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

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

13 Plaintiff,

14 v.

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

17 Defendants.

No. CV2017-013832

**DEFENDANT DAVID BEAUCHAMP'S
RESPONSES TO PLAINTIFF'S FIRST
SET OF NON-UNIFORM
INTERROGATORIES**

18 Defendant David G. Beauchamp responds as follows to Plaintiff's First Set of Non-
19 Uniform Interrogatories dated May 15, 2018.

20 **GENERAL OBJECTIONS**

21 Each of Mr. Beauchamp's responses, in addition to any specifically stated objections,
22 are subject to and incorporate the following General Objections. The assertion of these or
23 similar objections, additional objections, or a partial response to an individual Interrogatory
24 does not waive any of Mr. Beauchamp's General Objections.

- 25 1. Mr. Beauchamp objects to these Interrogatories to the extent the Plaintiff seeks
26 information that is protected from disclosure by the attorney client privilege,

1 the work product doctrine, or any other applicable privilege or protection. To
2 the extent that Mr. Beauchamp produces, provides or discloses exempt or
3 protected information or documents, such production or disclosure shall not be
4 construed as a waiver by Mr. Beauchamp or his attorneys of such privilege or
5 protection. *See* Ariz. R. Civ. P. 26(b)(6)(B).

6 2. In response to Plaintiff's Interrogatories, Mr. Beauchamp does not concede that
7 any of the responses or information contained therein are relevant or admissible.
8 Mr. Beauchamp reserves the right to object, on the grounds of competency,
9 privilege, relevance, materiality, or otherwise, to the use of this information for
10 any purposes, in whole or in part, in this action or in any action.

11 3. Mr. Beauchamp objects to Instruction No. 1 on the ground that it imposes
12 obligations broader than or inconsistent with the Arizona Rules of Civil
13 Procedure. Mr. Beauchamp additionally objects to Instruction No. 1 on the
14 ground that it requires information to be divulged in the possession of Mr.
15 Beauchamp's attorneys which may be subject to the attorney-client privilege
16 and/or work product doctrine.

17 4. Mr. Beauchamp objects to Instruction Nos. 3 and 4 on the ground that they are
18 a Request for Production of Documents and therefore beyond the scope of Rule
19 33.

20 5. Mr. Beauchamp objects to Instruction No. 4 on the ground that it is unduly
21 burdensome. The Instruction requires Mr. Beauchamp to not only "list and
22 identify" a document without a Bates number, but also "describe each such
23 responsive document, give the location of the document, and provide the name,
24 address and telephone number of the individual with custody or control over
25 the document." The Arizona Rules of Civil Procedure impose no such
26 obligations on parties responding to interrogatories. It is Plaintiff's duty to

1 locate and review documents identified by Mr. Beauchamp in response to an
2 interrogatory, not Mr. Beauchamp's duty to replicate the contents of such
3 documents. Mr. Beauchamp will disregard that portion of Instruction No. 4 that
4 imposes obligations on Mr. Beauchamp that go beyond the scope of Rule 33.
5

6 **INTERROGATORY NO. 1:**

7 Defendants' Initial Disclosure Statement states, on page 5, lines 21-23, that
8 "Mr. Beauchamp repeatedly advised DenSco that an update was necessary irrespective of
9 DenSco's plans regarding the outstanding amount of its offerings, but Mr. Chittick continued
10 to delay."

11 Are you aware of any document that contains such advice or reflects that it was given?

12 **RESPONSE:**

13 Yes. Mr. Beauchamp not only repeatedly advised DenSco that an update to the Private
14 Offering Memoranda ("POMs") and related investor documents was necessary, but he
15 worked diligently to update such documents throughout his relationship with DenSco. Mr.
16 Beauchamp drafted DenSco's first POM in 2001 and updated it approximately every two
17 years between 2001 and 2011 to reflect changes in the economy and DenSco's business. For
18 example, the 2007 POM was issued in June of that year. Less than two years later, in April
19 2009, Mr. Beauchamp began updating the POM to reflect changes in "the economy and real
20 estate collapse" and the updated POM was issued in June once again. Less than a year after
21 the 2009 POM had been prepared, Mr. Beauchamp began work on the 2011 POM.

22 It is therefore unremarkable that on May 1, 2013, Mr. Beauchamp again began the
23 process of updating the POM to reflect material changes with respect to DenSco, including
24 the size of its portfolio. An invoice sent by Mr. Beauchamp to Mr. Chittick in June 2013,
25 while Mr. Beauchamp was at Bryan Cave, confirms that Mr. Beauchamp worked on the 2013
26 POM throughout May of that year and that Mr. Beauchamp met with Mr. Chittick for several

1 hours on May 9, 2013 "to update private offering memorandum and to verify current
2 information." Additionally, without conceding the admissibility of Mr. Chittick's business
3 journals in this litigation, his May 9, 2013 entry corroborates that he met with Mr. Beauchamp
4 for nearly two hours regarding updates to the 2013 POM. Work on updating the 2013 POM
5 continued through June, July and August.

6 When Mr. Beauchamp left Bryan Cave and joined Clark Hill in September 2013, he
7 had DenSco's files relating to the 2013 POM transferred to Clark Hill, and he promptly
8 opened a New Matter Form to "[f]inish the private offering memorandum." Mr. Chittick,
9 however, instructed Mr. Beauchamp to cease updating it and failed to provide the updated
10 investment, loan, and financial information Mr. Beauchamp required. Efforts to complete the
11 2013 POM were further waylaid by Mr. Chittick's revelation in December 2013 that an
12 unspecified number of loans made to Mr. Menaged were secured by two deeds of trust
13 competing for priority, which did not comport with the representations in the investor
14 documents. Further complicating the issue was the fact that several of the lenders who had
15 provided loans that competed for first position with DenSco's loans threatened suit against
16 DenSco in January 2014 regarding the double lien properties. Mr. Chittick assured Mr.
17 Beauchamp that notwithstanding the threatened lawsuit, he had developed and implemented
18 a plan with Mr. Menaged to rectify the situation.

19 Mr. Beauchamp advised Mr. Chittick that he should document this plan with Mr.
20 Menaged in a Forbearance Agreement, which would then also need to be disclosed to
21 investors. Though negotiating the terms of the Forbearance Agreement proved difficult,
22 spanning nearly four months, Mr. Beauchamp consistently advised Mr. Chittick of his
23 disclosure and update obligations to his investors during this time and reminded him that the
24 terms of the Forbearance Agreement would have to be memorialized in the updated POM.
25 Once the Forbearance Agreement was finally executed in April 2014, Mr. Beauchamp
26 immediately turned to revising the POM again. These revisions included an explanation of

1 the double liening issue and the Forbearance Agreement, as well as updates to investors on
2 DenSco's finances. When Mr. Beauchamp presented Mr. Chittick with a draft of the updated
3 POM, however, Mr. Chittick balked at disclosing the information regarding the double liens
4 or the Forbearance Agreement and refused to proceed with the updated POM. At that point,
5 Mr. Beauchamp terminated the attorney-client relationship.

6
7 **INTERROGATORY NO. 2:**

8 If you answered "yes" to Interrogatory No. 1, please list and identify each such
9 document.

10 **RESPONSE:**

11 Mr. Beauchamp objects to this Interrogatory on the ground that is it overly broad and
12 unduly burdensome. *See, e.g., Steil v. Humana Kansas City, Inc.*, 197 F.R.D. 445 (D. Kan.
13 2000) (contention interrogatories which seek "every fact and document" to support a
14 contention are overly broad and unduly burdensome). Without waiving the foregoing
15 objection, relevant information regarding the contention identified in Interrogatory No. 1 can
16 be found in the following documents, in addition to others: DIC0000965, DIC0006068,
17 DIC0006528, DIC0006625, DIC0006656, DIC0006703, DIC0006707, DIC0006738,
18 DIC0006803, DIC0006904, DIC0008660, DIC0008802, DIC0008874, BC_000003,
19 BC_000756, BC_000296, BC_001614, BC_002005, BC_002027, BC_002082, BC_002982,
20 BC_003087, BC_003091, RECEIVER_000016, RECEIVER_000049, RECEIVER_000054.
21 Defendants reserve the right to supplement this response as discovery progresses.

22
23 **INTERROGATORY NO. 3:**

24 Defendants' Initial Disclosure Statement states, on page 6, lines 23-26, that
25 "Mr. Beauchamp advised Mr. Chittick, as he had done previously, that Mr. Chittick needed
26 to fund DenSco's loans directly to the trustee or escrow company conducting the sale, rather

1 than provide loan funds directly to the borrower, to ensure that DenSco's deed of trust was
2 protected."

3 Are you aware of any document that contains such advice or reflects that it was given?

4 **RESPONSE:**

5 Yes. Mr. Beauchamp prepared all of DenSco's offering documents including the
6 POMs and investor notes, and also reviewed and commented on the promissory notes from
7 borrowers, deeds of trust, mortgages and guaranties, all of which disclosed to DenSco's
8 investors the processes and procedures that DenSco used to protect the investments made in
9 the company. Mr. Chittick did not grant Mr. Beauchamp the authority to draft any of the
10 promissory notes from borrowers, deeds of trust, mortgages and guaranties.

11 For example, the 2007, 2009 and 2011 POMs describe that DenSco "intends to directly
12 . . . or indirectly . . . perform due diligence to verify certain information in connection with
13 funding a Trust Deed." The POMs explain that "[p]rior to purchasing a Trust Deed or funding
14 a direct loan, the Company intends to have an officer, employee or an authorized
15 representative conduct a due diligence review by interviewing its owner, verifying the
16 documentation and performing limited credit investigations as are deemed appropriate by the
17 Company and visiting the subject property in a timely manner." Further, every mortgage
18 evidencing a property purchase made with a DenSco loan stated that the check purchasing the
19 property was made to the Trustee.

20 Not only did Mr. Beauchamp set out the proper method and procedures for funding a
21 loan in the offering documents, but he also expressly told Mr. Chittick that he could not fund
22 loans directly to Mr. Menaged. Mr. Chittick vaguely suggested by email to Mr. Beauchamp
23 that he could "wire Scott the money, he could produce a cashiers check that says remitter is
24 DenSco and it would have the exact same affect as if I got cashiers check that said I'm the
25 remitter" [sic]. Mr. Beauchamp responded that this procedure was "quick and dirty," and that
26 it "[did] not work." Mr. Beauchamp informed Mr. Chittick that the DenSco money to fund

1 DenSco loans to borrowers had to be sent to the Trustee or Title Company, as applicable, in
2 order to both comply with Mr. Chittick's fiduciary duty to DenSco investors and protect
3 DenSco's recording position. That advice obviously went unheeded.

4
5 **INTERROGATORY NO. 4:**

6 If you answered "yes" to Interrogatory No. 3, please list and identify each such
7 document.

8 **RESPONSE:**

9 Mr. Beauchamp objects to this Interrogatory on the ground that is it overly broad and
10 unduly burdensome. *See, e.g., Steil v. Humana Kansas City, Inc.*, 197 F.R.D. 445 (D. Kan.
11 2000) (contention interrogatories which seek "every fact and document" to support a
12 contention are overly broad and unduly burdensome). Without waiving the foregoing
13 objection, relevant information regarding the contention identified in Interrogatory No. 3 can
14 be found in the following documents, in addition to others: DIC0000965, DIC0002508,
15 DIC0004474-75, DIC0007125-26, BC_000296, CH_001511, RECEIVER_000190.
16 Defendants reserve the right to supplement this response as discovery progresses.

17
18 **INTERROGATORY NO. 5:**

19 Defendants' Initial Disclosure Statement states, on page 7, lines 17-26: "In December
20 2013, Mr. Chittick contacted Mr. Beauchamp for the first time in months. He told
21 Mr. Beauchamp over the phone that he had run into an issue with some of his loans to
22 Menaged, and specifically, that properties securing a few DenSco loans were each subject to
23 a second deed of trust competing for priority with DenSco's deed of trust. Mr. Beauchamp
24 reminded Mr. Chittick that he still needed to update DenSco's private offering memorandum.
25 After briefly discussing the allegedly limited double lien issue, Mr. Chittick emphasized to
26 Mr. Beauchamp that Mr. Chittick wanted to avoid litigation with other lenders. Mr. Chittick,

1 however, did not request any advice or help. Accordingly, Mr. Beauchamp suggested that
2 Mr. Chittick develop and document a plan to resolve the double liens, and nothing more came
3 of the conversation.”

4 Are you aware of any document that contains your notes from that conversation or
5 reflects that it occurred?

6 **RESPONSE:**

7 Yes. On December 18, 2013, Mr. Chittick reached out to Mr. Beauchamp to finish the
8 2013 POM at the behest of an investor named Warren Bush who was demanding to see it.
9 That same day, the invoices from Clark Hill reflect that Mr. Beauchamp and Mr. Chittick
10 spoke by phone regarding the email and updates to the POM. It was during that brief phone
11 call, spurred by discussing the revisions to the POM, that Mr. Chittick first noted that he was
12 having an issue with a couple of the loans he had made to Mr. Menaged. After Mr. Chittick
13 clarified that he didn't want to litigate the matter and that he didn't want Mr. Beauchamp's
14 help, Mr. Beauchamp checked to see how the information he had been told conflicted with
15 the representations in the POM and he advised Mr. Chittick to devise a plan to resolve the
16 issue without litigation if he could.

17 It was not until January 7th, however, after receiving a letter from attorney Bob Miller
18 threatening suit, that Mr. Chittick first divulged some of the details and scope of the alleged
19 problem. He also notified Mr. Beauchamp that he and Mr. Menaged had developed a
20 proposed plan to deal with the issue, that the plan had already been implemented, and that he
21 had “cleared up 10% of the total \$'s in question.”

22
23 **INTERROGATORY NO. 6:**

24 If you answered “yes” to Interrogatory No. 5, please list and identify each such
25 document.

1 **RESPONSE:**

2 Mr. Beauchamp objects to this Interrogatory on the ground that is it overly broad and
3 unduly burdensome. *See, e.g., Steil v. Humana Kansas City, Inc.*, 197 F.R.D. 445 (D. Kan.
4 2000) (contention interrogatories which seek “every fact and document” to support a
5 contention are overly broad and unduly burdensome). Without waiving the foregoing
6 objection, relevant information regarding the contention identified in Interrogatory No. 5 can
7 be found in the following documents, in addition to others: DIC0007135 – DIC0007143,
8 CH_0000637, CH_0000708, CH_0009800 - CH_0009809. Defendants reserve the right to
9 supplement this response as discovery progresses.

10
11 **INTERROGATORY NO. 7:**

12 Defendants’ Initial Disclosure Statement states, on page 10, lines 13-20:
13 “Mr. Beauchamp’s advice to Mr. Chittick regarding disclosures Mr. Chittick had to make to
14 investors was immediate, clear, practical, consistent with his practice and experience, and
15 consistent with the standard of care: (a) DenSco was not permitted to take new money without
16 full disclosure to the investor lending the money; (b) DenSco was not permitted to roll over
17 existing investments without full disclosure to the investor rolling over the money; and (c)
18 DenSco needed to update its POM and make full disclosure to all investors. Mr. Beauchamp
19 provided this advice to DenSco starting with his January 9, 2014 meeting with Mr. Chittick,
20 and repeated it routinely over the next few months.”

21 Are you aware of any document that contains the advice you say was given on
22 January 9, 2014 or reflects that it was given?

23 **RESPONSE:**

24 Yes. Throughout 2014, when Mr. Beauchamp was preparing the Forbearance
25 Agreement and later the updated POM that would apprise investors of the double lien issue
26 and Mr. Chittick’s plan to resolve it, Mr. Beauchamp consistently reminded Mr. Chittick of

1 his fiduciary obligations to his investors, his obligation to provide full disclosure to his
2 investors (including his obligation to inform investors as to what had occurred prior to taking
3 new investor money or rolling over investor money), as well as his obligation to update the
4 2013 POM as soon as possible.

5 This is evidenced first by the fact that Mr. Beauchamp diligently worked to update the
6 2013 POM between May and August of 2013, until he was ordered to stop by Mr. Chittick.
7 Once Mr. Chittick reinitiated contact with Mr. Beauchamp in mid-December 2013 and
8 informed him of the allegedly limited double lien issue, Mr. Beauchamp immediately
9 advised Mr. Chittick of his general obligation to disclose the problem and his specific
10 obligation to disclose the problem to any investors from whom he was receiving additional
11 money (whether in the form of a new investment or rollover of an existing investment). Mr.
12 Chittick appears to have informed Mr. Beauchamp that he had done so, telling him in a
13 January 12, 2014 email, shortly after the initial January 9, 2014 meeting where Mr.
14 Beauchamp first instructed Mr. Chittick that disclosures were required prior to accepting
15 additional funds, that "I've spent the day contacting every investor that has told me they want
16 to give me more money." The clear implication was that Mr. Chittick was contacting those
17 investors to make adequate disclosures.

18 In the following months, as Mr. Beauchamp worked with Mr. Chittick, Mr. Menaged,
19 and Mr. Menaged's counsel to finalize the Forbearance Agreement and POM, Mr.
20 Beauchamp continually reminded Mr. Chittick of his fiduciary obligations with respect to
21 executing the Forbearance Agreement and updating the POM, as well as his obligations to
22 keep his investors apprised of the double lien issue. For example, on January 21, 2014, as
23 Mr. Chittick continued to work out the loan issues with the other hard money lenders who
24 had threatened suit earlier in the month, Mr. Beauchamp reminded Mr. Chittick that the
25 Forbearance Agreement needed to be finalized and that he was "very concerned about the
26 payoffs getting so far ahead of the documentation. I have authorized the preparation of the

1 Forbearance Agreement and the related documents. Under normal circumstances, this should
2 be finalized and signed before you advance all of this additional money.”

3 Then, as negotiations regarding the language of the Forbearance Agreement stretched
4 on between February and April 2014, Mr. Beauchamp consistently rejected changes to the
5 Forbearance Agreement proposed by Mr. Chittick and Mr. Menaged in favor of Mr. Menaged
6 that did not comport with Mr. Chittick’s fiduciary obligations. On February 4, 2014, for
7 instance, Mr. Beauchamp rejected proposed changes to the Forbearance Agreement by Mr.
8 Menaged’s counsel, Mr. Goulder. Mr. Beauchamp explained that those changes
9 “transfer[red] significant risk to [Mr. Chittick] and [his] investors” and that if even a portion
10 of the changes proposed were allowed to remain, the Forbearance Agreement would no longer
11 have a description of the double lien issue “that you HAVE to provide to your investors.”
12 That same day, Mr. Beauchamp reminded Mr. Chittick that he needed to be clear about what
13 he could and could not do with regards to the Forbearance Agreement “without going back
14 to all of [his] investors for approval.” Mr. Beauchamp acknowledged that while DenSco had
15 helped Mr. Menaged in the past on the double lien properties, Mr. Chittick could not
16 “OBLIGATE DenSco to further help Scott, because that would breach your fiduciary duty to
17 your investors.”

18 On February 7, 2014, Mr. Beauchamp again rejected changes proposed by Mr. Goulder
19 explaining that “the agreement needs to comply with Denny’s fiduciary obligations to his
20 investors.” Mr. Beauchamp clarified that though the parties “had intended to make the
21 document as balanced as possible,” the Forbearance Agreement needed “to set forth the
22 necessary facts for Denny to satisfy his securities obligations to his investors.” Two days
23 later, Mr. Beauchamp again reminded Mr. Chittick that his ability to force DenSco to assume
24 risk or liability related to the double lien properties in the Forbearance Agreement was
25 limited by his fiduciary duty to his investors.

26

1 On February 14th, Mr. Beauchamp reminded Mr. Chittick yet again that the
2 Forbearance Agreement had to comply with Mr. Chittick's fiduciary obligations to his
3 investors. He warned Mr. Chittick explicitly that Mr. Menaged was trying to get him to accept
4 a "watered down agreement" where DenSco "give[s] up substantial rights that [DenSco]
5 should not have to give up," but that he could not do so because "it is not your money. It is
6 your investors' money. So you have a fiduciary duty." Mr. Beauchamp further admonished
7 Mr. Chittick and reminded him that his "duty and obligation [was] not to be fair to Scott, but
8 to completely protect the rights of your investors. I am sorry if Scott is hurt through this, but
9 Scott's hurt will give Scott the necessary incentive to go after his cousin. Your job is to
10 protect the money that your investors have loaned to DenSco."

11 In late February 2014, while still negotiating the Forbearance Agreement, Mr.
12 Beauchamp learned that the double lien issue was much bigger than Mr. Chittick had
13 suggested initially. As noted in Mr. Chittick's corporate journal (the admissibility of which
14 is not conceded), "I told david the dollars today, he about shit a brick." Mr. Beauchamp once
15 again advised Mr. Chittick to disclose the issue to his investors. As documented in Mr.
16 Chittick's journal, Mr. Chittick recognized that "I have to tell [my investors] and hope they
17 stick with me." On February 21st, Mr. Beauchamp advised Mr. Chittick to inform his
18 investors of what he knew regarding the double lien issue at DenSco's upcoming annual
19 investors meeting on March 8th. Mr. Beauchamp encouraged Mr. Chittick to explain the issue
20 in person at the meeting, as well as provide a summary of the issue in the notice that was sent
21 to the investors before the meeting. Whether Mr. Chittick followed Mr. Beauchamp's advice
22 is unknown, as Mr. Beauchamp was expressly uninvited from the meeting that year, but Mr.
23 Beauchamp again discussed with Mr. Chittick on February 27th what Mr. Chittick should
24 include in the notice to the investors.

25 Throughout March, Mr. Beauchamp continued to be clear in his advice that Mr.
26 Chittick needed to keep his investors in the loop about the double lien issue and get to

1 work on the POM. For example, in mid-March, Mr. Beauchamp warned Mr. Chittick that he
2 was "very late in providing information to your investors about this problem and the resulting
3 material changes from your business plan. We cannot give Scott and his attorney any time to
4 cause further delay in getting this Forbearance Agreement finished and the necessary
5 disclosure prepared and circulated." Similarly on March 11th, Mr. Beauchamp discussed with
6 Mr. Chittick a cover email to the POM that would explain the double lien issue. Finally,
7 after the Forbearance Agreement was executed, Mr. Beauchamp moved swiftly to include in
8 the revised 2013 POM a detailed description of what had occurred. In the prior performance
9 section of the POM, Mr. Beauchamp explained the work out agreement, the total amount of
10 outstanding loans, and why a work out was the most beneficial approach for the investors.
11 Mr. Chittick chose to never complete the POM and Mr. Beauchamp promptly terminated the
12 attorney-client relationship.

13
14 **INTERROGATORY NO. 8:**

15 If you answered "yes" to Interrogatory No. 7, please list and identify each such
16 document.

17 **RESPONSE:**

18 Mr. Beauchamp objects to this Interrogatory on the ground that it is overly broad and
19 unduly burdensome. *See, e.g., Steil v. Humana Kansas City, Inc.*, 197 F.R.D. 445 (D. Kan.
20 2000) (contention interrogatories which seek "every fact and document" to support a
21 contention are overly broad and unduly burdensome). Without waiving the foregoing
22 objection, relevant information regarding the contention identified in Interrogatory No. 7 can
23 be found in the following documents, in addition to others: DIC0005439, DIC0005442,
24 DIC0006068, DIC0006528, DIC0006625, DIC0006656, DIC0006703, DIC0006673,
25 DIC0006803, DIC0006904, DIC0007085, DIC0008874, RECEIVER_000051. Defendants
26 reserve the right to supplement this response as discovery progresses.

1 **INTERROGATORY NO. 9:**

2 Defendants' Initial Disclosure Statement states, on page 10, lines 13-20: "Mr.
3 Beauchamp's advice to Mr. Chittick regarding disclosures Mr. Chittick had to make to
4 investors was immediate, clear, practical, consistent with this practice and experience, and
5 consistent with the standard of care: (a) DenSco was not permitted to take new money without
6 full disclosure to the investor lending the money; (b) DenSco was not permitted to roll over
7 existing investments without full disclosure to the investor rolling over the money; and (c)
8 DenSco needed to update its POM and make full disclosure to all investors. Mr. Beauchamp
9 provided this advice to DenSco starting with his January 9, 2014 meeting with Mr. Chittick,
10 and repeated it routinely over the next few months."

11 Are you aware of any document that contains the advice you say was given on
12 January 9, 2014 or reflects that it was given?

13 **RESPONSE:**

14 Yes. Throughout 2014, when Mr. Beauchamp was preparing the Forbearance
15 Agreement and later the updated POM that would apprise investors of the double lien issue
16 and Mr. Chittick's plan to resolve it, Mr. Beauchamp consistently reminded Mr. Chittick of
17 his fiduciary obligations to his investors, his obligation to provide full disclosure to his
18 investors (including his obligation to inform investors as to what had occurred prior to taking
19 new investor money or rolling over investor money), as well as his obligation to update the
20 2013 POM as soon as possible.

21 This is evidenced first by the fact that Mr. Beauchamp diligently worked to update the
22 2013 POM between May and August of 2013, until he was ordered to stop by Mr. Chittick.
23 Once Mr. Chittick reinitiated contact with Mr. Beauchamp in mid-December 2013 and
24 informed him of the allegedly limited double lien issue, Mr. Beauchamp immediately
25 advised Mr. Chittick of his general obligation to disclose the problem and his specific
26 obligation to disclose the problem to any investors from whom he was receiving additional

1 money (whether in the form of a new investment or rollover of an existing investment). Mr.
2 Chittick appears to have informed Mr. Beauchamp that he had done so, telling him in a
3 January 12, 2014 email, shortly after the initial January 9, 2014 meeting where Mr.
4 Beauchamp first instructed Mr. Chittick that disclosures were required prior to accepting
5 additional funds, that "I've spent the day contacting every investor that has told me they want
6 to give me more money." The clear implication was that Mr. Chittick was contacting those
7 investors to make adequate disclosures.

8 In the following months, as Mr. Beauchamp worked with Mr. Chittick, Mr. Menaged,
9 and Mr. Menaged's counsel to finalize the Forbearance Agreement and POM, Mr.
10 Beauchamp continually reminded Mr. Chittick of his fiduciary obligations with respect to
11 executing the Forbearance Agreement and updating the POM, as well as his obligations to
12 keep his investors apprised of the double lien issue. For example, on January 21, 2014, as
13 Mr. Chittick continued to work out the loan issues with the other hard money lenders who
14 had threatened suit earlier in the month, Mr. Beauchamp reminded Mr. Chittick that the
15 Forbearance Agreement needed to be finalized and that he was "very concerned about the
16 payoffs getting so far ahead of the documentation. I have authorized the preparation of the
17 Forbearance Agreement and the related documents. Under normal circumstances, this should
18 be finalized and signed before you advance all of this additional money."

19 Then, as negotiations regarding the language of the Forbearance Agreement stretched
20 on between February and April 2014, Mr. Beauchamp consistently rejected changes to the
21 Forbearance Agreement proposed by Mr. Chittick and Mr. Menaged in favor of Mr. Menaged
22 that did not comport with Mr. Chittick's fiduciary obligations. On February 4, 2014, for
23 instance, Mr. Beauchamp rejected proposed changes to the Forbearance Agreement by Mr.
24 Menaged's counsel, Mr. Goulder. Mr. Beauchamp explained that those changes
25 "transfer[red] significant risk to [Mr. Chittick] and [his] investors" and that if even a portion
26 of the changes proposed were allowed to remain, the Forbearance Agreement would no longer

1 have a description of the double lien issue "that you HAVE to provide to your investors."
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3 he could and could not do with regards to the Forbearance Agreement "without going back
4 to all of [his] investors for approval." Mr. Beauchamp acknowledged that while DenSco had
5 helped Mr. Menaged in the past on the double lien properties, Mr. Chittick could not
6 "OBLIGATE DenSco to further help Scott, because that would breach your fiduciary duty to
7 your investors."

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9 explaining that "the agreement needs to comply with Denny's fiduciary obligations to his
10 investors." Mr. Beauchamp clarified that though the parties "had intended to make the
11 document as balanced as possible," the Forbearance Agreement needed "to set forth the
12 necessary facts for Denny to satisfy his securities obligations to his investors." Two days
13 later, Mr. Beauchamp again reminded Mr. Chittick that his ability to force DenSco to assume
14 risk or liability related to the double lien properties in the Forbearance Agreement was
15 limited by his fiduciary duty to his investors.

16 On February 14th, Mr. Beauchamp reminded Mr. Chittick yet again that the
17 Forbearance Agreement had to comply with Mr. Chittick's fiduciary obligations to his
18 investors. He warned Mr. Chittick explicitly that Mr. Menaged was trying to get him to accept
19 a "watered down agreement" where DenSco "give[s] up substantial rights that [DenSco]
20 should not have to give up," but that he could not do so because "it is not your money. It is
21 your investors' money. So you have a fiduciary duty." Mr. Beauchamp further admonished
22 Mr. Chittick and reminded him that his "duty and obligation [was] not to be fair to Scott, but
23 to completely protect the rights of your investors. I am sorry if Scott is hurt through this, but
24 Scott's hurt will give Scott the necessary incentive to go after his cousin. Your job is to
25 protect the money that your investors have loaned to DenSco."

26

1 In late February 2014, while still negotiating the Forbearance Agreement, Mr.
2 Beauchamp learned that the double liening issue was much bigger than Mr. Chittick had
3 suggested initially. As noted in Mr. Chittick's corporate journal (the admissibility of which
4 is not conceded), "I told david the dollars today, he about shit a brick." Mr. Beauchamp once
5 again advised Mr. Chittick to disclose the issue to his investors. As documented in Mr.
6 Chittick's journal, Mr. Chittick recognized that "I have to tell [my investors] and hope they
7 stick with me." On February 21st, Mr. Beauchamp advised Mr. Chittick to inform his
8 investors of what he knew regarding the double liening issue at DenSco's upcoming annual
9 investors meeting on March 8th. Mr. Beauchamp encouraged Mr. Chittick to explain the issue
10 in person at the meeting, as well as provide a summary of the issue in the notice that was sent
11 to the investors before the meeting. Whether Mr. Chittick followed Mr. Beauchamp's advice
12 is unknown, as Mr. Beauchamp was expressly uninvited from the meeting that year, but Mr.
13 Beauchamp again discussed with Mr. Chittick on February 27th what Mr. Chittick should
14 include in the notice to the investors.

15 Throughout March, Mr. Beauchamp continued to be clear in his advice that Mr.
16 Chittick needed to keep his investors in the loop about the double liening issue and get to
17 work on the POM. For example, in mid-March, Mr. Beauchamp warned Mr. Chittick that he
18 was "very late in providing information to your investors about this problem and the resulting
19 material changes from your business plan. We cannot give Scott and his attorney any time to
20 cause further delay in getting this Forbearance Agreement finished and the necessary
21 disclosure prepared and circulated." Similarly on March 11th, Mr. Beauchamp discussed with
22 Mr. Chittick a cover email to the POM that would explain the double liening issue. Finally,
23 after the Forbearance Agreement was executed, Mr. Beauchamp moved swiftly to include in
24 the revised 2013 POM a detailed description of what had occurred. In the prior performance
25 section of the POM, Mr. Beauchamp explained the work out agreement, the total amount of
26 outstanding loans, and why a work out was the most beneficial approach for the investors.

1 Mr. Chittick chose to never complete the POM and Mr. Beauchamp promptly terminated the
2 attorney-client relationship.

3
4 **INTERROGATORY NO. 10:**

5 If you answered "yes" to Interrogatory No. 9, please list and identify each such
6 document.

7 **RESPONSE:**

8 Mr. Beauchamp objects to this Interrogatory on the ground that is it overly broad and
9 unduly burdensome. *See, e.g., Steil v. Humana Kansas City, Inc.*, 197 F.R.D. 445 (D. Kan.
10 2000) (contention interrogatories which seek "every fact and document" to support a
11 contention are overly broad and unduly burdensome). Without waiving the foregoing
12 objection, relevant information regarding the contention identified in Interrogatory No. 9 can
13 be found in the following documents, in addition to others: DIC0005439, DIC0005442,
14 DIC0006068, DIC0006528, DIC0006625, DIC0006656, DIC0006703, DIC0006673,
15 DIC0006803, DIC0006904, DIC0007085, DIC0008874, RECEIVER_000051. Defendants
16 reserve the right to supplement this response as discovery progresses.

17
18 **INTERROGATORY NO. 11:**

19 Defendants' Initial Disclosure Statement states, on page 11, lines 14-15, "Mr. Chittick
20 told Mr. Beauchamp that he was seeking such advice from what Mr. Chittick described as an
21 'advisory council.'"

22 Are you aware of any document that contains your notes from that conversation or
23 reflects that it occurred?

24 **RESPONSE:**

25 Yes. The majority of DenSco's investors were family, friends and acquaintances of
26 Mr. Chittick. He accordingly sought guidance from a subset of these investors throughout

1 DenSco's operations. Though the admissibility of Mr. Chittick's suicide letter to his investors
2 is not conceded, it documents the many times Mr. Chittick approached this group of investors
3 for advice on DenSco's operations. For example, the letter notes that DenSco weathered the
4 2008 housing crash by "talk[ing] to a few of you to help me make decisions on what I should
5 do. . . . Gladly after consultations from several of you, you agreed with my strategy . . ."

6 With respect to Mr. Menaged specifically, Mr. Chittick requested permission in 2012
7 from a select group of investors that he be allowed to waive the 10-15% loan cap to any one
8 borrower for Mr. Menaged. Mr. Chittick explained that after he "talked to a few of you
9 investors and got a positive response," and based on Mr. Menaged's "track record, the down
10 payments etc, the comfort level was there." Mr. Chittick's also noted that "many" of the
11 investors were aware of how DenSco was making loans directly to Mr. Menaged rather than
12 to a trustee. The letter recites that "for efficiency [sic] sake," Mr. Chittick would fund loans
13 directly to borrowers like Mr. Menaged and that "[m]any of you [investors] knew this and I
14 told you this is how I operated. Some of you that were also borrowers and investors have
15 experienced this way of doing business and know it's common." Mr. Chittick also informed
16 his investors that he may have to return some of their investments in DenSco because
17 DenSco's portfolio was reaching the \$50 million limit due to the loans made to Mr. Menaged.

18 Mr. Chittick even sought advice from individual investors regarding updates to his
19 investor offering documents. In 2011, for example, Mr. Chittick updated the POM with the
20 advice and consent of one of his investors named Warren Bush. Mr. Chittick would send to
21 Mr. Bush the revisions that Mr. Beauchamp had made and solicit Mr. Bush's opinion on those
22 changes. It was ultimately Mr. Bush that approved of the revisions to the POM, directing Mr.
23 Chittick "time to wrap it up."

24 In addition to seeking explicit advice from his investors for various company actions,
25 Mr. Chittick also kept his investors apprised of DenSco's processes and the issues with Mr.
26 Menaged specifically. Generally, Mr. Chittick met with DenSco's investors periodically to

1 keep them apprised of DenSco's business. He also sent investors quarterly updates on
2 DenSco's operations.

3
4 **INTERROGATORY NO. 12:**

5 If you answered "yes" to Interrogatory No. 11, please list and identify each such
6 document.

7 **RESPONSE:**

8 Mr. Beauchamp objects to this Interrogatory on the ground that is it overly broad and
9 unduly burdensome. *See, e.g., Steil v. Humana Kansas City, Inc.*, 197 F.R.D. 445 (D. Kan.
10 2000) (contention interrogatories which seek "every fact and document" to support a
11 contention are overly broad and unduly burdensome). Without waiving the foregoing
12 objection, relevant information regarding the contention identified in Interrogatory No. 11
13 can be found in the following documents, in addition to others: BC_000750, BC_000753,
14 BC_000767, BC_001174, BC_001198, BC_001273-74, BC_001828, DIC0000459,
15 DIC0000487-89, DIC0000609, DIC0000493-95, DIC0002044, DIC0002465, DIC0004056-
16 59, DIC0009462, DIC0011987, CH_0013624-13946. In addition, please see all of the
17 DenSco quarterly newsletters, DenSco invitations to attend investor meetings in Arizona,
18 Idaho, and other locations, and the correspondence between DenSco and individual investors.
19 Defendants reserve the right to supplement this response as discovery progresses.

20
21 **INTERROGATORY NO. 13:**

22 Defendants' Initial Disclosure Statement states, on page 15, lines 16-20,
23 "Mr. Beauchamp informed Mr. Chittick that Beauchamp and Clark Hill could not and would
24 not represent DenSco any longer."

25 Please list and identify any document through which you conveyed that information to
26 Mr. Chittick.

1 **RESPONSE:**

2 After Mr. Chittick made clear in May 2014 that he would not issue a revised POM,
3 Mr. Beauchamp terminated the attorney-client relationship and no further securities work was
4 done on behalf of DenSco other than cleaning up the documents related to the Forbearance
5 Agreement that had been executed in April 2014. The Clark Hill invoices make clear that
6 Mr. Beauchamp did not take on any new work on behalf of DenSco after May 20, 2014. Once
7 a clean up of the Forbearance Agreement documents was complete in July 2014, the invoices
8 show that no further work was done for DenSco until March 2016 when the Arizona
9 Department of Financial Institutions ("ADFI") informed Mr. Chittick that DenSco was being
10 investigated and Mr. Chittick reached back out to Mr. Beauchamp.

11 The communications between the parties corroborate that the attorney-client
12 relationship was terminated. The parties did not exchange any written communications
13 between July 2014 and March 2016, save for a few emails in March 2015, and a single email
14 exchange in September 2015 that related to spam being sent to Mr. Beauchamp from Mr.
15 Chittick's email address. After a single meeting in March 2015, the parties did not speak for
16 nearly a year until Mr. Chittick approached Mr. Beauchamp about the ADFI investigation.
17 Though the admissibility of Mr. Chittick's business journal is not conceded, it confirms these
18 facts.

19
20 **INTERROGATORY NO. 14:**

21 Please list and identify any document through which you conveyed to persons within
22 Clark Hill that you had "informed Mr. Chittick that Beauchamp and Clark Hill could not and
23 would not represent DenSco any longer?

24 **RESPONSE:**

25 Mr. Beauchamp objects to this Interrogatory on the ground that is it overly broad and
26 unduly burdensome. *See, e.g., Steil v. Humana Kansas City, Inc.*, 197 F.R.D. 445 (D. Kan.

1 2000) (contention interrogatories which seek "every fact and document" to support a
2 contention are overly broad and unduly burdensome). Without waiving the foregoing
3 objection, relevant information regarding the contention identified in Interrogatory No. 13
4 can be found in the following documents, in addition to others: CH_0009825 – CH_0009845,
5 CH_0006602 – CH_0006605, RECEIVER_000063 – RECEIVER_000146. Defendants
6 reserve the right to supplement this response as discovery progresses.

7 DATED this 21st day of June, 2018.

8
9 **COPPERSMITH BROCKELMAN PLC**

10 By 

11 John E. DeWulf

12 Marvin C. Ruth

13 Vidula U. Paki

2800 North Central Avenue, Suite 1900

Phoenix, Arizona 85004

Attorneys for Defendants

14 **ORIGINAL** mailed and emailed this
15 21st day of June, 2018 to:

16 Colin F. Campbell, Esq.

17 Geoffrey M. T. Sturr, Esq.

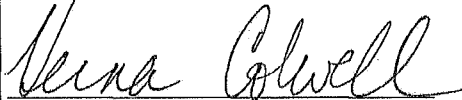
18 Joshua M. Whitaker, Esq.

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20 2929 N. Central Ave., Suite 2100

21 Phoenix, AZ 85012-2793

22 Attorneys for Plaintiff

23
24 
25
26

1
2
3 VERIFICATION

4 STATE OF ARIZONA)
5) ss.
6 COUNTY OF Maricopa)

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

8 I, David G. Beauchamp, am a Defendant in the matter *Peter S. Davis, as Receiver*
9 *for DenSoo Investment Corp, v. Clark Hill PLC; David G. Beauchamp and Jane Doe*
10 *Beauchamp, Maricopa County Superior Court Case No. CV2017-013832*. I have read the
11 foregoing Defendant David Beauchamp's Responses to Plaintiff's First Set of Non-
12 Uniform Interrogatories and know its contents. The matters stated in the foregoing
13 Responses are true and correct to the best of my knowledge except as to those matters that
14 are stated upon information and belief, and as to those matters, I believe them to be true.
15

16
17 I declare under penalty of perjury under the laws of the State of Arizona that the
18 foregoing is true and correct.

19 DATED this 21st day of June, 2018.
20

21 David G. Beauchamp
22 David G. Beauchamp
23
24
25
26
27