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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 RESPONSES TO
DEFENDANTS' FIRST SET OF
REQUESTS FOR ADMISSION**

(Assigned to the
Honorable Daniel Martin)

Pursuant to Rule 36(a)(5), Plaintiff Peter S. Davis, as Receiver of DenSco
Investment Corporation, hereby responds to Defendants' First Set of Requests for
Admission.

OBJECTIONS TO INSTRUCTIONS

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

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1 Investment Corporation or Denny Chittick, nor can he confirm, if one or more such
2 documents were in fact created, whether they were destroyed, preserved and/or
3 withheld by Bryan Cave or Clark Hill, or destroyed by DenSco or Denny Chittick.
4 Plaintiff notes that David Beauchamp testified to a telephone conversation with Denny
5 Chittick in December 2013 regarding double liened loans. Clark Hill produced a
6 number of written documents regarding the December 13, 2013 telephone conversation.

7 ADMIT _____ DENY _____

8 **REQUEST NO. 2:** Admit that Mr. Chittick's email to Mr. Beauchamp on
9 January 7, 2014 (a copy of which is at Bates stamp DIC0007140 and attached as
10 Exhibit A) is the first written communication to Mr. Beauchamp regarding the "First
11 Fraud," as that term is used in the expert report submitted by David Weekly of Fenix
12 Financial Forensics, LLC.

13 **Objections to Request No. 2:**

14 Plaintiff objects to this Request as being vague and ambiguous because Mr.
15 Weekly's report does not define the terms "First Fraud." Without waiving that
16 objection, Plaintiff construes the term to mean any instance in which Menaged used
17 DenSco and a second lender to obtain two separate loans against the same property.

18 **Response to Request No. 2:**

19 Without waiving that objection, Plaintiff responds as follows:

20 ADMIT _____ DENY X

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22 **REQUEST NO. 3:** Admit that Mr. Chittick learned in September 2012 that
23 multiple DenSco loans to Menaged may not have been secured in first position as a
24 result of Menaged double-liening the intended DenSco collateral (the "Initial Fraud").

25 **Objections to Request No. 3:**

26 Plaintiff objects to this Request because it is not "direct, simple and limited to [a]
27 singular relevant fact []," *Herrera v. Scully*, 143 F.R.D. 545, 549 (1992) (citation
28 omitted), and instead asks Plaintiff to admit multiple facts and/or conjectures: (1) as of

1 September 2012, DenSco had made certain loans, none of which are identified with
2 specificity in the Request; (2) as of September 2012, “multiple” such loans “may not
3 have been secured in first position”; (3) that “multiple” such loans “may not have been
4 secured in first position” was “the result of Menaged’s double-liening the intended
5 DenSco collateral”; and (4) Chittick “learned” of those multiple facts and/or conjecture
6 in September 2012.

7 **Response to Request No. 3:**

8 Without waiving that objection, Plaintiff states that, after reasonable inquiry, the
9 information he knows or can readily obtain is not sufficient to enable him to admit or
10 deny the Request as written. Plaintiff cannot confirm which specific loans are the
11 subject of this Request; the lien priority of those loans; how the property securing
12 DenSco’s loan came to be encumbered by two liens, if at all; what representations were
13 made to Chittick about the circumstances of any such double encumbering; and what
14 Chittick believed or did not believe with respect to any such encumbering. To the
15 extent the Request is construed as asking Plaintiff to admit whether, in September 2012,
16 Chittick knew and understood Menaged had perpetrated a fraud on DenSco by causing
17 two liens to be placed on property securing DenSco’s loans, Plaintiff denies the
18 Request.

19 ADMIT _____ DENY _____

20 **REQUEST NO. 4:** Admit that there is no evidence that Mr. Chittick ever
21 disclosed his knowledge of the Initial Fraud to Defendants.

22 **Objections to Request No. 4:**

23 Plaintiff objects to this Request because it is not “direct, simple and limited to [a]
24 singular relevant fact [],” *Herrera v. Scully*, 143 F.R.D. 545, 549 (1992) (citation
25 omitted), and instead asks Plaintiff to admit multiple facts and/or conjectures: (1) that
26 the “Initial Fraud” occurred as alleged in Request No. 3; (2) that Chittick believed there
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1 had been such a fraud; and (3) that no “evidence” exists that Chittick disclosed his
2 “knowledge” of the alleged “Initial Fraud” to Beauchamp or any attorney at Clark Hill.

3 **Response to Request No. 4:**

4 Without waiving that objection, Plaintiff states that, after reasonable inquiry, the
5 information he knows or can readily obtain is not sufficient to enable him to admit or
6 deny the Request as written. He cannot confirm which specific loans are the subject of
7 this Request; the lien priority of those loans; how the property securing DenSco’s loans
8 came to be encumbered by two liens, if at all; what representations were made to
9 Chittick about the circumstances of any such encumbering; what Chittick believed or
10 did not believe with respect to any such encumbering; every oral and written
11 communication Chittick and Beauchamp had at any time after September 2012 about
12 DenSco’s lending practices in general or these unidentified loans in particular; and
13 whether the communications Chittick and Beauchamp are known to have had regarding
14 DenSco’s lending practices in general included a discussion of loans made in 2012 that
15 are among the loans which are potentially included in this Request. To the extent the
16 Request is construed as asking Plaintiff to admit whether, in September 2012, Chittick
17 knew and understood Menaged had perpetrated a fraud on DenSco by causing two liens
18 to be placed on property securing DenSco’s loans and failed to disclose that information
19 to Beauchamp, Plaintiff denies the Request.

20 ADMIT _____ DENY _____

21 **REQUEST NO. 5:** Admit that there is no evidence that Mr. Chittick sought
22 Defendant’s counsel with respect to the Initial Fraud.

23 **Objections to Request No. 5:**

24 Plaintiff objects to this Request because it is not “direct, simple and limited to [a]
25 singular relevant fact [],” *Herrera v. Scully*, 143 F.R.D. 545, 549 (1992) (citation
26 omitted), and instead asks Plaintiff to admit multiple facts and/or conjecture: (1) that
27 the “Initial Fraud” occurred as alleged in Request No. 3; (2) that Chittick believed there
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1 had been such a fraud; and (3) that no “evidence” exists that Chittick sought “counsel”
2 from Beauchamp or any attorney at Clark Hill “with respect to” the alleged “Initial
3 Fraud.”

4 **Response to Request No. 5:**

5 Without waiving that objection, Plaintiff states that, after reasonable inquiry, the
6 information he knows or can readily obtain is not sufficient to enable him to admit or
7 deny the Request as written. He cannot confirm which specific loans are the subject of
8 this Request; the lien priority of those loans; how the property securing DenSco’s loans
9 came to be encumbered by two liens, if at all; what representations were made to
10 Chittick about the circumstances of any such encumbering; what Chittick believed or
11 did not believe with respect to any such encumbering; every oral and written
12 communication Chittick and Beauchamp had at any time after September 2012 about
13 DenSco’s lending practices in general or these unidentified loans in particular; and
14 whether the communications Chittick and Beauchamp are known to have had regarding
15 DenSco’s lending practices in general included a discussion of loans made in 2012 that
16 are among the loans which are potentially included in this Request. To the extent the
17 Request is construed as asking Plaintiff to admit whether, in September 2012, Chittick
18 knew and understood Menaged had perpetrated a fraud on DenSco by causing two liens
19 to be placed on property securing DenSco’s loans and failed to disclose that information
20 to Beauchamp and seek his counsel, Plaintiff denies the Request.

21 ADMIT _____ DENY _____

22 **REQUEST NO. 6:** Admit that, after the Initial Fraud and throughout 2013,
23 DenSco started lending Menaged money in amounts that far exceeded the
24 representations DenSco made to its investors about achieving a diverse borrower base
25 with no borrower comprising more than 10-15% of the portfolio.
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1 **Objections to Request No. 6:**

2 Plaintiff objects to this Request because it is not “direct, simple and limited to [a]
3 singular relevant fact [],” *Herrera v. Scully*, 143 F.R.D. 545, 549 (1992) (citation
4 omitted), and instead asks Plaintiff to admit multiple facts and/or conjectures: (1) that
5 the “Initial Fraud” occurred as alleged in Request No. 3; (2) that on some unspecified
6 date DenSco made representations to its investors about achieving a diverse borrower
7 base with no borrower comprising more than 10-15% of its loan portfolio; (3) that on an
8 unspecified date after September 2012 DenSco “started” lending Menaged money in
9 unspecified amounts; and (4) that on an unspecified date after September 2012 and
10 before the end of 2013, the aggregate amount DenSco loaned to Menaged was more
11 than 10-15% of DenSco’s loan portfolio.

12 **Response to Request No. 6:**

13 Without waiving that objection, Plaintiff admits that at some point in 2013 the
14 percentage of loans DenSco made to entities controlled by Menaged reached an amount
15 which made representations in DenSco’s July 2011 POM relating to diversification of
16 risk materially misleading.

17 ADMIT _____ DENY _____

18 **REQUEST NO. 7:** Admit that there is no evidence that DenSco sought legal
19 advice from the Defendants, or otherwise informed the Defendants, at any point in
20 2013, that DenSco’s loans to Menaged comprised more than 15% of DenSco’s loan
21 portfolio.

22 **Objections to Request No. 7:**

23 Plaintiff objects to this Request because it is not “direct, simple and limited to [a]
24 singular relevant fact [],” *Herrera v. Scully*, 143 F.R.D. 545, 549 (1992) (citation
25 omitted), and instead asks Plaintiff to admit that there is “no evidence” that (1) DenSco
26 disclosed to Beauchamp or any Clark Hill attorney during 2013 that DenSco’s loans to
27 Menaged compromised more than 15% of DenSco’s loan portfolio, or (2) “sought legal
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1 advice” from Beauchamp or any Clark Hill attorney during 2013 about DenSco’s loans
2 comprising more than 15% of DenSco’s loan portfolio.

3 **Response to Request No. 7:**

4 Without waiving that objection, Plaintiff states that, after reasonable inquiry, the
5 information he knows or can readily obtain is not sufficient to enable him to admit or
6 deny the Request as written. He cannot confirm that written communications between
7 Beauchamp and Chittick evidencing such communications were or were not created
8 during the specified time period, inasmuch as any such document would have been in
9 the possession of Bryan Cave, Clark Hill, DenSco Investment Corporation or Denny
10 Chittick, nor can he confirm, if one or more such documents were in fact created,
11 whether they were destroyed, preserved and/or withheld by Bryan Cave or Clark Hill,
12 or destroyed by DenSco or Denny Chittick. To the extent the Request is construed as
13 asking Plaintiff to admit that during 2013 Chittick did not seek legal advice from
14 Beauchamp about DenSco’s lending practices, Plaintiff denies the Request.

15 ADMIT _____ DENY _____

16 **REQUEST NO. 8:** Admit that DenSco’s lending to Menaged in 2013
17 disregarded legal advice DenSco received as reflected, at a minimum, in the 2011 POM
18 and DenSco’s loan documents.

19 **Objections to Request No. 8:**

20 Plaintiff objects to this Request because it is not “direct, simple and limited to [a]
21 singular relevant fact [],” *Herrera v. Scully*, 143 F.R.D. 545, 549 (1992) (citation
22 omitted), and instead asks Plaintiff to admit multiple facts and/or conjecture: (1) that
23 DenSco received legal advice from an unspecified attorney on an unspecified date;
24 (2) that the legal advice related to DenSco’s lending practices; (3) that the legal advice
25 was minimally reflected in the 2011 POM; (4) that the legal advice was minimally
26 reflected in DenSco’s loan documents; and (5) DenSco’s lending to Menaged in 2013
27 was in disregard of that legal advice.
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1 **Response to Request No. 8:**

2 Without waiving that objection, Plaintiff states that, after reasonable inquiry, the
3 information he knows or can readily obtain is not sufficient to enable him to admit or
4 deny the Request as written. He cannot confirm what “legal advice” is the subject of
5 this Request. To the extent the Request is construed as asking Plaintiff to admit that the
6 lending practices DenSco employed during 2013 in loaning funds to Menaged made
7 representations in DenSco’s July 2011 POM relating to its lending practices materially
8 misleading, Plaintiff so admits. To the extent the Request is construed as asking
9 Plaintiff to admit that Beauchamp knew during 2013 that DenSco was engaging in
10 lending practices that made representations in DenSco’s July 2011 POM relating to its
11 lending practices materially misleading, Plaintiff so admits, noting that Beauchamp
12 received such information from the *Freo* lawsuit.

13 ADMIT _____ DENY _____

14 **REQUEST NO. 9:** Mr. Chittick stated in his January 7, 2014 email to Mr.
15 Beauchamp (a copy of which is at Bates stamp DIC0007140 and attached as Exhibit A)
16 that DenSco has “never had a problem with payment or issue that hasn’t been resolved”
17 concerning loans made to Menaged. Admit that this statement is false.

18 **Objections to Request No. 9:**

19 Plaintiff objects to this Request because it is not “direct, simple and limited to [a]
20 singular relevant fact [],” *Herrera v. Scully*, 143 F.R.D. 545, 549 (1992) (citation
21 omitted). Plaintiff further objects because the Request does not quote in full Chittick’s
22 statement, which was: “I’ve been lending to Scott Menaged through a few different
23 LLC’s and [sic] his name since 2007. [I]’ve lent him 50 million dollars and I have
24 never had a problem with payment or issue that hasn’t been resolved.” A request that
25 Plaintiff admit or deny the truth of Chittick’s written statement is improper because
26 Plaintiff does not have personal knowledge of the facts on which Chittick relied in
27 making that statement. *Cf. U.S. ex rel. Englund v. Los Angeles County*, 235 F.R.D. 675,
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685 (E.D. Cal. 2006) (A party cannot be forced to admit or deny facts testified to by a third-party witness as to which the responding party has no personal knowledge.).

Response to Request No. 9:

Without waiving that objection, Plaintiff states that, after reasonable inquiry, the information he knows or can readily obtain is not sufficient to enable him to admit or deny the Request. He does not have access to all relevant records reflecting Chittick's lending relationship with Menaged from 2007 through January 2014 and has no way of determining whether any "problems with payment or issue" were or were not resolved to Chittick's satisfaction during that time period. Otherwise,

ADMIT _____ DENY X _____

REQUEST NO. 10: Admit that there are no written communications from Mr. Chittick to Mr. Beauchamp regarding the "Non-Workout Loans," as that term is defined in the expert report submitted by David Weekly of Fenix Financial Forensics, LLC.

Objections to Request No. 10:

Plaintiff objects to this Request as being vague and ambiguous because Mr. Weekly's report does not expressly define the term "Non-Workout Loans." Without waiving that objection, Plaintiff construes the term to include "new borrowings by Menaged under the plan Chittick and Menaged communicated to Beauchamp." Weekly Report ¶ 35; Response to Request No. 10.

ADMIT _____ DENY X _____

REQUEST NO. 11: Admit that there are no written communications (whether by email, text, letter etc.) between Mr. Beauchamp to Mr. Chittick requesting or providing securities advice (e.g., the application of, or compliance with, securities laws) after June 1, 2014.

Objections to Request No. 11:

Plaintiff objects to this Request because it is not "direct, simple and limited to [a] singular relevant fact []," *Herrera v. Scully*, 143 F.R.D. 545, 549 (1992) (citation

1 omitted), and instead asks Plaintiff to admit either that: (1) a document containing the
2 specified content was never created during the specified time period; or (2) any such
3 document, if one or more once existed, is not in the possession of Clark Hill, where Mr.
4 Beauchamp was employed after June 1, 2014, or was not maintained by DenSco
5 Investment Corporation or Denny Chittick.

6 **Response to Request No. 11:**

7 Without waiving these objections, Plaintiff states that, after reasonable inquiry,
8 the information he knows or can readily obtain is not sufficient to enable him to admit
9 or deny the Request. He has no way of knowing whether a document containing the
10 specified content was created during the specified time period, inasmuch as any such
11 document would have been in the possession of Clark Hill, DenSco Investment
12 Corporation or Denny Chittick, and has no way of knowing, if one or more such
13 documents were in fact created, whether they were destroyed, preserved and/or
14 withheld by Clark Hill, or destroyed by DenSco or Denny Chittick. Otherwise,

15 ADMIT _____ DENY X _____

16 **REQUEST NO. 12:** Admit that the invoices from Clark Hill to DenSco reflect
17 that no Clark Hill attorney billed for any securities advice after June 1, 2014.

18 **Objections to Request No. 12:**

19 Plaintiff objects as the request is vague. Part and parcel of the securities advice
20 given by Clark Hill was that Denny Chittick could refrain from disclosing Menaged's
21 conduct until the Forbearance Agreement was concluded. Further, Plaintiff contends
22 that Clark Hill both before and after June 1, 2014, advised Denny Chittick he could
23 refrain from making further securities disclosures. Clark Hill billed for continued work
24 on the Forbearance Agreement after June 1, 2014.

25 ADMIT _____ DENY X _____

26 **REQUEST NO. 13:** Admit that under Regulation D, Rule 506(c), Mr. Chittick
27 was not required to provide substantive or material information concerning DenSco in
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1 writing to an “accredited investor,” as that term is defined in Regulation D of the
2 Securities Act of 1933.

3 **Objections to Request No. 13:**

4 Plaintiff objects to this Request as an improper means of seeking discovery
5 relating to the opinions of Plaintiff’s disclosed standard-of-care expert, Neil Wertlieb.
6 As required by Rule 26.1, Plaintiff has disclosed an initial and rebuttal written report
7 authored by Mr. Wertlieb, which includes, on pages 37-40, a discussion of
8 Regulation D and other provisions of securities law regulating disclosures to investors
9 and Mr. Wertlieb’s opinions regarding those matters. Defendants have noticed Mr.
10 Wertlieb’s deposition for October 17, 2019 and will have the opportunity then to pose
11 this question. That deposition is the only means authorized by the Rules for Defendants
12 to question Mr. Wertlieb about his opinions. *See* Rule 26(4)(A). Requests for
13 admission are not permitted to seek discovery of testifying experts. *See, e.g., Workman*
14 *v. Chinchinian*, 807 F. Supp. 634, 647-648 (1992) (E. D. Wash. 1992).

15 ADMIT _____ DENY _____

16 **REQUEST NO. 14:** Admit that the “First Fraud,” as that term is used in the
17 expert report submitted by David Weekly of Fenix Financial Forensics, LLC, had
18 terminated by January 7, 2014.

19 **Objections to Request No. 14:**

20 Plaintiff objects to this Request as an improper means of seeking discovery
21 relating to the opinions of Plaintiff’s disclosed damages expert, David Weekly. As
22 required by Rule 26.1, Plaintiff has disclosed an initial and rebuttal written report
23 authored by Mr. Weekly, who was deposed by Defendants on October 2, 2019. That
24 deposition is the only means authorized by the Rules for Defendants to question Mr.
25 Weekly about his opinions. *See* Rule 26(4)(A). Requests for admission are not
26 permitted to seek discovery of testifying experts. *See, e.g., Workman v. Chinchinian*,
27 807 F. Supp. 634, 647-648 (1992) (E. D. Wash. 1992).
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1 ADMIT _____

DENY _____

2 **REQUEST NO. 15:** Admit that by January 7, 2014, Mr. Chittick had developed
3 a plan with Menaged to resolve the “First Fraud,” as that term is used in the expert
4 report submitted by David Weekly of Fenix Financial Forensics, LLC.

5 **Objection to Request No. 15:**

6 Plaintiff objects to this Request as an improper means of seeking discovery
7 relating to the opinions of Plaintiff’s disclosed damages expert, David Weekly. As
8 required by Rule 26.1, Plaintiff has disclosed an initial and rebuttal written report
9 authored by Mr. Weekly, who was deposed by Defendants on October 2, 2019. That
10 deposition is the only means authorized by the Rules for Defendants to question Mr.
11 Weekly about his opinions. *See* Rule 26(4)(A). Requests for admission are not
12 permitted to seek discovery of testifying experts. *See, e.g., Workman v. Chinchinian,*
13 807 F. Supp. 634, 647-648 (1992) (E. D. Wash. 1992).

14 ADMIT _____

DENY _____

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16 **REQUEST NO. 16:** Admit that at least as of May 19, 2015, Mr. Chittick was
17 on actual or constructive notice that Menaged’s representations that Menaged had
18 purchased properties, as purportedly evidenced by copies of trustee’s sales receipts and
19 images of cashier’s checks, may not have been truthful, as evidenced by the Consumer
20 Complaint Form sent to Mr. Chittick by the Office of the Arizona Attorney General, a
21 copy of which is at Bates stamp CH REC CHI 0035967 and attached as Exhibit B.

22 **Objection to Request No. 16:**

23 Plaintiff objects to this Request because it is not “direct, simple and limited to [a]
24 singular relevant fact [],” *Herrera v. Scully*, 143 F.R.D. 545, 549 (1992) (citation
25 omitted), and instead asks Plaintiff to admit multiple facts and/or conjecture: (1) that
26 Menaged had made unspecified representations to Chittick on unspecified dates;
27 (2) that Chittick received Exhibit B; (3) that Chittick reviewed Exhibit B; (4) that if
28 Chittick reviewed Exhibit B the information therein gave him actual knowledge that

1 Menaged “may not have been truthful”; and (5) that if Chittick reviewed Exhibit B the
2 information therein gave him constructive knowledge that Menaged “may not have
3 been truthful.”

4 **Response to Request No. 16:**

5 Without waiving that objection, Plaintiff states that, after reasonable inquiry, the
6 information he knows or can readily obtain is not sufficient to enable him to admit or
7 deny the Request. He has no way of determining whether Chittick actually received
8 and reviewed Exhibit B, or to determine whether that document caused Chittick to
9 question Menaged’s veracity. *Cf. U.S. ex rel. Englund v. Los Angeles County*, 235
10 F.R.D. 675, 685 (E.D. Cal. 2006) (A party cannot be forced to admit or deny facts
11 testified to by a third-party witness as to which the responding party has no personal
12 knowledge.).

13 ADMIT _____ DENY _____

14 **REQUEST NO. 17:** Admit that prior to March 2014, DenSco often requested
15 that Menaged provide DenSco with trustee’s deeds evidencing that property Menaged
16 had purchased at a trustee’s sale had actually been sold and transferred to Menaged.

17 **Objection to Request No. 17:**

18 Plaintiff objects to this Request because it is not “direct, simple and limited to [a]
19 singular relevant fact [],” *Herrera v. Scully*, 143 F.R.D. 545, 549 (1992) (citation
20 omitted), and asks Plaintiff to admit that, over the course of seven years, DenSco
21 “often” asked Menaged to provide Trustee’s deeds.

22 **Response to Request No. 17:**

23 Without waiving that objection, Plaintiff states that, after reasonable inquiry, the
24 information he knows or can readily obtain is not sufficient to enable him to admit or
25 deny the Request as written, given the time period the Request covers and records
26 available to him. Plaintiff admits that DenSco’s records reflect that before March 2014
27 DenSco asked Menaged to provide Trustee’s deeds.
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1 ADMIT _____

DENY _____

2 **REQUEST NO. 18:** Admit that there is no evidence that DenSco requested
3 copies of trustee's deeds from Menaged after March 1, 2014.

4 **Response to Request No. 18:**

5 Plaintiff states that, after reasonable inquiry, the information he knows or can
6 readily obtain is not sufficient to enable him to admit or deny the Request. He has no
7 way of confirming whether any such requests were made orally, whether a document
8 containing the specified content was created during the specified time period, inasmuch
9 as any such document would have been in the possession of DenSco Investment
10 Corporation, Denny Chittick or Menaged, or, if one or more such documents were in
11 fact created, whether they were destroyed by DenSco, Denny Chittick or Menaged.

12 ADMIT _____

DENY _____

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14 **REQUEST NO. 19:** Admit that under the Arizona Rules of Professional
15 Conduct, Mr. Beauchamp was never obligated or required to report DenSco's or Mr.
16 Chittick's alleged tortious conduct to DenSco's investors, or to any other third party.

17 **Objections to Request No. 19:**

18 Plaintiff objects to this Request as an improper means of seeking discovery
19 relating to the opinions of Plaintiff's disclosed standard-of-care expert, Neil Wertlieb.
20 As required by Rule 26.1, Plaintiff has disclosed an initial and rebuttal written report
21 authored by Mr. Wertlieb, and in his initial report (at 56), Mr. Wertlieb opines, with
22 reference to the Arizona Rules of Professional Conduct, that "in [his] opinion the
23 standard of care applicable to [Defendants] would have obligated them to report Mr.
24 Chittick's inappropriate actions to either the proper authorities or the Noteholders or
25 both." Defendants have noticed Mr. Wertlieb's deposition for October 17, 2019 and
26 will have the opportunity then to pose this question. That deposition is the only means
27 authorized by the Rules for Defendants to question Mr. Wertlieb about his opinions.
28 *See* Rule 26(4)(A). Requests for admission are not permitted to seek discovery of

1 testifying experts. *See, e.g., Workman v. Chinchinian*, 807 F. Supp. 634, 647-648
2 (1992) (E. D. Wash. 1992).

3 ADMIT _____ DENY _____

4 **REQUEST NO. 20:** Admit that Defendants did not have sufficient information
5 to determine whether DenSco was insolvent prior to June 1, 2014.

6 ADMIT _____ DENY X _____

7 **REQUEST NO. 21:** Admit that the documents produced by the Receiver from
8 Mr. Chittick's electronic devices, DenSco's files, and from Menaged's electronic
9 devices, as collected and stored by the Receiver in the Receiver's document depository,
10 are genuine and accurate copies of those files.

11 **Objections to Request No. 21:**

12 Plaintiff objects to this Request because it is not "direct, simple and limited to [a]
13 singular relevant fact []," *Herrera v. Scully*, 143 F.R.D. 545, 549 (1992) (citation
14 omitted). Instead of asking Plaintiff to admit that specific documents which may be
15 offered at trial are genuine and accurate, the Request asks Plaintiff to admit that tens of
16 thousands of unspecified documents are genuine and accurate.

17 ADMIT _____ DENY _____

18 **REQUEST NO. 22:** Admit that in the last 20 years, your expert, Mr. Wertlieb,
19 has not provided securities advice regarding Regulation D offerings and Regulation D
20 compliance to a client raising \$50 million or less from accredited investors.

21 **Objection to Request No. 22:**

22 Plaintiff objects to this Request as an improper means of seeking discovery
23 relating to the opinions of Plaintiff's disclosed standard-of-care expert, Neil Wertlieb.
24 As required by Rule 26.1, Plaintiff has disclosed an initial and rebuttal written report
25 authored by Mr. Wertlieb. Defendants have noticed Mr. Wertlieb's deposition for
26 October 17, 2019 and will have the opportunity then to pose this question. That
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1 deposition is the only means authorized by the Rules for Defendants to question Mr.
2 Wertlieb about his opinions. *See* Rule 26(4)(A). Requests for admission are not
3 permitted to seek discovery of testifying experts. *See, e.g., Workman v. Chinchinian,*
4 807 F. Supp. 634, 647-648 (1992) (E. D. Wash. 1992).

5 ADMIT _____ DENY _____

6 **REQUEST NO. 23:** Admit that your expert, Mr. Wertlieb, has not provided
7 legal advice to a hard money lender (i.e., a lender providing short-term financing
8 secured by real estate, and funded by private investors) in the last 20 years.

9 **Objection to Request No. 23:**

10 Plaintiff objects to this Request as an improper means of seeking discovery
11 relating to the opinions of Plaintiff's disclosed standard-of-care expert, Neil Wertlieb.
12 As required by Rule 26.1, Plaintiff has disclosed an initial and rebuttal written report
13 authored by Mr. Wertlieb. Defendants have noticed Mr. Wertlieb's deposition for
14 October 17, 2019 and will have the opportunity then to pose this question. That
15 deposition is the only means authorized by the Rules for Defendants to question Mr.
16 Wertlieb about his opinions. *See* Rule 26(4)(A). Requests for admission are not
17 permitted to seek discovery of testifying experts. *See, e.g., Workman v. Chinchinian,*
18 807 F. Supp. 634, 647-648 (1992) (E. D. Wash. 1992).

19 ADMIT _____ DENY _____

20
21 **REQUEST NO. 24:** Admit that the "Second Fraud," as that term has been used
22 by the Receiver in his Receivership reports, began on or about January 22, 2014.

23 ADMIT ___X___ DENY _____

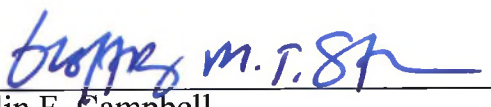
24 **REQUEST NO. 25:** Admit that Menaged, Mr. Chittick, US Bank, and Chase
25 Bank each bear some measure of fault, as described in A.R.S. § 12-2506, for the
26 damages sustained by DenSco.

27 ADMIT _____ DENY ___X___

1 DATED this 16th day of October, 2019.

2 OSBORN MALEDON P.A.

3
4 By


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7 Attorneys for Plaintiff

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9
10
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this 16th day of October, 2019, to:

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