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

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

13 Plaintiff,

14 v.

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

17 Defendants.

No. CV2017-013832

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

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

22 This case is in process and thus the content of this disclosure statement is preliminary
23 and subject to supplementation, amendment, explanation, change and amplification. Because
24 discovery is continuing, there may be information, documents, and materials related to the
25 various allegations and defenses set forth in the pleadings of which Defendants are presently
26 unaware. Defendants note that they do not currently have access to all potentially relevant

1 documents of the Plaintiff, or third parties, and that this disclosure statement is based upon
2 information currently available to Defendants. Nothing in this disclosure statement is
3 intended to be an admission of fact, an affirmation of the existence of any document, or an
4 agreement with or an acceptance of any legal theory or allegation. The information set forth
5 below is provided without waiving (1) the right to object to the use of such information for
6 any purpose in this or any other action due to applicable privilege (including the work-product
7 and attorney-client privileges), materiality, or any other appropriate grounds; (2) the right to
8 object to any request involving or relating to the subject matter of the information in this
9 disclosure statement; or (3) the right to revise, correct, supplement or clarify any of the
10 information provided below. If any part of this statement is ever read to the jury, fairness
11 would require that the jury be read this introductory statement and any supplementation,
12 amendments, explanation, changes or amplifications which may occur or be filed subsequent
13 to this disclosure statement.

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

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

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

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

25 One of those clients was DenSco Investment Corporation ("DenSco"), a company
26 solely owned and managed by Denny Chittick. DenSco raised money from investors by

1 issuing general obligation notes to those investors at interest rates that varied depending on
2 the note's maturity date. DenSco then invested those funds primarily by making high interest
3 short-term loans to borrowers buying residential properties out of foreclosure, which loans
4 were intended to be secured by deeds of trusts on those properties. Mr. Beauchamp started
5 providing securities advice to DenSco in the early 2000s, while he was a partner at the law
6 firm Gammage & Burnham. DenSco followed Mr. Beauchamp as a client when he left
7 Gammage to join the law firm Bryan Cave in March 2008, and again when Mr. Beauchamp
8 left Bryan Cave to join Clark Hill in September 2013.

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

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

1 Until mid-2013, Mr. Beauchamp's work as DenSco's securities counsel included,
2 among other things, drafting DenSco's Private Offering Memoranda and related investor
3 documents; advising DenSco regarding Blue Sky laws and state and federal securities
4 reporting and filing requirements; advising DenSco as to the rules and regulations
5 promulgated by state financial and lending authorities; and advising DenSco regarding the
6 applicability of mortgage broker regulations. At times, it would also involve answering
7 DenSco's questions regarding its Reg D filings and obligations. Although Mr. Beauchamp
8 helped DenSco file its first set of Reg D documents in 2003, Mr. Chittick told Mr.
9 Beauchamp thereafter that he did not want to pay a lawyer to review and file the Reg D
10 documents, and that Mr. Chittick would take on that responsibility himself. That was not a
11 surprising request, as Mr. Chittick repeatedly instructed Mr. Beauchamp to keep legal fees
12 to a minimum. Consequently, although Mr. Beauchamp's paralegal initially helped Mr.
13 Chittick understand the filing process and obtain access to the EDGAR filing site, in
14 accordance with his client's wishes Mr. Beauchamp did not review DenSco's Reg D filings.

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

19 Over the years, Mr. Chittick showed himself to be a trustworthy and savvy
20 businessman, and a good client. He appeared to be devoted to his business and investors,
21 many of whom were friends and family. Despite often complaining about the cost of legal
22 services, Mr. Chittick appeared to follow Mr. Beauchamp's advice and provided information
23 when asked for it, at least until the later years of the representation. It has since become clear
24 that Mr. Chittick did not follow certain advice Mr. Beauchamp and his firms provided, and
25 that Mr. Chittick did not always provide complete and accurate information to his attorneys,
26 particularly in 2013 and 2014. Further, Mr. Beauchamp understood that DenSco utilized an

1 outside accountant, David Preston, to review DenSco's books and records and file its tax
2 returns. It appears that Mr. Chittick also intentionally failed to provide complete and accurate
3 information regarding DenSco and its finances to DenSco's accountant, thereby deceiving
4 his accountant (whose advice on tax planning and other financial matters he also ignored at
5 times). At no point did Mr. Beauchamp serve as DenSco's general corporate counsel, nor
6 was Mr. Beauchamp engaged to review or approve DenSco financial statements or tax
7 returns or to investigate borrowers.

8 **B. The Private Offering Memoranda**

9 Mr. Beauchamp advised DenSco regarding its Private Offering Memoranda
10 ("POMs"), which DenSco generally updated every two years. He helped draft the 2003,
11 2005, 2007, 2009, and 2011 POMs. The POMs, however, had similar provisions and
12 generally described DenSco's historical performance based on information provided by Mr.
13 Chittick; set forth Mr. Chittick's authority to determine DenSco's "major business decisions
14 and policies", and to make, amend, or deviate from those policies in Mr. Chittick's sole
15 discretion; and set forth DenSco's aspirational lending standards (including its intent to
16 "maintain a loan-to-value ratio below 70%" for both individual trust deeds that secure loans
17 to borrowers from DenSco and the aggregate loan portfolio, as well as its intent to "achieve
18 a diverse borrower base" with no borrower comprising more than 10-15% of the portfolio).
19 The POMs also provided information regarding DenSco's lending history and loan portfolio.
20 In preparing the POMs, Mr. Beauchamp would generally inquire of Mr. Chittick as to how
21 DenSco was administering the loans and performing due diligence on the collateral. The
22 Receiver has recently alleged that information in the 2011 POM that DenSco was raising and
23 lending more money in 2011 than in prior years should have raised purported "red flags" for
24 Mr. Beauchamp. Those allegations are unfounded (and irrelevant to the issues DenSco
25 faced, which arose out of Mr. Chittick's decision, more than a year later, to lend exorbitant
26 amounts directly to Menaged, without using a fiduciary). Among other things, increased

1 hard money lending would not have been atypical given the real estate market at the time,
2 and DenSco had provided assurances that it had adequate internal procedures to manage its
3 business.

4 In addition, Mr. Beauchamp and his prior law firms, including Gammage & Burnham,
5 provided advice to DenSco regarding proper loan documentation and procedures since at
6 least 2007. DenSco and Mr. Chittick were both advised, and understood, (a) that DenSco
7 should fund loans through a trustee, title company or other fiduciary, (b) that DenSco was
8 representing to its investors that DenSco's loans would be in first position, and (c) that it was
9 of fundamental importance that DenSco safeguard the use of its investors' funds in
10 conjunction with properly recording liens, in order to ensure that DenSco's loans were in
11 first position.

12 In early summer 2013, Mr. Beauchamp advised DenSco that it needed to update its
13 2011 POM given the passage of time and changes in the scope of DenSco's fund raising.
14 Mr. Chittick was well aware based on historical practice and his work with other hard money
15 lenders, including Mr. Gould and Mr. Koehler, that it was necessary to keep investors up to
16 date with regular disclosures. In particular, based on Mr. Chittick's representations to Mr.
17 Beauchamp, DenSco either had or would soon eclipse the \$50 million maximum offering set
18 forth in the 2011 POM. Consequently, Mr. Beauchamp began drafting revisions to the 2011
19 POM, which included updates to the maximum offering and updates on DenSco's
20 performance to date, among other revisions. Mr. Beauchamp, however, was never able to
21 finalize the 2013 POM. Although Mr. Beauchamp asked for updated investment, loan and
22 financial information regarding DenSco, Mr. Chittick stalled on providing the information,
23 preferring to wait until after he scaled down the amount outstanding to investors. Mr.
24 Beauchamp repeatedly advised DenSco that an update was necessary irrespective of
25 DenSco's plans regarding the outstanding amount of its offerings, and opened a file at Clark
26 Hill to complete the update, but Mr. Chittick continued to delay.

1 **C. The FREO Lawsuit**

2 On May 24, 2013, Easy Investments, an entity owned by Yomtov “Scott” Menaged
3 (“Menaged”), DenSco, and Ocwen Loan Servicing, were sued by FREO Arizona, LLC
4 (“FREO”) regarding liens recorded by Easy Investments in favor of DenSco and Active
5 Funding Corporation, on a parcel of property. In a June 14, 2013 email from Mr. Chittick to
6 Mr. Beauchamp, Mr. Chittick explained that Easy Investments had purchased a property at
7 a trustee’s sale using a DenSco loan, which had apparently been previously purchased by
8 FREO, leading to a dispute. A review of the partial Complaint provided to Mr. Beauchamp
9 confirms Mr. Chittick’s description. According to its allegations, the loan servicer, Ocwen,
10 failed to cancel a trustee’s sale and release the deed of trust after FREO had paid off the debt
11 and acquired the property, thereby allowing Easy Investments to purchase the property again
12 with DenSco’s funds. Contrary to the allegations in the Receiver’s Complaint, his disclosure
13 statements, his expert reports, and otherwise, the FREO lawsuit did not concern lien priority
14 or double lien issues. Moreover, a review of the docket reveals that Easy Investments
15 prevailed in the FREO lawsuit when the Court granted summary judgment in favor of Easy
16 Investments and against both FREO and Ocwen (for breach of its duties) on December 6,
17 2013.

18 Further, although Mr. Chittick forwarded a portion of the Complaint to Mr.
19 Beauchamp, Mr. Chittick did not ask Mr. Beauchamp to represent DenSco in the litigation;
20 nor did he ask Mr. Beauchamp to investigate the factual allegations in the Complaint. To
21 the contrary he explained to Mr. Beauchamp that Mr. Chittick did not need his involvement
22 and that Menaged’s attorney would handle the defense against FREO’s claims as to
23 ownership of the property. Contemporaneous records verify this. Mr. Chittick expressly
24 stated in his email to Bryan Cave that he merely wanted Mr. Beauchamp to “be aware” of
25 the lawsuit and that Menaged’s attorney would handle the defense. Later that day, Mr.
26 Chittick told Menaged that he would “keep [Beauchamp] from running up any unessary [sic]

1 bills” and that Menaged should “just talk to your guy and hadn [sic] it off ot [sic] him.”
2 Consequently, although Mr. Beauchamp ran the matter through Bryan Cave’s conflict system
3 pursuant to standard firm procedure, Mr. Beauchamp did not represent DenSco in the
4 litigation and did not conduct any further investigation into its merits given his client’s
5 instruction not to get involved. Further, given the nature of the lawsuit, there was no present
6 conflict in having Menaged’s attorney defend against FREO’s claims.

7 Mr. Beauchamp did, however, explain to Mr. Chittick that this lawsuit itself would
8 need to be disclosed in DenSco’s 2013 POM. In addition, Mr. Beauchamp advised Mr.
9 Chittick, as he had done previously, that Mr. Chittick needed to fund DenSco’s loans directly
10 to the trustee or escrow company conducting the sale, rather than provide loan funds directly
11 to the borrower, to ensure that DenSco’s deed of trust was effective to protect the borrowed
12 funds. Mr. Chittick, however, explained to Mr. Beauchamp that this was an isolated incident
13 with a borrower, Menaged, whom Mr. Chittick described in his email as someone he had
14 “done a ton of business with...hundreds of loans for several years...”

15 Nothing about the FREO Lawsuit would have put Mr. Beauchamp on notice that
16 DenSco was suffering from some kind of systemic issues, or that Mr. Chittick had abandoned
17 fundamental lending principles and abandoned the promises he made to his investors.
18 Notably, around the same time, DenSco was served with at least two tax lien foreclosure
19 lawsuits listing AFG and DenSco as lien holders with respect to the property at issue, which
20 should have caused DenSco to at least inquire with Menaged regarding potential issues.
21 There is no evidence that DenSco did so. Further, as set forth below, Magnus Title informed
22 DenSco in the summer of 2013 that at least one of its deeds of trust, which DenSco expected
23 to be in first position, was actually in second position. There is no evidence that DenSco
24 acted upon that information either.

1 **D. Mr. Beauchamp leaves Bryan Cave, hears nothing from Mr. Chittick for**
2 **months.**

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

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

15 In December 2013, Mr. Chittick contacted Mr. Beauchamp for the first time in months.
16 He told Mr. Beauchamp over the phone that he had run into an issue with some of his loans to
17 Menaged, and specifically, that properties securing a few DenSco loans were each subject to a
18 second deed of trust competing for priority with DenSco's deed of trust. Mr. Beauchamp
19 reminded Mr. Chittick that he still needed to update DenSco's private offering memorandum.
20 After briefly discussing the allegedly limited double lien issue, Mr. Chittick emphasized to Mr.
21 Beauchamp that Mr. Chittick wanted to avoid litigation with other lenders. Mr. Chittick,
22 however, did not request any advice or help. Rather, Mr. Chittick indicated that he wanted to
23 continue working on a plan with Menaged to resolve the double-lien issue—a plan, that
24 unbeknownst to Mr. Beauchamp, Mr. Chittick was already well on his way to implementing.
25 Accordingly, Mr. Beauchamp suggested that Mr. Chittick and Menaged document their plan.
26 Nothing more came of the issue with Menaged until January. Mr. Beauchamp's actions in this
 regard were appropriate and met the standard of care.

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

12 The issue with the Miller Lenders could not have been a surprise to Mr. Chittick. For
13 one, although Mr. Chittick’s business journals contain hearsay and present questions
14 regarding admissibility and reliability, they suggest that Menaged had told Mr. Chittick about
15 the double lien issue in November 2013, and had explained that the issue could affect every
16 property Menaged had purchased using DenSco funds going back as far as 2011. Mr.
17 Chittick, however, did not provide this information to Mr. Beauchamp.

18 Second, Mr. Chittick was had actual knowledge that Menaged had been double lien
19 properties using DenSco’s funds as far back as *September 2012* (and should have known that
20 Menaged was double lien
21 properties as far back as 2011, *see e.g.,*
22 CH_Rec_Men_0001120, 0003557, 0001829, 1042). It was at that time that Gregg Reichman
23 at Active Funding Group told Mr. Chittick that Menaged had double lien
24 properties (at least ten) with loans from both Active Funding Group and DenSco, thereby
25 putting in question DenSco’s lien priority and loan-to-value ratio. Yet as Mr. Reichman
26 testified, Mr. Chittick appeared unperturbed by this news and clear violation of trust, and
instead reiterated that he had faith in Menaged.

1 Mr. Reichman apparently went about putting in additional safeguards to ensure his
2 loans to Menaged would remain in first position. Mr. Chittick did not. It is unclear what
3 Menaged's excuse or explanation to Mr. Chittick was, and it is equally unclear whether Mr.
4 Chittick conducted any due diligence with respect to Mr. Menaged's apparent propensity for
5 jeopardizing DenSco's first position lien priority through double liening. It is also unclear
6 whether Mr. Chittick even addressed the double-liens Mr. Reichman expressly identified for
7 him. To the contrary, Mr. Chittick, for example, did nothing to address the double lien on
8 the 37209 N 12th Street property that Mr. Reichman expressly identified. Depo. Exh. 487.
9 That property was sold in November 2013, with the sales proceeds going to pay off AFG in
10 first position. *See* CH_Rec_Men_00016142.

11 What is clear, is that after the double liening came to light, Mr. Chittick drastically
12 increased his lending to Menaged, such that by the time Mr. Chittick approached Mr.
13 Beauchamp about the double liening issue at the end of 2013, more than half of his loan
14 portfolio was tied up with Menaged—well in excess of the promised loan concentrations
15 DenSco had set forth in its disclosures to investors. The reason Mr. Chittick abandoned his
16 investment principles is unknown, although there is evidence that Mr. Chittick paid above-
17 market interest rates to his investors, and consequently, needed borrowers to pay above-
18 market interest rates to DenSco. Menaged may have been one of the few borrowers willing
19 to do so, particularly at a time where DenSco was having difficulty placing its funds.
20 DenSco's investors knew that by bargaining for higher rates of return from DenSco, that their
21 investments in DenSco would consequently be riskier than investments offering a lower rate
22 of return.

23 What is also clear, is that Mr. Chittick failed to provide this information to Mr.
24 Beauchamp, despite numerous opportunities to do so. Those opportunities included, but
25 were not limited to: (a) September 2012 when Mr. Chittick first became aware that Menaged
26 was double liening at least ten properties subject to DenSco's loans, (b) Summer 2013 when

1 Mr. Beauchamp advised Mr. Chittick that he needed to update DenSco's POM, including
2 updates regarding DenSco's borrowers and lending history, and (c) upon the receipt of the
3 FREO lawsuit. Yet despite Mr. Chittick's numerous opportunities to disclose the issue to
4 Mr. Beauchamp, Mr. Chittick concealed the double lien issue (and DenSco's inexplicable
5 and exponential increase in lending to Menaged) from DenSco's counsel, as well as
6 DenSco's investors. Even when Mr. Chittick finally sought his attorneys' advice in January
7 2014 (which happened only *after* Mr. Chittick was threatened with a lawsuit), Mr. Chittick
8 still concealed Menaged's lengthy history of double-liening properties with DenSco loans.

9 Further, as set forth below, by the time Mr. Chittick finally provided Mr. Beauchamp
10 with a minimal and partial disclosure of the issues facing DenSco, Mr. Chittick and Menaged
11 had already reached a verbal agreement on how to deal with the double lien issue in
12 November 2013. Mr. Chittick, however, failed to provide that information to Mr.
13 Beauchamp in December. Nor did he immediately provide Mr. Beauchamp with the full
14 scope of the problem, or reveal the procedure he had agreed to with Menaged to resolve that
15 problem, in December or early January.

16 Instead, Mr. Chittick sent the Miller letter to Mr. Beauchamp on January 6, 2014 with
17 nothing more than a sparse request for Mr. Beauchamp to "read the first two pages." The
18 next day, Mr. Chittick provided Mr. Beauchamp a more expansive, though incomplete,
19 explanation. In his email, Mr. Chittick stated that he had lent Menaged a total of \$50 million
20 since 2007 and that he'd "never had a problem with payment or issue that hasn't been
21 resolved."

22 Mr. Chittick's representations to Mr. Beauchamp regarding DenSco's purportedly
23 positive lending relationship with Menaged were grossly misleading. While it was true that
24 DenSco had lent Menaged approximately \$50 million since 2007, DenSco had lent Menaged
25 \$31 million in 2013 alone, and had \$28.5 million in loans to Menaged outstanding as of the
26 end of 2013, a large portion of which were more than six months past due, including a

1 significant number of 2012 loans. Further, Mr. Chittick had known as of September 2012
2 (and should have known as of 2011) that Menaged had double-liened multiple properties
3 with DenSco loans, thereby jeopardizing DenSco's lien position. Yet not only did he keep
4 this a secret, Mr. Chittick thereafter drastically increased DenSco's lending to Menaged,
5 from \$4.65 million outstanding at the end of 2012 to more than \$28 million outstanding by
6 the end of 2013 (all of which Mr. Chittick also failed to timely disclose to Mr. Beauchamp).
7 Rather than provide Mr. Beauchamp with any of this information, Chittick instead
8 misrepresented to Mr. Beauchamp in January 2014 that Menaged was a good borrower with
9 a sterling track record. Mr. Chittick made similar misrepresentations to Mr. Beauchamp
10 regarding his positive lending relationship with Menaged when he disclosed the FREO
11 lawsuit.

12 Mr. Chittick further explained that Menaged's wife had become critically ill in the
13 past year, and that Menaged had turned the day-to-day operations of his companies over to
14 Menaged's cousin. According to Mr. Chittick, the cousin would receive loan funds directly
15 from DenSco, then request loans for the same property from another lender, including the
16 Miller Lenders. The other lenders, who had funded their loans directly to the trustee, would
17 record their deed of trust, as would DenSco, leaving DenSco in second position. The cousin,
18 the story went, then unfortunately absconded with the funds DenSco lent directly to
19 Menaged. This "double lien" issue consequently jeopardized DenSco's secured position and
20 its loan-to-value ratios. Mr. Chittick feared that a lawsuit with the Miller Lenders would
21 jeopardize DenSco's entire enterprise.

22 According to Mr. Chittick's email, Menaged purportedly found out about his cousin's
23 scam in November and revealed the fraud to Mr. Chittick at the time. Yet rather than consult
24 legal counsel, Mr. Chittick devised a plan to fix the double lien issue with Menaged. The
25 initial plan included DenSco paying off the other lenders. That required additional capital,
26 which Menaged and Mr. Chittick agreed would come from DenSco lending Menaged an

1 additional \$1 million and Menaged investing additional capital, including \$4-\$5 million from
2 the liquidation of other assets, as set forth in a term sheet DenSco and Menaged signed after
3 having already put their plan into effect. As the scope of the problem appeared to grow, Mr.
4 Chittick and Menaged agreed to terms of an expanded plan, which included further
5 investment from both DenSco and Menaged, who would also continue to flip and rent homes
6 to raise the necessary profits needed to pay off the other lenders.

7 Unbeknownst to Mr. Beauchamp, according to Mr. Chittick's January 7, 2014 email,
8 DenSco and Menaged had already been "proceeding with this plan since November [2013]."
9 That is corroborated by the Receiver, who asserts that Mr. Chittick began lending on the \$1
10 million line of credit to Menaged to further their private workout plan in December 2013. It
11 is also corroborated by Gregg Reichman at AFG, who testified that Chittick told him in 2013
12 that Chittick and Menaged agreed to become partners and were in full cooperation on a long
13 term solution, which included Chittick providing Menaged with an unsecured credit line. In
14 other words, by the time Mr. Chittick approached Mr. Beauchamp with a partial disclosure
15 of the issues in late 2013 and early 2014, Mr. Chittick had already agreed to a business plan
16 with Menaged to work out the double lien problems, and had already advanced Menaged
17 significant sums pursuant to that agreement. As Mr. Beauchamp explained in a February 20,
18 2014 email to his colleagues, Mr. Chittick "without any additional documentation or any
19 legal advice...has been reworking his loans and deferring interest payments to assist
20 Borrower...When we became aware of this issue, we advised our client that he needs to have
21 a Forbearance Agreement in place to evidence the forbearance and the additional protections
22 he needs."

- 23 1. Mr. Beauchamp tells DenSco it cannot accept new funds or roll over
24 prior funds.

25 After receiving Mr. Chittick's January 7, 2014 email, Mr. Beauchamp was alarmed
26 that DenSco may be taking on new investors or rolling over prior investments without

1 disclosing the double lien issue or the workout to which Mr. Chittick and Menaged had
2 agreed. Mr. Beauchamp's advice to Mr. Chittick regarding disclosures Mr. Chittick had to
3 make to investors was immediate, clear, practical, consistent with his practice and
4 experience, and consistent with the standard of care: (a) DenSco was not permitted to take
5 new money without full disclosure to the investor lending the money; (b) DenSco was not
6 permitted to roll over existing investments without full disclosure to the investor rolling over
7 the money; and (c) DenSco needed to update its POM and make full disclosure to all its
8 investors. Mr. Beauchamp provided this advice to DenSco starting with his January 9, 2014
9 meeting with Mr. Chittick, and repeated it routinely over the next few months.

10 Mr. Chittick clearly understood that he could not accept funds from new investors
11 without full disclosure as to the issues created by Menaged. As he told Menaged in a
12 February 11, 2014 email, "I've not taken any new investors, so if I do, I have to disclose a
13 lot to them, which is all about you." Although Mr. Chittick was aware of his obligations on
14 behalf of DenSco, as repeatedly explained to him by Mr. Beauchamp (and as he clearly
15 understood from years of experience in the industry, years of providing updated disclosure
16 statements, and years of working with other hard money lenders who stressed the importance
17 of disclosure, including Scott Gould's prior advice regarding disclosure) Mr. Chittick did not
18 disclose to Mr. Beauchamp that he was apparently raising funds from new investors without
19 disclosing DenSco's situation with Menaged. This is one more example of Mr. Chittick
20 keeping Mr. Beauchamp in the dark as to the extent of DenSco's problems with Menaged
21 and Mr. Chittick's attempts to solve those problems without seeking help.

22 Mr. Beauchamp was also concerned about the source and use of the funds needed to
23 effectuate the workout plan independently crafted by Menaged and Chittick. Yet, as Mr.
24 Chittick explained, the funds for the \$1 million loan (which Mr. Chittick funded prior to
25 engaging Clark Hill) and an additional \$5 million loan Mr. Chittick and Menaged eventually
26 agreed to as part of the workout, would come from (a) Mr. Chittick's investment of additional

1 funds out of his retirement account, (b) Mr. Chittick's personal \$1.5 million line of credit,
2 and (c) DenSco's working capital raised as loans to other borrowers paid off. In reality, Mr.
3 Chittick actually and secretly took millions *out* of DenSco starting as early as January 2014,
4 as acknowledged by the Receiver in his Notice of Claim against the Chittick estate. Again,
5 and at all times, Mr. Beauchamp advised Mr. Chittick that he could not obtain new investor
6 funds or roll over prior investments without full disclosure. Mr. Beauchamp also repeatedly
7 insisted that Mr. Chittick revise his out-of-date POM to provide disclosure to all his investors.
8 Mr. Chittick, however, insisted that DenSco first document the forbearance agreement so
9 that Mr. Chittick would have a plan to show his investors.

10 Further, Mr. Chittick assured Mr. Beauchamp repeatedly that he was making the
11 requisite disclosures to investors on an as-needed basis, and that he had informed a select
12 group of investors as to the double lien issue and proposed workout. That would be in
13 keeping with Mr. Chittick's prior approach to business. As far as Mr. Beauchamp knew, and
14 as Mr. Chittick had previously told him, Mr. Chittick indeed had a select group of investors
15 to whom he turned for advice and approval when confronted with important business
16 decisions, such as, for example, diversifying his investments into different types of
17 properties. Mr. Chittick told Mr. Beauchamp that he was seeking such advice from what Mr.
18 Chittick described as an "advisory council." Mr. Chittick's assertions regarding this
19 "advisory council" appear to be yet another untruth. While the letters Mr. Chittick appears
20 to have authored prior to his passing contain hearsay and are both unreliable and
21 inadmissible, they include various statements that Mr. Chittick previously told (and received
22 approval from) a select group of investors that he was investing specifically with Menaged,
23 that he was increasing his loan concentration with Menaged above the 10-15% concentration
24 threshold suggested in his POMs, and that his lending process involved funding loans directly
25 to borrowers, rather than a trustee or escrow account. To date, not a single investor has
26 corroborated these claims. Mr. Chittick lied to Mr. Beauchamp about this "council" and then

1 subsequently lied about it again in his suicide letters in an effort to deflect blame. In fact,
2 Mr. Chittick's suicide letters and journals are replete with blatant lies (including his
3 assertions that he tried to save DenSco by investing his own money, told investors about
4 Menaged, told investors about his lending practices, and told investors about his increased
5 loan concentrations), deflection, material omissions, self-serving conclusions, and subjective
6 and ambiguous statements.

7 However, there was no reason for Mr. Beauchamp to question whether Mr. Chittick
8 was in fact providing disclosures to investors. Over the more than decade long strong
9 professional relationship Mr. Beauchamp had developed with Mr. Chittick, Mr. Chittick had
10 proven himself to be a trustworthy client with what appeared to be a strong history of sharing
11 information and making prudent decisions with respect to disclosing information to
12 investors. It is clear now that Mr. Chittick was disregarding advice regarding loan procedures
13 and disclosures to DenSco investors, in addition to disregarding his own loan and investment
14 documents, by, for example, devoting the majority of his loan portfolio to Menaged in late
15 2012 and 2013 in contravention of his representations to investors regarding loan
16 concentration and loan-to-value. He also failed to follow fundamental lending practices that
17 were well-known to him, and that were common knowledge and accepted practice in the
18 industry.

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

20 Beginning in early January, and over the course of several meetings and telephone
21 conversations with Mr. Chittick, Mr. Beauchamp convinced Mr. Chittick that if he was going
22 to keep doing business with Menaged (and Mr. Chittick never wavered from his insistence
23 on working his way out of the double lien issue with Menaged), DenSco should at least
24 document the issues and workout plan in a forbearance agreement. Entering into a
25 forbearance agreement was sound, practical advice and consistent with the standard of care,
26 particularly where Mr. Chittick and Menaged had already implemented their own workout

1 plan. As Mr. Beauchamp repeatedly explained to Mr. Chittick, the forbearance agreement
2 would, among other things, (a) clarify and set forth the facts that led to the double lien issue,
3 (b) clarify and set forth the scope of the issue with the borrower, (c) acknowledge Mr.
4 Menaged's defaults under his loan documents with DenSco, as well as the amount and
5 validity of any debt owed to DenSco, (d) obtain additional written commitments from
6 Menaged and his entities to fund the workout Mr. Chittick and Menaged had already agreed
7 to; and (e) obtain additional security and other protections from Menaged and his entities to
8 protect DenSco and its investors. Mr. Beauchamp was crystal clear with Mr. Chittick all of
9 this would need to be disclosed to DenSco's investors. Other protections Mr. Beauchamp
10 advocated for, including additional admissions of fault and fraud by Menaged to protect
11 DenSco in the event of a bankruptcy filing by Menaged or his entities, were eventually
12 stricken from the agreement at Menaged and Mr. Chittick's insistence, and over Mr.
13 Beauchamp's objections.

14 Mr. Beauchamp had previously drafted and negotiated countless forbearance
15 agreements. He reasonably anticipated that documenting DenSco's forbearance would take
16 2-3 weeks. Negotiating the forbearance agreement, however, turned out to be more difficult
17 than Mr. Beauchamp could have reasonably imagined. For one, Menaged and his counsel
18 repeatedly insisted on edits and revisions that served only to undermine DenSco's fiduciary
19 duty to its investors. Mr. Beauchamp repeatedly had to undo changes proffered by Menaged
20 or Jeff Goulder, Menaged's attorney, and often by Mr. Chittick at Menaged's direction, in
21 order to protect DenSco's investors. For example, Menaged (and Mr. Goulder) attempted to
22 restrict the type of information that could be disclosed to investors, attempted to obtain
23 releases for Menaged related to his defaults and conduct, and refused to provide additional
24 security or information regarding that additional security. Mr. Beauchamp repeatedly pushed
25 back on these efforts and advised DenSco and Mr. Chittick, both in writing and verbally, that
26

1 they had fiduciary duties to DenSco's investors, which included disclosure obligations. For
2 example:

- 3 • February 4, 2014 email from Mr. Beauchamp to Mr. Chittick, advising Mr. Chittick
4 that "you cannot obligate DenSco to further help Scott, because that would breach
5 your fiduciary duty to your investors"
- 6 • February 4, 2014 email from Mr. Beauchamp to Mr. Chittick, advising Mr. Chittick
7 that Menaged's proposed changes to the Forbearance Agreement are "substantive
8 changes that clearly transfer significant risk to you and your investors" and that if
9 "even a portion of these changes are allowed to remain, we can no longer describe
10 this as an industry standard 'forbearance agreement' in the description that you
11 HAVE to provide to your investors"
- 12 • February 14, 2014 email from Mr. Beauchamp to Mr. Chittick, advising Mr. Chittick
13 that "[Goulder] clearly thinks he can force you to agree to accept a watered down
14 agreement and give up substantial rights that you should not have to give up.
15 Unfortunately, it is not your money. It is your investors' money. So you have a
16 fiduciary duty"
- 17 • February 25, 2014 email from Mr. Beauchamp to Mr. Chittick, advising Mr. Chittick
18 that Menaged's and his lawyer, Jeff Goulder's, "demands and changes have pretty
19 much killed your ability to sign the Forbearance Agreement, which I believe Jeff
20 wanted to do from the beginning" and that Menaged was asking for concessions that
21 are never included in forbearance agreements
- 22 • March 13, 2014 email from Mr. Beauchamp to Mr. Chittick, advising Mr. Chittick
23 that "we cannot give Scott and his attorney any time to cause further delay in getting
24 this Forbearance Agreement finished and the necessary disclosure prepared and
25 circulated."

1 Mr. Chittick, likewise, intentionally delayed the Forbearance Agreement. Not only did he
2 allow Menaged to take DenSco off track by willingly acceding to Menaged's demands against
3 Mr. Beauchamp's advice, he himself actively delayed finalizing the Forbearance Agreement,
4 going so far as to joke on June 16, 2014 that "I guess dave is losing sense of humour with our
5 delay." This followed his agreement with Menaged five days earlier to "keep trying to delay
6 till it looks better and better."

7 Mr. Beauchamp and Mr. Chittick also routinely discussed the need for disclosures to
8 investors with respect to, among other things, the double liening, loan concentration, and loan-
9 to-value issues. *See also, inter alia*, Deposition Exhibits 347, 357, 365, 372, and 387. And of
10 course, Mr. Beauchamp and Mr. Chittick had been discussing the general need to disclose
11 material facts to investors for years, at a minimum, during their scheduled updates for the
12 DenSco POM. In any event, Mr. Chittick, who had decades of experience in financing,
13 lending, and making necessary securities disclosures, knew, understood, and appreciated the
14 need to make disclosures to investors. Mr. Beauchamp repeatedly advised Mr. Chittick that
15 DenSco could not accept monies or rollover investments without full disclosure. Mr. Chittick,
16 moreover, would have been well aware of the need to make disclosures to his investors given
17 his prior experience, including experience working with, and learning from, Scott Gould and
18 Robert Koehler. Likewise, Mr. Chittick was fully aware that the proper way to lend money to
19 a borrower purchasing property from a trustee sale, was to provide the funds directly to the
20 trustee with a fiduciary duty to utilize the funds for their intended purpose, not the borrower
21 itself. As Mr. Gould, Mr. Koehler, and Mr. Reichman all testified, this was common
22 knowledge in the industry.

23 Moreover, Mr. Chittick understood Mr. Beauchamp's advice. As noted above, Mr.
24 Chittick went so far as to joke with Menaged in February 2014 that he could not raise funds
25 from investors without telling those investors about Menaged. As Menaged later noted to
26 Chittick in a couple of March 13, 2015 emails, "[Beauchamp] is not going to be happy I

1 don't think, but it is what it is and we are doing what we need to do...", and that "if you
2 listened to [Beauchamp] a year ago we would never be where we are now." In short, Mr.
3 Chittick was going to follow Menaged--to whom he'd lent tens of millions of dollars *after*
4 learning about Menaged's misuse of DenSco funds and Menaged's double liening DenSco's
5 collateral as early as September 2012, and, at a minimum, in knowing contravention of his
6 representations to investors regarding loan concentration and disregard for Mr. Beauchamp's
7 advice.

8 Mr. Chittick and Menaged's ongoing conversations during the drafting of the
9 Forbearance Agreement bear this out. Not only did Mr. Chittick repeatedly cast aside
10 DenSco's attorney-client privilege in his conversations with Menaged, but the two were (a)
11 fixated on doing the deal they wanted to do irrespective of, and often in direct contravention
12 of, Mr. Beauchamp's advice and (b) cavalier about DenSco's predicament and their
13 respective roles in harming DenSco. Further, Mr. Chittick was clearly willing to bend over
14 backwards for Menaged. For example (and this list is by no means exhaustive):

- 15 • On February 3, 2014, Chittick wrote to Menaged regarding the efforts to draft a
16 Forbearance Agreement, and asking if Menaged had "put a call in to jeff to get
17 him on the phone with [Mr. Beauchamp] and pound through" what Mr. Chittick
18 dismissively referred to as "their language arts assignment."
- 19 • On February 5, 2014, Mr. Chittick wrote to Menaged that he had directed Mr.
20 Beauchamp to "make some concenssions [sic] that you and I agreed to..."
- 21 • On February 7, 2014, Mr. Chittick wrote that he and Menaged were "going to go
22 over" the draft Forbearance Agreement, and that "after any changes *we* agree to
23 and make, david will amek [sic] them them [sic]. *I tell david to send it to jeff,*
24 *you tell jeff, the terms are agreeable between us,* and they can only fix the
25 spelling!" (emphasis added)

- 1 • On February 12, 2014, Mr. Chittick told Menaged, who was demanding that he
2 be released from “any fraud claim” by DenSco that Mr. Chittick “understand[s]
3 both sides.”
- 4 • On February 14, 2014, Chittick and Menaged complained amongst themselves
5 that “these lawyers are trying to prevent progress,” and complained about the
6 fees. Chittick asserted that in the interim, “we solved another. What [sic] 20%
7 of the problem.”
- 8 • On February 15, 2014, upset at his attorney, Mr. Beauchamp, for wanting to
9 know what Menaged’s “points of contention” were with respect to the draft
10 Forbearance Agreement, Mr. Chittick complained that “attorneys’ sole purpose
11 is to self perserverance [sic].”
- 12 • On February 15, 2014, Menaged explained to Mr. Chittick that he was not
13 generating as much income as he expected, claimed he couldn’t keep borrowing
14 money from friends (who had purportedly paid AFG \$370,000 in interest
15 already), and was concerned he’s merely “wasting money.” Mr. Chittick
16 informed Menaged that he had over \$2 million coming in next week “that should
17 allow u [sic] to start buying again.” Chittick never told Mr. Beauchamp that he
18 was raising \$2 million from investors and loaning it to Menaged.
- 19 • On March 20, 2014, Mr. Chittick wrote Menaged that he had told Mr.
20 Beauchamp that “\$5 million should be the max of the work out loan.”
21 According to Mr. Chittick’s own accounting of the “loan,” however, the work
22 out balance would eclipse that purported “maximum” a mere three months later
23 and would nearly double that “maximum” by the end of 2014.
- 24 • On April 3, 2014, Menaged told Mr. Chittick that he was signing the
25 Forbearance Agreement “even though it is not anymore a true understanding
26 of what we are doing...*but I signed it so at least you have it for what you need*

1 *it for and not to have Dave Change it again and again with every move we*
2 *make.”* Mr. Chittick did not object.

- 3 • On May 28, 2014, after Menaged received notice from his bank that the bank
4 had increased Menaged’s transaction limit for wire transfers but reserved the
5 right to revoke access “at any time due to potential fraud,” Mr. Chittick
6 commented to Menaged that the bank included the “due to potential fraud”
7 language because “they heard about us.”
- 8 • Chittick routinely noted in his corporate “journal” that he did not plan on ever
9 needing or using the Forbearance Agreement.
- 10 • Almost a year after Mr. Beauchamp terminated the client relationship with
11 DenSco, on March 13, 2015, Menaged wrote to Chittick that irrespective of
12 Mr. Beauchamp, they are “doing what we need to do so we are out of this”
13 amidst jokes between the two of them that Mr. Beauchamp only reached out to
14 Mr. Chittick for a “free meal.”

15 In addition to Chittick, Menaged, and Menaged’s counsel’s constant delays and
16 revisions, the number of loans affected by the double lien issue also kept growing. The
17 number of loans Mr. Chittick asserted were in issue grew from December 2013 to January
18 2014, and then grew again from January 2014 to February 2014. This resulted in constant
19 changes to the revised workout documents, as well as to Menaged and Mr. Chittick’s
20 agreement regarding the manner in which to fund the workout. Mr. Chittick, however,
21 maintained, despite multiple inquiries from Mr. Beauchamp, that he had run the calculations
22 and projections and was confident his plan with Menaged would work. Mr. Chittick also
23 told Mr. Beauchamp that he had gone over those projections with his “advisory council.” As
24 Mr. Chittick described it to Mr. Beauchamp, it was a cash flow issue, not a payment issue,
25 and that with Menaged’s additional investments, the workout would succeed.

1 Nevertheless, Mr. Beauchamp at one point became concerned enough at Menaged's
2 intransigence and the apparent influence he held over Mr. Chittick, that he reached out to
3 third parties in late January 2014 to inquire about Menaged. Those third parties informed
4 him that Menaged was generally someone to be distrusted and not someone to do business
5 with. Mr. Beauchamp attempted to persuade Mr. Chittick of this during several heated
6 conversations, but Mr. Chittick ignored these admonitions, explaining that while Menaged
7 could be sharp and off-putting, Menaged had always performed on DenSco's loans in the
8 past, and had stood by Mr. Chittick in tough times. Gregg Reichman testified that he likewise
9 trusted Menaged as a borrower who performed on his obligations, continued lending to
10 Menaged even after the double-liening issues arose, and did not think otherwise about
11 Menaged's character until after Menaged testified at his Rule 2004 examination.
12 Unbeknownst to Mr. Beauchamp, however, Menaged had in fact not always performed on
13 DenSco's loans and previously jeopardized DenSco's lien priorities. Mr. Chittick was well
14 aware of those facts, yet failed to share them with Mr. Beauchamp. Despite Mr.
15 Beauchamp's efforts, Mr. Chittick could not be convinced to cut ties with Menaged.

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

17 When Mr. Beauchamp agreed to represent DenSco with respect to Menaged, Mr.
18 Beauchamp made clear that Mr. Chittick had to immediately update DenSco's POM and
19 make full disclosure to its investors regarding the double lien issues, the workout with
20 Menaged, and the potential implications thereof on DenSco's finances and the investors'
21 investments. To that point, Mr. Chittick consistently acknowledged that responsibility and
22 agreed to make the full disclosure once the forbearance agreement was properly documented.
23 As the forbearance agreement neared completion, Mr. Beauchamp and his [then-] associate,
24 Daniel Schenck, began drafting the updated POM in April and May 2014. Specifically, the
25 draft 2014 POM would have: provided a description of the forbearance agreement (including
26 all the parties' funding obligations), the reason it was necessary, and its effect on DenSco's

1 books; updated DenSco's goals for intended loan-to-value ratios; updated the descriptions
2 regarding DenSco's loan funding and securitizations procedures; updated the number of loan
3 defaults triggering foreclosures; and amended the descriptions regarding DenSco's borrower
4 base, among other things. Further, Mr. Beauchamp explained that the updated POM would
5 need to be accompanied with a cover letter or other communication highlighting the major
6 material changes, including the double lien issue and resulting workout agreement, to ensure
7 that investors were fully informed. Mr. Chittick, however, refused to provide the necessary
8 information to complete the draft POM and refused to approve the description of the workout
9 or the double lien issue, despite his prior acknowledgement that he would need to make full
10 disclosure to all of his investors about DenSco (as he had been doing through POMs and
11 newsletters since 2003).

12 Nevertheless, Mr. Chittick clearly understood the need for full disclosure and the need
13 to update his POM, yet failed to heed the advice Mr. Beauchamp provided. As set forth
14 above, Mr. Chittick joked with Menaged about raising money without first providing the
15 disclosures he knew he was required to provide. Further, on June 27, 2014, upon learning
16 that Mr. Chittick was going to meet with an "investor," Menaged wrote to Chittick "hope
17 you are not meeting with an investor who is looking for the memorandum! HaHa." Chittick's
18 response: "no, it's my mom's meeting with my other borrowers." Mr. Chittick fully
19 understood and appreciated the need to keep his investors apprised, based on more than a
20 decade of experience in raising investor money to fund hard money lending, repeated
21 disclosures to his investors through POMs and otherwise during his time as a hard money
22 lender (including his work with Scott Gould and Robert Koehler), and his lawyers' repeated
23 advice and counsel on DenSco's disclosure obligations. Mr. Chittick knowingly chose not
24 to make those disclosures.

25 In May 2014, Mr. Beauchamp left a physical copy of a draft POM that still required
26 substantial input from Mr. Chittick at Mr. Chittick's office (where Mr. Chittick frequently

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

15 Thereafter, Mr. Beauchamp and Clark Hill ceased providing DenSco with securities
16 advice (as confirmed by Mr. Beauchamp and Mr. Schenck). Mr. Chittick accepted that, but
17 asked that Mr. Beauchamp clean up some small issues with the forbearance agreement before
18 ending the relationship entirely. Other than addressing those small forbearance agreement
19 issues in June and July (which was ethically permissible, if not required), Clark Hill stopped
20 working with DenSco or Mr. Chittick in any capacity until 2016, when Mr. Chittick
21 requested that Mr. Beauchamp assist with a very limited issue involving an audit by the
22 Arizona Department of Financial Institutions - work Mr. Beauchamp had previously
23 performed for DenSco and that Mr. Chittick characteristically believed could be done most
24 cost-effectively by Mr. Beauchamp rather than by a new lawyer with no background on the
25 issue.

26

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

3 During the time that he represented it regarding securities matters, Mr. Beauchamp (a)
4 repeatedly advised DenSco that it had to make full disclosure to its investors and then
5 terminated his relationship as securities counsel for DenSco when DenSco refused, (b)
6 explained that DenSco would need to retain new counsel after Mr. Beauchamp withdrew to
7 provide proper disclosures and monitor the forbearance, and (c) repeatedly reminded Mr.
8 Chittick that he needed to fund loans directly to a trustee or escrow company, rather than to
9 the borrower. Mr. Chittick ignored Mr. Beauchamp's advice, his own lending documents, and
10 the knowledge gained through years of working in the hard money lending business, including
11 experience and knowledge gained from working with Scott Gould and Robert Koehler, as well
12 as prior warnings among hard money lenders regarding double liening and best practices. It is
13 unclear if DenSco ever engaged or even talked to new counsel. It appears Mr. Chittick never
14 issued an updated POM, a fact which could not have gone unnoticed by DenSco's sophisticated
15 accredited investors, who had gotten used to regular updates from DenSco (and to receiving
16 generous returns indicative of the inherent risk in their investments), not only through updated
17 POMs, but through monthly newsletters and periodic investor meetings. It is quite clear that
18 despite the double liening issue which arose as a direct result of Mr. Chittick's careless practice
19 of funding loan money directly to Menaged (as well as to his other borrowers, a practice other
20 hard money lenders have testified is contrary to common knowledge in the industry regarding
21 the proper way to lend money while ensuring a valid first position lien and securing investors'
22 funds), Mr. Chittick continued to loan funds directly to Menaged in direct contravention of
23 common sense and Mr. Beauchamp's repeated advice to fund loans directly to a trustee or
24 escrow company. As discovery has made clear, Mr. Chittick's approach to lending was much
25 more reckless than he represented to his investors or that he disclosed to his attorney.
26 Nevertheless, the brazen scope of Menaged's efforts to defraud DenSco through use of copies

1 of bank issued cashier's checks and falsified trustee's sale receipts was not foreseeable. Nor
2 was the complicity of Chase Bank and US Bank in what the Receiver has termed the "Second
3 Fraud" foreseeable, and whom the Receiver has now sued for aiding and abetting Menaged's
4 fraud on DenSco.

5 After several years of bilking DenSco and others out of millions of dollars, Menaged
6 was eventually arrested. The United States Department of Justice first charged Menaged with
7 defrauding various banks through his purported furniture stores. Menaged used fabricated
8 receipts of purchases made at the furniture store to obtain credit from banks using the names
9 of, and personal identification information of, individuals who had recently died. He would
10 then incur millions of dollars in fraudulent charges on those fake accounts. Incredibly,
11 Menaged acknowledged in his plea agreement that he had perpetrated the bank fraud in order
12 to get cash to continue defrauding DenSco.

13 The Department of Justice then also charged Menaged with money laundering with
14 respect to the DenSco fraud. In his plea agreement, Menaged admitted that from January 2014
15 through June 2016, he embezzled millions of dollars without purchasing properties with the
16 loans obtained from DenSco. He explained that DenSco would wire money to purchase
17 properties directly to Menaged who, in turn, would send DenSco "an image of a bank cashier's
18 check and a copy of a Trustee Certificate of Sale Receipt." No sales, however, actually took
19 place. Menaged would simply redeposit the cashier's check into his account and create bogus
20 receipts for the purchase of the property. According to the Receiver's analysis, between
21 January 2013 and June 2016, Menaged admitted he obtained 2,172 loans from DenSco totaling
22 approximately \$734,484,440.67. Yet, of the 2,712 loans made by DenSco, only 96 involved
23 actual property transactions. Menaged supposedly used the remaining 2,616 loans for personal
24 expenses, gambling trips, and transfers to his family members and associates. Menaged would
25 also utilize new loans from DenSco to pay back outstanding DenSco loans to conceal the
26 embezzlement. Menaged was sentenced to 17 years in jail. As First Assistant U.S. Attorney

1 Elizabeth Strange stated, the “lengthy sentence is a fitting punishment for his egregious
2 crimes.”

3 Menaged appears to have shamelessly duped Mr. Chittick and taken advantage of Mr.
4 Chittick’s refusal to utilize lending procedures that would protect DenSco’s investments and
5 first lien priority, notwithstanding his lawyers’ advice, common business practices, common
6 sense, Menaged’s experience with other hard money lenders (including Scott Gould and Robert
7 Koehler) or the First Fraud (which would have alerted anyone to the risks inherent in Mr.
8 Chittick’s lending practices). Documents and recordings suggest that Menaged never invested
9 any money into the workout plan. He never obtained any money from Israel despite
10 purportedly making numerous trips to the country for that very purpose, blatantly lied that
11 funds that could have been used to fund the workout were tied up in his divorce proceedings,
12 and ultimately invented a non-existent investment scheme involving “auction.com” which
13 Menaged falsely claimed was retaining most of DenSco’s money (to go along with his
14 fabrication of the fraudulent cousin and terminally ill wife). Sadly, Mr. Chittick appears to
15 have bought into all of Menaged’s lies, turned a blind eye to contrary facts, or even
16 affirmatively engaged in the fraud until his last days. In doing so, Mr. Chittick ignored the
17 advice of counsel and the commitments he had made in the legal documents drafted for him
18 by counsel. Mr. Chittick’s blind devotion and/or refusal to acknowledge the harm he knew he
19 was causing DenSco is evidenced by, among other things:

- 20 • Mr. Chittick’s failure to address the double-lien issues that started to arise in
21 2012 and which he was expressly made aware of.
- 22 • Mr. Chittick’s failure to recognize and act on double-lien issues that arose in
23 2011 (*See e.g.*, CH_Rec_Men_0001120, 0003557, 0001829, 1042).
- 24 • Mr. Chittick’s decision not to perform due diligence on the loans he was making
25 to Menaged. This includes his failures to check for double liening issues after
26 having been apprised of the problem by AFG, after receiving multiple tax lien

1 lawsuits in 2013 naming both AFG and DenSco as lien holders, and after Magnus
2 Title made him aware he was in second position behind AFG on a deed of trust
3 he expected to be in first position in June 2013. It also includes his failure to do
4 due diligence regarding money lent during the “Second Fraud,” including his
5 failure to check for or obtain trustee’s deeds with respect to the properties
6 Menaged was purportedly buying. This was a marked departure from Mr.
7 Chittick’s prior business practice. Mr. Chittick’s routine practice in 2012 and
8 2013, as evidenced by numerous communications with borrowers, including
9 Menaged, was to request the status of trustee’s deeds evidencing that the
10 borrower had in fact obtained title to the property securing DenSco’s loan.
11 Starting in 2014, however, Mr. Chittick deviated from this practice, stopped
12 requesting copies of trustee’s deeds, knew he was not receiving trustee’s deeds
13 and/or that the trustee’s deed were not being recorded, and thus, knew or should
14 have known that Menaged was not actually purchasing any properties.

- 15 • Mr. Chittick’s decision not to protect DenSco’s lien priority, including his failure
16 to obtain title insurance or condition of title reports on the properties Menaged
17 purchased at auction, notwithstanding his own October 13, 2010 email to various
18 borrowers (including Menaged) making title insurance “mandatory” and noting
19 that the “costs [of title insurance] are trivial when you factor in the ‘what ifs’ you
20 and I are not covered.”
- 21 • Mr. Chittick’s decision to continue raising money from his investors in the face
22 of evidence that Menaged was lying about the use of DenSco’s money. For
23 example, on August 21, 2015, Chittick expressed his frustration that DenSco’s
24 \$30 million balance with Menaged has not gone down, admitted he “can’t get
25 new investors [because] I can’t give them the documentation that is necessary,”
26 and acknowledged that “I am in so many violations with my current investors

1 it's nuts." Nevertheless, Mr. Chittick told Menaged that he had "tried raising
2 more money" from his friends and family and continued to hope that he could
3 squeeze more money out of the "Utah guys."

- 4 • Mr. Chittick's decision to misrepresent his finances to his accountant to hide
5 DenSco's problems. *See* e.g., David Preston deposition transcript and exhibits
6 thereto, as well as Mr. Chittick's August 21, 2015 statement to Menaged that he
7 was altering his financial records to "keep[] my accountant happy."
- 8 • Mr. Chittick's decision to lend far in excess of the \$5 million workout loan set
9 forth in the Forbearance Agreement.
- 10 • Mr. Chittick's decision to take his own money out of DenSco rather than risk
11 personal losses.
- 12 • Mr. Chittick's refusal to acknowledge Menaged's lies, including lies about:
13 having a hedge fund ready to purchase banks of properties (there was never any
14 evidence of a hedge fund being involved in anything); auction.com holding
15 DenSco's money (there was never any evidence that auction.com was involved
16 in anything); raising money from his father or other anonymous persons in New
17 York or Israel, none of which ever came to pass; falsely asserting that his
18 furniture store assets were unencumbered and could secure DenSco's additional
19 financing (Defendants told DenSco the assets were fully encumbered); using
20 DenSco's funds to purchase properties (despite the lack of any evidence of a
21 trustee's deed or any other recorded document); Menaged's purported divorce
22 preventing Menaged from returning DenSco's funds (this despite Chittick's own
23 research into the family court docket revealing that Menaged was lying about the
24 divorce proceedings); and Menaged's wife's string of various maladies,
25 including, hospitalization, hospice care, psychosis, etc. all somehow preventing
26 Menaged from returning DenSco's funds.

- 1 • Mr. Chittick's knowledge of facts inconsistent with Menaged's cousin story,
2 which should have at least caused Mr. Chittick to conduct further due diligence.
3 For example, on June 3, 2013, Mr. Chittick learned through Magnus Title that
4 his lien on a Menaged property, 4745 W. Golden, was unexpectedly in second
5 position behind an AFG lien. CH_Rec_Men_0012083. Menaged's explanation
6 was that AFG had made a mistake (not his cousin) and was sending a release.
7 CH_Rec_Men_0012070. That was a lie. There was no release. That same
8 property remained encumbered by DenSco and AFG liens, and in 2014, AFG
9 was paid off in first position by DenSco. CH_Rec_Men_0023478. Thus, Mr.
10 Chittick should have known that Menaged's "cousin" had nothing to do with
11 AFG's lien on the 4745 W. Golden property.
- 12 • Mr. Chittick's failure to follow up on an April 28, 2015 consumer complaint to
13 the Consumer Protection and Advocacy Section, where a consumer named
14 Church complained that someone put a loan on his home and purportedly sold it
15 to Menaged, which the consumer explained was impossible because "my house
16 was not sold, or in foreclosure. *Also paper work states the check was payable to*
17 *Tiffany and Bosco. Who never received any check. And told me they not conduct*
18 *[sic] sale as stated in paper work."* The complaint goes on to state that "the
19 whole thing makes no sense. I called Tiffany and Bosco. And they told me that
20 they had nothing to do with it. But the paper work says they had the sale. And
21 the check of the borrower was made out to them. Also Yomtov Scott Menaged
22 the borrower. Has someone else's phone number listed as his..." Although the
23 consumer described what the Receiver terms the Second Fraud, and although
24 DenSco had actual notice of the complaint, there is no evidence that Chittick
25 followed up in any critical way whatsoever.
26

1 **H. Mr. Beauchamp briefly represents DenSco with respect to the Arizona**
2 **Department of Financial Institutions licensing requirements in 2016**

3 In prior years, Mr. Beauchamp had advised DenSco as to whether it would be
4 considered a mortgage broker by the ADFI, and thus, subject to ADFI licensing requirements.
5 In 2016, at Mr. Chittick's request, Mr. Beauchamp again represented DenSco in that regard
6 and provided advice as to whether DenSco was subject to ADFI licensure. Mr. Beauchamp
7 again determined that DenSco was not subject to ADFI licensing requirements. The ADFI did
8 not (and has never) contested that conclusion.

9 **I. Mr. Beauchamp briefly helps Shawna Heuer and DenSco after Mr.**
10 **Chittick's passing.**

11 Mr. Beauchamp first found out that Mr. Chittick had committed suicide on July 30,
12 2016, when Shawna Heuer called him while he was driving down State Route 51, forcing him
13 to pull over to the side of the road and collect himself. At that time, Mr. Beauchamp did not
14 have knowledge as to DenSco's business practices or activities after Mr. Beauchamp fired
15 DenSco for failing to make the requisite disclosures to its investors.

16 Mr. Beauchamp communicated with the Arizona Corporation Commission ("ACC") on
17 August 3, 2016 and they became actively involved with respect to DenSco's wind-down.

18 Clark Hill undertook a very limited representation solely to open an estate and arrange
19 for the appointment of Ms. Heuer as the personal representative of Mr. Chittick's estate. Ms.
20 Heuer was appointed on August 4, 2016. On or about August 10, 2016, Gammage & Burnham
21 took over representing her in that capacity. By August 18, 2016, the Receiver had been
22 appointed over DenSco, at the ACC's request.

23 In the interim, however, DenSco had no employees, officers, or directors other than Mr.
24 Chittick, and Ms. Heuer had no knowledge of DenSco's business, records, or hard money
25 lending in general. Although DenSco had a letter agreement with another hard money lender,
26 Robert Koehler, to step in and wind down DenSco's affairs in the event Mr. Chittick was

1 incapable of doing so, Mr. Koehler declined to do so. Given that DenSco needed to provide
2 information to its investors and the ACC, Mr. Beauchamp briefly stepped in to gather
3 information, maintain the status quo, provide information to the ACC, and provide updates to
4 investors until someone else could be appointed.

5 Mr. Beauchamp's actions during this brief period of time were helpful and necessary
6 and permitted by the Arizona Rules of Professional Conduct. On August 3, 2016 Mr.
7 Beauchamp sent an email to the investors alerting them to the situation involving Chittick's
8 death and information then-known about the state of DenSco's finances, after receiving input
9 from Ms. Heuer and Mr. Koehler. Until Mr. Davis was appointed as Receiver for DenSco, Mr.
10 Beauchamp periodically provided status updates to the investors. These communications with
11 the investors were accurate, and contrary to the Receiver's unfounded assertions otherwise,
12 were not misleading. Mr. Beauchamp recommended using a forensic accountant to trace
13 DenSco's funds, supported involving the police to investigate Menaged, and fully cooperated
14 in providing documents and information to both the ACC and the Receiver. Mr. Beauchamp
15 further reasonably relied on Gammage & Burnham, as counsel for the Chittick Estate, to
16 produce information and assert claims of privilege and confidentiality on behalf of Mr.
17 Chittick. Contrary to the Receiver, Mr. Beauchamp did not try to hide or conceal any
18 information, did not misrepresent the scope of his attorney-client relationship, did not use his
19 attorney-client relationship to shield information, and fully cooperated with both the ACC and
20 the Receiver. Mr. Beauchamp was as open as he could be given his limited knowledge of
21 DenSco's affairs in the two years since he fired the client, and the limited information DenSco
22 had provided him. While Mr. Beauchamp understood that given the situation, DenSco's
23 creditors might attempt to point the finger at DenSco's professionals, including Clark Hill and
24 Mr. Beauchamp, in an effort to minimize their losses, Mr. Beauchamp made the prudent and
25 permissible decision under difficult circumstances, at Ms. Heuer's request and when no one
26

1 else was available, to remain helpful to DenSco, DenSco's investors, the ACC, and the
2 Receiver, for a limited period of time.

3 Defendants further reject recent allegations that Mr. Beauchamp's potential
4 representation of an entity owned by Barry Luchtel gave rise to a conflict. Mr. Luchtel
5 borrowed money from DenSco through his entity AZ Home Buyer LLC, among others, and
6 invested in DenSco through his entity BLL Capital, LLC. In February 2016, Mr. Luchtel
7 communicated with Mr. Beauchamp regarding representing Luchtel entity Kayak Capital,
8 LLC, with respect to ADFI licensing requirements. Years earlier, Mr. Luchtel had requested
9 an electronic version of the DenSco POM, but Denny Chittick declined to share it. Aside from
10 a potential consultation, Mr. Beauchamp does not recall performing any work for Kayak. Clark
11 Hill has not been able to locate a signed engagement letter, and it does not appear that Kayak
12 was ever billed for legal services. Even had Mr. Beauchamp undertaken the representation of
13 Kayak with respect to ADFI, that would not have presented a conflict.

14 Discovery is continuing. Defendants may supplement.

15 **II. LEGAL THEORIES OF CLAIMS AND DEFENSES.**

16 **A. Plaintiff's claims**

17 ***Legal Malpractice***

18 Receiver asserts that Defendants, in their representation of DenSco, committed
19 malpractice and breached fiduciary duties owed to DenSco. Legal malpractice requires proof
20 of the existence of a duty, breach of duty, that defendant's breach was the actual and proximate
21 cause of damages, and the "nature and extent" of those damages. *Glaze v. Larsen*, 207 Ariz.
22 26, 29 ¶ 12 83 P.3d 26, 29 (Ariz. 2004) (citations and quotations omitted).

23 Receiver cannot prove breach of duty, actual and proximate cause, or resulting damages.
24 To prove breach of duty, Receiver will need to demonstrate that Defendants deviated from the
25 professional standard of care. *Phillips v. Clancy*, 152 Ariz. 415, 418, 733 P.2d 300, 303 (App.
26 1986). Defendants' advice and conduct in representing DenSco and, in doing so, representing

1 Mr. Chittick as president of DenSco, was consistent with Defendants' practice and experience,
2 and consistent with the standard of care. Thus, Defendants did not breach their duties to
3 DenSco. Receiver will also need to prove that if Defendants had not purportedly breached the
4 standard of care, that DenSco would not have suffered injury. *Id.* Whatever harm befell
5 DenSco was not an actual or foreseeable result of the advice provided by Defendants.
6 Defendants' conduct did not cause DenSco injury. Further, DenSco for years had failed to
7 follow: advice of counsel, its own loan documents, its promises to its investors through the
8 POMs and otherwise, or sound business judgment. There is no evidence DenSco would have
9 followed the advice the Receiver falsely accuses Defendants of failing to provide, and ample
10 evidence that DenSco had disregarded its lawyers' advice and would continue to disregard that
11 advice in favor of its joint venture with Menaged. Further, intervening or superseding causes
12 and wrongful conduct by third parties caused DenSco's injury. Thus, Receiver's malpractice
13 claim fails.

14 Defendants further incorporate the opinions of expert witnesses Rhodes and Olson
15 regarding attorney professionalism and the standard of care in the practice of securities law
16 respectively, as well as the opinions of experts Nelson, Rodriguez, and Perry.

17
18 ***Aiding and Abetting Breach of Fiduciary Duties***

19 Receiver asserts that Defendants aided and abetted Mr. Chittick in breaching his
20 fiduciary duties to DenSco. Claims of aiding and abetting require proof that: (1) the primary
21 tortfeasor must commit a tort that caused injury to the plaintiff; (2) the defendant must know
22 that the primary tortfeasor's conduct constitutes a breach of duty; (3) the defendant must
23 substantially assist or encourage the primary tortfeasor in the achievement of that breach and
24 (4) there must be a causal relationship between the defendant's assistance or encouragement
25 and the primary tortfeasor's commission of the tort. *Wells Fargo Bank v. Az. Laborers,*
26 *Teamsters and Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 485 (Ariz.

2002); *Sec. Title Agency, Inc. v. Pope*, 219 Ariz. 480, 491 (App. 2008). Importantly, “[b]ecause aiding and abetting is a theory of secondary liability, the party charged with the tort must have knowledge of the primary violation.” *Wells Fargo*, 201 Ariz. at 485.

As set forth above, Defendants’ advice and conduct in representing DenSco were consistent with the applicable standard of care. Defendants did not “substantially assist or encourage” Mr. Chittick in breaching his duties to DenSco, Defendants did not have knowledge of Mr. Chittick’s purported “primary violation,” nor is there a causal relationship between Defendants’ representation of DenSco and Mr. Chittick’s purported tortious conduct with respect to DenSco. Further, as set forth above, whatever harm befell DenSco was not an actual or foreseeable result of Defendants’ actions or inactions. Defendants’ conduct did not cause DenSco’s injury. Further, DenSco for years had failed to follow: advice of counsel, its own loan documents, its promises to its investors through the POMs and otherwise, or sound business judgment. There is no evidence DenSco would have followed the advice the Receiver falsely accuses Defendants of failing to provide, and ample evidence that DenSco had disregarded its lawyers’ advice and would continue to disregard that advice in favor of its joint venture with Menaged. Further, intervening or superseding causes and wrongful conduct by third parties caused DenSco’s injury.

Defendants further incorporate the opinions of expert witnesses Rhodes and Olson regarding attorney professionalism and the standard of care in the practice of securities law respectively, as well as the opinions of experts Nelson, Rodriguez, and Perry.

B. Affirmative Defenses

Statute of Limitations

Both the legal malpractice claim and the aiding and abetting claim have a two-year statute of limitations. *See* A.R.S. §12-542(1) (An action “[f]or injuries done to the person of another” shall be commenced and prosecuted within two years after the cause of action accrues, and not afterward”). Receiver who was appointed on August 18, 2016, did not file the

1 Complaint in this action until October 16, 2017, which was well outside the statute of
2 limitations. DenSco, and potentially the Investors, could have discovered at least as of Summer
3 2014, that DenSco's loans to Menaged (or his entities) and DenSco's lending practices with
4 respect to Menaged, could give rise to potential causes of action against Mr. Chittick or his
5 agents. Consequently, because the statute of limitations ran, at the latest, in the Summer of
6 2016, the Complaint is barred in its entirety.

7 *In pari delicto and unclean hands*

8 Arizona law recognizes the doctrine of in pari delicto. *Brand v. Elledge*, 89 Ariz. 200,
9 205, 360 P.2d 213, 217 (1961) (quoting *Furman v. Furman*, 34 N.Y.S.2d 699, 704 (N.Y. Sup.
10 Ct. 1941), *aff'd*, 40 N.E.2d 643 (N.Y. 1942)). In pari delicto is an affirmative defense by which
11 a party is barred from recovering damages if his losses are substantially caused by activities
12 the law forbade him to engage in." *Stewart v. Wilmington Trust SP Servs., Inc.*, 112 A.3d 271,
13 301–02 (Del. Ch.), *aff'd*, 126 A.3d 1115 (Del. 2015) (quotation omitted). The defense may
14 be raised against a receiver. *Id.* ("no cogent reason for sparing the innocent Receiver the effect
15 of in pari delicto while equally innocent stockholders or policyholders would be barred from
16 relief in the derivative context"); *Knauer v. Jonathon Roberts Fin. Grp., Inc.*, 348 F.3d 230,
17 236 (7th Cir. 2003) (affirming dismissal of the receiver's claims against the broker dealers,
18 concluding that they were barred by the defense of in pari delicto).

19 Here, to the extent there are claims against the Defendants, DenSco, into whose shoes
20 the Receivers steps, bears fault for damages about which it complains. Thus, the Receiver's
21 claims are barred by doctrine of *in pari delicto* and, to the extent it specifically seeks equitable
22 relief, by the related doctrine of unclean hands. Neither the Arizona constitution, nor Arizona's
23 comparative fault statutes, preclude the *in pari delicto* defense, nor are receivers, such as the
24 Plaintiff in this case, immune from the defense.

25 Defendants hereby incorporates its response in opposition to Plaintiff's Motion for
26 Summary Judgment on the *in pari delicto* defense.

1 ***Laches***

2 A claim is barred by laches when the delay in bringing the claim is “unreasonable under
3 the circumstances” given “the party’s knowledge of his or her right” and “any change in
4 circumstances caused by the delay has resulted in prejudice to the other party sufficient to
5 justify denial of relief.” *Mathieu v. Mahoney*, 174 Ariz. 456, 459, 851 P.2d 81, 84 (1993).
6 Receiver seeks to recover potentially millions of dollars in alleged damages resulting from
7 loans Mr. Chittick made to Menaged. DenSco would have been aware of the harms that could
8 befall DenSco and its investors as a result of DenSco’s loans to, and lending practices with,
9 Menaged, by Summer 2014 at the latest. DenSco’s inaction for several years, up through the
10 death of Mr. Chittick, to seek relief against any potential third party for harms suffered by
11 DenSco was unreasonable in light of DenSco’s knowledge. Because the Receiver steps into
12 DenSco’s shoes, the claims are barred.

13
14 ***Setoff***

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

19
20 ***Non-Parties at Fault***

21 As set forth in Defendants’ Notice of Third Parties at Fault, various third parties,
22 including, but not limited to, Mr. Chittick, Menaged, Menaged’s banks (Chase Bank and US
23 Bank), the banks’ employees, and Gregg Reichman/AFG, over whom Defendants have no
24 authority or control, are at fault for any damages suffered. The Receiver concurs.

25 With respect to Mr. Chittick, the Receiver filed a claim against Mr. Chittick’s estate for
26 \$48,811,635.54, asserted on numerous occasions that Mr. Chittick engaged in a Ponzi scheme

1 pursuant to which Mr. Chittick defrauded DenSco investors, and obtained repayment of
2 DenSco proceeds from net Ponzi “winners” based on the allegation that Mr. Chittick had
3 committed fraud. Further, it is clear that Mr. Chittick’s lending practices were at best careless
4 and that Mr. Chittick concealed critical information from his investors and his counsel. For
5 example, Mr. Chittick was aware of Menaged’s misuse of DenSco’s funds and double liening
6 of properties as far back as September 2012, yet did not provide this information to Mr.
7 Beauchamp or his investors. Instead, Mr. Chittick chose to drastically increase his lending to
8 Menaged, from \$4.65 million at the end of 2012 to more than \$28 million by the end of 2013
9 (none of which he disclosed to Mr. Beauchamp at the time, or even when he first sought Mr.
10 Beauchamp’s counsel in January 2014). Further, although Mr. Chittick understood that the
11 double liening issue arose as a direct result of Mr. Chittick’s funding loan money directly to
12 borrowers, Mr. Chittick refused to change his lending practices, thereby allowing Menaged to
13 perpetrate yet another fraud on DenSco. Even when Mr. Chittick expressed suspicion of
14 Menaged and his business practices, Mr. Chittick ignored his suspicions. For example, as
15 described above, Mr. Chittick dramatically increased his lending to Menaged *after* learning
16 that Menaged was double liening properties in 2012. And although Defendants do not concede
17 the accuracy, reliability, or admissibility of Mr. Chittick’s journals, Mr. Chittick noted in his
18 corporate journal as early as June 10, 2014 that he was aware that none of his loans with
19 Menaged were being secured by deeds of trust, yet he continued to lend Menaged hundreds of
20 millions of dollars. Mr. Chittick further stopped obtaining trustee’s deeds or any other
21 evidence that Menaged was actually purchasing properties subject to DenSco’s deeds of trust,
22 ignored consumer complaints that highlighted Menaged’s lies regarding trustee sale receipts
23 and cashier’s checks, and withdrew millions of dollars from DenSco knowing the business was
24 in serious jeopardy. Mr. Chittick hid or misrepresented many of the details regarding his
25 lending practices and finances from DenSco’s professionals, including its attorneys and
26 accountants. As further set forth above, Mr. Chittick appears to have bought into all of

1 Menaged's lies, turned a blind eye to evidence in front of him, or even affirmatively engaged
2 in the fraud until his last days. Mr. Chittick bears substantial fault for the damages caused to
3 DenSco.

4 With respect to Menaged, the Receiver admitted that Menaged caused DenSco \$31
5 million in damages, as set forth in the claim against Menaged. (See Deposition Exhibit 510
6 and Receiver's Petition No. 32). Menaged has pled guilty to defrauding DenSco and is serving
7 17 years in federal prison as a result. Menaged bears substantial fault for the damages caused
8 to DenSco.

9 With respect to Menaged's banks, the Receiver has retained counsel to pursue Chase
10 Bank and US Bank and has testified that he believes the Receivership has viable claims against
11 the banks for aiding and abetting Menaged's fraud by allowing Menaged to withdraw and
12 immediately redeposit nearly \$320 million dollars of DenSco funds. In August 2019, the
13 Receiver filed a lawsuit against the Chase Bank, US Bank, and its employees asserting that the
14 banks had aided and abetted Menaged's fraud on DenSco and that "but for" the bank's aiding
15 and abetting, the Second Fraud would not have occurred. Furthermore, discovery and the
16 Receiver's lawsuit against the banks is ongoing, but it is believed the banks allowed Menaged
17 to circumvent their own policies and procedures with respect to the withdrawal and deposit of
18 funds, that the banks knew DenSco wired the loan proceeds into Menaged's accounts to fund
19 the purchase of real property but that Menaged did not use DenSco's funds for the purpose
20 intended, and that the banks facilitated Menaged's fraudulent conduct, all as acknowledged by
21 the Receiver. The Banks aided and abetted Menaged's Second Fraud and bear substantial fault
22 for the resulting damage to DenSco.

23 With respect to AFG and its employees and agents, the Receiver has likewise retained
24 counsel to pursue those persons and entities for aiding and abetting Menaged's fraud or,
25 potentially, for aiding and abetting Mr. Chittick's breach of fiduciary duty to his DenSco or
26 his investors. AFG learned that Menaged was double liening properties with AFG and DenSco

1 loans in the Fall of 2012, then (much like DenSco), responded by lending Menaged even more
2 money. Upon information and belief, AFG made those loans to Menaged knowing that
3 DenSco would end up in second position on AFG's collateral, and may have benefitted from
4 Menaged's fraudulent use of DenSco's funds. Discovery is ongoing.

5

6 **Additional defenses:**

7 • Densco is at fault for any damages suffered. Among other things, DenSco
8 represented to its investors that it would obtain first position liens, understood
9 the proper loan practices and procedures that would ensure DenSco's loans
10 would be in first position, and received advice from its lawyers' regarding such
11 practices and procedures, yet chose to engage in riskier lending practices by
12 funding directly to his borrowers, including Menaged. After the First Fraud,
13 DenSco again ignored his lawyers' advice and standard lending practices,
14 thereby exposing DenSco and its investors to the same risks, this time manifested
15 in the Second Fraud. DenSco also ignored its lawyers' advice regarding
16 necessary disclosure prior to raising or rolling over investor funds. Further,
17 DenSco knew it had made representations to its investors regarding loan
18 concentrations and secured first position priority, yet nevertheless lent excessive
19 amounts of money to Menaged after learning of Menaged's habit of double
20 liening properties, in direct contravention of those representations (and without
21 informing his attorney). DenSco, based on its experience and its work with other
22 lenders, including Scott Gould and Robert Koehler, knew proper and safe
23 business practices, yet willingly chose not to follow those practices. Further, as
24 set forth above, DenSco negligently or willfully ignored numerous warnings and
25 conflicting information that should have alerted DenSco, and often did actually
26 alert DenSco, that Menaged was defrauding him.

- 1 • Densco, in to whose shoes the Receiver steps, assumed the risk of any actions
2 taken or not taken by DenSco or Mr. Chittick. *Hildebrand v. Minyard*, 16 Ariz.
3 App. 583, 585, 494 P.2d 1328, 1330 (1972) (“A plaintiff who by contract or
4 otherwise expressly agrees to accept a risk of harm arising from the defendant’s
5 negligent or reckless conduct cannot recover for such harm”) (*quoting*
6 Restatement (Second) of Torts § 496(B) (1965)).
- 7 • Receiver cannot demonstrate proximate cause or loss causation because
8 Defendants are not the actual or proximate cause of any damages suffered.
9 Among other things: (a) the damages were caused by Menaged, DenSco, and
10 Mr. Chittick, as well as the actions of AFG and Menaged’s banks, (b) all damages
11 associated with the First Fraud (including the alleged “damages” associated with
12 the \$1 million note and the \$5 million note) were incurred before Mr. Chittick
13 ever sought Mr. Beauchamp’s counsel in January 2014, (c) Plaintiff’s attempts
14 to make Defendants responsible for damages that predated their involvement by
15 alleging that Defendants should have been aware of earlier purported “red flags”
16 or that Defendants aided and abetted the use of expired POMs, fail both factually
17 and legally, and (d) damages associated with the Second Fraud were incurred as
18 a result of DenSco’s failure to abide by its attorneys’ advice, DenSco’s ongoing
19 failure to abide by its loan documents, Mr. Chittick’s failure to make proper
20 disclosures despite full knowledge that such disclosures were necessary and
21 required, Menaged’s fraudulent conduct, and the banks’ aiding and abetting of
22 that fraudulent conduct. Further, as set forth above, Mr. Chittick was intent on
23 working together with Menaged to “solve” the double liening issues, irrespective
24 of DenSco’s professionals’ advice, and in doing so, bought into all of Menaged’s
25 lies, turned a blind eye to evidence in front of him, or even affirmatively engaged
26 in the fraud. There is no evidence to suggest that Mr. Chittick would have done

1 anything other than continue the joint venture he had embarked on with Menaged
2 after drastically deviating from his business practices and his promises to his
3 investors starting in fall 2012.

- 4 • Any damages suffered were the result of intervening or superseding events or
5 causes over which the Defendants had no control and were not legally
6 responsible. *See above.*
- 7 • Receiver's failure to mitigate damages by failing to take actions that would
8 maximize recovery to the Receivership, including pursuing claims against other
9 third parties.
- 10 • Receiver's claims are barred by doctrines of waiver and estoppel.

11 Discovery is continuing. Defendants may supplement.

12
13 **III. WITNESSES.**

14 Because discovery is not complete, Defendants have not yet identified all persons it
15 may call as witnesses at trial, but reserves the right to call any of the following persons to
16 testify as a witness at trial:

- 17 1. David Beauchamp
18 c/o Coppersmith Brockelman, PLC
19 2800 N. Central Avenue, Suite 1900
Phoenix, Arizona 85004

20 Mr. Beauchamp is expected to testify with respect to and consistently with the facts and
21 issues raised in his deposition; the allegations in the Complaint, Plaintiff's Disclosure
22 Statements and other filings; and his and Clark Hill's representation of DenSco and of Mr.
23 Chittick in his capacity as president of DenSco.

1 2. Ed Hood
2 c/o Coppersmith Brockelman, PLC
3 2800 N. Central Avenue, Suite 1900
4 Phoenix, Arizona 85004

5 Mr. Hood is expected to testify with respect to and consistently with the facts and issues
6 raised in his deposition; the allegations in the Complaint, Plaintiff's Disclosure Statements and
7 other filings; Clark Hill's policies and procedures; and Clark Hill's representation of DenSco
8 and of Mr. Chittick in his capacity as president of DenSco.

9 3. Peter Davis, Receiver of DenSco Investment Corporation
10 c/o Osborn Maledon, P.A.
11 2929 N. Central Avenue, Suite 2100
12 Phoenix, Arizona 85012

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

1 4. David Preston
2 c/o Gammage & Burnham
3 2 N. Central Avenue, Suite 15
 Phoenix, Arizona 85004

4 Mr. Preston is expected to testify with respect to and consistently with his deposition
5 testimony, and is expected to testify regarding DenSco and Mr. Chittick's finances and tax
6 returns, Mr. Chittick's lack of complete or accurate disclosures to Mr. Preston, DenSco's
7 accountant, regarding DenSco's finances; Mr. Chittick's retirement planning and his
8 withdrawal of investments in DenSco for his own personal benefit; and the investments Mr.
9 Preston and his mother-in-law made in DenSco and Mr. Chittick's representations to them
10 regarding those investments. Mr. Preston is also expected to testify regarding Mr. Chittick's
11 character and personality, and the history and nature of his relationship with Mr. Chittick.

12 5. Daniel Schenck
13 c/o Coppersmith Brockelman, PLC
 2800 N. Central Avenue, Suite 1900
 Phoenix, Arizona 85004

14 Mr. Schenck is expected to testify with respect to and consistently with his deposition
15 testimony; the allegations in the Complaint and Plaintiff's Disclosure Statements, including
16 testimony about the work he and Clark Hill performed on behalf of DenSco and Mr. Chittick
17 in his capacity as president of DenSco. Mr. Schenck is also expected to testify regarding
18 Menaged's communications with Beauchamp, Menaged's communications with Mr. Chittick,
19 and Mr. Beauchamp's communications with Mr. Chittick. Mr. Schenck is expected to testify
20 regarding Clark Hill's advice to DenSco that it could not raise money from investors without
21 full disclosure to those investors, Mr. Chittick's ultimate refusal to provide written disclosures
22 to his investors, and Clark Hill's termination of its representation of DenSco.
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1 6. Robert Anderson
2 c/o Coppersmith Brockelman, PLC
3 2800 N. Central Avenue, Suite 1900
4 Phoenix, Arizona 85004

5 Mr. Anderson is expected to testify with respect to and consistently with his deposition
6 testimony; and about the the work he and Clark Hill performed on behalf of DenSco and Mr.
7 Chittick in his capacity as president of DenSco. Mr. Anderson is also expected to testify
8 regarding Clark Hill's advice to DenSco.

9 7. Mark Sifferman
10 c/o Coppersmith Brockelman, PLC
11 2800 N. Central Avenue, Suite 1900
12 Phoenix, Arizona 85004

13 Mr. Sifferman is expected to testify with respect to and consistently with his deposition
14 testimony, and testify regarding any non-privileged communications or work he performed
15 with respect DenSco or Mr. Chittick, in his capacity as assistant general counsel for Clark Hill.

16 8. Shawna Heuer
17 c/o Bonnett Fairbourn, PC
18 2325 E. Camelback Road
19 Phoenix, Arizona 85016

20 Ms. Heuer is expected to testify with respect to and consistently with her deposition
21 testimony regarding Mr. Beauchamp's work on behalf Ms. Heuer and DenSco after Mr.
22 Chittick's death and her communications with Mr. Beauchamp, the Receiver, the Arizona
23 Corporation Commission, DenSco's investors, and other third parties regarding DenSco. Ms.
24 Heuer is also expected to testify about Mr. Chittick's character and personality. Ms. Heuer
25 may also have knowledge regarding Mr. Chittick and DenSco's business, and Mr. Chittick's
26 communications with Mr. Beauchamp, Menaged, or DenSco's investors.

1 9. Yomtov “Scott” Menaged

2 Scott Menaged is expected to testify with respect to any issues raised in his deposition
3 testimony. Mr. Menaged is also expected to testify about all aspects of any personal, financial,
4 or business dealings he may have had with DenSco and Mr. Chittick; all aspects of the fraud(s)
5 he perpetrated on DenSco and Mr. Chittick, either directly, or through one of his entities,
6 including, but not limited to, Easy Investments, LLC, Arizona Home Foreclosures, LLC,
7 Furniture King, LLC, and Scott’s Fine Furniture; all aspects of actions or conduct related to
8 his criminal indictment, plea bargain, or sentencing in the United States District Court for the
9 District of Arizona; his communications with DenSco and Mr. Chittick; his communications
10 with Mr. Beauchamp; his relationship and communications with AFG and its principals; his
11 use of AFG to further his fraud against DenSco; his relationship with his banks; his use of
12 those banks to further his fraud against DenSco; his communications with the Plaintiff and his
13 agents, and his actions related to the cooperation agreement he signed with Plaintiff.

14
15 10. PMK Chase Bank
16 c/o Greenberg Traurig
17 2375 East Camelback Road, #700
 Phoenix, AZ 85016

18 Chase Bank is expected to testify with respect to any issues raised in its deposition
19 testimony. Chase Bank is further expected to testify regarding Menaged’s banking practices,
20 including Menaged’s use of Chase Bank to perpetrate his fraud on DenSco and Chittick; Chase
21 Bank’s policies and procedures regarding the use of its bank accounts (including the issuance
22 and cancellation of cashier’s checks); and Chase Bank’s knowledge of, and aid to, Menaged
23 fraud on DenSco and Chittick.

1 11. Samantha Kumbalek
2 c/o Greenberg Traurig
3 2375 East Camelback Road, #700
 Phoenix, AZ 85016

4 Ms. Kumbalek, a current or former employee at Chase Bank, is expected to testify with
5 respect to any issues raised in her deposition testimony. Ms. Kumbalek is also expected to
6 testify about Yomtov Menaged's banking relationship and practices at Chase Bank, including
7 Menaged's use of Chase Bank to perpetrate fraud(s) upon DenSco and Denny Chittick as set
8 forth in the Receiver's Petition #36 and in Yomtov Menaged's December 8, 2017 interview
9 with Kenneth Frakes; Chase Bank's policies and procedures regarding the use of its bank
10 accounts (including the issuance and cancellation of cashier's checks); and her knowledge of,
11 and aid to, Menaged fraud on DenSco and Chittick.

12 12. Vikram Dadlani
13 c/o Greenberg Traurig
14 2375 East Camelback Road, #700
 Phoenix, AZ 85016

15 Vikram, a current or former employee at Chase Bank, is expected to testify with respect
16 to any issues raised in his deposition testimony. Mr. Dadlani is also expected to testify about
17 Yomtov Menaged's banking relationship and practices at Chase Bank, including Menaged's
18 use of Chase Bank to perpetrate fraud(s) upon DenSco and Denny Chittick as set forth in the
19 Receiver's Petition #36 and in Yomtov Menaged's December 8, 2017 interview with Kenneth
20 Frakes; Chase Bank's policies and procedures regarding the use of its bank accounts (including
21 the issuance and cancellation of cashier's checks); and his knowledge of, and aid to, Menaged
22 fraud on DenSco and Chittick.

1 13. PMK US Bank
2 c/o Quarles & Brady, LLP
3 2 North Central Avenue, Suite #3
 Phoenix, AZ 85004

4 US Bank is expected to testify with respect to any issues raised in its deposition
5 testimony. US Bank is further expected to testify regarding regarding Menaged's banking
6 practices, including Menaged's use of Chase Bank to perpetrate his fraud on DenSco and
7 Chittick; US Bank's policies and procedures regarding the use of its bank accounts (including
8 the issuance and cancellation of cashier's checks); and US Bank's knowledge of, and aid to,
9 Menaged's fraud on DenSco and Chittick.

10
11 14. Hilda Chavez
12 c/o Quarles & Brady, LLP
13 2 North Central Avenue, Suite #3
 Phoenix, AZ 85004

14 Ms. Chavez is expected to testify with respect to any issues raised in her deposition
15 testimony. Ms. Chavez is further expected to testify regarding regarding Menaged's banking
16 practices, including Menaged's use of US Bank to perpetrate his fraud on DenSco and Chittick;
17 US Bank's policies and procedures regarding the use of its bank accounts (including the
18 issuance and cancellation of cashier's checks); and US Bank's knowledge of, and aid to,
19 Menaged's fraud on DenSco and Chittick.

20
21 15. Gregg Seth Reichman
22 c/o Andrew Abraham
23 702 East Osborn Road
24 Suite 200
 Phoenix, AZ 85014

25 Mr. Reichman and/or Active Funding Group is expected to testify regarding the facts
26 and issues raised in his deposition. Mr. Reichman is also expected to testify regarding the

1 hardmoney lending business in Arizona; Menaged's businesses, business practices, and
2 finances and AFG's relationship with Menaged and his entities; the fraud(s) Menaged
3 perpetrated on DenSco and Mr. Chittick, either directly, or through one of Menaged's entities;
4 Mr. Reichman's conversations with Mr. Chittick regarding Menaged and business practices,
5 including the double lien issue that Mr. Reichman first noticed in fall 2012. Mr. Reichman
6 may also testify with respect to the allegations raised by the Receiver in Petition No. 45. .

7
8 16. Kevin Merritt
9 Gammage & Burnham
2 North Central Avenue, 15th Floor
Phoenix, Arizona 85004

10 Mr. Merritt is expected to testify consistently with any potential deposition testimony
11 and is expected to testify regarding Gammage & Burnham's representation of the Estate of
12 Denny Chittick and Shawna Heuer as Personal Representative for the Estate; Gammage &
13 Burnham's communications with Clark Hill and David Beauchamp regarding the
14 representation of the Estate of Denny Chittick and Shawna Heuer; the disclosure of documents
15 and information to the DenSco Receiver and its work and communications with Clark Hill and
16 David Beauchamp with respect to that production, including the Estate's assertions or concerns
17 regarding privileged communications; the timing of that disclosure; Gammage & Burnham's
18 work generally, Kevin Merritt's work specifically, in representing DenSco and Mr. Chittick,
19 including, the drafting and creation of DenSco's loan documents, and the advice provided
20 regarding those documents and loan procedures, **and Kevin Merritt's personal and**
21 **professional relationship with Mr. Beauchamp.**

22 17. James Polese
23 Gammage & Burnham
24 2 North Central Avenue, 15th Floor
Phoenix, Arizona 85004

25 Mr. Polese is expected to testify consistently with any potential deposition testimony
26 and is expected to testify regarding Gammage & Burnham's representation of the Estate of

1 Denny Chittick and Shawna Heuer as Personal Representative for the Estate; Gammage &
2 Burnham's communications with Clark Hill and David Beauchamp regarding the
3 representation of the Estate of Denny Chittick and Shawna Heuer; Gammage & Burnham's
4 disclosure of documents and information to the DenSco Receiver and its work and
5 communications with Clark Hill and David Beauchamp with respect to that production,
6 including the Estate's assertions or concerns regarding privileged communications; and the
7 timing of that disclosure, **and James Polese's personal and professional relationship with**
8 **Mr. Beauchamp.**

9 18. Robert Koehler

10 Mr. Koehler is expected to testify regarding the facts and issues raised in his deposition
11 testimony. Mr. Koehler is also expected to testify about, hard money lending practices and
12 procedures used by hard money lenders to protect their investments, and the practices and
13 procedures Mr. Chittick learned or witnessed while working with Mr. Koehler; how typical
14 hard money lending practices compare to those used by DenSco; his work with Chittick
15 regarding hard money lending prior to and after DenSco's formation; his investment in
16 DenSco; DenSco's communications with Mr. Koehler regarding his investment; Mr. Koehler's
17 agreement to windup DenSco's affairs in the event Mr. Chittick was unable to continue leading
18 the company; Mr. Koehler's relationship and communications with Mr. Chittick; Mr.
19 Beauchamp's efforts on behalf of DenSco after Mr. Chittick's passing; and Mr. Chittick's
20 sophistication and knowledge of prudent hard money lending practices.

21 19. Scott Gould

22 Mr. Gould is expected to have knowledge regarding and testify about: the facts and
23 issues raised in Mr. Gould's deposition testimony; Mr. Chittick's business practices, and the
24 practices and procedures Mr. Chittick learned or witnessed while working with Mr. Gould;
25 hard money lending and the practices and procedures used by hard money lenders to protect
26 their investments; his investment in DenSco; DenSco's communications with Mr. Gould

1 regarding his investment; Mr. Gould's understanding of DenSco's practices and procedures,
2 including DenSco's decision to charge above market rates to borrowers and provide above
3 market returns to investors; and Mr. Chittick's sophistication and knowledge of prudent hard
4 money lending practices.

5 20. Ranasha Chittick
6 c/o MJ Simpson
7 1232 East Missouri Avenue
8 Phoenix, Arizona 85014

9 Ms. Ranasha Chittick is expected to have knowledge regarding and testify about the
10 facts and issues raised in her deposition testimony; Denny Chittick's business practices and
11 procedures; Menaged's relationship with Mr. Chittick; Mr. Chittick mental and psychological
12 makeup over time; Mr. Chittick's relationships with his family and friends; the impact of
13 various life events on Mr. Chittick, including the Chitticks' divorce and the responsibility of
14 running DenSco.

15 21. Barry Luchtel

16 Mr. Luchtel is expected to testify about the facts and issues raised in his deposition
17 testimony; his borrowing relationship with DenSco; DenSco's lax lending procedures;
18 DenSco's collection and enforcement procedures; the practices and procedures used by hard
19 money lenders; his investment in DenSco; DenSco's communications with Mr. Luchtel
20 regarding his investment; Mr. Luchtel's understanding of DenSco's practices and procedures;
21 his relationship with Mr. Chittick; and Mr. Chittick character and personality traits.

22 22. Steve Bunger

23 Mr. Bunger is expected to testify regarding the facts and issues raised in his deposition
24 testimony; his relationship with Mr. Chittick and DenSco; his investments in DenSco and the
25 risks he understood he was taking with those investments; his communications with Mr.
26 Chittick regarding his investments in DenSco; his understanding of DenSco's lending practices

1 and procedures; Mr. Chittick's character and personality traits; and Mr. Chittick's
2 sophistication and knowledge of prudent hard money lending practices.

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1 23. Brian Imdieke

2 Mr. Imdieke is expected to testify regarding the facts and issues raised in his deposition
3 testimony; his relationship with Mr. Chittick and DenSco; his investments in DenSco and the
4 risks he understood he was taking with those investments; his communications with Mr.
5 Chittick regarding his investments in DenSco; his understanding of DenSco's lending practices
6 and procedures; Mr. Chittick's character and personality traits; and Mr. Chittick's
7 sophistication and knowledge of prudent hard money lending practices.

8 24. Anthony Burdett

9 Mr. Burdett is expected to testify regarding the facts and issues raised in his deposition
10 testimony; his relationship with Mr. Chittick and DenSco; his investments in DenSco and the
11 risks he understood he was taking with those investments; his communications with Mr.
12 Chittick regarding his investments in DenSco; his understanding of DenSco's lending practices
13 and procedures; Mr. Chittick's character and personality traits; and Mr. Chittick's
14 sophistication and knowledge of prudent hard money lending practices.

15 25. Warren Bush

16 Mr. Bush is expected to testify regarding the facts and issues raised in his deposition
17 testimony; his relationship with Mr. Chittick and DenSco; his investments in DenSco and the
18 risks he understood he was taking with those investments; his communications with Mr.
19 Chittick regarding his investments in DenSco; his understanding of DenSco's lending practices
20 and procedures; Mr. Chittick's character and personality traits; and Mr. Chittick's
21 sophistication and knowledge of prudent hard money lending practices.

22 26. Doriann Davis

23 Ms. Davis is expected to testify regarding the facts and issues raised in her deposition
24 testimony; her relationship with Mr. Chittick and DenSco; her investments in DenSco and the
25 risks she understood she was taking with those investments; her communications with Mr.
26 Chittick regarding her investments in DenSco; her understanding of DenSco's lending

1 practices and procedures; Mr. Chittick's character and personality traits; and Mr. Chittick's
2 sophistication and knowledge of prudent hard money lending practices.

3 27. Russ Dupper

4 Mr. Dupper is expected to testify regarding the facts and issues raised in his deposition
5 testimony; his relationship with Mr. Chittick and DenSco; his investments in DenSco and the
6 risks he understood he was taking with those investments; his communications with Mr.
7 Chittick regarding his investments in DenSco; his understanding of DenSco's lending practices
8 and procedures; Mr. Chittick's character and personality traits; and Mr. Chittick's
9 sophistication and knowledge of prudent hard money lending practices.

10 28. Paul Kent

11 Mr. Kent is expected to testify regarding the facts and issues raised in his deposition
12 testimony; his relationship with Mr. Chittick and DenSco; his investments in DenSco and the
13 risks he understood he was taking with those investments; his communications with Mr.
14 Chittick regarding his investments in DenSco; his understanding of DenSco's lending practices
15 and procedures; Mr. Chittick's character and personality traits; and Mr. Chittick's
16 sophistication and knowledge of prudent hard money lending practices.

17 29. Kevin Potempa

18 Mr. Potempa is expected to testify regarding the facts and issues raised in his deposition
19 testimony; his relationship with Mr. Chittick and DenSco; his investments in DenSco and the
20 risks he understood he was taking with those investments; his communications with Mr.
21 Chittick regarding his investments in DenSco; his understanding of DenSco's lending practices
22 and procedures; Mr. Chittick's character and personality traits; and Mr. Chittick's
23 sophistication and knowledge of prudent hard money lending practices.

24 30. Judy Siegford

25 Ms. Siegford is expected to testify regarding the facts and issues raised in her deposition
26 testimony; her relationship with Mr. Chittick and DenSco; her investments in DenSco and the

1 risks she understood she was taking with those investments; her communications with Mr.
2 Chittick regarding her investments in DenSco; her understanding of DenSco's lending
3 practices and procedures; Mr. Chittick's character and personality traits; and Mr. Chittick's
4 sophistication and knowledge of prudent hard money lending practices.

5 31. William Swirtz

6 Mr. Swirtz is expected to testify regarding the facts and issues raised in his deposition
7 testimony; his relationship with Mr. Chittick and DenSco; his investments in DenSco and the
8 risks he understood he was taking with those investments; his communications with Mr.
9 Chittick regarding his investments in DenSco; his understanding of DenSco's lending practices
10 and procedures; Mr. Chittick's character and personality traits; and Mr. Chittick's
11 sophistication and knowledge of prudent hard money lending practices.

12 32. Steve Tuttle

13 Mr. Tuttle is expected to testify regarding the facts and issues raised in his deposition
14 testimony; his relationship with Mr. Chittick and DenSco; his investments in DenSco and the
15 risks he understood he was taking with those investments; his communications with Mr.
16 Chittick regarding his investments in DenSco; his understanding of DenSco's lending practices
17 and procedures; Mr. Chittick's character and personality traits; and Mr. Chittick's
18 sophistication and knowledge of prudent hard money lending practices.

19 33. Michelle Tran
20 c/o Coppersmith Brockelman, PLC
21 2800 N. Central Avenue, Suite 1900
 Phoenix, Arizona 85004

22 Ms. Tran is expected to regarding the facts and issues raised in her deposition testimony,
23 and her knowledge regarding Clark Hill's limited representation of Ms. Shawna Heuer in her
24 capacity as the Personal Representative of Denny Chittick's estate.

25 34. Any witnesses disclosed by other parties.

26 35. Any witnesses that become known through discovery.

1 36. Any witness deposed by parties.

2 37. Custodian or other foundational witnesses necessary to admit exhibits,
3 including, but not limited to:

- 4 a. Michael Boland, c/o Coppersmith Brockelman, regarding the collection,
5 preservation and production of data and documents from Clark Hill.
6 b. Andrea Padinha, c/o Coppersmith Brockelman, regarding the collection,
7 preservation and production of data and documents from Clark Hill.
8 c. TERIS, regarding the collection, preservation and production of data and
9 documents from the Chittick estate.
10 d. D4 Technology & eDiscovery, regarding the collection, preservation and
11 production of data and documents from the Chittick estate.
12 e. Gammage & Burnham regarding the collection, preservation and
13 production of data and documents from the Chittick estate.
14 f. Ryan Anderson, regarding the collection, preservation and production of
15 data and documents produced by Yomtov Menaged to the Receiver.
16 g. Forensics Consulting Solutions, LLC, regarding the collection,
17 preservation and production of data and documents produced by
18 Yomtov Menaged's.
19 h. U.S. Bank
20 i. Chase Bank
21 j. The Receiver, regarding the collection, preservation and production of
22 data and documents residing in the Depository.

23 Discovery is continuing. Defendants may supplement.
24
25
26

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

2
3 38. Veronica Castro aka Veronica Gutierrez Reyes
4 c/o Thomas W. Warshaw Attorney at Law
5 33147 North 71st Way
6 Scottsdale, AZ 85266

7 Ms. Castro is expected to testify regarding any issues raised in her deposition testimony.
8 Ms. Castro is also expected to testify regarding Menaged's personal, financial, or business
9 dealings with DenSco and Mr. Chittick; the fraud(s) Menaged perpetrated on DenSco and Mr.
10 Chittick, either directly, or through one of Menaged's entities, and Ms. Castro's involvement
11 in those frauds; Menaged's communications with DenSco and Mr. Chittick; Menaged's
12 communications with Mr. Beauchamp; the actions or conduct related to Menaged's criminal
13 indictment, plea bargain, or sentencing in the United States District Court for the District of
14 Arizona; and Ms. Castro's communications with DenSco and Mr. Chittick.

15 39. Luigi Amoroso

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

23 40. Alberto Pena
24 c/o Law Office of Cameron A. Morgan
25 4356 North Civic Center Plaza
26 Suite 101
Scottsdale, AZ 85251

Mr. Pena may have knowledge regarding Menaged's personal, financial, or business
dealings with DenSco and Chittick; the fraud(s) Menaged perpetrated on DenSco and Chittick,

1 either directly, or through one of Menaged's entities; Menaged's communications with DenSco
2 and Mr. Chittick; and the actions or conduct related to Mr. Pena's and Menaged's criminal
3 indictment, plea bargain, or sentencing in the United States District Court for the District of
4 Arizona.

5 41. Troy Flippo
6 c/o Storrs Law Firm PLLC
7 1421 East Thomas Road
8 Phoenix, AZ 85014

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

15 42. Menaged family members, including, Joseph Menaged, Michelle Menaged,
16 Jennifer Bonfiglio, Joy Menaged, Jess Menaged, and Short Term Finance,
17 LLC, an entity solely owned by Joseph Menaged

18 Menaged's family may have knowledge regarding Menaged's personal, financial, or
19 business dealings with DenSco and Chittick; the fraud(s) Menaged perpetrated on DenSco and
20 Chittick, either directly, or through one of Menaged's or his Family's entities; Menaged's
21 family's receipt and use of millions of dollars transferred to them by Menaged, including
22 money Menaged fraudulently obtained from DenSco, as alleged by the Chapter 7 Bankruptcy
23 Trustee of the Menaged bankruptcy estate in Case No. 2:17-ap-00776-PS filed in the
24 Bankruptcy Court for the District of Arizona; Menaged's communications with DenSco and
25 Chittick; and the actions or conduct related to Menaged's criminal indictment, plea bargain, or
26 sentencing in the United States District Court for the District of Arizona.

1 43. Jeff Goulder
2 Stinson Leonard Street
3 1850 North Central Avenue, Suite 2100
4 Phoenix, Arizona 85004

5 Mr. Goulder is expected to have knowledge regarding the negotiations of the
6 Forbearance Agreement. Mr. Goulder also may have knowledge regarding Menaged's
7 businesses, business practices, and finances. Mr. Goulder also may have knowledge regarding
8 Menaged's communications with Mr. Beauchamp.

9 44. Ryan Anderson
10 Gutilla Murphy Anderson
11 5415 East High Street, Phoenix, Arizona 85054

12 Mr. Anderson is expected to have knowledge regarding communications between the
13 DenSco Receiver and his agents, including Mr. Anderson, and Clark Hill and David
14 Beauchamp related to DenSco; Clark Hill and David Beauchamp's cooperation with the
15 DenSco Receiver's requests and demands; Clark Hill and David Beauchamp's disclosure of
16 documents and information to the DenSco Receiver and the timing thereof; the DenSco
17 Receiver's investigation into DenSco and Denny Chittick's business (including any frauds
18 perpetrated upon DenSco and Denny Chittick), the information obtained as a result of that
19 investigation, and the timing thereof; the Receivership's claims against, among others, AFG,
20 the Chittick Estate, Menaged, Chase Bank, and US Bank; the cooperation agreement the
21 Receivership entered into with Menaged, and Menaged's actions and communications with the
22 Receivership; gathering and reviewing documents produced by third parties, including
23 Menaged; the Receiver's actions on behalf of the receivership.

24 45. Person Most Knowledgeable, Federal Bureau of Investigation

25 The FBI is expected to have knowledge regarding the investigation into Yomtov
26 Menaged and the fraud he perpetrated on DenSco, Mr. Chittick, and others.

1 46. Gary Clapper and Wendy Coy
2 Arizona Corporation Commission
3 1300 W. Washington, 3rd Floor
 Phoenix, Arizona 85007

4 Mr. Clapper and Ms. Coy are expected to have knowledge regarding the Arizona
5 Corporation Commission's investigation of DenSco; its decision to appoint a Receiver for
6 DenSco; and the ACC's requests to, and communications with, Mr. Beauchamp, and Mr.
7 Beauchamp's cooperation with those requests.

8 47. Debbie Pihl
9 Magnus Title Agency
 6991 East Camelback Road, Suite C100
 Scottsdale, Arizona 85251

10 Ms. Pihl is expected to have knowledge regarding DenSco and Menaged's lending
11 relationship and practices, and Menaged's lending relationships and practices with other
12 lenders.

13 48. Ellen Bolduc
14 Suburban Mortgage, Inc.
15 7500 North Dreamy Draw, #110
 Phoenix, AZ 85020

16 Ms. Bolduc is expected to have knowledge regarding DenSco and Menaged's lending
17 relationship and practice, and Menaged's lending relationships and practices with other
18 lenders.

19 49. Sharla Chittick Trainor

20 Ms. Trainor is expected to have knowledge regarding Denny Chittick mental and
21 psychological makeup over time; Mr. Chittick's relationships with his family and friends; the
22 impact of various life events on Mr. Chittick, including the Chitticks' divorce and the
23 responsibility of running DenSco.
24

1 50. Christopher Hughes

2 Mr. Hughes is expected to have knowledge regarding the practices and procedures used
3 by hard money lenders to protect their investments; his borrowing relationship with DenSco
4 and DenSco/Chittick's practices and procedures with respect to DenSco's loans to borrowers;
5 and his communications with DenSco regarding his loans.

6 51. Victor Gojgaj
7 c/o David Knapper Law Office
8 1599 East Oranewood #125
 Phoenix, Arizona 85020

9 Mr. Gojgaj is expected to have knowledge regarding, and testify about the facts and
10 issues raised in his deposition testimony, his borrowing relationship with DenSco; DenSco's
11 lax lending procedures; DenSco's collection and enforcement procedures; his relationship with
12 Mr. Chittick; Mr. Chittick character and personality traits; and Mr. Chittick's sophistication
13 and knowledge of prudent hard money lending practices.

14
15 52. Kurt Johnson

16 Mr. Johnson is expected to have knowledge regarding his relationship with DenSco,
17 whether as an attorney or otherwise and any legal advice provided to DenSco.

18
19 53. Coralee Thompson

20 Ms. Thompson is expected to have knowledge regarding the facts and issues raised in
21 her deposition testimony; her relationship with Mr. Chittick and DenSco; her investments in
22 DenSco and the risks she understood she was taking with those investments; her
23 communications with Mr. Chittick regarding her investments in DenSco; her understanding of
24 DenSco's lending practices and procedures; Mr. Chittick's character and personality traits; and
25 Mr. Chittick's sophistication and knowledge of prudent hard money lending practices.

1 54. G.E. Siegford

2 Mr. Siegford is expected to have knowledge regarding the facts and issues raised in his
3 deposition testimony; his relationship with Mr. Chittick and DenSco; his investments in
4 DenSco and the risks he understood he was taking with those investments; his communications
5 with Mr. Chittick regarding his investments in DenSco; his understanding of DenSco's lending
6 practices and procedures; Mr. Chittick's character and personality traits; and Mr. Chittick's
7 sophistication and knowledge of prudent hard money lending practices.

8 55. John Ray

9 Mr. Ray is expected to have knowledge regarding the facts and issues raised in his
10 deposition testimony; his relationship with Mr. Chittick, DenSco, Menaged, and Menaged's
11 entities; his understanding of DenSco's lending practices and procedures; Mr. Chittick's
12 character and personality traits; Mr. Menaged's character and personality traits; and Mr.
13 Chittick's sophistication and knowledge of prudent hard money lending practices.

14
15 56. DenSco Investors and Borrowers

16 The Investors are expected to have knowledge regarding Mr. Chittick's
17 communications to the Investors and their knowledge of DenSco's business, the status of their
18 investments, the status of DenSco's loans at all relevant times, and personal information
19 regarding Mr. Chittick. The Borrowers are expected to have knowledge regarding the typical
20 business practices of DenSco and Mr. Chittick's operation of DenSco.

21 57. Bruce Church

22 Mr. Church is expected to have knowledge regarding a complaint he filed with the
23 Consumer Protection and Advocacy Section of the Office of the Arizona Attorney General
24 regarding a lien placed on his home. The complaint notes that his home was purportedly sold
25 at a trustee's sale by Tiffany & Bosco, but that Tiffany & Bosco has no knowledge of such a
26 sale and that Tiffany & Bosco never received payment for such a sale, despite representations

1 otherwise. Mr. Church is also expected to have knowledge regarding DenSco's response to
2 the complaint and any resolution thereof.

3 58. Chittick family members Eldon, Carleen, and Sharla Chittick

4 The Chittick family members are expected to have knowledge regarding Mr. Chittick's
5 character and personality, and may have knowledge regarding Mr. Chittick and DenSco's
6 business, and Mr. Chittick's communications with Mr. Beauchamp, Menaged, or DenSco's
7 investors.

8 59. Sara Beretta, Simon Consulting
9 c/o Osborn Maledon, P.A.
10 2929 N. Central Avenue, Suite 2100
Phoenix, Arizona 85012

11 Ms. Beretta is expected to have knowledge regarding the Receiver's actions, conduct,
12 and analyses with respect to the DenSco Receivership, including, the facts and issues raised in
13 Mr. Davis's deposition; the allegations in the Complaint and Mr. Davis's conduct as the
14 Receiver; the Receiver's evaluations, analyses, and determinations regarding all aspects of
15 DenSco's business and finances, including, but not limited to, DenSco's loans, lending
16 practices, record keeping, financial transactions, and solvency; the Receiver's maintenance of
17 any DenSco or Chittick records or property, including, but not limited to, electronic records,
18 websites, and email communications; the Receiver's communications with third parties related
19 to DenSco, including communications with Menaged, financial institutions, investors, and
20 accountants and other professionals; the Receiver's determinations regarding the Receiver's
21 evaluation and analysis regarding the potential fault, liability, or culpability of any third party
22 with respect to any losses suffered by DenSco, including, but not limited, to Chase Bank, U.S.
23 Bank, Yomtov Menaged, Active Funding Group, LLC, and/or Gregg Seth Reichman; the
24 Receiver's efforts at collecting monies for the benefit of the receivership; the cooperation
25 agreement between the Receiver and Menaged.

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

2 **Aside from the various witnesses who have been deposed in the above captioned**
3 **matter:** Scott Menaged testified at his Section 341 Meeting of Creditors and his Rule 2004
4 exam as part of his Chapter 7 bankruptcy proceeding. Mr. Menaged also provided a statement
5 to Mr. Ken Frakes, whom the Receiver has retained as counsel to pursue claims against
6 Menaged's banks. The Receiver is believed to be the custodian of the resulting transcripts.
7 Luigi Amoroso gave deposition testimony as well. The Receiver is believed to be the custodian
8 of the transcript.

9
10 **VI. EXPERT WITNESSES.**

11 Defendants have retained Scott Rhodes, Kevin Olson, Erin Nelson, Rick Rodriguez, and
12 David Perry as testifying experts in this case, and have previously disclosed their reports to
13 Plaintiff.

14
15 **VII. COMPUTATION AND MEASURE OF DAMAGES.**

16 Plaintiff is not entitled to recover damages against Defendants nor is Plaintiff entitled
17 to prejudgment interest, as the asserted damages are not liquidated. Further, Plaintiff is not
18 entitled to punitive damages. Defendants did not breach the standard of care or aid and abet
19 any breach of fiduciary duty, there is no evidence that Defendants acted with an evil mind at
20 any point in time, nor did Defendants actions, taken after the alleged breaches (and which
21 Plaintiff alleges form the basis of a punitive damage claim), have any causal link to Plaintiff's
22 alleged damages.

23 Similarly, Plaintiff's late assertion that Defendants are jointly and severally liable with
24 Chittick and Menaged for the damages caused to DenSco fails. Plaintiffs allege that
25 Defendants are jointly and severally liable under A.R.S. § 12-2506(D)(1) because of their
26 "multiple acts of aiding and abetting a breach of fiduciary duty that DenSco owed to its

investors.” Section 12-2506(D)(1) imposes joint and several liability, however, only when a party “acts in concert” with other tortfeasors. Case law in Arizona is clear that to establish a prima facie case of “acting in concert,” Plaintiff must show that the parties: (a) knowingly agreed to commit an intentional tort that (b) they were certain or substantially certain would result in the consequences complained of, and (c) actively participated in the commission of the tort. *Chappell v. Wenholz*, 226 Ariz. 309, 311 (App. 2011). The burden for showing “acting in concert” is thus greater than simply establishing a claim for aiding and abetting (which Plaintiff cannot do). There is no evidence that Defendants either knowingly agreed with Mr. Chittick and Menaged to commit an intentional tort or that Defendants actively participated in Mr. Chittick and Menaged intentionally tortious acts. The evidence is to the contrary. Plaintiff cannot prove that Defendants “acted in concert” as required by A.R.S. § 12-2506(D)(1).

Defendants further incorporate the reports and opinions of Mr. David Perry regarding damages.

Discovery is continuing.

VIII. EXHIBITS.

Defendants have not yet identified which of the documents listed in Section IX below will be used at trial, and therefore expressly reserve the right to introduce any of the listed documents as exhibits at trial. Defendants may also use any documents identified in any other party’s disclosure statement or otherwise disclosed in this matter. By reserving the right to introduce any of the listed documents as exhibits at trial, Defendants do not waive their right to object to the introduction of any of these documents at the time of trial. Defendants will supplement this initial disclosure statement in accordance with Arizona Rules of Civil Procedure 26.1(b)(2).

Discovery is continuing. Defendants may supplement.

1 **IX. LIST OF RELEVANT DOCUMENTS.**

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

- 5 1. Documents previously produced by Clark Hill bates labeled CH_0000001-
6 13330.
 - 7 2. Additional documents produced herewith by Clark Hill bates labeled
8 CH_0013331-13374.
 - 9 3. Documents previously produced by Plaintiff including bates labeled
10 DIC000001-25330, 28634-53950 and Quickbooks backup.
 - 11 4. Documents previously produced by Plaintiff including bates labeled D126751-
12 128731 and 130972-133111.
 - 13 5. Documents previously produced by Bryan Cave in response to Subpoena Duces
14 Tecum bates labeled BC000001-3188.
 - 15 6. Documents produced herewith by Dave Preston in response to Subpoena Duces
16 Tecum bates labeled DP000001-601.
 - 17 7. Any and all documents in CR-17-00680, United States of America v. Yomtov
18 Scott Menaged, et al.
 - 19 8. All documents produced by any party or third party in this litigation.
 - 20 9. All pleadings, filings, minute entries, orders and judgments.
 - 21 10. All deposition or hearing transcripts in the above captioned litigation.
 - 22 11. All deposition or hearing exhibits in the above captioned litigation.
 - 23 12. All transcripts from any Section 341 creditor meetings, Rule 2004 examinations,
24 depositions, or hearings in Yomtov Menaged's bankruptcy pending in the United
25 States Bankruptcy Court for the District of Arizona at 2:16-bk-04268.
- 26

- 1 13. Additional documents produced by Clark Hill bates labeled CH_000013387-
2 13616.
- 3 14. Documents produced by Sell Wholesale Funding in response to Subpoena Duces
4 Tecum bates labeled SELL000001-766.
- 5 15. Documents produced by Azben Limited, LLC in response to Subpoena Duces
6 Tecum bates labeled AZBEN000001-5248.
- 7 16. Documents produced by Geared Equity in response to Subpoena Duces Tecum
8 bates labeled GE000001-257.
- 9 17. Documents produced by Active Funding in response to Subpoena Duces Tecum
10 bates labeled AF000001-2448.
- 11 18. Documents produced in Defendant Clark Hill's Responses to Plaintiff's First Set
12 of Requests for Production bates labeled CH_0013617-13623 (previously
13 produced to counsel on 6/21/18).
- 14 19. Documents produced in Defendant David Beauchamp's Responses to Plaintiff's
15 First Set of Requests for Production bates labeled CH_0013624-13946
16 (previously produced to counsel on 6/21/18).
- 17 20. Additional documents produced by Clark Hill bates labeled CH_0013947-
18 17849.
- 19 21. Documents produced by Geared Equity in response to Subpoena Duces Tecum
20 bates labeled GEAR000001-203.
- 21 22. Documents produced by 50780 L.L.C. in response to Subpoena Duces Tecum
22 bates labeled 50780LLC - 000001-65.
- 23 23. Additional documents produced by Clark Hill bates labeled CH_0017997-18010
24 (previously produced to opposing counsel on 8/29/18).
- 25
- 26

24. Additional documents produced by Clark Hill bates labeled CH_0018012-18013 (previously produced to opposing counsel on 8/30/18)(NOTE: CH_0018011 not used)
25. Additional documents produced by Sell Wholesale Funding in response to Subpoena Duces Tecum bates labeled SELL000767-1636.
26. Additional documents produced by Active Funding in response to Subpoena Duces Tecum bates labeled AF002449-2644.
27. Additional documents produced by Azben Limited, LLC in response to Subpoena Duces Tecum bates labeled AZBEN005249-5318.
28. Additional documents produced by Geared Equity LLC in response to Subpoena Duces Tecum bates labeled DIETHELM 0001 – DIETHELM 0211.
29. Additional documents produced by 50780 LLC in response to Subpoena Duces Tecum bates labeled HOEBING 0001 – HOEBING 0057.
30. Additional documents produced by Clark Hill bates labeled CH_0018014-18023 (previously produced to opposing counsel on 9/21/18).
31. Additional documents produced by Clark Hill bates labeled CH_EstateSDT_00000001-0072926 (previously produced to opposing counsel on 12/21/18).
32. Documents previously produced by Plaintiff bates labeled D133112-135602.
33. Documents previously produced by Plaintiff bates labeled Menaged00001-3956.
34. Additional documents produced by Bank of America in response to Subpoena Duces Tecum bates labeled CH_BOA_SDT_00000001-31.
35. Documents previously produced by Plaintiff bates labeled RECEIVER_000001-1711.
36. Documents previously produced by Plaintiff bates labeled DIC053951-73954.

- 1 37. Documents previously produced by Plaintiff bates labeled R-RFP-
2 Response000001-937.
- 3 38. Menaged00001-3956
- 4 39. CH_REC_CHI_0000001-153188
- 5 40. CH_REC_DEP_0000001-16263
- 6 41. CH_REC_MEN_0000001-169004
- 7 42. CH_0018024-18667
- 8 43. USBANK000001-894
- 9 44. RECEIVER_001712-5627
- 10 45. DIC073955-81283
- 11 46. JPMC 0001-484
- 12 47. Any and all documents in the following proceedings, including but not limited
13 to, CH_0018668-CH_0018830.
- 14 a. In re Yomtov Scott Menaged, Adversary Case No. 2:16-ap-00589-PS
- 15 b. In re Yomtov Scott Menaged, Adversary Case No. 2:17-ap-00116-PS
- 16 c. In re Yomtov Scott Menaged, Adversary Case No. 2:17-ap-00776-PS
- 17 d. Yomtov Scott Menaged v. USA, 2:18-CV-02417-GMS
- 18 48. Expert Kevin Olson Invoice. CH_0018831-18848
- 19 49. Expert Scott Rhodes Invoice. CH_0018849-18862
- 20 50. Additional documents produced by Clark Hill bates labeled CH_0018863-
21 18968.
- 22 51. Tax lien complaints (and service of process documents) filed against Easy
23 Investments, DenSco, and AFG in Maricopa County Superior Court at CV2013-
24 094134 and CV2013-094760 and produced herewith.
- 25
- 26

- 1 52. All timesheets or invoices produced by Plaintiff, including timesheets and
2 invoices reflecting Plaintiffs' experts (RECEIVER_005546-5627), Peter Davis',
3 and Ryan Anderson's work.
- 4 53. All documents placed in the Receiver's Depository.
- 5 54. All documents posted to the Receiver's website at
6 <https://denscoreceiver1.godaddysites.com/home.html>
- 7 55. All documents filed or to be filed in any proceeding brought by the Receiver, and
8 all documents produced in any such proceeding.
- 9 56. All correspondence between counsel in the above captioned proceeding,
10 including the communications produced herewith.
- 11 57. All documents recorded with the Maricopa County Recorder's office regarding
12 DenSco and other lender liens on properties purchased by Menaged or his
13 entities, including documents produced herewith.
- 14 **58. Plaintiff's Notice of Service of Preliminary Expert Opinion Declaration,**
15 **dated March 9, 2018, a copy of which was previously disclosed and is hereby**
16 **reproduced with Bates Numbers.**
- 17 **59. Plaintiff's Disclosure of Expert Witness Report Re: Standard of Care, dated**
18 **April 3, 2019, a copy of which was previously disclosed and is hereby**
19 **reproduced with Bates Numbers.**
- 20 **60. Plaintiff's Disclosure of Expert Witness Report Re Damages, dated April 4,**
21 **2019, a copy of which was previously disclosed and is hereby reproduced**
22 **with Bates Numbers.**
- 23 **61. Defendants' Disclosure of Expert Witness Enrique "Rick" Rodriguez, dated**
24 **April 5, 2019, a copy of which was previously disclosed and is hereby**
25 **reproduced with Bates Numbers.**
26

- 1 **62. Defendants' Disclosure of Expert Witness Erin Nelson, dated April 5, 2019,**
2 **a copy of which was previously disclosed and is hereby reproduced with**
3 **Bates Numbers.**
- 4 **63. Defendants' Disclosure of Expert Witness Kevin Olson, dated April 5, 2019,**
5 **a copy of which was previously disclosed and is hereby reproduced with**
6 **Bates Numbers.**
- 7 **64. Defendants' Disclosure of Expert Witness Scott J. Rhodes, dated April 5,**
8 **2019, a copy of which was previously disclosed and is hereby reproduced**
9 **with Bates Numbers.**
- 10 **65. Defendants' Disclosure of Expert Witness David Perry, dated April 5, 2019,**
11 **a copy of which was previously disclosed and is hereby reproduced with**
12 **Bates Numbers.**
- 13 **66. Defendants' Rebuttal Disclosure of Expert Witness Kevin Olson, dated**
14 **June 7, 2019, a copy of which was previously disclosed and is hereby**
15 **reproduced with Bates Numbers.**
- 16 **67. Defendants' Rebuttal Disclosure of Expert Witness Scott J. Rhodes, dated**
17 **June 7, 2019, a copy of which was previously disclosed and is hereby**
18 **reproduced with Bates Numbers.**
- 19 **68. Defendants' Rebuttal Disclosure of Expert Witness David Perry, dated**
20 **June 7, 2019, a copy of which was previously disclosed and is hereby**
21 **reproduced with Bates Numbers.**
- 22 **69. Plaintiff's Disclosure of Rebuttal Expert Witness Report Re Damages, dated**
23 **June 7, 2019, a copy of which was previously disclosed and is hereby**
24 **reproduced with Bates Numbers.**
- 25
- 26

1 **70. Plaintiff's Disclosure of Rebuttal Expert Witness Report Re Standard of**
2 **Care, dated June 7, 2019, a copy of which was previously disclosed and is**
3 **hereby reproduced with Bates Numbers.**

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

6 **X. INSURANCE AGREEMENTS.**

7 Defendants produced the insurance policies in effect during the relevant time period
8 and the November 10, 2017 correspondence from Mendes & Mount, LLP, all of which are
9 stamped "Confidential Materials."

10 DATED this 13th day of September, 2019.

11
12 **COPPERSMITH BROCKELMAN PLC**

13 By: 

14 John E. DeWulf
15 Marvin C. Ruth
16 Vidula U. Patki
17 2800 North Central Avenue, Suite 1900
18 Phoenix, Arizona 85004
19 Attorneys for Defendants
20
21
22
23
24
25
26

1 **ORIGINAL** mailed and emailed this
20th day of September, 2019 to:

2 Colin F. Campbell, Esq.
3 Geoffrey M. T. Sturr, Esq.
4 Joseph Roth, Esq.
5 Joshua M. Whitaker, Esq.
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6 Attorneys for Plaintiff

7 
8 _____

