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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 **MOTION FOR PARTIAL SUMMARY JUDGMENT ON DEFENDANTS' AFFIRMATIVE DEFENSE OF *IN PARI DELICTO*** (Assigned to the Hon. Daniel Martin) (Oral Argument Requested)

Plaintiff Peter Davis, as Receiver of DenSco Investment Corporation, moves under Rule 56(a) for summary judgment on Defendants' affirmative defense that the Receiver's claims are barred by the doctrine of *in pari delicto*. That doctrine – which Defendants Clark Hill and David Beauchamp contend totally bars a claimant from recovering if his own conduct substantially causes the loss – is not applicable in this case as a matter of law. In Arizona, a plaintiff's "relative degree of fault . . . and the relative degrees of fault of all defendants and nonparties, shall be determined and apportioned as a whole at one time by the trier of fact." A.R.S. § 12-2506(C). Defendants cannot avoid having a jury determine their liability for the substantial losses DenSco has suffered by relying on *in pari delicto* or any other similarly discarded loss-

shifting common law theories. In Arizona, jury members, not a court in equity, decide fault for all parties; Defendants will have to face their judgment.

Separate from the statutory problem, the *in pari delicto* doctrine cannot as a matter of law apply to bar recovery for three additional reasons. First, a mandatory bar on recovery based on the claimant's conduct would violate Article 18, § 5 of the Arizona Constitution, which prohibits "bar[ring] recovery of damages based on the conduct of" the injured party. *Sonoran Desert Investigations, Inc. v. Miller*, 213 Ariz. 274, 281 ¶ 26 (App. 2006) (citing *City of Tucson v. Fahringer*, 164 Ariz. 599, 603 (1990)). Second, the defense is an equitable theory grounded on disallowing recovery for someone's own bad conduct. Such theories "do not generally apply against the party's receiver." *FDIC v. O'Melveny & Myers*, 61 F.3d 17, 19 (9th Cir. 1995). Third, a party's fiduciaries, and those who aided and abetted a fiduciary's wrongdoing, cannot avail themselves of *in pari delicto* even in jurisdictions where it applies.

This motion presents a pure question of law: Can Defendants rely on the affirmative defense of *in pari delicto* to preclude the Receiver from presenting to the jury his claims for professional negligence and aiding and abetting breaches of fiduciary duty?[1] Arizona law is clear that they cannot, and the Court should therefore enter summary judgment on Defendants' affirmative defense of *in pari delicto*.

I. ARGUMENT

In August 2016, Plaintiff was appointed the Receiver of DenSco Investment Corporation through an order issued by the Superior Court in *Arizona Corporation Commission v. DenSco Investment Corporation, an Arizona Corporation*, Maricopa County Superior Court, Case No. CV2016-014142 (the "Receivership Court").

[1] Because this motion challenges the legal sufficiency of the *in pari delicto* affirmative defense Defendants raised in their Answer and does not rely on any facts, Plaintiff has not submitted a separate statement of facts, which Rule 56(c)(3)(A) requires when a moving party relies on "specific facts" in support of a motion for summary judgment.

Complaint ¶ 11; Answer ¶ 11. This was shortly after Denny Chittick, DenSco's President, committed suicide. Complaint ¶¶ 3, 96; Answer ¶¶ 3, 96.

The Receiver brought this action in October 2017. He obtained approval from the Receivership Court before doing so. Complaint ¶ 11; Answer ¶ 11. The Receiver seeks through his Complaint "compensatory damages for the financial losses DenSco suffered as a result of [Defendants'] negligence, breaches of fiduciary duty, and aiding and abetting Chittick's breaches of fiduciary duty." Complaint ¶ 10.[2] In their Answer, Defendants asserted *in pari delicto* as an affirmative defense. Answer ¶ 118 ("Plaintiff's claims are barred, in whole or in part, by the doctrine of . . . *in pari delicto*.").[3]

[2] Count One, a claim for Legal Malpractice, alleges that Defendants, while representing DenSco, breached the applicable standard of care and breached fiduciary duties owed DenSco. Complaint ¶¶ 100, 101. Count Two, a claim for Aiding and Abetting Breach of Fiduciary Duty, alleges that Defendants aided and abetted Chittick in breaching fiduciary duties he owed DenSco. Complaint ¶¶ 106-108. As alleged in the Complaint, Clark Hill and David Beauchamp, after learning in January 2014 that DenSco had suffered substantial losses from Chittick's mismanagement, negligently advise DenSco, and "instead breached fiduciary duties owed DenSco and helped Chittick breach fiduciary duties he owed the Company" by, inter alia, causing DenSco to raise more than $15 million from investors without making adequate disclosures, and enter into a "forbearance agreement," and continuing a lending relationship with, the person who had caused those losses, resulting in damages to DenSco of more than $25 million. Complaint ¶¶ 3, 5-8.

[3] As Rule 26.1(a)(2) requires, Defendants have disclosed how they contend the *in pari delicto* doctrine bars the Receiver's claims: "In pari delicto is an affirmative defense by which a party is barred from recovering damages if his losses are substantially caused by activities the law forbade him to engage in. . . . Here . . . DenSco, into whose shoes the Receiver[] steps, bears fault for damages about which it complains. Thus, the Receiver's claims are barred by [the] doctrine of *in pari delicto*." Defendants' Initial Disclosure Statement at 20 (citation omitted), a copy of which is attached as **Appendix A**.

A. In Arizona, the jury – not common law doctrines – determines and apportions fault for all parties and nonparties.

1. Arizona replaced common law loss-shifting rules with pure comparative fault: the jury determines the fault of all parties and nonparties as a whole at one time.

In any case "for personal injury, property damage or wrongful death," the "relative degree of fault of the claimant, and the relative degrees of fault of all defendants and nonparties, shall be determined and apportioned as a whole at one time by the trier of fact." A.R.S. §§ 12-2506(A), (C).[4] The jury must "allocate the responsibility of each actor in direct proportion to that person's percentage of fault," and it "may consider the conduct of both parties and nonparties" all at the same time. *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 54 ¶ 15 (1998), *abrogated on other grounds by State v. Fischer*, 242 Ariz. 44 (2017) (internal quotation marks and citation omitted). The statute gives the jury power to determine "all types of fault committed by all persons." *Id.* ¶ 19.

"Fault" has an "extremely broad" definition. *Id.* ¶ 17. Fault means "an actionable breach of legal duty, act or omission proximately causing or contributing to injury or damages . . . including negligence in all of its degrees, contributory negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability and misuse, modification or abuse of a product." A.R.S. § 12-2506(F)(2). Accordingly, the jury not only compares the negligence of parties, the law "permit[s] the comparison of negligence with strict liability," "reckless, willful, or wanton conduct," and "intentional" conduct. *Hutcherson*, 192 Ariz. at 54-55 ¶¶ 17, 20. *See also Graves v. N.E. Servs. Inc.*, 345 P.3d 619, 629 ¶ 49 (Utah 2015) (interpreting

[4] Section 12-2506 plainly applies to this case. "Property damage" under § 12-2506 is defined to include "both physical damage to tangible property and economic loss proximately caused by a breach of duty." A.R.S. § 12-2501(G). *See also Standard Chartered PLC v. Price Waterhouse*, 190 Ariz. 6, 42 (App. 1996) (holding that § 12-2506 applies to claims for "purely economic claim" for breach of professional and fiduciary duties).

parallel language as requiring jury's authority over fault to "encompass intentionally tortious activity").

Because of the statutory scheme, many common law loss-shifting doctrines that automatically allocate liability based on fault no longer apply. Most directly, § 12-2506 "eliminated the harshness of an all-or-nothing contributory negligence defense." *Hutcherson*, 192 Ariz. at 54 ¶ 15. The law also dispenses with other common law rules that automatically allocate fault or liability, including the "original tortfeasor rule," *Cramer v. Starr*, 240 Ariz. 4, 10 ¶ 22 (2016), the longstanding rule of joint and several liability in strict liability products cases, *State Farm Ins. Cos. v. Premier Manufactured Sys., Inc.*, 217 Ariz. 222, 228 (2007), and the "doctrine of avoidable consequences," *Law v. Super. Ct.*, 157 Ariz. 147, 153-54 (1988). Rather than apply these doctrines that pre-determine liability allocation, Arizona requires that "the relative degrees of fault" of all parties and nonparties "shall be determined and apportioned as a whole at one time by the trier of fact." A.R.S. § 12-2506(C).

2. *In Pari Delicto* is a common law loss-shifting rule that has been replaced in Arizona.

The *in pari delicto* doctrine, like contributory negligence, strict products liability, and the other doctrines discussed in the cases cited above, has been supplanted by Arizona's statutory scheme granting the jury comprehensive authority over fault and liability determinations.

Arizona courts have already held that a nearly identical doctrine has been replaced by the statutory scheme. Before that scheme was adopted, Arizona courts applied a common law principle that shifted liability by allowing "indemnity or contribution among joint tortfeasors" when "one joint tortfeasor" engaged in "reckless or intentionally wrongful" conduct. *See, e.g., Allison Steel Mfg. Co. v. Super. Ct.*, 20 Ariz. App. 185, 189 (1973) (applying Restatement of Restitution § 97 but concluding that conduct was not sufficiently "reckless or intentionally wrongful" to allow indemnity). That common law principle automatically shifted liability from one party

(a merely negligent joint tortfeasor) to another (the recklessly or intentionally wrongful tortfeasor). But that common law principle "did not survive the adoption of comparative negligence in Arizona and provides no relief." *Cella Barr Assocs., Inc. v. Cohen*, 177 Ariz. 480, 486 (App. 1994). Just as the comparative negligence statute displaced a common law doctrine that automatically shifted liability to the recklessly or intentionally wrongful tortfeasor, it also supplanted the *in pari delicto* doctrine, which according to Defendants, *see* footnote 5, *supra*, automatically bars a claim by a plaintiff who "bears fault for damages about which it complains."

There is no need for such doctrines under Arizona's statutory scheme. Rather than rely on common law rules that pre-determine allocations of fault and liability, the statutory scheme authorizes the jury to determine fault "without distinguishing between intentional and negligent conduct or requiring that a minimum percentage of responsibility be assigned" to intentional conduct. *Hutcherson*, 192 Ariz. at 55 ¶ 20. The trier of fact, and only the trier of fact, is authorized to determine the relative degrees of fault for all parties and nonparties, as a whole, at one time. A.R.S. § 12-2506(C). If Defendants believe that some fault should be apportioned to DenSco and/or the Receiver, then they must make that argument without relying on a liability-shifting common law doctrine such as *in pari delicto* and must instead persuade the jury of their position.

B. Applying *in pari delicto* to bar the Receiver's claims would violate Article 18, Section 5 of the Arizona Constitution.

The doctrine of *in pari delicto*, as Defendants describe it, does not exist in Arizona and applying the defense to bar recovery would plainly violate the Arizona Constitution. Under Article 18, Section 5 of the Arizona Constitution, the "defense of contributory negligence or of assumption of risk shall, in all cases whatsoever, be a question of fact and shall, at all times, be left to the jury." This provision means that neither the common law nor a statute may "provide that 'the antecedent conduct of a person injured is an absolute bar to the recovery of damages from one otherwise liable

for the injury.'" *Sonoran Desert Investigations, Inc.*, 213 Ariz. at 277-78 ¶ 9 (holding that statute barring recovery for injury if plaintiff is injured while committing a criminal act is unconstitutional); *see also Fahringer*, 164 Ariz. at 602 (holding that statute barring recovery if injured party was riding in car with intoxicated driver is unconstitutional). And the label of the defense (be it *in pari delicto* or "contributory negligence") is irrelevant: the constitution requires that "in all cases" issues of "contributory negligence . . . be left to the jury, even if the rule or statute directing otherwise attaches some other name to the defenses." *Fahringer*, 164 Ariz. at 603. Even instructing the jury that such a defense bars recovery would violate Arizona law. *See Salt River Project Agric. Improvement and Power Dist. v. Westinghouse Elec. Corp.*, 176 Ariz. 383, 386 (App. 1993) (explaining that instruction that tells jury that a finding of assumption of risk or contributory negligence must bar recovery is reversible error).

In pari delicto, as Defendants conceive it, is precisely the sort of "absolute bar to the recovery of damages from one otherwise liable" that the Arizona Constitution prohibits. As hard as they might try, Defendants will "be unable to cite any Arizona authority barring, as a matter of law, recovery by a tort plaintiff who was engaged in criminal conduct at the time of the injury." *Sonoran Desert Investigations, Inc.*, 213 Ariz. at 281 ¶ 24. Instead, when Arizona courts use the words "*in pari delicto*" they are not invoking the doctrine – a total bar on claims for damages – that Defendants are asserting. Indeed, *in pari delicto* has hardly been mentioned in Arizona courts, and never in a case even remotely similar in kind to this case. The only Arizona case Defendants cite in their disclosure statement is from 1961 and has to do with enforcement of an illegal contract. *See Brand v. Elledge*, 89 Ariz. 200, 201 (1961) (enforcing contract over objection that it was an illegal, unenforceable contract and that the parties were *in pari delicto*). Other older cases apply some form of *in pari delicto* when deciding whether to grant equitable relief – not whether to bar claims for damages as Defendants seek with their affirmative defense. *See, e.g.*, *MacRae v. MacRae*, 37

Ariz. 307, 321-22 (1930) (refusing to grant equitable relief of equitable title when property transfers in question were "conceived in sin and born in iniquity" and parties were *in pari delicto*).

The main case on which Defendants rely is a Delaware chancery case applying Delaware law. *See* Appendix A at 20, *citing Stewart v. Wilmington Tr. SP Servs., Inc.*, 112 A.3d 271 (Del. Ch. 2015). But the distinction between Delaware law and Arizona law regarding fault is stark and decisive. Unlike Arizona, Delaware bars recovery in general for claimants that bear more than 50% of the fault. 10 Del. C. § 8132; *Brittingham v. Layfield*, 962 A.2d 916 (Del. 2008). And, more distant yet, Delaware law would allow a court to dispose of claims based on *in pari delicto* on a motion to dismiss, *Stewart*, 112 A.3d at 302, totally contrary to Arizona's comparative fault system and Arizona's constitutional commitment to trusting such defenses to juries, not judges. The doctrine of *in pari delicto* as applied in Delaware – where claimant's conduct prevents claims for damages from ever reaching the jury – simply cannot exist under Arizona's constitution.

C. Setting aside Arizona's constitution and statutes, *in pari delicto* does not apply to bar the Receiver's claims from the jury.

Although the constitution and statutory scheme unequivocally hand these issues to the jury, Defendants' affirmative defense of *in pari delicto* also fails because the defense cannot apply to this claimant or these claims. The Receiver is not the culpable party but is instead a person the Receivership Court appointed to protect and recover DenSco's assets. Furthermore, *in pari delicto* does not bar claims for breach of a fiduciary duty or aiding and abetting breaches of fiduciary duty.

First, *in pari delicto* cannot bar the Receiver's claims because the plaintiff in this action is the Receiver, not the culpable party. "[D]efenses based on a party's unclean hands or inequitable conduct" such as *in pari delicto* "do not generally apply against that party's receiver." *O'Melveny & Myers*, 61 F.3d at 19 (applying California law). The "defense of *in pari delicto* loses its sting when the person who is in *pari*

delicto is" no longer controlling the corporation and instead the corporation (and its claims) are controlled by a "receiver whose only object is to maximize the value of the corporation[] for the benefit of [its] investors and any creditors." *Scholes v. Lehmann*, 56 F.3d 750, 754-55 (7th Cir. 1995).

This result is necessary because the "doctrine itself require[s] a careful consideration of [public policy] implications before allowing the defense." *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985). Consideration of the public policy implications cuts in one direction: applying the defense of *in pari delicto* would only serve to shield defendants' wrongdoing without any corresponding benefit.

The defense "is grounded on two premises: first, that courts should not lend their good offices to mediating disputes among wrongdoers; and second, that denying judicial relief to an admitted wrongdoer is an effective means of deterring illegality." *Id*. at 306. Neither premise is true here. The Receiver is not an "admitted wrongdoer," but instead is a lawfully appointed receiver serving at the request of the Arizona Corporation Commission. *See* A.R.S. § 44-2011 (authorizing appointment of receiver when there is a violation of the securities laws). The Receiver does not act for the benefit of the wrongdoer but instead, like a conservator, is appointed to, among other things, "protect the rights of persons having a direct interest in the properties and affairs of the violator." A.R.S. § 44-2015(C). That is, the Receiver acts to recover losses of creditors and investors, not the interest of the violator. *See Jones v. Wells Fargo Bank, N.A.* , 666 F.3d 955, 966-67 (5th Cir. 2012) (applying defense "would undermine one of the primary purposes of the receivership" to "recover assets for investors and creditors"); *see also Grant Thorton, LLP v. FDIC*, 435 F. App'x 188, 200 (4th Cir. 2011) (affirming dismissal of *in pari delicto* affirmative defense because the receiver, unlike the original wrongdoer, was serving to "vindicate the rights of the public" (citation and alterations omitted)).

Moreover, rather than deter illegality, applying the defense to the Receiver's claims would create a perverse incentive by allowing the Defendants, themselves guilty

of significant wrongdoing, to "enjoy[] a windfall" at the expense of "the wrongdoer's innocent creditors." *O'Melveny & Myers*, 61 F.3d at 19. Consequently, applying the doctrine to bar the Receiver from pursuing legal malpractice claims against Clark Hill and Beauchamp for their negligence and breaches of fiduciary duty in representing DenSco, and for aiding and abetting Chittick's breaches of fiduciary duties he owed DenSco, would have the effect of shielding a wrongdoer without any beneficial deterrent effect on the claimant. *See Bell v Kaplan*, No. 3:14CV352, 2016 WL 815303, at *4 (W.D.N.C. Feb. 29, 2016) (declining to apply *in pari delicto* to a receiver's claims for legal malpractice and aiding and abetting breach of fiduciary duty because of the "important public policy interests at stake," including that the receiver's claims were based on the lawyer's "direct involvement with the scheme, including his bad legal advice" and "active assistance to the wrongdoers").

Second, even where the defense is available against a receiver, the defense would still not bar the Receiver's claims, which are (1) a legal malpractice claim based on breaches of fiduciary duty and (2) a claim for aiding and abetting breaches of fiduciary duty by DenSco's president Denny Chittick. Claims for breaches of fiduciary duty and aiding and abetting breaches of fiduciary duty "differ materially from contract and negligence claims." *Stewart*, 112 A.3d at 319. Even under Delaware's expansive reading of *in pari delicto*, "Delaware law sets aside *in pari delicto* when a receivership trustee or derivative plaintiff seeks to sue the corporation's own fiduciaries for breach of their fiduciary duties." *Id*. The same is true for claims that "an auditor or similar defendant is alleged to have aided and abetted such breach." *Id*. In affirming the chancery court's decision under Delaware law, the Delaware Supreme Court approvingly cited the lower court's decision that "*in pari delicto* should, consistent with the recognized fiduciary exception to that doctrine, not bar claims against professional advisors for aiding and abetting." *Stewart v. Wilmington Tr. SP Servs., Inc.*, 126 A.3d 1115 (Del. 2015). Thus, even under the non-Arizona case law on which Defendants have relied, the defense would not bar the Receiver's claims.

II. CONCLUSION

For the reasons discussed above, the Court should enter summary judgment on Defendants' affirmative defense of *in pari delicto* and rule that the affirmative defense cannot, as a matter of law, bar the Receiver from presenting his claims to the jury. If Defendants contend that Mr. Chittick or DenSco bears some fault for the damages suffered here, they can try to persuade the jury, consistent with Arizona law.

RESPECTFULLY SUBMITTED this 20th day of June, 2019.

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This document was electronically filed and served via AZTurboCourt this 20th day of June, 2019, on:

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Appendix A

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SUPERIOR COURT OF ARIZONA

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 **DEFENDANTS' INITIAL RULE 26.1 DISCLOSURE STATEMENT**

Defendants Clark Hill PLC, David G. Beauchamp and Jane Doe Beauchamp (collectively, "Defendants") provide this initial disclosure statement according to Arizona Rule of Civil Procedure 26.1. Defendants reserve the right to amend or supplement this disclosure statement as discovery progresses.

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

In pari delicto and *unclean hands*

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

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

Laches

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

9. All pleadings, filings, minute entries, orders and judgments.

10. All deposition or hearing transcripts in the above captioned litigation.

11. All transcripts from any Section 341 creditor meetings, Rule 2004 examinations, depositions, or hearings in Yomtov Menaged's bankruptcy pending in the United States Bankruptcy Court for the District of Arizona at 2:16-bk-04268.

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

X. INSURANCE AGREEMENTS.

Not applicable.

DATED this 9th day of March, 2018.

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VERIFICATION

STATE OF ARIZONA)
) ss.
COUNTY OF Maricopa)

David G. Beauchamp, being first duly sworn upon his oath, deposes and says:

I, David G. Beauchamp, am a Defendant in the matter *Peter S. Davis, as Receiver for DenSco Investment Corp. v. Clark Hill PLC; David G. Beauchamp and Jane Doe Beauchamp, Maricopa County Superior Court Case No. CV2017-013832.* I have read the foregoing Defendants' Initial Rule 26.1 Disclosure Statement and know its contents. The matters stated in the foregoing Initial Rule 26.1 Disclosure Statement are true and correct to the best of my knowledge except as to those matters that are stated upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of Arizona that the foregoing is true and correct.

DATED this 12th day of March, 2018.

David G. Beauchamp

David G. Beauchamp

VERIFICATION

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

Edward J. Hood, being first duly sworn upon his oath, deposes and says:

I, Edward J. Hood, am General Counsel of Clark Hill PLC, a Defendant in the matter *Peter S. Davis, as Receiver for DenSco Investment Corp. v. Clark Hill PLC; David G. Beauchamp and Jane Doe Beauchamp, Maricopa County Superior Court Case No. CV2017-013832.* I am authorized to make this Verification on its behalf. I have read the foregoing Defendant's Initial Rule 26.1 Disclosure Statement and know its contents. The matters stated in the foregoing Initial Rule 26.1 Disclosure Statement are true and correct to the best of my knowledge except as to those matters that are stated upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of Michigan that the foregoing is true and correct.

DATED this 9th day of March, 2018.

Edward J. Hood