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8 **SUPERIOR COURT OF ARIZONA**

9 **COUNTY OF MARICOPA**

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

12 Plaintiff,

13 v.

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

16 Defendants.

No. CV2017-013832

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR DETERMINATION THAT
PLAINTIFF HAS MADE A PRIMA
FACIE CASE FOR PUNITIVE
DAMAGES AND SEPARATE
STATEMENT OF FACTS**

(Assigned to the Honorable
Daniel Martin)

18 Defendants submit this response to the Statement of Facts filed by Plaintiff, as well
19 as its own Statement of Facts in support of its Response to Plaintiff's Motion for
20 Determination that Plaintiff Has Made a Prima Facie Case for Punitive Damages.

21 Plaintiff filed the Motion for Determination that Plaintiff Has Made a Prima Facie
22 Case for Punitive Damages under Rule 7, which limits motions to 17 pages "exclusive of
23 attachments and any required statement of facts." Unlike Rule 56.1, Rule 7 does not
24 provide for or require an accompanying Statement of Facts. Nor does it require Defendants
25 to specify the paragraphs in Plaintiff's statement that are disputed. The standard for ruling
26 on whether there is a prima facie case supporting a punitive damages award, which requires

1 clear and convincing evidence that Defendants aided and abetted DenSco's breach of
2 fiduciary duty and possessed an evil mind in doing so, does not rely on this Court's
3 determination of whether there are disputed facts. In addition, many of the alleged facts are
4 not relevant to this Court's determination. For these reasons, Defendants do not
5 specifically identify which paragraphs are disputed or undisputed, and do not admit that
6 any of the facts alleged are undisputed by doing so.

7 Defendants also object to following paragraphs as unsupported by admissible
8 evidence: 111, 112, 141, 234, 235, 237, 243, 245, 246, 257, 269, 271, 277, 281, 283, 295,
9 296, 301, 303, 304, 306, 318, and 325-329. These paragraphs rely on Exhibits 38, 72, 82,
10 136, and 138, which are Mr. Chittick's journals and suicide letters. For the reasons
11 outlined in Defendants' contemporaneous Motion in Limine, these documents are
12 inadmissible hearsay and are not admissible under Rule 807.

13 Finally, Defendants object to all of the paragraphs presenting argument disguised as
14 facts. For example, Plaintiff contends throughout the Statement of Facts that
15 Mr. Beauchamp knew that Mr. Chittick had breached his fiduciary duties to DenSco by
16 providing loan funds directly to borrowers. This argument is not a fact. Further, it is
17 irrelevant to Plaintiff's Motion because Mr. Beauchamp did not know of this alleged
18 breach until after Mr. Chittick had loaned those funds. And there is no evidence that Mr.
19 Beauchamp knew that Mr. Chittick continued this practice after Mr. Beauchamp learned of
20 the double-lien issue. Recognizing this, Plaintiff's Motion does not ultimately rely on the
21 empty argument that Mr. Beauchamp aided and abetted Mr. Chittick's alleged breach by
22 loaning funds directly to borrowers.

23 Defendants provide the following Statement of Facts to address the more relevant
24 facts that will be presented to the Judge and jury and provide the Court with context for its
25 decision.

1 **Defendants' Statement of Facts**

2 1. David Beauchamp has represented clients in the areas of corporate law,
3 securities, venture capital, and private equity for more than 35 years, since graduating with
4 honors from the University of Michigan Law School in 1981. PSOF¹ Ex. 4.

5 2. Mr. Beauchamp started providing securities advice to DenSco in the early
6 2000s, while he was a partner at the law firm Gammage & Burnham. Mr. Beauchamp
7 continued to provide securities advice to DenSco when he joined Bryan Cave in March
8 2008 and when he joined Clark Hill in September 2013. DSOF² Ex. 1 [7/19/18 D.
9 Beauchamp Dep. Tr. 33:1-18; 57:6-12].

10 3. DenSco Investment Corporation ("DenSco") is a company that was solely
11 owned and managed by Denny Chittick. DenSco began operations in 2001 and operated
12 continually until Mr. Chittick's suicide in late July 2016. DenSco did not have any
13 directors, officers, or employees other than Mr. Chittick. Mr. Chittick was responsible for
14 managing DenSco's business and he rarely used any outside experts, consultants, or
15 contractors. The only other third party involved in DenSco operations regularly was
16 DenSco's outside accountant David Preston. PSOF Ex. 2 at BC_002921 and BC_002960.

17 4. DenSco focused on the "hard money lending" business in Arizona. DenSco
18 made high interest short-term loans to borrowers, who used DenSco's funds to buy
19 residential properties. The purchasers generally improved the properties (with physical
20 improvements or by placing renters in them) and then "flipped" them quickly at a profit.
21 PSOF Ex. 2 at BC_002924.

22
23
24 ¹ PSOF refers to Plaintiff's Statement of Facts In Support of Motion For Determination that
25 Plaintiff has Made a Prima Facie Case For Punitive Damages for Aiding and Abetting Breach
of Fiduciary Duty

26 ² DSOF refers to Defendants' Statement of Facts In Support of Response to Plaintiff's Motion
for Determination that Plaintiff Has Made a Prima Facie Case for Punitive Damages.

1 5. DenSco financed its business by raising money from investors. DenSco
2 issued general obligation notes at interest rates that varied depending on the maturity date.
3 The notes were not directly tied to or secured by any specific properties DenSco was
4 financing, or by any other security. PSOF Ex. 2 at BC_002945.

5 6. All DenSco investors represented that they were “accredited investors” under
6 SEC Regulation D, which meant they were individuals with the assets or income deemed
7 necessary to give them experience in investment matters and leverage with issuers. Most
8 of DenSco’s investors were family, friends, or personal acquaintances of Mr. Chittick.
9 PSOF Ex. 2 at BC_002916.

10 7. DenSco required all investors to sign a Subscription Agreement and provided
11 a promissory note from DenSco setting forth the terms of the investment. *See, e.g.*, PSOF
12 Ex. 17.

13 8. Until 2012, Mr. Chittick appears to have operated DenSco responsibly, never
14 missing an interest payment or defaulting on DenSco’s notes to investors. During that
15 time, Mr. Chittick successfully guided DenSco through the Great Recession between 2007
16 and 2010. Despite the increased stress on DenSco’s business due to foreclosures and
17 repossession, DenSco still never missed an interest payment or defaulted on its notes to
18 investors, and consistently informed investors (both orally and in writing) about important
19 DenSco information. PSOF Ex. 3.

20 **I. David Beauchamp’s Limited Scope of Work for DenSco.**

21 9. Mr. Beauchamp’s work as DenSco’s counsel included, among other things,
22 drafting DenSco’s Private Offering Memoranda (“POM”) and related investor documents,
23 including subscription agreements and questionnaires; advising DenSco regarding Blue
24 Sky laws and state and federal securities reporting and filing requirements; advising
25 DenSco as to state financial and lending rules; and advising DenSco regarding the
26 applicability of mortgage broker regulations. At times, Mr. Beauchamp answered

1 DenSco's questions regarding its Reg D filings and obligations, although this is a task for
2 which Mr. Chittick took primary responsibility. On rare occasions, Mr. Beauchamp
3 responded to DenSco's requests for other discrete advice, including advice regarding the
4 potential formation of a title insurance company. DSOF Ex. 1 [7/19/18 D. Beauchamp Dep.
5 Tr. 53:8-18-54:5].

6 10. Mr. Beauchamp and his prior law firms also provided advice to DenSco
7 regarding proper loan documentation and procedures, including the following advice:

8 a. DenSco should fund loans through a trustee, title company, or other
9 fiduciary under a letter of instruction, and [*Id.* at 59:3-7].

10 b. To ensure that DenSco's loans were in first position, DenSco must
11 properly record its liens. DSOF Ex. 1 [7/19/18 D. Beauchamp Dep. Tr. 57:13-60:8]; DSOF
12 Ex. 2 [7/20/18 D. Beauchamp Dep. Tr. 252:17-253:5].

13 11. DenSco's loan documents aligned with those instructions, stating that
14 DenSco funded its loans through a trustee and that the borrower was to promptly discharge
15 any lien which has priority over DenSco's Deed of Trust. DSOF Ex. 3 [Schenck Dep. Ex.
16 57]; PSOF Ex. 68; PSOF Ex. 83 [CH_005795-5800].

17 12. Mr. Beauchamp did not serve as DenSco's general counsel and was not
18 engaged or asked to review or approve DenSco financial statements or tax returns or to
19 investigate borrowers. DSOF Ex. 2 [7/20/18 D. Beauchamp Dep. Tr. 270:3-10, 452:9-15].

20 13. Mr. Beauchamp was not provided access to DenSco's financial statements or
21 QuickBooks accounting records. DSOF Ex. 1 [7/19/18 D. Beauchamp Dep. Tr. 106:3-9].

22 14. Mr. Beauchamp did not represent DenSco investors and the POM DenSco
23 provided to investors confirmed that "legal counsel to the Company . . . will not represent
24 the interests of any investor." PSOF Ex. 2 at BC_002950.

1 **II. DenSco's Private Offering Memoranda.**

2 15. Like many issuers, DenSco made basic disclosures to its accredited investors
3 through a POM, supplemented by other written and verbal disclosures. PSOF Ex. 2, 14,
4 15.

5 16. In conjunction with other attorneys across multiple law firms (including
6 Gammage & Burnham, Bryan Cave, and Clark Hill), Mr. Beauchamp helped draft and
7 update DenSco's 2003, 2005, 2007, 2009, and 2011 POMs. The POMs had similar
8 provisions and in all cases relied upon specific information and data Mr. Chittick supplied.
9 No outside advisers were retained to provide a comprehensive due diligence review or
10 audit of the information in the POMs. *See id.*

11 17. Generally, the POMs:

- 12 a. Described DenSco's historical lending performance;
- 13 b. Described DenSco's borrowing and investment history;
- 14 c. Disclosed Mr. Chittick's authority to determine DenSco's "major
15 business decisions and policies," and to make, amend, or deviate from those policies in Mr.
16 Chittick's sole discretion;
- 17 d. Set forth DenSco's lending standards, including:
 - 18 i. DenSco's intent to "maintain a loan-to-value ratio below 70%" for
19 both individual trust deeds that secure loans to borrowers from
20 DenSco and the aggregate loan portfolio.
 - 21 ii. DenSco's intent to "achieve a diverse borrower base" with no
22 borrower comprising more than 10-15% of the portfolio, and
 - 23 iii. DenSco's intent that loans be secured by first position trust deeds;
- 24 e. Provided information regarding DenSco's lending history and loan
25 portfolio, and an assessment of certain risks, including the risk of insufficient demand, the
26 risk that DenSco's success depended on its ability to achieve and maintain growth, and the
risk that such growth could challenge the company's management and resources;

1 f. Explained that DenSco would offer Notes until the earlier of two years
2 after the POM was issued or the offering reached a maximum of \$50 million; and

3 g. Set forth the nature of the investments that investors could make.
4 Generally, DenSco sold notes with six month, one year, and two to five year terms, with
5 corresponding interest rates at 8, 10, and 12%. Investors could elect to be paid interest
6 quarterly, or to allow the interest to accrue. At the note's maturity, investors could elect to
7 rollover their investment or redeem the note. *Id.*

8 18. Mr. Chittick did not ask Mr. Beauchamp to conduct a comprehensive due
9 diligence review to confirm the statements in the POM.

10 **III. DenSco Fails to Tell Mr. Beauchamp of Double-Lien Issue in 2012.**

11 19. In September 2012, Mr. Chittick learned that a DenSco borrower, Yomtov
12 "Scott" Menaged, borrowed money from DenSco and Active Funding Group ("AFG"),
13 another hard money lender, for the purchase of the same property and secured the loans
14 from both lenders with double liens on the same property. The AFG deeds of trust
15 competed for priority with DenSco's deed of trust on the same properties. The total liens
16 on the properties exceeded the value of the properties, jeopardizing both lenders' ability to
17 obtain the full value of their loans in the event of Mr. Menaged's default. DSOF Ex. 4
18 [CH_REC_CHI_0009480]; DSOF Ex. 5 [CH_REC_CHI_0009504]; DSOF Ex. 6
19 [CH_REC_MEN_11301].

20 20. Mr. Chittick agreed to work cooperatively with AFG and Mr. Menaged to
21 pay off the AFG loans in order to resolve the competing lien issue on the multiple
22 properties securing DenSco loans. DSOF Ex. 5; DSOF Ex. 7 [Reichman Dep. Ex. 933].

23 21. In doing so, Mr. Chittick did not contest AFG's superior lien position even
24 though DenSco had recorded some of its deeds before AFG. DSOF Ex. 8
25 [CH_REC_MEN_0010506]; DSOF Ex. 7.

1 22. Mr. Chittick did not tell Mr. Beauchamp about the double-lien issue
2 identified in September of 2012.

3 23. Rather than reducing the loan balance that DenSco had with Mr. Menaged
4 after learning of the double liens in September 2012, Mr. Chittick drastically increased
5 DenSco's loans to Mr. Menaged. At the end of 2012, DenSco had approximately \$4.65
6 million outstanding loans to Mr. Menaged's entities. At the end of 2013 DenSco had
7 increased its outstanding loans to Mr. Menaged's entities to more than \$28 million, more
8 than half of DenSco's loan portfolio. DSOF Ex. 9 [4/5/19 D. Perry Expert Report, p. 8].

9 24. AFG also continued to loan substantial sums to Mr. Menaged after requiring
10 additional security from Mr. Menaged. AFG continued to secure these loans with deeds of
11 trust on the relevant properties, and Mr. Menaged continued double liening the relevant
12 properties while ensuring that AFG recorded its deeds of trust before DenSco or any other
13 lenders. DSOF Ex. 10 [CH_REC_MEN_0018442; DSOF Ex. 11 [CH_REC_MEN_0018305-
14 6].

15 **IV. Mr. Beauchamp's Efforts to Update DenSco's 2011 POM.**

16 25. In the spring of 2013, Mr. Chittick asked Mr. Beauchamp to update the
17 DenSco POM. PSOF Ex. 34. This was in keeping with Mr. Chittick's sporadic requests
18 that Mr. Beauchamp perform specific tasks related to DenSco.

19 26. As they worked to update the information provided, Mr. Beauchamp
20 reminded Mr. Chittick of DenSco's disclosure obligations and began gathering DenSco's
21 updated information. PSOF Ex. 36. Mr. Chittick told Mr. Beauchamp that he had 114
22 individual borrowers holding investor notes across approximately 80 families. He also
23 stated that he had reached or was about to cross the \$50 million threshold in funds raised.
24 PSOF Ex. 40, 56.

1 27. Mr. Beauchamp and Bryan Cave began researching whether crossing the \$50
2 million threshold would impose additional obligations on DenSco under SEC regulations.
3 PSOF Ex. 6 at 258-260; PSOF Ex. 34-35.

4 28. While this research was ongoing, Mr. Chittick emailed Mr. Beauchamp about
5 a lawsuit brought by FREO Arizona, LLC against one of the entities created and managed
6 by Mr. Menaged, Easy Investments, DenSco, and others. The lawsuit addressed Easy
7 Investment's purchase of a property at a trustee's sale with DenSco funds ("FREO
8 lawsuit"). Mr. Chittick attached a partial copy of the FREO Complaint to the email. PSOF
9 Ex. 43.

10 29. According to the FREO Complaint, FREO had purchased the same property
11 earlier, but the loan servicer, Ocwen, had failed to cancel the trustee's sale and release the
12 deed of trust after FREO had paid off the debt. As a result, Easy Investments had been able
13 to purchase the property at the trustee's sale with DenSco's funds. *Id.* at DIC0000063-65.

14 30. The FREO lawsuit did not focus on double liens. DSOF Ex. 12 [G.
15 Reichman Dep. Ex. 948 (FREO Settlement Agreement. CH_REC_MEN_0025943-48)]
16 Despite an opportune moment to inform his counsel about the extensive double liens
17 relating to DenSco loans in September 2012, Mr. Chittick did not reveal the larger double-
18 lien issue to his attorney.

19 31. Mr. Menaged agreed to have his attorney defend DenSco and pay the related
20 fees. PSOF Ex. 45. As Mr. Chittick told Mr. Menaged, "[I]'m going to keep him [Mr.
21 Beauchamp] from running up any un[nec]essary bills, just talk to your guy and ha[n]d it off
22 [t]o him." DSOF Ex. 57 [CH_REC_CHI_0060457].

23 32. Mr. Chittick did not ask Mr. Beauchamp to represent DenSco in the
24 litigation; nor did he ask Mr. Beauchamp to investigate the factual allegations in the FREO
25 Complaint. *Id.*

1 33. As his client instructed, Mr. Beauchamp did not represent DenSco in the
2 FREO lawsuit and did not conduct any further investigation. *Id.*

3 34. Later, Mr. Menaged's attorney successfully defended the FREO lawsuit, and
4 the Court ultimately granted summary judgment in favor of Easy Investments and against
5 both FREO and Ocwen (for breach of its duties). DSOF Ex. 13 [CH_REC_CHI_0059981-
6 82]; *see also* DSOF Ex. 12.

7 35. With regard to their work updating the POM, Mr. Beauchamp told Mr.
8 Chittick that DenSco should disclose the FREO lawsuit to its investors. PSOF Ex. 35 at
9 BC_003082-83.

10 36. In addition, Mr. Beauchamp reminded Mr. Chittick that DenSco should fund
11 loans directly to the trustee or escrow company conducting the sale, rather than provide
12 loan funds directly to the borrower. DSOF Ex. 1 [7/19/18 D. Beauchamp Dep. Tr. 59:3-
13 12]; DSOF Ex. 2. [7/20/19 D. Beauchamp Dep. Tr. 252-253; 305:12-19].

14 37. In July 2013, with the help of other Bryan Cave attorneys specializing in this
15 area, Mr. Beauchamp and Bryan Cave determined that the updated POM did not need to
16 address any additional obligations due to DenSco's crossing of the \$50 million threshold in
17 funds raised. At this time, Mr. Beauchamp still did not have all of the DenSco information
18 necessary to update DenSco's POM. PSOF Ex. 42.

19 38. At the end of August 2013, Mr. Beauchamp left a message for Mr. Chittick
20 regarding the "need to work on the latest version of POM . . . and to discuss timing and
21 update." PSOF Ex. 47. Mr. Beauchamp also notified Mr. Chittick that he was leaving
22 Bryan Cave. *Id.* On August 30, 2013, Mr. Beauchamp and Bryan Cave sent DenSco a
23 joint separation letter informing them that Mr. Beauchamp was joining Clark Hill effective
24 as of September 1, 2013. PSOF Ex. 48.

25 39. In response, Mr. Chittick agreed to transfer a portion of DenSco's files to
26 Clark Hill. Aside from DenSco's authorization letter, Mr. Beauchamp did not hear from

1 Mr. Chittick regarding the unfinished 2013 POM or any other matter until later that year.
2 DSOF Ex. 14 [CH_0000788].

3 **V. DenSco Fails to Tell Mr. Beauchamp of Additional Double-Lien Issues.**

4 40. In November 2013, Mr. Menaged told Mr. Chittick that entities owned by
5 him had double liened additional properties with loans from both AFG and DenSco.
6 According to Mr. Menaged, his wife had become critically ill and he had turned the day-to-
7 day operations of his companies over to his cousin. The cousin requested loans for the
8 same property from multiple lenders, and both lenders recorded deeds of trust. The cousin
9 then absconded with the funds lent to Mr. Menaged's entities. DSOF Ex. 23
10 [DIC0005570-89].

11 41. Mr. Chittick believed and trusted Mr. Menaged. DSOF Ex. 1 [7/19/18 D.
12 Beauchamp Dep. Tr. 75:3-76:9]; DSOF Ex. 2 [7/20/18 D. Beauchamp Dep. Tr. 366:5-13].

13 42. Regarding the same issue, Mr. Reichman of AFG testified that Mr. Menaged
14 told him that a former Jamaican employee was responsible for the double liens and had
15 absconded with the money. Based on his past relationship with Mr. Menaged and
16 experience in the hard money lending industry, Mr. Reichman also believed Mr. Menaged.
17 DSOF Ex. 15 [G. Reichman Dep. Tr. 141:18-142:13).

18 43. Mr. Chittick did not tell Mr. Beauchamp about this fraud in November 2013.

19 44. Without any attorney advice, Mr. Menaged and Mr. Chittick reached an
20 agreement regarding a "workout plan" to resolve the double liens in November 2013. Mr.
21 Chittick and Mr. Menaged agreed to partner together to "wholesale" properties and jointly
22 address the double liens by paying off all loans subject to double liens. DSOF Ex. 56
23 [DIC0007135-38].

24 45. To obtain the additional funds necessary to pay off these loans, DenSco
25 agreed to loan Mr. Menaged an additional \$1 million, and Mr. Menaged agreed to
26 contribute \$4-\$5 million from the liquidation of other assets. *Id.*

1 46. Mr. Chittick did not tell Mr. Beauchamp of the workout plan in November
2 2013. *Id.*

3 47. By late November 2013, DenSco had already begun implementing the
4 workout plan with Mr. Menaged, lending funds to Mr. Menaged on the \$1 million line of
5 credit. PSOF Ex. 105; DSOF Ex. 16 [RECEIVER_001337].

6 **VI. DenSco Misrepresents the Double-Lien Issue to Mr. Beauchamp.**

7 48. On December 18, 2013, Mr. Chittick followed up with Mr. Beauchamp about
8 updating the POM. Mr. Chittick and Mr. Beauchamp also had a brief phone call. PSOF
9 Ex. 20 at CH_0002310; PSOF Ex. 76.

10 49. Over the phone, Mr. Chittick told Mr. Beauchamp for the first time that
11 properties securing a few DenSco loans to Mr. Menaged were each subject to a second
12 deed of trust competing for priority with DenSco's deed of trust. Mr. Chittick explained
13 that he had worked out a plan with Mr. Menaged to resolve the double-lien issue. DSOF
14 Ex. 2 [7/20/18 D. Beauchamp Dep. Tr. 300-305].

15 50. Mr. Chittick did not give Mr. Beauchamp any details about the scope of the
16 double-lien issue. He also stated he wanted to avoid litigation with Mr. Menaged. Mr.
17 Beauchamp advised Mr. Chittick that he needed to document the agreement with Mr.
18 Menaged. *Id.*

19 51. As Mr. Beauchamp explained in an email to his colleagues, Mr. Chittick
20 "without any additional documentation or any legal advice . . . has been reworking his
21 loans and deferring interest payments to assist Borrower. . . . When we became aware of
22 this issue, we advised our client that he needs to have a Forbearance Agreement in place to
23 evidence the forbearance and the additional protections he needs." PSOF Ex. 105 at
24 CH_0005790-94.

25 52. Mr. Beauchamp and Mr. Chittick also discussed the update to DenSco's
26 POM. DSOF Ex. 2 [7/20/18 D. Beauchamp Dep. Tr. pp. 300-305].

1 53. On January 6, 2014, Bob Miller, an attorney with Bryan Cave sent Mr. Chittick
2 a letter on behalf of various lenders (the “Bryan Cave Demand Letter”). The letter asserted
3 that the lenders had advanced purchase money loans directly to trustees to buy more than 50
4 properties out of foreclosure, and had recorded deeds of trust to evidence their first position
5 security interest. DenSco, however, had likewise recorded mortgages evidencing its
6 purchase money loans for the same properties. PSOF Ex. 86.

7 54. The Bryan Cave Demand Letter (1) asserted that DenSco’s claimed interest
8 was a “practical and legal impossibility since . . . only the Lenders provided the applicable
9 trustee with certified funds supporting the Borrowers purchase money acquisition for each of
10 the Properties,” (2) demanded that DenSco subordinate its alleged interests to their interests,
11 and (3) threatened to bring claims for fraud, negligent misrepresentation, and wrongful
12 recordation. *Id.* at CH_0000830.

13 55. On January 6, 2014, Mr. Chittick sent the Bryan Cave letter to Mr. Beauchamp
14 with a request for Mr. Beauchamp to “read the first two pages.” *Id.*

15 56. The next day, Mr. Chittick emailed Mr. Beauchamp and explained that an
16 issue with Mr. Menaged’s cousin and sick wife had led to the double liens, repeating the
17 story told by Mr. Menaged. PSOF Ex. 105 [CH_0005790-94].

18 57. Again, Mr. Chittick vouched for Mr. Menaged, representing, “I’ve been
19 lending to Scott Menaged through few different LLC’s and his name since 2007. [I]’ve lent
20 him 50 million dollars and [I]’ve never had a problem with payment or issue that hasn’t been
21 resolved.” *Id.* at CH_0005790.

22 58. Mr. Chittick disclosure of information to Mr. Beauchamp was incomplete.

23 59. First, Mr. Chittick failed to tell Mr. Beauchamp that Mr. Menaged had been
24 double liening properties secured by DenSco’s funds since September 2012. DSOF Ex. 2
25 [7/20/18 D. Beauchamp Dep. Tr. 300-305].
26

1 60. Second, Mr. Chittick failed to tell Mr. Beauchamp that DenSco had lent
2 Menaged \$31 million in 2013 alone, and had \$28.5 million in outstanding loans to Menaged
3 as of the end of 2013, a large portion of which were more than six months past due. A
4 significant number of these past due loans were made in 2012. PSOF Ex. 84 at p. 19.

5 61. Mr. Beauchamp told Mr. Chittick that DenSco could not accept new money, or
6 roll over existing investments, without first informing the investors about the issues relating
7 to Mr. Menaged. DSOF Ex. 1 [7/19/18 D. Beauchamp Dep. Tr. 81:1-8, 158:24-159:3] DSOF
8 Ex. 2 [7/20/18 D. Beauchamp Dep. Tr. 347:24-25].

9 62. Mr. Chittick assured Mr. Beauchamp that he would make these disclosures or
10 rely on personal funds in the future. DSOF Ex. 1 [7/19/18 D. Beauchamp Dep. Tr. 80-81];
11 *see also* PSOF Ex. 128 (referencing discussion regarding DenSco's disclosure obligations
12 and that it "will not take long" for Mr. Chittick to identify scope of issue and talk to his
13 existing investors).

14 **VII. DenSco "Workout Plan" Term Sheet.**

15 63. Mr. Beauchamp began helping DenSco document the terms of DenSco and
16 Mr. Menaged's agreement in a term sheet that was later expanded upon and formalized in a
17 Forbearance Agreement. PSOF Ex. 100-102.

18 64. The term sheet documented the workout plan already agreed to and
19 implemented by DenSco and Mr. Menaged. The key points of the agreement included:

20 a. Mr. Menaged agreeing to pay off any shortfall on the loans as the
21 double-encumbered properties were sold or refinanced by borrowing \$1 million from a
22 third party and liquidating assets worth \$4-5 million;

23 b. Mr. Menaged agreeing to obtain a \$10 million life insurance policy
24 naming DenSco as the beneficiary;

25 c. Mr. Menaged admitting that the DenSco loans were secured by deeds
26 of trust that were intended to be in a first lien position; and

1 d. DenSco agreeing to loan up to \$1 million to Mr. Menaged for
2 purposes of purchasing and flipping or renting additional properties, with all profits used to
3 pay off the loans on the double-encumbered properties. PSOF Ex. 105; PSOF Ex. 100.

4 65. On January 16, 2014 Mr. Beauchamp cautioned Mr. Chittick regarding
5 revisions to a provision in which Mr. Menaged acknowledged that DenSco's deed of trusts
6 should have been in first position. Clark Hill that "we don't recommend that you accept
7 these changes [by Mr. Menaged] because it still leaves open the question of whether Scott
8 intended for DenSco to be in first position," but DenSco moved forward with the term
9 sheet without Mr. Menaged's admission that the loan documents required a first position
10 lien. PSOF Ex. 101.

11 **VIII. DenSco Forbearance Agreement.**

12 66. After finalizing the term sheet, Mr. Beauchamp began working on the parties'
13 Forbearance Agreement and believed it could be completed in a few weeks. DSOF Ex. 18
14 [D. Schenck Dep. Ex. 58].

15 67. The Forbearance Agreement addressed the following points:

16 a. Mr. Menaged identified the facts that led to the double lien issue and the
17 scope of the issue.

18 b. Mr. Menaged acknowledged his obligation to discharge the liens of the
19 other lenders.

20 c. Mr. Menaged and his entities agreed to pay off the double-encumbered
21 loans by liquidating additional assets, renting or selling real estate, recovering stolen funds,
22 and obtaining \$4.2 million in outside financing.

23 d. Mr. Menaged agreed to provide additional security and guarantees,
24 including a \$10 million life insurance policy naming DenSco as beneficiary; and

25 e. DenSco agreed to extend additional financing to Mr. Menaged (and
26 defer the collection of interest on defaulted loans) for purposes of purchasing and flipping or

1 renting additional properties, with all profits used to pay off the loans on the double-
2 encumbered properties. PSOF Ex. 113.

3 68. Mr. Beauchamp had previously drafted and negotiated close to 200
4 forbearance agreements. In drafting DenSco's Forbearance Agreement, Mr. Beauchamp
5 provided advice on a number of key issues, including (1) advice regarding Mr. Menaged's
6 trustworthiness; (2) advice regarding DenSco's fiduciary duties and disclosure obligations
7 to investors; and (3) advice regarding the risk of loaning funds to Mr. Menaged without an
8 executed Forbearance Agreement and the need to move forward with finalizing the
9 Forbearance Agreement and updating DenSco's POM. *See, e.g.*, DSOF Ex. 1 [7/19/18 D.
10 Beauchamp Dep. Tr. 54:12-23; 57:17-60:8; 78:8-79:18]; DSOF Ex. 2 [7/20/18 D.
11 Beauchamp Dep. Tr. 410:11-23]; PSOF Ex. 106.

12 69. In late January 2014, Mr. Beauchamp reached out to third parties regarding
13 Mr. Menaged. He had heard from others in the business and legal community that Mr.
14 Menaged was not to be trusted, and expressed his concerns to Mr. Chittick. Mr. Chittick
15 ignored this advice and asserted (falsely) that Mr. Menaged had a history of performing on
16 DenSco's loans and that he had stood by Mr. Chittick in tough times. DSOF Ex. 1 [7/19/18
17 D. Beauchamp Dep. Tr. 75:3-76:9]

18 **IX. Mr. Beauchamp Reminds Mr. Chittick of DenSco's Fiduciary Duty and Disclosure**
19 **Obligations.**

20 70. On January 21, 2014, Mr. Beauchamp advised Mr. Chittick that "I am just very
21 concerned about the payoffs getting so far ahead of the documentation. . . . Under normal
22 circumstances, [the Forbearance Agreement] should be finalized and signed before you
23 advance all of this additional money." DSOF Ex. 19 [CH_0001420 -22]. His notes also
24 reference a discussion with Mr. Chittick regarding DenSco's disclosure obligations,
25 including addressing the double-lien issue with DenSco investors at its upcoming annual
26 meeting. He also identified the information that would be included in a "notice to the

1 investors,” including the concentration of loans to Mr. Menaged, the discovery of the double-
2 lien issue, and the planned resolution. PSOF Ex. 132.

3 71. On January 27, 2014, Mr. Beauchamp’s notes again address a discussion with
4 Mr. Chittick regarding DenSco’s disclosure, stating, “how to write this up for investors.”
5 PSOF Ex. 115.

6 72. On January 31, 2014, Mr. Beauchamp repeated, “[u]ntil you have the
7 Forbearance Agreement and the other documents in place, you are not protected with
8 respect to Scott [Menaged]. . . .” DSOF Ex. 20 [CH_0001600-2].

9 73. On February 4, 2014, Mr. Beauchamp advised Mr. Chittick that “you cannot
10 obligate DenSco to further help Scott [Menaged], because that would breach your fiduciary
11 duty to your investors.” PSOF Ex. 108. Mr. Beauchamp also admonished Mr. Chittick
12 that he should not agree to edits to the Forbearance Agreement suggested by Mr. Menaged,
13 noting that the changes did not comply with the “industry standard.” Mr. Beauchamp also
14 reminded Mr. Chittick of DenSco’s disclosure obligations, referencing the description of
15 the Forbearance Agreement that “you HAVE to provide to your investors.” PSOF Ex. 131.

16 74. A few days later, on February 7, 2014, Mr. Beauchamp told Mr. Menaged’s
17 attorney, Jeff Goulder, that the Forbearance Agreement “needs to comply with Denny’s
18 fiduciary obligations to his investors.” PSOF Ex. 106.

19 75. On February 11, 2014, Mr. Beauchamp’s notes document his advice
20 regarding DenSco’s disclosure obligations, including a discussion regarding the issue of
21 “Material Disclosure” with Mr. Chittick. PSOF Ex. 110, 111.

22 76. Based on these discussions with Mr. Beauchamp, Mr. Chittick understood
23 that he could not accept funds from investors without disclosing the issues relating to the
24 double-liens and the workout plan agreement. That same day, Mr. Chittick told Mr.
25 Menaged, “I’ve not taken any new investors, so if I do, I have to disclose a lot to them,
26 which is all about you.” DSOF Ex. 22 [CH_REC_MEN_0026867]; *see also* DSOF Ex. 21

1 [CH_REC_MEN_0026879-80 (email from Mr. Chittick to Mr. Menaged stating, “I have to
2 now disclose to my investors what we are doing.”)].

3 77. Mr. Beauchamp’s notes continue to record his discussion with Mr. Chittick
4 regarding DenSco’s disclosure obligations, referencing a “notice to investors” that would
5 accompany the updated POM and explain the scope of the double-lien issue and the
6 solution. PSOF Ex. 132

7 78. On February 14, 2014, Mr. Beauchamp again reminded Mr. Chittick of the
8 applicable fiduciary duties, stating, “[Mr. Menaged’s attorney] clearly thinks he can force
9 you to agree to accept a watered down agreement and give up substantial rights that you
10 should not have to give up. Unfortunately, it is not your money. It is your investors’
11 money. So you have a fiduciary duty. . . . [Your] job is to protect the money that your
12 investors have loaned to DenSco.” PSOF Ex. 111.

13 79. In doing so, Mr. Beauchamp advised against Mr. Menaged’s attempt to
14 obtain releases for Mr. Menaged with regard to his defaults. *Id.*

15 80. On February 25, 2014, Mr. Beauchamp advised Mr. Chittick that Mr.
16 Menaged and his lawyer’s “demands and changes have pretty much killed your ability to
17 sign the Forbearance Agreement, which I believe Jeff wanted to do from the beginning”
18 and that Mr. Menaged was asking for concessions that are never included in forbearance
19 agreements. PSOF Ex. 94.

20 81. During this time, Mr. Chittick assured Mr. Beauchamp that he was making
21 the necessary disclosures to investors providing new or rollover funds on an as-needed
22 basis, and that he had informed a select group of investors about the double lien issue and
23 the workout plan. DSOE Ex. 1 [7/19/18 D. Beauchamp Dep. Tr. 79:19-82:13, 188:17-22].

24 82. Mr. Chittick explained to Mr. Beauchamp that the funds for the \$1 million
25 loan and the additional \$5 million loan would come from (a) Mr. Chittick’s investment of
26 additional funds out of his retirement account, (b) Mr. Chittick’s personal \$1.5 million line

1 of credit, and (c) DenSco's working capital raised as loans to other borrowers paid off.
2 PSOF Ex. 83 at CH_0005792-93.

3 83. Mr. Chittick did not tell Mr. Beauchamp that he was moving forward with
4 raising funds from investors without disclosing the double-lien issues relating to Mr.
5 Menaged. DSOF Ex. 1 [7/19/18 D. Beauchamp Dep. Tr. 79:19-81:8].

6 84. On March 10, 2014, Mr. Beauchamp advised Mr. Chittick against Mr.
7 Menaged's revisions to the Forbearance Agreement restricting the type of information that
8 could be disclosed to investors, and ultimately preserved DenSco's right to disclose
9 Regulation D information to investors. PSOF Ex. 118; PSOF Ex. 120. The next day, Mr.
10 Beauchamp's notes again reflect a focus on DenSco's disclosure obligations, noting
11 "materiality requires disclosure of the risks." PSOF Ex. 119.

12 85. On March 13, 2014, Mr. Beauchamp advised Mr. Chittick that "we cannot
13 give Scott and his attorney any time to cause further delay in getting this Forbearance
14 Agreement finished and the necessary disclosure prepared and circulated." PSOF Ex. 120.
15 A few days later, Mr. Beauchamp reminded Mr. Chittick, I am concerned about the
16 disclosure to your investors." PSOF Ex. 123.

17 **1. Mr. Chittick Valued the Relationship with Mr. Menaged Over the**
18 **Relationship with Mr. Beauchamp.**

19 86. Throughout this process, Mr. Chittick prioritized his relationship with Mr.
20 Menaged and was dismissive of Mr. Beauchamp's advice. He also routinely discussed with
21 Mr. Menaged privileged advice provided by Mr. Beauchamp. DSOF Ex. 1 [7/19/18 D.
22 Beauchamp Dep. Tr. 74:4-10].

23 87. For example, Mr. Chittick wrote to Mr. Menaged regarding the efforts to
24 draft a Forbearance Agreement, and asked if Mr. Menaged had "put a call in to [his
25 attorney] to get him on the phone with [Mr. Beauchamp] and pound through" what Mr.
26

1 Chittick dismissively referred to as “their language arts assignment.” DSOF Ex. 24
2 [CH_REC_MEN_0027814].

3 88. Mr. Chittick later wrote that he had directed Mr. Beauchamp to “make some
4 concenssions [sic] that you and I agreed to. . . .” DSOF Ex. 25
5 [CH_REC_MEN_0027482].

6 89. Regarding revisions to the draft Forbearance Agreement, Mr. Chittick stated
7 “after any changes we agree to and make, david will amek [sic] them them [sic]. I tell
8 david to send it to jeff, you tell jeff, the terms are agreeable between us, and they can only
9 fix the spelling!” DSOF Ex. 26 [CH_REC_MEN_0027218].

10 90. Mr. Chittick again emailed Mr. Menaged regarding his frustration with Mr.
11 Beauchamp for wanting to know what Mr. Menaged’s “points of contention” were with
12 respect to the draft Forbearance Agreement. Mr. Chittick complained that “attorneys’ sole
13 purpose is to self perserverance [sic].” DSOF Ex. 27 [CH_REC_MEN_0026580].

14 91. Mr. Chittick and Mr. Menaged also complained amongst themselves that
15 “these lawyers are trying to prevent progress” and increase their fees. Mr. Chittick asserted
16 that in the interim, “we solved another. What [sic] 20% of the problem.” DSOF Ex. 28
17 [CH_REC_MEN_0026600].

18 92. The real reason behind the delay was Mr. Chittick and Mr. Menaged
19 themselves. For example, the number of DenSco loans that Mr. Chittick told Mr.
20 Beauchamp were subject to double liens grew each month between December 2013 to
21 February 2014, and Mr. Chittick failed to provide documentation supporting those
22 numbers. DSOF Ex. 29 [DIC0006633-37] DSOF Ex. 30 [DIC0006600-04]; DSOF Ex. 31
23 [DIC0006627].

24 93. As a result, Mr. Beauchamp had to continually address and incorporate
25 significant changes to the Forbearance Agreement. Despite these changes, Mr. Chittick
26 maintained that he had run the calculations and projections and was confident that the plan

1 with Mr. Menaged would work with the additional funding promised from Mr. Menaged.
2 *Id.*; DSOF Ex. 32 [DIC0006673].

3 94. Mr. Chittick and Mr. Menaged also struck a number of protections proposed
4 by Mr. Beauchamp from the Forbearance Agreement, including additional admissions of
5 fault and fraud by Mr. Menaged to protect DenSco in the event of a bankruptcy filing by
6 Mr. Menaged or his entities.

7 95. On April 3, 2014, Mr. Menaged told Mr. Chittick,
8 I have signed the Notes and Agreement even though it is not anymore a true
9 understanding of what we are doing . . . but I signed it so at least you have it for
and not to have Dave [c]hange it again and again with every move we make.

10 Mr. Chittick did not object. DSOF Ex. 33 [CH_REC_CHI_0068720].

11 **I. Mr. Beauchamp's Termination of Its Securities Work for DenSco.**

12 96. In April and May 2014, Mr. Beauchamp and a Clark Hill associate at the
13 time, Daniel Schenck, returned to updating DenSco's POM to reflect the final Forbearance
14 Agreement. DSOF Ex. 34 [DIC0008802].

15 97. In May 2014, Mr. Beauchamp dropped off a physical copy of the draft
16 updated POM at Mr. Chittick's office. DSOF Ex. 1 [7/19/18 D. Beauchamp Dep. Tr.
17 194:13-195:7].

18 98. The draft updated POM included the following disclosures:

- 19 a. A description of the forbearance agreement (including the parties'
20 funding obligations), the reason it was necessary, and its effect on DenSco's finances;
- 21 b. Updated goals for DenSco's intended loan-to-value ratios;
- 22 c. Updated descriptions regarding DenSco's loan funding procedures and
23 system to secure its loans;
- 24 d. Updated information regarding the number of loan defaults triggering
25 foreclosures; and

1 e. Updated descriptions regarding DenSco's borrower base. PSOF Ex.
2 19.

3 99. Mr. Chittick refused to provide the remaining information necessary to
4 finalize the updated POM. Mr. Beauchamp asked Mr. Chittick if he had concerns with the
5 disclosure. Mr. Chittick stated that he did not, but that he was not ready to make these
6 disclosures to his investors. DSOF Ex. 1 [7/19/18 D. Beauchamp Dep. Tr. 163:23-164:14];
7 PSOF Ex. 164 (noting "Denny stopped our efforts to do an updated offering
8 memorandum"); PSOF Ex. 167 (noting that "Denny Chittick refused to send the amended
9 Private Offering Memorandum to his investors").

10 100. This was the first time that Mr. Chittick informed Mr. Beauchamp that he did
11 not intend to provide the updated POM. In response, Mr. Beauchamp stated to Mr. Chittick
12 that he could not continue to represent DenSco on securities matters. DSOF Ex. 1
13 [7/19/2018 D. Beauchamp Dep. Tr. 194:15-195:10], DSOF Ex. 18 [D. Schenck Dep. Tr.
14 111:5-113:25], DSOF Ex. 36 [S. Heuer Dep. Tr. 138:5-25]. As Mr. Schenck testifies, Mr.
15 Beauchamp told him that Clark Hill was terminating its work for DenSco after "Denny said
16 he was not going to follow our advice regarding the POM." DSOF Ex. 18 [D. Schenck
17 Dep. Tr. 111:5-113:25].

18 101. Mr. Beauchamp also told Mr. Chittick that he would need to retain new
19 securities counsel to provide assistance regarding the proper disclosure to DenSco's
20 investors and protect DenSco's rights under the forbearance agreement. Mr. Beauchamp
21 understood that Mr. Chittick was speaking to a new lawyer to take over the work. DSOF
22 Ex. 1 [7/19/18 D. Beauchamp Dep. Tr. 205:10-206:10]; DSOF Ex. 18 [D. Schenck Dep.
23 Tr. 113:12-25].

24 102. Mr. Beauchamp and Clark Hill stopped providing securities advice to
25 DenSco in May 2014, though Mr. Schenck made some minor corrections to the
26

1 Forbearance Agreement to document the actual number of loans and amount of money at
2 issue. DSOF Ex. 37 [DIC0007165-68]; DSOF Ex. 38 [CH_REC_CHI_0012644]

3 103. Other than making these corrections, Mr. Beauchamp and Clark Hill did not
4 perform any work for DenSco in 2015 or early 2016.

5 **II. Mr. Menaged's Fraud on DenSco Escalates.**

6 104. Without Mr. Beauchamp's knowledge, DenSco continued to loan funds
7 directly to Menaged through 2016. DSOF Ex. 9 [4/5/19 D. Perry Expert Report, p. 4-5].

8 105. In 2016, Mr. Chittick asked Mr. Beauchamp to help with a limited issue
9 involving an audit by the Arizona Department of Financial Institutions ("ADFI"). Mr.
10 Beauchamp had addressed whether DenSco was a mortgage broker subject to ADFI
11 licensing requirements in the past, and Mr. Chittick characteristically believed that Mr.
12 Beauchamp could do the work most cost-effectively. Mr. Beauchamp agreed to perform
13 this discrete work. DSOF Ex. 1 [7/19/18 D. Beauchamp Dep. Tr. pp. 228-29].

14 106. Mr. Beauchamp again determined that DenSco was not subject to ADFI
15 licensing requirements. *Id.* at pp. 230-32.

16 107. The ADFI did not (and has never) contested that conclusion.

17 108. Other than this discrete task, Mr. Beauchamp and Clark Hill did not perform
18 any work for DenSco or have any information regarding DenSco's operations in 2015 or
19 2016.

20 **III. Mr. Chittick's Suicide.**

21 109. On July 28, 2016, Mr. Chittick killed himself. PSOF Ex. 143 at 1.

22 110. On July 30, 2016, Shawna Heuer, Mr. Chittick's sister, told Mr. Beauchamp
23 that Mr. Chittick had killed himself. PSOF Ex. 31, 144 [DIC0010941]. Mr. Beauchamp
24 was driving down State Route 51 and had to pull over to the side of the road to collect
25 himself after learning of the death of his friend. DSOF Ex. 1 [7/19/18 D. Beauchamp Dep.
26 Tr. 112:8-10]; DSOF Ex. 39 [CH_0018101].

1 111. Other than the limited ADFI work and a short lunch in March 2015, Mr.
2 Beauchamp had not spoken to Mr. Chittick in the past two years. DSOF Ex. 2 [7/20/18 D.
3 Beauchamp Dep. Tr. 442:11-13]; DSOF Ex. 36 [8/22/18 S. Heuer Dep. Tr. 29:6-17].

4 112. At Ms. Heuer's request, Clark Hill's Michelle Tran undertook a very limited
5 representation solely to open an estate for Mr. Chittick as quickly as possible and arrange
6 for the appointment of Ms. Heuer as the personal representative of Mr. Chittick's estate.
7 DSOF Ex. 1 [7/19/18 D. Beauchamp Dep. Tr. 443].

8 113. At Ms. Heuer's request, Mr. Beauchamp also briefly stepped in to gather
9 information, maintain the status quo, and provide documents and information to the ACC and
10 DenSco investors until someone else could be appointed. DSOF Ex. 2 [7/20/18 D.
11 Beauchamp Dep. Tr. 443-445].

12 114. DenSco had no employees, officers, or directors other than Mr. Chittick, and
13 Ms. Heuer had no knowledge of DenSco's operations, records, or hard money lending.
14 DSOF Ex. 40 [DIC0009655]; DSOF Ex. 36 [8/22/18 S. Heuer Dep. Tr. 23:20-21].

15 115. DenSco had a letter agreement with another hard money lender, Robert
16 Koehler, to step in and wind down DenSco's affairs in the event Mr. Chittick was incapable
17 of doing so. While Mr. Koehler performed some limited initial work, he then backed out.
18 DSOF Ex. 36 [8/22/18 S. Heuer Dep. Tr. 17-18]; DSOF Ex. 41 [CH_0014585-
19 CH_0014588].

20 116. On August 3, 2016, Mr. Beauchamp communicated with the Arizona
21 Corporation Commission ("ACC") regarding DenSco. DSOF Ex. 42 [CH_0009715]. The
22 ACC quickly became involved in DenSco's wind-down, thanking Mr. Beauchamp "for
23 contacting the Securities Division" and confirming the agreement that "no assets should be
24 dissipated until a receiver and/or forensic accountant has reviewed the books" DSOF
25 Ex. 42 [ACC005458].
26

1 117. On August 3, 2016, after receiving input from Ms. Heuer and Mr. Koehler,
2 Mr. Beauchamp sent an email to the investors telling them of Mr. Chittick's death and
3 providing information he could confirm regarding DenSco's finances. PSOF Ex. 151
4 [DIC0011830]; DSOF Ex. 36 [8/22/18 S. Heuer Dep. Tr. 26]; DSOF Ex. 43
5 [DIC0011901].

6 118. Mr. Beauchamp also stated,
7 [I]f we determine that DenSco's recoverable proceed[s] are likely to be
8 significantly or materially insufficient to return investors' capital to the investors,
9 then Shawna is unlikely to assume the control of DenSco and we will work with
10 the various state authorities to have a Receiver named for DenSco, and such
11 Receiver will be responsible to come up with an acceptable plan to collect the
12 proceeds owed to DenSco and to return as much of the Investor's money as
13 possible.
14 PSOF Ex. 151 [DIC0011831].

15 119. On August 4, 2016, the court appointed Ms. Heuer as the personal
16 representative of Mr. Chittick's estate. PSOF Ex. 150 [CH_0010225-226].

17 120. On August 5, 2016, Mr. Beauchamp emailed DenSco investors with a
18 summary of the status of DenSco's loans. DSOF Ex. 44 [DIC0009934].

19 121. On August 10, 2016, Gammage & Burnham took over representing Ms.
20 Heuer in her capacity as personal representative of the Estate of Denny Chittick. DSOF Ex.
21 45 [DIC0009582].

22 122. Ms. Heuer testified that Mr. Beauchamp's actions taken after Mr. Chittick's
23 death were helpful. She stated explicitly in the confusion following Mr. Chittick's death,
24 Mr. Beauchamp "helped me with trying to figure out how to communicate with the
25 investors, and just offered me some guidance on how to put one foot in front of the other."
26 DSOF Ex. 36 [8/22/18 S. Heuer Dep. Tr., 66:5-7]. She also testified that she thought that
Mr. Beauchamp was helpful and that he simply "wanted to help." *Id. at 66:13.*

123. DenSco investors also appreciated Mr. Beauchamp's help after Mr. Chittick's
death. For example, on August 4, 2016, investor Glen Davis wrote to Mr. Beauchamp and

1 thanked him for his initial summary email – twice. DSOF Ex. 46 [CH_0010313].
2 Similarly, as Mr. Beauchamp continued to keep DenSco investors apprised of updates in
3 the case, Craig Hood wrote to Mr. Beauchamp “thanks for the meeting update from
4 yesterday!” DSOF Ex. 40 [DIC0009657]. Another investor, Stan Schlosz, even asked Mr.
5 Beauchamp to “tak[e] the lead” on helping the investors recover as much money as
6 possible. DSOF Ex. 47 [CH_0008587]. And investor Jean Locke specifically requested
7 that Mr. Beauchamp continue to “please help keep us informed.” DSOF Ex. 48
8 [DIC0011339].

9 124. DenSco investors also questioned the costs associated with the appointment
10 of a receiver. DSOF Ex. 55 [3/22/19 A. Burdett Dep. Tr. 109:21-110:24 (“Historically I
11 think about 10 or 12 cents on the dollar is what you get when you go through the
12 receivership route.”)].

13 125. With regard to Mr. Chittick’s personal information, such as personal tax
14 returns, Mr. Beauchamp directed the ACC to counsel for Mr. Chittick’s estate because he
15 had “not previously represented Denny Chittick.” PSOF Ex. 173 [CH_0009195-96].

16 126. Mr. Beauchamp relied on Gammage & Burnham, as counsel for the Chittick
17 Estate, to produce Mr. Chittick’s personal information and assert claims of privilege and
18 confidentiality on behalf of Mr. Chittick. DSOF Ex. 1 [*See* 7/19/18 D. Beauchamp Dep.
19 Tr. 156:7-157:2].

20 127. In connection with the Chittick Estate’s assertion of privilege, Mr.
21 Beauchamp signed a declaration prepared by Gammage & Burnham stating, “During my
22 involvement with Mr. Chittick and DenSco, I understood that Mr. Chittick considered that I
23 was his counsel as well as counsel for DenSco” PSOF Ex. 165 [DIC0010610].

24 128. Mr. Beauchamp also stated that he represented DenSco and “Mr. Chittick as
25 the President of DenSco.” *Id.*, DSOF Ex. 1 [7/19/18 D. Beauchamp Dep. Tr. 106:13-16].
26

1 129. The only relevant decision made by the judge regarding this point was that
2 “the receiver may not waive the attorney/client privilege as to Chittick's communications
3 with Beauchamp without the Estate's consent. The receiver must obtain court approval
4 before waiving the privilege as to DenSco if the Estate does not consent to the waiver.”
5 DSOF Ex. 49 [D. Beauchamp Dep., Ex. 428 at 20:19-23].

6 130. Mr. Beauchamp later clarified that he did not represent Mr. Chittick “outside
7 of his role as President [of] DenSco.” DSOF Ex. 1 [7/19/18 D. Beauchamp Dep. Tr.
8 106:10-16; 142:20-143:6].

9 131. On August 12, 2016, Mr. Beauchamp emailed DenSco investors explaining
10 his work on behalf of DenSco, which included responding to the Arizona Corporation
11 Commission’s subpoena, obtaining and reviewing DenSco’s records, and preserving
12 DenSco’s rights with respect to the Menaged bankruptcy. DSOF Ex. 40 [DIC0009655-57].

13 132. Mr. Beauchamp also recommended hiring a forensic accountant to trace
14 DenSco’s funds and supported a police investigation of Mr. Menaged. PSOF Ex. 157
15 [DIC0010075].

16 133. On August 18, 2016, the court appointed the Receiver over DenSco, at the
17 ACC’s request. DSOF Ex. 50 [CH_0010437-444].

18 **IV. Mr. Menaged’s Arrest.**

19 134. In May 2017, the United States Department of Justice arrested Mr. Menaged
20 and charged him with defrauding various banks. Mr. Menaged later admitted that he had
21 used fabricated receipts of purchases at his furniture store to obtain credit from banks under
22 the personal identification information of individuals who had recently died. He then
23 fraudulently charged millions of dollars on those fake accounts. PSOF Ex. 185 at 7-8;
24 DSOF Ex. 51 [RECEIVER_001479]; DSOF Ex. 52 [RECEIVER_001484-97].

25 135. Mr. Menaged acknowledged in his plea agreement that he perpetrated the
26 bank fraud in order to get cash to continue defrauding DenSco. *Id.*

136. The Department of Justice then charged Mr. Menaged with money laundering in defrauding DenSco. DSOF Ex. 53 [RECEIVER_001480-83].

137. In his plea agreement, Menaged admitted that from January 2014 through June 2016, he embezzled millions of dollars from DenSco without purchasing any properties with the DenSco loans. According to Mr. Menaged, DenSco wired money to purchase properties directly to Mr. Menaged. Mr. Menaged responded with “an image of a bank cashier’s check and a copy of a Trustee Certificate of Sale Receipt” documenting the property purchase. But Mr. Menaged did not purchase any properties with the DenSco funds. Instead, he redeposited the cashier’s check into his account and created fake receipts for the property purchase. DSOF Ex. 52 [RECEIVER 001484-97].

138. Mr. Beauchamp did not have any knowledge regarding this “second fraud” by Mr. Menaged.

139. Menaged is now serving a 17 year sentence in federal prison for defrauding DenSco and other lenders. Plaintiff obtained a \$31 million judgment against Mr. Menaged, his wife, and their marital community. DSOF Ex. 54 [RFP Response000904].

DATED this 13th day of May, 2019.

COPPERSMITH BROCKELMAN PLC

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