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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiff,

vs.

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

Defendants.

No. CV2017-013832

**PLAINTIFF'S SEVENTH
DISCLOSURE STATEMENT**

(Assigned to the
Honorable Daniel Martin)

Pursuant to Rule 26.1(a), Plaintiff Peter S. Davis, as the court-appointed receiver of DenSco Investment Corporation (the "Receiver"), makes the following disclosures. Changes from the Receiver's Sixth Disclosure Statement are identified in the mark-up attached as **Appendix G**.

On August 18, 2016, the Receiver was appointed to serve as the Receiver for DenSco Investment Corporation ("DenSco") under an order entered by the Maricopa County Superior Court in *Arizona Corporation Commission v. DenSco Investment Corporation*, CV2016-014142 (the "Receivership Court"). After the Receiver and his

1 staff had reviewed DenSco's books and records and files maintained by DenSco's
2 former legal counsel, Clark Hill PLC and Clark Hill partner David Beauchamp, the
3 Receiver concluded that DenSco might have claims against Clark Hill and Beauchamp.
4 On March 31, 2017, the Receiver filed a petition with the Receivership Court seeking
5 permission to retain special counsel to investigate those potential claims. The petition
6 was granted on April 27, 2017. After special counsel completed its investigation, the
7 Receiver filed a petition asking the Receivership Court to authorize the Receiver to file,
8 through special counsel, a complaint against Clark Hill and Beauchamp. That petition
9 was granted on October 9, 2017. The Receiver, through special counsel, initiated this
10 lawsuit on October 16, 2017 by filing a complaint which asserted claims against Clark
11 Hill and Beauchamp for legal malpractice and aiding and abetting breach of fiduciary
12 duty.

13 The Receiver has relied on special counsel to pursue those claims against Clark
14 Hill and Beauchamp and to prepare this and previous disclosure statements.

15 **I. FACTUAL BASIS OF CLAIMS**

16 The following numbered paragraphs disclose the primary facts on which the
17 Receiver's claims against Clark Hill and Beauchamp are based. At trial, the Receiver
18 may also rely on: facts disclosed in previous disclosure statements which are not
19 included herein; facts disclosed in the Receiver's responses to written discovery; facts
20 disclosed through any deposition taken in this action; facts contained in the documents
21 and electronically stored information that have been identified in Sections VIII
22 (anticipated trial exhibits) and IX (documents that may be relevant) of this disclosure
23 statement, including, but not limited to, documents and electronically stored
24 information in the Receiver's document depository; the defendants' disclosure
25 statements, productions of documents and electronically stored information, and
26 discovery responses; and documents and electronically stored information produced by
27 non-parties pursuant to subpoena. The Receiver has also filed with the Court
28 substantive and evidentiary motions and other memoranda which set forth facts, and

1 circumstantial inferences from facts, which are incorporated by reference into this
2 disclosure statement.

3 This disclosure statement was prepared to fulfill the requirements in the Court's
4 Scheduling Order of a "final" disclosure statement that would be served before the
5 close of discovery. The Receiver anticipates supplementing his disclosures to
6 incorporate facts learned through discovery that has not yet been taken and through
7 further analysis of evidence disclosed and discovered in this action.

8 **A. Background Facts for the Period April 2001 to September 2011**

9 **1. DenSco's Formation and Operations Through 2003**

10 1. DenSco was established in April 2001 as an Arizona corporation.

11 2. Denny Chittick formed DenSco to make short-term loans to companies
12 buying or investing in real estate. DenSco used money raised from investors to make
13 those loans.

14 3. Chittick was DenSco's sole shareholder, president and director, and its
15 only employee.

16 4. When DenSco was formed, Chittick retained Scott Gould to serve as a
17 consultant to DenSco and a mentor to Chittick.

18 **2. Beauchamp Was DenSco's Securities Lawyer.**

19 **a. DenSco First Hired Beauchamp in 2003 to Advise the**
20 **Company on Securities Law Issues.**

21 5. David Beauchamp is an attorney. He describes himself as practicing
22 primarily in the areas of corporate law, securities, venture capital and private equity
23 transactions.

24 6. Beauchamp has experience in representing companies that make real
25 estate loans. Among others, he has represented DenSco, Real Estate Equity Lending,
26 Inc., and RLS Capital, Inc.

27 7. Beauchamp began representing DenSco in 2003, when he was a partner of
28 the law firm Quarles & Brady LLP.

1 8. In 2004, Beauchamp left Quarles & Brady to join the law firm Gammage
2 & Burnham, PLLC, where he continued to represent DenSco.

3 9. In 2008, Beauchamp left Gammage & Burnham to join the law firm
4 Bryan Cave LLP, where he continued to represent DenSco.

5 10. Beauchamp has testified that DenSco relied on him to prepare private
6 offering memoranda for distribution “to investors of DenSco in compliance with
7 Arizona and federal security [sic] laws” and to provide DenSco with “recommendations
8 for amended or additional [private offering memoranda] in keeping with the
9 investments being made or contemplated by DenSco.”

10 **b. Beauchamp Prepared Private Offering Memoranda that**
11 **DenSco Issued to Investors in 2003, 2005, 2007, 2009,**
 and 2011 to Sell Promissory Notes.

12 11. DenSco issued private offering memoranda in 2003, 2005, 2007, 2009,
13 and 2011, which DenSco used to sell promissory notes to investors.

14 12. Beauchamp prepared each private offering memorandum (“POM”),
15 sometimes working with other attorneys and others.

16 a. Beauchamp met with Chittick and Gould in the course of preparing
17 the 2003 POM. Gould is expected to testify that Chittick relied on Beauchamp
18 and followed his advice with respect to the 2003 POM.

19 b. At the time Beauchamp was preparing the 2007 POM, he prepared
20 a private offering memorandum for RLS Capital, Inc.

21 c. The 2009 POM was prepared by Beauchamp with assistance from
22 Bryan Cave attorneys Ray Burgan, Logan Miller, and Nancy Pohl.

23 d. The 2011 POM was prepared by Beauchamp with assistance from
24 Bryan Cave attorneys Gus Schneider and Jonathan E. Stern.

25 13. The process of preparing POMs in 2007, 2009 and 2011 took between
26 one and three months.

1 a. Beauchamp began working on a POM in early May 2007, after a
2 May 3, 2007 meeting with Chittick, and completed his work in approximately
3 thirty days.

4 b. Beauchamp began working on a POM in April 2009, after an
5 April 9, 2009 meeting with Chittick, and completed his work in approximately
6 ninety days.

7 b. Beauchamp began working on a POM in April 2011, after an
8 April 13, 2011 meeting with Chittick, and completed his work in approximately
9 ninety days.

10 14. Beauchamp knew that Chittick told his investors that he had retained legal
11 counsel to prepare DenSco's POMs, and that Chittick had identified him as the
12 Company's securities attorney who helped prepare those POMs. For example, Chittick
13 distributed a POM in 2011 to DenSco's investors through a July 19, 2011 email. The
14 email was sent to all of DenSco's investors and Beauchamp. Chittick's transmittal
15 email stated, in part: "I update this memorandum every two years. I work with David
16 Beauchamp (securities attorney) to review all the statues [sic] and laws in Arizona as it
17 pertains to my business and all the states that I have investors in. This is to ensure that
18 I'm filing all the forms and following all the rules"

19 **c. The Terms of the POMs Beauchamp Prepared**

20 **(1) DenSco Sold Promissory Notes.**

21 15. In the POMs it issued in 2007, 2009 and 2011, DenSco offered to sell
22 investors promissory notes of \$50,000 or more with the following durations and interest
23 rates: six months at 8%; one year at 10%; and two to five years at 12%. The notes
24 were "paid 'interest only' during the terms, with principal payable only at maturity."
25 Investors had the ability to "have interest paid monthly, quarterly, or at maturity."

26 16. Each POM stated that "[a]lthough the Company intends to use its good
27 faith efforts to accommodate written requests from an investor to prepay any Note prior
28

1 to maturity and the Company has in fact been able to satisfy such requests in a timely
2 manner with interest paid in full, the Company has no obligation to do so and the
3 investor has no right to require the Company to redeem the Note prior to maturity.”

4 17. By completing and signing a Subscription Agreement, investors specified
5 the amount of the promissory note they wished to purchase, the term of the note, and
6 how they wished to be paid interest.

7 18. The files that Beauchamp maintained, and the billing statements Bryan
8 Cave issued to DenSco, reflect that Beauchamp prepared a form of Subscription
9 Agreement in 2007 and 2009, but did not do so when he prepared a POM for DenSco in
10 2011. There is no reference in those files and billing statements to any actions that
11 Beauchamp took when DenSco issued a POM in 2011, or at any time thereafter, to
12 ensure that DenSco was using an appropriate Subscription Agreement for the
13 promissory notes DenSco sold during and after July 2011.

14 19. DenSco’s investor files reflect that during the two years the 2011 POM
15 was in effect, Chittick used a Subscription Agreement that Beauchamp had prepared in
16 2009 and which referenced the 2009 POM. Those files also reflect that Chittick
17 continued to use the 2009 Subscription Agreement to sell promissory notes after the
18 2011 POM expired in July 2013.

19 20. Beauchamp knew that the vast majority of DenSco’s investors purchased
20 two-year promissory notes. For example, Beauchamp’s notes reflect that Chittick told
21 him during a May 3, 2007 meeting that 90% of the promissory notes DenSco had issued
22 to investors were two-year notes.

23 21. Beauchamp also knew that the vast majority of DenSco’s investors did
24 not redeem their promissory notes when those notes matured, and instead “rolled over”
25 their investments by executing a subscription agreement and buying a new promissory
26 note when a previous promissory note matured. As Beauchamp wrote in a June 15,
27 2007 e-mail to Richard Carney, who was then doing “Blue Sky” work for DenSco,
28

1 “DenSco has regular sales of roll-over investments” and an “ongoing roll-over of the
2 existing investors every 6 months or so.”

3 **(2) The Promissory Notes Were Represented to Be**
4 **Safe, Secure Investments.**

5 22. In the POMs it issued in 2007, 2009 and 2011, DenSco made a number of
6 representations about its business practices that were intended to give existing and
7 potential investors the impression that the promissory notes sold by DenSco were safe,
8 secure investments.

9 23. For example, the POM that DenSco issued in 2011 stated that:

10 a. DenSco had sold promissory notes worth \$25.9 million to
11 new and existing investors since 2001, and “ha[d] never defaulted on
12 either interest or principal” on any of those notes.

13 b. “All real estate loans funded by [DenSco] have been and are
14 intended to be secured through first position trust deeds.”

15 c. DenSco would “attempt to maintain a diverse [loan]
16 portfolio . . . by seeking a large borrowing base” and by “attempting to
17 ensure that one borrower will not comprise more than 10 to 15 percent of
18 the total portfolio.”

19 c. DenSco “intend[ed] to maintain general loan-to-value
20 guidelines that currently range from 50 percent to 65 percent, (but it is not
21 intended to exceed 70%), to help protect the Company’s portfolio of
22 loans.”

23 d. “Because of these varying degrees of diversification, the
24 relatively short duration of each of the loans, and management’s
25 knowledge of the Phoenix metropolitan market, [DenSco’s] management
26 anticipates that it will not experience a significant amount of losses.”

27 f. DenSco’s “objective is to have sufficient cash coming in
28 from Trust Deed payoffs to be able to redeem all Notes as they come due

1 and maintain reserves without any need to sell assets or issue new Notes
2 to repay the earlier maturing Notes.”

3 24. The POMs DenSco issued to existing and potential investors in 2007,
4 2009 and 2011 each included a “Prior Performance” section which summarized the
5 dollar value of promissory notes sold in preceding years, the number of loans made in
6 each year, the value of those loans, the value of the property securing those loans, and
7 losses incurred in each of those years.

8 25. The Prior Performance section in each POM concluded with a statement
9 that was intended to give existing and potential investors the impression that the
10 promissory notes sold by DenSco were safe, secure investments: “Each and every
11 Noteholder has been paid the interest and principle due to that Noteholder in
12 accordance with the respective terms of the Noteholder’s Notes. Despite any losses
13 incurred by the Company from its borrowers, no Noteholder has sustained any
14 diminished return or loss on their investment in a Note from [DenSco].”

15 **(3) The 2007, 2009 and 2011 POMs Were Each in**
16 **Effect for Two Years, But Were Never Updated**
17 **by DenSco, And Beauchamp Did Not Advise**
DenSco To Do So.

18 26. Each POM that DenSco issued to existing and potential investors in 2007,
19 2009 and 2011 stated that DenSco “intends to offer [promissory notes for sale] on a
20 continuous basis until the earlier of (a) the sale of the maximum offering,” which was
21 \$50 million, “or (b) two years from the date of this memorandum.” They went on to
22 state that DenSco “reserves the right to amend, modify and/or terminate this offering.”

23 27. DenSco’s records do not reflect that it ever told existing and potential
24 investors that “the maximum offering proceeds” offered through the 2007, 2009 and
25 2011 POMs had been raised, or that it had terminated any of those offerings.

26 28. As a result, the POM that was dated June 1, 2007 expired on June 1,
27 2009; the POM that was dated July 1, 2009 expired on July 1, 2011; and the POM that
28 was dated July 1, 2011 expired on July 1, 2013.

1 29. The POMs DenSco issued to existing and potential investors in 2007,
2 2009 and 2011 each stated that “[i]n order to continue offering the Notes during this
3 [two-year] period, [DenSco] will need to update this Memorandum from time to time.”
4 Each POM went on to state that

5 Keeping the information in the Memorandum current will cause the
6 Company to incur additional costs. *A failure to update this Memorandum*
7 *as required could result in the Company being subject to a claim under*
8 *Section 10b-5 of the Security Act for employing a manipulative or deceptive*
9 *practice in the sale of securities, subjecting [DenSco], and possibly the*
10 *management of [DenSco], to claims from regulators and investors.* In
11 addition, an investor might seek to have the sale of the Notes hereunder
12 rescinded which would have a serious adverse effect on [DenSco’s]
13 operations. (Emphasis added.)

14 30. DenSco’s records do not reflect that DenSco ever took steps to “[k]eep[]
15 the information in the [POMs DenSco issued in 2007, 2009 and 2011] current” by
16 issuing updates to those POMs during the two-year period each of those POMs was in
17 effect.

18 31. The files that Beauchamp maintained, and the billing statements issued to
19 DenSco by his respective law firms, do not reflect that Beauchamp ever advised
20 DenSco to “[k]eep[] the information in the [POMs DenSco issued in 2007, 2009 and
21 2011] current” by issuing updates to those POMs during the two-year period each of
22 those POMs was in effect.

23 32. Each POM that DenSco issued in 2007, 2009 and 2011 prominently
24 warned potential purchasers of DenSco’s promissory notes that “NO PERSON HAS
25 BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY
26 REPRESENTATIONS CONCERNING THE COMPANY OTHER THAN AS
27 CONTAINED IN THIS CONFIDENTIAL PRIVATE OFFERING MEMORANDUM,
28 AND IF GIVEN OR MADE, SUCH OTHER INFORMATION OR
REPRESENTATIONS MUST NOT BE RELIED UPON.”

(4) In Preparing the 2011 POM, Beauchamp Failed to Investigate a “Red Flag” About DenSco’s Lending Practices.

33. The Prior Performance section of the POM DenSco issued in 2011 concluded with the same positive statement about DenSco’s lending activities and the absence of losses on promissory notes that was made in earlier POMs:

Since inception through June 30, 2011, [DenSco] has participated in 2622 loans, with an average amount of \$116,000, with the highest loan being \$800,000 and lowest being \$12,000. The aggregate amount of loans funded is \$306,786,893 with property valued totaling \$470,411,170. . . These loans have borne interest rates of 18% per annum. The interest rate paid to noteholders has ranged from 8% to 12% per annum through such date. Each and every Noteholder has been paid the interest and principle due to that Noteholder in accordance with the respective terms of the Noteholder’s Notes. Despite any losses incurred by the Company from its borrowers, no Noteholder has sustained any diminished return or loss on their investment in a Note from [DenSco].”

34. But the information disclosed in the 2011 POM’s Prior Performance section clearly raised a “red flag” about DenSco’s lending activities. Among the information disclosed in that section was the following.

<i>Year</i>	<i>Notes Sold</i>	<i>Loans Made</i>	<i>Yearly Loan Amount</i>
2001	\$500,000	37	\$8,378,000
2002	\$930,000	69	\$5,685,000
2003	\$1,550,000	124	\$11,673,000
2004	\$2,450,000	185	\$19,907,000
2005	\$2,670,000	236	\$34,955,700
2006	\$2,800,000	215	\$34,468,100
2007	\$2,400,000	272	\$42,579,634
2008	\$3,000,000	304	\$38,864,660
2009	\$2,100,000	412	\$41,114,707
2010	\$2,800,000	390	\$37,973,097
2011 (to 6/30/11)	\$4,700,000	378	\$36,187,995

35. This information raised a red flag because Chittick was DenSco’s sole employee. Chittick had previously retained Scott Gould as a consultant to DenSco and personal mentor, but by 2011 had unilaterally terminated DenSco’s relationship with Gould. In addition to selling promissory notes, making interest payments, and issuing statements to investors, Chittick was the only person who was conducting due diligence

1 and underwriting and documenting DenSco's loans. He was also responsible for
2 collecting loan payments and ensuring compliance with loan agreements.

3 36. Since 2009, when the previous POM had been issued, Chittick made more
4 than one loan a day: 412 in 2009; 390 in 2010; and 378 in just the first six months of
5 2011.

6 37. A reasonable securities lawyer would have questioned whether Chittick
7 could humanly make so many loans, and whether he was competently managing
8 DenSco's lending activities.

9 38. A reasonable securities lawyer would have conducted a due diligence
10 inquiry about DenSco's lending practices and the 2011 POM's representations that
11 "[a]ll real estate loans funded by [DenSco] have been and are intended to be secured
12 through first position trust deeds," and that DenSco was, in fact, "attempting to ensure
13 that one borrower will not comprise more than 10 to 15 percent of the total portfolio,"
14 among other representations.

15 39. Any concerns about DenSco's lending practices would have been
16 heightened by the increased amount of money Chittick had raised in the first half of
17 2011 (\$1.9 million more than the \$2.8 million that had been raised in all of 2010), and
18 the overall amount of money DenSco had raised since 2001 through the sale of
19 promissory notes (\$26.9 million as of June 30, 2011).

20 40. Bryan Cave had a mandatory due diligence procedure in place at the time
21 Beauchamp was working on the 2011 POM. As Beauchamp told Chittick in a June 11,
22 2011 email, he was required by Bryan Cave's "internal compliance procedures to
23 comply with the new regulations and requirements" to "set up a due diligence file" that
24 would "support each of the statements in the POM."

25 41. But the files that Beauchamp maintained, and the billing statements Bryan
26 Cave issued to DenSco, do not reflect that Beauchamp ever conducted any due
27 diligence on DenSco's lending practices in 2011.
28

1 42. Beauchamp overlooked this red flag and would later overlook other red
2 flags.

3 **3. Beauchamp Also Advised DenSco About Its Lending Practices.**

4 43. In addition to preparing DenSco's POMs and advising DenSco on
5 securities law matters, Beauchamp advised DenSco about its lending practices.

6 44. As Beauchamp wrote in a June 15, 2007 email to Richard Carney, he and
7 others at Gammage & Burnham had "updated DenSco's . . . loan documents to be used
8 with borrowers."

9 45. The files that Beauchamp maintained from his time at Gammage &
10 Burnham reflect that he had a meeting with Chittick on May 3, 2007, during which
11 Chittick asked Beauchamp to review and revise the documents DenSco used to make
12 and secure its loans.

13 46. At Beauchamp's request, Gammage & Burnham attorney Kevin Merritt
14 took the lead in making those revisions, but Beauchamp remained involved in
15 reviewing the revisions and discussing them with Chittick.

16 47. Chittick told Beauchamp and Merritt that DenSco used a Receipt and
17 Mortgage, which only the borrower signed, to serve as evidence that DenSco had paid
18 directly to a Trustee the proceeds of a loan a borrower had obtained from DenSco to
19 buy property from the Trustee at a Trustee's sale.

20 48. Chittick told Beauchamp and Merritt that because there was often a delay
21 in a Trustee recording a Trustee's deed after a Trustee's sale, DenSco recorded its
22 Receipt and Mortgage immediately after a Trustee's sale had been completed to
23 establish its lien rights. Once a Trustee's deed was recorded, DenSco would record its
24 Deed of Trust and Assignment of Rents.

25 49. In May and June 2007, Merritt prepared for DenSco's use revised forms
26 of a Receipt and Mortgage, Note Secured by Deed of Trust, Deed of Trust and
27 Assignment of Rents, and a Continuing Personal Guaranty, which Beauchamp received.
28

1 50. The revised Receipt and Mortgage, like the previous form, was to be
2 signed by the borrower only, and not the Trustee. The operative language included the
3 following terms:

4 The undersigned borrower ("Borrower") acknowledges receipt of the proceeds
5 of a loan from DenSco Investment Corporation ("Lender") in the sum of \$____,
6 **as evidenced by check payable to _____ ("Trustee").** The loan was made to
7 Borrower to purchase the Real Property legally described as: Lot____,
8 Subdivision____, according to Book____ of Maps, Page____, in the plat record
9 in the Recorder's Office of Maricopa County. Address:_____. **At a**
10 **trustee's sale conducted by Trustee, which took place on____, 200____, Borrower**
11 **became the successful purchaser with the highest bid,** and the loan is intended
12 to fund all or a part of the purchase price bid by Borrower at such trustee's sale.
13 (Emphasis added.)

14 51. As revised by Merritt, the Receipt and Mortgage contemplated that
15 DenSco would: (1) issue a check payable to the Trustee; and (2) employ some means to
16 confirm that the check had been used by the borrower to purchase the property from the
17 Trustee at a Trustee's sale.

18 52. Beauchamp has testified in an interrogatory answer that he "prepared all
19 of DenSco's offering documents" and "reviewed and commented on" DenSco's loan
20 documents, including the Receipt and Mortgage."

21 53. Beauchamp also testified that he "set out the proper method and
22 procedures for funding a loan" in the POMs, which he said were "disclosed to
23 DenSco's investors [as] the processes and procedures DenSco used to protect the
24 investments made in the company." He identified two specific representations made in
25 the POMs that DenSco issued in 2007, 2009 and 2011. According to Beauchamp, those
26 POMs

27 a. "describe that DenSco 'intends to directly . . . or indirectly . . .
28 perform due diligence to verify certain information in connection with funding a
Trust Deed'" and

 b. "explain that '[p]rior to purchasing a Trust Deed or funding a
direct loan, the Company intends to have an officer, employee or an authorized
representative conduct a due diligence review by interviewing its owners,

1 verifying the documentation and performing limited credit investigations as are
2 deemed appropriate by the Company and visiting the subject property in a timely
3 manner.’”

4 54. After identifying those representations, Beauchamp linked them to the
5 Receipt and Mortgage, testifying: “Further, every mortgage evidencing a property
6 purchase made with a DenSco loan stated that the check purchasing the property was
7 made to the Trustee.”

8 **4. In 2009 and 2010, Beauchamp Advised DenSco About Whether**
9 **DenSco Should Be Regulated by the Arizona Department of**
10 **Financial Institutions, and in 2010 and 2011 Worked to**
11 **Prevent the Department from Regulating DenSco.**

12 55. Beauchamp also advised DenSco about whether it was subject to
13 regulation by the Arizona Department of Financial Institutions (“ADFI”); such
14 regulation would have included periodic audits of DenSco’s lending practices. He then
15 represented DenSco in fending off the ADFI’s efforts to regulate DenSco.

16 56. During April 2009, when Beauchamp was a partner of Bryan Cave,
17 Beauchamp and Bryan Cave attorney Ray Burgan reviewed DenSco’s lending
18 procedures and advised DenSco as to whether DenSco was subject to ADFI supervision
19 and required to be licensed.

20 57. Beauchamp and Burgan advised Chittick by email that “DenSco’s
21 operations as we understand them can be shown to exclude DenSco and you from being
22 subject to [the ADFI’s] current licensing requirements.”

23 58. Chittick accepted their advice and followed it.

24 59. In May 2010, Beauchamp reviewed and analyzed proposed new licensing
25 regulations and conferred with Chittick about them.

26 60. In June 2010, Beauchamp and Bryan Cave attorneys Logan Miller and
27 Michael Dvoren further analyzed those proposed regulations.

28 61. Chittick stated by email that he was prepared to have DenSco and himself
subject to regulation by the ADFI.

1 62. But based on Beauchamp's advice, Chittick did not cause DenSco to be
2 regulated by the ADFI and took active steps to resist such regulation.

3 63. At Beauchamp's direction, in June 2010, Dvoren presented arguments to
4 a representative of the ADFI as to why DenSco was not subject to the Department's
5 regulation and oversight. Those arguments were memorialized in emails that Dvoren
6 sent to representatives of the ADFI and the Arizona Attorney General's Office.

7 64. Beauchamp's and Dvoren's arguments were apparently successful, as the
8 ADFI did not take further steps in 2010 to regulate DenSco.

9 65. On August 12, 2011, Chittick sent Beauchamp a letter DenSco had
10 received from the ADFI regarding an investigation by the Department as to whether
11 DenSco was subject to mortgage broker regulations and required to be licensed and
12 supervised by the Department.

13 66. On August 22, 2011, Beauchamp sent a letter to the Department which
14 asserted that DenSco was not subject to regulation by the ADFI.

15 67. Those arguments were apparently successful, as the ADFI did not take
16 further steps in 2011 to regulate DenSco.

17 **5. Beauchamp Consistently Identified DenSco As His Client.**

18 68. Files maintained by DenSco, Gammage & Burnham and Bryan Cave
19 reflect that while Beauchamp was affiliated with Gammage & Burnham and Bryan
20 Cave he consistently identified DenSco as his client, and never stated in an engagement
21 letter that he represented Chittick individually.

22 69. For example, on May 7, 2007, Beauchamp sent Chittick a letter to
23 confirm that DenSco had retained Gammage & Burnham to prepare the 2007 POM
24 which stated, in part, "As we have previously done, DenSco Investment Corporation
25 ("DenSco") will continue to be the client for this matter. If that is not consistent with
26 your understanding, please advise me immediately."
27
28

1 70. On April 10, 2008, Beauchamp sent Chittick a letter to confirm that
2 Bryan Cave had been retained “to provide legal services to DenSco Investment
3 Corporation in connection with [its] general business matters and such future matters
4 that we mutually agree to undertake.”

5 71. On April 14, 2009, Beauchamp sent Chittick a letter to confirm that
6 Bryan Cave had been retained “to provide legal services to DenSco Investment
7 Corporation in connection with updating [its] Confidential Private Offering
8 Memorandum for 2009.”

9 72. During 2010, Beauchamp caused a “Blue Sky Issues” matter to be
10 established in Bryan Cave’s accounting and filing system which identified DenSco as
11 the firm’s client.

12 73. On May 3, 2011, Beauchamp sent Chittick a letter to confirm that Bryan
13 Cave had been retained “to provide legal services to DenSco Investment Corporation in
14 connection with the updating of [its] Confidential Private Offering Memorandum for
15 2011.”

16 74. In May and June 2011, Beauchamp discussed with Chittick his or
17 DenSco’s possible participation in a to-be-formed title insurance company. Beauchamp
18 established a new matter in Bryan Cave’s accounting and filing systems for DenSco,
19 described as “Formation of affiliate entity with partners.” DenSco was identified as
20 Bryan Cave’s client.

21 75. In August 2011, Beauchamp caused a new matter in Bryan Cave’s
22 accounting and filing systems to be opened, captioned AZ Practice Review, which
23 identified DenSco as the firm’s client.

24 **B. Events That Occurred in the Four Months Before Beauchamp Joined**
25 **Clark Hill in September 2013.**

26 76. The POM that DenSco issued in July 2011 expired on July 1, 2013.
27 DenSco did not issue a POM in July 2013, or at any time after July 2013, to replace the
28 POM that expired on July 1, 2013.

1 77. Between May 9 and July 1, 2013, Beauchamp took some preliminary
2 steps to prepare a new POM but did not begin drafting a new POM. He also failed to
3 conduct the due diligence that a reasonable securities lawyer would have undertaken.
4 He failed to investigate red flags about DenSco's lending practices when they were
5 brought to his attention.

6 **1. Beauchamp Was Asked to Leave Bryan Cave in June 2013 and**
7 **Left the Firm in August 2013.**

8 78. One apparent reason for Beauchamp's inattention to DenSco's need for a
9 new POM was that he spent the summer months looking for a new job.

10 79. Information the Receiver has received in response to a subpoena served
11 on Bryan Cave suggests that on or shortly after June 4, 2013, Beauchamp was informed
12 by Bryan Cave's management committee that the firm wanted to end its relationship
13 with Beauchamp and that he would need to find a new law firm where he could practice
14 law.

15 80. Bryan Cave's decision understandably was not well received by
16 Beauchamp. As he wrote in a January 15, 2014 email to his former partner Bob Miller
17 explaining why he did not wish to attend a meeting at Bryan Cave's offices, "[m]y last
18 few months [at Bryan Cave] were more than a little difficult and I do not want to go
19 back to that."

20 81. Beauchamp finalized the terms of his employment by Clark Hill by mid-
21 to late-August 2013.

22 82. Beauchamp's notes reflect that he spoke to Chittick on August 26, 2013
23 and told him that "BC will be sending a letter to Denny & letting Denny decide if he
24 wants files kept at BC or moved to CH."

25 83. On August 30, 2013, Beauchamp sent Chittick by email a letter that he
26 and Jay Zweig, the managing partner of Bryan Cave's Phoenix office, both signed,
27 informing DenSco that Beauchamp would be leaving Bryan Cave effective August 31,
28 2013, and that Beauchamp would be joining Clark Hill.

1 **2. During the Month of May 2013, Beauchamp Performed**
2 **Minimal Work to Prepare a New POM.**

3 84. The files that Beauchamp maintained at Bryan Cave and Bryan Cave's
4 billing statements reflect that Chittick had to prompt Beauchamp to start working on a
5 new POM in 2013.

6 a. On March 17, 2013, Chittick sent Beauchamp an email proposing
7 to meet in April to begin working on an updated private offering memorandum.

8 b. On May 1, 2013, Chittick sent another email to Beauchamp which
9 stated: "it's the year we have to do the update on the memorandum, when do you
10 want to start?"

11 c. Beauchamp responded by email that day and scheduled a meeting
12 for May 9, 2013.

13 85. Despite those documents, Beauchamp claims in Defendants' initial
14 disclosure statement (at 5) that he, rather than Chittick, was the one who started the
15 process of preparing a new POM in 2013 when he "advised DenSco that it needed to
16 update its 2011 POM given the passage of time and changes in the scope of DenSco's
17 fund raising."

18 86. Beauchamp caused a new matter to be established in Bryan Cave's
19 accounting and filing systems for the preparation of a 2013 POM which identified
20 DenSco as Bryan Cave's client.

21 87. When the matter was opened, Bryan Cave established a "due diligence"
22 file for a 2013 POM.

23 88. Before the May 9, 2013 meeting, Beauchamp prepared or caused to be
24 prepared a draft private offering memorandum dated "May __, 2013" (the "draft 2013
25 POM").

26 89. With the exception of the title page, the draft 2013 POM was a duplicate
27 of a preliminary draft of the 2011 POM, which Bryan Cave attorney Gus Schneider had
28

1 sent to Chittick on June 15, 2011 at Beauchamp's direction, when Schneider and
2 Beauchamp were working on the 2011 POM.

3 90. During the May 9 meeting, Beauchamp took a few notes and apparently
4 underlined or circled a few passages in the draft 2013 POM.

5 91. Beauchamp's notes reflect that Chittick told him during the meeting that
6 DenSco had as of that date raised over \$50 million from 75 to 80 investors who
7 collectively held 114 accounts.

8 92. Beauchamp stopped working on the draft 2013 POM after learning how
9 much money DenSco had raised since the 2011 POM. As he would later tell Bryan
10 Cave partner Elizabeth Sipes through a June 25, 2013 email: "We stopped the updating
11 when we were told that the investments from the investors had jumped to
12 approximately \$47.5 million. Given that significant increase, I have been asking for
13 help to determine what other federal or state laws might be applicable."

14 93. According to Bryan Cave's billing statement, the only work Beauchamp
15 performed during May 2013 on the draft 2013 POM was for less than thirty minutes of
16 "[w]ork on issues and follow-up" on May 10 and less than thirty minutes of "[w]ork on
17 issues and information for Private Offering Memorandum" on May 31, 2013.

18 **3. During June 2013, Beauchamp Learned From Another Bryan**
19 **Cave Lawyer That DenSco's Website Violated Federal**
Securities Laws.

20 94. Although Beauchamp learned on May 9, 2013 that DenSco had nearly
21 \$50 million of investor loans and told his Bryan Cave colleagues that he stopped
22 working on the draft 2013 POM when he learned of that fact so that he could
23 investigate what federal or state laws were implicated by the substantial increase in
24 DenSco's sales of promissory notes, Beauchamp waited until June 10, 2013 before
25 seeking assistance from other Bryan Cave attorneys.
26
27
28

1 a. On June 10, 2013, Beauchamp sent an email to Ken Henderson, an
2 attorney in Bryan Cave's New York City office, copied to William Seabaugh, an
3 attorney in Bryan Cave's St. Louis office.

4 b. His email stated, in part: DenSco "is a client which makes high
5 interest loans (18% with no other fees) secured by first lien position against real
6 estate. . . . DenSco has previously had aggregate investor loans outstanding at
7 approximately \$16 to \$18 million from its investors. We are starting the process
8 to update and renew DenSco's private offering memo (renew it every two years)
9 and we have now been advised that DenSco now has almost \$47 million in
10 aggregate investor loans outstanding."

11 c. Beauchamp said he was seeking "guidance or direction" as to
12 whether DenSco, with close to \$50 million of investor funds, was subject to
13 certain federal securities acts and regulations.

14 d. Henderson suggested by email that Beauchamp confer with Robert
15 Pedersen, an attorney in Bryan Cave's New York City office, and Elizabeth
16 Sipes, an attorney in Bryan Cave's Denver office.

17 95. On June 11, 2013, Beauchamp sent an email to Chittick which stated:
18 "How many investors hold notes from DenSco? We are trying to determine what
19 exclusions DenSco could qualify for with respect to the other applicable federal
20 statutes. I do not have that number in my notes."

21 96. Chittick responded by email that day, telling Beauchamp DenSco had 114
22 individual accounts, held by approximately 80 families.

23 97. On June 17, 2013, Beauchamp received an email from Pedersen.
24 Pedersen noted that he had reviewed DenSco's website, and had asked Randy Wang, an
25 attorney in Bryan Cave's St. Louis office, whether DenSco was in compliance with the
26 Securities Act of 1933. Pedersen wrote: "Randy questioned whether in the DenSco
27 Investment Corp. case, the existence of, and/or statements made on, the DenSco
28

1 [website] which I had brought to his attention, made the transaction exemption
2 unavailable to DenSco. In any event you may wish to discuss further with Randy.”

3 98. Beauchamp then printed information from DenSco’s website, which
4 included a section captioned “Investor Requirements” that purported to provide an
5 “abbreviated description” of “legal definitions” found in the 2011 POM and related
6 subscription agreement, including a definition of accredited investor.

7 99. Although Beauchamp had been representing DenSco since 2003, and his
8 files reflect that he regularly reviewed DenSco’s website, it was another Bryan Cave
9 lawyer, with no prior involvement in Bryan Cave’s representation of DenSco, who
10 immediately identified this significant issue.

11 100. Beauchamp wrote an email to Wang on June 17, 2013, which stated:
12 “With respect to the client’s statements on its website, I was not aware that the client
13 had added his personal description of what is an eligible ‘accredited investor’ to the
14 DenSco website. *I will have him take it down.* (Emphasis added.) I also have a call
15 into him to ask when he added that language. Previously, his website was just for
16 potential borrowers and for existing investors. It included his view of the real estate
17 lending market and explained the status of the properties that DenSco had commenced
18 or might have to commence a Trustee Sale to take ownership of the security for a loan.
19 Given his ‘layman’s description of an accredited investor’ on the website, does that
20 constitute general solicitation, which will cause the offering to no longer qualify under
21 Regulation D? If so, can we discuss what we need to tell him that he needs to do to
22 resolve the loss of his exempt security status?”

23 101. Beauchamp’s notes reflect that he spoke to Wang on June 17, 2013.

24 102. Beauchamp’s notes also reflect that he spoke to Chittick on June 17,
25 2013.

26 103. After talking to Chittick, Beauchamp sent an email to Wang on June 17,
27 2013, which stated, in part: “*I talked to Denny Chittick, the owner of DenSco. Denny*
28 *has already had the website modified.* (Emphasis added.) Denny also reviewed the list

1 of his investors (there are only 114 individual investors from approx 80 families). All
2 of his investors were either family or friends (or verified referrals from family or
3 friends). . . . According to his note schedule, Denny has approximately 60 investor
4 notes that are scheduled to expire in the next six months, *so he would prefer to not be*
5 *shut down and have to return all of that investment money to his investors until he*
6 *could commence operations again.*” (Emphasis added.)

7 104. Beauchamp received an email from Chittick late in the day on June 17,
8 2013, through which Chittick forwarded his email exchange with a vendor confirming
9 that information regarding interest rates offered for promissory notes and the entire
10 “Investor Requirements” section had been removed from DenSco’s website.

11 105. Beauchamp spoke to Wang on June 18, 2013. His notes reflect that Wang
12 “does not have a clean path for the private placement” and that he and Beauchamp
13 discussed a number of “judgment calls” which were described in Beauchamp’s notes as
14 follows: (i) “whether website constitutes ‘General Solicitation’ – probably yes”;
15 (ii) “would a waiver of Right of Rescission be helpful – probably not → that just
16 resolves the individual claim + not the offering itself”; (iii) “would starting a new
17 company be helpful – probably not – still would be integrated offering.” Beauchamp’s
18 notes concluded by stating “Randy does not have a solution” and a list of the names of
19 other Bryan Cave attorneys Beauchamp should contact.

20 106. On June 20, 2013, Beauchamp sent an email to Bryan Cave attorneys
21 Henderson, Wang, Robert Endicott in the firm’s St. Louis office, and Garth Jensen in
22 the firm’s Denver office. Beauchamp’s email stated, in part:

23 “[DenSco] is a client which makes high interest loans (18% with no other fees)
24 secured by first lien position against Arizona real estate. . . . As part of our due
25 diligence for this offering, we reviewed the client’s website. On its website, the
26 client lists several pieces of information concerning Arizona real estate, but the
27 client has also added Denny Chittick’s personal description of who or what is an
28 eligible ‘accredited investor.’ In addition, the website also referenced the
interest rate paid by DenSco to its investors. *After we advised the client that*
this could be deemed to be “general solicitation” in violation of Regulation D,
the client immediately took down these references from its website. . . . Randy
and I are concerned that if this information on the website is deemed to
constitute ‘general solicitation’ then the offering will no longer qualify under

1 Regulation D. . . . *According to his note schedule, Denny has approximately 60*
2 *investor notes that are scheduled to expire in the next 6 months (and to*
3 *probably be rolled over into new notes), so he would prefer to not be shut down*
4 *and to have to return all of that investment money to his investors until he*
5 *could commence operations again.* Issue: Does anyone have any suggestion or
thoughts that we can advise the client (short of closing down its business for six
months) that he needs to do to resolve the loss of his exempt security status?"
(Emphasis added.)

6 107. Henderson and Wang responded to Beauchamp's email on June 20, 2013,
7 discussing when the "'JOBS Act' requirement that the SEC eliminate the general
8 solicitation requirement for all accredited investors offerings [would] become
9 effective[.]"

10 108. On June 25, 2013, Beauchamp sent an email to Sipes which stated, in
11 part: "Attached is the previous POM for the client which has only had the date
12 changed. We stopped the updating when we were told that the investments from the
13 investors had jumped to approximately \$47.5 million. Given that significant increase, I
14 have been asking for help to determine what other federal or state laws might be
15 applicable. Bob Pederson of NY has said that the Trust Indenture Act will not be
16 applicable so long as the client is under the Regulation D, Rule 506 exemption. The
17 other big issues [that] have waited for your help to discern [is] if we need to comply
18 with the Investment Advisors Act of 1940 and the Registered Investment Advisors
19 requirements."

20 109. Beauchamp spoke to Sipes on June 27, 2013. Beauchamp's notes reflect
21 that Sipes told him the 2011 POM had incorrectly referenced an exemption under the
22 Investment Company Act, that she was considering other issues, and that she would
23 follow up by email.

24 110. Beauchamp spoke to Chittick on June 27, 2013. Beauchamp's notes
25 reflect that he shared with Chittick the information he had received from Sipes.

26 111. Chittick sent Beauchamp an email on June 27, 2013 to again confirm that
27 the requested changes to the website had been completed. He added, "Oh ya I just took
28 in another 1.1 million yesterday."

1 4. **During June 2013, Beauchamp Learned That Representations**
2 **Made In the 2011 POM About DenSco's Lending Practices**
3 **Were Materially Misleading But Failed to Conduct Any**
4 **Investigation of DenSco's Lending Practices.**

5 112. Beauchamp received an email from Chittick on June 14, 2013.

6 113. Chittick's email, which was copied to Yomtov "Scott" Menaged, said, in
7 part: "I have a borrower, to which I've done a ton of business with, million[s] in loans
8 and hundreds of loans for several years[.] [H]e's getting sued along with me. . . . Easy
9 Investments[] has his attorney working on it[.] [I]'m okay to piggy back with his
10 attorney to fight it[.] Easy Investments [is] willing to pay the legal fees to fight it. I
11 just wanted you to be aware of it, and talk to his attorney, [whose] contact info is
12 below."

13 114. Chittick's email included a forwarded email from Menaged which
14 provided contact information for his attorney, Jeffrey J. Goulder.

15 115. Copies of a summons, the first four pages of a complaint, a certificate of
16 compulsory arbitration, and a lis pendens were attached to the email.

17 116. Menaged responded to the email by telling Beauchamp in an email to
18 "bill me for your services and utilize my attorney for anything you may need."

19 117. The complaint and other documents Beauchamp received identified by
20 street address and legal description the foreclosed home at issue in the lawsuit; they
21 also identified the names of the former owners.

22 118. After reviewing these documents, Beauchamp sent an email to Chittick on
23 June 14, 2013 which said "***We will need to disclose this in POM.***" (Emphasis added.)

24 119. Bryan Cave's billing records reflect that Beauchamp billed DenSco for 30
25 minutes of time on June 14, 2013 devoted to "[e]mail to D. Chittick regarding need to
26 disclose pending litigation in Private Offering Memorandum; review email from D.
27 Chittick; review requirements."
28

1 120. The complaint had been filed in Maricopa County Superior Court by Freo
2 Arizona, LLC against DenSco; Easy Investments, LLC; Active Funding Group, LLC;
3 Ocwen Loan Servicing, LLC; and another defendant.

4 121. According to the excerpt of the complaint that Beauchamp received,

5 a. A home in Peoria, Arizona was to be sold at a trustee's sale.

6 b. Freo claimed to have purchased the home on March 18, 2013,
7 before the date of the scheduled trustee's sale, by paying Ocwen Loan Servicing
8 the payoff amount for the mortgage, and that the sale was documented in a
9 warranty deed that had been recorded with the Maricopa County Recorder's
10 Office.

11 c. Ocwen failed to timely instruct the Trustee to cancel the trustee's
12 sale.

13 d. On March 22, 2013, *Easy Investments* acquired the property at a
14 trustee's sale, and then ***"attempted to encumber the property with deeds of trust***
15 ***to Active [Funding Group] and DenSco.***" (Emphasis added.)

16 e. Freo filed its lawsuit to establish that it owned the property free
17 and clear of liens asserted by Active Funding Group and DenSco.

18 122. The *Freo* complaint put Beauchamp on notice that DenSco's 2011 POM
19 was materially misleading because DenSco was not following the "proper method and
20 procedures for funding a loan" which, according to Beauchamp's interrogatory
21 answers, were described in the 2011 POM as including "'due diligence to verify certain
22 information in connection with funding a Trust Deed'" and "'conduct[ing] a due
23 diligence review by . . . verifying the documentation.'"

24 123. It was apparent from the *Freo* complaint that Chittick had not conducted
25 any due diligence before loaning money to Easy Investments to acquire this particular
26 home, since the property had been sold, according to public records, five days before a
27 trustee's sale. Under such circumstances, the loan funded by DenSco could not have
28

1 been a loan “intended to be secured through [a] first position trust deed[],” as DenSco
2 had represented in the 2011 POM.

3 124. It was also apparent from the *Freo* complaint that Chittick had not
4 exercised appropriate care in loaning money to Easy Investments, since Freo alleged
5 that Easy Investments had “attempted to encumber the property with deeds of trust to
6 Active [Funding Group] and DenSco.” That allegation called into question both the
7 due diligence Chittick had employed in selecting Easy Investments as a borrower and
8 the practices Chittick followed in funding loans made by DenSco.

9 125. Although the files Beauchamp maintained and Bryan Cave’s billing
10 records reflect that the only actions Beauchamp took after receiving Chittick’s June 14,
11 2013 email were to spend 30 minutes to “review email from D. Chittick” and to send
12 “[e]mail to D. Chittick regarding need to disclose pending litigation in Private Offering
13 Memorandum,” Beauchamp claims in Defendants’ initial disclosure statement (at 6-7)
14 that he did more than that.

15 126. Beauchamp claims that after reviewing the *Freo* complaint, he “advised
16 Mr. Chittick . . . that Mr. Chittick needed to fund DenSco’s loans directly to the trustee
17 or escrow company conducting the sale, rather than provide loan funds directly to the
18 borrower, to ensure that DenSco’s deed of trust was protected.” This is an admission
19 by Beauchamp that he knew in June 2013 that the 2011 POM was materially
20 misleading.

21 127. Beauchamp goes on to say in Defendants’ initial disclosure statement that
22 “Mr. Chittick explained to Mr. Beauchamp that this was an isolated incident with a
23 borrower, Menaged, whom Mr. Chittick described in his email as someone he had
24 ‘done a ton of business with . . . hundreds of loans for several years’”

25 128. If a jury believes that Beauchamp actually had this discussion with
26 Chittick, despite the absence of any email, note or billing record to support
27 Beauchamp’s claim, it should conclude that Beauchamp decided not to take *any* steps to
28 investigate Chittick’s admission that DenSco had lax lending practices. The jury may

1 also conclude that Beauchamp was preoccupied with his efforts to find a new law firm
2 and did not take the time to do so.

3 129. An investigation into DenSco's lending practices was needed because:

4 a. the volume of DenSco's lending that Chittick was managing by
5 himself (a missed red flag when the 2011 POM was prepared) had significantly
6 increased since 2011;

7 b. as Beauchamp had noted in his email exchanges with Bryan Cave
8 attorneys, DenSco had gone from \$16 to \$18 million of investor funds in 2011 to
9 approximately \$47 million in 2013, and Beauchamp knew that the additional
10 investor funds would be utilized to make new loans;

11 c. the allegations in the *Freo* lawsuit evidenced a lack of due
12 diligence on DenSco's part in deciding to fund the loan in question;

13 d. the allegations in the *Freo* lawsuit called into question whether
14 Menaged, whom Chittick described as one of DenSco's major borrowers, was a
15 reliable and trustworthy person.

16 e. Chittick's admission that he had given funds directly to Easy
17 Investments necessarily meant DenSco was not complying with the terms of the
18 Receipt and Mortgage which, as Beauchamp has noted in his interrogatory
19 answers, "stated that the check purchasing the property was made to the
20 Trustee."

21 f. Beauchamp knew on June 17, 2013, when he downloaded and
22 reviewed DenSco's website, that DenSco was representing to existing and
23 potential investors that it followed "Lending Guidelines" under which it would
24 be in "First Position ONLY!"

25 g. Beauchamp knew that DenSco would be actively selling
26 promissory notes in the latter half of 2013, since he knew, and told his Bryan
27 Cave colleagues on June 20, 2013, that "[a]ccording to [Chittick's] note
28

1 schedule, [DenSco] has approximately 60 investor notes that are scheduled to
2 expire in the next 6 months (and to probably be rolled over into new notes).”

3 h. Beauchamp knew that DenSco was actively selling promissory
4 notes based on the 2011 POM. On June 27, 2013, for example, Chittick told him
5 by email “Oh ya I just took in another 1.1 million yesterday.”

6 130. Beauchamp did not conduct an investigation of the allegations in the *Freo*
7 lawsuit regarding DenSco’s lending practices, or of DenSco’s lending practices
8 generally, in June 2013 (before the 2011 POM expired on July 1, 2013) or at any time
9 thereafter.

10 131. If Beauchamp had investigated the allegations in the *Freo* complaint, he
11 would have found within minutes, by reviewing records available through the Maricopa
12 County Recorder’s website relating to the property described in the *Freo* lawsuit: (i) a
13 Deed of Trust and Security Agreement With Assignment of Rents given by Easy
14 Investments in favor of Active Funding Group, which Menaged had signed on
15 March 25, 2013; and (ii) a Deed of Trust and Assignment of Rents given by Easy
16 Investments in favor of DenSco, which Menaged had signed on April 2, 2013. Both
17 signatures were witnessed by the same notary public.

18 132. Those documents confirmed the allegation in the *Freo* complaint that
19 DenSco was not in first position on a loan it had made to Easy Investments.

20 133. Those documents also showed that Menaged had purposefully borrowed
21 money, first from Active Funding and then from DenSco, using the same property as
22 security, since he had personally signed both the Active Funding deed of trust and the
23 DenSco deed of trust before a notary.

24 134. Had Beauchamp questioned Chittick about his lending relationship with
25 Menaged, he would have learned that Chittick had, by mid-2013, caused DenSco to
26 make loans to entities controlled by Menaged such that the representation in the 2011
27 POM regarding loan concentrations (that DenSco would “attempt[] to ensure that one
28

1 borrower will not comprise more than 10 to 15 percent of the total portfolio”) was
2 materially misleading.

3 **5. During July and August 2013, Beauchamp Took Minimal**
4 **Steps to Prepare a New POM.**

5 135. After failing to do any investigation of the allegations in the *Freo* lawsuit
6 or of DenSco’s lending practices generally, an apparently distracted Beauchamp took
7 minimal steps in July and August 2013 to prepare a new POM.

8 136. On July 1, 2013, Beauchamp received an email from Sipes which stated,
9 in part, that she didn’t believe DenSco would be considered an investment advisor
10 under the Investment Company Act or the Investment Advisers Act and did not believe
11 DenSco needed to limit the number of accredited investors to whom it offered
12 promissory notes.

13 137. On July 10, 2013, Beauchamp forwarded to Chittick a news report that
14 the SEC had just decided to end the ban on general solicitation.

15 138. Bryan Cave’s billing statements reflect that between July 12, 2013 and
16 July 31, 2013, Beauchamp recorded time to “revise disclosure in Private Offering
17 Memorandum” and “[w]ork on and revise Private Offering Memorandum” and had
18 additional time entries to “[w]ork on revisions to Private Offering Memorandum” or
19 “[w]ork on issues for Private Offering Memorandum.”

20 139. But the only document in Bryan Cave’s file that reflects any revisions
21 Beauchamp made to the draft of a 2013 POM is a draft containing several of his
22 handwritten edits. They included a note on the cover of the draft to “revise to new
23 version for B/L purposes,” but no blacklined draft of a 2013 POM exists in Bryan
24 Cave’s file.

25 140. Bryan Cave’s billing records reflect that the only work Beauchamp
26 performed on the draft 2013 POM during August 2013 was to exchange emails on
27 August 6, 2013 with Jensen asking for a form subscription agreement to comply with
28 changes to Rule 506.

1 141. When Beauchamp left Bryan Cave in August 2013, the “due diligence”
2 file for the draft 2013 POM contained only three documents: (1) a June 18, 2013 article
3 captioned “Determining whether a company is an investment company”; (2) a printout
4 from DenSco’s website dated June 17, 2013; and (3) a July 28, 2010 article captioned
5 “Private Fund Investors Advisors Registration Act of 2010: New Law Changes
6 Regulatory Framework for Alternative Investment Advisors.”

7 142. Beauchamp’s notes reflect that he left a voicemail message for Chittick
8 on August 26, 2013 regarding “need to work on the latest version of POM that Denny
9 has w/ the prior experience charts. Need to discuss timing and update.”

10 143. Beauchamp’s notes go on to reflect that he spoke to Chittick on
11 August 26, 2013 – four days before Beauchamp and Bryan Cave sent a letter to Chittick
12 announcing Beauchamp’s August 31 departure from Bryan Cave – and that he
13 “explained delay w/ POM,” discussed the “need to get copy of Denny’s latest POM &
14 make changes to it,” and discussed that “BC will be sending a letter to Denny & letting
15 Denny decide if he wants files kept at BC or moved to CH.”

16 **6. Beauchamp Now Claims That Chittick Was Responsible for**
17 **His Failure to Prepare a New POM Before He Left Bryan**
18 **Cave, But His Claim Is at Odds With the Documentary**
19 **Record.**

20 144. In Defendants’ initial disclosure statement (at 5), Beauchamp claims that
21 he “was never able to finalize the 2013 POM” because of Chittick. He says that
22 “[a]lthough [he] asked for updated investment, loan and financial information regarding
23 DenSco, Mr. Chittick stalled on providing the information, preferring to wait until after
24 he scaled down the amount outstanding to investors.”

25 145. But Beauchamp’s claim has absolutely no support in the documentary
26 record and is at odds with that record. Not only is there nothing in Bryan Cave’s files
27 reflecting that Beauchamp asked Chittick for information that was not provided or that
28 Chittick engaged in “stalling” tactics, but the files reflect that Chittick promptly gave

1 Beauchamp the information he requested, and followed Beauchamp's advice, such as
2 when Chittick promptly changed DenSco's website after Beauchamp told him to do so.

3 146. Moreover, the corporate journal Chittick maintained for 2013 (the "2013
4 Corporate Journal") does not reflect any entries by Chittick about requests from
5 Beauchamp for information or his declination to provide that information.

6 147. The only reference in the 2013 Corporate Journal to the preparation of the
7 2013 POM is a June 17, 2013 entry which stated: "I am going back and forth with
8 David about how to circumvent this 50 million issue on size." That entry is consistent
9 with Beauchamp's communications of the same date as to whether DenSco had
10 engaged in general solicitation, an issue which, as noted above, was resolved on
11 July 10, 2013.

12 **7. An Apparently Distracted Beauchamp, After Failing to**
13 **Prepare a New POM by July 1, 2013, Did Not Advise DenSco**
14 **to Stop Selling Promissory Notes Until a New POM Was**
Issued.

15 148. By its terms, the 2011 POM expired on July 1, 2013.

16 149. There is no evidence in the documentary record that Beauchamp, with one
17 foot out of Bryan Cave's door, ever advised DenSco that it could not sell any new
18 promissory notes after July 1, 2013 until it issued a new POM, and Beauchamp does not
19 claim that he did so.

20 150. Beauchamp, preoccupied with finding a new law firm where he could
21 continue to practice law, failed to give that advice, even though he knew, as he told his
22 Bryan Cave colleagues in a June 20, 2013 email, that DenSco had "approximately 60
23 investor notes that are scheduled to expire in the next 6 months (and to probably be
24 rolled over into new notes)."

25 151. And while Beauchamp claims in Defendants' initial disclosure statement
26 (at 7) that "[p]rior to his departure" from Bryan Cave, he "repeatedly made clear to
27 DenSco and Mr. Chittick that they needed to update DenSco's POM," there is no
28 documentary support for that claim.

152. Even if a jury believes that Beauchamp actually gave that advice, despite the absence of any supporting documents, the advice fell short of an explicit instruction that no sales could be made until a new POM was prepared. Without that instruction, Chittick was effectively told that DenSco could indefinitely delay “updating” its POM while continuing to sell promissory notes.

8. Because of Beauchamp’s Inattention, Chittick Caused DenSco to Sell Approximately \$3.3 Million of Promissory Notes Before Beauchamp Left Bryan Cave.

153. Because Beauchamp failed to prepare a new POM by July 1, 2013 and failed to tell Chittick that DenSco could not sell promissory notes until a new POM was issued, Chittick caused DenSco, during July and August 2013, to sell promissory notes to some of the “approximately 60 investor[s]” whose notes Beauchamp knew were “scheduled to expire in the next 6 months (and to probably be rolled over into new notes).”

154. In each case, an investor who had purchased a two-year promissory note in 2011, which expired in July or August 2013, purchased a new two-year promissory note. Those sales, which total \$2,337,653.47, are summarized in the following chart.

Investor	Amount	Date
Jeff Phalen	\$100,000	7/1/13
Gary Thompson	\$250,000	7/3/13
Kaylene Moss	\$10,000	7/12/13
Branson & Sandra Smith	\$250,000	7/13/13
Ralph Kaiser IRA	\$170,653.47	7/17/13
Jimmy Trainor	\$122,000	7/22/13
Russ Grisswold IRA	\$50,000	7/24/13
William Alber	\$60,000	7/28/13
Carol Wellman	\$50,000	7/28/13
Tom Smith	\$400,000	8/2/13

GE Seigford	\$70,000	8/2/13
GE Seigford	\$40,000	8/2/13
Carysn Smith	\$10,000	8/2/13
McKenna Smith	\$10,000	8/3/13
Gary Thompson	\$145,000	8/3/13
Carol & Mike Wellman	\$25,000	8/5/13
Stacy Grant IRA	\$75,000	8/8/15
GE Seigford	\$50,000	8/18/15
Tom Smith	\$400,000	8/24/15
Dale Hickman	\$50,000	8/30/15

155. In addition to these “rollover” promissory note sales, Chittick caused DenSco to sell \$926,567 of new promissory notes to existing and new investors during July and August 2013. Those sales are summarized in the following chart.

Investor	Amount	Date	Maturity
Laurie Weiskopf	\$100,000	7/10/13	7/10/15
Carol McDowell	\$100,000	7/3/13	7/3/15
Kevin Potempa	\$100,000	7/29/13	1/26/16
Wayne Ledet	\$30,567	8/23/13	8/23/15
Tom Smith	\$500,000	8/26/13	2/26/15
Kirk Fischer	\$70,000	8/26/13	8/26/18
Carsyn Smith	\$8,000	8/26/13	8/26/15
McKenna Smith	\$8,000	8/26/13	8/26/15
Averill Cate	\$10,000	8/29/13	8/29/14

1 **C. Facts Regarding Clark Hill’s Representation of DenSco in 2013**

2 **1. In September 2013, Beauchamp Brought DenSco to Clark Hill**
3 **as a New Client and Clark Hill Agreed to Prepare a New POM.**

4 156. On September 11 and 12, 2013, Beauchamp exchanged emails with
5 Chittick about taking steps to have certain DenSco files transferred from Bryan Cave to
6 Clark Hill: “AZ Practice Review”; “Blue Sky Issues”; “Garnishments”; “General
7 Corporate”; and “2011 and 2013 Private Offering.”

8 157. On September 12, 2013, Beauchamp sent Chittick an engagement letter,
9 which Chittick signed and returned that day.

10 158. The letter, which was captioned “Representation of DenSco Investment
11 Corporation,” stated that it would “serve[] to record the terms of [Clark Hill’s]
12 engagement to represent DenSco Investment Corporation (the ‘Client’), with regard to
13 the legal matters transferred to Clark Hill PLC from Bryan Cave LLP.”

14 159. Clark Hill’s engagement letter, like those Beauchamp had sent DenSco
15 when he was at Gammage & Burnham and Bryan Cave, identified DenSco as Clark
16 Hill’s client.

17 160. But Clark Hill’s engagement letter went further, and expressly stated that
18 Clark Hill was representing only DenSco, and was not representing Chittick in any
19 capacity.

20 a. The letter stated that it was “supplemented by our Standard Terms
21 of Engagement for Legal Services, attached, which are incorporated in this letter
22 and apply to this matter and the other matter(s) for which you engage us.”

23 b. The “Standard Terms of Engagement for Legal Services” included
24 a section called “Whom We Represent.” That section stated: “*The . . . entity*
25 *whom we represent is the . . . entity identified in our engagement letter and*
26 *does not include any . . . employees, officers, directors, shareholders of a*
27 *corporation . . . unless our engagement letter expressly provides otherwise.*”
28

1 161. Even though this engagement letter clearly and expressly stated that Clark
2 Hill represented only DenSco and was not also representing Chittick, Clark Hill and
3 Beauchamp say in their initial disclosure statement (at 3) that “Chittick understood that
4 Mr. Beauchamp, as an incident to Mr. Beauchamp’s representation of DenSco, was also
5 representing Mr. Chittick in his capacity as president of DenSco.”

6 162. On September 13, 2013, Beauchamp took steps to open a new matter for
7 DenSco in Clark Hill’s accounting and filing systems that was mis-identified as “2003
8 Private Offering Memorandum.” Beauchamp’s notes stated that the file was being
9 opened to “[f]inish 2013 POM for client. Started POM update at Bryan Cave.”

10 163. Beauchamp opened this file, obligating Clark Hill to provide securities
11 advice to DenSco and to diligently and promptly “finish [the] 2013 POM,” knowing
12 that the 2011 POM had expired on July 1, 2013, no new POM had been issued, and that
13 as of June 20, 2013, “[a]ccording to [Chittick’s] note schedule, [DenSco] ha[d]
14 approximately 60 investor notes that are scheduled to expire in the next 6 months (and
15 to probably be rolled over into new notes).”

16 **2. According to Clark Hill’s Records the Firm Did No Work**
17 **Whatsoever on a New POM During the Months of September,**
 October, November and December 2013.

18 164. Clark Hill’s records show that neither Beauchamp nor any other Clark
19 Hill attorney performed *any* work on a new POM during September, October, or
20 November 2013.

21 **3. Clark Hill and Beauchamp Blame Chittick for Their Failure to**
22 **Prepare a New POM in 2013.**

23 165. In their initial disclosure statement (at 7), Clark Hill and Beauchamp
24 blame Chittick for their failure to do anything to prepare a new POM, which Clark Hill
25 agreed to undertake in early September 2013. They say that after Chittick signed Clark
26 Hill’s engagement letter on September 12, 2013 and directed Bryan Cave to transfer
27 certain files to Clark Hill, “Mr. Beauchamp never heard from Mr. Chittick regarding the
28 unfinished 2013 POM, or any other matter, until December 2013.”

1 166. But Clark Hill's records show that after the firm opened a file in
2 September 2013 to prepare a new POM, no one at Clark Hill even attempted to contact
3 Chittick about the new POM during that month and for the next three months.

4 167. When he was deposed, Beauchamp offered a new excuse for Clark Hill's
5 failure to do any work on a new POM. He testified that Clark Hill did nothing to
6 prepare a new POM for DenSco because Chittick instructed him, as a condition of
7 signing Clark Hill's engagement letter in early September 2013, that Clark Hill not do
8 any work on a new POM "until I'm ready to go," and Beauchamp agreed.

9 168. Beauchamp did not include this material limitation on Clark Hill's
10 representation in the engagement letter he asked DenSco to sign.

11 169. When Clark Hill agreed in September 2013 to abide by Chittick's request,
12 neither Beauchamp nor any other Clark Hill attorney separately advised Chittick that
13 DenSco could not sell any promissory notes until it authorized Clark Hill to prepare a
14 new POM and DenSco had issued the POM.

15 **4. In September 2013, Clark Hill Negligently Failed to Instruct**
16 **DenSco That It Could Not Sell Any Promissory Notes Until a**
17 **New POM Was Issued, and Aided and Abetted Chittick**
18 **Breach Fiduciary Duties He Owed DenSco by Following**
19 **Chittick's Instructions to Not Prepare a New POM for DenSco,**
20 **Knowing DenSco Was Continuing its Business Operations and**
21 **Selling Rollover Promissory Notes.**

22 170. Clark Hill was negligent by not advising Chittick in September 2013 (or
23 any time thereafter) that DenSco could not sell any promissory notes until it had issued
24 a new POM.

25 171. The evidence that will be presented to a jury will establish that if Clark
26 Hill had given that advice, DenSco would have followed it and worked diligently with
27 Clark Hill to begin the process of preparing a new POM so that it could resume selling
28 promissory notes.

 172. In the course of conducting due diligence to prepare a new POM during
September 2013, it would have been evident to Clark Hill that DenSco could not, given

1 Chittick's previous mismanagement of the Company, material misstatements in
2 previous POMs, and its financial condition, sell any new securities.

3 173. As the Receiver's standard-of-care expert Neil Wertlieb has stated in his
4 report, if Clark Hill had properly advised DenSco in September 2013, Clark Hill would
5 have advised DenSco to conduct an orderly liquidation (presumably through a
6 Chapter 7 bankruptcy) for the benefit of its Noteholders, and withdrawn from
7 representing DenSco if Chittick failed to follow that advice.

8 174. The evidence establishing that if Clark Hill had properly advised DenSco,
9 Chittick would have followed Clark Hill's advice, including the following:

10 a. Clark Hill and Beauchamp admitted in their initial disclosure
11 statement (at 4), that "[o]ver the years, Mr. Chittick showed himself to be a
12 trustworthy and savvy businessman, and a good client. . . . Despite complaining
13 about the cost of legal services, Mr. Chittick appeared to follow Mr.
14 Beauchamp's advice and provided information when asked for it."

15 b. Approximately six weeks before Clark Hill was retained, DenSco
16 had immediately followed Bryan Cave's advice to modify its website, and Bryan
17 Cave's files reflect that Chittick was prepared to cause DenSco to refund all
18 investor loans if that was necessary to correct the "general solicitation" problem
19 Bryan Cave had identified.

20 c. Chittick's writings immediately before his death provide further
21 evidence that he would have followed the advice that Clark Hill should have
22 given, but failed to give.

23 175. Beauchamp's testimony that Clark Hill did not work on a new POM in
24 2013 because Chittick conditioned DenSco's execution of the firm's engagement letter
25 on Clark Hill's agreement to not perform any work on a new POM until Chittick was
26 "ready to go" (knowing that one-half of DenSco's investors would "roll over" their
27 investments and purchase new promissory notes during the last six months of 2013) is
28 an admission that from the moment DenSco retained Clark Hill in September 2013,

1 Clark Hill aided and abetted Chittick in breaching fiduciary duties Chittick owed
2 DenSco.

3 176. Between September and December 2013, Clark Hill substantially assisted
4 Chittick in breaching his fiduciary duties to DenSco by:

5 a. accepting DenSco as a client for purposes of preparing a new
6 POM, and then abiding by Chittick's instruction to not do any work on that
7 POM, knowing DenSco was continuing its business operations, including the
8 sale of promissory notes;

9 b. failing to appropriately advise DenSco about, and investigate facts
10 regarding, DenSco's loan portfolio because Chittick was allegedly "dealing"
11 with those problems; and

12 c. advising Chittick that DenSco could indefinitely delay the issuance
13 of an "update" to the 2011 POM,

14 177. The ongoing sale of "roll over" and new promissory notes was necessary
15 for DenSco to continue its business operations, and Clark Hill enabled DenSco to
16 obtain investor funds for a four-month period without making adequate disclosures to
17 those investors, exposing DenSco to substantial liability to its investors.

18 178. The Receiver's damages expert Dave Weekly has calculated the damages
19 DenSco suffered after October 1, 2013 as a result of Clark Hill's failure to properly
20 advise DenSco in September 2013, and its aiding and abetting of Chittick's breaches of
21 fiduciary duties. His calculations are discussed below.

22 **5. During the First Four Months of Clark Hill's Representation**
23 **of DenSco, the Firm Aided and Abetted Chittick's Breach of**
24 **Fiduciary Duty to DenSco When He Caused DenSco to Sell**
Approximately \$8.5 Million of Promissory Notes in Violation
of the Securities Laws

25 179. As a result of Clark Hill's and Beauchamp's conduct, Chittick caused
26 DenSco between September and December 2013 to sell promissory notes to some of the
27 "approximately 60 investor[s]" whose promissory notes Beauchamp knew were
28

“scheduled to expire [during the last six months of 2013] (and to probably be rolled over into new notes).”

180. In each case, an investor who had purchased a two-year promissory note in 2011, which expired in September, October, November or December 2013, purchased a new two-year promissory note. Those sales, which total \$4,148,162.79, are summarized in the following chart.

Investor	Amount	Date
Van Butler	\$50,000	9/1/13
Arden & Nina Chittick	\$100,000	9/1/13
Carysn Smith	\$10,000	9/2/13
Michael & Diana Gumbert	\$100,000	9/8/13
Kaylene Moss	\$10,000	9/8/13
McKenna Smith	\$10,000	9/8/13
Glen Davis	\$20,000	9/12/13
Averill Cate, Jr.	\$10,000	9/13/13
Craig Brown	\$25,000	9/20/13
Judy & Gary Siegford	\$40,000	9/20/13
Bill & Jean Locke	\$15,000	9/25/13
Bill & Jean Locke	\$30,000	9/25/13
Ralph Hey	\$60,000	9/29/13
Michael & Diana Gumbert	\$100,000	9/30/13
Mary Kent	\$100,000	10/1/13
Jim McArdle	\$100,000	10/3/13
Caro McDowell	\$100,000	10/7/13
Jeff Phalen	\$20,000	10/14/13
Jeff Phalen	\$20,000	10/14/13
Jeff Phalen – IRA	\$200,000	10/18/13

Brian Imdieke	\$250,000	10/19/13
Bill Hughes – IRA	\$314,700	10/24/13
Judy Hughes – IRA	\$14,300	10/24/13
Manual A. Lent – IRA	\$40,000	10/25/13
Dave Preston	\$60,000	10/26/13
Michael & Diana Gumbert	\$100,000	11/1/13
Jolene Page	\$50,000	11/1/13
Stanley Scholz – IRA	\$50,000	11/5/13
Wade Underwood	\$50,000	11/5/13
Paul A. Kent	\$112,161.79	11/9/13
Scott D. Detota	\$50,000	11/14/13
Tom Smith	\$800,000	11/21/13
Mary Kent	\$100,000	11/21/13
Les Jones	\$100,000	11/21/13
Vince & Sharry Muscat	\$200,000	11/23/13
Lillian Lent – IRA	\$17,000	11/25/13
Jolene Page	\$50,000	12/1/13
Gary Thompson	\$20,000	12/4/13
Kennen Burkhart	\$150,000	12/15/13
Mo & Sam Chittick	\$50,000	12/20/13
Jolene Page	\$200,000	12/22/13
Brian Imdieke	\$250,000	12/23/13

181. In addition to these “rollover” promissory note sales, Chittick caused DenSco to sell \$4,029,066.71 of new promissory notes to existing and new investors

during September, October, November and December 2013. Those sales are summarized in the following chart.¹

Investor	Amount	Date
Ralph Hey	\$15,000	9/6/13
Marvin & Pat Miller	\$900,000	9/9/13
Marvin & Pat Miller	\$100,000	9/9/13
Marvin & Pat Miller	\$706,000	9/10/13
Ross Dupper	\$800,000	9/13/13
Jeff Phalen – IRA	\$150,000	9/17/13
Michael Zones	\$500,000	9/24/13
Erin Carrick – Trust	\$200,066.71	9/27/13
Averill Cate	\$10,000	10/15/13
Jemma Kopel	\$100,000	11/14/13
Averill Cate	\$10,000	11/15/13*
Brian Odenthal – IRA	\$8,000	12/1/13
Averill Cate	\$10,000	12/15/13*
Brian & Janice Odenthal	\$20,000	12/19/13
Steven Bunger	\$500,000	12/20/13**

6. On December 18, 2013, Chittick Asked Beauchamp By Email Why the New POM Had Not Been Finished.

182. The first time entry in Clark Hill's billing records relating to a new POM is a twelve-minute entry by Beauchamp on December 18, 2013 to "review email; telephone conversation with D. Chittick; review POM."

¹ Each note was a two-year note, except those marked with an *, which were one-year notes, and the note marked with **, which matured on 3/31/14.

1 183. The email referenced in that time entry is an email that Chittick sent to
2 Beauchamp on December 18, 2013, saying “since you’ve moved, we’ve never finished
3 the update on the memorandum. Warren is asking where it is.”²

4 184. Chittick’s question is at odds with Beauchamp’s claim that Clark Hill had
5 not done any work on a new POM at Chittick’s instruction and was waiting to hear
6 from Chittick that he was, in Beauchamp’s words, ““ready to go.””

7 185. Beauchamp did not send Chittick a response to that email.

8 186. There are not any notes in Clark Hill’s files made by Beauchamp that
9 summarized his December 18, 2013 call with Chittick.

10 187. Beauchamp apparently asked Chittick during that call to send him a copy
11 of the 2011 POM, since Chittick emailed Beauchamp an electronic copy of the final
12 2011 POM during the late morning of December 18, 2013. Beauchamp promptly
13 responded, saying simply “[t]hank you. Have a wonderful holiday season.”

14 188. Beauchamp forwarded Chittick’s e-mail to his secretary that afternoon,
15 asking her to “put this on our system for DenSco Investment Corporation/2013 POM.”

16 **7. Clark Hill Claims That Beauchamp Learned During the**
17 **December 18, 2013 Call with Chittick About Problems in**
18 **DenSco’s Loan Portfolio but Clark Hill Did Nothing to**
 Investigate Those Problems Nor Did It Begin Preparing a New
 POM.

19 189. In their initial disclosure statement (at 7), Clark Hill and Beauchamp
20 make claims about Beauchamp’s December 18, 2013 telephone call with Chittick that
21 are at odds with Clark Hill’s file, including its billing statement. They allege that
22 Chittick told Beauchamp “he had run into an issue with some of his loans with
23 Menaged, and specifically, that properties securing a few DenSco loans were each
24 subject to a second deed of trust competing for priority with DenSco’s deed of trust.”
25

26
27 ² Chittick was apparently referring to Warren Bush, an investor who had reviewed
28 and commented on a draft of the 2011 POM, and had communicated with Beauchamp
 about that draft.

1 190. Clark Hill and Beauchamp claim that, “[a]fter briefly discussing the
2 allegedly limited double lien issue, Mr. Chittick emphasized to Mr. Beauchamp that
3 Mr. Chittick wanted to avoid litigation with other lenders. Mr. Chittick, however, did
4 not request any advice or help. Accordingly, Mr. Beauchamp suggested that Mr.
5 Chittick develop and document a plan to resolve the double liens, and nothing more
6 came of the conversation.”

7 191. Lastly, Clark Hill and Beauchamp claim that during the telephone
8 conversation “Mr. Beauchamp reminded Mr. Chittick that he still needed to update
9 DenSco’s private offering memorandum.”

10 192. No document in Clark Hill’s file, such as the handwritten notes that
11 Beauchamp consistently and regularly kept to record his telephone conversations and
12 meetings with Chittick, exists.

13 193. The 2013 Corporate Journal does not have any entries by Chittick
14 reflecting that he had such a conversation with Beauchamp in December 2013.

15 194. If a jury were to believe Beauchamp’s claim that he had such a
16 conversation with Chittick on December 18, 2013, despite the lack of evidence, it could
17 only conclude that Clark Hill and Beauchamp, having failed to properly advise DenSco
18 when Clark Hill began representing DenSco in September 2013, were again negligent
19 in December 2013 because they:

20 a. Failed to immediately investigate the information Beauchamp
21 received about the Menaged loan problem, since Clark Hill had an affirmative
22 duty to diligently and timely prepare a new POM, having agreed to do so in
23 September 2013; and

24 b. Failed to expressly instruct Chittick that DenSco could not sell *any*
25 promissory notes, since the 2011 POM had expired and a new POM had not yet
26 been issued.

27 195. By merely “reminding” Chittick that DenSco needed to “update” the 2011
28 POM, knowing that one-half of its investors would be “rolling over” promissory notes

1 during the last six months of 2013, Beauchamp effectively advised Chittick that
2 DenSco could indefinitely delay “updating” the 2011 POM while continuing to sell
3 promissory notes.

4 **8. Although Clark Hill Did Nothing in December 2013 to Prepare**
5 **a New POM and Investigate Problems in DenSco’s Loan**
6 **Portfolio, It Devoted Time That Month to Advising DenSco**
7 **About Possibly Expanding its Business to Florida.**

8 196. In Chittick’s December 18, 2013 email to Beauchamp, Chittick wrote,
9 after asking about the status of Clark Hill’s work on a new POM, about his plans to
10 expand DenSco’s business to Florida. He wrote: “[I]’ve got two of my best borrowers
11 moving to F[L][.] [T]hey are begging me to look at lending in FL. [I] don’t know
12 anything about the market there, but [I] trust these guys. [I]’ve done 20 million with
13 them over the past 5 yrs. [I]s it easy to find out the challenges, issues, etc with me
14 lending there?”

15 197. While Beauchamp did nothing in response to Chittick’s question about
16 the status of a new POM, he immediately forwarded Chittick’s e-mail to Clark Hill
17 attorney Daniel Schenck, asking “[w]ill you have time to do the research for Florida or
18 should I find someone else?”

19 198. Beauchamp also made an 18-minute time entry on December 18, 2013 to
20 “[r]eview email and outline Florida research.”

21 199. Between December 20, 2013 and December 23, 2013, both Beauchamp
22 and Schenck recorded time to conducting research and analysis on “Florida broker
23 issues,” “hard money regulatory lender requirements in Florida,” and “Florida lending
24 licenses.”

25 200. On December 23, 2013, Beauchamp recorded 42 minutes of time to
26 “[r]eview Florida research from D. Schenck; discuss research and follow up with D.
27 Schenck; email to D. Chittick.”

28 201. On Christmas Eve, December 24, 2013, Beauchamp sent Chittick an
email which stated: “Happy Holidays! Quick Status: Based on a review of the Florida

1 statutes, you would be considered a ‘Mortgage Lender’ which requires a license in
2 Florida. The Florida government office that regulates ‘Mortgage Lender’ [sic] has been
3 difficult to reach, but we will try again on Thursday. I want to confirm if you might be
4 able to qualify for a limited license to operate in Florida and check a few other
5 questions.”

6 202. On December 26 and 30, 2013, Beauchamp and Schenck recorded time to
7 obtaining information from the Florida Office of Financial Regulation and other
8 information relevant to Chittick’s December 18, 2013 inquiry about expanding
9 DenSco’s lending operations to Florida.

10 **D. Facts Regarding Clark Hill’s Representation of DenSco During 2014**

11 **1. Clark Hill Learned During the First Week of January 2014**
12 **That DenSco Had Suffered a Substantial Loan Loss Because of**
13 **Chittick’s Mismanagement and Failure to Follow the Lending**
14 **Procedures DenSco Had Told Its Investors It Would Follow.**

15 203. On Sunday, January 5, 2014, Beauchamp received an email from Chittick
16 asking if he had time to meet with him during the coming week.

17 **a. On Monday, January 6, 2014, Beauchamp Received a**
18 **Demand Letter That Called Into Question 52 Loans**
19 **DenSco Had Made to Menaged.**

20 204. On Monday, January 6, 2014, Beauchamp received an email from
21 Chittick which stated: “read the first two pages, then give me a call.” Attached to the
22 email was a three-page demand letter from Bryan Cave attorney Robert J. Miller;
23 Exhibit A, a list of 52 properties; and two subordination agreements.

24 205. The letter was written on behalf of Azben Limited, LLC; Geared Equity,
25 LLC; and 50780, LLC (the “Lienholders”). It asserted that Geared Equity, 50780, and
26 Sell Wholesale Funding, LLC (the “Lenders”) had each loaned money to Arizona
27 Home Foreclosures, LLC and Easy Investments, LLC, and that the loans Sell
28 Wholesale Funding had made were subsequently assigned to Azben.

1 206. Exhibit A to the letter identified, with reference to specific loan numbers
2 and street addresses, 52 loans that the Lenders had made to Easy Investments and
3 Arizona Home Foreclosures to acquire 52 homes at trustee sales.

4 207. The letter asserted that the Lenders' loans had been made by "certified
5 funds delivered directly to the trustee" and secured by "promptly recorded deeds of
6 trust confirming a senior lien position on each of the Properties."

7 208. The letter went on to assert that DenSco had "engaged in a practice of
8 recording a 'mortgage' on each of the [52 properties] on around the same time as the
9 Lenders were recording their senior deeds of trust" and that *each such mortgage falsely*
10 *stated that DenSco had "provided purchase money funding" and that its "loans are*
11 *'evidenced by a check payable' to the trustee for each of the Properties.*" (Emphasis
12 added.)

13 209. The letter asserted that DenSco could not claim to be in a senior lien
14 position on those properties "since in each and every instance, only the Lenders
15 provided the applicable trustee with certified funds supporting the Borrower's purchase
16 money acquisition for each of the Properties."

17 210. The letter demanded that DenSco sign subordination agreements
18 acknowledging that it did not have a first position lien on any of the 52 properties, and
19 said that if DenSco refused to do so, the Lienholders would assert claims against
20 DenSco for fraud and conspiracy to defraud; negligent misrepresentation; and wrongful
21 recordation pursuant to A.R.S. § 33-420.

22 211. The letter included "two forms of subordination agreement – one form
23 document applies to the Azben loans and the other form applies to the loans of Geared
24 Equity, LLC and 50780, LLC." A footnote stated that "[p]roperty addresses and other
25 'form' information will need to be included in each subordination agreement. My firm
26 will only commence preparing a subordination agreement for each loan when written
27 confirmation is provided that DenSco has unconditionally agreed to execute each
28 subordination agreement in the form enclosed herein."

1 **b. Beauchamp Reviewed the Demand Letter on the Day He**
2 **Received It, Which Provided Clear Evidence That**
3 **Chittick Had Breached His Fiduciary Duties to DenSco**
 and Exposed DenSco to Substantial Financial Loss.

4 212. Beauchamp spoke to Chittick by telephone on January 6, 2014, after
5 receiving the letter. Beauchamp's notes from that call state that Chittick told him
6 DenSco's "largest borrower" – who Beauchamp knew or should have known from the
7 *Freo* lawsuit he had received in June 2013 was Menaged – "had a guy working in his
8 office and was getting 2 loans on each property," and that Chittick and Menaged "had
9 already fixed about 6 loans." The notes reflect that Beauchamp planned to meet with
10 Chittick on Thursday, January 9, 2014.

11 213. Clark Hill's billing records reflect that Beauchamp billed 2.4 hours on
12 January 6, 2014 to "[r]eview, work on and respond to several emails; review statutory
13 references; telephone conversation with office of D. Chittick [a reference to having left
14 a voice-mail message for Chittick, since he worked alone from his home office];
15 telephone conversation with D. Chittick regarding demand letter, issues, background
16 information and requirements; review notes and statute requirements; review
17 documents."

18 214. From the demand letter alone, Beauchamp knew that:

19 a. Chittick had failed to follow the lending procedures called for by
20 the Receipt and Mortgage document Beauchamp had approved in 2007. That
21 document called for DenSco's borrower to present a "check payable to _____
22 ('Trustee')" to the Trustee. It was evident from the demand letter that DenSco
23 had not done so. DenSco could not have issued 52 checks payable to Trustees,
24 since the letter asserted that the Lenders had issued checks to the Trustees when
25 they acquired those 52 properties.

26 b. DenSco's borrowers, Arizona Home Foreclosures and Easy
27 Investments – which were both owned by Menaged – had obtained 52 loans
28 from the Lenders and 52 loans from DenSco, that were to be secured by the

1 same 52 properties. If, as the Lenders claimed, they had actually paid a Trustee
2 for each property, DenSco had effectively made 52 unsecured loans and the
3 disposition of those monies was unknown.

4 c. The potential financial impact on DenSco was substantial.
5 Beauchamp knew from the 2011 POM that DenSco's average loan amount was
6 \$116,000, so that DenSco's potential losses from the 52 loans, if the loan
7 proceeds could not be traced and recovered, was \$6 million or more, or
8 approximately 13% of the \$47 million that Beauchamp understood DenSco had
9 raised from investors as of June 2013.

10 215. Beauchamp could have easily conducted a limited investigation to
11 evaluate the claims in the demand letter that the Lenders were in first position on each
12 of the 52 properties, or to assess the information he had received during his telephone
13 call with Chittick that "a guy working in [Menaged's] office . . . was getting 2 loans on
14 each property."

15 216. Beauchamp could have done so by searching for publicly recorded
16 documents that were identified in the two subordination agreements attached to the
17 demand letter.

18 a. The first of those subordination agreements identified, by reference
19 to the instrument number assigned by the Maricopa County Recorder (2013-
20 0832534), the Mortgage DenSco had recorded on September 16, 2013 on the
21 property at issue. The subordination agreement also identified, by reference to a
22 recorded instrument number (2013-0833010), the deed of trust that Sell
23 Wholesale Funding, LLC had recorded on September 16, 2013 for the same
24 property.

25 b. In January 2014, the Maricopa County Recorder's Office had a
26 free "Recorded Document Search" function. The same tool is available today.

27 c. If Beauchamp had used that tool, two brief searches would have
28 shown that the DenSco Mortgage (2013-0832534) was signed by Menaged

1 before a notary on September 16, 2013, and that Menaged also signed the Sell
2 Wholesale Funding deed of trust (2013-0833010) before a notary on
3 September 16, 2013. Those searches would also have identified the property in
4 question as 977 S. Colonial Drive in Gilbert, Arizona.

5 d. Those two documents show that Menaged, not “a guy in his
6 office,” had secured both loans.

7 e. The second of the subordination agreements attached to the
8 demand letter identified, by reference to a recorded instrument number (2013-
9 0717135), the Mortgage DenSco had recorded on August 6, 2013 on the
10 property at issue. The subordination agreement also identified, by reference to a
11 recorded instrument number (2013-0721399), the deed of trust that Geared
12 Equity, LLC had recorded on August 7, 2013 for the same property.

13 f. If Beauchamp had used the Recorded Document Search tool, two
14 brief searches would have shown that the DenSco Mortgage (2013-0717135)
15 was signed by Menaged before a notary on August 6, 2013, and that Menaged
16 also signed the Sell Wholesale Funding deed of trust (2013-0721399) before a
17 notary on August 6, 2013. Those searches would have identified the property in
18 question as 39817 Messner Way in Anthem, Arizona.

19 g. Those two documents show that Menaged, not “a guy in his
20 office,” had secured both loans.

21 217. As for the remaining 49 properties on Exhibit A to the demand letter,
22 Beauchamp could have, either by himself, or through a paralegal, quickly discovered
23 that in each case, Menaged, and not “a guy in his office,” had signed the documents at
24 issue.

25 a. This could have been done by using a free search function on the
26 Maricopa County Assessor’s Office website that allows anyone to search for
27 property records using a street address (such as those given in Exhibit A to the
28 demand letter) or other means of customary due diligence. The Assessor’s

1 website provides a link to a recorded instrument on the Maricopa County
2 Recorder's Office website for each property, and that information could have in
3 turn been used to quickly locate both the deed of trust recorded by the Lenders
4 and DenSco's competing Mortgage by using the Recorded Document Search
5 tool.

6 b. Such a search, which would take less than five minutes for each
7 property, would produce records showing that for each of the 49 properties,
8 Menaged had signed both a DenSco Mortgage and another lender's deed of trust
9 before a notary, providing further evidence that Menaged, not "some guy in his
10 office," had secured all of the loans in question, and had purposefully defrauded
11 DenSco.

12 c. **On Tuesday, January 7, 2014, Beauchamp Received an**
13 **Email From Chittick in Which He Admitted That He**
14 **Had Grossly Mismanaged DenSco's Loan Portfolio,**
15 **Failed to Comply With the Lending Practices Disclosed**
16 **in the 2011 POM, and Caused Densco to Suffer**
17 **Substantial Losses.**

18 218. On Tuesday, January 7, 2014, Beauchamp received an email from
19 Chittick, copied to Menaged, which contained information relevant to the demand letter
20 and said that Chittick was bringing Menaged to the planned January 9, 2014 meeting.

21 219. Chittick's email said that DenSco had, since 2007, loaned \$50 million to
22 "a few different LLC's" controlled by Menaged. Beauchamp knew or should have
23 known that those companies included the two entities identified in the demand letter:
24 Easy Investments (a defendant in the June 2013 *Freo* lawsuit) and Arizona Home
25 Foreclosures.

26 220. Chittick's email said that "[b]ecause of our long term relationship, *when*
27 *[Menaged] needed money, [I] would wire the money to his account and he would pay*
28 *the trustee*" (emphasis added), Menaged would sign a Mortgage that referenced the
payment to the trustee, and Chittick would cause the Mortgage to be recorded.

1 221. Chittick attached to his email a form of Mortgage, Deed of Trust, and
2 Note Secured by Deed of Trust that he routinely used in making loans to Menaged,
3 which Chittick described as “docs you have reviewed and have been reviewed by a guy
4 at your last law firm, maybe two firms ago in 2007.”

5 222. Chittick’s email confirmed what was evident from the demand letter, and
6 brought home the red flags Beauchamp had missed when he prepared the 2011 POM
7 and when he reviewed the *Freo* lawsuit six months earlier:

8 a. Chittick had been grossly negligent in managing DenSco’s loan
9 portfolio, by not complying with the terms of the Mortgage, which called for
10 DenSco to issue a check payable to the Trustee, and instead wiring money to
11 Menaged, trusting Menaged to actually use those funds to pay a Trustee.

12 b. Chittick’s admitted practice of giving DenSco’s funds directly to
13 Menaged, rather than paying them directly to a Trustee through a check made
14 payable to the Trustee, made the statements in the 2011 POM about DenSco’s
15 lending practices materially misleading.

16 223. Chittick’s reference to “docs you have reviewed and have been reviewed
17 by a guy at your last law firm, maybe two firms ago in 2007” suggested that Chittick
18 might blame Beauchamp for the problems DenSco now faced because of DenSco’s use
19 of those documents.

20 224. Chittick’s email went on to say that Menaged had told him in November
21 2013 that DenSco had been defrauded by Menaged’s “cousin,” who allegedly worked
22 with Menaged in managing Easy Investments and Arizona Home Foreclosures.
23 Menaged claimed that his “cousin” had “receiv[ed] the funds from [DenSco], then
24 request[ed] them from . . . other lenders [who] cut a cashiers check for the agreed upon
25 loan amount . . . [took] it to the trustee and . . . then record[ed] a [deed of trust]
26 immediately.”

27 225. Chittick explained that “sometimes” DenSco had recorded its mortgage
28 before another lender’s deed of trust was recorded, but in other cases it had not.

1 226. According to Chittick, “[t]he cousin absconded with the funds.
2 [Menaged] figured this out in mid November. He came to me and told me what was
3 happening. He said he talked to the other lenders and they agreed that this was a mess,
4 and as long as they got their interest and were being paid off they wouldn’t foreclose,
5 sue or anything else.”

6 227. Chittick went on to describe the “plan” that he and Menaged had been
7 executing since November: to “sell off the properties and pay off both liens with
8 interest and make everyone whole.” He acknowledged that there were “short falls” on
9 each property, representing the difference between the value of the property and the
10 combined amount of the two loans, and that “[c]oming up with the short fall on all these
11 houses is a challenge, but we believe it is doable. Our plan is a combination of
12 injecting capital and extending cheaper money.”

13 228. Chittick described the basic terms of the agreement with the “other
14 lenders” as including the following: (1) “all lenders will be paid their interest, except
15 [DenSco], I’m allowing [its] interest to accrue”; and (2) DenSco is “extending
16 [Menaged] a million dollars against a home at 3%.”

17 229. Chittick claimed that he and Menaged had “already cleared up about 10%
18 of the total \$’s in question” with the “other lenders.”

19 230. As for the “gentleman who handed me the paperwork” – a reference to a
20 person affiliated with one of the three entities identified in the demand letter – Chittick
21 wrote that he “believes because he physically paid the trustee that he is in first position,
22 but agrees it’s messy. [H]e wants me to subordinate to him, no matter who recorded
23 first. [W]e have paid off one of his loans, you’ll see on this list Pratt – paid in full, I’ve
24 attached the hud-1 and you can see that it shows me in first position versus his belief.
25 [N]ow that’s one title agent[’]s opinion, [I] understand that’s not settling [a] legal
26 dispute on who’s in first or second.”
27
28

1 231. Chittick went on to state: ***"I know that [I] can't sign the subordination***
2 ***[agreement] because that goes against everything that [I] tell [DenSco's] investors."***

3 (Emphasis added.)

4 232. He also wrote that "there are several other lenders waiting to see what [I]
5 do[.] [I]f I sign with this group, they want to have me sign for them too."

6 233. Chittick concluded his email by stating "[w]hat we need is an agreement
7 that as long as the other lenders are being paid their interest and payoffs continue to
8 come . . . that no one initiates foreclosure for obvious reasons, which will give us time
9 to execute our plan."

10 **d. Beauchamp Reviewed the Demand Letter and Chittick's**
11 **January 6, 2014 Email on the Day He Received It and**
12 **the Following Day; He Also Reviewed "Lien Dispute**
13 **Information" and Knew of the Extent of Chittick's**
14 **Breaches of Fiduciary Duty and Resulting Financial**
15 **Loss to DenSco.**

16 234. Clark Hill's billing records reflect that Beauchamp billed 1.8 hours on
17 Tuesday, January 7, 2014 to "[r]eview legislative history for purchase money security
18 interest; review documents and follow-up information" and "telephone conversation
19 with office of D. Chittick," which was a reference to having left a voicemail message
20 for Chittick.

21 235. Clark Hill's billing records reflect that Beauchamp billed 1.7 hours on
22 Wednesday, January 8, 2014 to "[r]eview information from D. Chittick; review and
23 outline follow-up questions; prepare for meeting; review lien dispute information."

24 236. As of January 8, 2014, Beauchamp knew that:

25 a. Chittick had breached fiduciary duties he owed DenSco by causing
26 it to sell promissory notes to investors during the four months that had passed
27 since DenSco's September 2013 retention of Clark Hill without first issuing the
28 new POM that Clark Hill had been retained to prepare, but had not prepared at
Chittick's instruction;

1 b. Chittick had breached fiduciary duties he owed DenSco through
2 grossly negligent lending practices;

3 c. the scope of DenSco's financial exposure was greater than the 52
4 properties identified in the demand letter, since it included the "other lenders"
5 with whom Menaged had reached an informal agreement in November 2013;

6 d. Investors who had purchased promissory notes since Clark Hill's
7 September 2013 retention had not been told of the *Freo* lawsuit; DenSco's
8 grossly deficient lending practices; DenSco's concentration of loans made to one
9 borrower, Menaged; DenSco's November 2013 discovery of the fraud allegedly
10 perpetrated by Menaged's "cousin"; and Chittick's plan to help Menaged by
11 "injecting capital" to pay off the loans of other lenders on properties that
12 Menaged's companies had allegedly purchased with DenSco's funds, allowing
13 interest on DenSco's loans to accrue, and lending Menaged \$1 million at 3%
14 interest.

15 e. Chittick was unwilling to cause DenSco to accept the losses his
16 gross negligence had caused by signing the subordination agreements attached to
17 the demand letter, "because that goes against everything that [he] tell[s]
18 [DenSco's] investors," or to make any disclosure to DenSco's investors while he
19 and Menaged pursued their plan.

20 237. Beauchamp also knew from his January 6 review of the demand letter and
21 the hours he had devoted on January 7 and 8 to analyzing Chittick's email and other
22 information he had received from Chittick, that Menaged's "cousin" story was
23 implausible and that by accepting the story without investigation and planning to
24 continue DenSco's lending relationship with Menaged, Chittick was breaching his
25 fiduciary duties to DenSco.

26 238. In addition to the information provided in the subordination agreements
27 and the list of the other 52 properties identified in the demand letter, Beauchamp should
28

1 have also reviewed the information attached to Chittick's January 6, 2014 email
2 regarding a loan for which Chittick claimed DenSco was in first position.

3 239. If Beauchamp had used the information in the settlement statement
4 attached to Chittick's email to investigate Chittick's claim that DenSco was in first
5 position with respect to the "Pratt" property, he could have used the Recorded
6 Document Search tool on the website maintained by Maricopa County Recorder's
7 Office.

8 240. A few brief searches would have confirmed Chittick's claim that DenSco
9 was the first to record: DenSco's Mortgage was recorded on September 18, 2013 as
10 instrument number 2013-0837513, while Geared Equity's deed of trust was recorded on
11 September 19, 2013 as instrument number 2013-0842640.

12 241. But those two documents would also have shown that Menaged signed
13 each document before a notary on September 17, 2013, making clear that Menaged, not
14 his "cousin," had secured both loans.

15 242. Moreover, because the demand letter claimed that Geared Equity had
16 delivered funds to the Trustee, and Chittick had admitted he had not, the question
17 remained as to where DenSco's funds had gone and whether they could be recovered.

18 **2. On Thursday, January 9, 2014, Beauchamp, After Learning**
19 **about Chittick's Gross Mismanagement of DenSco and the**
20 **Substantial Financial Losses DenSco Faced as a Result of Its**
21 **Past Lending Relationship With Menaged, Negligently Advised**
DenSco to Pursue a "Work Out" Plan With Menaged, Which
Was a Further Act of Negligence and the Ongoing Aiding and
Abetting of Chittick's Breaches of Fiduciary Duties.

22 243. Beauchamp, as DenSco's attorney, should have recognized that he had an
23 obligation to meet privately with Chittick, without Menaged present, to confirm
24 relevant facts, and advise Chittick, as DenSco's President, of the actions DenSco
25 needed to take and the consequences to DenSco if it failed to do so.

26 244. Beauchamp instead agreed to meet on Thursday, January 9, 2014, with
27 both Chittick and Menaged, who Beauchamp knew from an email he had received in
28

1 June 2013 regarding the *Freo* lawsuit was represented by attorney Jeffrey J. Goulder.
2 Beauchamp did not take any steps to confirm with Goulder that he could meet with
3 Menaged without Goulder being present.

4 245. Clark Hill's billing records reflect that Beauchamp billed 4.3 hours on
5 January 9, 2014 to "[p]repare for and meeting with D. Chittick and S. Menages [sic];
6 review and work on notes from meeting and outline follow-up; review and respond to
7 several emails; review documents and information."

8 246. Beauchamp's notes from the January 9, 2014 meeting reflect that Chittick
9 and Menaged confirmed that DenSco faced exposure from both the Lienholders
10 identified in the January 6, 2014 demand letter and other lenders, including Active
11 Funding Group.

12 247. According to Beauchamp's notes, the number of loans made by DenSco
13 that were not in first position and were either unsecured or under-secured was between
14 100 and 125. Based on that information and the 2011 POM's average loan amount of
15 \$116,000, Beauchamp knew or should have known that DenSco's loans to Menaged
16 represented a potential loss of between \$11.6 and \$14.5 million, or between 25% and
17 30% of the \$47 million that Beauchamp understood DenSco had raised as of June 2013.

18 248. Beauchamp's notes from the January 9, 2014 meeting also reflect that
19 Chittick did not know what had happened to as much as \$14.5 million that DenSco had
20 loaned to Menaged, and that Chittick was not taking any meaningful steps to investigate
21 the loss and seek to recover those funds. The notes state: "What happened to the
22 money? -- Will pursue something or his cousin → but trying to determine where the
23 money has gone."

24 249. Beauchamp's notes from the January 9, 2014 meeting also reflect that,
25 although the money DenSco previously loaned Menaged was missing and Chittick had
26 taken no steps to investigate the circumstances under which the loan losses had
27 occurred and their impact on DenSco, Chittick and Menaged had agreed to pursue a
28

1 “work out” of the loan losses caused by Chittick’s gross mismanagement of DenSco’s
2 lending practices.

3 250. As of the conclusion of the January 9, 2014 meeting, Clark Hill and
4 Beauchamp, who had negligently advised DenSco in September 2013 and since then
5 had aided and abetted Chittick’s breach of fiduciary duty, failed to do the following:

- 6 a. Tell Chittick he should not bring Menaged to the meeting;
- 7 b. Tell Chittick that DenSco’s sale of promissory notes since July 1,
8 2013 to investors exposed DenSco and Chittick to civil and criminal liability;
- 9 c. Tell Chittick that DenSco should not have sold any notes without
10 first issuing a new POM and should not use the proceeds of sales made since
11 July 1, 2013 until the investors who bought those notes had been given a new
12 POM and afforded an opportunity to rescind those transactions;
- 13 d. Tell Chittick that DenSco could not sell any new promissory notes
14 until Clark Hill was able to conduct an adequate investigation of DenSco’s
15 lending practices and other material information and a new POM had been
16 issued;
- 17 e. Tell Chittick that DenSco should immediately cease doing business
18 with Menaged based on the implausibility of the “cousin” story and the readily
19 available public records discussed above;
- 20 f. Tell Chittick that, at a minimum, DenSco should not have any
21 further business dealings with Menaged until it had investigated the true facts of
22 the alleged fraud by Menaged’s “cousin”;
- 23 g. Tell Chittick that after discovering the true facts about Menaged’s
24 dealings with DenSco (whether through a review of public records or some other
25 investigation), DenSco should rescind all lending agreements it had made with
26 Menaged since November 2013 on the grounds of fraud in the inducement, and
27 seek to enforce its remedies for all other loans that Menaged had obtained
28 through fraud; and

1 h. Tell Chittick that DenSco had to assess the impact of the fraud on
2 DenSco's financial position, and if that assessment resulted in a finding that
3 DenSco was insolvent, DenSco had to consider duties owed to its investors and
4 other creditors in making all business decisions.³

5 251. This advice should have been documented in writing.

6 252. If Chittick declined to follow that advice, Beauchamp should have
7 threatened to withdraw from representing DenSco, which may have caused Chittick to
8 relent and follow the advice, and withdraw from representing DenSco if Chittick failed
9 to follow the advice.

10 253. The Receiver intends to offer evidence at trial establishing that if
11 Beauchamp had taken the actions summarized above and given Chittick the advice he
12 should have given, Chittick would have caused DenSco to follow that advice.

13 254. Evidence of Chittick's long professional relationship with Beauchamp
14 and numerous instances of Chittick following Beauchamp's legal advice establish that
15 if Beauchamp had properly advised DenSco during the first week of January 2014,
16 Chittick would have caused DenSco to: (i) stop selling promissory notes; (ii) terminate
17 its relationship with Menaged and his companies; (iii) pursue its remedies against
18 Menaged and his companies; and (iv) explore whether DenSco could survive as a going
19 concern or would have to liquidate. Such evidence, among other evidence disclosed or
20 discovered during this litigation, includes:

21 a. Clark Hill and Beauchamp's admission in their initial disclosure
22 statement (at 4), that "[o]ver the years, Mr. Chittick showed himself to be a
23 trustworthy and savvy businessman, and a good client. . . . Despite complaining
24 about the cost of legal services, Mr. Chittick appeared to follow Mr.
25 Beauchamp's advice and provided information when asked for it."

27 ³ DenSco was indisputably insolvent in January 2014, as Chittick's statements to
28 Beauchamp at the time made clear and as the Receiver was able to determine after
 reviewing DenSco's QuickBooks records.

1 b. The fact that, only six months earlier, DenSco had immediately
2 followed Bryan Cave's June 2013 advice to modify its website, and Bryan
3 Cave's files reflect that Chittick was prepared to cause DenSco to refund all
4 investor loans if that was necessary to correct the "general solicitation" problem
5 Bryan Cave had identified.

6 c. A number of instances during and after January 2014 in which
7 Chittick followed Beauchamp's advice.

8 d. Chittick's oral and written statements after January 2014 reflecting
9 his desire to obtain Beauchamp's advice.

10 c. Chittick's writings shortly before his death.

11 **3. On Sunday, January 14, 2014, Clark Hill Advised Chittick**
12 **That DenSco Could Continue Selling Promissory Notes**
 Without First Issuing a New POM.

13 255. Clark Hill and Beauchamp claim in their initial disclosure statement
14 (at 10-11) that Beauchamp advised Chittick "during his January 9, 2014 meeting with
15 Mr. Chittick" and repeatedly thereafter that: (a) DenSco was not permitted to take new
16 money without full disclosure to the investor lending the money; (b) DenSco was not
17 permitted to roll over existing investments without full disclosure to the investor rolling
18 over the money; and (c) DenSco needed to update its POM and make full disclosure to
19 all its investors.

20 256. A jury will be asked to find that this claim is an after-the-fact untruth.

21 257. There are *no documents*, such as notes, emails or letters, which reflect
22 that Beauchamp *ever* gave that advice.

23 258. The documents in the file instead show that Beauchamp told Chittick on
24 January 12, 2014 that DenSco *could* sell promissory notes without first issuing a new
25 POM.

26 259. Chittick's entry for January 9, 2014 in a corporate journal he maintained
27 during 2014 (the "2014 Corporate Journal") says nothing about having been instructed
28

1 by Beauchamp that DenSco could not sell promissory notes. The entry states, in part:
2 “Scott and I met with David. He never read my email. We spent two hours. . . . He’s
3 going to contact the lawyer tomorrow and let us know.”

4 260. Beauchamp’s handwritten notes from a call with Chittick on Friday,
5 January 10, 2014 state, in part, “Need to get back up plan in place. ***Denny does not***
6 ***want to talk to his investors until he is ready*** – will not take long.” (Emphasis added.)

7 261. Chittick’s entry for that date in the 2014 Corporate Journal states, in part,
8 “at 5pm Dave called, said ***they would give us time to clean it up***. I talked to Scott; he is
9 going to try to bring in money. ***I can raise money according to Dave.***” (Emphasis
10 added.)

11 262. On Sunday, January 12, 2014, Chittick sent Beauchamp an email which
12 stated, in part, “***I’ve spent the day contacting every investor that has told me they want***
13 ***to give me more money. I don’t have an answer on specifically how much I can***
14 ***raise; I’ll know that in a day or two.***” (Emphasis added.) He went on to say that
15 between new money, current cash on hand, and pending real estate closings, he would
16 have ***between \$5 and \$10 million in the next ten days***. His email summarized the
17 outline of the plan he and Menaged had discussed the previous Friday, which included,
18 for the group of lenders represented by Bryan Cave: (i) identifying all properties in
19 which another party claimed an interest; (ii) providing that information to an escrow
20 agent; (iii) buying out the other parties as cash was put into escrow; and (iv)
21 memorializing the arrangement through a term sheet and a written contract. “***[I]f both***
22 ***Scott and I can raise enough money***, we should be able to have this all done in 30 days
23 easy, less than three weeks would be my goal.” (Emphasis added.) As for the other
24 lenders, Chittick stated that the plan was to pay them off as Menaged was able to raise
25 additional capital. Chittick concluded the email by stating, “***that’s my plan, shoot***
26 ***holes in it.***” (Emphasis added.)

27 263. Beauchamp responded in an email sent later that day which stated, in part,
28 “***[y]ou should feel very honored that you could raise that amount of money that***

1 *quickly*. I will outline a few thoughts tomorrow and get back to you.” (Emphasis
2 added.)

3 264. The “few thoughts” that Beauchamp conveyed the next day were
4 questions about the sources from whom Menaged would raise money. *Beauchamp did*
5 *not tell Chittick that DenSco could not raise new money by selling promissory notes*
6 *without first issuing a new POM.*

7 265. In addition to these facts, Beauchamp admitted in his deposition that he
8 knew Chittick had caused DenSco to sell promissory notes after January 9, 2014. He
9 implausibly claimed to have understood that Chittick did so only after making
10 disclosures to each investor who purchased a promissory note.

11 266. Clark Hill and Beauchamp make a similar admission in their initial
12 disclosure statement (at 11) that “Mr. Chittick assured Mr. Beauchamp repeatedly that
13 he was making the requisite disclosures to investors on an as needed basis, and that he
14 had informed a select group of investors as to the double lien issue and the proposed
15 workout.”

16 4. **After the January 9, 2014 Meeting, Clark Hill Negligently**
17 **Advised DenSco and Continued Assisting Chittick Breach**
18 **Fiduciary Duties He Owed to DenSco By (1) Telling Chittick**
19 **DenSco Could Indefinitely Delay Issuing a New POM,**
20 **(2) Negotiating a Forbearance Agreement That Was Not in**
DenSco’s Interest, and (3) Negligently Advising DenSco About
the Practices It Should Follow in Continuing to Loan Money to
Menaged.

21 267. After the January 9, 2014 meeting, Clark Hill and Beauchamp negligently
22 advised DenSco and continued assisting Chittick breach fiduciary duties by telling
23 Chittick that DenSco could continue to raise money from investors while Chittick was
24 implementing his “work out” plan, and that DenSco could indefinitely delay issuing a
25 new POM until Chittick felt comfortable doing so.

26 268. Clark Hill also negligently advised DenSco and continued assisting
27 Chittick breach fiduciary duties he owed DenSco by negotiating a “Forbearance
28 Agreement” that was not in DenSco’s interest and was instead intended to cover up

1 Chittick's mismanagement of DenSco's lending practices and protect Chittick from
2 potential claims by DenSco's investors.

3 269. In addition, having failed to advise DenSco to end completely its lending
4 relationship with Menaged, Clark Hill negligently advised DenSco about the lending
5 practices it should follow in loaning new monies to Menaged and his entities.

6 270. These actions served Chittick's interests, who hoped to "fix" the problem
7 created by his gross mismanagement of DenSco and delay telling his investors about
8 the problem until after he had minimized the financial harm, and to delay or avoid
9 making disclosures to DenSco's investors about the Forbearance Agreement and how it
10 came to be put in place.

11 271. Clark Hill and Beauchamp, on the other hand, having failed to properly
12 advise Chittick in September 2013 that DenSco could not sell promissory notes without
13 first issuing a new POM, and having agreed with Chittick to indefinitely delay work on
14 the POM, similarly saw the Forbearance Agreement as an opportunity to cover up their
15 negligence and potentially mitigate their exposure.

16 **5. During February, March and April 2014, While the**
17 **Forbearance Agreement Was Negotiated, Clark Hill Advised**
Chittick That DenSco Could Delay Issuing a New POM.

18 272. After telling Chittick that DenSco could continue selling promissory notes
19 without first issuing a new POM, Beauchamp would periodically tell Chittick that a
20 new POM had to be issued to reveal information about DenSco's operations, but let
21 Chittick believe the issuance of the POM could be delayed.

22 273. In a February 4, 2014 email that Beauchamp sent to Chittick, Beauchamp
23 wrote that the Forbearance Agreement would need to be described in a document "that
24 you HAVE to provide to your investors."

25 274. Chittick's February 7, 2014 entry in the 2014 Corporate Journal states, in
26 part, "I was on the phone with David and [Menaged] off and on trying to find middle
27
28

1 ground in this crap to make this agreement final. *Now [D]avid is telling me I have to*
2 *tell my investors.*”

3 275. Beauchamp’s notes reflect that he discussed with Chittick on February 21,
4 2014 DenSco’s upcoming annual meeting, which was scheduled for March 8. He
5 wrote: “*cannot be ready to tell everything.*” (Emphasis added.)

6 276. Beauchamp’s notes went on to reflect his thoughts about what might
7 eventually be disclosed to investors. He wrote: “What to put into notice to the
8 investors. [E]xplain concentration to Scott to help Scott package homes to sell to a
9 Hedge Fund in \$5M groups. [T]he problem was discovered but to resolve the loans with
10 double leverage came up with a plan, but that required DenSco to make higher
11 leveraged loans. DenSco also made advances on new homes purchased.”

12 277. Notably, Beauchamp’s notes reflect that he did not intend to advise
13 Chittick to disclose to investors that the “double leverage” problem was the result of
14 Chittick’s grossly negligent lending practices.

15 278. Beauchamp’s notes also show that he knew the workout plan was
16 increasing the loan-to-value ratios on many of DenSco’s loans far above what DenSco
17 had disclosed to investors in any previous POM. For example, he wrote: “30 loans are
18 now at 95% LTV.”

19 279. The entry Chittick made in the 2014 Corporate Journal for March 11,
20 2014 states, in part: “*David changed and said now I have to tell my investors.*
21 (Emphasis added.) [Menaged] and I are going to try to fix this mess in 30 days and that
22 way it will be a minor issue.”

23 280. In a March 13, 2014 email to Chittick regarding the inclusion in the
24 Forbearance Agreement of a confidentiality provision that Menaged had sought,
25 Beauchamp wrote: With respect to timing, we are already very late in providing
26 information to your *investors about this problem and the resulting material changes*
27 *to your business plan. We cannot give [Menaged] and his attorney any time to cause*
28

1 *further delay in getting this Forbearance Agreement finished and the necessary*
2 *disclosure prepared and circulated.”* (Emphasis in original.)

3 **6. Clark Hill Further Aided and Abetted Chittick’s Breach of**
4 **Fiduciary Duties Owed DenSco by Negotiating and**
5 **Documenting a Forbearance Agreement Between January and**
6 **April 2014 That Was Not in DenSco’s Interests and Was**
7 **Intended by Clark Hill to Cover Up Chittick’s**
8 **Mismanagement of DenSco’s Lending Practices and Protect**
9 **Chittick From Claims by DenSco’s Investors.**

10 281. On January 10, 2014, Beauchamp opened a “new matter” for DenSco in
11 Clark Hill’s accounting and filing systems that was called “work-out of lien issue” to
12 enable and implement the “work out” plan Chittick and Menaged had developed.⁴

13 282. Over the next three months, Beauchamp helped negotiate and finalize a
14 Forbearance Agreement that was not in DenSco’s interests and was, as Beauchamp said
15 multiple times in writing, intended to protect Chittick from potential claims by his
16 investors by making it appear that the loan losses DenSco faced were caused by
17 Menaged, rather than by Chittick’s gross mismanagement of DenSco’s lending
18 practices, and that Chittick had taken appropriate steps to protect DenSco’s interests.

19 **a. In January 2014, Beauchamp Negotiated the Terms of a**
20 **Nondisclosure Agreement and Term Sheet.**

21 283. During the week of January 12, 2014, Beauchamp prepared a
22 nondisclosure agreement and a term sheet. Beauchamp negotiated with Menaged’s
23 attorney, Jeff Goulder, over the term sheet.

24 284. Beauchamp also communicated with Bryan Cave attorney Bob Miller,
25 who withdrew from representing his clients on January 16, 2014 because of a conflict
26 issue raised by Beauchamp and the scope of the consent DenSco would give Bryan
27 Cave.

28 ⁴ A few days later, on January 14, 2014, Beauchamp opened a “new matter” for
DenSco in Clark Hill’s accounting and file systems that was called “business matters.”

1 285. Chittick (for DenSco) and Menaged signed the nondisclosure agreement
2 and term sheet on Friday, January 17, 2014. The term sheet contemplated that DenSco
3 would advance additional funds to Menaged, some of which would be used to pay off
4 (by February 28, 2014) the loans held by the lenders represented by Bryan Cave. The
5 term sheet also outlined the elements of a Forbearance Agreement and a process to
6 resolve the claims of the other competing lenders.

7 **b. During February 2014, Beauchamp Negotiated the**
8 **Terms of the Forbearance Agreement With Menaged's**
9 **Counsel, Repeatedly Stating That the Agreement Was**
 Needed to Protect Chittick's, Rather Than DenSco's,
 Interests.

10 286. During the first week of February, Beauchamp began negotiating with
11 Goulder over the terms of a Forbearance Agreement.

12 287. It is evident from Beauchamp's communications with Chittick and
13 Goulder during February 2014 that Clark Hill was looking out for Chittick's interests,
14 rather than the interests of DenSco and its investors.

15 288. One example of Clark Hill's misplaced loyalty to Chittick is a February 4,
16 2014 email that Beauchamp sent to Chittick, which said:

17 a. "Before we all get into a room, you and I need to make sure we
18 have a clear understanding of what you can do and what you cannot do without
19 going to all of your investors for approval. We have a deal that works for you
20 and your investors and is fair to [Menaged]. Now [Goulder] is trying to better
21 the deal for [Menaged]. But you already have been more than generous trying to
22 help [Menaged] out of [Menaged's] problem. Again, *this goes back to*
23 *[Goulder] not acknowledging that this is [Menaged's] problem and instead*
24 *insisting that this is your problem because you did not make sure that*
25 *[Menaged] handled the loans properly and that you did not take the necessary*
26 *actions so that DenSco had a first lien on each property. . . . [Goulder] is*
27 *trying to have you think that you have significant responsibility for creating*
28

1 *this problem as opposed to this being created by [Menaged's] cousin working*
2 *for [Menaged]. . . . [Goulder] is trying to make you feel that you are guilty so*
3 *you have to assume a significant responsibility in the agreement to share*
4 *[Menaged's] problem, but nobody stole the money from you. You can help and*
5 *have helped [Menaged], but you cannot OBLIGATE DenSco to further help*
6 *[Menaged], because that would breach your fiduciary duty to your investors."*
7 (Emphasis added.)

8 289. And in an email Beauchamp sent to Goulder on Friday, February 7, 2014
9 Beauchamp wrote: "*Based on your previous changes, the Forbearance Agreement*
10 *would be prima facia evidence that Denny Chittick had committed securities fraud*
11 *because the loan documents he had [Menaged] sign did not comply with DenSco's*
12 *representations to DenSco's investors in its securities offering documents.*

13 Unfortunately, this agreement needs to not only protect [Menaged] from having this
14 agreement used as evidence of fraud against him in litigation, *the agreement needs to*
15 *comply with Denny's fiduciary obligation to his investors as well as not become*
16 *evidence to be used against Denny for securities fraud. . . . We wanted the document*
17 *to set forth the necessary facts for Denny to satisfy his securities obligations to his*
18 *investors (including that the original loans had to have been written and secured by a*
19 *first lien on real property and that the workout agreed to by Denny complied with his*
20 *workout authorization) without having [Menaged] admit to facts that could cause*
21 *trouble to him. . . . To try to balance the respective interests, I have inserted sections*
22 *from the loan documents into the Forbearance Agreement. Referencing the language of*
23 *the Loan Documents is needed to satisfy Denny's fiduciary obligations, but I have also*
24 *modified the other provisions so that the Borrower is not admitting that it was required*
25 *to provide first lien position in connection with the loans."* (Emphasis added.)

26 290. In an email exchange on Sunday, February 9, 2014 Beauchamp told
27 Chittick "[p]lease understand that you are limited in what risk or liability you can
28 assume. Your fiduciary duty to your investors makes this a difficult balancing act."

1 291. Chittick's response was that he "trusts that we are in balance and I have
2 even more confidence that [Menaged] and I can solve this problem without issue and
3 we never have to use the document that we've worked so long on getting completed."

4 292. Beauchamp responded: "Your point is understood. If possible, please
5 recognize and understand that *you will 'use' the document even if you and [Menaged]*
6 *never refer to it again. It has to have the necessary and essential terms to protect you*
7 *from potential litigation from investors and third parties.*" (Emphasis added.)

8 293. In his notes from a February 11, 2014 call with Chittick, which touched
9 on the status of Chittick's and Menaged's plan to pay off loans on the double-escrowed
10 properties, Beauchamp wrote "'Material Disclosure' – exceeds 10% of the overall
11 portfolio." But in his discussions with Chittick about requests from Goulder for further
12 concessions, including an agreement not to pursue civil claims for fraud, Beauchamp's
13 focus was on protecting Chittick's interests, including protecting him from a potential
14 investor claim.

15 294. In a February 14, 2014 email to Chittick, Beauchamp wrote: "[Goulder]
16 clearly thinks he can force you to agree to accept a watered down agreement and give
17 up substantial rights that you should not have to give up. Unfortunately, it is not your
18 money. It is your investors' money. So you have a fiduciary duty. . . . *[Menaged] is*
19 *the one responsible for this and not you.* (Emphasis added.) He failed to put out the
20 proper protection systems in place so his cousin could not do what his cousin did. . . .
21 *[Menaged's] actions to comply with the terms of this agreement will have a big effect*
22 *on whether or not you have to deal with a third party lawsuit filed against you in*
23 *court.* (Emphasis added.) In this situation, you can have an action brought against you
24 by any of the other lenders, and/or by any of your investors. . . . In addition, *you could*
25 *also face an action by the SEC or by the Securities Division of the ACC if an investor*
26 *is able to convince someone in a prosecutor's office that you* somehow assisted
27 [Menaged] to cover up this fraud or you *were guilty of gross negligence by failing to*
28 *perform adequate due diligence (on behalf of your investors' money) to determine*

1 ***what was going on.*** . . . (Emphasis added.) [Y]our duty and obligation is not to be fair
2 to [Menaged], but to completely protect the rights of your investors. I am sorry if
3 [Menaged] is hurt through this, but [Menaged's] hurt will give [Menaged] the necessary
4 incentive to go after his cousin. Your job is to protect the money that your investors
5 have loaned to DenSco."

6 295. Beauchamp advised Chittick not to make any further concessions.
7 Beauchamp then sought input from bankruptcy lawyers within Clark Hill about the
8 risks DenSco faced if Chittick were to agree to the concessions Goulder sought with
9 respect to a potential civil fraud claim.

10 296. Chittick ultimately followed Beauchamp's advice, and the concessions
11 sought by Goulder were not included in the final Forbearance Agreement.

12 297. On February 20, 2014, Beauchamp met with Chittick, Menaged and
13 Goulder to discuss the Forbearance Agreement. As Chittick described the meeting in
14 the DenSco journal, Beauchamp and Goulder "were no better in person then they were
15 in email. David lost his temper more than once. We went back and forth for 3 hours.
16 We broke up and came together, finally we are down to one point about the release. The
17 lawyers are trying to word it to make each other happy."

18 298. It appears from Chittick's February 20, 2014 entry in a corporate journal
19 Chittick maintained (the "2014 Corporate Journal") that this meeting was the first time
20 Beauchamp learned of the full extent of DenSco's exposure to Menaged. Chittick
21 wrote: "I told David the dollars today, he about shit a brick. I explained to him how I
22 got there and how far we have come and how much better we are today then in
23 November. Though I'm not sure he understands that. My balance sheet isn't looking
24 much better, but it will start to swing in the right direction in the next 30 days. ***I'm***
25 ***more concerned about telling my investors and their reaction to the problem. I have***
26 ***to tell them and hope they stick with me. If I get a run on the bank I'm in deep shit.***
27 ***I won't be able to fund new deals, I won't be able to payoff investors and won't be***
28 ***able to support [Menaged]. The whole thing crators.***" (Emphasis added.)

1 299. Beauchamp's notes from that day contain a summary of DenSco's
2 exposure to Menaged. They state: "Approx. \$31 MM outstanding to [Menaged's]
3 entities – total fund up to \$62-63 MM. Problem loans down to about \$17 MM for 122
4 loans."

5 300. Chittick's February 21, 2014 entry in the 2014 Corporate Journal has a
6 consistent summary of the advice he received from Beauchamp: "I talked to Dave, he
7 found out what we already suspected; there is no way we can give what [Menaged]
8 wants. I'm not sure where this will lead us. *We talked about telling my investors; we*
9 *are going to put that off as long as possible so that we can improve the situation as*
10 *much as possible.* (Emphasis added.) We've got another 15 more that are closing next
11 few weeks. We could be close to under a 100 problem loans within a month. I just have
12 to keep telling myself I'm doing the right thing to fix it, no matter how much anxiety I
13 have over this issue."

14 301. During the last week of February 2014, discussions with Goulder on the
15 Forbearance Agreement ended after Goulder sent Beauchamp a revised draft on
16 February 25, 2014.

17 302. Chittick sent Beauchamp an email that day describing his ongoing
18 discussions with Menaged about taking a different approach to the double encumbrance
19 problem by having DenSco advance additional monies to Menaged so that Menaged
20 could sell homes more quickly: "[H]e's throwing out all sorts of ideas in how this can
21 be done. [I] would be willing to release the UCC if he was able to secure the funds and
22 use them to pay some of these loans. [W]e've got about 3 more ideas, *but what both of*
23 *us are really concerned about is that when [I] tell my investors the situation, they*
24 *request their money back. [I] want to be able to say, this was the problem, we've*
25 *eliminated this much of the problem and this is what is left. [I] want to be able to say*
26 *what is left is as small as possible.*" (Emphasis added.)
27
28

1 303. Beauchamp responded by saying “**[g]ood ideas and probably something**
2 ***we need to work on***” in light of the breakdown of discussions on the Forbearance
3 Agreement. (Emphasis added.)

4 304. Chittick sent Beauchamp an email the following day, February 26, 2014
5 describing his continuing discussions with Menaged. He wrote: “[W]hat if [Menaged]
6 just starts selling everything [I] take losses[.] [A]long with the several million that
7 [Menaged’s] going to bring in from outside sources, we wipe the whole thing out in,
8 name a time frame, 90 days. [T]o secure the loss, [Menaged] signs a promissory note
9 with terms of repayment. [W]hat happens? [I] take a huge hit to my books, but [I] get
10 the money back in my hands. [I]’m no longer in violation of anything with my
11 investors. [I]’m in possession of money that now [I] can put to work with new loans
12 that are actually paying me interest versus right now that [I]’m having no interest
13 coming in. [O]r I can return the money to investors if I can’t put it to work. [F]rom a
14 P/L standpoint it looks horrible, but at least [I] have the majority of the money back
15 except maybe 2-4 million. [Menaged] agrees to pay me interest and principle [sic] back
16 every month for whatever I write off[,] which fills in that hole. [I] put the money I get
17 back to work and make money on it, that fills the hole. ***[I] [would] rather take the loss***
18 ***short term now, and get working on trying to make the money work th[a]n drag this***
19 ***thing out over a year or more. . . . [I] don’t have anything in my docs that say I have***
20 ***to be profitable. [I] see this is a negative year obviously, but [I]’ll be profitable next***
21 ***year; the problem is gone[.]*** [Menaged] will be paying me back interest and principle
22 [sic] for the loss that I took. [N]ow I know there are 100 legal things here, ***but now I’m***
23 ***thinking this is the best way to get the problem solved from a fiduciary standpoint. . . .***
24 [I] know this may sound crazy, but [I] can’t come up with anything else that will bring
25 an end to this situation quickly. [T]ime is crucial. [L]et me know your thoughts.”
26 (Emphasis added.)

27 305. Beauchamp’s email response was: “***Good ideas.*** Can we talk later today
28 to clarify a few things?” (Emphasis added.) Beauchamp also told Clark Hill attorney

1 Bill Price, who emailed him to say that the release provision in Goulder's latest draft of
2 the Forbearance Agreement was unacceptable, that "[t]here is another possibility to
3 resolve this," on which Beauchamp would be focusing his attention.

4 306. Chittick's entry in the 2014 Corporate Journal for February 26, 2014
5 contains a consistent summary of his discussions with Menaged and Beauchamp:
6 "We've decided it's better to sell these properties as quickly as possible, take the losses
7 and move on. [Menaged] will sign a promissory note, it frees up from paying interest, I
8 take a big hit, . . . and we move on. *It will take me 2 years to get back to profitability*
9 *I'm guessing. This may allow me not to do what David wants me to do, I don't know.*
10 *I never got to talk to him. But what we are doing isn't going to work fast enough and*
11 *we'll have a big hill to climb in the end.* (Emphasis added.) I'm just so sick over this I
12 can't function."

13 307. Beauchamp's notes reflect that he discussed the proposed new plan with
14 Chittick the following day, February 27, 2014. They state, in part: "Denny explained
15 procedure and Denny is taking all of the shortfall. [Menaged] wants this resolved.
16 *Denny wants this resolved because Denny is losing money to make payments to his*
17 *investors* if DenSco is not getting paid interest from [Menaged]. Denny willing to take
18 loss this year -- so DenSco can return cash to investors and reduce interest obligation.
19 (Emphasis added.) *How to write this up for investors -- discussed. Do we still need*
20 *Forbearance Agmt. - yes but will be less problematic. Will need Forbearance Agmt.*
21 *to explain procedures and protect Denny for future revisions.* (Emphasis added.) Will
22 need multiple advance not (unsecured) so DenSco can advance cash on house w/ double
23 loans to be sold."

24 308. Chittick's entry in the 2014 Corporate Journal for that day is consistent
25 with Beauchamp's notes. It states, in part: "I talked to [Menaged] again, he agreed to
26 everything this morning on how to work this out. *I talked to David, he thinks its fine.*
27 (Emphasis added.) So we are done. . . . [N]ow we just need to get this signed and start
28 working towards selling these houses."

1 c. **During March 2014, Beauchamp Continued to Negotiate**
2 **the Terms of the Forbearance Agreement But Did So**
3 **With Menaged, Communicating With Him Through**
4 **Chittick.**

5 309. Beauchamp had a telephone conversation with Chittick on March 3, 2014.
6 Chittick's entry in the 2014 Corporate Journal that day says, in part: "David called me
7 telling me of ad lib info to scare me about dealing with [Menaged]. I can't control what
8 others are saying in the lawyer community. I have to get this done so that I have
9 something in writing and do the best deal that I can do."

10 310. Chittick sent Beauchamp an email on March 4, 2014 in apparent response
11 to that conversation. It stated, in part: "About what you said, I have no idea of the
12 timing of that person you [mentioned] as to when he spoke to [Goulder] about our
13 situation. I don't doubt perhaps that he was positioning himself in some way; seems
14 logical for him to think that way. However, ***now that [Menaged] has agreed to sign***
15 ***the terms sheet that we originally agreed to, allowing you to write it, he says he's not***
16 ***going to have [Goulder] review because [Goulder] already told him not to sign***
17 ***anything.*** Plus he's signing the promissory note which also confirms the situation . . .
18 in not so many words. But the fraud occurred and he's taking responsibility for it. . . .
19 ***You probably have the only chance in your career to write an agreement without***
20 ***conflicting counsel.*** You can write it to our liking and in our best interests. ***We CYA as***
21 ***broad as the Grand Canyon.*** I think that is pretty advantageous." (Emphasis added.)

22 311. Beauchamp's response was: "***Your thoughts make sense,*** but we still
23 need an agreement that works." (Emphasis added.)

24 312. Beauchamp sent Chittick a draft of the Forbearance Agreement on
25 March 10, 2014.

26 313. Chittick gave him comments that day, one of which reflected Chittick's
27 and Menaged's request to modify the draft's confidentiality provision. As Chittick
28 described it in an email to Beauchamp: "***Only time I can disclose info is if I'm legally***
required by investors. He wants me to not say a word unless I'm legally required to,

1 because the reputation with his investors and buyers, clients etc. could be harmed.”

2 (Emphasis added.)

3 314. In his email response, Beauchamp wrote: “The confidentiality change is a
4 problem, because who makes the decision if the disclosure is required? *I had language*
5 *that you could disclose if such disclosure is reasonably needed to be disclosed to your*
6 *investors or if a governmental agency requires such disclosure (after you give*
7 *[Menaged] notice and an opportunity to get the agency to change its mind).* Those
8 are standard confidentiality exceptions. *I will look at them again to see if there is*
9 *anything we can do to make it tighter.”* (Emphasis added.)

10 315. Beauchamp’s notes reflect that he had a telephone conference with both
11 Chittick and Menaged on March 11, 2014 to discuss the release and confidentiality
12 provisions of the Forbearance Agreement, as well as the terms of a \$1 million “workout
13 loan.”

14 316. Beauchamp’s notes reflect that he had a telephone conference with both
15 Chittick and Menaged on March 12, 2014 to discuss the release and confidentiality
16 provisions of the Forbearance Agreement.

17 317. On March 13, 2014, Beauchamp conferred with Chittick about the
18 security for the loans DenSco would be advancing to Menaged. He also revised the
19 confidentiality section of the Forbearance Agreement, sending the section to Chittick in
20 an email which stated, in part: “*I have done a complete re-write of the Confidentiality*
21 *section. . . . In order to comply with the specific securities disclosure requirements, I*
22 *left ____ (blank) the amount of time for [Menaged] to be able to review and comment*
23 *upon the proposed disclosure (suggest 48 hours)* and I did not give him the right to
24 disapprove and block what you can or cannot disclose. DenSco and you as the
25 promoter of DenSco’s offering have to make the decisions as to what is to be disclosed
26 or not.” (Emphasis added.)

1 318. Between March 14 and March 20, 2014, Beauchamp communicated with
2 Chittick about revisions to the Forbearance Agreement, relying on Chittick to convey
3 drafts to Menaged and communicating with Menaged through Chittick.

4 319. One of the topics Beauchamp discussed with Chittick was his plans to
5 loan funds to Menaged and the impact of those loans, including loans up to 120% of
6 value. Beauchamp stated that he *“completely agree[s] that [the proposed lending*
7 *plan] makes a lot of sense, but I am concerned about the disclosure to your*
8 *investors.”* (Emphasis added.)

9 320. Chittick’s entry in the 2014 Corporate Journal for March 20, 2014 stated,
10 in part: “[Menaged] finally agreed to [the] agreement. That’s done. I have to do some
11 numbers to fill in the blanks, but otherwise it’s ready to be signed. *I have no idea if it*
12 *will ever be used, but David assured me I’m in a good position.”* (Emphasis added.)

13 **d. The Forbearance Agreement Was Signed in April 2014.**

14 321. The Forbearance Agreement was signed by Chittick (for DenSco) and
15 Menaged (for himself and his entities) on April 16, 2014.

16 322. Under the Forbearance Agreement, Menaged agreed to pay off the loans
17 of DenSco and other lenders by, inter alia, (i) liquidating various assets; (ii) renting or
18 selling real estate assets; (iii) attempting to recover the missing funds that his cousin
19 allegedly stole; and (iv) obtaining \$4.2 million in outside financing.

20 323. In turn, *DenSco agreed to, inter alia, (i) increase its loans to Menaged*
21 *on certain properties up to 120% of the loan-to-value ratio; (ii) loan Menaged up to*
22 *\$5 million more, at 18% interest; (iii) loan Menaged up to \$1 million more, at 3%*
23 *interest; and (iv) defer the collection of interest on loans that Menaged had already*
24 *defaulted on.*

25 324. The Forbearance Agreement included a schedule of the loans DenSco had
26 made to Menaged, members of his family, Easy Investments, and Arizona Home
27 Foreclosures, including loans DenSco made between December 2013 and April 15,
28

1 2014. *Those loans totaled \$37,456,620.47, well over half of the aggregate amounts*
2 *DenSco had raised from investors.*

3 325. The confidentiality provision in the Forbearance Agreement permitted
4 DenSco to disclose information “as may be necessary for [DenSco] to disclose to
5 [DenSco’s] current or future investors” subject to the following limitations:

6 [DenSco] agrees to use its good faith efforts *to limit such disclosure as much as*
7 *legally possible* pursuant to the applicable SEC Regulation D disclosure rules,
8 *which limitation is intended to have [DenSco] only describe:* 1. the multiple
9 Loans secured by the same Properties which created the Loans Defaults; 2. the
10 work-out plan pursuant to this Agreement in connection with the steps to be
11 taken to resolve the Loans Defaults; 3. the work-out plan shall also include
12 disclosing the previous additional advances that [DenSco] has made and the
13 additional advances that are intended to be made by [DenSco] to Borrower
14 pursuant to this Agreement in connection with increases in the loan amount of
15 certain specific Loans (up to 120% of the LTV of the applicable Property being
16 used as security for that Loan), the additional advances pursuant to both the
17 Additional Loan and the Additional Funds Loan; and 4. the cumulative effect
that all of such additional advances to Borrower will have on [DenSco’s]
business plan that [DenSco] has previously disclosed to its investors in
[DenSco’s] private offering documents and which [DenSco] committed to
follow, including the overall LTV loan ratios for all of [DenSco’s] outstanding
loans to its borrowers in the aggregate and the concentration of all of [DenSco’s]
outstanding loans among all of its borrowers. Further, [DenSco] will use its good
faith efforts not to include the names of Borrower, Guarantor, or New Guarantor
in [DenSco’s] disclosure material. [DenSco] will also provide Borrower with a
copy of the applicable disclosure prior to dissemination to [DenSco’s] investors
and allow Borrower to have 48 hours to review and comment upon such
disclosure. (Emphasis added.)

18 7. **In May 2014, Clark Hill Made a Half-Hearted Effort to**
19 **Prepare a New POM and Then, at Chittick’s Request, Stopped**
20 **Working on the New POM and Advised Chittick That DenSco**
Could Continue to Put Off Issuing a New POM While Chittick
Pursued His “Work Out” Plan.

21 326. Chittick’s entry in the 2014 Corporate Journal for April 16, 2014 reflected
22 the signing of the Forbearance Agreement and concludes: “I’ll send it up to David and
23 then he and I can start on the memorandum.”

24 327. Beauchamp’s notes show that he had a call with Chittick on April 24,
25 2014. Those notes reflect that Beauchamp knew that DenSco’s total loans to Menaged
26 were approximately \$36 million in principal, with a \$5 million note (of which
27
28

1 approximately \$1.78 million was principal), and a \$1 million note (of which
2 approximately \$915,000 was principal).

3 328. Under the heading "POM update" he noted that 186 loans were double-
4 encumbered when the workout started, which was down to 94 loans, representing \$12.3
5 million of principal, as of that date, which was down from a previous balance of
6 approximately \$25 million.

7 329. That same day, Chittick sent Beauchamp by email another copy of the
8 2011 private offering memorandum.

9 330. It appears from the Clark Hill file that Beauchamp gave a printed copy of
10 the memorandum to Schenck with a handwritten note asking him to mark up the
11 memorandum and add "updates/forbearance, etc."

12 331. Beauchamp's handwritten notes and documents in the file reflect that
13 some research was done on May 13, 2014 on "Dodd Frank and regulation."

14 332. On May 14, 2014, Schenck sent Beauchamp by email a redline of a draft
15 private offering memorandum and a separate document with comments, some of which
16 were for Beauchamp's attention. Schenck's email concluded by asking Beauchamp to
17 "let me know what changes you prefer *before this draft is sent to Denny.*" (Emphasis
18 added.) His time entry describes the document as a "first draft" which he had
19 "finish[ed]."

20 333. The document with comments contained, in the "Prior Performance"
21 section, a discussion of the terms of the Forbearance Agreement, with limited
22 information about the circumstances that gave rise to it and a narrative that accepted, as
23 accurate and reliable, Menaged's "cousin" story: "According to the Foreclosure
24 Debtors, an agent of the Foreclosure Debtors had secured the Outside Loans without the
25 Foreclosure Debtors' knowledge." The draft said nothing about Chittick's gross
26 negligence in managing DenSco's lending practices by giving funds directly to
27 Menaged, rather than to a Trustee.
28

1 334. Clark Hill's time records reflect that Beauchamp billed 30 minutes of
2 time on May 14, 2014 to "review revisions to POM and work on same."

3 335. But there is nothing in the Clark Hill file to reflect that Beauchamp
4 actually made any revisions to this first draft.

5 336. Neither the Clark Hill file nor Clark Hill's billing statement reflect that
6 Beauchamp ever sent the draft POM to Chittick or discussed it with him.

7 337. Clark Hill's files show that the firm simply stopped work on a new POM
8 in mid-May 2014. The last time entries referencing the draft POM were made on
9 May 14.

10 338. On May 15, 2014, Beauchamp sent Chittick e-mails with instructions on
11 making revisions to the Forbearance Agreement.

12 339. On May 23, 2014, Beauchamp sent Chittick a letter with billing
13 statements which said nothing about a termination of the representation and instead
14 offered to "assist [DenSco] with any other matter(s)."

15 340. On June 12, 2014, Beauchamp and Chittick exchanged emails about
16 revising the Forbearance Agreement.

17 341. Entries by Chittick in the 2014 Corporate Journal shortly thereafter reflect
18 that Chittick had decided not to issue a new POM at that time, and to continue selling
19 promissory notes while he pursued his "work out" plan in the hope of minimizing
20 DenSco's losses before making a disclosure to investors. Clark Hill decided to abide by
21 Chittick's instruction, just as the firm had agreed in September 2013 to prepare a new
22 POM and then followed Chittick's instruction not to work on the new POM until
23 Chittick was ready to issue it.

24 a. The July 2, 2014 entry states, in part: "We are making progress,
25 just too damn slow, *but I'm sure much quicker than David expected us to do.*"
26 (Emphasis added.)

27 b. The July 25, 2014 entry states, in part: "My time is running out on
28 updating my private placement memorandum and notifying my investors."

1 c. The July 31, 2014 entry states, in part: “It’s all going in the right
2 direction, just not sure if it’s going fast enough. *As long as David doesn’t bug*
3 *me, I feel like we are doing the right thing.*” (Emphasis added.)

4 342. Clark Hill’s blessing of Chittick’s plan to continue pursuing a work out
5 plan without telling DenSco’s investors is reflected in Beauchamp’s dealings with
6 Chittick the following March.

7 343. On March 13, 2015, Beauchamp sent Chittick an email which stated, in
8 part: “I would like to meet for coffee or lunch (at no charge to you) so we can sit down
9 and talk about how things have progressed for you since last year. I would also like to
10 listen to you about your concerns, and frustration with how the forbearance settlement
11 and the documentation process was handled. I have thought back to it a lot and I have
12 second guessed myself concerning several steps in the overall process, *but I wanted to*
13 *protect you as much as I could.* (Emphasis added.) *When I felt that your frustration*
14 *had reached a very high level, I stopped calling you about how things were going so*
15 *that you did not feel I was just trying to add more attorney’s fees.* (Emphasis added.)
16 I planned to call you after about 30 days, but then I let it slip all of last year because I
17 kept putting it off. I even have tried to write you several different emails, but I kept
18 erasing them before I could send them. I acknowledge that you were justifiably
19 frustrated and upset with the expense and how the other lenders (and [Menaged] at
20 times) seemed to go against you as you were trying to get things resolved last year for
21 [Menaged]. I have tried to let time pass so that we can discuss if you are willing to
22 move beyond everything that happened and still work with me. If not, I would like you
23 to know that I still respect you, what you have done and would still like to consider you
24 a friend. You stood up for [Menaged] when he needed it and I truly believe it was more
25 than just a business decision on your part. Hopefully, you will respond to this email
26 and we can try to talk and catch up.”

27 344. Chittick responded “[s]ure, give me some options on when to meet.”
28

1 345. Chittick forwarded Beauchamp's email to Menaged, who wrote,
2 "[s]chedule coffee in 18 months when our balance is close to nothing."

3 346. Chittick responded: "***I figure it's a miracle he left me alone this long!***"
4 (Emphasis added.)

5 347. Chittick went on to write: "I have some legal reporting obligations that
6 are the real rub, ***I will see what he has to say.***" (Emphasis added.) And when Menaged
7 wrote that Chittick should "delay the reporting a bit," Chittick said: "That's ***what I***
8 ***have to find out is the timing needed to report and stay in compliance*** and be able to
9 show something that isn't scary enough [t]o start a stampede on the bank!" (Emphasis
10 added.) Those statements reflect that Chittick did not believe Clark Hill's
11 representation had been terminated in May of 2014, as Clark Hill now claims, and that
12 he continued to look to Beauchamp for advice about DenSco's obligations under the
13 securities laws.

14 348. In his entry that day in the corporate journal Chittick maintained for 2015
15 (the "2015 Corporate Journal"), Chittick wrote: "***I got an email from Dave my***
16 ***attorney wanting to meet. He gave me a year to straighten stuff out. We'll see what***
17 ***pressure I'm under to report now.***" (Emphasis added.)

18 349. Chittick had lunch with Beauchamp on March 24, 2015.

19 350. Chittick's entry in the 2015 Corporate Journal for that date states: "I had
20 lunch with Dave Beauchamp. I was nervous he was going to put a lot of pressure on
21 me. However, ***he was thrilled to know where we were at and I told him by April 15th,***
22 ***we'll be down to 16 properties with seconds on them, and by the end of June we hope***
23 ***to have all the retail houses sold by then and just doing wholesale. He said he would***
24 ***give me 90 days.*** (Emphasis added.) I just hope we can sell them all by then and darn
25 near be done with it. ***I'm going to slow down the whole memorandum process too.***
26 ***Give us as much time as possible to get things in better order.***" (Emphasis added.)

27 351. Chittick's entry in the 2015 Corporate Journal for June 18, 2015 states, in
28 part: "[Menaged] tried to enlarge the wholesale number saying, well I'm paying down

1 the workout, I can use that for the wholesale. I'm not letting him. That number needs to
2 start dropping! *I have to get his number falling, or it's going to be hell with Dave.*"
3 (Emphasis added.)

4 **8. With Clark Hill's Assistance, Chittick Caused DenSco to Sell**
5 **Approximately \$5 Million of Promissory Notes Between**
6 **January and May 2014 Without First Issuing a New POM.**

7 352. During the months of January through May 2014, DenSco sold
8 \$5,000,008.00 of new promissory notes to the following investors, which were all two-
9 year notes unless otherwise indicated.

Investor	Amount	Date
Brian & Carla Wenig	\$15,000	1/3/14
Dale Hickman	\$150,000	1/13/14
Carol & Mike Wellman	\$30,000	1/14/14
Carol Wellman	\$10,000	1/14/14
Jolene Page	\$150,000	1/14/14
Marvin & Pat Miller	\$200,000	1/15/14
Marvin & Pat Miller	\$100,000	1/15/14
Mark & Debbie Wenig	\$50,000	1/24/14
Kirk Fischer	\$600,000	1/29/14 ⁵
Brian Imdieke	\$500,000	2/11/14 ⁶
Ryan Baughman	\$300,000	2/11/14
Kaylene Moss	\$10,000	3/5/14
Ryan Baughman	\$300,000	4/1/14 ⁷
Wayne Ledet	\$30,000	4/7/14

26 ⁵ Five-year note.

27 ⁶ Six-month note.

28 ⁷ Three-month note.

Alexandra Bunger	\$850,000	5/1/14
Cassidy Bunger	\$850,000	5/1/14
Connor Bunger	\$850,000	5/1/14
Bill Hughes	\$6,500	5/1/14
Bill Hughes -- IRA	\$6,500	5/1/14

353. DenSco's sale of those promissory notes was necessary for DenSco to continue its business operations, and Clark Hill enabled DenSco to obtain investor funds during that five-month period without making adequate disclosures to those investors, exposing DenSco to substantial liability for those sales.

354. During the months of June through December 2014, DenSco sold two new promissory notes and rolled over many more, as shown in the table below, in the amount of \$6,914,542.07.

Last	First	Promissory Note Amount	Original Issue Date of Note	Rollover Maturity Date
NEW				
Imdieke	Brian	500,000.00	02/11/14	08/11/14
Baughman	Ryan	300,000.00	04/01/14	07/15/14
RENEWAL				
Brown	Craig	50,000.00	09/02/10	09/02/14
Burkhart – IRA	Kennen	250,449.14	07/02/12	07/02/14
Butler	Van	100,000.00	09/01/09	09/01/14
Carrick	Gretchen	100,000.00	09/04/12	09/04/14
McDowell	Caro	100,000.00	07/06/06	07/06/14
Cate, Jr.	Averill	10,000.00	08/29/13	08/29/14
Cate, Jr.	Averill	10,000.00	10/15/13	10/15/14
Cate, Jr.	Averill	10,000.00	12/15/13	12/15/14
Chittick	Arden & Nina	50,000.00	11/18/04	11/18/14
Chittick	Arden & Nina	30,000.00	11/14/06	11/14/14
Chittick	Arden & Nina	20,000.00	11/06/08	11/06/14
Chittick	Mo & Sam	75,000.00	09/12/07	09/12/14
Cohen	Herb & Eileen	150,000.00	09/27/12	09/27/14
Cohen	Herb & Eileen	50,000.00	10/03/12	10/03/14

Last	First	Promissory Note Amount	Original Issue Date of Note	Rollover Maturity Date
Cohen	Herb & Eileen	50,000.00	11/02/12	11/02/14
Davis	Glen	50,000.00	08/11/04	08/11/14
Davis	Glen	30,000.00	08/09/06	08/09/14
Davis	Glen	20,000.00	08/16/12	08/16/14
Davis	Jack	65,832.67	11/02/04	11/02/14
Detota	Scott	50,000.00	07/02/10	07/02/14
Dirks – IRA	Amy	72,307.96	08/03/12	08/03/14
Griswold	Russ	50,000.00	09/06/12	09/06/14
Hahn	Robert	20,000.00	07/15/08	07/15/14
Hickman	Dale	25,000.00	09/06/06	09/06/14
Hickman	Dale	100,000.00	07/14/08	07/14/14
Indieke	Brian	250,000.00	12/01/10	12/01/14
Indieke	Brian	500,000.00	09/19/12	09/19/14
Jetton	James	50,000.00	09/12/12	09/12/14
Jones	Les	50,000.00	10/10/06	11/10/14
Jones	Les	50,000.00	11/18/08	11/18/14
Kent	Paul	117,268.22	07/16/04	07/26/14
Kent	Paul	22,316.11	07/24/04	07/24/14
Kopel	Jemma	50,000.00	08/01/04	08/01/14
Ledet – IRA	Wayne	200,000.0	09/21/10	09/21/14
Ledet – Roth IRA	Wayne	91,658.52	08/06/12	08/06/14
Lee	Terry & Lil	200,000.00	07/22/08	07/22/14
Lee	Terry & Lil	100,000.00	09/30/10	10/30/14
Lee	Terry & Lil	100,000.00	09/30/10	09/30/14
Locke	Bill & Jean	30,000.00	07/11/06	07/11/14
Locke	Bill & Jean	25,000.00	10/31/08	10/31/14
McArdle	Jim	80,000.00	11/26/10	11/26/14
Miller	Marv & Pat	200,000.00	07/26/10	07/26/14
Muscat	Vince & Sharry	200,000.00	07/22/04	07/22/14
Dubay	Dave	100,000.00	12/22/04	12/22/14
Page	Jolene	200,000.00	11/26/12	11/26/14
Pearce – IRA	Marlene	10,000.00	08/13/12	08/13/14
Davis	Dori Ann	50,000.00	08/17/06	08/17/14
Davis	Dori Ann	25,000.00	08/16/12	08/16/14
Phalen	Jeff	150,000.00	11/01/06	11/01/14
Phalen	Jeff	50,000.00	12/01/06	12/01/14
Phalen	Jeff	50,000.00	11/01/10	11/01/14
Rzonca	Pete	100,000.00	11/19/12	11/19/14

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Last	First	Promissory Note Amount	Original Issue Date of Note	Rollover Maturity Date
Sheriff	Stewart	150,000.00	12/26/06	12/26/14
Schloz	Stanley	50,000.00	10/18/14	11/18/14
Scroggin – IRA	Annette	146,365.89	09/28/12	09/28/14
Scroggin – Roth	Annette	48,823.03	09/20/12	09/20/14
Scroggin – Roth	Annette	6,000.00	10/08/12	10/08/14
Scroggin	Michael	150,000.00	08/31/12	08/31/14
Scroggin – IRA	Michael	140,621.06	09/21/14	09/21/14
Scroggin – IRA	Michael	170,000.00	10/12/12	10/12/14
Scroggin – IRA	Michael	52,443.15	11/06/12	11/06/14
Scroggin – Roth	Michael	77,360.78	09/20/12	09/20/14
Scroggin – Roth	Michael	6,000.00	10/08/12	10/08/14
Sheriff	Stewart	150,000.00	11/20/06	11/20/14
Siegford	GE	70,000.00	09/12/06	09/12/14
Siefgord	GE	30,000.00	09/12/06	09/12/14
Smith	Carsyn	60,000.00	10/31/08	10/31/14
Smith	Carsyn	10,000.00	11/01/10	11/01/14
Smith	McKenna	60,000.00	10/31/08	10/31/14
Smith	McKenna	10,000.00	11/01/10	11/01/14
Sterling	Don	75,000.00	11/07/12	11/07/14
Thompson	Coralee	100,000.00	11/14/08	11/14/14
Thompson	Coralee	100,000.00	12/01/08	12/01/14
Thompson	Gary	55,000.00	07/14/10	07/14/14
Thompson	Gary	75,000.00	07/27/10	07/27/14
Trainor	Jimmy	10,000.00	07/21/04	07/21/14
Wellman	Carol & Mike	50,000.00	08/12/05	08/12/14
Wellman – Roth	Carol	22,095.54	07/21/10	07/21/14
Wenig	Mark & Debbie	50,000.00	06/28/04	07/28/14
Wenig	Mark & Debbie	50,000.00	10/25/04	10/25/14
Zones	Michael	100,000.00	07/01/10	07/01/14
Zones	Michael	200,000.00	11/03/10	11/03/14

Last	First	Promissory Note Amount	Original Issue Date of Note	Rollover Maturity Date
Zones	Michael	50,000.00	11/13/12	11/13/14
	Total Investments	6,914,542.07		

E. Response to 2016 ADFI Investigation

355. In March 2016, Chittick asked Beauchamp to help DenSco respond to another investigation by the Arizona Department of Financial Institutions. Beauchamp worked on the matter during March, April, May and June 2016, billing his time to a “General” matter he had established in January 2013. As with previous inquiries by ADFI, Clark Hill argued that DenSco should not be licensed and regulated by ADFI, which would have included a review of DenSco’s lending procedures.

F. Chittick’s Suicide

356. Chittick committed suicide on July 28, 2016.

357. Shortly before his death, Chittick wrote an “Investor” letter that was never sent to DenSco’s investors but was among the business records obtained by the Receiver. Among the statements in that letter are the following: “Why didn’t I let all of you know what was going on at any point? It was pure fear. . . . I have 100 investors. I had no idea what everyone would do or want to do or how many would just sue, justifiably. *I also feared that there would be a classic run on the bank. . . I truly believe we had a plan that would allow me to continue to operate, my investors would receive their interest and redemptions as a normal course of business, and the rest of my portfolio was performing. Dave blessed this course of action.* (Emphasis added.) We signed this workout agreement and began executing it.”

358. The letter also stated: “Going back to December of 2013, . . . [Menaged] knew he had to make money to help cover the deficit [that] would be created by the double encumbered properties and shortage that would be created at the time of disposition. He wanted time to still fund him buying properties at auction and flipping

1 them, wholesaling them, etc. *I talked to Dave about this in January [2014] and he*
2 *was in agreement with it as long as I received copies of checks and receipts showing*
3 *that I was paying the trustee.*” (Emphasis added.)

4 359. Chittick also wrote a detailed letter to his sister, Shawna Heuer (aka
5 Iggy), shortly before his death. He wrote: “[*Beauchamp*] *let me get the workout*
6 *signed[,] not tell the investors[,] and try to fix the problem. That was a huge mistake.*
7 . . . Dave did a workout agreement with [Menaged], we were executing to it and making
8 headway, *yet Dave never made me tell the investors. . . . I talked Dave my attorney*
9 *into allowing me to continue without notifying my investors. Shame on him. He*
10 *shouldn’t have allowed me. He even told me once I was doing the right thing.*”
11 (Emphasis added.)

12 360. The letter also stated: “*Dave, my lawyer, negotiated the work out*
13 *agreement and endorsed the plan.* (Emphasis added.) Then when [Menaged] said
14 hey, let me buy some foreclosures, flip them, wholesale them, etc. so I can make
15 money. All the other lenders wouldn’t lend to him. I needed him to make money now
16 more than ever before. *We went to Dave, and he gave some constraints on how we*
17 *were to operate.* I have all the documentation. I received copies of checks made out to
18 trustees, receipts from the trustees. I had all my docs signed. I recorded my mortgages.
19 I had evidence of insurance, and I did everything.” (Emphasis added.)

20 361. This “Iggy Letter” contained detailed information about actions Chittick
21 had taken in managing DenSco’s affairs, including the location of funds and how he
22 had transferred funds.

23 **G. After Chittick’s Death, Clark Hill Represented DenSco in “Winding**
24 **Down Its Business”**

25 362. According to Clark Hill’s billing records, Beauchamp learned of
26 Chittick’s suicide on Saturday, July 30, 2016, through a telephone call with Robert
27 Koehler and Shawna Heuer. Beauchamp billed his time for that call to the “Business
28 Matters” file he had caused to be established on January 14, 2014.

1 363. Robert Koehler was identified in the 2011 POM, under the heading
2 “Contingency Plan in the Event of Death or Disability of Mr. Chittick,” as the person
3 with whom Chittick had entered into a written agreement “to provide or arrange for any
4 necessary services for the Company” upon Chittick’s death or disability.

5 364. According to Beauchamp’s notes from his July 30, 2016 telephone
6 conversation with Koehler and Heuer, he was told that Chittick had sent him a letter
7 with instructions and a detailed letter to Koehler. Beauchamp wrote that he needed “to
8 get both letters & discuss how to deal w/ this.”

9 365. Beauchamp sent an email that day to Darrell Davis, managing partner of
10 Clark Hill’s Scottsdale office, and Mark Sifferman, Clark Hill’s Assistant General
11 Counsel in the Scottsdale office. He wrote: “I just got a call that the sole owner of a
12 client (DenSco Investment Corporation), good friend and sole Manager of a real estate
13 investment fund (\$25 million +) committed suicide on Thursday night. I am one of two
14 people named to clean up and shut down the fund.” He went on to state: “I just thought
15 his investors (very high profile and possibly some of Darrell’s clients) will need to
16 know they are likely to start calling when the word gets out. Is there something I
17 should do to set up internal procedures at the firm?”

18 a. Mr. Davis wrote in a responsive email: “Are there any
19 irregularities with his fund?”

20 b. Mr. Beauchamp responded: “*Not that I am aware of.*” (Emphasis
21 added.)

22 366. Tellingly, Mr. Beauchamp did not tell Mr. Davis, as he and Clark Hill
23 now claim in this lawsuit, that he had previously “fired DenSco for failing to make the
24 requisite disclosures to its investors.”

25 367. On Sunday, July 31, 2016, Beauchamp exchanged emails with Koehler
26 about scheduling a meeting with Koehler and Heuer the following afternoon.

27 368. Although Koehler had been identified in the 2011 POM as the person
28 who would “provide or arrange for any necessary services for the Company” upon

1 Chittick's death or disability, there is nothing in Clark Hill's file to indicate that
2 Beauchamp consulted with Koehler about Clark Hill's role, and whether it should or
3 could provide services to DenSco at this time.

4 369. Beauchamp exchanged emails with Heuer on July 31 in which he
5 approved an email Heuer had drafted to send to DenSco's investors which stated, in
6 part, "[a] meeting with Denny's attorney is planned for Monday, August 1st, to form a
7 course of action."

8 370. Heuer sent the e-mail to DenSco investors during the evening of July 31,
9 2016, forwarding a copy to Beauchamp, who thanked her for doing so.

10 371. On the morning of August 1, 2016, Heuer sent Beauchamp by email a
11 copy of Chittick's investor letter, which she asked Beauchamp to "read before we meet
12 you today." As noted above, Chittick made various statements in the letter about
13 negligent advice he had received from Beauchamp.

14 372. Heuer gave Beauchamp at their August 1 meeting or in a meeting the
15 following day a copy of the Iggy Letter.

16 373. Beauchamp "understood" at that time, as Defendants admit in their Sixth
17 Supplemental Disclosure Statement, "that given the situation, DenSco's creditors might
18 attempt to point the finger at DenSco's professionals, including Clark Hill and David
19 Beauchamp."

20 374. Beauchamp and Clark Hill nevertheless decided, as Clark Hill has
21 admitted in a sworn statement prepared by one of its attorneys, Ryan Lorenz, to provide
22 "advice and guidance to DenSco to assist it in winding down its business."

23 375. Beauchamp did not run a conflict check before he and Clark Hill assumed
24 that role, even though he could have quickly obtained information to run a conflict
25 check from Heuer or Koehler.

26 376. Beauchamp did not memorialize Clark Hill's representation through an
27 engagement letter.
28

1 377. Beauchamp instead caused a “business wind down” file to be opened to
2 which he began billing substantial amounts of time.

3 **H. Clark Hill Agreed to Represent Shauna Heuer, as Personal**
4 **Representative of the Estate of Denny Chittick, Without Considering**
5 **Apparent and Unconsentable Conflicts, or Discussing Those Conflicts**
6 **With Ms. Heuer.**

7 378. Beauchamp arranged for Michelle Tran, who was then Senior Counsel for
8 Clark Hill, to attend his planned August 1, 2016 meeting with Shauna Heuer. Tran
9 practiced in the area of estates and trusts.

10 379. Tran attended the August 1 meeting. She received during that meeting a
11 copy of Denny Chittick’s will, which identified Heuer as a beneficiary, trustee of
12 certain children’s trusts, and executor.

13 380. Tran agreed in that meeting to represent Heuer as personal representative
14 of the Estate of Denny Chittick.

15 381. Clark Hill has produced in this litigation one of two pages of a “New
16 Business Intake” form which reflects that on August 2, 2016, Tran approved a “conflict
17 report” which appears to have been created that day.

18 382. The *only* parties identified in the conflict report were the Estate of Denny
19 J. Chittick, which is identified as the client, and Heuer, who was identified as a “client
20 affiliate.”

21 383. *No adverse or potential adverse parties were identified.*

22 384. Tran did not discuss with Heuer actual or potential conflicts of interest
23 associated with Clark Hill undertaking that representation.

24 385. Beauchamp did not discuss with Heuer actual or potential conflicts of
25 interest associated with Clark Hill undertaking that representation.

26 386. Tran did not discuss with Beauchamp actual or potential conflicts
27 associated with Clark Hill undertaking that representation.

28 387. Beauchamp did not tell Tran of the work he had previously performed for
DenSco, that he had “fired DenSco for failing to make the requisite disclosures to its

investors,” as Beauchamp and Clark Hill now claim, or that he believed at the time, “given the situation, DenSco’s creditors might attempt to point the finger at DenSco’s professionals, including Clark Hill and David Beauchamp.”

388. On August 2, 2016, Tran met Heuer and had her sign an engagement letter.

389. Clark Hill and Beauchamp claim in their Sixth Supplemental Disclosure Statement that “Clark Hill undertook a very limited representation solely to open an estate and arrange for the appointment of Ms. Heuer as the personal representative of Mr. Chittick’s estate.”

390. But the engagement letter Tran prepared and Heuer signed did not in any way limit the scope of Clark Hill’s representation.

391. And when Tran sent Heuer an email on August 5, 2016 forwarding documents she had caused to be filed with the probate court, Tran stated that she was “happy to help as you are addressing various assets of the Estate and I will work with David on the corporate issues.”

I. Beauchamp Caused Clark Hill to Simultaneously Serve as DenSco’s “Business Wind Down” Counsel and Heuer’s Counsel, Despite Unconsentable Conflicts, In an Attempt to Protect Himself, Clark Hill and the Chittick Estate from Potential Claims.

392. Clark Hill and Beauchamp should not have undertaken the role of DenSco’s “business wind down” counsel because they had an unconsentable conflict in serving in that role because they knew, as they have admitted in their Sixth Supplemental Disclosure Statement, that DenSco had potential claims against the firm.

393. Clark Hill and Tran should not have agreed to represent Heuer, as personal representative of the Chittick Estate, because the firm knew, through Beauchamp, that DenSco and its investors had substantial claims against the Estate for Chittick’s gross negligence in managing DenSco’s affairs. As described below, for a period of time Beauchamp took actions intended to benefit the Estate, on the apparent belief that doing so would protect himself and Clark Hill from claims by DenSco

1 investors. Now, however, Clark Hill and Beauchamp have identified the Estate as a
2 non-party at fault and seek to blame Chittick for DenSco's losses.

3 394. A jury can assume that Beauchamp wanted Clark Hill to represent
4 DenSco and Heuer, despite obvious, unconsentable conflicts, because he thought he
5 could protect himself and the firm from liability. Beauchamp and the firm's conduct
6 during the months of August, September and October 2016 provide further evidence
7 that Beauchamp and Clark Hill ignored conflicts, disregarded the interests of DenSco
8 and its investors, and sought to advance their own interests.

9 **J. During the First Week That Beauchamp Served as DenSco's**
10 **"Business Wind Down" Attorney (August 1-5), He Communicated**
11 **with Investors and the Securities Division of the Arizona Corporation**
12 **Commission; He Did Not Share What He Learned in January 2014**
13 **About Menaged's "Cousin" and the "Work Out" Plan He Helped**
14 **Develop.**

15 395. On August 3, 2016, Beauchamp was told by Koehler that DenSco's loan
16 portfolio had only about \$6 million of good loans, with a huge amount of bad and
17 troubled loans.

18 396. He spoke on the phone that day to Gary Clapper, Chief Investigator for
19 the Securities Division of the Arizona Corporation Commission.

20 397. After that call, he sent an email to Heuer asking her to "call me when you
21 are alone so we can talk. I just spent an hour on the phone with the enforcement people
22 from the Arizona Corporation Commission – Securities Division. They have talked to
23 several investors and we need to discuss the stories being circulated and what they are
24 planning to do."

25 398. Beauchamp then drafted an email to DenSco's investors which he sent,
26 after obtaining approval from Heuer.

27 399. Beauchamp's email is telling for several reasons. First, he did not
28 disclose what he learned in January 2014 about Chittick's grossly negligent practices
and how he had worked closely with Chittick and Menaged on documenting their
"work out" plan in the Forbearance Agreement. He instead stated that "the problem

1 with DenSco's Troubled Loans developed over time and it will take some time to
2 understand those Troubled Loans [and] how those loans came into existence."

3 400. Second, on two occasions in his email, Beauchamp asserted that
4 DenSco's investors would be best served if a receiver were not appointed.

5 If whoever is in charge of DenSco does not work with the Investors, then
6 DenSco will either be put into bankruptcy or have a Receiver appointed, which
7 will incur costs on behalf of the Investors and that will significantly reduce what
8 will be available to return to the Investors. For example, ***one of the recent
reports concerning liquidation of companies owing money to investors
indicated that the costs associated with a bankruptcy or a Receiver can reduce
the amount to be paid to investors by almost half or even a much more
significant reduction. . . .***

9

10 ***[W]e would like to keep DenSco out of a protracted bankruptcy or a
contentious Receivership proceeding.*** As indicated above, various studies have
11 shown that the third party costs and legal and other professional fees and costs
12 and the inherent delays in bankruptcy and/or Receivership proceedings can
13 consume more than 35% of the available money that should or would otherwise
14 be available to be returned to Investors. (Emphasis added.)

15 401. On August 4, Beauchamp learned that investor Robert Brinkman was
16 trying to get copies of one of the POMs Beauchamp had drafted for DenSco's use in
17 raising investor funds.

18 402. That same day, Beauchamp received a letter from Wendy Coy, Director
19 of Enforcement for the ACC Securities Division, who wanted to schedule a meeting on
20 August 10.

21 403. Beauchamp spoke to Coy on August 5, who told him the ACC would be
22 issuing a subpoena for DenSco's records.

23 404. Beauchamp also authored and sent to DenSco's investors a second email
24 status report. A portion of that report was devoted to discussing Menaged's bankruptcy
25 and the status of assets that were supposed to have secured DenSco's loans to
26 Menaged's entities. While Beauchamp's report made a passing reference to the
27 Forbearance Agreement he had drafted, it did not reveal the double encumbrance
28 problem that was disclosed to Beauchamp in January 2014 and that the Forbearance

1 Agreement was part of Chittick's and Menaged's plan to work their way out of that
2 problem.

3 405. Beauchamp took the opportunity to explain why he and his firm were not
4 responsible for the apparent absence of a UCC-1 filing; he said it was Chittick's fault.

5 406. And Beauchamp said nothing about why DenSco had not issued a POM
6 since July 2011 but had continued raising money from investors.

7 **K. During the Second Week That Beauchamp Served as DenSco's**
8 **"Business Wind Down" Attorney (August 8-12) He Arranged for**
9 **Beauchamp's Former Law Partners to Represent Heuer For Claims**
10 **DenSco's Investors Might Bring, Began Colluding with Them to**
11 **Protect Chittick's Estate, and Side-Stepped a Question From an**
12 **Investor About Clark Hill's Conflicts of Interest.**

13 407. On Monday, August 8, Beauchamp received a document subpoena from
14 the ACC which sought DenSco's corporate records.

15 408. In a phone call that day with Coy, Beauchamp learned that the ACC
16 would be seeking the appointment of a Receiver and that it wanted some records
17 produced at their planned meeting on Wednesday, August 10.

18 409. Coy also told Beauchamp that she had been contacted by an attorney who
19 indicated he would be representing all of DenSco's investors going forward.

20 410. In an email exchange Beauchamp had that day with Heuer, he told her
21 that he "talked to Kevin Merritt at Gammage & Burnham over the weekend to possibly
22 represent you. His telephone # is 602-256-4481. He has an excellent reputation as a
23 business finance and workout attorney. I think he would be able to provide very good
24 representation for you." Beauchamp went on to say "[y]ou will need legal counsel to
25 keep the aggressive attorneys at bay, which is why I talked to Kevin Merritt."

26 411. As set forth above, Merritt was Beauchamp's partner at Gammage &
27 Burnham.

28 412. Beauchamp sent a separate email to Heuer that day forwarding the ACC
subpoena. He noted that it "also asks for Denny's financial records," an apparent
reference to Paragraph 3 of Exhibit A to the subpoena, which sought "[a]ll assets and

1 liabilities currently held by or for the benefit of . . . Denny Chittick.” Beauchamp told
2 Heuer he “will advise them that I am only authorized to accept a subpoena on behalf of
3 Denny and not Denny’s Estate.”

4 413. On August 8, Beauchamp authored and sent another email report to
5 DenSco’s investors.

6 414. On August 9, Beauchamp, who knew that the interests of Chittick’s Estate
7 were adverse to those of the ACC and DenSco’s investors, and who was acting as
8 DenSco’s counsel, had a number of telephone calls and emails with Merritt.

9 Beauchamp’s notes reflect that Merritt would be “*representing Shawna + the Estate*
10 *with respect to claims from DenSco investors.*” (Emphasis added.) Merritt told
11 Beauchamp he had asked Gammage & Burnham partner Jim Polese to take part in that
12 representation “since we both had extensive experience in the Mortgages Ltd debacle.”

13 415. Merritt and Beauchamp also discussed the ACC subpoena on August 9.
14 Merritt was of the opinion that the subpoena “didn’t affect Shawna” in her capacity as
15 personal representative of the Chittick Estate, because the subpoena only sought
16 DenSco’s records.

17 416. That evening, Beauchamp authored and sent another email report to
18 DenSco’s investors.

19 417. Later that evening, Beauchamp and Merritt exchanged emails. Merritt
20 asked: “Since you are meeting with Wendy, for the moment it seems that you are still
21 representing DenSco in some capacity. While you have conflict issues, do you expect
22 Clark Hill to have to resign from all representations, or do you think CH can continue to
23 represent the estate, since your firm filed the probate? Or is that still being sorted
24 through?”

25 418. Beauchamp responded: “The probate was filed right away under the
26 original thought to have Shawna appointed Personal Representative (5 day wait period)
27 and to let her control the DenSco stock. Then we found out the problems and have
28

1 recommended that she pass on the DenSco stock. We will have to review and decide
2 how to deal with the conflict issues.”

3 419. Coincidentally, while Beauchamp was arranging for Merritt to represent
4 Heuer and the Estate from claims by DenSco’s investors – while Clark Hill was serving
5 as DenSco’s “business wind down” attorney and as Heuer’s attorney in her capacity as
6 personal representative of the Estate – Tran received a letter on August 9 from Scott
7 Swinson, an attorney representing DenSco investor Rob Brinkman. His letter stated, in
8 part that Brinkman had

9 forwarded to me the various e-mails regarding DenSco generated by Mr.
10 Beauchamp. From some of the statements Mr. Beauchamp has made in his e-
11 mails, it sounds as though your firm represented either Mr. Chittick and/or
12 DenSco prior to Mr. Chittick’s death.

13 If this is in fact the case, ***I would appreciate a confirmation from your firm that***
14 ***you have considered the potential of a conflict of interest in your***
15 ***representation of the Chittick estate*** and you determination [sic] that no conflict
16 exists. (Emphasis added.)

17 The letter was accompanied by a request for notice directed to Ms. Tran in her capacity
18 as counsel for Heuer as the personal representative of the Chittick estate.

19 420. Tran, after consulting with Beauchamp, sent an email to Swinson during
20 the morning of August 10 which said, in part, “[w]e are in the process of addressing this
21 concern,” making clear that Clark Hill might continue representing Heuer. She
22 suggested that Swinson file his request for notice “with the probate court so that
23 subsequent counsel for the Estate, ***if and when that change occurs***, is aware of and
24 bound by your demand as well.” (Emphasis added.)

25 421. Beauchamp sent that morning a letter to Coy regarding the ACC
26 subpoena. His letter said, in part:

27 When we had talked previously, I had said that I would accept delivery of a
28 Subpoena from your office to DenSco to get started in the record location and
29 delivery process. However, ***I have not previously represented Denny Chittick***
30 ***and I do not have authority to accept the service of the Subpoena on Mr.***
31 ***Chittick or his Estate***, so some of the items listed in the Subpoena (e.g. Denny
32 Chittick’s personal tax records) are not within my control and I have forwarded
33 the Subpoena to the Personal Representative for his Estate, Shawna Chittick
34 Heuer. (Emphasis added.)

1 422. Beauchamp went on to say that Heuer would look for responsive
2 documents but would not be able to produce any by the deadline to respond to the
3 subpoena, which was that day.

4 423. Beauchamp noted that he was making arrangements to have 51 boxes of
5 DenSco's files transported to Clark Hill's offices, which would then have to be
6 reviewed, and that as a consequence, no documents could be produced that day.

7 424. Beauchamp's notes from his meeting with Coy and Clapper that day
8 reflect that he was told the ACC would be seeking the appointment of a receiver and
9 had identified two possible receivers – Peter Davis and Jim Sell.

10 425. It does not appear from Beauchamp's notes that he told Coy and Clapper
11 during that meeting facts in his possession about Chittick's lax lending practices, his
12 role in drafting the Forbearance Agreement, and that DenSco was raising investor funds
13 after the 2011 POM expired in July 2013 without issuing a new POM.

14 426. That evening, Beauchamp authored and sent to DenSco's investors an
15 email summary of the ACC meeting which stated in part, "we were able to provide the
16 Securities Division a preliminary assessment of how the perceived fraud occurred and
17 the timing of such fraud." Just as he had failed to tell the ACC that day all relevant
18 facts in his possession, Beauchamp did not share those facts with DenSco's investors.

19 427. By focusing on Menaged's conduct, rather than Chittick's
20 mismanagement of DenSco and his efforts to aid and abet Chittick, Beauchamp hoped
21 to protect his interests and Clark Hill's, as well as those of the Chittick Estate.

22 428. The following day, August 11, Beauchamp received an email from
23 investor Brinkman, who had through his attorney Scott Swinson just questioned
24 whether Clark Hill and Beauchamp had a conflict of interest. Brinkman noted that the
25 only POM in his possession was the 2007 POM and stated: "It is my understanding
26 there is a more current POM dated July 1, 2009. Could you please confirm that is the
27 more recent and forward a copy as well."
28

1 429. When he responded, Beauchamp did not answer Brinkman by telling him
2 that DenSco had issued a POM in 2009 and that its last POM had been issued in July
3 2011, both of which he had drafted. He instead said he did not have a copy of POMs
4 issued after 2007 and blamed Chittick, stating that Chittick “did not elect to have those
5 records forwarded to me” from Bryan Cave. In fact, Beauchamp had received Bryan
6 Cave files in January 2014 which included the 2009 and 2011 POMs.

7 430. Beauchamp also took that day the first step toward implementing a
8 scheme by Merritt and Polese – whom Beauchamp knew had been retained to protect
9 the Estate from claims by DenSco’s investors – to cloak DenSco’s files in a false claim
10 of privilege to delay the soon-to-be appointed Receiver from gaining access to them.

11 431. Beauchamp sent an email late in the day on August 11 to Clapper, copied
12 to Coy, Merritt and Polese, which said, that he had just talked to Polese and Merritt
13 and they “want us to follow a different procedure with respect to the DenSco
14 documents.” That procedure called for: (1) loan files previously delivered to the ACC
15 by Koehler reviewed for privilege; (2) 51 boxes of DenSco corporate records, from
16 2011 to the present, in Clark Hill’s possession reviewed for privilege; (3) investor files
17 at Chittick’s home reviewed for privilege; and (4) Chittick’s computer reviewed for
18 privileged materials.

19 432. Beauchamp’s email was copied to Mark Sifferman, a Clark Hill Assistant
20 General Counsel resident in the firm’s Scottsdale office.

21 433. On Friday, August 12, Beauchamp arranged for DenSco’s corporate files
22 to be transferred to Gammage & Burnham.

23 434. That same day, Polese sent a letter to Coy and Clapper, which referenced
24 Beauchamp’s email of the previous day and stated that Gammage & Burnham had
25 “been retained as legal counsel for Ms. Shawna Heuer,” the personal representative for
26 the Chittick Estate,” and “are replacing the firm of Clark Hill.”

27 435. Polese asserted that DenSco’s corporate records could not be delivered to
28 the ACC on the timetable requested by the ACC “because the files must first be

1 reviewed to protect against disclosure of *any attorney/client communication* or other
2 privilege that belongs to either the company *or Mr. Chittick* and which now passes to
3 the Estate.” (Emphasis added.) He went on to say that Gammage & Burnham had
4 “advised Clark Hill not to deliver any post-2011 documents to you.”

5 436. Beauchamp was copied on the letter. He had sent Coy a letter only two
6 days earlier which said that he “[had not previously represented Denny Chittick” but
7 did not correct Polese’s claim that DenSco’s files contained privileged communication
8 belonging to Chittick.

9 437. When Coy sent Polese an email asking if Gammage & Burnham
10 represented DenSco, Polese replied, copying Beauchamp, that “Beauchamp remains as
11 counsel for DenSco, if for no other reason than there is no mechanism in place to make
12 any change.”

13 438. Polese went on to state that “[t]he reason the estate has taken the lead with
14 respect to compliance with the subpoena is that Mr. Beauchamp and Clark Hill find
15 themselves in somewhat of an awkward position, given the wild allegations being
16 made. Mr. Beauchamp is caught between continued representation and not wishing to
17 be accused of acting in a way that compromises the company in any way, such as the
18 loss of the attorney client privilege. Accordingly, whether this firm takes the lead or
19 Clark Hill, the procedures for review of the corporate records for attorney client
20 privilege, the preparation of the privilege log and the delivery disks that contain the
21 responsive documents of the corporation to the subpoena is going to be followed.”

22 439. Polese went on to state that the Estate would submit to the ACC a list of
23 candidates to serve as Receiver that would be acceptable to the Estate.

24 440. In a responsive email, Coy noted that she had shared with Beauchamp
25 two potential receiver candidates – Peter Davis and Jim Sell.

26 441. In a subsequent email to Coy, Polese wrote: “It remains our view at this
27 point in time from what we have seen that DenSco and Chittick were the victims of a
28

1 fraud, not the perpetrators.” Beauchamp responded in an email to Polese – “Good set
2 of emails!”

3 442. While applauding Polese’s representation of the Estate and desire for the
4 appointment of a Receiver the Estate preferred, and assisting his efforts to falsely claim
5 a personal privilege over DenSco’s corporate records, Beauchamp continued drafting
6 and sending emails to DenSco’s investors. He sent one on August 15, 2016, in which
7 he wrote that “I am the only person who is still able to represent DenSco and the
8 Investors to deal with the current issues.” He described the “current legal matters” for
9 which he owed duties to DenSco and its investors as “responding to the Subpoena from
10 the Securities Division, to finish the investigation of the AZ Department of Financial
11 Institutions (“ADFI”) which is almost complete (with hopefully no fines being assessed
12 against DenSco) and most importantly to protect and preserve any rights of DenSco in
13 the Scott Menaged bankruptcy case.”

14 **L. During the Third Week That Beauchamp Served as DenSco’s**
15 **“Business Wind Down” Attorney (August 15-19), He Made a False**
16 **Statement to the ACC About Clark Hill’s Securities Work for**
17 **DenSco, Falsely Claimed Clark Hill Had Resigned from Representing**
Heuer, and Gave a False Declaration Which Heuer’s Attorney Used
to Obtain a Court Order Limiting the Receiver’s Access to DenSco’s
Corporate Records

18 443. On Monday, August 15, Clapper sent Beauchamp an email which stated,
19 in part: “Can you please get a copy of the forbearance agreement. Since the offering
20 document is updated every two years can you please get copies of all of them.”

21 444. Beauchamp responded: “I only have access to some of DenSco’s files.
22 Despite my requests, Denny Chittick did not request for all of DenSco’s previous files
23 to be transferred to me. In addition, *Denny stopped our efforts to do an updated*
24 *offering memorandum in 2013*, so the initial work on that was never finished. Denny
25 also *did not engage us to prepare an amendment to the offering document or to*
26 *prepare a new disclosure document despite several conversations about that issue.*”
27 (Emphasis added.)
28

1 445. The underscored statements were false, as they conflict with the facts set
2 forth above. Chittick did not stop Clark Hill's efforts to prepare a POM in 2013. Clark
3 Hill's files reflect the firm did not perform any work on a POM in 2013; on
4 December 18, 2013, Chittick asked about the status of the POM. If Beauchamp's
5 testimony is believed, the firm did not work on the POM because Chittick conditioned
6 the opening of a file for a new POM on Beauchamp's agreement that the firm would do
7 no work on the POM. As for 2014, Beauchamp's statement to Clapper is at odds with
8 his and Clark Hill's claim in their Initial Disclosure Statement that Beauchamp and
9 Daniel Schenk prepared an "updated POM in April and May 2014."

10 446. On the same day, Beauchamp responded to an email Tran had received
11 from an individual who had contacted her as counsel to Heuer in her capacity as
12 personal representative of the Estate. Beauchamp wrote: "Due to potential conflicts of
13 interest, we have resigned as counsel to the Estate and new counsel has been appointed
14 or is being appointed for the Estate."

15 447. Beauchamp's statement was false because Clark Hill did not send Heuer a
16 letter or email stating it had resigned, nor did it close its file. Clark Hill continued
17 doing work for Heuer and the Estate, and Beauchamp sent billing statements to Heuer
18 for that work on September 15 and October 20, 2016 and January 19, 2017. Gammage
19 and Burnham filed a Notice of Appearance, rather than a Substitution of Counsel, in the
20 probate court on August 18, 2016. ***Clark Hill remained counsel of record for Heuer***
21 ***and the Estate until January 13, 2017.***

22 448. On August 15, Polese sent an email to Coy, copied to Beauchamp and
23 others, which laid the groundwork for an argument Beauchamp knew to be false. He
24 wrote:

25 Privilege: It is my view and that of Dave Beauchamp, ***Denny viewed David as***
26 both his company attorney and ***his personal attorney***. Therefore both the
27 receiver and the estate should be recognized to have standing to assert any
28 attorney client privilege with respect to documents that were delivered to the
 State or which may be involved in any litigation. Thus the receiver must agree
 that the receiver will not have the ability to unilaterally waive privilege with

1 respect to any matter which the estate believe is also a *personal privilege to*
2 *Denny Chittick or the estate.* (Emphasis added.)

3 449. Beauchamp had sent Coy a letter only five days earlier which said that he
4 “[had] not previously represented Denny Chittick” but did not correct Polese’s claim
5 that DenSco’s files contained privileged communication belonging to Chittick.

6 450. On August 17, the ACC filed a Verified Complaint and a Motion for
7 Expedited Hearing for Preliminary Injunction and Appointment of Receiver.

8 451. Beauchamp conferred that day by phone with Merritt who shared with
9 him the Estate’s preference to have a receiver other than Peter Davis or Jim Sell
10 appointed.

11 452. Beauchamp then had a call with Polese and Merritt, who sought from
12 Beauchamp an affidavit or declaration they wanted to refute Coy’s argument that the
13 receiver could waive DenSco’s attorney-client privilege. They told him they would
14 send him a draft affidavit or declaration. Beauchamp’s notes state “needs to be
15 reviewed by CH in-house General Counsel.”

16 453. Beauchamp received from Merritt that afternoon a declaration, which he
17 revised in consultation with Clark Hill Assistant General Counsel Mark Sifferman and
18 submitted to Merritt.

19 454. Beauchamp’s August 17 declaration falsely stated that Beauchamp
20 understood that Chittick “considered that I was his counsel as well as counsel for
21 DenSco.” Beauchamp admitted in the deposition he gave in this case that the statement
22 was false.

23 455. The declaration, drafted by Beauchamp and revised and approved by
24 Sifferman, and later filed in court, stated that “[i]n late 2014 or 2015, I ended my
25 formal relationship with Mr. Chittick and DenSco.” This was the first time
26 Beauchamp claimed that his attorney-client relationship with DenSco had ended.

27 456. Polese and Merritt sought the declaration to support the Estate’s claim, in
28 a document captioned “Recommendations Re Receiver and Attorney/Client Privilege”

1 and filed with the Receivership Court, that “Chittick retained Beauchamp on behalf of
2 both DenSco *and himself in his individual capacity.*” (Emphasis added.)

3 457. A hearing was held in the Receivership Court on August 18. Beauchamp
4 and Sifferman attended the hearing.

5 458. During the hearing, Polese sought to persuade the Receivership Court to
6 appoint a receiver other than the candidates proposed by the ACC, Peter Davis and Jim
7 Sell. Polese had stated in email communications with Coy, copied to Beauchamp, that
8 Davis was not acceptable to the Estate.

9 459. The Receivership Court appointed Davis to serve as DenSco’s Receiver.

10 460. During the hearing, Polese (i) stated that Beauchamp “was counsel for
11 both the company and Mr. Chittick”; (ii) asserted that there was a “presumption . . . that
12 any [privilege] would apply to both the Estate and the corporation”; and (iii) asked that
13 any order appointing a receiver include an instruction that the receiver “cannot waive
14 the attorney[-]client privilege with respect to the company, unless the Estate also
15 agrees.”

16 461. Polese’s statement was false because Beauchamp told Coy eight days
17 earlier that he “[had] not previously represented Denny Chittick” and nothing in Clark
18 Hill’s files reflects that the firm ever represented Chittick individually. Indeed, Clark
19 Hill’s engagement letter expressly disclaimed that representation and made clear that its
20 only client was DenSco.

21 462. Neither Beauchamp nor Sifferman sought to correct Polese’s
22 misstatement.

23 463. The Receivership Court granted the request and included the requested
24 language in the Order Appointing Receiver.

25 464. As discussed below, the Estate’s counsel used the Order to impede the
26 Receiver’s access to relevant information.

1 465. The Receiver later had to incur the time and expense of seeking an Order
2 amending the Order Appointing Receiver to remove the language the Estate had sought
3 and obtained.

4 466. On Friday, August 19, the Receiver's counsel Ryan Anderson contacted
5 Beauchamp by telephone, as a first step to obtaining relevant DenSco records in Clark
6 Hill's possession, custody or control.

7 **M. Despite the Receiver's Appointment, Beauchamp Continued to Act as**
8 **DenSco's Counsel and Continued to Collude with Attorneys for the**
9 **Estate, All While Clark Hill Was Counsel of Record to the Estate.**

10 467. On August 20, Anderson sent an email to Beauchamp to which the
11 Receivership Order was attached. Anderson noted that the Receiver "has been advised
12 that certain records of DenSco are in your possession," and sought, pursuant to the
13 Receivership Order, to obtain those records.

14 468. Beauchamp responded by email that day, noting that the bulk of the
15 DenSco records he had received had been transferred to Gammage & Burnham for a
16 privilege review.

17 469. That same day, Beauchamp received an email from Brinkman, who was
18 responding to Beauchamp's August 11 email in which Beauchamp had failed to answer
19 Brinkman's question about whether the 2007 POM was the most recent POM.
20 Brinkman forwarded an excerpt from Chittick's July 19, 2011 email to DenSco
21 investors, copied to Beauchamp, in which Chittick stated that he updated the POM
22 every two years "work[ing] with David Beauchamp (securities attorney)." Brinkman
23 noted that he had received a 2011 POM through that email and asked "if there was a
24 POM for 2013 and 2015 or if 2011 was the last POM?"

25 470. *This appears to be the first time Beauchamp was questioned by an*
26 *investor about his role as securities counsel for DenSco and the first time he was*
27 *asked to explain why DenSco had not issued the 2013 POM Clark Hill had been*
28 *retained in September 2013 to prepare.*

1 471. Five days earlier Beauchamp had told Clapper “***Denny stopped our***
2 ***efforts to do an updated offering memorandum in 2013***, so the initial work on that was
3 never finished. Denny also ***did not engage us to prepare an amendment to the***
4 ***offering document or to prepare a new disclosure document despite several***
5 ***conversations about that issue.***” (Emphasis added.)

6 472. Three days early, Beauchamp stated under penalty of perjury in his
7 August 17 declaration that “***[i]n late 2014 or 2015, I ended my formal relationship***
8 ***with Mr. Chittick and DenSco.***”

9 473. In responding to Brinkman, Beauchamp changed his story. He wrote:
10 “***My law firm started preparing the 2013 POM, but we were put on hold.*** After the
11 Forbearance Agreement was signed by Scott Menaged, ***we started to amend the 2013***
12 ***draft POM, but we stopped and withdrew as securities counsel for DenSco. Denny***
13 ***was supposed to get other counsel and finish the POM in 2014, but I do not know if***
14 ***that did happen.***” (Emphasis added.)

15 474. In an email sent on August 21, Brinkman asked Beauchamp to “explain
16 the details and provide a copy of the Forbearance Agreement signed by Scott Menaged
17 that you reference in your email.” He also asked for a copy of the 2009 POM.

18 475. Beauchamp responded by email that same day, ducking Brinkman’s
19 questions and requests by saying he had been “advised that the Receiver had taken over
20 [from him] the responsibility to provide all of the information to the Investors” and that
21 his “records and what I have from DenSco are boxed up to be provided to the
22 Receiver.”

23 476. Brinkman persisted, saying in an August 21 email that he assumed
24 Beauchamp had a copy of the 2009 POM he could send by email and had “asked for
25 specifics to be provided of the Forbearance Agreement with Menaged, which you
26 reference in your earlier email. You did not provide nor address my request for such an
27 Agreement. I find it hard to believe that your firm doesn’t have electronic copies of
28 these agreements.”

1 477. When he responded by email that day, Beauchamp told Brinkman that
2 “[t]he 2013 POM was never finished due to attorney client protected issues that I have
3 been instructed not to discuss.” Those instructions presumably came from Clark Hill’s
4 general counsel.

5 478. On Monday, August 22, Anderson wrote Beauchamp an email. He and
6 others working with the Receiver were trying to gather information as quickly as
7 possible to understand and evaluate DenSco’s operating history and its current financial
8 condition. He noted that a letter Chittick had sent to Koehler referenced a letter
9 Chittick had sent to Beauchamp and asked Beauchamp for a copy.

10 479. Beauchamp responded by email later that day, copying Merritt. He wrote
11 that he had not received a letter from Chittick, but disclosed the existence of what is
12 described as the Iggy Letter, which Beauchamp received on August 1 or 2 from Heuer.
13 Beauchamp wrote:

14 I have been advised to discuss any request to share this letter with Kevin Merritt
15 before I share any portion with anyone. I believe that a portion of the letter is
16 not applicable to anyone except his sister as his Estate’s Personal Representative
17 but there is a portion that is applicable to DenSco. Unfortunately, the DenSco
18 portion does not go into the detail that I had hoped would fully explain the
19 situation with Auction.com and Scot Menaged. ***The DenSco portion also
includes incorrect statements and references as to the legal advice that I had
provided to him and fails to properly reference why I was not providing any
further securities advice to him and DenSco.*** (Emphasis added.)

19 Please let me discuss with Kevin Merritt and we will get back to you.

20 480. On August 23, Anderson sent an email to Polese, Merritt and Beauchamp,
21 which noted that the Receiver was “working very hard to devise and implement a
22 comprehensive strategy to maximize recoveries for the investor victims.” He noted that
23 the Receiver sought “a concise representation from Mr. Chittick [or anyone] that sets
24 forth the allegations underlying the fraud scheme perpetrated on DenSco.” He
25 reiterated his request to Beauchamp for the Iggy Letter.

26 481. Polese responded by email that day, copying Beauchamp. He attached
27 two copies of the Investor Letter. In one, “some references to specific conversations
28

1 with Mr. Beauchamp and advice rendered” had been redacted as attorney-client
2 privilege communications. Polese stated that his firm was “still engaged in researching
3 whether any other privilege might attach to this document and deliver it to you with the
4 understanding that it will be for the receiver’s eyes only and that it will not be
5 disseminated to third parties including investors or their counsel” until that research had
6 been concluded. “Even then, we assume and remit these documents on the express
7 understanding that while the receiver may take a broader view on the attorney-client
8 privilege . . . he cannot take a narrower one and thus the only version that could be
9 disseminated to a third party would be the redacted version with at least these
10 redactions, absent a ruling from the court otherwise.” He did not produce the Iggy
11 Letter.

12 482. Anderson responded to Polese that day, copying Beauchamp. He stated
13 that the Receiver would accept Polese’s stated conditions with respect to the Investor
14 Letter, but noted that “[a] review of the document begs this question, is there another
15 letter out there?”

16 483. On August 24, Polese sent an email to Anderson, copied to Beauchamp,
17 acknowledging the existence of the Iggy Letter, but claiming it contained information
18 that was “personal to [Chittick] and do not involve the Corporation,” other than one
19 paragraph which mentioned Menaged.

20 484. On August 26, Polese sent Beauchamp a draft email he planned to send to
21 Anderson regarding the Estate’s decision to deliver certain information to the Receiver,
22 including a recording Chittick had made of a conversation with Menaged. He noted
23 that “[w]e agonized whether to voluntarily disclose this recording because it clearly
24 deals with Denny’s personal concern of lawsuit, etc. against him personally” but “the
25 decision was made on balance with the consent of our client to release this to the
26 receiver rather than wait for formal discovery.”

27 485. Beauchamp responded that he thought “this is a good email” and offered
28 additional points to make in it.

1 486. Beauchamp had a telephone call that day with Polese and Merritt in which
2 they shared with Beauchamp a detailed summary of their meeting the previous day with
3 the Receiver and Anderson. Beauchamp's notes reflect that they discussed Chittick's
4 written statements in the Investor Letter regarding Beauchamp's role as DenSco's
5 counsel and that Polese intended to provide "info. to Receiver so the Estate is not
6 deemed a target."

7 487. On August 29, Anderson sent a letter to Beauchamp asking Clark Hill to
8 produce "your firm's entire file concerning its representation of DenSco."

9 488. Beauchamp forwarded Anderson's letter to Polese and Merritt.

10 489. On August 30, Merritt sent an email to Anderson, copied to Beauchamp,
11 which said, in part, that while the Estate did not object to the Receiver's request for
12 Clark Hill's files, "I would like to remind everyone that David testified at the
13 receivership hearing that he concurrently represented both DenSco and Denny Chittick
14 personally, and I believe the Court's order acknowledges as much."

15 490. Beauchamp, who was copied on the email and knew that he and Clark
16 Hill had never "represented . . . Denny Chittick personally" did not correct Merritt. He
17 was silent.

18 491. Merritt used the false assertion of a "concurrent" representation of
19 DenSco and Chittick personally to demand that the Estate receive Clark Hill's entire
20 file.

21 492. Merritt went on to remind Anderson that the Receiver could not waive the
22 attorney-client privilege without the Estate's consent.

23 493. Beauchamp's notes reflect that he had a telephone call with Merritt that
24 day to discuss these points.

25 494. On September 2, 2016, Polese sent Anderson and Beauchamp a draft
26 "common interest" agreement between the Estate, DenSco and the Receiver, which
27 Polese assumed Beauchamp could sign for DenSco.
28

1 495. The proposed common interest agreement was intended to protect the
2 Estate, DenSco, Clark Hill, and Beauchamp from “third parties, including but not
3 necessarily limited to DenSco Investors,” who might assert claims.

4 496. It rested, in part, on the false statement that “there exists a large overlap of
5 attorney-client privilege with respect to the activities involving Chittick personally and
6 those of DenSco and the representation of Clark Hill as counsel for both.”

7 497. Beauchamp, who knew the foregoing representation was false, said
8 nothing.

9 498. On September 12, Beauchamp sent an email to Sara Beretta, a
10 representative of the Receiver, stating that Clark Hill’s files would be turned over to the
11 Receiver “as soon as the files are reviewed by Gammage & Burnham as requested by
12 Kevin Merritt,” stating that his request was “consistent with the hand-written notation
13 by the Judge in the Judge’s order appointing the receiver.”

14 499. When Merritt responded that he “was not aware you were waiting on
15 anything from me,” Beauchamp acknowledged that his email to Ms. Beratta was not
16 accurate, stating: “I was not really waiting for you. I just received instructions on
17 Friday from my firm’s General Counsel.”

18 500. On September 14, 2016, Beauchamp sent an email to Merritt, asking to
19 have a call before a planned “conference call with Peter Davis at 4:00 today. He will
20 probably have Ryan [Anderson] on the call with me to discuss why I have not yet sent
21 over all of the files.”

22 501. Merritt forwarded to Beauchamp his August 30 email to Anderson in
23 which Merritt had falsely claimed a “concurrent” privilege.

24 502. On September 15, 2016, Beauchamp sent an invoice to the Receiver
25 seeking approximately \$74,000 from DenSco for “business wind down” services Clark
26 Hill provided during August 2016.

27 503. On September 16, 2016, Anderson sent Beauchamp a letter noting that
28 Clark Hill had not responded to his August 29 letter request for all of its files relating to

1 its representation of DenSco. He made “a demand for the immediate turnover” of Clark
2 Hill’s files. His letter concluded: “If it was not apparent in past communications from
3 the Receiver, please accept this letter as a confirmation that your law firm’s legal
4 services are not required by the Receiver or DenSco.”

5 504. Anderson also sent an email that day to Polese, copied to Beauchamp. It
6 (1) stated that the Receiver declined to pursue the proposed common interest
7 agreement; (2) asserted that there was not, in fact, a “personal privilege,” and (3) asked
8 for clarification on the Estate’s claim of a “personal” privilege. With respect to the
9 latter point, Anderson noted that Beauchamp was copied on the email “and can
10 elaborate or clarify as necessary.”

11 505. Polese responded that he was inclined to “advise our client to instruct
12 David to turn over all [Clark Hill] files to the Receiver” and “treat it as privileged as to
13 both.”

14 506. Beauchamp did not respond to the email.

15 507. Through a September 23 email to Anderson, Merritt reasserted the
16 Estate’s “concurrent representation” claim but stated that the Estate had no objection to
17 Clark Hill delivering its files to the Receiver.

18 508. On October 7, Anderson sent Beauchamp an email asking about the status
19 of Clark Hill’s production of its files to the Receiver, noting he would take up the issue
20 with the Receivership Court if the files were not timely received.

21 509. Before October 13, 2016, Sifferman personally reviewed Clark Hill’s
22 files. He testified that he did not see any records reflecting that Clark Hill had ever
23 represented Chittick personally.

24 510. On October 13, 2016, Sifferman sent a letter to Anderson identifying six
25 boxes of files Clark Hill was producing to the Receiver.

26 511. After finally receiving Clark Hill’s files, the Receiver discovered critical
27 documents, such as the Iggy Letter, that the Estate had sought to prevent the Receiver
28 from obtaining under a false claim of personal privilege. The last letter contained

1 information that was material to claims the Receiver later brought against the Estate of
2 Chittick. Without the document being provided at the inception of the Receivership
3 proceeding, the Receiver had been required to devote substantial resources to
4 independently discovering information contained in the Iggy Letter.

5 **N. Beauchamp and Clark Hill Have Continued to Falsely Claim That**
6 **the Firm Terminated Its Representation of DenSco.**

7 512. After telling the Receivership Court that his representation of DenSco
8 ended in late 2014 or early 2015, and then telling Brinkman the representation had
9 ended on an unspecified date in 2014, Beauchamp continued to change his story.

10 513. In a February 8, 2017 email to Anderson, Beauchamp made the following
11 unsolicited statement: "Please note that my previous reference to 'securities work' was
12 for work done PRIOR to when *my firm terminated doing any securities or other legal*
13 *work for DenSco when Denny Chittick refused to send the amended Private Offering*
14 *Memorandum to his investors.* The amended Private Offering Memorandum that we
15 wanted to be sent described the Forbearance Agreement and the changes to the lending
16 criteria and security ratios that DenSco was to follow when making its loans to
17 Borrowers. *I believe that we terminated our representation in approximately July*
18 *2014.*" (Emphasis added.)

19 514. Clark Hill and Beauchamp now claim that the firm terminated the
20 representation in May 2014, stating in Defendants' initial disclosure statement (at 15)
21 that

22 Mr. Chittick . . . refused to provide the necessary information to complete the
23 POM and refused to approve the description of the workout or the double lien
issue. . . .

24 *In May 2014*, Mr. Beauchamp handed Mr. Chittick a physical copy of the draft
25 POM and asked him what Mr. Chittick's specific issues were with the
disclosure. Mr. Chittick responded that there was nothing wrong with the
26 disclosure, he was simply not ready to make any kind of disclosures to his
investors at this stage. Mr. Beauchamp again explained that Mr. Chittick had no
27 choice in the matter and that he had a fiduciary duty to his investors to make
these disclosures. Mr. Chittick would not budge. *Faced with an intransigent*
28 *client who was now acting contrary to the advice Mr. Beauchamp was*
providing, and with concerns that Mr. Chittick may not have been providing

1 ***any disclosures to anyone since January 2014, Mr. Beauchamp informed Mr.***
2 ***Chittick that Beauchamp and Clark Hill could not and would not represent***
3 ***DenSco any longer.*** Mr. Beauchamp also told Chittick that he would need to
4 retain new securities counsel, not only to provide the proper disclosure to
5 DenSco's investors, but to protect DenSco's rights under the forbearance
6 agreement. Mr. Chittick suggested that he had already started that process and
7 was speaking with someone else.

8 515. But there is not a single document in Clark Hill's file to support this
9 claim, such as a termination letter that law firms commonly send when ending a client
10 relationship and especially when a law firm believes a client is disregarding advice
11 given by the firm.

12 516. The absence of ***any*** handwritten notes by Beauchamp about the alleged
13 termination of the representation is particularly telling, since by Beauchamp's own
14 admission, his consistent practice was to "write up" notes after every meeting or call
15 with Chittick. The evidence of that practice is in a March 12, 2014 email to Chittick, in
16 which Beauchamp wrote: "Since I was driving to a meeting with another client, ***I did***
17 ***not get a chance to write up my notes after our call, as I usually do.***" (Emphasis
18 added.)

19 517. Moreover, Clark Hill makes this claim despite numerous documents in its
20 files reflecting that Clark Hill never terminated the representation and continued to
21 represent DenSco after May 2014. Those documents include:

22 a. Documents generated in June 2014 which reflected work Clark
23 Hill performed to amend the Forbearance Agreement and correct errors the firm
24 had made when the Forbearance Agreement was signed in April 2014. Chittick
25 and Menaged signed those documents on June 18, 2014.

26 b. In May, June, July and August 2014, Beauchamp sent Chittick
27 billing statements for work performed for DenSco through transmittal letters that
28 stated: "Thank you again for allowing Clark Hill and me to provide legal
services to DenSco Investment Corporation. If you have any question or if we
can assist you with any other matter(s), please let me know."

1 c. As noted above, when Chittick asked Clark Hill to respond to the
2 ADFI inquiry in March 2016, Beauchamp billed his time to the “General” matter
3 Clark Hill had established in January 2014.

4 d. As noted above, Beauchamp told his office managing partner on
5 July 30, 2016 that he was not aware of any irregularities in DenSco’s practices
6 and said nothing about having terminated DenSco.

7 e. As noted above, after Chittick’s death, Beauchamp billed his time
8 to the “Business Matters” file Clark Hill had established in January 2014.

9 f. On June 22, 2017, approximately six months before this lawsuit
10 was filed, Clark Hill submitted two proofs of claim to the Receiver, seeking
11 \$53,820.00 for work performed between June 1, 2016 and August 17, 2016, and
12 \$23,046.00 for work performed between August 18, 2016 and September 30,
13 2016. Clark Hill claimed in an accompanying affidavit that “*[i]n 2016 and*
14 *earlier, the Firm represented DenSco Investment Corporation,*” providing
15 “general business advice and representation,” and that “[a]fter the death of
16 DenSco’s principal, in July 2016, the Firm transitioned the subject matter of its
17 work to advice and guidance to DenSco to assist in winding down its business.”
18 (Emphasis added.) Clark Hill did not claim then that it had terminated its
19 representation of DenSco at any previous time.

20 518. In claiming that Clark Hill had, in fact, terminated its representation of
21 DenSco in May 2014 – a claim verified by Clark Hill’s General Counsel – Clark Hill
22 concealed material information it should have disclosed pursuant to Rule 26.1. It was
23 only after the Receiver’s counsel served written discovery on Clark Hill that Clark Hill
24 admitted that it was not until May 2018 – *after* receiving the Receiver’s written
25 discovery – that Clark Hill closed the files it had opened in September 2013 to prepare
26 a new POM and in January 2014 for the “lien workout.” The files established for
27 DenSco’s “General” and “Business Matters” were never closed and remain open.
28

1 **O. Actions Taken by the Receiver**

2 519. After his appointment, the Receiver took possession of and analyzed
3 DenSco's books and records, issuing a preliminary report on September 19, 2016,
4 which the Receiver incorporates by reference in this disclosure statement.

5 520. On December 9, 2016, the Receiver filed a notice of claim in the probate
6 court against the Estate of Denny Chittick, asserting, inter alia, claims that Chittick had
7 breached fiduciary duties owed DenSco.

8 521. The Estate issued a notice of disallowance of the claim on February 3,
9 2017.

10 522. On December 23, 2016, the Receiver issued a status report, which the
11 Receiver incorporates by reference in this disclosure statement. That report contains,
12 among other things, the Receiver's conclusion that DenSco was insolvent in January
13 2014.

14 523. The Receiver monitored and took part in a bankruptcy proceeding that
15 Menaged initiated. Among other things, the Receiver's counsel conducted an
16 examination of Menaged, and the Receiver filed an adversary complaint and a
17 complaint to determine nondischargeability, and obtained a judgment against Menaged.

18 524. On June 22, 2017, Clark Hill submitted two proofs of claim to the
19 Receiver, which are discussed below.

20 525. On September 14, 2017, the Receiver filed a petition with the
21 Receivership Court seeking to file this action. The petition was granted on October 10,
22 2017.

23 526. On September 25, 2017, the Receiver filed in the Receivership Court
24 Petition No. 37 – Petition for Approval of Receiver's Final Recommendations
25 Approving Claims in DenSco Receivership, in which the Receiver recommended that
26 Clark Hill's claims be denied "because the Receiver has determined that Clark Hill had
27 a conflict of interest that precluded it from performing the legal services without
28 violating fiduciary duties to DenSco. Despite providing Clark Hill with notice of the

1 Receiver's recommendation of the denial of its two claims and a copy of the Claims
2 Report, Clark Hill failed to object or respond to the Receiver's recommendation that
3 their two non-investor claims submitted by Clark Hill be denied." The Petition was
4 granted on October 27, 2017.

5 527. This action was filed on October 16, 2017.

6 528. On December 22, 2017, the Receiver issued a status report describing the
7 status of the receivership, which the Receiver incorporates by reference in this
8 disclosure statement.

9 529. On March 15, 2019, the Receiver issued a status report describing the
10 status of the receivership, which the Receiver incorporates by reference in this
11 disclosure statement.

12 **II. LEGAL BASIS FOR CLAIMS**

13 The Receiver has filed substantive motions in the case. The Receiver
14 incorporates by this reference all substantive pleadings filed by the Receiver including
15 pleadings on a prima facie case for punitive damages, pleadings on the common law
16 defense of in pari delicto, and pleadings on matters of evidence.

18 **A. Count One (Legal Malpractice)**

19 The Receiver asserts that Defendants were negligent. To sustain that claim, the
20 Receiver "must prove the existence of a duty, breach of duty, that the defendant's
21 negligence was the actual and proximate cause of injury, and the 'nature and extent' of
22 damages." *Glaze v. Larsen*, 207 Ariz. 26, 29, ¶ 12, 83 P.3d 26, 29 (2004) (citing
23 *Phillips v. Clancy*, 152 Ariz. 415, 418, 733 P.2d 300, 303 (App. 1986)).

24 That Defendants owed a duty to DenSco is undisputed, established by, *inter alia*,
25 the engagement letter Clark Hill issued in September 2013.

26 The Receiver will establish, through expert testimony, that Clark Hill fell below
27 the standard of care by, *inter alia*, (i) failing to advise DenSco at the outset of
28

1 representation of DenSco in September 2013 that DenSco could not sell any promissory
2 notes without first issuing a new POM; (ii) failing to advise DenSco of the
3 consequences of having previously sold promissory notes without an adequate
4 disclosure document; (iii) accepting the responsibility of preparing a new POM and
5 then following Chittick's instruction not to perform work on the new POM until
6 Chittick wished to do so, knowing that DenSco was continuing its business operations
7 and selling promissory notes to rollover investors and others; (iv) failing to properly
8 advise DenSco during the first week of January 2014 about the actions DenSco was
9 required to take in light of the loan losses caused by Chittick's gross mismanagement of
10 DenSco's lending practices and Chittick's intent to pursue a "work out" with Menaged;
11 (v) advising DenSco in January 2014 and thereafter that it could sell promissory notes
12 without first issuing a new POM and could continue its business operations, including
13 the sale of promissory notes, while indefinitely delaying the issuance of a new POM;
14 (vi) negligently advising DenSco during January 2014 about the procedures DenSco
15 should employ in loaning monies to Menaged; and (vii) failing to withdraw from the
16 representation of DenSco in September 2013 and at later points in time when it was
17 apparent that Chittick intended to take actions that were harmful to the interests of
18 DenSco and its creditors, including its investors.

19 The Receiver will establish that, but for Defendants' negligence, DenSco would
20 not have suffered the losses described in the expert report of David Weekly. Those
21 losses were reasonably foreseeable to Beauchamp and others at Clark Hill.

22 The Receiver alternatively asserts that Clark Hill and Beauchamp breached
23 fiduciary duties they owed DenSco. "[T]he essential elements of legal malpractice
24 based on breach of fiduciary duty include the following: (1) an attorney-client
25 relationship; (2) breach of the attorney's fiduciary duty to the client; (3) causation, both
26 actual and proximate; and (4) damages suffered by the client." *Cecala v. Newman*, 532
27 F. Supp. 2d 1118, 1135 (D. Ariz. 2007) (internal citations omitted).
28

1 The Receiver will establish through expert testimony that Defendants breached
2 their duty of loyalty to their only client, DenSco, by taking actions after September 12,
3 2013 that were intended to advance Chittick's rather than DenSco's interests, and by
4 failing to take actions that would have advanced DenSco's interests. The Receiver will
5 establish that, but for Defendants' breach of fiduciary duty, DenSco would not have
6 suffered the losses described in the expert report of David Weekly and that those losses
7 were reasonably foreseeable to Beauchamp and others at Clark Hill.

8 In addition to the losses DenSco suffered as a result of Defendants' breach of
9 fiduciary duty, DenSco also seeks an order requiring Clark Hill to disgorge fees it
10 received from DenSco for work performed after Clark Hill breached its fiduciary duties.
11 DenSco relies on Restatement (Third) of the Law Governing Lawyers § 37, which
12 states: "A lawyer engaging in clear and serious violation of duty to a client may be
13 required to forfeit some or all of the lawyer's compensation for the matter.
14 Considerations relevant to the question of forfeiture include the gravity and timing of
15 the violation, its willfulness, its effect on the value of the lawyer's work for the client,
16 any other threatened or actual harm to the client, and the adequacy of other remedies."
17 The Receiver relied on § 37 in denying Clark Hill's proofs of claim.

18 **B. Count Two (Aiding and Abetting Breach of Fiduciary Duty)**

19 The Receiver asserts that Clark Hill and Beauchamp aided and abetted Chittick
20 in breaching fiduciary duties Chittick owed DenSco. Arizona recognizes that "lawyers
21 have no special privilege against civil suit" and are "subject to liability to a client or
22 nonclient when a nonlawyer would be in similar circumstances" including claims for
23 aiding and abetting. *Chalpin v. Snyder*, 220 Ariz. 413, 424, ¶¶ 44-45, 207 P.3d 666,
24 677 (2008) (internal citations omitted). It is also generally recognized that "a corporate
25 attorney may be liable . . . for aiding and assisting the directors and officers in
26 breaching their fiduciary duties." 3 William Fletcher, *Cyclopedia of the Law of Private*
27 *Corporations* § 839.10 (Apr. 2018 update).
28

1 To sustain this claim, the Receiver must establish that: “(1) [Chittick breached a
2 fiduciary duty he owed DenSco] causing injury to [DenSco]; (2) [Defendants] knew
3 [Chittick] breached a duty; (3) [Defendants] substantially assisted or encouraged
4 [Chittick] in the breach; and (4) a causal relationship exists between the assistance or
5 encouragement and [Chittick’s] breach.” *Security Title Agency, Inc. v. Pope*, 219 Ariz.
6 480, 491, ¶ 44, 200 P. 3d 977, 988 (App. 2008).

7 Chittick, as DenSco’s only director and officer, owed fiduciary duties to
8 DenSco. “In Arizona a director of a corporation owes a fiduciary duty to the
9 corporation and its stockholders. This duty is in the nature of a trust relationship”
10 *Atkinson v. Marquart*, 112 Ariz. 304, 306, 541 P.2d 556, 558 (1975) (citations omitted).
11 These fiduciary duties are both “implied by law,” *Dooley v. O’Brian*, 226 Ariz. 149,
12 154, ¶ 18, 244 P.3d 586, 591 (App. 2010), and codified by statute. *See* A.R.S. § 10-830
13 (duties of directors); A.R.S. § 10-842 (duties of officers).

14 Chittick also owed fiduciary duties to DenSco’s creditors, including its investors.
15 Under Arizona law, a director’s fiduciary duties “can apply even to creditors when a
16 corporation enters the zone of insolvency, without regard to the terms of the underlying
17 contracts.” *Dooley*, 226 Ariz. at 154, ¶ 18, 244 P.3d at 591. “Once a corporation
18 becomes insolvent, the creditors join the class of persons to whom directors owe a
19 fiduciary duty to maximize the economic value of the firm for *all* of the firm’s
20 creditors.” *Dawson v. Withycombe*, 216 Ariz. 84, 107, ¶71, 163 P.3d 1034, 1057
21 (2008).

22 Among Chittick’s duties was the duty of loyalty. He was required to act in
23 “good faith” and in the manner he “reasonably believe[d] to be in the best interests of
24 the corporation.” A.R.S. § 10-830(A)(1), (3); A.R.S. § 10-842(A)(1), (3). “The duty of
25 loyalty mandates that the best interest of the corporation . . . take precedence over any
26 interest possessed by a director.” *Fletcher, supra*, at § 837.60; *see also AMERCO v.*
27 *Shoen*, 184 Ariz. 150, 160, 907 P.2d 536, 546 (App. 1995) (approving jury instruction
28 to the effect that “defendants were obliged to place the corporation’s interest before

1 their own”). Loyalty therefore includes “a duty to disclose information to those who
2 have a right to know the facts.” Fletcher, *supra*, at § 837.50.

3 Chittick also owed a separate duty of care. He was required to exercise a “high
4 degree of care,” *Atkinson*, 112 Ariz. at 306, 541 P.2d at 558, including “the care an
5 ordinarily prudent person in a like position would exercise under similar
6 circumstances.” A.R.S. §§ 10-830(A)(2), 10-842(A)(2). Care includes ensuring that
7 the corporation complies with the law. *See, e.g., Big 4 Advert. Co. of Phx. v. Clingan*,
8 15 Ariz. 34, 38, 135 P. 713, 715 (1913) (“It is the duty of the board of directors to see
9 that the law’s requirements are observed.”).

10 Care also includes investigation. For example, “[t]he existence of a ‘red flag’
11 that might cause suspicion may require a director to make reasonable inquiries.”
12 Fletcher, *supra*, at § 1034.80. While the business judgment rule sometimes calls for
13 judicial deference to a director’s decision, that rule does not apply when, for instance,
14 the director fails to gather “all material information reasonably available” or is
15 “personally interested” in the decision. *Resolution Trust Corp. v. Dean*, 854 F. Supp.
16 626, 636, 644 (first quoting *Blumenthal v. Teets*, 155 Ariz. 123, 128, 745 P.2d 181, 186
17 (App. 1987); then citing *Shoen v. Shoen*, 167 Ariz. 58, 65, 804 P.2d 787, 794 (App.
18 1990)); *see also* Fletcher, *supra*, at § 1040 (“To gain the protection of the business
19 judgment rule, a director must have been disinterested, independent, and informed.”).
20 Even under the business judgment rule, a director still is liable for “gross negligence.”
21 *Resolution Trust Corp.*, 854 F. Supp. at 635; *see also* Fletcher, *supra*, at § 1040 (“[T]he
22 presumptions arising from the business judgment rule may be overcome by showing
23 irrationality or inattention on the part of corporate officers or directors.”).

24 Clark Hill knew that Chittick owed fiduciary duties to DenSco and its investors,
25 as is evidenced by numerous emails Beauchamp authored. *See, e.g.,* Feb. 4, 2014 Email
26 from Beauchamp to Chittick, at DIC0006673 (“you cannot obligate DenSco to further
27 help Scott, because that would breach your fiduciary duty to your investors.”); Feb. 9,
28 2014 Email from Beauchamp to Chittick, at DIC0006703 (“Denny: Please understand

1 that you are limited in what risk or liability you can assume. Your fiduciary duty to
2 your investors makes this a difficult balancing act.”); Feb. 14, 2014 Email from
3 Beauchamp to Chittick, at DIC0006698 (“Unfortunately, it is not your money. It is
4 your investors’ money. So you have a fiduciary duty.”).

5 Clark Hill continues to acknowledge that Chittick owed these duties. *See*
6 Defendants’ Fifth Supplemental Rule 26.1 Disclosure Statement at 12-13, 15 (referring
7 to Chittick’s “fiduciary duty” to DenSco’s investors); *see also* Deposition of David
8 George Beauchamp, 7/19/2018, at 135:8-10 (stating that Chittick’s “fiduciary duty was
9 to DenSco and the investors”), 157:19-21 (“Q. Mr. Beauchamp, DenSco owed
10 fiduciary duties to its investors. True? A. Correct.”), 162:17-20 (“Q. You understand
11 that DenSco owed a duty of loyalty to its investors. That’s part of a fiduciary duty,
12 correct? A. Correct.”), 172:22-173:1 (“Q. . . . DenSco has a fiduciary duty to disclose
13 material facts to its investor. True? A. That is correct.”), 330:24-331:3 (“Q. . . .
14 DenSco had a fiduciary duty of loyalty and disclosure to its investors. True? A.
15 Correct.”); 337:11-15 (“Q. DenSco had a fiduciary duty of diligence to its investors.
16 True? [Objection to form.] A. It had a fiduciary duty to use sound business judgment
17 in doing the loans, yes.”).

18 Chittick breached these fiduciary duties by, *inter alia*,

- 19 • failing to acquire the manpower and resources necessary to effectively
20 manage DenSco’s ever-increasing loan volume;
- 21 • using lax and grossly negligent lending practices that violated the terms of
22 DenSco’s loan documents and representations made to investors in
23 DenSco’s POMs;
- 24 • instructing Clark Hill not to do any work on a new POM while causing
25 DenSco to continue selling promissory notes between September and
26 December 2013;
- 27 • failing to acknowledge that the loan losses evident from Bryan Cave’s
28 January 6, 2014 demand letter and the claims of other hard money lenders

1 were the result of his own grossly negligent practice of disbursing loan
2 proceeds to Menaged, contrary to the terms of the Mortgage form and
3 representations made to investors in DenSco's POMs;

- 4 • failing to question, much less investigate, the veracity of Menaged's
- 5 claim that his "cousin" had caused those losses;
- 6 • failing to investigate where the funds supposedly taken by Menaged's
- 7 "cousin" had gone;
- 8 • pursuing a work out plan with Menaged that was not in the best interests
- 9 of DenSco and its investors and other creditors, instead of pursuing legal
- 10 remedies against Menaged;
- 11 • deciding to continue giving loan proceeds directly to Menaged, rather
- 12 than a Trustee, contrary to the terms of the Mortgage form and
- 13 representations made to investors in DenSco's POMs;
- 14 • causing DenSco to sell promissory notes between January and May 2014
- 15 without first issuing a new POM;
- 16 • instructing Clark Hill to not do more work on a new POM other than the
- 17 limited work that Clark Hill performed in May 2014 to prepare a new
- 18 POM; and
- 19 • causing DenSco to sell promissory notes between June 2014 and June
- 20 2016 without first issuing a new POM;

21 Defendants' knowledge of Chittick's breaches of fiduciary duty can be inferred
22 from the circumstances. *Pope*, 219 Ariz. at 491, ¶ 45, 200 P. 3d at 988. Indeed, some
23 courts have held that "[c]onstructive knowledge is adequate when the aider and abettor
24 has maintained a long-term or in-depth relationship with the fiduciary." *Chem-Age*
25 *Industries, Inc. v. Glover*, 652 N.W. 2d 756, 775 (S.D. 2002) (internal citation omitted).
26 The facts set forth above demonstrate Clark Hill's intimate knowledge of, and
27 participation in, Chittick's breaches of fiduciary duty.

1 Causation “requires proof of a causal connection between the defendant’s
2 assistance or encouragement and the primary tortfeasor’s commission of the tort,
3 although ‘but for’ causation is not required.” *Pope*, 219 Ariz. at 491, ¶ 47, 200 P.3d
4 at 988. “The test is whether the assistance makes it ‘easier’ for the violation to occur,
5 not whether the assistance was necessary.” *Wells Fargo Bank v. Ariz. Laborers,*
6 *Teamsters & Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 485, ¶
7 31, 38 P.3d 12, 23 (2002). *Cf. Granewich v. Harding*, 329 Or. 47, 59, 985 P.2d 788,
8 800 (1999) (allegation that lawyer for corporate client took actions “outside the scope
9 of any legitimate employment on behalf of the corporation” sufficient to allege
10 substantial assistance in aiding and abetting non-client corporate constituent’s breach of
11 fiduciary duties).

12 The facts set forth above demonstrate that Clark Hill provided substantial
13 assistance to Chittick’s breaches of fiduciary duty over an extended period of time.

14 **C. Punitive Damages**

15 The Receiver seeks punitive damages. To recover punitive damages, the
16 Receiver must “prove by clear and convincing evidence that the defendant engaged in
17 aggravated and outrageous conduct with an ‘evil mind.’ A defendant acts with the
18 requisite evil mind when he intends to injure or defraud, or deliberately interferes with
19 rights of others, ‘consciously disregarding the unjustifiable substantial risk of
20 significant harm to them.’ Important factors to consider when deciding whether a
21 defendant acted with an evil mind include (1) the reprehensibility of defendant’s
22 conduct and the severity of the harm likely to result, (2) any harm that has occurred,
23 (3) the duration of the misconduct, (4) the defendant’s awareness of the harm or risk of
24 harm, and (5) any concealment of it.” *Hyatt Regency Phoenix Hotel Co. v. Winston &*
25 *Strawn*, 184 Ariz. 120, 132, 907 P.2d 506 (App. 1995) (citations omitted).

26 Punitive damages are appropriately awarded when, as here, an attorney breaches
27 fiduciary duties, acts out of self-interest, and attempts to conceal his misconduct. *See,*
28 *e.g., Elliott v. Videan*, 164 Ariz. 113, 791 P.2d 639 (App. 1989) (punitive damages were

1 appropriate where attorney had conflict of interest, concealed it from client, and acted
2 to benefit at client's expense); *Asphalt Engineers v. Galusha*, 160 Ariz. 134, 770 P.2d
3 1180 (App. 1989) (affirming award of punitive damages against attorney who breached
4 ethical duties to his client and concealed his misconduct).

5 "[Clark Hill] can be vicariously liable in punitive damages for acts that its
6 partner [Beauchamp] performed in the ordinary course of the partnership's business."
7 *Hyatt Regency*, 184 Ariz. at 130, 907 P.2d at 130.

8 The Receiver has established a prima facie case for punitive damages based on
9 Beauchamp's and Clark Hill's: (i) aiding and abetting Denny Chittick's breaches of
10 fiduciary duty to DenSco and investors of DenSco, which in turn breached duties they
11 owed DenSco; (ii) conflicts of interest; and (iii) actions taken to conceal their
12 misconduct.

13 Evidence of that prima facie case is drawn from the documents produced by
14 Clark Hill to date, Clark Hill's Rule 26.1 Initial Disclosure Statement, Beauchamp's
15 answers to interrogatories, the depositions and exhibits thereto of Beauchamp, Daniel
16 Schenck, and Robert Anderson, and the evidence supporting the Receiver's motion that
17 it has made a prima facie case for punitive damages, which are incorporated herein by
18 reference. Without limiting the evidence on which the Receiver may rely, the evidence
19 developed to date includes the following facts or inferences drawn therefrom:

20 a. When Clark Hill undertook the representation of DenSco in
21 September 2013, it knew through Beauchamp that DenSco's 2011 POM had expired on
22 July 1, 2013 and that DenSco had not issued a new POM, even though one-half of
23 DenSco's investors held promissory notes that were due to expire, and would almost
24 certainly be renewed through the sale of new promissory notes between July and
25 December 2013. Despite that knowledge, Clark Hill and Beauchamp agreed with
26 Chittick, as a condition of opening a file to prepare a new POM, that the firm would do
27 no work on a new POM until Chittick instructed Clark Hill to do so.
28

1 b. As a result of Clark Hill's and Beauchamp's knowing participation
2 in this breach of fiduciary duty by Chittick, DenSco sold more than \$8 million of
3 promissory notes between September and December 2013 to investors who did not
4 receive a new POM, and were unaware of DenSco's perilous financial condition and
5 Chittick's gross mismanagement of DenSco's loan portfolio. Those investors would
6 not have purchased promissory notes if they had known those facts. Without those
7 funds, and funds DenSco raised thereafter through Clark Hill's and Beauchamp's
8 assistance, DenSco could not have continued operating.

9 c. In January 2014, Clark Hill and Beauchamp received clear,
10 unequivocal evidence that Chittick's mismanagement of DenSco's loan portfolio,
11 specifically his decision to give loaned funds directly to borrowers, rather than to a
12 Trustee, as DenSco's loan documents required and as DenSco's POMs had represented,
13 had resulted in a potential loss to DenSco of between \$11.6 and \$14.5 million, or
14 between 25% and 30% of the \$47 million that Clark Hill understood DenSco had raised
15 as of June 2013.

16 d. Clark Hill and Beauchamp knew that DenSco's interests and
17 Chittick's interests were then in conflict, and that DenSco was their only client.

18 e. Clark Hill and Beauchamp nevertheless advised Chittick that:
19 (1) he could pursue a "work out" with Menaged that was eventually documented in the
20 Forbearance Agreement which was not in DenSco's interests and was intended to
21 protect Chittick from claims by DenSco's investors; (2) DenSco could continue to sell
22 promissory notes without issuing a new POM; and (3) DenSco could continually delay
23 the issuance of a new POM while Chittick pursued this workout plan.

24 f. Clark Hill and Beauchamp acted out of their own self-interest,
25 knowing that if DenSco instead terminated its relationship with Menaged and informed
26 its investors of Chittick's mismanagement, Clark Hill and Beauchamp faced potential
27 claims by investors who had purchased \$8 million of promissory notes from DenSco
28 without adequate disclosure during the four-month period that Clark Hill and

1 Beauchamp had been advising the firm on securities law matters, but failed to advise
2 Chittick that DenSco could not sell those notes without first issuing a new POM and
3 had abided by Chittick's instruction not to prepare the new POM the firm had been
4 retained to prepare.

5 g. In January 2014, Clark Hill knew that Menaged was an unreliable
6 creditor, that Chittick had flagrantly disregarded DenSco's lending documents and
7 representations made to investors through DenSco's previous POMs by giving millions
8 of loaned funds directly to Menaged, rather than to a Trustee. Clark Hill also knew that
9 Chittick needed to continue loaning money to fund the planned "work out" and wanted
10 to continue his past practice of giving loaned funds directly to Menaged. Rather than
11 tell Chittick that his past practices were a breach of fiduciary duty and could not
12 continue, Clark Hill acquiesced in Chittick's plan to continue giving loaned funds
13 directly to Menaged, thereby exposing DenSco and its investors to even greater losses
14 than those caused by Chittick's gross mismanagement before that date.

15 h. With Clark Hill's knowing assistance, Chittick caused DenSco to
16 sell more than \$5 million of promissory notes between January and May 2014 to
17 investors who did not receive a new POM, and were unaware of DenSco's perilous
18 financial condition, Chittick's gross mismanagement of DenSco's loan portfolio, and
19 his pursuit of a "work out" with Menaged that was not in DenSco's interests and
20 exposed the company and its investors to additional financial loss. Those investors
21 would not have purchased promissory notes if they had known those facts. Without
22 those funds, and funds DenSco raised thereafter through Clark Hill's assistance,
23 DenSco could not have continued operating.

24 i. In May 2014, at Chittick's request, Clark Hill agreed to stop the
25 minimal steps it had taken to prepare a new POM and assured Chittick that DenSco
26 could continue its operations, including the sale of promissory notes, while indefinitely
27 delaying the issuance of a new POM.
28

1 j. Clark Hill continued to represent DenSco, awaiting his decision to
2 finally direct the firm to finish preparing a new POM. Chittick continued to operate
3 DenSco, selling still more promissory notes to investors who did not receive a new
4 POM and were not given information about DenSco's financial condition and Chittick's
5 management of the company.

6 k. After Chittick's death, Clark Hill and Beauchamp failed to
7 withdraw from representing DenSco despite their knowledge of Chittick's
8 mismanagement of DenSco and evidence that Chittick blamed Clark Hill and
9 Beauchamp for having negligently represented DenSco.

10 l. In addition to undertaking that conflicted representation, Clark Hill
11 and Beauchamp agreed to also represent the Estate of Denny Chittick, despite knowing
12 that the interests of DenSco and the Estate were adverse, because DenSco had
13 substantial claims against the Estate arising from Chittick's multiple breaches of
14 fiduciary duty he owed DenSco.

15 m. Clark Hill and Beauchamp sought to represent DenSco and the
16 Estate because it hoped to cover up evidence of its own misconduct and deter the ACC,
17 investors, or the Receiver from pursuing claims against them.

18 n. As part of their plan to protect themselves from liability, Clark Hill
19 and Beauchamp began stating, during their representation of DenSco, that they had
20 terminated their representation of DenSco because of Chittick's alleged failure to
21 follow their advice. They continued to make that claim and have done so in this
22 litigation. The Receiver believes the claims are untrue, as they are: (1) contrary to
23 Clark Hill's and Beauchamp's actual course of conduct; (2) not evidenced by any
24 document; (3) in conflict with certain documents in Clark Hill's possession, some of
25 which Clark Hill failed to disclose; and (4) inconsistent with what a reasonable law firm
26 would have done if it had, in fact, terminated the representation of a client who failed to
27 follow the firm's advice and was engaging in violations of law.

1 o. Clark Hill and Beauchamp also colluded with the Estate and its
2 counsel to conceal material information from the Receiver and/or delay his receipt of
3 that information by, among other things, making knowing false statements to the
4 Receivership Court. Clark Hill did so with the knowledge and participation of its
5 Office of General Counsel.

6 **D. Joint and Several Liability**

7 Arizona law provides that a defendant is “responsible for the fault of another
8 person,” including non-parties, if both the defendant and the other person at fault acted
9 in concert. Ariz. Rev. Stat. § 12-2506(D)(1). That is, Clark Hill will be jointly and
10 severally liable if it “enter[ed] into a conscious agreement to pursue a common plan or
11 design to commit an intentional tort.” § 12-2506(F)(1).

12 Clark Hill has admitted that DenSco owed fiduciary duties to its investors, and
13 that Clark Hill was aware that DenSco owed these fiduciary duties. Aiding and abetting
14 a breach of fiduciary duty is an intentional tort. Part of Plaintiff’s theory of the case is
15 that Clark Hill initially advised DenSco that it did not need to disclose material facts to
16 investors while a forbearance agreement was drawn up. Then, Clark Hill negotiated
17 and recommended a forbearance agreement between DenSco and Menaged that itself
18 was a breach of fiduciary duty to DenSco’s investors. The forbearance agreement
19 violated the terms of the 2011 Private Offering Memorandum by subordinating
20 DenSco’s debt to other hard money lenders and was a fig leaf to fool investors that
21 DenSco was working itself out of an overwhelming debt. Then, Clark Hill sat quietly
22 by and allowed DenSco over a year to work itself out of the Menaged fraud problem –
23 telling Chittick that DenSco could do so without disclosing a thing to investors.

24 Plaintiff will argue that by its multiple acts of aiding and abetting a breach of
25 fiduciary duty that DenSco owed to its investors, Clark Hill is jointly and severally
26 liable with both Chittick and Menaged for damages. There were three parties who
27 negotiated and agreed to the forebearance agreement, Clark Hill, Managed and Chittick.
28

1 They acted in concert to create an agreement that on its face and in practice
2 subordinated Densco's notes into junior positions.

3 **III. ANTICIPATED TRIAL WITNESSES**

4 The Receiver presently anticipates calling the following witnesses:

5 1. **David Beauchamp** (c/o John DeWulf, Coppersmith Brockelman,
6 PLC, 2800 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999): Mr.
7 Beauchamp will testify about the facts set forth above in a manner consistent with the
8 deposition testimony he has given in this matter.

9 2. **Robert Anderson** (c/o John DeWulf, Coppersmith Brockelman,
10 PLC, 2800 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999):
11 Consistent with his deposition testimony, Mr. Anderson will testify that he did not
12 undertake any effort to advise DenSco about deficiencies in its lending practices during
13 January 2014, as Mr. Beauchamp claimed in his deposition. Mr. Anderson may testify
14 on other matters addressed during his deposition.

15 3. **Daniel Schenck** (c/o John DeWulf, Coppersmith Brockelman,
16 PLC, 2800 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999): Mr.
17 Schenck will testify that he did not undertake any effort to advise DenSco about
18 deficiencies in its lending practices during January 2014, as Mr. Beauchamp claimed in
19 his deposition. Mr. Schenck may testify about other matters addressed during his
20 deposition.

21 4. **Mark Sifferman** (c/o John DeWulf, Coppersmith Brockelman,
22 PLC, 2800 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999): Mr.
23 Sifferman, Clark Hill's former Assistant General Counsel, will testify about his actions
24 in reviewing and revising Beauchamp's declaration that was submitted to the
25 Receivership Court, his attendance at the August 18, 2016 hearing, and other matters
26 addressed during his deposition.

1 5. **Ed Hood** (c/o John DeWulf, Coppersmith Brockelman, PLC, 2800
2 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999): Mr. Hood, Clark
3 Hill's General Counsel, will testify about matters addressed during his deposition.

4 6. **Ryan Lorenz** (c/o John DeWulf, Coppersmith Brockelman, PLC,
5 2800 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999): Mr.
6 Lorenz will testify about the proofs of claim he submitted to the Receiver in June 2017,
7 his accompanying affidavit, and the information contained therein.

8 7. **Michelle M. Tran** (c/o John DeWulf, Coppersmith Brockelman,
9 PLC, 2800 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999): Ms.
10 Tran will testify about her meeting with David Beauchamp and Shawna Heuer in
11 August 2016, the conflict check conducted by Clark Hill at that time, and her work as
12 counsel to Ms. Heuer and the Estate of Denny Chittick.

13 8. **Shawna Chittick Heuer** (c/o James Polese, Gammage &
14 Burnham, PLC, Two N. Central Avenue, 15th Floor, Phoenix, AZ 85004; (602) 256-
15 0566): Plaintiff anticipates offering portions of Ms. Heuer's deposition testimony.

16 9. **Robert Koehler** (RLS Capital, Inc., 4455 E Camelback Road,
17 Suite D135, Phoenix, AZ 85018; (480) 945-2799): Mr. Koehler is expected to testify
18 consistent with his deposition testimony in this matter.

19 10. **Scott Gould** (contact information to be supplemented): Mr. Gould
20 is expected to testify consistent with his deposition testimony in this matter.

21 11. **Robert Brinkman** (15001 S. 5th Avenue, Phoenix, AZ 85045;
22 rbrinkman@cox.net; (480) 460-8646): Mr. Brinkman is expected to testify about his
23 communications with David Beauchamp in August 2016.

24 12. **Steven G. Bunger** (6134 W. Trovita Place, Chandler, AZ 85226;
25 steve@bunger.me; (480) 961-4002): Mr. Bunger is expected to testify consistent with
26 his deposition testimony in this matter.
27
28

1 13. **Brian Imdieke** (6173 W. Victoria Place, Chandler, AZ 85226;
2 b-imdieke@cox.net; bji6173@gmail.com; (480) 694-7850): Mr. Imdieke is expected to
3 testify consistent with his deposition testimony in this matter.

4 14. **Warren Bush** (P.O. Box 92080, Albuquerque, NM 87199-2080;
5 wbush1120@comcast.net; (505) 856-7398; (505) 264-0773): Mr. Bush is expected to
6 testify consistent with his deposition testimony in this matter.

7 15. **Paul A. Kent** (23 E. 15th Street, Tempe, AZ 85281;
8 paul_a_kent@yahoo.com; (480) 213-7231): Mr. Kent is expected to testify consistent
9 with his deposition testimony in this matter.

10 16. **Patricia S. Miller** (701 E. Front Street #602, Coeur d'Alene, ID
11 83814; patsmiller@verizon.net; (208) 818-6735 Marvin; (208) 818-6734 Pat): Mrs.
12 Miller is expected to testify consistent with her deposition testimony in this matter.

13 17. **Coralee Thompson** (23233 N. Pima Road #113-240, Scottsdale,
14 AZ 85255; thompscg2@cox.net; (480) 993-8080): Ms. Thompson is expected to testify
15 consistent with her deposition testimony in this matter.

16 18. **Bill Swirtz** (6054 W. Trovita Place, Chandler, AZ 85226;
17 Bill.Swirtz@apollogrp.edu; (602) 315-8080): Mr. Swirtz is expected to testify
18 consistent with his deposition testimony in this matter

19 19. **Barry Luchtel** (c/o Ryan Murphy, Esq., Fredrikson & Byron,
20 P.A., Suite 4000, 200 South Sixth Street, Minneapolis, MN 55402; (612) 492-7310):
21 Mr. Luchtel is expected to testify consistent with his deposition testimony in this
22 matter.

23 20. **Kevin R. Merritt** (Gammage & Burnham, PLC, Two N. Central
24 Avenue, 15th Floor, Phoenix, AZ 85004; (602) 256-0566): Mr. Merritt is expected to
25 testify about work he performed in 2007 for DenSco regarding its loan agreements, and
26 his interactions with David Beauchamp in August, September and October 2016, and
27 the securing and retention of DenSco corporate records and computer equipment.
28

1 21. **James F. Polese** (Gammage & Burnham, PLC, Two N. Central
2 Avenue, 15th Floor, Phoenix, AZ 85004; (602) 256-0566): Mr. Polese is expected to
3 testify about actions he took in August, September and October 2016 as counsel to the
4 Estate of Denny Chittick and Shawna Chittick Heuer in her capacity as the Personal
5 Representative of Denny Chittick's Estate, his interactions with David Beauchamp, the
6 August 18, 2016 receivership hearing, and the securing and retention of DenSco
7 corporate records and computer equipment.

8 22. **Gary Clapper** (1300 W. Washington, Third Floor, Phoenix, AZ
9 85007; (602) 542-0152): Mr. Clapper is expected to testify about the ACC's
10 investigation of DenSco in August 2016, events leading to the ACC's filing of an
11 application for a preliminary injunction and the appointment of a receiver, and his
12 communications with Mr. Beauchamp in connection with the ACC's investigation.

13 23. **Peter S. Davis** (c/o Colin Campbell and Geoffrey Sturr, Osborn
14 Maledon, P.A., 2929 N. Central Avenue, Suite 2100, Phoenix, AZ 85012; (602) 640-
15 9377): Mr. Davis will testify consistent with his deposition testimony.

16 24. **Ryan W. Anderson** (Guttilla Murphy Anderson, 5415 E. High
17 Street, Suite 200, Phoenix, AZ 85054; (480) 304-8300): Mr. Anderson may be called
18 to testify about his interactions with David Beauchamp, Mark Sifferman, Kevin Merritt,
19 and James Polese between August 2016 and February 2017. He has knowledge of the
20 Receiver's attempts to obtain records and complications raised by Mr. Beauchamp's
21 assertion of the attorney-client privilege for Mr. Chittick individually and the late
22 disclosure by Clark Hill of such matters as the investor and Iggy letters and the
23 forbearance agreement.

24 25. **Sara Beretta** (c/o Colin Campbell and Geoffrey Sturr, Osborn
25 Maledon, P.A., 2929 N. Central Avenue, Suite 2100, Phoenix, AZ 85012; (602) 640-
26 9377): Ms. Beretta may be called to lay foundation for certain DenSco corporate
27 records.
28

1 26. **Custodian of Records for Bryan Cave** (contact information to be
2 supplemented): Plaintiff anticipates calling a representative of Bryan Cave to
3 authenticate records produced by Bryan Cave in response to a subpoena.

4 27. **Person to Authenticate Electronically Stored Information**
5 (contact information to be supplemented): Plaintiff anticipates calling a forensic
6 computer expert as a witness to authenticate documents maintained on computer
7 devices used by Denny Chittick in order to lay foundation for business records and
8 contemporaneous recording of information.

9 28. **Persons Who Have Been Deposed:** Plaintiff reserves the right to
10 call any witness, in addition to those listed above, who has been deposed in this matter.

11 29. **Witnesses Identified by Defendants:** Defendants reserve the
12 right to call at trial any witness Defendants have identified as a trial witness, even if
13 such designation has been withdrawn.

14 **IV. PERSONS WHO MAY HAVE RELEVANT KNOWLEDGE OR**
15 **INFORMATION**

16 **A. Persons Affiliated With DenSco**

17 1. **Shawna Chittick Heuer** (c/o James Polese, Gammage &
18 Burnham, PLC, Two N. Central Avenue, 15th Floor, Phoenix, AZ 85004; (602) 256-
19 0566): Ms. Heuer is Denny Chittick's sister. She has knowledge of certain facts set
20 forth above and matters addressed during her deposition.

21 2. **Kurt Johnson** (3317 E. Bell Road, Suite 101-265, Phoenix, AZ
22 85032; (602) 505-8117): Mr. Johnson is an attorney who provided certain legal
23 services to DenSco and is believed to have knowledge of those services.

24 3. **Robert Koehler** (RLS Capital, Inc., 4455 E Camelback Road,
25 Suite D135, Phoenix, AZ 85018; (480) 945-2799): Mr. Koehler was described in the
26 July 2011 POM as having entered into a written agreement with Chittick pursuant to
27 which he was a signatory on DenSco's bank account, was to have received on a weekly
28 basis "an updated spreadsheet of all properties currently being used as collateral for a

1 loan” and, on a monthly basis, “a spreadsheet of all the investors and what is owed to
2 them, and receives the monthly statements for all investors.” Mr. Koehler was an
3 investor in DenSco. After Mr. Chittick’s death and at the request of Ms. Heuer, Mr.
4 Koehler conducted a preliminary analysis of DenSco’s loan portfolio. He is believed to
5 have knowledge of DenSco’s business operations, books and records, and written
6 communications he received from Mr. Chittick at or around the time of his death.

7 **4. David Preston:** (Preston CPA, P.C., 1949 E. Broadway Road,
8 Suite 101, Tempe, AZ 85282; (480) 820-4419): Mr. Preston is a Certified Public
9 Accountant and an investor in DenSco. He provided professional services to DenSco.
10 He commented on the 2007 POM. He communicated with David Beauchamp after
11 Chittick’s death in 2016. He is believed to have knowledge of his dealings with Denny
12 Chittick, the professional services he provided to DenSco, his investment in DenSco,
13 his participation in the preparation of the 2007 POM, and his dealings with Mr.
14 Beauchamp.

15 **B. DenSco Investors**

16 **1. William and Helene Alber** (1551 W. Grand Canyon Drive,
17 Chandler, AZ 85248; wkalber@cox.net; (480) 200-8045): Mr. and Mrs. Alber are
18 believed to have knowledge of their communications with Mr. Chittick, investments in
19 DenSco through the Alber Family Trust, and their communications with Mr.
20 Beauchamp after Mr. Chittick’s death.

21 **2. Angels Investments, LLC** c/o Yusuf Yildiz (1609 W. 17th Street,
22 Tempe, AZ 85281; yusif@comsiscomputer.com; 480-258-8171): Mr. Yildiz is
23 believed to have knowledge of his communications with Mr. Chittick, the company’s
24 investments in DenSco, and his communications with Mr. Beauchamp after Mr.
25 Chittick’s death.

26 **3. BLL Capital, LLC** c/o Barry Luchtel (5550 Wild Rose Lane,
27 Suite 400, West Des Moines, IA 50266; (480)256-2274; (515) 225-0300): Mr. Luchtel
28 is believed to have knowledge of his communications with Mr. Chittick, the company’s

1 investments in DenSco, and his communications with Mr. Beauchamp after Mr.
2 Chittick's death.

3 4. **Robert Brinkman** (15001 S. 5th Avenue, Phoenix, AZ 85045;
4 rbrinkman@cox.net; (480) 460-8646): Mr. Brinkman is believed to have knowledge of
5 his communications with Mr. Chittick, investments in DenSco individually and through
6 the Brinkman Family Trust, and his communications with Mr. Beauchamp after Mr.
7 Chittick's death.

8 5. **Craig and Tomie Brown** (6135 W. Trovita Place, Chandler, AZ
9 85226; Trovita@gmail.com; (480)287-4622): Mr. and Mrs. Brown are believed to have
10 knowledge of their communications with Mr. Chittick, their investments in DenSco
11 individually and through their trust, and their communications with Mr. Beauchamp
12 after Mr. Chittick's death.

13 6. **Steven G. and Mary E. Bunger** (6134 W. Trovita Place,
14 Chandler, AZ 85226; steve@bunger.me; (480) 961-4002): Mr. and Mrs. Bunger are
15 believed to have knowledge of their communications with Mr. Chittick, investments in
16 DenSco through the Bunger Estate, and their communications with Mr. Beauchamp
17 after Mr. Chittick's death.

18 7. **Anthony Burdett** (1623 Common Drive, El Paso, TX 79936-
19 5235; Burdett.anthony@gmail.com; (915) 373-1850): Mr. Burdett is believed to have
20 knowledge of his communications with Mr. Chittick, his investments in DenSco
21 through his IRA, and his communications with Mr. Beauchamp after Mr. Chittick's
22 death.

23 8. **Kennen Burkhardt** (2030 S. Minnewawa Avenue, Fresno, CA
24 93727; KennenL@yahoo.com; (515) 537-5494; (949) 361-4335): Mr. Burkhardt is
25 believed to have knowledge of his communications with Mr. Chittick, his investments
26 in DenSco individually and through his IRA, and his communications with Mr.
27 Beauchamp after Mr. Chittick's death.
28

1 9. **Warren V. and Fay L. Bush** (P.O. Box 92080, Albuquerque, NM
2 87199-2080; wbush1120@comcast.net; (505) 856-7398; (505) 264-0773): Mr. and
3 Mrs. Bush are believed to have knowledge of their communications with Mr. Chittick,
4 their investments in DenSco, their involvement in the preparation of the 2011 POM,
5 and their communications with Mr. Beauchamp after Mr. Chittick's death.

6 10. **Mary L. Butler** (62 Cypress Court, Durango, CO 81301): Ms.
7 Butler is believed to have knowledge of her communications with Mr. Chittick, her
8 investments in DenSco through her IRA, and her communications with Mr. Beauchamp
9 after Mr. Chittick's death.

10 11. **Van H. Butler** (62 Cypress Court, Durrango, CO 81301;
11 butlerv@yahoo.com; (970) 749-9025): Mr. Butler is believed to have knowledge of his
12 communications with Mr. Chittick, his investments in DenSco individually and through
13 his IRA, and his communications with Mr. Beauchamp after Mr. Chittick's death.

14 12. **Thomas and Sara Byrne** (72 Commonwealth Avenue, San
15 Francisco, CA 94118; thomasbyrne11@gmail.com; (415) 990-4676): Mr. and Mrs.
16 Byrne are believed to have knowledge of their communications with Mr. Chittick, their
17 investments in DenSco through their trust, and their communications with Mr.
18 Beauchamp after Mr. Chittick's death.

19 13. **Erin P. Carrick Trust** c/o Gretchen P. Carrick (1404 W.
20 Lakeshore Drive, Whitefish, MT 59937; epcarrick@gmail.com; (541) 729-1990): Ms.
21 Carrick is believed to have knowledge of her communications with Mr. Chittick, her
22 investments in DenSco through the Trust, and her communications with Mr.
23 Beauchamp after Mr. Chittick's death.

24 14. **Gretchen P. Carrick** (P.O. Box 773656, Eagle River, AK 99577;
25 carricks3@ak.net; (541) 729-6878): Ms. Carrick is believed to have knowledge of her
26 communications with Mr. Chittick, her investments in DenSco through her Trust, and
27 her communications with Mr. Beauchamp after Mr. Chittick's death.
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1 15. **Averill Cate, Jr. and Mary Kris McIlwaine** (3661 N. Campbell
2 Avenue, Suite 372, Tucson, AZ 85719; acatejr@gmail.com; (520) 370-6997): Mr. Cate
3 and Ms. McIlwaine are believed to have knowledge of their communications with Mr.
4 Chittick, their investments in DenSco, and their communications with Mr. Beauchamp
5 after Mr. Chittick's death.

6 16. **Arden and Nina Chittick** (8028 F 53rd Avenue West, Mukilteo,
7 WA 98275; artnina@hotmail.com; (425) 205-8997): Mr. and Mrs. Chittick are
8 believed to have knowledge of their communications with Denny Chittick, their
9 investments in DenSco, and their communications with Mr. Beauchamp after Mr.
10 Chittick's death.

11 17. **Eldon and Charlene Chittick** (5869 W. Heine Road, Coeur
12 d'Alene, ID 83814; moandsam@yahoo.com; (208) 765-2702): Mr. and Mrs. Chittick
13 are believed to have knowledge of their communications with Denny Chittick, their
14 investments in DenSco through the Chittick Family Trust, and their communications
15 with Mr. Beauchamp after Mr. Chittick's death.

16 18. **Eileen Cohen** (1419 Peerless Place, Apt. 116, Los Angeles, CA
17 90035): Ms. Cohen is believed to have knowledge of her communications with Mr.
18 Chittick, her investments in DenSco, and her communications with Mr. Beauchamp
19 after Mr. Chittick's death.

20 19. **Herbert I. Cohen** (1419 Peerless Place, Apt. 116, Los Angeles,
21 CA 90035; (623) 866-3221): Mr. Cohen is believed to have knowledge of his
22 communications with Mr. Chittick, his investments in DenSco through his Trust, and
23 his communications with Mr. Beauchamp after Mr. Chittick's death.

24 20. **Dori Ann Davis** (5346 E. Herrera Road, Phoenix, AZ 85054;
25 doriann@cox.net; (602) 300-9740): Ms. Davis is believed to have knowledge of her
26 communications with Mr. Chittick, investments in DenSco through her Trust, and her
27 communications with Mr. Beauchamp after Mr. Chittick's death.
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1 21. **Glen P. Davis** (5346 E. Herrera Road, Phoenix, AZ 85054;
2 glenbo@cox.net; (602) 692-5862): Mr. Davis is believed to have knowledge of his
3 communications with Mr. Chittick, his investments in DenSco through his IRA, and his
4 communications with Mr. Beauchamp after Mr. Chittick's death.

5 22. **Jack J. Davis** (543 West Avenue, Rifle, CO 81650;
6 jackdavisdds@hotmail.com; (970) 625-1391): Mr. Davis is believed to have
7 knowledge of his communications with Mr. Chittick, his investments in DenSco, and
8 his communications with Mr. Beauchamp after Mr. Chittick's death.

9 23. **Samantha Davis** c/o Jack J. Davis (543 West Avenue, Rifle, CO
10 81650; jackdavisdds@hotmail.com; (970) 625-1391): Ms. Davis is believed to have
11 knowledge of her communications with Mr. Chittick, her investments in DenSco, and
12 her communications with Mr. Beauchamp after Mr. Chittick's death.

13 24. **Desert Classic Investments, LLC** c/o Steven G. Bunger (6134 W.
14 Trovita Place, Chandler, AZ 85226; steve@bunger.me; (602) 531-3100): Mr. Bunger
15 is believed to have knowledge of his communications with Mr. Chittick, the company's
16 investments in DenSco, and his communications with Mr. Beauchamp after Mr.
17 Chittick's death.

18 25. **Scott D. Detota** (1220 Ridgewood Land, Lake Villa, IL 60046
19 sdetota99@yahoo.com; (847) 736-0160): Mr. Detota is believed to have knowledge of
20 his communications with Mr. Chittick, his investments in DenSco, and his
21 communications with Mr. Beauchamp after Mr. Chittick's death.

22 26. **Amy Lee Dirks** (82 N. Acacia Drive, Gilbert, AZ 85233;
23 amydirks@hotmail.com; (480) 414-5552): Ms. Dirks is believed to have knowledge of
24 her communications with Mr. Chittick, her investments in DenSco through her IRA,
25 and her communications with Mr. Beauchamp after Mr. Chittick's death.

26 27. **Bradley Mark Dirks** (82 N. Acacia Drive, Gilbert, AZ 85233;
27 (602) 206-3041): Mr. Dirks is believed to have knowledge of his communications with
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1 Mr. Chittick, his investments in DenSco through his IRA, and his communications with
2 Mr. Beauchamp after Mr. Chittick's death.

3 28. **Dave DuBay** (6921 Trevett Lane, Casper, WY 82604; (307) 262-
4 7708; davedubay@gmail.com): Mr. DuBay is believed to have knowledge of his
5 communications with Mr. Chittick, his investments in DenSco, and his communications
6 with Mr. Beauchamp after Mr. Chittick's death.

7 29. **Ross H. Dupper** (6133 W. Victoria Place, Chandler, AZ 85261;
8 rdupper@rhdupper.com; (602) 768-8515): Mr. Dupper is believed to have knowledge
9 of his communications with Mr. Chittick, his investments in DenSco through his Trust,
10 and his communications with Mr. Beauchamp after Mr. Chittick's death.

11 30. **Todd F. Einick** (4757 E. Greenway Road, Suite 107B-107,
12 Phoenix, AZ 85032; switchback62@hotmail.com; (480) 202-6752): Mr. Einick is
13 believed to have knowledge of his communications with Mr. Chittick, investments in
14 DenSco through the Trust, and his communications with Mr. Beauchamp after Mr.
15 Chittick's death.

16 31. **Yusef Fielding** (1609 W. 17th Street, Tempe, AZ 85281; (480)
17 612-0666; yusef@comsiscomputer.com): Mr. Fielding is believed to have knowledge
18 of his communications with Mr. Chittick, his investments in DenSco, and his
19 communications with Mr. Beauchamp after Mr. Chittick's death.

20 32. **Fischer Family Holdings** (2011 N. 51st Avenue, B-240, Glendale,
21 AZ 85308; (480) 200-8730; kirkjfischer@yahoo.com): Mr. or Mrs. Fischer is believed
22 to have knowledge of their communications with Mr. Chittick, their investments in
23 DenSco, and their communications with Mr. Beauchamp after Mr. Chittick's death.

24 33. **GB 12, LLC** c/o Stanley Schloz (10050 E. Sonoran Vista Circle,
25 Scottsdale, AZ 85255; smschloz@msn.com; (480) 694-8868): Mr. Schloz is believed
26 to have knowledge of his communications with Mr. Chittick, the company's
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1 investments in DenSco, and his communications with Mr. Beauchamp after Mr.
2 Chittick's death.

3 34. **Stacy B. Grant** (2601 La Frontera Blvd., Round Rock, TX 78681;
4 (602) 499-9966): Ms. Grant is believed to have knowledge of her communications with
5 Mr. Chittick, her investments in DenSco through her IRA, and her communications
6 with Mr. Beauchamp after Mr. Chittick's death.

7 35. **Russell T. Griswold** (10 Suncrest Terrace, Onenta, NY 13820;
8 rgriswold3@stny.rr.com; (607) 437-3882): Mr. Griswold is believed to have
9 knowledge of his communications with Mr. Chittick, his investments in DenSco
10 through his IRA, and his communications with Mr. Beauchamp after Mr. Chittick's
11 death.

12 36. **Michael and Diana Gumbert** (607 Hurst Creek Road, Lakeview,
13 TX 78734; anthjen@yahoo.com (480) 250-6063): Mr. and Mrs. Gumbert are believed
14 to have knowledge of their communications with Mr. Chittick, their investments in
15 DenSco through their Trust, and their communications with Mr. Beauchamp after Mr.
16 Chittick's death.

17 37. **Nihad Hafiz** (23 Rae's Creek Lane, Coto de Caza, CA 92679;
18 nihad@yahoo.com; (949) 246-8135): Mr. Hafiz is believed to have knowledge of his
19 communications with Mr. Chittick, his investments in DenSco, and his communications
20 with Mr. Beauchamp after Mr. Chittick's death.

21 38. **Robert B. and Elizabeth A. Hahn** (15239 E. Redrock Drive,
22 Fountain Hills, AZ 85268; hahnaz2@cox.net; (602) 769-8385): Mr. and Mrs. Hahn are
23 believed to have knowledge of their communications with Mr. Chittick, their
24 investments in DenSco through the Trust, and their communications with Mr.
25 Beauchamp after Mr. Chittick's death.

26 39. **Ralph L. Hey** (P.O. Box 62, Westcliffe, CO 82152;
27 hey.ralph01@gmail.com; (719) 207-1313): Mr. Hey is believed to have knowledge of
28

1 his communications with Mr. Chittick, his investments in DenSco, and his
2 communications with Mr. Beauchamp after Mr. Chittick's death.

3 40. **Dale W. and Kathy L. Hickman** (5477 W. Heine Road, Coeur
4 d'Alene, ID 83814; hikthestik@aol.com; (208) 215-6378): Mr. and Mrs. Hickman are
5 believed to have knowledge of their communications with Mr. Chittick, their
6 investments in DenSco, and their communications with Mr. Beauchamp after Mr.
7 Chittick's death.

8 41. **Craig and Samantha Hood** (8420 E. Cactus Wren Road,
9 Scottsdale, AZ 85250; greeraz@gmail.com; (602)317-3753): Mr. and Mrs. Hood are
10 believed to have knowledge of their communications with Mr. Chittick, their
11 investments in DenSco, and their communications with Mr. Beauchamp after Mr.
12 Chittick's death.

13 42. **Doris and Levester Howze** (2864 E. Preston Street, Mesa, AZ
14 85213; dhowze@cox.net; (602) 568-0119): Ms. Howze and Mr. Howze are believed to
15 have knowledge of their communications with Mr. Chittick, their investments in
16 DenSco, and their communications with Mr. Beauchamp after Mr. Chittick's death.

17 43. **Bill Bryan Hughes** (23114 N. Pedregosa Drive, Sun City West,
18 AZ 85375; jbhok@yahoo.com; (480) 244-8863): Mr. Hughes is believed to have
19 knowledge of his communications with Mr. Chittick, his investments in DenSco
20 through his IRA, and his communications with Mr. Beauchamp after Mr. Chittick's
21 death.

22 44. **Judy Kay Hughes** (23114 N. Pedregosa Drive, Sun City West, AZ
23 85375; jbhok@yahoo.com; (480) 244-8864): Ms. Hughes is believed to have
24 knowledge of her communications with Mr. Chittick, her investments in DenSco
25 through her IRA, and her communications with Mr. Beauchamp after Mr. Chittick's
26 death.

1 45. **Brian Imdieke** (6173 W. Victoria Place, Chandler, AZ 85226;
2 b-imdieke@cox.net; bji6173@gmail.com; (480) 694-7850): Mr. Imdieke is believed to
3 have knowledge of his communications with Mr. Chittick, his investments in DenSco
4 through his Trust, and his communications with Mr. Beauchamp after Mr. Chittick's
5 death.

6 46. **James K. Jetton and Debora I. Pekker-Jetton** (9213 SW 21st
7 Street, Oklahoma City, OK 73128; jkjetto@yahoo.com; (904) 610-4213): Mr. and Mrs.
8 Jetton are believed to have knowledge of their communications with Mr. Chittick, their
9 investments in DenSco, and their communications with Mr. Beauchamp after Mr.
10 Chittick's death.

11 47. **Leslie W. Jones** (2176 E. Gazania Lane, Tucson, AZ 85719): Ms.
12 Jones is believed to have knowledge of her communications with Mr. Chittick, her
13 investments in DenSco through her IRA, and her communications with Mr. Beauchamp
14 after Mr. Chittick's death.

15 48. **Ralph Kaiser** (3319 E. Piro Street, Phoenix, AZ 85044;
16 ralph@kaisertile.com; (602) 697-3189): Mr. Kaiser is believed to have knowledge of
17 his communications with Mr. Chittick, his investments in DenSco through his IRA, and
18 his communications with Mr. Beauchamp after Mr. Chittick's death.

19 49. **Mary Kent** (30 Laurel Court, Paramus, NJ 07652;
20 mbencekent@yahoo.com; (201) 845-6147): Ms. Kent is believed to have knowledge of
21 her communications with Mr. Chittick, her investments in DenSco, and her
22 communications with Mr. Beauchamp after Mr. Chittick's death.

23 50. **Paul A. Kent** (23 E. 15th Street, Tempe, AZ 85281;
24 paul_a_kent@yahoo.com; (480) 213-7231): Mr. Kent is believed to have knowledge of
25 his communications with Mr. Chittick, investments in DenSco through the Family
26 Trust, and his communications with Mr. Beauchamp after Mr. Chittick's death.
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1 51. **Robert Z. Koehler** (5433 E. Osborn Road, Phoenix, AZ 85018;
2 rzkoehler@yahoo.com; (602) 330-4624): Mr. Koehler is believed to have knowledge
3 of his communications with Mr. Chittick, his investments in DenSco through his IRA,
4 and his communications with Mr. Beauchamp after Mr. Chittick's death.

5 52. **Jemma Kopel** (5304 S. Marine Drive, Tempe, AZ 85283;
6 jemmakopel@hotmail.com; (480) 696-0888): Ms. Kopel is believed to have
7 knowledge of her communications with Mr. Chittick, her investments in DenSco, and
8 her communications with Mr. Beauchamp after Mr. Chittick's death.

9 53. **LeRoy Kopel** (5304 S. Marine Drive, Tempe, AZ 85283;
10 lkopel22@hotmail.com; (480) 839-3787): Mr. Kopel is believed to have knowledge of
11 his communications with Mr. Chittick, his investments in DenSco through his IRA and
12 his Trust, and his communications with Mr. Beauchamp after Mr. Chittick's death.

13 54. **Robert F. Lawson** (400 Alta Vista Court, Danville, CA 94506;
14 robertflawson@gmail.com; (480) 221-9893): Mr. Lawson is believed to have
15 knowledge of his communications with Mr. Chittick, his investments in DenSco, and
16 his communications with Mr. Beauchamp after Mr. Chittick's death.

17 55. **Wayne J. Ledet** (16751 SW 23rd Street, El Reno, OK 73036;
18 uaflyor767@yahoo.com; (405) 824-3754): Mr. Ledet is believed to have knowledge of
19 his communications with Mr. Chittick, investments in DenSco through the Family
20 Trust, his IRA and his Roth IRA, and his communications with Mr. Beauchamp after
21 Mr. Chittick's death.

22 56. **The Lee Group, Inc.** c/o Terry and Lil Lee (6541 N. Paseo
23 Tamayo, Tucson, AZ 85750; terryleeaz@comcast.net; (520) 907-3828): Mr. and Mrs.
24 Lee are believed to have knowledge of their communications with Mr. Chittick, the
25 company's investments in DenSco, and their communications with Mr. Beauchamp
26 after Mr. Chittick's death.

1 57. **Terry and Lil Lee** (6541 N. Paseo Tamayo, Tucson, AZ 85750;
2 terryleeaz@comcast.net; (520) 907-3828): Mr. and Mrs. Lee are believed to have
3 knowledge of their communications with Mr. Chittick, their investments in DenSco,
4 and their communications with Mr. Beauchamp after Mr. Chittick's death.

5 58. **Lillian Lent** (4145 E. Blue Ridge Place, Chandler, AZ 85249;
6 (480) 813-7151): Ms. Lent is believed to have knowledge of her communications with
7 Mr. Chittick, her investments in DenSco through her Roth IRA, and her
8 communications with Mr. Beauchamp after Mr. Chittick's death.

9 59. **Manual A. Lent** (4145 E. Blue Ridge Place, Chandler, AZ 85249;
10 (480) 225-9538): Mr. Lent is believed to have knowledge of his communications with
11 Mr. Chittick, his investments in DenSco through his IRA, and his communications with
12 Mr. Beauchamp after Mr. Chittick's death.

13 60. **William Lent** (contact information to be added): Mr. Lent is
14 believed to have knowledge of his communications with Mr. Chittick, his investments
15 in DenSco through his IRA, and his communications with Mr. Beauchamp after Mr.
16 Chittick's death

17 61. **LJL Capital, LLC** c/o Landon Luchtel (5550 Wild Rose Lane,
18 Suite 400, West Des Moines, IA 50266; (515) 225-2800): Mr. Luchtel is believed to
19 have knowledge of his communications with Mr. Chittick, the company's investments
20 in DenSco, and his communications with Mr. Beauchamp after Mr. Chittick's death.

21 62. **W. Jean Locke** (12163 Country Meadows Lane, Silverdale, WA
22 98383; billandjean54@centurytel.net; (360) 638-1002): Ms. Locke is believed to have
23 knowledge of her communications with Mr. Chittick, her investments in DenSco, and
24 her communications with Mr. Beauchamp after Mr. Chittick's death.

25 63. **Long Time Holdings, LLC** c/o William Swirtz (6054 W. Trovita
26 Place, Chandler, AZ 85226; Bill.Swirtz@apollogrp.edu; (602) 315-8080): Mr. Swirtz
27 is believed to have knowledge of his communications with Mr. Chittick, the company's
28

1 investments in DenSco, and his communications with Mr. Beauchamp after Mr.
2 Chittick's death.

3 64. **Jim P. McArdle** (750 E. McLellan, Phoenix, AZ 85014;
4 jim@abdc-az.com; (602) 509-8635): Mr. McArdle is believed to have knowledge of
5 his communications with Mr. Chittick, his investments in DenSco, and his
6 communications with Mr. Beauchamp after Mr. Chittick's death.

7 65. **James and Lesley McCoy** (727 E. Verde Lane, Tempe, AZ
8 85284; (602) 390-2506): Mr. and Mrs. McCoy are believed to have knowledge of their
9 communications with Mr. Chittick, investments in DenSco through the Trust, and their
10 communications with Mr. Beauchamp after Mr. Chittick's death.

11 66. **Caro McDowell** (9010 E. Range Ride Trail, Mesa, AZ 85207;
12 kayell121@cs.com; (480) 380-2062): Ms. McDowell is believed to have knowledge of
13 her communications with Mr. Chittick, her investments in DenSco through her Trust,
14 and her communications with Mr. Beauchamp after Mr. Chittick's death.

15 67. **Marvin G. Miller and Patricia S. Miller** (701 E. Front Street
16 #602, Coeur d'Alene, ID 83814; patsmiller@verizon.net; (208) 818-6735 Marvin; (208)
17 818-6734 Pat): Mr. and Mrs. Miller are believed to have knowledge of their
18 communications with Mr. Chittick, investments in DenSco through the Family Trust,
19 and their communications with Mr. Beauchamp after Mr. Chittick's death.

20 68. **Marian Minchuck** (contact information to be added): Ms.
21 Minchuck is believed to have knowledge of her communications with Mr. Chittick, her
22 investments in DenSco, and her communications with Mr. Beauchamp after Mr.
23 Chittick's death.

24 69. **Kaylene Moss** (2524 E. Silverwood Drive, Phoenix, AZ 85048;
25 kayleen.moss@avnet.com; (602) 692-6934; (480) 759-7811): Ms. Moss is believed to
26 have knowledge of her communications with Mr. Chittick, her investments in DenSco
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1 through her IRA, and her communications with Mr. Beauchamp after Mr. Chittick's
2 death.

3 70. **Moss Family Trust** (2524 E. Silverwood Drive, Phoenix, AZ
4 85048; kayleen.moss@avnet.com; (602) 692-6934; (480) 759-7811): Mr. or Mrs. Moss
5 is believed to have knowledge of their communications with Mr. Chittick, investments
6 in DenSco through the Trust, and their communications with Mr. Beauchamp after Mr.
7 Chittick's death.

8 71. **Muscat Family** c/o Vince I. Muscat (14827 S. 20th Street,
9 Phoenix, AZ 85048; vimusat@gmail.com; (480) 460-5007): Mr. or Mrs. Muscat is
10 believed to have knowledge of their communications with Mr. Chittick, investments in
11 DenSco through the Trust, and their communications with Mr. Beauchamp after Mr.
12 Chittick's death.

13 72. **Non Lethal Defense, Inc.** c/o Dave Dubay (6921 Trevett Lane,
14 Casper, WY 82604): Mr. Dubay is believed to have knowledge of his communications
15 with Mr. Chittick, the company's investments in DenSco, and his communications
16 with Mr. Beauchamp after Mr. Chittick's death.

17 73. **Brian and Janice Odenthal** (1929 Canyon Drive, Coeur d'Alene,
18 ID 83815; bjodenhal@frontier.com; (208) 755-5499): Mr. and Mrs. Odenthal are
19 believed to have knowledge of their communications with Mr. Chittick, their
20 investments in DenSco through their IRA, and their communications with Mr.
21 Beauchamp after Mr. Chittick's death.

22 74. **Valerie J. Paxton** (1243 E. Glenhaven Drive, Phoenix, AZ 85048;
23 vpaxto@q.com; (602) 999-4339): Ms. Paxton is believed to have knowledge of her
24 communications with Mr. Chittick, her investments in DenSco, and her
25 communications with Mr. Beauchamp after Mr. Chittick's death.

26 75. **Marlene Pearce** (94 Acacia Drive, Gilbert, AZ 85233;
27 pearces@mailhaven.com; (480) 600-0955): Ms. Pearce is believed to have knowledge
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1 of her communications with Mr. Chittick, her investments in DenSco through her IRA,
2 and her communications with Mr. Beauchamp after Mr. Chittick's death.

3 76. **Jeff Phalen** (11764 N. Adobe Village Place, Marana, AZ 85658;
4 jphalen00@aol.com; (520) 909-1018): Mr. Phalen is believed to have knowledge of his
5 communications with Mr. Chittick, his investments in DenSco individually and through
6 the Phalen Family Trust and his IRA, and his communications with Mr. Beauchamp
7 after Mr. Chittick's death.

8 77. **Kevin Potempa** (P.O. Box 5156, Scottsdale, AZ 85261; (480)
9 5120-0362): Mr. Potempa is believed to have knowledge of his communications with
10 Mr. Chittick, his investments in DenSco, and his communications with Mr. Beauchamp
11 after Mr. Chittick's death.

12 78. **Preston Revocable Living Trust** c/o David M. Preston (9010 E.
13 Range Rider Trail, Mesa, AZ 85207; dave@prestoncpa.biz; (602) 369-4418): The
14 Trustee is believed to have knowledge of his or her communications with Denny
15 Chittick, the Trust's investments in DenSco, and his or her communications with Mr.
16 Beauchamp after Mr. Chittick's death.

17 79. **Peter and Kay Rzonca** (140 E. Rio Salado Parkway #603, Tempe,
18 AZ 85281; krzonca1@cox.net; (602) 743-1801): Mr. and Mrs. Rzonca are believed to
19 have knowledge of their communications with Mr. Chittick, their investments in
20 DenSco, and their communications with Mr. Beauchamp after Mr. Chittick's death.

21 80. **Saltire, LLC** c/o William Stewart Sheriff (155 108th Avenue,
22 Suite 400, Bellevue, WA 98004; stewart.sherriff@cox.net; (602) 330-7776): Mr.
23 Sheriff is believed to have knowledge of his communications with Mr. Chittick, the
24 company's investments in DenSco, and his communications with Mr. Beauchamp after
25 Mr. Chittick's death.

26 81. **JoAnn Sanders** (780 E. Gregory Lane, Coeur d'Alene, ID 83815;
27 (406) 461-4462): Ms. Sanders is believed to have knowledge of her communications
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1 with Mr. Chittick, her investments in DenSco, and her communications with Mr.
2 Beauchamp after Mr. Chittick's death.

3 82. **Satellite LLC** (contact information to be added): A Member of
4 Satellite LLC is believed to have knowledge of its communications with Mr. Chittick,
5 its investments in DenSco, and its communications with Mr. Beauchamp after Mr.
6 Chittick's death.

7 83. **Mary I. Schloz** (10050 E. Sonoran Vista Circle, Scottsdale, AZ
8 85255; smschloz@msn.com; (480) 694-8868): Ms Schloz is believed to have
9 knowledge of her communications with Mr. Chittick, her investments in DenSco
10 individually and through the Family Trust, and her communications with Mr.
11 Beauchamp after Mr. Chittick's death.

12 84. **Stanley Schloz** (10050 E. Sonoran Vista Circle, Scottsdale, AZ
13 85255; smschloz@msn.com; (480) 694-8868): Mr. Schloz is believed to have
14 knowledge of his communications with Mr. Chittick, his investments in DenSco
15 individually, through his IRA, and the Family Trust, and his communications with Mr.
16 Beauchamp after Mr. Chittick's death.

17 85. **Annette M. Scroggin** (124 Abby Lane, LaPorte, IN 46350;
18 mscroggin@me.com; (219) 608-2552): Ms. Scroggin is believed to have knowledge of
19 her communications with Mr. Chittick, her investments in DenSco through her IRAs,
20 and her communications with Mr. Beauchamp after Mr. Chittick's death.

21 86. **Michael Scroggin** (124 Abby Lane, LaPorte, IN 46350;
22 mscroggin@me.com; (219) 608-2552): Mr. Scroggin is believed to have knowledge of
23 his communications with Mr. Chittick, his investments in DenSco through his IRAs,
24 and his communications with Mr. Beauchamp after Mr. Chittick's death.

25 87. **William Stewart Sheriff** (155 108th Avenue, Suite 400, Bellevue,
26 WA 98004; stewart.sherriff@cox.net; (602) 330-7776): Mr. Sheriff is believed to have
27
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1 knowledge of his communications with Mr. Chittick, his investments in DenSco, and
2 his communications with Mr. Beauchamp after Mr. Chittick's death.

3 **88. Gary E Siegford and Corrina C. Esvelt-Siegford** (11917 Hidden
4 Valley Road, Rathdrum, ID 83858; gsiegford@msn.com; (208) 661-1842): Mr. and
5 Mrs. Siegford are believed to have knowledge of their communications with Mr.
6 Chittick, their investments in DenSco, and their communications with Mr. Beauchamp
7 after Mr. Chittick's death.

8 **89. Gary D. and Judith Siegford** (212 Ironwood Drive, Suite D,
9 PMB #313, Coeur d'Alene, ID 83814): Mr. and Mrs. Siegford are believed to have
10 knowledge of their communications with Mr. Chittick, their investments in DenSco
11 through the Trust, and their communications with Mr. Beauchamp after Mr. Chittick's
12 death.

13 **90. Carsyn P. Smith** c/o Deanna M. Smith (4901 E. Tomahawk Trail,
14 Paradise Valley, AZ 85253; dmsmith99@me.com; (602) 432-4227): Ms. Smith is
15 believed to have knowledge of her communications with Mr. Chittick, her investments
16 in DenSco, and her communications with Mr. Beauchamp after Mr. Chittick's death.

17 **91. McKenna Smith** c/o Deanna M. Smith (4901 E. Tomahawk Trail,
18 Paradise Valley, AZ 85253): Ms. Smith is believed to have knowledge of her
19 communications with Mr. Chittick, her investments in DenSco, and her
20 communications with Mr. Beauchamp after Mr. Chittick's death.

21 **92. Branson and Sandra Smith** (9261 E. Northview Court, Tucson,
22 AZ 85749; aztonysmith@aol.com; (520) 299-9791): Mr. or Mrs. Smith is believed to
23 have knowledge of their communications with Mr. Chittick, their investments in
24 DenSco through the Trust and their IRA, and their communications with Mr.
25 Beauchamp after Mr. Chittick's death.

26 **93. Tom Smith** (4901 E. Tomahawk Trial, Paradise Valley, AZ
27 85253): Mr. Smith is believed to have knowledge of his communications with Mr.
28

1 Chittick, his investments in DenSco individually and through his IRA, and his
2 communications with Mr. Beauchamp after Mr. Chittick's death.

3 94. **Tony Smith** (9261 E. Northview Court, Tucson, AZ 85749): Mr.
4 Smith is believed to have knowledge of his communications with Mr. Chittick, his
5 investments in DenSco, and his communications with Mr. Beauchamp after Mr.
6 Chittick's death.

7 95. **Donald E. and Lucinda Sterling** (2101 Bonnie Drive, Payette, ID
8 83661; don-cindy@cableone.net; (208) 401-6156): Mr. and Mrs. Sterling are believed
9 to have knowledge of their communications with Mr. Chittick, their investments in
10 DenSco, and their communications with Mr. Beauchamp after Mr. Chittick's death.

11 96. **Bill Swirtz** (6054 W. Trovita Place, Chandler, AZ 85226;
12 Bill.Swirtz@apollogrp.edu; (602) 315-8080): Mr. Swirtz is believed to have
13 knowledge of his communications with Mr. Chittick, his investments in DenSco, and
14 his communications with Mr. Beauchamp after Mr. Chittick's death.

15 97. **Nancy Swirtz** (6054 W. Trovita Place, Chandler, AZ 85226): Ms.
16 Swirtz is believed to have knowledge of her communications with Mr. Chittick, her
17 investments in DenSco, and her communications with Mr. Beauchamp after Mr.
18 Chittick's death.

19 98. **Coralee Thompson** (23233 N. Pima Road #113-240, Scottsdale,
20 AZ 85255; thompseg2@cox.net; (480) 993-8080): Ms. Thompson is believed to have
21 knowledge of her communications with Mr. Chittick, her investments in DenSco, and
22 her communications with Mr. Beauchamp after Mr. Chittick's death.

23 99. **Gary L. Thompson** (23233 N. Pima Road #113-240, Scottsdale,
24 AZ 85255; thompseg2@cox.net; (480) 993-8080): Mr. Thompson is believed to have
25 knowledge of his communications with Mr. Chittick, his investments in DenSco, and
26 his communications with Mr. Beauchamp after Mr. Chittick's death.
27
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1 100. **James A. Trainor** (6113 S. Greensferry Road, Coeur d'Alene, ID
2 83814; jimmy@flytrapproductions.com; (208) 676-8072): Mr. Trainor is believed to
3 have knowledge of his communications with Mr. Chittick, his investments in DenSco,
4 and his communications with Mr. Beauchamp after Mr. Chittick's death.

5 101. **Stephen Tuttle** (6428 E. Evans Drive, Scottsdale, AZ 85254;
6 steve@taser.com; (602) 451-8529): Mr. Tuttle is believed to have knowledge of his
7 communications with Mr. Chittick, his investments in DenSco, and his communications
8 with Mr. Beauchamp after Mr. Chittick's death.

9 102. **Wade A. Underwood** (P.O. Box 1311, Sisters, OR 97759;
10 wunderwood@boxer.com; (480) 227-4658): Mr. Underwood is believed to have
11 knowledge of his communications with Mr. Chittick, his investments in DenSco, and
12 his communications with Mr. Beauchamp after Mr. Chittick's death.

13 103. **Jolene Page Walker** (8620 N. 52nd Street, Paradise Valley, AZ
14 85253; jwalker113@cox.net; (480) 220-5200): Ms. Walker is believed to have
15 knowledge of her communications with Mr. Chittick, her investments in DenSco, and
16 her communications with Mr. Beauchamp after Mr. Chittick's death.

17 104. **Laurie A. Weiskopf** (P.O. Box 161097, Big Sky, MT 59716-
18 1000): Ms. Weiskopf is believed to have knowledge of her communications with Mr.
19 Chittick, her investments in DenSco through her IRA, and her communications with
20 Mr. Beauchamp after Mr. Chittick's death.

21 105. **Thomas D. Weiskopf** (P.O. Box 161097, Big Sky, MT 59716-
22 1000): Mr. Weiskopf is believed to have knowledge of his communications with Mr.
23 Chittick, his investments in DenSco through his IRA, and his communications with Mr.
24 Beauchamp after Mr. Chittick's death.

25 106. **Carol J. Wellman** (12119 Whitley Manor Drive, Chesterfield, VA
26 23838; mikewellman1@comcast.net; (804) 338-3006): Ms. Wellman is believed to
27 have knowledge of her communications with Mr. Chittick, her investments in DenSco
28

1 through her IRAs, and her communications with Mr. Beauchamp after Mr. Chittick's
2 death.

3 **107. Wellman Family Trust** (12119 Whitley Manor Drive,
4 Chesterfield, VA 23838; mikewellman1@comcast.net; (804) 338-3006): A Trustee of
5 the Wellman Family Trust is believed to have knowledge of its communications with
6 Mr. Chittick, its investments in DenSco, and its communications with Mr. Beauchamp
7 after Mr. Chittick's death.

8 **108. Brian and Carla Wenig** (19 E. Canterbury Court, Phoenix, AZ
9 85022; bwenig@cox.net; (602) 300-5665 Brian; (602) 703-7313 Carla): Mr. and Mrs.
10 Wenig are believed to have knowledge of their communications with Mr. Chittick, their
11 investments in DenSco through the Trust, and their communications with Mr.
12 Beauchamp after Mr. Chittick's death.

13 **109. Mark and Debbie Wenig** (4445 E. Desert Willow Drive, Phoenix,
14 AZ 85044; mwenig@insight.com; (480) 227-7777): Mr. and Mrs. Wenig are believed
15 to have knowledge of their communications with Mr. Chittick, their investments in
16 DenSco, and their communications with Mr. Beauchamp after Mr. Chittick's death.

17 **110. Yusuf Yuldiz** (1609 W. 17th Street, Tempe, AZ 85281; (480) 258-
18 8171): Mr. Yuldiz is believed to have knowledge of his communications with Mr.
19 Chittick, his investments in DenSco, and his communications with Mr. Beauchamp
20 after Mr. Chittick's death.

21 **111. Leslie Jones** c/o Michael Zones (8 Briarcliff Drive, Huntington,
22 WV 25704; czj528@hotmail.com; (304) 429-6741 ext. 2712): Mr. Zones is believed to
23 have knowledge of his communications with Mr. Chittick, his investments in DenSco,
24 and his communications with Mr. Beauchamp after Mr. Chittick's death.

25 **112. Michael Zones** (8 Briarcliff Drive, Huntington, WV 25704;
26 czj528@hotmail.com; (304) 429-6741 ext. 2712): Mr. Zones is believed to have
27
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1 knowledge of his communications with Mr. Chittick, his investments in DenSco, and
2 his communications with Mr. Beauchamp after Mr. Chittick's death.

3 **C. DenSco Borrowers and Persons Affiliated With Them**

4 1. **Luigi Amoroso** (contact information to be added): Mr. Amoroso
5 worked with Menaged in bidding on and acquiring properties subject to foreclosure.

6 2. **Veronica Castro (RRM Phoenix, 230 N. First Avenue, Suite**
7 **405, Phoenix, AZ 85003)**: Ms. Castro was Scott Menaged's assistant and has
8 knowledge of deeds, mortgages and other instruments signed by Menaged during 2013
9 that she notarized.

10 3. **Jeffrey C. Goulder** (Stinson Leonard Street LLP, 1850 N. Central
11 Avenue, Suite 1200, Phoenix, AZ 85004; (602) 212-8531): Mr. Goulder is an attorney
12 who represented Scott Menaged in connection with the Term Sheet and Forbearance
13 Agreement. He is believed to have knowledge of those agreements and his
14 communications with Mr. Beauchamp regarding them.

15 4. **Cody Jess** (Schian Walker PLC, 1850 N. Central Avenue,
16 Suite 900, Phoenix, AZ 85004; (602) 277-1501): Mr. Jess is an attorney who
17 represented Scott Menaged in a bankruptcy proceeding. He is believed to have
18 knowledge of that proceeding and of his communications with Mr. Beauchamp relating
19 to that proceeding.

20 5. **Scott Menaged** (c/o Molly Patricia Brizgys, 2210 S. Mill Avenue,
21 Suite 7A, Tempe, AZ 85282; (602) 460-9013): Mr. Menaged has knowledge of his
22 dealings with Mr. Chittick and Mr. Beauchamp.

23 **D. Current or Former Clark Hill Attorneys and Employees**

24 1. **Robert Anderson** (c/o John DeWulf, Coppersmith Brockelman,
25 PLC, 2800 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999): Mr.
26 Anderson is an attorney who was involved in Clark Hill's representation of DenSco.
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1 2. **David Beauchamp** (c/o John DeWulf, Coppersmith Brockelman,
2 PLC, 2800 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999): Mr.
3 Beauchamp is an attorney who was involved in Clark Hill's representation of DenSco.

4 3. **Lindsay Grove** (c/o John DeWulf, Coppersmith Brockelman,
5 PLC, 2800 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999): Ms.
6 Grove is a legal assistant who worked with David Beauchamp during the relevant time
7 period and is believed to have knowledge of certain documents received or sent by Mr.
8 Beauchamp.

9 4. **Ryan Lorenz** (c/o John DeWulf, Coppersmith Brockelman, PLC,
10 2800 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999): Mr.
11 Lorenz submitted proofs of claim to the Receiver in June 2017 and gave an affidavit in
12 support of those proofs of claim which summarized certain work Clark Hill performed
13 during its representation of DenSco.

14 5. **Darra Lynn Rayndon** (c/o John DeWulf, Coppersmith
15 Brockelman, PLC, 2800 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602)
16 224-0999): Ms. Rayndon is an attorney who initiated a probate proceeding on
17 August 4, 2016 in which she and Clark Hill represented Shawna Chittick Heuer in her
18 capacity as the Personal Representative of Denny Chittick's Estate. She is believed to
19 have knowledge of any discussions within Clark Hill that may have occurred regarding
20 conflicts of interest arising from the firm's separate representation of DenSco.

21 6. **Daniel Schenck** (c/o John DeWulf, Coppersmith Brockelman,
22 PLC, 2800 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999): Mr.
23 Schenck is an attorney who was involved in Clark Hill's representation of DenSco.

24 7. **Michelle M. Tran** (c/o John DeWulf, Coppersmith Brockelman,
25 PLC, 2800 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999): Ms.
26 Tran is an attorney who initiated a probate proceeding on August 4, 2016 in which she
27 and Clark Hill represented Shawna Chittick Heuer in her capacity as the Personal
28

1 Representative of Denny Chittick's Estate. She is believed to have knowledge of any
2 discussions within Clark Hill that may have occurred regarding conflicts of interest
3 arising from the firm's separate representation of DenSco.

4 **E. Current or Former Bryan Cave Attorneys**

5
6 1. **Ray Burgan** (Zenfinity Capital LLC, 14850 N. Scottsdale Road,
7 No. 295, Scottsdale, Arizona, 85254; (480) 292-8111): Mr. Burgan is an attorney who
8 was formerly associated with Bryan Cave and is believed to have knowledge of work
9 he performed for DenSco and David Beauchamp's representation of DenSco while
10 Beauchamp was affiliated with Bryan Cave.

11 2. **Michael Dvoren** (Jaburg & Wilk PC, 3200 N. Central Avenue,
12 Suite 2000, Phoenix, Arizona 85012; (602) 248-1000): Mr. Dvoren is an attorney who
13 was formerly associated with Bryan Cave and is believed to have knowledge of work
14 he performed for DenSco and David Beauchamp's representation of DenSco while
15 Beauchamp was affiliated with Bryan Cave.

16 3. **Robert Endicott** (Bryan Cave LLP, One Metropolitan Square, 211
17 North Broadway, Suite 3600, St. Louis, MO 63102; (314) 259-2000): Mr. Endicott is
18 an attorney who is believed to have knowledge of his communications with David
19 Beauchamp in the summer of 2013 regarding DenSco.

20 4. **Kenneth L. Henderson** (Bryan Cave LLP, 1290 Avenue of the
21 Americas, New York, NY, 10104; (212) 541-2000): Mr. Henderson is an attorney who
22 is believed to have knowledge of his communications with David Beauchamp in the
23 summer of 2013 regarding DenSco.

24 5. **Garth Jensen** (Sherman & Howard L.L.C., 633 Seventeenth
25 Street, Suite 3000, Denver, CO 80202; (303) 297-2900): Mr. Jensen is an attorney who
26 was formerly associated with Bryan Cave and is believed to have knowledge of his
27 communications with David Beauchamp in the summer of 2013 regarding DenSco.
28

1 6. **Logan Miller** (Apollo Education Group, Inc., 4025 S. Riverpoint
2 Parkway, Phoenix, AZ 85040; (800) 990-2765): Mr. Miller is an attorney who was
3 formerly associated with Bryan Cave and is believed to have knowledge of work he
4 performed for DenSco and David Beauchamp's representation of DenSco while
5 Beauchamp was affiliated with Bryan Cave.

6 7. **Robert Miller:** (Bryan Cave LLP, Two N. Central, Suite 2100,
7 Phoenix, Arizona 85004; (602) 364-7099): Mr. Miller is an attorney who
8 communicated with David Beauchamp in January 2014 in connection with the demand
9 letter described above and is believed to have knowledge of those communications.

10 8. **Robert Pedersen** (Bryan Cave LLP, 1290 Avenue of the
11 Americas, New York, NY, 10104; (212) 541-2000): Mr. Pedersen is an attorney who is
12 believed to have knowledge of his communications with David Beauchamp in the
13 summer of 2013 regarding DenSco.

14 9. **Nancy Pohl** (Gallagher & Kennedy PA, 2575 E. Camelback Road,
15 Suite 1100, Phoenix, Arizona 85016; (602) 530-8052): Ms. Pohl is an attorney who was
16 formerly associated with Bryan Cave and is believed to have knowledge of work she
17 performed for DenSco and David Beauchamp's representation of DenSco while
18 Beauchamp was affiliated with Bryan Cave.

19 10. **Gus Schneider** (Bryan Cave LLP, Two N. Central, Suite 2100,
20 Phoenix, AZ 85004; (602) 364-7099): Mr. Schneider is an attorney who is associated
21 with Bryan Cave and is believed to have knowledge of work he performed for DenSco
22 and David Beauchamp's representation of DenSco while Beauchamp was affiliated
23 with Bryan Cave.

24 11. **Elizabeth Sipes** (Bryan Cave LLP, 1700 Lincoln Street,
25 Suite 4100, Denver, CO 80203; (303) 861-7000): Ms. Sipes is an attorney who is
26 believed to have knowledge of her communications with David Beauchamp in the
27 summer of 2013 regarding DenSco.
28

1 12. **Jonathan Stern** (contact information not known): Mr. Stern is an
2 attorney who is associated with Bryan Cave and is believed to have knowledge of work
3 he performed for DenSco and David Beauchamp's representation of DenSco while
4 Beauchamp was affiliated with Bryan Cave.

5 13. **Randy Wang** (Bryan Cave LLP, One Metropolitan Square, 211 N.
6 Broadway, Suite 3600, St. Louis, MO 63102; (314) 259-2000): Mr. Wang is an
7 attorney who is believed to have knowledge of his communications with David
8 Beauchamp in the summer of 2013 regarding DenSco.

9 14. **Mark Weakley** (Bryan Cave LLP, One Boulder Plaza, 1801 13th
10 Street, Suite 300, Boulder, CO 80302; (303) 444-5955): Mr. Weakley is an attorney
11 who is believed to have knowledge of his communications with David Beauchamp in
12 the summer of 2013 regarding DenSco.

13
14 **F. Current or Former Gammage & Burnham Attorneys**

15 1. **Christopher L. Raddatz** (Gammage & Burnham, PLC, Two N.
16 Central Avenue, 15th Floor, Phoenix, AZ 85004; (602) 256-0566): Mr. Raddatz is an
17 attorney who represented the Estate of Denny Chittick and Shawna Chittick Heuer in
18 her capacity as the Personal Representative of Denny Chittick's Estate.

19 2. **Kevin R. Merritt** (Gammage & Burnham, PLC, Two N. Central
20 Avenue, 15th Floor, Phoenix, AZ 85004; (602) 256-0566): Mr. Merritt is an attorney
21 who in 2007 advised DenSco regarding its loan agreements. Beginning in August
22 2016, he represented the Estate of Denny Chittick and Shawna Chittick Heuer in her
23 capacity as the Personal Representative of Denny Chittick's Estate.

24 3. **James F. Polese** (Gammage & Burnham, PLC, Two N. Central
25 Avenue, 15th Floor, Phoenix, AZ 85004; (602) 256-0566): Mr. Polese is an attorney
26 who represented the Estate of Denny Chittick and Shawna Chittick Heuer in her
27 capacity as the Personal Representative of Denny Chittick's Estate.

1 **G. Persons Affiliated With the Arizona Corporation Commission,**
2 **Securities Division**

3 1. **Gary Clapper** (1300 W. Washington, Third Floor, Phoenix, AZ
4 85007; (602) 542-0152): Mr. Clapper is Chief Investigator, Arizona Corporation
5 Commission, Securities Division. He is believed to have knowledge of the ACC's
6 investigation of DenSco in August 2016, events leading to the ACC's filing of an
7 application for a preliminary injunction and the appointment of a receiver, and his
8 communications with Mr. Beauchamp.

9 2. **Wendy Coy** (1300 W. Washington, Third Floor, Phoenix, AZ
10 85007; (602) 542-0633): Ms. Coy is Director of Enforcement, Arizona Corporation
11 Commission, Securities Division. She is believed to have knowledge of the ACC's
12 investigation of DenSco in August 2016, events leading to the ACC's filing of an
13 application for a preliminary injunction and the appointment of a receiver, her
14 communications with Mr. Beauchamp.

15 **H. The Receiver, His Employees and Attorneys**

16 1. **Peter S. Davis** (c/o Colin Campbell and Geoffrey Sturr, Osborn
17 Maledon, P.A., 2929 N. Central Avenue, Suite 2100, Phoenix, AZ 85012; (602) 640-
18 9377): Mr. Davis has knowledge of work he has performed as DenSco's Receiver, as
19 set forth in reports he has issued in the course of his work.

20 2. **Ryan W. Anderson** (Guttilla Murphy Anderson, 5415 E. High
21 Street, Suite 200, Phoenix, AZ 85054; (480) 304-8300): Mr. Anderson is an attorney
22 who represents the Receiver. He has knowledge of the receivership proceeding and his
23 communications with participants in that proceeding.

24 3. **Sara Beretta** (c/o Colin Campbell and Geoffrey Sturr, Osborn
25 Maledon, P.A., 2929 N. Central Avenue, Suite 2100, Phoenix, AZ 85012; (602) 640-
26 9377): Ms. Beretta is a Director of Simon Consulting and has knowledge of DenSco's
27 books and records and work performed by the Receiver, as set forth in reports he has
28 issued in the course of his work.

1 **I. Lenders Who Negotiated With Chittick and Menaged During**
2 **January 2014**

3 1. **Craig Cardon** (contact information to be added): Mr. Cardon is a
4 member of Azben Limited, LLC and is believed to have knowledge of his
5 communications with Chittick and Menaged regarding the January 6, 2014 demand
6 letter discussed above.

7 2. **Daniel Diethelm** (contact information to be added): Mr. Diethelm
8 is a manager of Geared Equity, LLC and is believed to have knowledge of his
9 communications with Chittick and Menaged regarding the January 6, 2014 demand
10 letter discussed above

11 3. **Lynn Hoebing** (contact information to be added): Mr. Hoebing is
12 a manager of 50780, LLC and is believed to have knowledge of his communications
13 with Chittick and Menaged regarding the January 6, 2014 demand letter discussed
14 above.

15 **J. Other Persons**

16 1. **Rick Carney** (contact information to be added): Mr. Carney was
17 formerly affiliated with Quarles & Brady and provided legal services to DenSco as
18 described above. He is believed to have knowledge of those services and his
19 communications with Denny Chittick and David Beauchamp relating to those services.

20 2. **Gregg Reichman** (believed to be c/o Andrew Abraham, Burch &
21 Cracchiolo, P.A., 702 E. Osborn Road, Suite 200, Phoenix, AZ 85014; (602) 234-
22 9917): Mr. Reichman is a current or former member of Active Funding Group, LLC.
23 He is believed to have knowledge of dealings between Active Funding Group, LLC and
24 Menaged.

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

26 1. **Luigi Amoroso** (contact information to be added): Mr. Amoroso gave a
27 deposition in the receivership proceeding on December 14, 2016. The Receiver's
28 counsel is the custodian of the transcript of that deposition.

1 2. **Robert Anderson** (c/o John DeWulf, Coppersmith Brockelman, PLC,
2 2800 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999): Mr.
3 Anderson gave a deposition in this case, the original transcript of which is in the
4 possession of the Receiver's counsel.

5 3. **David Beauchamp** (c/o John DeWulf, Coppersmith Brockelman, PLC,
6 2800 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999): Mr.
7 Beauchamp executed a declaration dated August 17, 2016 that was submitted to the
8 court in the Receivership Proceeding in support of the Estate's Recommendations re
9 Receiver and Attorney/Client Privilege. The Estate's counsel, Gammage & Burnham,
10 is believed to be the custodian of the original declaration. Mr. Beauchamp has also
11 given a deposition in this case, the original transcript of which is in the possession of
12 the Receiver's counsel.

13 4. **Shawna Chittick Heuer** (c/o Greg Fairbourne, Bonnett Fairbourn
14 Friedman & Balint PC 2325 E. Camelback Rd., Suite 300, Phoenix, AZ 85016): Ms.
15 Heuer gave a deposition in this case. Clark Hill's counsel is believed to be the
16 custodian of the original transcript of that deposition.

17 5. **Scott Menaged** (c/o Molly Patricia Brizgys, 2210 S. Mill Avenue,
18 Suite 7A, Tempe, AZ 85282; (602) 460-9013): On October 20, 2016, Mr. Menaged
19 gave testimony during a Rule 2004 Examination that was taken in connection with Mr.
20 Menaged's bankruptcy proceeding. The Receiver's counsel is the custodian of the
21 transcript of that deposition.

22 On December 8, 2017, Mr. Menaged was interviewed by Ken Frakes, Special
23 Counsel to the Receiver, before a court reporter. Mr. Frakes is believed to be the
24 custodian of the transcript of that interview.

25 6. **Ryan Lorenz** (c/o John DeWulf, Coppersmith Brockelman, PLC, 2800
26 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999): Mr. Lorenz gave
27 an affidavit in support of notices of claim Clark Hill submitted to the Receiver. He is
28 believed to be the custodian of the original affidavit.

1 7. **Daniel Schenck** (c/o John DeWulf, Coppersmith Brockelman, PLC,
2 2800 N. Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 224-0999): Mr.
3 Schenck gave a deposition in this case, the original transcript of which is in the
4 possession of the Receiver's counsel.

5 8. **Steve Bunger** (6134 W. Trovita Place, Chandler, AZ 85226): Mr.
6 Bunger gave a deposition in this case, the original transcript of which is in the
7 possession of Clark Hill's counsel.

8 9. **Anthony Burdett**: Mr. Burdett gave a deposition in this case, the
9 original transcript of which is in the possession of Clark Hill's counsel.

10 10. **Warren Bush**: Mr. Bush gave a deposition in this case, the original
11 transcript of which is in the possession of Clark Hill's counsel.

12 11. **Ranasha Chittick**: Ms. Chittick gave a deposition in this case, the
13 original transcript of which is in the possession of Clark Hill's counsel.

14 12.

15 13. **Dori Ann Davis**: Ms. Davis gave a deposition in this case, the original
16 transcript of which is in the possession of Clark Hill's counsel.

17 14. **Peter Davis**: Mr. Davis gave a deposition in this case, the original
18 transcript of which is in the possession of Clark Hill's counsel.

19 15. **Russell Dupper**: Mr. Duper gave a deposition in this case, the original
20 transcript of which is in the possession of Clark Hill's counsel.

21 16. **Victor Gojcay**: Mr. Gojcay gave a deposition in this case, the original
22 transcript of which is in the possession of Clark Hill's counsel.

23 17. **Scott Gould**: Mr. Gould gave a deposition in this case, the original
24 transcript of which is in the possession of Clark Hill's counsel.

25 18. **Ed Hood**: Mr. Hood gave a deposition in this case, the original
26 transcript of which is in the possession of the Receiver's counsel.

27 19. **Brian Imdieke**: Mr. Imdieke gave a deposition in this case, the original
28 transcript of which is in the possession of Clark Hill's counsel.

1 20. **Paul Kent:** Mr. Kent gave a deposition in this case, the original
2 transcript of which is in the possession of Clark Hill's counsel.

3 21. **Robert Koehler:** Mr. Koehler gave a deposition in this case, the
4 original transcript of which is in the possession of Clark Hill's counsel.

5 22. **Barry Luchtel:** Mr. Luchtel gave a deposition in this case, the original
6 transcript of which is in the possession of Clark Hill's counsel.

7 23. **Patricia Miller:** Ms. Miller gave a deposition in this case, the original
8 transcript of which is in the possession of Clark Hill's counsel.

9 24. **Kevin Olson:** Mr. Crabill gave a deposition in this case, the original
10 transcript of which is in the possession of Clark Hill's counsel.

11 25. **John Ray:** Mr. Ray gave a deposition in this case, the original transcript
12 of which is in the possession of Clark Hill's counsel.

13 26. **Gregg Reichman:** Mr. Reichman gave a deposition in this case, the
14 original transcript of which is in the possession of Clark Hill's counsel.

15 27. **Scott Rhodes:** Mr. Rhodes gave a deposition in this case, the original
16 transcript of which is in the possession of Clark Hill's counsel.

17 28. **GE Siegford:** Mr. Siegford gave a deposition in this case, the original
18 transcript of which is in the possession of Clark Hill's counsel.

19 29. **Mark Sifferman:** Mr. Sifferman gave a deposition in this case, the
20 original transcript of which is in the possession of the Receiver's counsel.

21 30. **William Swirtz:** Mr. Swirtz gave a deposition in this case, the original
22 transcript of which is in the possession of Clark Hill's counsel.

23 31. **Coralee Thompson:** Ms. Thompson gave a deposition in this case, the
24 original transcript of which is in the possession of Clark Hill's counsel.

25 32. **Steven Tuttle:** Mr. Tuttle gave a deposition in this case, the original
26 transcript of which is in the possession of Clark Hill's counsel.

27 33. **Kevin Potempa:** Mr. Potempa gave a deposition in this case, the
28 original transcript of which is in the possession of Clark Hill's counsel.

1 34. **Michelle Tran:** Ms. Tran gave a deposition in this case, the original
2 transcript of which is in the possession of the Receiver's counsel.

3 **VI. EXPERT WITNESSES EXPECTED TO BE CALLED AT TRIAL**

4 Certain fact witnesses in the case have expert credentials. For example, the
5 Receiver is an accountant and is certified in fraud investigations. The Receiver has
6 prepared various reports in the case which have been identified as trial exhibits. These
7 reports contain conclusions as to the frauds involved in the case, and the impact and
8 loss created by these frauds. In an excess of caution, the Receiver's counsel discloses
9 that certain fact witnesses in the case such as the Receiver also, by reason of their
10 training and experience, have expert opinions in the case by reason of the work they
11 performed.

12 Densco's business records consist in large part on computer hard drives that
13 have been secured through discovery. Densco was a one-man shop, and that one man is
14 now deceased. For purposes of evidentiary foundation for records, the Receiver has
15 retained a computer data expert who can testify as to data characteristics of the business
16 records that were retained on the hard drive.

17 The Defendants have retained and disclosed expert witnesses. Some opinions of
18 the Defendants' expert witnesses support Plaintiff's case. For example, the mandatory
19 nature of Clark Hill's duty to withdraw in May 2014, or the ability to do a "noisy"
20 withdrawal, or how a reasonable and prudent risk manager in a law firm would act
21 under the circumstances of this case all support the Plaintiff's claim. In an excess of
22 caution, the Receiver discloses that it may play parts of the Defendants' expert witness
23 deposition testimony in its case in chief.

24 Experts hired for purposes of testimony in this case are:

25 1. **Neil Wertlieb:** *See* report dated March 26, 2019, a copy of which is
26 attached as **Appendix A**, and rebuttal report dated June 4, 2019, a copy of which is
27 attached as **Appendix B**.

1 2. **David Weekly:** *See* report dated April 4, 2019, a copy of which is
2 attached as **Appendix C**, and rebuttal report dated June 5, 2019, a copy of which is
3 attached as **Appendix D**.

4 **VII. COMPUTATION AND MEASURE OF DAMAGES**

5 The computation and measure of damages sought by the Receiver is set forth in
6 Mr. Weekly's reports attached as Appendices C & D. Those reports will be
7 supplemented to address the Receiver's claim for punitive damages when Clark Hill
8 discloses financial information the Receiver has sought through written discovery.

9 Although the Receiver in his reports calculated damages in a different
10 conceptual way, the Receiver's calculation of damages is corroborative of Mr.
11 Weekly's reports.

12 **VIII. ANTICIPATED TRIAL EXHIBITS**

13 A list of exhibits the Receiver presently anticipates using at trial is attached as
14 **Appendix E**.

15 The Receiver notes that any document, whether marked as a trial exhibit or not,
16 may be used to refresh a witnesses' recollection. Any relevant document listed below
17 or disclosed in discovery may be used for that purpose. For example, investor
18 witnesses wrote victim impact letters to Judge Snow for the Managed sentencing. Such
19 letters can be used to refresh investor recollections as to what impact the loss of their
20 funds had upon them or their families.

21 Under the rules of evidence, a learned treatise may be introduced by a witness
22 reading the relevant part of a learned treatise into the record. The Receiver notes that it
23 may utilize learned treatises in examination of expert witnesses and read sections into
24 the record. For example, *see* learned treatises marked as exhibits in the deposition of
25 Scott Rhodes.
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1 **IX. DOCUMENTS THAT MAY BE RELEVANT**

2 1. Documents maintained in the Document Depository established by the
3 Receiver pursuant to an underlying Court Order dated January 1, 2017 in the matter
4 entitled *Ariz. Corp. Comm'n v. DenSco Investment Corp.*, Maricopa County Superior
5 Court CV2016-014142. The most recent index is attached as **Appendix F**. Certain
6 documents relevant to the receivership are also publicly available on a website
7 maintained by the Receiver: <http://denscoreceiver1.godaddysites.com/>.

8 a. The Receiver's counsel has caused to be deposited into the
9 Depository documents received from Defendants' counsel and third parties, and
10 will continue to do so as this matter proceeds.

11 b. The Receiver's counsel will provide Defendants' counsel with
12 updated indices of documents maintained in the Document Depository as they
13 become available. To update the index attached to Plaintiff's Fifth Disclosure
14 Statement, updated indices were sent to Clark Hill's counsel on January 10,
15 2019, March 12, 2019, April 17, 2019, July 9, 2019 and August 9, 2019.

16 c. The Receiver also updates the website periodically.

17 2. The Receiver will rely on documents maintained in the Document
18 Depository and on the Receiver's website to support his claims in this action, as well as
19 publicly available documents such as the recorded instruments referenced in the factual
20 narrative above.

21 3. The Receiver's counsel plans to compile, number, and produce to
22 Defendants' counsel certain documents it has obtained from the Depository, the
23 Receiver's website, and other publicly available documents that the Receiver may
24 designate as trial exhibits.

25 a. The Receiver's March 27, 2018 production (Second Disclosure
26 Statement) included documents numbered RECEIVER_000001- 001345.

27 i. The March 27, 2018 production included copies of the
28 DenSco Corporate Journals for 2013, 2014, 2015 and 2016, which have

1 been numbered RECEIVER_000001-000164. They replaced copies of
2 those documents that were produced on September 5, 2017 and which
3 were incorrectly numbered DIC0011918-0012081.

4 ii. The March 27, 2018 production included publicly available
5 documents, such as the recorded instruments referenced in the factual
6 narrative above (RECEIVER_000165-RECEIVER_001345).

7 b. The Receiver's May 15, 2018 production (Third Disclosure
8 Statement) included Clark Hill's documents numbered RECEIVER_001325-
9 RECEIVER_001497.

10 c. The Receiver's July 11, 2018 production (Fourth Disclosure
11 Statement) included Clark Hill's notices of claim, which were numbered
12 RECEIVER_001498-RECEIVER_001538, and publicly recorded documents,
13 which were numbered RECEIVER_001539-RECEIVER_001548.

14 d. The November 14, 2018 production (Fifth Disclosure Statement)
15 included documents obtained from the Document Depository numbered
16 RECEIVER_001549-RECEIVER_001711.

17 e. Other documents from the Document Depository, the Receiver's
18 website, or publicly available sources that the Receiver may designate as trial
19 exhibits will be numbered and produced through one or more supplemental
20 disclosure statements.

21 4. In addition to the documents set forth above,

22 a. on October 30, 2018, the Receiver's counsel produced to
23 Defendants' counsel documents evidencing communications between the
24 Receiver and the Estate of Chittick, which were numbered RECEIVER_
25 001712-002517.

26 b. on March 15, 2019, the Receiver's counsel produced to
27 Defendants' counsel documents numbered RECEIVER_002518-004487.
28

1 c. on March 15, 2019, the Receiver's counsel produced to
2 Defendants' counsel documents numbered RECEIVER_ 004488-004896.

3 d. on April 4, 2019, the Receiver's counsel produced to
4 Defendants' counsel documents numbered RECEIVER_ 004897-005186.

5 e. on April 16, 2019, the Receiver's counsel produced to
6 Defendants' documents numbered RECEIVER_ 005187-005188.

7 f. on May 2, 2019, the Receiver's counsel produced to
8 Defendants' counsel documents numbered RECEIVER_ 005189-005195.

9 g. on May 8, 2019, the Receiver's counsel produced to
10 Defendants' counsel a document numbered RECEIVER_ 005196.

11 h. on June 4, 2019, the Receiver's counsel produced to
12 Defendants' counsel documents numbered RECEIVER_ 005197-005542.

13 i. on July 2, 2019, the Receiver's counsel produced to
14 Defendants' counsel documents numbered RECEIVER_ 005543-005545.

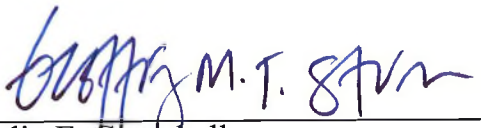
15 j. on July 11, 2019, the Receiver's counsel produced to
16 Defendants' counsel documents numbered RECEIVER_ 005546-005627.

17 k. on September 6, 2019, The Receiver's counsel produced to
18 Defendants' counsel documents numbered RECEIVER_ 005628-005676.

19 DATED this 13th day of September, 2019.

20 OSBORN MALEDON, P.A.

21
22 By

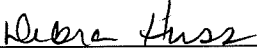

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23
24
25
26 *Attorneys for Plaintiff*
27
28

1 COPY of the foregoing served by mail
2 this 13th day of September 2019, to:

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1. I am the court-appointed receiver of DenSco Investment Corporation and in that capacity am the plaintiff in this action.
2. I have reviewed Plaintiff's Seventh Supplemental Disclosure Statement.
3. That document was prepared by Special Counsel, Osborn Maledon, and reflects information that Special Counsel has compiled based on its review of relevant documents.
4. To the best of my knowledge, information and belief, the information contained in Plaintiff's Seventh Supplemental Disclosure Statement is accurate.

Executed on September 16, 2019.

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