or through one of Menaged's entities; Menaged's
12 communications with DenSco and Mr. Chittick; Menaged's communications with Mr.
13 Beauchamp; the actions or conduct related to Menaged's criminal indictment, plea bargain,
14 or sentencing in the United States District Court for the District of Arizona; and Ms. Castro's
15 communications with DenSco and Mr. Chittick.

16 7. Luigi Amoroso

17 Mr. Amoroso is expected to have knowledge regarding Menaged's personal, financial,
18 or business dealings with DenSco and Mr. Chittick; the fraud(s) Menaged perpetrated on
19 DenSco and Mr. Chittick, either directly, or through one of Menaged's entities; Menaged's
20 communications with DenSco and Chittick; Menaged's communications with Mr.
21 Beauchamp; the actions or conduct related to Menaged's criminal indictment, plea bargain,
22 or sentencing in the United States District Court for the District of Arizona; and Mr.
23 Amoroso's communications with DenSco and Mr. Chittick.

24 8. Alberto Pena
25 c/o Law Office of Cameron A. Morgan
26 4356 North Civic Center Plaza
 Suite 101

1 Scottsdale, AZ 85251

2
3 Mr. Pena may have knowledge regarding Menaged's personal, financial, or business
4 dealings with DenSco and Chittick; the fraud(s) Menaged perpetrated on DenSco and
5 Chittick, either directly, or through one of Menaged's entities; Menaged's communications
6 with DenSco and Mr. Chittick; and the actions or conduct related to Mr. Pena's and
7 Menaged's criminal indictment, plea bargain, or sentencing in the United States District
8 Court for the District of Arizona.

9
10 9. Troy Flippo
11 c/o Storrs Law Firm PLLC
12 1421 East Thomas Road
Phoenix, AZ 85014

13 Mr. Flippo may have knowledge regarding Menaged's personal, financial, or business
14 dealings with DenSco and Mr. Chittick; the fraud(s) Menaged perpetrated on DenSco and
15 Mr. Chittick, either directly, or through one of Menaged's entities; Menaged's
16 communications with DenSco and Chittick; and the actions or conduct related to Flippo's and
17 Menaged's criminal indictment, plea bargain, or sentencing in the United States District
18 Court for the District of Arizona.

19 10. Menaged family members, including, Joseph Menaged, Michelle Menaged,
20 Jennifer Bonfiglio, Joy Menaged, Jess Menaged

21 Menaged's family may have knowledge regarding Menaged's personal, financial, or
22 business dealings with DenSco and Chittick; the fraud(s) Menaged perpetrated on DenSco
23 and Chittick, either directly, or through one of Menaged's or his Family's entities; the use of
24 funds obtained from DenSco; Menaged's communications with DenSco and Chittick; and the
25 actions or conduct related to Menaged's criminal indictment, plea bargain, or sentencing in
26 the United States District Court for the District of Arizona.

1
2 11. Shawna Heuer
3 c/o Bonnett Fairbourn, PC
4 2325 E. Camelback Road
5 Phoenix, Arizona 85016

6 Ms. Heuer is expected to have knowledge regarding Mr. Beauchamp's work on behalf
7 of DenSco after Mr. Chittick's death and her communications with Mr. Beauchamp. Ms.
8 Heuer may also have knowledge regarding Mr. Chittick and DenSco's business, and Mr.
9 Chittick's communications with Mr. Beauchamp, Menaged, or DenSco's investors.

10 12. Jeff Goulder
11 Stinson Leonard Street
12 1850 North Central Avenue, Suite 2100
13 Phoenix, Arizona 85004

14 Mr. Goulder is expected to have knowledge regarding the negotiations of the
15 Forbearance Agreement. Mr. Goulder also may have knowledge regarding Menaged's
16 businesses, business practices, and finances. Mr. Goulder also may have knowledge
17 regarding Menaged's communications with Mr. Beauchamp.

18 13. David Preston
19 c/o Gammage & Burnham
20 2 N. Central Avenue, Suite 15
21 Phoenix, Arizona 85004

22 Mr. Preston is expected to have knowledge regarding DenSco and Mr. Chittick's
23 finances and tax returns. Mr. Preston is also expected to have knowledge regarding Mr.
24 Chittick's retirement plan.

25 14. DenSco Investors
26

1 The Investors are expected to have knowledge regarding Mr. Chittick's
2 communications to the Investors and their knowledge of DenSco's business, the status of
3 their investments, and the status of DenSco's loans at all relevant times.

4
5 15. PMK Chase Bank
6 3800 North Central Avenue
7 Suite 460
8 Phoenix, AZ 85012

9 Chase Bank is expected to have knowledge regarding Menaged's banking practices,
10 including Menaged's use of Chase Bank to perpetrate his fraud on DenSco and Chittick.

11 16. PMK US Bank
12 3800 North Central Avenue
13 Suite 460
14 Phoenix, AZ 85012

15 US Bank is expected to have knowledge regarding Menaged's banking practices,
16 including Menaged's use of Chase Bank to perpetrate his fraud on DenSco and Chittick.

17 17. Gregg Seth Reichman/Active Funding Group
18 Attention: Andrew Abraham
19 702 East Osborn Road
20 Suite 200
21 Phoenix, AZ 85014

22 Mr. Reichman may have knowledge regarding Menaged's businesses, business
23 practices, and finances; the fraud(s) Menaged perpetrated on DenSco and Mr. Chittick, either
24 directly, or through one of Menaged's entities; and Mr. Reichman or his entities' (including
25 Active Funding Group) participation in any of those fraudulent schemes (as suggested by the
Receiver's Petition No. 45).

26 18. Daniel Schenk

1 c/o Coppersmith Brockelman, PLC
2 2801 N. Central Avenue, Suite 1900
3 Phoenix, Arizona 85004

4 Mr. Schenk is expected to have knowledge regarding any work he performed on
5 behalf of DenSco and Mr. Chittick in his capacity as president of DenSco. Mr. Schenk may
6 also have knowledge of Menaged's communications with Beauchamp, Menaged
7 communications with Mr. Chittick, and Mr. Beauchamp's communications with Mr. Chittick.

8 19. Robert Anderson
9 c/o Coppersmith Brockelman, PLC
10 2802 N. Central Avenue, Suite 1900
11 Phoenix, Arizona 85004

12 Mr. Anderson is expected to have knowledge regarding any work he performed on
13 behalf of DenSco and Mr. Chittick in his capacity as president of DenSco.

14 **V. PERSONS WHO HAVE GIVEN STATEMENTS.**

15 None at this time. Discovery is continuing. Defendants may supplement.

16 **VI. EXPERT WITNESSES.**

17 Defendants will identify expert witnesses in accordance with the schedule ordered by
18 the Court.

19 **VII. COMPUTATION AND MEASURE OF DAMAGES.**

20 Plaintiff is not entitled to recover damages against Defendants.

21 Discovery is continuing. Defendants may supplement.

22 **VIII. EXHIBITS.**

23 Defendants have not yet identified which of the documents listed in Section IX below
24 will be used at trial, and therefore expressly reserve the right to introduce any of the listed
25 documents as exhibits at trial. Defendants may also use any documents identified in any other
26 party's disclosure statement or otherwise disclosed in this matter. By reserving the right to

1 introduce any of the listed documents as exhibits at trial, Defendants do not waive their right
2 to object to the introduction of any of these documents at the time of trial. Defendants will
3 supplement this initial disclosure statement in accordance with Arizona Rules of Civil
4 Procedure 26.1(b)(2).

5 Discovery is continuing. Defendants may supplement.

6 **IX. LIST OF RELEVANT DOCUMENTS.**

7 Defendants have not yet identified any additional relevant documents. The
8 following documents, or categories of documents, may be relevant or lead to discovery of
9 admissible evidence in this action and have already been exchanged or are being produced
10 herewith:

- 11 1. Documents previously produced by Clark Hill bates labeled CH_0000001-
12 13330.
- 13 2. Additional documents produced herewith by Clark Hill bates labeled
14 CH_0013331-13374.
- 15 3. Documents previously produced by Plaintiff including bates labeled
16 DIC000001-25330, 28634-53950 and Quickbooks backup.
- 17 4. Documents previously produced by Plaintiff including bates labeled D126751-
18 128731 and 130972-133111.
- 19 5. Documents previously produced by Bryan Cave in response to Subpoena Duces
20 Tecum bates labeled BC000001-3188.
- 21 6. Documents produced herewith by Dave Preston in response to Subpoena Duces
22 Tecum bates labeled DP000001-601.
- 23 7. Any and all documents in CR-17-00680, United States of America v. Yomtov
24 Scott Menaged, et al.
- 25 8. All documents produced by any party or third party in this litigation.
- 26 9. All pleadings, filings, minute entries, orders and judgments.

10. All deposition or hearing transcripts in the above captioned litigation.
11. All transcripts from any Section 341 creditor meetings, Rule 2004 examinations, depositions, or hearings in Yomtov Menaged's bankruptcy pending in the United States Bankruptcy Court for the District of Arizona at 2:16-bk-04268.
12. Additional documents produced by Clark Hill bates labeled CH_000013387-13616.
13. Documents produced by Sell Wholesale Funding in response to Subpoena Duces Tecum bates labeled SELL000001-766.
14. Documents produced by Azben Limited, LLC in response to Subpoena Duces Tecum bates labeled AZBEN000001-5248.
- ~~15. Documents produced by Geared Equity in response to Subpoena Duces Tecum bates labeled GE000001-257.~~
16. Documents produced by Active Funding in response to Subpoena Duces Tecum bates labeled AF000001-2448.
17. Documents produced in Defendant Clark Hill's Responses to Plaintiff's First Set of Requests for Production bates labeled CH_0013617-13623 (previously produced to counsel on 6/21/18).
18. Documents produced in Defendant David Beauchamp's Responses to Plaintiff's First Set of Requests for Production bates labeled CH_0013624-13946 (previously produced to counsel on 6/21/18).
19. Additional documents produced by Clark Hill bates labeled CH_0013947-17849.
- 20. Documents produced by Geared Equity in response to Subpoena Duces Tecum bates labeled GEAR000001-203.**
- 21. Documents produced by 50780 L.L.C. in response to Subpoena Duces Tecum bates labeled 50780LLC - 000001-65.**

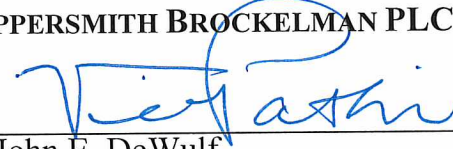
1 Defendants reserves the right to supplement the list of documents that may be relevant
2 as information becomes available.

3 **X. INSURANCE AGREEMENTS.**

4 Defendants produce the insurance policies in effect during the relevant time period
5 and the November 10, 2017 correspondence from Mendes & Mount, LLP, all of which are
6 stamped "Confidential Materials."

7 DATED this 10th day of August, 2018.

8
9 **COPPERSMITH BROCKELMAN PLC**

10 By: 

11 John E. DeWulf
12 Marvin C. Ruth
13 Vidula U. Patki
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
Attorneys for Defendants

14 **ORIGINAL** mailed and emailed this
15 10th day of August, 2018 to:

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17 Geoffrey M. T. Sturr, Esq.
18 Joshua M. Whitaker, Esq.
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21 Phoenix, AZ 85012-2793
22 Attorneys for Plaintiff

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25
26 