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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.**

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

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

25 **DSOF ¶ 19:** DenSco’s POMs provided short explanations as to whether
26 collateral was foreclosed on, or if loans did not yield a profit. The POM would then
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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.*)
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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
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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
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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.)
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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
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1 Menaged and Chittick, the ultimate plan was developed largely by Clark Hill and
2 Beauchamp. (*See, e.g.*, CSOF ¶¶ 280-339.)

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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.” DSOF 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. DSOF 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 **DSOF ¶ 58:** Chittick and Menaged purposely delayed sending Clark Hill the
24 necessary paperwork until mid-June. DSOF Exh. 61, email exchanges between
25 Beauchamp, Chittick and Menaged at CH_REC_CHI_0012589,
26 CH_REC_CHI_0012644 and CH_REC_CHI_0012840. The update to the Forbearance
27
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
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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.
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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

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.

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

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.”¹ (*See* Beauchamp Dep.
26 Exhibit 139A, attached as **CSOF Ex. 76.**)

27 ¹ 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**
11 **About Possibly Expanding its Business to Florida.**

12 **214.** In Chittick's December 18, 2013 email to Beauchamp, Chittick wrote,
13 after asking about the status of Clark Hill's work on a new POM, about his plans to
14 expand DenSco's business to Florida. He wrote: "[I]'ve got two of my best borrowers
15 moving to F[L][.] [T]hey are begging me to look at lending in FL. [I] don't know
16 anything about the market there, but [I] trust these guys. [I]'ve done 20 million with
17 them over the past 5 yrs. [I]s it easy to find out the challenges, issues, etc with me
18 lending there?" (See Beauchamp Dep. Exhibit 139A, attached as **CSOF Ex. 76.**)

19 **215.** While Beauchamp did nothing in response to Chittick's question about
20 the status of a new POM, he immediately forwarded Chittick's e-mail to Clark Hill
21 attorney Daniel Schenck, asking "[w]ill you have time to do the research for Florida or
22 should I find someone else?" (See Schenck Dep. Exhibit 30, attached as **CSOF Ex. 80.**)

23 **216.** On December 18, 2013, Beauchamp recorded time to "[r]eview email and
24 outline Florida research." (See Jan. 2014 Invoice at CH_0002310, Schenck Dep.
25 Exhibit 6, attached as **CSOF Ex. 20.**)

26 **217.** Between December 20 and December 23, 2013, both Beauchamp and
27 Schenck recorded time to conducting research and analysis on "Florida broker issues,"
28 "hard money regulatory lender requirements in Florida," and "Florida lending

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.

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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.²

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

² 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.³

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

27 ³ 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.⁴
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

⁴ 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*
what we are doing isn't going to work fast enough and we'll have a big hill
to climb in the end. I'm just so sick over this I can't function.

10 (Emphasis added.) (See Schenck Dep. Exhibit 21 at RECEIVER_000052, attached as
11 **CSOF Ex. 82**.)

12 **319.** Beauchamp's notes reflect that he discussed the proposed new plan with
13 Chittick the following day, February 27, 2014. They state, in part:

14 Denny explained procedure and Denny is taking all of the shortfall.
15 [Menaged] wants this resolved. Denny wants this resolved because Denny
16 is losing money to make payments to his investors if DenSco is not getting
17 paid interest from [Menaged]. Denny willing to take loss this year -- so
18 DenSco can return cash to investors and reduce interest obligation. *How to*
19 *write this up for investors -- discussed. Do we still need Forbearance Agmt.*
20 *- yes but will be less problematic. Will need Forbearance Agmt. to explain*
procedures and protect Denny for future revisions. Will need multiple
advance not (unsecured) so DenSco can advance cash on house w/ double
loans to be sold.

21 (Emphasis added.) (See Beauchamp Dep. Exhibit 365, attached as **CSOF Ex. 115**.)

22 **320.** Chittick's entry in the 2014 Corporate Journal for that day is consistent
23 with Beauchamp's notes. It states, in part: "I talked to [Menaged] again, he agreed to
24 everything this morning on how to work this out. I talked to David, he thinks its fine.
25 So we are done. . . . [N]ow we just need to get this signed and start working towards
26 selling these houses." (See Schenck Dep. Exhibit 21, at RECEIVER_000052, attached
27 as **CSOF Ex. 82**.)
28

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.**)⁵

25
26 ⁵ 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**
5 **Issuing a New POM While Chittick Pursued His "Work**
6 **Out" Plan.**

7 **363.** Chittick's entry in the 2014 Corporate Journal for April 16, 2014 reflected
8 the signing of the Forbearance Agreement and concludes: "I'll send it up to David and
9 then he and I can start on the memorandum." (*See* 2014 Corporate Journal at
10 RECEIVER_000059, Schenck Dep. Exhibit 21, attached as **CSOF Ex. 82.**)

11 **364.** Beauchamp's notes show that he had a call with Chittick on April 24,
12 2014. Those notes reflect that Beauchamp knew that DenSco's total loans to Menaged
13 were approximately \$36 million in principal, with a \$5 million note (of which
14 approximately \$1.78 million was principal), and a \$1 million note (of which
15 approximately \$915,000 was principal). (*See* Beauchamp Dep. Exhibit 406, attached
16 as **CSOF Ex. 133.**)

17 **365.** Under the heading "POM update" he noted that 186 loans were double-
18 encumbered when the workout started, which was down to 94 loans, representing \$12.3
19 million of principal, as of that date, which was down from a previous balance of
20 approximately \$25 million. (*Id.*)

21 **366.** That same day, Chittick sent Beauchamp by email another copy of the
22 2011 private offering memorandum. (*See* Schenck Dep. Exhibit 99, attached as **CSOF**
23 **Ex. 134.**)

24 **367.** It appears from the Clark Hill file that Beauchamp gave a printed copy of
25 the memorandum to Schenck with a handwritten note asking him to mark up the
26 memorandum and add "updates/forbearance, etc." (*See* Schenck Dep. Exhibit 100,
27 attached as **CSOF Ex. 54.**)

28 **368.** Beauchamp's handwritten notes and documents in the file reflect that
 some research was done on May 13, 2014 on "Dodd Frank and regulation." (*See* May

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 15th, 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.*

13 (Emphasis added.) (2015 Corporate Journal at RECEIVER_000102, Schenck Dep.
14 Exhibit 22, attached as **CSOF Ex. 136**.)

15 **384.** Chittick's entry in the 2015 Corporate Journal for June 18, 2015 states, in
16 part: "[Menaged] tried to enlarge the wholesale number saying, well I'm paying down
17 the workout, I can use that for the wholesale. I'm not letting him. That number needs
18 to start dropping! *I have to get his number falling, or it's going to be hell with Dave.*"
19 (Emphasis added.) (See 2015 Corporate Journal at RECEIVER_000112, Schenck Dep.
20 Exhibit 22, attached as **CSOF Ex. 136**.)

21 **d. Clark Hill Knew that Chittick Was Not Making**
22 **Appropriate Oral Disclosures to DenSco's Investors.**

23 **385.** At times in this case, Clark Hill has suggested that it thought Chittick was
24 making oral disclosures to investors before raising money from them. The jury will be
25 asked to reject that suggestion because, among other things:

26 a. As explained above, DenSco's longstanding practice, based on
27 Beauchamp's advice, was to give *written* disclosures to investors in the form of
28 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

22
23
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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 ⁶
Brian Imdieke	\$500,000	2/11/14 ⁷
Ryan Baughman	\$300,000	2/11/14
Kaylene Moss	\$10,000	3/5/14
Ryan Baughman	\$300,000	4/1/14 ⁸
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.

⁶ Five-year note.

⁷ Six-month note.

⁸ 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
go through." He wouldn't be looking for a call or an email from
10 Mr. Beauchamp if he resigned as his counsel.*

11 (Emphasis added.) (See Menaged Dep. Transcript at 387:21–388:9, attached as
12 CSOF Ex. 188.)

13 **J. Clark Hill Colluded With the Estate of Chittick to Prevent the**
14 **Receiver From Obtaining Material Information.**

15 **447.** Clark Hill did not internally consider the conflicts created by its joint
16 representation of DenSco and the Chittick Estate until an investor raised the issue on
17 August 10, 2016. (See Beauchamp Dep. Exhibit 434, attached as **CSOF Ex. 173.**)

18 **448.** Clark Hill referred Heuer to lawyers whom Clark Hill believed would
19 aggressively protect the Estate from potential claims by investors and the Receiver –
20 Beauchamp's former colleagues at Gammage & Burnham: James Polese and Kevin
21 Merritt. (See Beauchamp Dep. Exhibit 278, attached as **CSOF Ex. 174.**)

22 **449.** Clark Hill then began colluding with Gammage & Burnham to protect the
23 Chittick Estate and Clark Hill from the Receiver. (Beauchamp Dep. Exhibit 435,
24 attached as **CSOF Ex. 175**; Beauchamp Dep. Exhibit 436, attached as **CSOF Ex. 176**;
25 Heuer Dep. Exhibit 447, attached as **CSOF Ex. 177**; Sifferman Dep. Exhibit 465,
26 attached as **CSOF Ex. 178**; Sifferman Dep. Exhibit 466, attached as **CSOF Ex. 179**;
27 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
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Maricopa County Superior Court
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