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**SUPERIOR COURT OF ARIZONA**

10

**COUNTY OF MARICOPA**

11

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

No. CV2017-013832

13

Plaintiff,

**ANSWER**

14

v.

15

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

17

Defendants.

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Defendants Clark Hill PLC, David G. Beauchamp and Jane Doe Beauchamp  
20 (collectively, “Defendants”), by and through undersigned counsel, answer the Complaint of  
21 Plaintiff Peter S. Davis (“Plaintiff”) as follows:

22

**SUMMARY OF PLAINTIFF’S CLAIMS**

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1. Defendants are without sufficient information or knowledge to admit or deny the  
24 allegations in Paragraph 1 and therefore deny the allegations in Paragraph 1.

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2. Defendants deny the allegations in Paragraph 2.

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1           3.        Answering Paragraph 3, Defendants admit that in January 2014, Denny Chittick,  
2 the President and sole shareholder of DenSco, informed Mr. Beauchamp that issues had arisen  
3 with some of the loans DenSco had made. Defendants deny the remaining allegations in  
4 Paragraph 3.

5           4.        Defendants deny the allegations in Paragraph 4.

6           5.        The allegations in Paragraph 5 state a legal conclusion to which no response is  
7 required. To the extent that the allegations in Paragraph 5 constitute factual allegations,  
8 Defendants deny them.

9           6.        The allegations in Paragraph 6 state a legal conclusion to which no response is  
10 required. To the extent that the allegations in Paragraph 6 constitute factual allegations,  
11 Defendants deny them.

12           7.        Defendants deny the allegations in Paragraph 7.

13           8.        Defendants deny the allegations in Paragraph 8.

14           9.        Defendants deny the allegations in Paragraph 9.

15           10.       The allegations in Paragraph 10 state legal conclusions to which no response is  
16 required. To the extent a response is required, Defendants deny the allegations in Paragraph  
17 10.

## 18   **PARTIES, JURISDICTION, AND VENUE**

19           11.        Defendants admit the allegations in Paragraph 11.

20           12.        Defendants admit the allegations in Paragraph 12.

21           13.        Defendants admit the allegations in Paragraph 13.

22           14.        Defendants deny the allegations in Paragraph 14.

23           15.        Defendants admit that Mr. Beauchamp is an Arizona resident, but deny the  
24 remaining allegations in Paragraph 15.

25           16.        Defendants admit the allegations in Paragraph 16.

26           17.        Defendants admit the allegations in Paragraph 17.

1 **FACTUAL ALLEGATIONS**

2 18. Answering Paragraph 18, Defendants admit that DenSco began operating in  
3 2001 and had its principal office in Chandler, Arizona. Defendants are without sufficient  
4 information or knowledge to admit or deny the remaining allegations in Paragraph 18 and  
5 therefore deny those allegations.

6 19. Defendants are without sufficient information or knowledge to admit or deny the  
7 allegations in Paragraph 19 and therefore deny the allegations in Paragraph 19.

8 20. Defendants are without sufficient information or knowledge to admit or deny the  
9 allegations in Paragraph 20 and therefore deny the allegations in Paragraph 20.

10 21. Defendants deny the allegations in Paragraph 21.

11 22. Answering Paragraph 22, Defendants admit that Mr. Beauchamp reviewed and  
12 revised some form loan documents provided by Mr. Chittick, each of which speaks for itself,  
13 and any implied inferences or characterizations of those documents are denied. Defendants  
14 deny the remaining allegations of Paragraph 22.

15 23. Defendants admit that Mr. Beauchamp prepared private offering memoranda in  
16 2007, 2009 and 2011. Defendants deny the remaining allegations in Paragraph 23.

17 24. Defendants are without sufficient information or knowledge to admit or deny the  
18 allegations in Paragraph 24 and, on that basis, deny them.

19 25. Answering Paragraph 25, each private offering memorandum speaks for itself,  
20 and any implied inferences or characterizations are denied. Defendants deny the remaining  
21 allegations in Paragraph 25.

22 26. Answering Paragraph 26, each private offering memorandum speaks for itself,  
23 and any implied inferences or characterizations are denied. Defendants deny the remaining  
24 allegations in Paragraph 26.

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1           27.    Answering Paragraph 27, each private offering memorandum speaks for itself,  
2 and any implied inferences or characterizations are denied. Defendants deny the remaining  
3 allegations in Paragraph 27.

4           28.    Answering Paragraph 28, to the extent that the allegations in Paragraph 28 are  
5 premised on the terms of any private offering memorandum or Notes, those documents speak  
6 for themselves, and any implied inferences or characterizations are denied.

7           29.    Defendants are without sufficient information or knowledge to admit or deny the  
8 allegations in Paragraph 29 and therefore deny the allegations in Paragraph 29.

9           30.    Defendants are without sufficient information or knowledge to admit or deny the  
10 allegations in Paragraph 30 regarding what the Notes showed and therefore deny those  
11 allegations. Defendants deny the remaining allegations in Paragraph 30.

12          31.    Answering Paragraph 31, each private offering memorandum speaks for itself,  
13 and any implied inferences or characterizations are denied. Defendants deny the remaining  
14 allegations in Paragraph 31.

15          32.    Defendants are without sufficient information or knowledge to admit or deny the  
16 allegations in Paragraph 32 and, on that basis, deny them.

17          33.    Answering Paragraph 33, the 2011 private offering memorandum speaks for  
18 itself, and any implied inferences or characterizations are denied. Defendants deny the  
19 remaining allegations in Paragraph 33.

20          34.    Defendants admit the allegations in Paragraph 34.

21          35.    Answering Paragraph 35, the June 10, 2013 email speaks for itself, and any  
22 implied inferences or characterizations are denied.

23          36.    Defendants are without sufficient information or knowledge to admit or deny the  
24 allegations in Paragraph 36 and, on that basis, deny them. To the extent that such an “internal  
25 compliance procedure” exists at Bryan Cave, those procedures speak for themselves, and any  
26 implied inferences or characterizations are denied.

1           37.     Answering Paragraph 37, the unspecified draft memorandum speaks for itself,  
2 and any implied inferences or characterizations are denied. The remaining allegations in  
3 Paragraph 37 state a legal conclusion to which no response is required. To the extent that those  
4 allegations in Paragraph 37 constitute factual allegations, Defendants deny them.

5           38.     Answering Paragraph 38, the 2011 private offering memorandum speaks for  
6 itself, and any implied inferences or characterizations are denied. Defendants are without  
7 sufficient information or knowledge to admit or deny the allegations in Paragraph 38 regarding  
8 the DenSco website and what it may have stated on June 17, 2013 and therefore deny those  
9 allegations. Defendants deny the remaining allegations in Paragraph 38.

10          39.     Defendants deny the allegations in Paragraph 39.

11          40.     Answering Paragraph 40, the June 14, 2013 email and complaint filed by Freo  
12 Arizona, LLC, (hereinafter, “Freo litigation”) speak for themselves, and any implied inferences  
13 or characterizations are denied. Defendants deny the remaining allegations in Paragraph 40.

14          41.     Answering Paragraph 41, the documents filed in the Freo litigation speak for  
15 themselves, and any implied inferences or characterizations are denied.

16          42.     Answering Paragraph 42, the transmittal email from Mr. Chittick speaks for  
17 itself, and any implied inferences or characterizations are denied.

18          43.     Answering Paragraph 43, the complaint in the Freo litigation speaks for itself,  
19 and any implied inferences or characterizations are denied. Defendants deny the remaining  
20 allegations in Paragraph 43.

21          44.     Defendants deny the allegations in Paragraph 44.

22          45.     The allegations in Paragraph 45 state a legal conclusion to which no response is  
23 required. To the extent that the allegations in Paragraph 45 constitute factual allegations,  
24 Defendants deny them.

25          46.     Defendants deny the allegations in Paragraph 46.

1           47. Defendants are without sufficient information or knowledge to admit or deny the  
2 allegations in Paragraph 47 and therefore deny the allegations in Paragraph 47. Defendants  
3 deny the remaining allegations in Paragraph 47.

4           48. Answering Paragraph 48, the August 30, 2013 letter speaks for itself, and any  
5 implied inferences or characterizations are denied.

6           49. Defendants admit the allegations in Paragraph 49.

7           50. Answering Paragraph 50, the September 12, 2013 letter from Clark Hill and  
8 emails between Mr. Beauchamp and Mr. Chittick speak for themselves, and any implied  
9 inferences or characterizations are denied.

10          51. Answering Paragraph 51, the engagement letter sent by Clark Hill speaks for  
11 itself, and any implied inferences or characterizations are denied.

12          52. Answering Paragraph 52, the September 13, 2013 New Client/Matter Form  
13 speaks for itself, and any implied inferences or characterizations are denied.

14          53. Defendants deny the allegations in Paragraph 53.

15          54. Answering Paragraph 54, Defendants admit that Mr. Chittick forwarded a  
16 demand letter sent to DenSco on January 6, 2014 to Mr. Beauchamp. The demand letter speaks  
17 for itself, and any implied inferences or characterizations are denied. Defendants deny the  
18 remaining allegations in Paragraph 54.

19          55. Answering Paragraph 55, the demand letter speaks for itself, and any implied  
20 inferences or characterizations are denied.

21          56. Answering Paragraph 56, the demand letter speaks for itself, and any implied  
22 inferences or characterizations are denied.

23          57. Answering Paragraph 57, the demand letter speaks for itself, and any implied  
24 inferences or characterizations are denied.

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1           58.    The allegations in Paragraph 58 state a legal conclusion to which to no response  
2 is required. To the extent that the allegations in Paragraph 58 constitute factual allegations,  
3 Defendants deny them.

4           59.    Answering Paragraph 59, Mr. Beauchamp's notes speak for themselves, and any  
5 implied inferences or characterizations are denied.

6           60.    Answering Paragraph 60, the 2011 private offering memorandum speaks for  
7 itself, and any implied inferences or characterizations are denied. The remaining allegations  
8 in Paragraph 60 state a legal conclusion to which no response is required. To the extent that  
9 those allegations constitute factual allegations, Defendants deny them.

10          61.    Answering Paragraph 61, the email from Mr. Chittick to Mr. Beauchamp speaks  
11 for itself, and any implied inferences or characterizations are denied.

12          62.    Answering Paragraph 62, the email from Mr. Chittick to Mr. Beauchamp speaks  
13 for itself, and any implied inferences or characterizations are denied.

14          63.    Answering Paragraph 63, the email from Mr. Chittick to Mr. Beauchamp speaks  
15 for itself, and any implied inferences or characterizations are denied.

16          64.    Defendants deny the allegations in Paragraph 64.

17          65.    Answering Paragraph 65, the email from Mr. Chittick to Mr. Beauchamp speaks  
18 for itself, and any implied inferences or characterizations are denied.

19          66.    The allegations in Paragraph 66 state a legal conclusion to which no response is  
20 required. To the extent that the allegations in Paragraph 66 constitute factual allegations,  
21 Defendants deny them.

22          67.    Answering Paragraph 67, the email from Mr. Chittick to Mr. Beauchamp speaks  
23 for itself, and any implied inferences or characterizations are denied.

24          68.    Answering Paragraph 68, the email from Mr. Chittick to Mr. Beauchamp speaks  
25 for itself, and any implied inferences or characterizations are denied.

26          69.    Defendants admit the allegations in Paragraph 69.

1           70.     Answering Paragraph 70, Mr. Beauchamp’s notes speak for themselves, and any  
2 implied inferences or characterizations are denied. The allegations in Paragraph 70 regarding  
3 what Mr. Beauchamp should have done state a legal conclusion to which no response is  
4 required. To the extent that those allegations constitute factual allegations, Defendants deny  
5 them. Defendants deny the remaining allegations in Paragraph 70.

6           71.     The allegations in Paragraph 71 state a legal conclusion to which no response is  
7 required. To the extent that the allegations in Paragraph 71 constitute factual allegations,  
8 Defendants deny them.

9           72.     Answering Paragraph 72, Mr. Beauchamp’s notes speak for themselves, and any  
10 implied inferences or characterizations are denied.

11          73.     The allegations in Paragraph 73 and all of its subparts state legal conclusions to  
12 which no response is required. To the extent that the allegations in Paragraph 73 constitute  
13 factual allegations, Defendants deny them.

14          74.     Defendants deny the allegations in Paragraph 74.

15          75.     Defendants deny the allegations in Paragraph 75.

16          76.     Answering Paragraph 76, the allegations in Paragraph 76 are premised on notes  
17 written by Mr. Chittick that speak for themselves, and any implied inferences or  
18 characterizations are denied.

19          77.     Answering the allegations in Paragraph 77, Defendants deny that  
20 Mr. Beauchamp’s advice was documented in whole or in part in a January 12, 2014 email  
21 exchange with Mr. Chittick. Mr. Chittick’s and Mr. Beauchamp’s January 12, 2014 emails  
22 speak for themselves, and any implied inferences or characterizations are denied.

23          78.     Defendants deny the allegations in Paragraph 78.

24          79.     The allegations in Paragraph 79 state a legal conclusion to which no response is  
25 required. To the extent that the allegations in Paragraph 79 constitute factual allegations,  
26 Defendants deny them.



1 80. Defendants deny the allegations in Paragraph 80.

2 81. The allegations in Paragraph 81 state a legal conclusion to which no response is  
3 required. To the extent that the allegations in Paragraph 81 constitute factual allegations,  
4 Defendants are without sufficient information or knowledge to admit or deny the allegations  
5 in Paragraph 81 and therefore deny the allegations in Paragraph 81.

6 82. The allegations in Paragraph 82 state a legal conclusion to which no response is  
7 required. To the extent that the allegations in Paragraph 82 constitute factual allegations,  
8 Defendants deny them.

9 83. Defendants deny the allegations in Paragraph 83.

10 84. Defendants deny the allegations in Paragraph 84.

11 85. Answering Paragraph 85, the January 10, 2014 New Client/Matter Form speaks  
12 for itself, and any implied inferences or characterizations are denied.

13 86. Defendants deny the allegations in Paragraph 86.

14 87. Answering the allegations in Paragraph 87, the Term Sheet, Forbearance  
15 Agreement and other loan documents speak for themselves, and any implied inferences or  
16 characterizations are denied. Defendants deny the remaining allegations in Paragraph 87.

17 88. Answering the allegations in Paragraph 88, the January 21, 2014 email speaks  
18 for itself, and any implied inferences or characterizations are denied. Defendants deny the  
19 remaining allegations in Paragraph 88.

20 89. Answering the allegations in Paragraph 89, the February 7, 2014 email speaks  
21 for itself, and any implied inferences or characterizations are denied.

22 90. Answering the allegations in Paragraph 90, the February 20, 2014 email speaks  
23 for itself, and any implied inferences or characterizations are denied. Defendants deny the  
24 remaining allegations in Paragraph 90.

25 91. Defendants deny the allegations in Paragraph 91.

1           92. Answering the allegations in Paragraph 92, the Forbearance Agreement speaks  
2 for itself, and any implied inferences or characterizations are denied. To the extent that the  
3 allegations in Paragraph 92 constitute factual allegations, Defendants deny them.

4           93. Defendants deny the allegations in Paragraph 93.

5           94. Answering Paragraph 94, the draft updated Forbearance Agreement speaks for  
6 itself, and any implied inferences or characterizations are denied. Defendants deny the  
7 remaining allegations in Paragraph 94. Defendants further affirmatively allege that the  
8 allegation of who Defendants represented states a legal conclusion to which no response is  
9 required. To the extent it constitutes a factual allegation, Defendants deny it.

10          95. Defendants are without sufficient information or knowledge to admit or deny the  
11 allegations in Paragraph 95 and, on that basis, deny them.

12          96. Defendants are without sufficient information or knowledge to admit or deny the  
13 allegations in Paragraph 96 and, on that basis, deny them.

14          97. Defendants deny the allegations in Paragraph 97.

15                                   **CLAIMS FOR RELIEF**

16                                   **Count One**  
17                                   **(Legal Malpractice)**

18          98. Defendants' responses to Paragraphs 1-97 are incorporated as if fully set forth  
19 herein.

20          99. Defendants admit the allegations in Paragraph 99.

21          100. Defendants deny the allegations in Paragraph 100.

22          101. Defendants deny the allegations in Paragraph 101.

23          102. Defendants deny the allegations in Paragraph 102.



1 **AFFIRMATIVE DEFENSES**

2 Defendants allege the following affirmative defenses to the relief sought in Plaintiff's

3 Complaint:

4 112. Some or all of Plaintiff's claims fail to state a claim upon which relief can be  
5 granted.

6 113. Some or all of Plaintiff's claims are barred by the applicable statutes of  
7 limitations.

8 114. Plaintiffs cannot establish loss causation.

9 115. Any alleged misrepresentations and/or omissions constitute inactionable legal  
10 conclusions, inactionable opinions or inactionable promises, statements or projections as to  
11 future events or future conduct.

12 116. The damages alleged by Plaintiff, if any, resulted entirely from or were  
13 contributed to by the fault of DenSco or other persons, regardless of whether they are parties  
14 to this action or could have been named in this action.

15 117. Plaintiff's claims are barred, in whole or in part, by estoppel, laches, waiver,  
16 and/or unclean hands.

17 118. Plaintiff's claims are barred, in whole or in part, by the doctrine of avoidable  
18 consequences, failure to mitigate damages, and/or *in pari delicto*.

19 119. Plaintiff's claims are barred, in whole or in part, because Plaintiff's alleged  
20 injuries, if any, were caused by intervening or superseding events and/or acts of others over  
21 whom Defendants have no control, and for whose conduct Defendants are not legally  
22 answerable.

23 120. Defendants' conduct was neither the sole proximate cause nor a contributing  
24 proximate cause of any alleged injuries to Plaintiff.

25 121. Plaintiff's claims are barred because Plaintiff's alleged damages, if any, are  
26 speculative and cannot be established with reasonable certainty.

1           122. Plaintiff’s request for punitive damages is legally infirm because the facts fail to  
2 show that the Defendants acted with an “evil hand” guided by an “evil mind”.

3           123. Defendants affirmatively state that at all times they acted with due diligence  
4 and/or reasonable care.

5           124. To the extent that Defendants owed any legal duty, Plaintiff’s allegations exceed  
6 the scope of that duty.

7           125. Defendants affirmatively allege offset and/or setoff.

8           126. DenSco and/or Plaintiff assumed the risk of the injury it allegedly suffered.

9           127. Defendants reserve the right to plead further affirmative defenses as may be  
10 justified by facts learned through discovery, including defenses which may pertain to Chittick’s  
11 alleged breaches of fiduciary duty, which form the basis for Count Two. Defenses may  
12 include, but are not limited to, the Business Judgment Rule.

13           WHEREFORE, having fully answered the allegations contained in Plaintiff’s  
14 Complaint, Defendants Clark Hill PLC, David G. Beauchamp and Jane Doe Beauchamp pray  
15 for relief, as follows:

- 16           A. The Plaintiff’s claims against Defendants be dismissed with prejudice and that  
17 the Plaintiff takes nothing thereby;
- 18           B. That the Defendants be awarded their costs incurred pursuant to A.R.S. § 12-  
19 341;
- 20           C. That the Defendants be awarded interest on the foregoing costs at the highest rate  
21 permitted by law, from the date of judgment until paid in full; and
- 22           D. For such other and further relief as the Court deems just and proper.
- 23  
24  
25  
26

1 DATED this 8<sup>th</sup> day of January, 2018.

2 **COPPERSMITH BROCKELMAN PLC**

3  
4 By: /s/ John E. DeWulf

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10 Attorneys for Defendants

11 **ORIGINAL E-FILED** and **COPY**  
12 of the foregoing mailed this  
13 8<sup>th</sup> day of January, 2018, to:

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