

Geoffrey M. T. Sturr

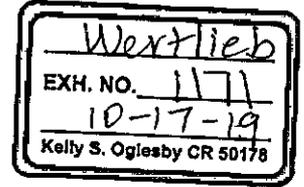
gsturr@omlaw.com

2929 North Central Avenue
21st Floor
Phoenix, Arizona 85012

Direct Line 602.640.9377

Telephone 602.640.9000
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omlaw.com

October 16, 2019



Via U.S. & Electronic Mail

John E. DeWulf, Esq.
Coppersmith Brockelman PLC
2800 N. Central Avenue, Suite 1900
Phoenix, AZ 85004
jdewulf@cblawyers.com

Re: Davis v. Clark Hill, et al.
Maricopa County Superior Court No. CV2017-013832

Dear John:

In response to your October 15 email, I enclose copies of invoices Mr. Wertlieb has issued since June 2019, which have been numbered RECEIVER_005684 to RECEIVER_005685.

I also enclose a summary Mr. Wertlieb prepared of his experience with Regulation D matters, which has been numbered RECEIVER_005686 to RECEIVER_005688.

Finally, I have enclosed the F3 Engagement Agreement numbered RECEIVER_005680 to RECEIVER_005683, which Marvin requested during Mr. Weekly's deposition. These documents should all be treated as Confidential.

Yours very truly,

Geoffrey M. T. Sturr

GMTS:dh
Enclosures
8259904

Wertlieb Law Corp
15332 Antioch Street, Unit 802
Pacific Palisades, CA 90272
(424) 265-9659



Invoice

BILL TO

Geoffrey M.T. Sturr
Osborn Maledon, P.A.
2929 North Central Avenue
Twenty-First Floor
Phoenix, Arizona 85012-2793

INVOICE # OM: 018
DATE 07/28/2019
DUE DATE 08/12/2019

DATE	ACCOUNT SUMMARY	AMOUNT
06/28/2019	Balance Forward	\$32,833.36
	Payments and credits between 06/28/2019 and 07/28/2019	-28,833.35
	New charges (details below)	5,666.67
	Total Amount Due	\$9,666.68

DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
07/10/2019	NJW: Telephone call with Geoff Sturr; review letter	0:15	1,000.00	250.00
07/11/2019	NJW: Regulation D private placements	4:10	1,000.00	4,166.67
07/18/2019	NJW: History of Reg D offerings	1:15	1,000.00	1,250.00

TOTAL OF NEW CHARGES 5,666.67
BALANCE DUE **\$9,666.68**

PLEASE PAY BY WIRE TRANSFER:
Bank Name: Citibank N.A.
ABA Routing #: 322271724
Account Title: Wertlieb Law Corp
Account #: 206726291

RECEIVER_005684

CONFIDENTIAL

Wertlieb Law Corp
 15332 Antioch Street, Unit 802
 Pacific Palisades, CA 90272
 (424) 265-9659



INVOICE

BILL TO

Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 019
DATE 10/08/2019
DUE DATE 10/16/2019

DATE	ACCOUNT SUMMARY	AMOUNT
07/28/2019	Balance Forward	\$9,666.68
	Payments and credits between 07/28/2019 and 10/08/2019	-9,666.68
	New charges (details below)	11,920.60
	Total Amount Due	\$11,920.60

DATE	DESCRIPTION	HR:MIN	RATE	AMOUNT
08/24/2019	Expenses/Description: Booked travel to Phoenix for deposition	1:00	670.60	670.60
10/01/2019	NJW: Organize supplemental documents; review deposition of Michelle Tran and related exhibits	2:35	1,000.00	2,583.33
10/03/2019	NJW: Review deposition of Gary Clapper and related exhibits	2:55	1,000.00	2,916.67
10/05/2019	NJW: Begin review deposition of Scott Menaged and related exhibits	2:25	1,000.00	2,416.67
10/06/2019	NJW: Review deposition of Scott Menaged and related exhibits	3:20	1,000.00	3,333.33

TOTAL OF NEW CHARGES 11,920.60
BALANCE DUE \$11,920.60

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005685

CONFIDENTIAL

PRIVATE PLACEMENTS**TYPICAL CONTEXT**

- Devoted time to over 1,000 different matters while at Milbank
- Types of Reg D Offerings
 - Entity formation
 - Early stage: friends & family, venture capital, angel investors
 - Project finance
 - Finance generally
 - Debt or equity
 - Equity incentives
 - Strategic relationships
 - Restructurings/bankruptcy
 - Refinancing
 - Rights offerings
 - Rescission offers
- Types of Clients
 - Issuers
 - Investors: V/Cs, angels, funds, strategic investors
 - Investment banks & placement agents
 - Financial advisors

PARTIAL LIST OF CLIENTS

- Fund Issuers & Investors
 - V/C investors
 - Mellon Ventures
 - Tyco Ventures
 - AT&T Strategic Ventures
 - Cappello Capital Corporation
 - New Enterprises Associates
 - Angel investors
 - Ampersand Ventures
 - Atlas Communications
 - Strategic investors
 - Littelfuse
 - Fund offerings & investments
 - Oaktree Capital Management
 - Libra Investments
 - Anchorage Capital
 - Compass Advisors
 - Liberation Investments
 - VMG Equity Partners

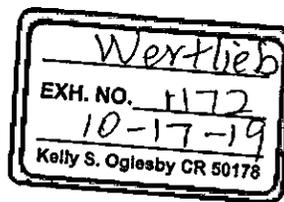
- Schultze Asset Management
 - Aria Partners
 - Houlihan Lokey
- Fund investors
 - Kirkland Messina
 - Post Advisory Group
 - Beach Point Capital
 - Kayne Anderson Investment Management
 - Denham Capital
 - SunAmerica Investments, Inc.
 - TCW
 - William E. Simon & Sons
 - Platinum Equity
 - Silverlake
- Investment Banks & Placement Agents
 - Banc of America Securities
 - ING/Furman Selz
 - Cappello Capital
 - Donaldson, Lufkin & Jenrette
 - Wedbush Morgan Securities
 - Credit Suisse
 - J.P. Morgan
 - Seidler Securities
 - Wasserstein, Perella & Co.
 - Donaldson, Lufkin & Jenrette
 - Dean Witter Reynolds Inc.
 - PaineWebber
 - Cruttenden Roth Incorporated
 - Libra Investments
 - Imperial Capital
- Issuers
 - Start-ups & early stage
 - theRomp.com
 - Accelerate Interactive
 - KORE, Inc.
 - ShowMe.com
 - Boingo Wireless
 - Club One
 - AstroVision
 - Oxygnet, Inc.
 - Figueroa Partners
 - Luckman Interactive, Inc.
 - myBIKE
 - Private companies

- Bidz.com
- Alterna
- Utilimaster Corporation
- McGuire-Nicholas Company
- Millennium Rail
- Composite Technology Corp.
- Alagem Capital
- Westin San Francisco
- Resort Group
- EveryWare Global
- American Medical Partners
- Kash 'n Karry Food Stores, Inc.
- Interactive Networks
- AM International, Inc.
- Geothermal Resources International, Inc.
- Gordon Biersch
- FFN/PMGI (investors)
- The Resort Group

- Public companies
 - IDB Communications Group
 - Toyota
 - Steinway Musical Instruments
 - William Lyon Homes
 - Allergan

- Restructuring/Bankruptcy
 - Radnor
 - Idearc
 - American Capital
 - Relativity Media
 - EveryWare Global
 - Spansion

Wertlieb Law Corp
15332 Antioch Street, Unit 802
Pacific Palisades, CA 90272
(424) 265-9659



INVOICE

REC'D OSBORN MALEDON PA.

BILL TO

Geoffrey M.T. Sturr
Osborn Maledon, P.A.
2929 North Central Avenue
Twenty-First Floor
Phoenix, Arizona 85012-2793

AUG 22 2017

INVOICE # OM: 001
DATE 08/15/2017
DUE DATE 08/30/2017

DATE	ACTIVITY	HR:MIN	AMOUNT
06/23/2017	Telephone conference with Geoff Sturr; review correspondence	0:05	80.00
06/26/2017	Review of Appendices 1 through 4 to Sturr letter dated June 23, 2017	1:55	1,920.00
06/27/2017	Telephone call with Geoff Sturr; complete review through appendix 67	5:05	5,080.00
06/30/2017	Telephone call with Geoffrey Sturr	1:01	1,020.00
07/07/2017	Review of appendix 68 through appendix 117	3:25	3,420.00
07/08/2017	Review of appendix 118 through appendix 139	1:20	1,330.00
07/10/2017	Review of appendix 140 through appendix 173	3:25	3,420.00
07/11/2017	Analysis and review in preparation for call with counsel	0:35	580.00
07/12/2017	Telephone call with Geoffrey Sturr and Colin Campbell	0:53	880.00

BALANCE DUE

\$17,730.00

FOR INVOICES OVER \$1,000 FOR CLIENTS

Approval To Pay: X EMTJ

Matter #: 15698.3

Pay Normal Course? Hold Until Client Pays OM?
(30-day basis) forward to Kathy Busk

PLEASE PAY BY WIRE TRANSFER:

Bank Name: Citibank N.A.
ABA Routing #: 322271724
Account Title: Wertlieb Law Corp
Account #: 206726291

RECEIVER_005601

Wertlieb Law Corp
 15332 Antioch Street, Unit 802
 Pacific Palisades, CA 90272
 (424) 265-9659



REC'D OSBORN MALEDON P.A.

INVOICE

OCT 12 2017

BILL TO

Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 002
 DATE 10/04/2017
 DUE DATE 10/19/2017

DATE	ACCOUNT SUMMARY	AMOUNT
08/15/2017	Balance Forward	\$17,730.00
	Payments and credits between 08/15/2017 and 10/04/2017	-17,730.00
	New charges (details below)	6,330.00
	Total Amount Due	\$6,330.00

DATE	ACTIVITY	HR. MIN.	AMOUNT
08/31/2017	NJW: Telephone call with Geoffrey Sturr	0:15	250.00
09/10/2017	NJW: Review Appendices 174 - 180	0:20	330.00
09/19/2017	NJW: Review provided materials in preparation for meeting on Thursday	2:55	2,920.00
09/21/2017	NJW: Lunch meeting with Geoff Sturr and Collin Campbell	1:50	1,830.00
09/27/2017	NJW: telephone call with Geoff Sturr	0:20	330.00
10/02/2017	NJW: Telephone call with Geoff Sturr	0:40	670.00

TOTAL OF NEW CHARGES 6,330.00
 BALANCE DUE **\$6,330.00**

FOR INVOICES OVER \$1,000 FOR CLIENTS

Approval To Pay: X gmt
 Matter #: 15698.3
 Pay Normal Course? Hold Until Client Pays OM?
 (30-day basis) Forward to: Kathy Busk

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

Wertlieb Law Corp
 15332 Antioch Street, Unit 802
 Pacific Palisades, CA 90272
 (424) 265-9659



REC'D OSBORN MALEDON PA.

INVOICE

DEC 13 2017

BILL TO

Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 003
 DATE 12/13/2017
 DUE DATE 12/28/2017

DATE	ACCOUNT SUMMARY	AMOUNT
10/04/2017	Balance Forward	\$6,330.00
	Payments and credits between 10/04/2017 and 12/13/2017	-6,330.00
	New charges (details below)	1,080.00
	Total Amount Due	\$1,080.00

DATE	ACTIVITY	HR/MIN	AMOUNT
10/18/2017	NJW: Review filed complaint	1:05	1,080.00
TOTAL OF NEW CHARGES			1,080.00
BALANCE DUE			\$1,080.00

FOR INVOICES OVER \$1,000 FOR CLIENTS

Approval To Pay: X GMTS
 Matter # : 15698.3
 Pay Normal Course? Hold Until Client Pays OM?
 (30-day basis) Forward to Kathy Busk

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005603

Wertlieb Law Corp
 15332 Antioch Street, Unit 802
 Pacific Palisades, CA 90272
 (424) 265-9659

REC'D OSBORN MALEDON P.A.

APR 17 2018

WERTLIEB LAW

INVOICE

BILL TO

Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 004
 DATE 03/27/2018
 DUE DATE 04/11/2018

FOR INVOICES OVER \$1,000 FOR CLIENTS

Approval To Pay: X GMTS

Matter #: 15698.3

Pay Normal Course? Hold Until Client Pays OM?

(30-day basis)

Forward to Kathy Busk

DATE	ACCOUNT SUMMARY	AMOUNT
12/13/2017	Balance Forward	\$1,080.00
	Payments and credits between 12/13/2017 and 03/27/2018	-1,080.00
	New charges (details below)	2,496.61
	Total Amount Due	\$2,496.61

DATE	ACTIVITY	HR:MIN	AMOUNT
12/14/2017	NJW: Telephone call with Geoff Sturr	0:15	250.00
01/18/2018	NJW: Review Defendants' Answer	0:20	333.33
02/25/2018	NJW: Review correspondence	0:20	333.33
02/26/2018	NJW: Telephone call with Geoff Sturr and Colin Campbell	0:25	416.67
02/28/2018	NJW: Telephone call with Geoff Sturr	0:10	166.67
03/07/2018	NJW: Telephone call with Geoff Sturr	0:08	133.33
03/08/2018	NJW: Telephone call with Geoff Sturr	0:30	500.00
03/10/2018	NJW: Begin review of Plaintiff's Initial Disclosure Statement	0:20	333.33
03/10/2018	Expenses/Description: copying charges	1:00	29.95

PLEASE PAY BY WIRE TRANSFER:

Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005604

TOTAL OF NEW CHARGES
BALANCE DUE

2,496.61

\$2,496.61

PLEASE PAY BY WIRE TRANSFER:

Bank Name: Citibank N.A.
ABA Routing #: 322271724
Account Title: Wertlieb Law Corp
Account #: 206726291

RECEIVER_005605

Wertlieb Law Corp
 15332 Antioch Street, Unit 802
 Pacific Palisades, CA 90272
 (424) 265-9659

WERTLIEB LAW



REED OSBORN MALEDON P.A.

INVOICE

JUN 01 2018

BILL TO

Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 005
 DATE 05/20/2018
 DUE DATE 06/04/2018

FOR INVOICES OVER \$1,000 FOR CLIENTS

Approval To Pay: X GMTS

Matter #: 15698.3

Pay Normal Course? Hold Until Client Pays OM?

(30-day basis) Forward to Kathy Busk

DATE	ACCOUNT SUMMARY	AMOUNT
03/27/2018	Balance Forward	\$2,496.61
	Payments and credits between 03/27/2018 and 05/20/2018	-2,496.61
	New charges (details below)	11,260.42
	Total Amount Due	\$11,260.42

DATE	ACTIVITY	HR/MIN	AMOUNT
03/22/2018	CCP: Document review and analysis	2:00	750.00
04/03/2018	NJW: Telephone call with Geoff Sturr; Review Defendants' Initial Rule 26.1 Disclosure Statement, Notice of Service of Preliminary Expert Opinion Declaration; Analysis	1:45	1,750.00
04/04/2018	NJW: Complete review of Plaintiff's Initial Disclosure Statement; analysis; begin to formulate potential opinions	1:45	1,750.00
04/05/2018	Expenses/Description: Printing	1:00	2,000.00
04/06/2018	NJW: Telephone call with Geoff Sturr; preparation for call	1:40	1,666.67
04/07/2018	CCP: Document review and analysis	0:45	281.25
04/08/2018	CCP: Document review and analysis	8:10	3,062.50

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005606

TOTAL OF NEW CHARGES
BALANCE DUE

11,260.42
\$11,260.42

PLEASE PAY BY WIRE TRANSFER:
Bank Name: Citibank N.A.
ABA Routing #: 322271724
Account Title: Wertlieb Law Corp
Account #: 206726291

RECEIVER_005607

Wertlieb Law Corp
 15332 Antioch Street, Unit 802
 Pacific Palisades, CA 90272
 (424) 265-9659



REC'D OSBORN MALEDON P.A.

JUN 30 2018

INVOICE

BILL TO

Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 006
 DATE 06/29/2018
 DUE DATE 07/14/2018

FOR INVOICES OVER \$1,000 FOR CLIENTS

Approval To Pay: X Gmt's email attached

Matter #: 15698.3

Pay Normal Course? Hold Until Client Pays OM?
 (30-day basis) Forward to Kathy Busk

DATE	ACCOUNT SUMMARY	AMOUNT
05/20/2018	Balance Forward	\$11,260.42
	Payments and credits between 05/20/2018 and 06/29/2018	-11,260.42
	New charges (details below)	12,771.33
	Total Amount Due	\$12,771.33

DATE	ACTIVITY	HR/MIN	AMOUNT
05/21/2018	CCP: Legal analysis	0:15	93.75
05/25/2018	CCP: Legal analysis and document review	0:30	188.00
06/02/2018	CCP: Legal analysis	1:15	468.75
06/03/2018	CCP: Legal analysis and document review	1:15	468.75
06/04/2018	CCP: Legal analysis	0:30	187.50
06/08/2018	NJW: Telephone call with Geoff Sturr	0:10	166.67
06/11/2018	CCP: Legal analysis and document review	5:00	1,875.00
06/12/2018	CCP: Legal analysis and document review	6:33	2,456.25
06/13/2018	CCP: Legal analysis	7:12	2,700.00
06/14/2018	NJW: Work on suggested deposition questions	0:50	833.33
06/15/2018	NJW: Review notes; telephone call with counsel	1:00	1,000.00
06/28/2018	NJW: Review & analysis of Defendant's Responses to Plaintiff's First Set of Non-	1:20	1,333.33

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005608

DATE	ACTIVITY	HR:MIN	AMOUNT
06/29/2018	Uniform Interrogatories NJW: Telephone call with counsel re Defendant's Responses to Plaintiff's First Set of Non-Uniform Interrogatories	1:00	1,000.00
TOTAL OF NEW CHARGES			12,771.33
BALANCE DUE			\$12,771.33

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005609

Wertlieb Law Corp
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 Pacific Palisades, CA 90272
 (424) 265-9659

REC'D OSBORN MALEDON PA

AUG 04 2018



INVOICE

BILL TO

Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 007
 DATE 08/04/2018
 DUE DATE 08/19/2018

Signature: X Seegmts emails attached
 Printed Name: GEOFF STURR
 Matter #: 15698.3
 Pay Normal Course? Hold Until Client Pays OM?
 (30-day basis) Forward to Kathy Busk

DATE	ACCOUNT SUMMARY	AMOUNT
06/29/2018	Balance Forward	\$12,771.33
	Payments and credits between 06/29/2018 and 08/04/2018	0.00
	New charges (details below)	21,931.67
	Total Amount Due	\$34,703.00

DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
07/06/2018	CCP: Legal Analysis	2:05	375.00	781.25
07/07/2018	CCP: Document Review and Legal Analysis	0:45	375.00	281.25
07/09/2018	CCP: Document Review and Legal Analysis	2:00	375.00	750.00
07/10/2018	CCP: Document Review and Legal Analysis	2:30	375.00	937.50
07/12/2018	CCP: Document Review and Legal Analysis	2:15	375.00	843.75
07/17/2018	CCP: Document Review and Legal Analysis	2:05	375.00	781.25
07/18/2018	NJW: Review amended answer	0:10	1,000.00	166.67
07/19/2018	NJW: Attendance at Beauchamp deposition; travel	16:00	1,000.00	16,000.00
07/25/2018	CCP: Document Review and Legal Analysis	1:00	375.00	375.00
07/30/2018	NJW: Telephone call with Geoff Sturr	0:25	1,000.00	416.67
				Subtotal: 21,333.34
07/11/2018	Expenses/Description: Airfare to Phoenix	1:00	545.96	545.96
07/19/2018	Expenses/Description: Taxi	1:00	22.37	22.37

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005610

DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
07/19/2018	Expenses/Description: Parking @ LAX	1:00	30.00	30.00
				Subtotal: 598 33

TOTAL OF NEW CHARGES 21,931.67
BALANCE DUE **\$34,703.00**

PLEASE PAY BY WIRE TRANSFER:
Bank Name: Citibank N.A.
ABA Routing #: 322271724
Account Title: Wertlieb Law Corp
Account #: 206726291

RECEIVER_005611

Wertlieb Law Corp
 15332 Antioch Street, Unit 802
 Pacific Palisades, CA 90272
 (424) 265-9659

WERTLIEB LAW

REC'D OSBORN MALEDON PA

INVOICE

SEP 05 2018

BILL TO

Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 008
 DATE 09/04/2018
 DUE DATE 09/19/2018

Signature: X GM R
 Printed Name: GEOFF STURR
 Matter #: 15698.3
 Pay Normal Course? Hold Until Client Pays OM?
 (30-day basis) Forward to Kathy Busk

DATE	ACCOUNT SUMMARY	AMOUNT
08/04/2018	Balance Forward	\$34,703.00
	Payments and credits between 08/04/2018 and 09/04/2018	-34,703.00
	New charges (details below)	47,457.79
	Total Amount Due	\$47,457.79

DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
08/05/2018	NJW: Analysis; Begin to outline report	3:45	1,000.00	3,750.00
08/06/2018	NJW: Organize depositions and exhibits; begin review of Beauchamp depo on 7/20/18	2:55	1,000.00	2,916.67
08/07/2018	NJW: Complete review of Beauchamp depo on 7/20/18; work on outline of Report	2:40	1,000.00	2,666.67
08/07/2018	Expenses/Description: Printing costs	1:00	176.53	176.53
08/07/2018	CCP: Document review and analysis	4:20	375.00	1,625.00
08/08/2018	NJW: Review deposition of Daniel Schenck and related exhibits	3:05	1,000.00	3,083.33
08/09/2018	NJW: Review deposition transcript of Bob Anderson	1:25	1,000.00	1,416.67
08/10/2018	CCP: Document review and analysis	1:20	375.00	500.00
08/17/2018	CCP: Analysis re outline	1:20	375.00	500.00
08/17/2018	NJW: Organize and outline draft Report; research re Arizona rules of professional conduct	1:40	1,000.00	1,666.67
08/19/2018	CCP: Draft outline	1:30	375.00	562.50
08/22/2018	CCP: Draft outline	7:50	375.00	2,937.50
08/23/2018	CCP: Draft outline	0:40	375.00	250.00
08/24/2018	NJW: Work on outline of Report	2:10	1,000.00	2,166.67
08/24/2018	CCP: Review and revise outline	1:45	375.00	656.25
08/26/2018	CCP: Review and revise outline	5:50	375.00	2,187.50

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005612

DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
08/27/2018	CCP: Review and revise outline	2:00	375.00	750.00
08/27/2018	NJW: Organize outline	1:05	1,000.00	1,083.33
08/28/2018	CCP: Review and revise outline	4:00	375.00	1,500.00
08/29/2018	CCP: Review and revise outline	2:30	375.00	937.50
08/30/2018	NJW: Prepare outline of analysis & opinions	2:50	1,000.00	2,833.33
08/30/2018	CCP: Review and revise outline	8:20	375.00	3,125.00
08/31/2018	NJW: Prepare draft report	5:25	1,000.00	5,416.67
08/31/2018	CCP: Review and revise outline	3:10	375.00	1,187.50
09/01/2018	NJW: Revise opinion outline in preparation for meeting with counsel	1:55	1,000.00	1,916.67
09/03/2018	NJW: Revise outline of opinion; research	0:50	1,000.00	833.33
09/03/2018	CCP: Legal research; review report	2:10	375.00	812.50

TOTAL OF NEW CHARGES
BALANCE DUE

47,457.79
\$47,457.79

PLEASE PAY BY WIRE TRANSFER:
Bank Name: Citibank N.A.
ABA Routing #: 322271724
Account Title: Wertlieb Law Corp
Account #: 206726291

RECEIVER_005613

Wertlieb Law Corp
 15332 Antioch Street, Unit 802
 Pacific Palisades, CA 90272
 (424) 265-9659

REC'D OSBORN MALEDON PA

OCT 01 2018

WERTLIEB LAW

INVOICE

BILL TO

Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 009
 DATE 09/30/2018
 DUE DATE 10/15/2018

Signature: X *gmh*
 Printed Name: GEOFF STURR
 Matter # : 15698.3
 Pay Normal Course? Hold Until Client Pays OM?
 (30-day basis) Forward to Kathy Busk

DATE	ACCOUNT SUMMARY	AMOUNT
09/04/2018	Balance Forward	\$47,457.79
	Payments and credits between 09/04/2018 and 09/30/2018	0.00
	New charges (details below)	39,394.80
	Total Amount Due	\$86,852.59

DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
09/04/2018	NJW: Review/revise draft Report	2:05	1,000.00	2,083.33
09/05/2018	NJW: Review draft Report; review deposition updates	0:55	1,000.00	916.67
09/05/2018	CCP: Legal research	2:05	375.00	781.25
09/06/2018	Expenses/Description: Jonathan Club (room rental; food service; TV monitor; parking)	1:00	3,162.76	3,162.76
09/06/2018	CCP: Legal analysis	4:20	375.00	1,625.00
09/06/2018	NJW: Meeting with counsel; preparation and follow up	4:30	1,000.00	4,500.00
09/10/2018	NJW: Review designations; research on duty of disclosure	0:20	1,000.00	333.33
09/10/2018	CCP: Legal research	2:00	375.00	750.00
09/11/2018	CCP: Legal Analysis; Document Review	3:00	375.00	1,125.00
09/11/2018	Expenses/Description: Printing	1:00	96.62	96.62
09/12/2018	CCP: Prepare outline	2:30	375.00	937.50
09/15/2018	CCP: Document Review and Analysis	1:20	375.00	500.00
09/17/2018	CCP: Document Review and Analysis	5:25	375.00	2,031.25
09/18/2018	CCP: Document Review and Analysis	3:25	375.00	1,281.25
09/19/2018	NJW: Accessing, organizing and begin review of files provided	0:50	1,000.00	833.33
09/19/2018	CCP: Document Review and Analysis	2:45	375.00	1,031.25
09/20/2018	CCP: Document Review and Analysis	0:20	375.00	125.00

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005614

DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
09/21/2018	CCP: Document Review and Analysis	4:45	375.00	1,781.25
09/22/2018	CCP: Document Review and Analysis	3:30	375.00	1,312.50
09/23/2018	CCP: Document Review and Analysis	3:45	375.00	1,406.25
09/25/2018	CCP: Document Review and Analysis	1:30	375.00	562.50
09/26/2018	NJW: Review Beauchamp deposition; begin review of Menaged deposition; coordination	2:55	1,000.00	2,916.67
09/26/2018	CCP: Document Review and Analysis	1:00	375.00	375.00
09/27/2018	CCP: Document Review and Analysis	5:35	375.00	2,093.75
09/29/2018	NJW: Complete review of Menaged deposition	2:55	1,000.00	2,916.67
09/30/2018	NJW: Review deposition of Shawna Chittick Heuer; organize notes	3:55	1,000.00	3,916.67

TOTAL OF NEW CHARGES	39,394.80
BALANCE DUE	\$86,852.59

PLEASE PAY BY WIRE TRANSFER:
Bank Name: Citibank N.A.
ABA Routing #: 322271724
Account Title: Wertlieb Law Corp
Account #: 206726291

RECEIVER_005615

Wertlieb Law Corp
 15332 Antioch Street, Unit 802
 Pacific Palisades, CA 90272
 (424) 265-9659



INVOICE

BILL TO

Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 010
DATE 10/26/2018
DUE DATE 11/10/2018

DATE	ACCOUNT SUMMARY	AMOUNT
09/30/2018	Balance Forward	\$86,852.59
	Payments and credits between 09/30/2018 and 10/26/2018	-47,457.79
	New charges (details below)	40,885.41
	Total Amount Due	\$80,280.21

DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
09/28/2018	CCP: Legal Analysis	3:00	375.00	1,125.00
10/01/2018	CCP: Legal Analysis	3:20	375.00	1,250.00
10/02/2018	CCP: Legal Analysis	2:15	375.00	843.75
10/03/2018	NJW: Draft Report	6:05	1,000.00	6,083.33
10/04/2018	NJW: Draft Report	5:35	1,000.00	5,583.33
10/04/2018	CCP: Legal Analysis	4:00	375.00	1,500.00
10/05/2018	CCP: Draft Report	3:35	375.00	1,343.75
10/06/2018	NJW: Draft Report	0:25	1,000.00	416.67
10/07/2018	NJW: Draft Report	1:10	1,000.00	1,166.67
10/07/2018	CCP: Draft Report	3:45	375.00	1,406.25
10/08/2018	CCP: Revise Report	2:55	375.00	1,093.75
10/10/2018	CCP: Revise Report	2:40	375.00	1,000.00
10/11/2018	CCP: Revise Report	2:45	375.00	1,031.25
10/12/2018	CCP: Revise Report	1:10	375.00	437.50
10/15/2018	CCP: Revise Report	2:30	375.00	937.50
10/16/2018	CCP: Revise Report	3:00	375.00	1,125.00
10/17/2018	CCP: Revise Report	2:45	375.00	1,031.25
10/21/2018	NJW: Revised Expert Report	2:00	1,000.00	2,000.00
10/22/2018	NJW: Draft Expert Report	7:05	1,000.00	7,083.33

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005616

DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
10/25/2018	NJW: Draft Expert Report	4:20	1,000.00	4,333.33
10/26/2018	CCP: Legal Analysis	0:15	375.00	93.75
TOTAL OF NEW CHARGES				40,885.41
BALANCE DUE				\$80,280.21

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005617

Wertlieb Law Corp
 15332 Antioch Street, Unit 802
 Pacific Palisades, CA 90272
 (424) 265-9659



INVOICE

REC'D OSBORN MALEDON P.A.

NOV 20 2018

BILL TO

Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 011
 DATE 11/26/2018
 DUE DATE 12/11/2018

Signature: X Geoffrey M.T. Sturr
 Printed Name: Geoffrey Sturr GEOFF STURR
 Matter #: 15698.3
 Pay Normal Course? Hold Until Client Pays OM?
 (30-day basis) Forward to Kathy Busk

DATE	ACCOUNT SUMMARY	AMOUNT
10/26/2018	Balance Forward	\$80,280.21
	Payments and credits between 10/26/2018 and 11/26/2018	-39,394.80
	New charges (details below)	22,864.58
	Total Amount Due	\$63,749.99

DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
10/27/2018	CCP: Revise Report	3:10	375.00	1,187.50
10/28/2018	CCP: Revise Report	4:30	375.00	1,687.50
10/29/2018	CCP: Revise Report	4:20	375.00	1,625.00
10/30/2018	CCP: Revise Report	6:15	375.00	2,343.75
10/31/2018	NJW: Revise Expert Report	1:35	1,000.00	1,583.33
10/31/2018	CCP: Revise Report	5:00	375.00	1,875.00
11/01/2018	NW: Review/revise Expert Report	1:55	1,000.00	1,916.67
11/02/2018	NW: Review/revise Expert Report	1:00	1,000.00	1,000.00
11/04/2018	NJW: Draft Expert Report	1:20	1,000.00	1,333.33
11/05/2018	NJW: Draft Expert Report	2:35	1,000.00	2,583.33
11/05/2018	CCP: Revise Report	1:30	375.00	562.50
11/07/2018	NJW: Draft Expert Report	1:00	1,000.00	1,000.00
11/08/2018	NJW: Draft Expert Report	3:55	1,000.00	3,916.67
11/09/2018	NJW: Telephone call with counsel	0:15	1,000.00	250.00

TOTAL OF NEW CHARGES 22,864.58
 BALANCE DUE **\$63,749.99**

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005618

Wertlieb Law Corp
 15332 Antioch Street, Unit 802
 Pacific Palisades, CA 90272
 (424) 265-9659



REC'D OSBORN MALEDON P.A.

OCT 29 2018

INVOICE

BILL TO

Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 010
 DATE 10/26/2018
 DUE DATE 11/10/2018

Signature: X GM S
 Printed Name: GEOFF STURR

Matter #: 15698.3

Pay Normal Course? Hold Until Client Pays OM?
 (30-day basis) Forward to Kathy Busk

DATE	ACCOUNT SUMMARY	AMOUNT
09/30/2018	Balance Forward	\$86,852.59
	Payments and credits between 09/30/2018 and 10/26/2018	-47,457.79
	New charges (details below)	40,885.41
	Total Amount Due	\$80,280.21

DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
09/28/2018	CCP: Legal Analysis	3:00	375.00	1,125.00
10/01/2018	CCP: Legal Analysis	3:20	375.00	1,250.00
10/02/2018	CCP: Legal Analysis	2:15	375.00	843.75
10/03/2018	NJW: Draft Report	6:05	1,000.00	6,083.33
10/04/2018	NJW: Draft Report	5:35	1,000.00	5,583.33
10/04/2018	CCP: Legal Analysis	4:00	375.00	1,500.00
10/05/2018	CCP: Draft Report	3:35	375.00	1,343.75
10/06/2018	NJW: Draft Report	0:25	1,000.00	416.67
10/07/2018	NJW: Draft Report	1:10	1,000.00	1,166.67
10/07/2018	CCP: Draft Report	3:45	375.00	1,406.25
10/08/2018	CCP: Revise Report	2:55	375.00	1,093.75
10/10/2018	CCP: Revise Report	2:40	375.00	1,000.00
10/11/2018	CCP: Revise Report	2:45	375.00	1,031.25
10/12/2018	CCP: Revise Report	1:10	375.00	437.50
10/15/2018	CCP: Revise Report	2:30	375.00	937.50
10/16/2018	CCP: Revise Report	3:00	375.00	1,125.00
10/17/2018	CCP: Revise Report	2:45	375.00	1,031.25
10/21/2018	NJW: Revised Expert Report	2:00	1,000.00	2,000.00
10/22/2018	NJW: Draft Expert Report	7:05	1,000.00	7,083.33

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005619

DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
10/25/2018	NJW: Draft Expert Report	4:20	1,000.00	4,333.33
10/26/2018	CCP: Legal Analysis	0:15	375.00	93.75
TOTAL OF NEW CHARGES				40,885.41
BALANCE DUE				\$80,280.21

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005620

Wertlieb Law Corp
 15332 Antioch Street, Unit 802
 Pacific Palisades, CA 90272
 (424) 265-9659

REYD OSBORN MALEDON PA

DEC 17 2018



INVOICE

BILL TO

Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 012
 DATE 12/13/2018
 DUE DATE 01/01/2019

Signature: X

Printed Name: GEOFF STURR

Matter #: 15698.3

Pay Normal Course? Hold Until Client Pays OM?
 (30-day basis) Forward to Kathy Busk

DATE	ACCOUNT SUMMARY	AMOUNT
11/26/2018	Balance Forward	\$63,749.99
	Payments and credits between 11/26/2018 and 12/13/2018	-40,885.41
	New charges (details below)	28,978.62
	Total Amount Due	\$51,843.20

DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
11/19/2018	CCP: Revise Report	1:05	375.00	406.25
11/20/2018	Expenses/Description: Printing of revised Disclosure Schedule	1:00	9.88	9.88
11/27/2018	CCP: Revise Report	0:50	375.00	312.50
11/30/2018	NJW: Review documents	2:05	1,000.00	2,083.33
12/01/2018	NJW: Review documents	2:55	1,000.00	2,916.67
12/05/2018	NJW: Review documents; revise Expert Report	3:00	1,000.00	3,000.00
12/07/2018	NJW; Review documents	1:50	1,000.00	1,833.33
12/09/2018	NJW: Revise Expert Report; review documents	4:50	1,000.00	4,833.33
12/10/2018	NJW: Telephone call with Geoff Sturr; review documents; revise Expert Report	5:05	1,000.00	5,083.33
12/11/2018	NJW: Telephone call with Geoff Sturr; review and revised Expert Report	4:50	1,000.00	4,833.33
12/12/2018	NJW: Review & revise Expert Report; sharing of draft with counsel	3:40	1,000.00	3,666.67

Happy Holidays! TOTAL OF NEW CHARGES 28,978.62
BALANCE DUE **\$51,843.20**

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

Wertlieb Law Corp
 15332 Antioch Street, Unit 802
 Pacific Palisades, CA 90272
 (424) 265-9659

REC'D OSBORN MALEDON P.A.

MAR 06 2019



Invoice

BILL TO

Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 013
 DATE 03/02/2019
 DUE DATE 03/17/2019

Signature: X GM TS

Printed Name: GEOFF STURR

Matter #: 15698.3

Pay Normal Course? (30-day basis) Hold Until Client Pays OM? Forward to: Kathy Busk

DATE	ACCOUNT SUMMARY	AMOUNT
12/13/2018	Balance Forward	\$51,843.20
	Payments and credits between 12/13/2018 and 03/02/2019	-51,843.20
	New charges (details below)	29,937.50
	Total Amount Due	\$29,937.50

DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
02/08/2019	NJW: Telephone call with Geoff Sturr and Colin Campbell; preparation for call	1:20	1,000.00	1,333.33
02/14/2019	NJW: Review and revise Expert Report	2:50	1,000.00	2,833.33
02/14/2019	CCP: Analysis and Revise Expert Report	2:00	375.00	750.00
02/18/2019	CCP: Analysis and Revise Expert Report	5:00	375.00	1,875.00
02/19/2019	CCP: Analysis and Revise Expert Report	0:45	375.00	281.25
02/21/2019	NJW: Review & revise Expert Report; review deposition transcript of Edward Hood and exhibits	3:50	1,000.00	3,833.33
02/21/2019	CCP: Analysis and Revise Expert Report	1:00	375.00	375.00
02/23/2019	NJW: Analysis	1:10	1,000.00	1,166.67
02/23/2019	CCP: Analysis and Revise Expert Report	1:35	375.00	593.75
02/24/2019	CCP: Analysis and Revise Expert Report	6:00	375.00	2,250.00
02/25/2019	CCP: Analysis and Revise Expert Report	2:30	375.00	937.50
02/26/2019	CCP: Analysis and Revise Expert Report	3:00	375.00	1,125.00
02/27/2019	CCP: Analysis and Revise Expert Report	2:00	375.00	750.00
02/28/2019	NJW: Revise Report; review documents; research	7:10	1,000.00	7,166.67
03/02/2019	NJW: Revise and circulate Expert Report	4:40	1,000.00	4,666.67

TOTAL OF NEW CHARGES 29,937.50

PLEASE PAY BY WIRE TRANSFER:

Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005622

BALANCE DUE

\$29,937.50

PLEASE PAY BY WIRE TRANSFER:
Bank Name: Citibank N.A.
ABA Routing #: 322271724
Account Title: Wertlieb Law Corp
Account #: 206726291

RECEIVER_005623

Wertlieb Law Corp
15332 Antioch Street, Unit 802
Pacific Palisades, CA 90272
(424) 265-9659

MAR 31 2019



Invoice

BILL TO

Geoffrey M.T. Sturr
Osborn Maledon, P.A.
2929 North Central Avenue
Twenty-First Floor
Phoenix, Arizona 85012-2793

INVOICE # OM: 014
DATE 03/31/2019
DUE DATE 04/15/2019

Signature: X GMTS

Printed Name: GEOFF STURR

Matter # : 15698.3

Pay Normal Course? (30-day basis) Hold Until Client Pays OM?

Forward to: Kathy Busk

DATE	ACCOUNT SUMMARY	NT
03/02/2019	Balance Forward	\$29,937.50
	Payments and credits between 03/02/2019 and 03/31/2019	0.00
	New charges (details below)	20,838.94
	Total Amount Due	\$50,776.44

DATE	ACTIVITY	HR-MIN	RATE	AMOUNT
03/06/2019	NJW: Telephone call with Geoff Sturr and Colin Campbell; preparation for call	1:25	1,000.00	1,416.67
03/09/2019	NJW: Review additional materials provided by Mr. Sturr; analysis and review documents; review and revise Expert Report	5:55	1,000.00	5,916.67
03/10/2019	NJW: Review and revise Expert Report	2:55	1,000.00	2,916.67
03/14/2019	NJW: Review Defendants' latest Disclosure Statement; revise draft Expert Report accordingly	3:05	1,000.00	3,083.33
03/23/2019	NJW: Revise list of documents provided; add list to Expert Report	0:20	1,000.00	333.33
03/25/2019	NJW: Telephone call with counsel; revise Expert Report	4:55	1,000.00	4,916.67
03/26/2019	NJW: Finalize Expert Report	2:15	1,000.00	2,250.00
03/26/2019	Expenses/Description: Printing Expert Report	1:00	5.60	5.60

TOTAL OF NEW CHARGES 20,838.94
BALANCE DUE **\$50,776.44**

PLEASE PAY BY WIRE TRANSFER:
Bank Name: Citibank N.A.
ABA Routing #: 322271724
Account Title: Wertlieb Law Corp
Account #: 206726291

RECEIVER_005624

Wertlieb Law Corp
 15332 Antioch Street, Unit 802
 Pacific Palisades, CA 90272
 (424) 265-9659



REC'D OSBORN MALEDON PA.

MAY 03 2019

Invoice

BILL TO
 Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 015
 DATE 05/03/2019
 DUE DATE 05/18/2019

DATE	ACCOUNT SUMMARY	AMOUNT
03/31/2019	Balance Forward	\$50,776.44
	Payments and credits between 03/31/2019 and 05/03/2019	-29,937.50
	New charges (details below)	6,916.67
	Total Amount Due	\$27,755.61

DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
04/06/2019	NJW: Review & analysis of defendants' filed expert reports	3:50	1,000.00	3,833.33
04/09/2019	NJW: Telephone call with Geoff Sturr	0:55	1,000.00	916.67
05/03/2019	NJW: Telephone call with Colin Campbell and Geoff Sturr; review Defendants' Expert Reports; begin drafting of Rebuttal Report	2:10	1,000.00	2,166.67

TOTAL OF NEW CHARGES 6,916.67
 BALANCE DUE **\$27,755.61**

Signature: X *G.M.T.S.*
 Printed Name: GEOFF STURR
 Matter #: 15698.3
 Pay Normal Course? (30-day basis) Hold Until Client Pays OM?
Forward to Kathy Busk

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

Wertlieb Law Corp
 15332 Antioch Street, Unit 802
 Pacific Palisades, CA 90272
 (424) 265-9659



REC'D OSBORN MALEDON P.A.

Invoice

JUN 04 2019

BILL TO

Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 016
 DATE 06/01/2019
 DUE DATE 06/16/2019

Signature: X GM TS

Printed Name: GEOFF STURR

Matter # : 16598.3

Pay Normal Course? Hold Until Client Pays OM?
 (30-day basis) Forward to: Kathy Busk

DATE	ACCOUNT SUMMARY	AMOUNT
05/03/2019	Balance Forward	\$27,755.61
	Payments and credits between 05/03/2019 and 06/01/2019	-27,755.61
	New charges (details below)	28,833.35
	Total Amount Due	\$28,833.35

DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
05/06/2019	NJW: Draft Rebuttal Report	2:35	1,000.00	2,583.33
05/08/2019	NJW: Draft Rebuttal Report	3:55	1,000.00	3,916.67
05/12/2019	NJW: Complete first draft of Expert Rebuttal Report	4:55	1,000.00	4,916.67
05/15/2019	NJW: Telephone call with Geoff Sturr	0:10	1,000.00	166.67
05/24/2019	NJW: Telephone call with Geoff Sturr; review deposition of Mr. Rhodes; revise rebuttal report	4:00	1,000.00	4,000.00
05/25/2019	NJW: Revise Rebuttal Report	2:10	1,000.00	2,166.67
05/27/2019	NJW: Review deposition of Mr. Olson; review/revise Rebuttal Report; search responsive documents	6:10	1,000.00	6,166.67
05/28/2019	NJW: Telephone call with Geoff Sturr; response to document request; research; review/revise Rebuttal Report	4:55	1,000.00	4,916.67

TOTAL OF NEW CHARGES 28,833.35
 BALANCE DUE **\$28,833.35**

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005626

Wertlieb Law Corp
 15332 Antioch Street, Unit 802
 Pacific Palisades, CA 90272
 (424) 265-9659



REC'D OSBORN MALEDON PA

JUN 28 2019

Invoice

BILL TO

Geoffrey M.T. Sturr
 Osborn Maledon, P.A.
 2929 North Central Avenue
 Twenty-First Floor
 Phoenix, Arizona 85012-2793

INVOICE # OM: 017
 DATE 06/28/2019
 DUE DATE 07/13/2019

DATE	ACCOUNT SUMMARY	AMOUNT
06/01/2019	Balance Forward	\$28,833.35
	Payments and credits between 06/01/2019 and 06/28/2019	0.00
	New charges (details below)	4,000.01
	Total Amount Due	\$32,833.36

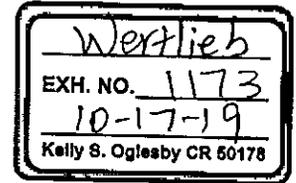
DATE	ACTIVITY	HR:MIN	RATE	AMOUNT
06/04/2019	NJW: Telephone call with Geoff Sturr; finalize and submit Rebuttal Report	1:35	1,000.00	1,583.33
06/05/2019	NJW: Telephone call with Geoff Sturr	0:25	1,000.00	416.67
06/07/2019	NJW: Review Defendants' Experts' Rebuttal Reports	1:10	1,000.00	1,166.67
06/11/2019	NJW: Telephone call with Geoff Sturr	0:25	1,000.00	416.67
06/19/2019	NJW: Review letter; telephone call with Geoff Sturr	0:15	1,000.00	250.00
06/24/2019	NJW: Review correspondence	0:10	1,000.00	166.67

TOTAL OF NEW CHARGES 4,000.01
 BALANCE DUE **\$32,833.36**

Signature: X GM S
 Printed Name: GEOFF STURR
 Matter # : 15698.3
 Pay Normal Course? (30-day basis) Hold Until Client Pays OM?
Forward to Kathy Busk

PLEASE PAY BY WIRE TRANSFER:
 Bank Name: Citibank N.A.
 ABA Routing #: 322271724
 Account Title: Wertlieb Law Corp
 Account #: 206726291

RECEIVER_005627



ABOUT

"Big Law" Law Firm Partner

Mr. Wertlieb is a retired partner from Milbank LLP, a leading international law firm, where he worked from 1995 to 2016. Based in Milbank's Los Angeles office, Mr. Wertlieb's legal practice focused on business transactions, primarily acquisitions, securities offerings and restructurings.

Mr. Wertlieb has represented clients in a wide variety of business matters, including formation and early round financings, mergers and acquisitions, initial public offerings, international securities offerings and other international transactions, fund formations, joint ventures, partnerships and limited liability companies, reorganizations and restructurings, independent investigations and general corporate and contractual matters.

While at Milbank, Mr. Wertlieb served as: Chair of the Ethics Group responsible for the firm's California practices; the Hiring Partner for the firm's Los Angeles office; and a member of the firm's Corporate Governance Group, the firm's Equal Opportunity Committee, and the firm's Professional Development Committee. As a member of the firm's Professional Development Committee, Mr. Wertlieb played an active role in designing, implementing and co-teaching at Milbank@Harvard, an innovative training program in partnership with Harvard Law and Business Schools for Milbank associates worldwide.

Representative Transactions

- Represented an NYSE-listed company as regular outside corporate counsel in numerous transactions, including IPO, acquisitions, financings and a change-in-control transaction
- Represented underwriters in the initial public offering of a Southern California-based home builder, considered by *The Daily Journal* to be one of the Top 10 IPOs of 2013
- Led the restructuring of a social network company for which Milbank received an "M&A Advisor" Award for Deal of the Year (2014) from *The M&A Advisor*
- Represented the finance subsidiary of one of the world's largest automotive companies in numerous debt financings totaling almost \$20 billion
- Represented the venture capital investing subsidiaries of three major public companies – a multinational conglomerate, a leading telecom company and a large US bank – in over 50 different investments in early stage companies
- Represented two different alternative energy companies in sale transactions for which Milbank received the "Top Legal Advisor" Award for M&A from *Bloomberg New Energy Finance*
- Represented family owners in disposition transactions for a fashion optical company, a broadcast company and a hair care company

- Represented unsecured lenders in the restructuring of a print media company with over \$10 billion in debt

In-House & Other Legal Experience

Prior to joining Milbank, Mr. Wertlieb was the General Counsel of a public telecommunications and broadcasting company, where he supervised a legal department of nine attorneys and five legal assistants. Mr. Wertlieb also served as the General Counsel of the Los Angeles Kings Hockey Team.

Prior to going in-house, Mr. Wertlieb was an associate in the corporate department at O'Melveny & Myers.

* * *

Adjunct Professor

Mr. Wertlieb is an Adjunct Professor at UCLA School of Law, where (since 2002) he teaches a transaction skills course of his own design, which includes deal-making, negotiation, contract drafting and ethics.

For more information about Mr. Wertlieb's transaction skills course, [click here](#).

Mr. Wertlieb is also Senior Advisor, Milbank@Harvard at Harvard Law School Executive Education, a professional development education program that provides attorneys with immersive week-long programs to build leadership and business skills. The Milbank@Harvard curriculum includes intensive, interactive courses on finance and accounting, leadership and team management, strategy, marketing, negotiations and macroeconomics.

Mr. Wertlieb is also a Visiting Lecturer at UC Berkeley School of Law, where he teaches transaction skills.

* * *

Education

Law School:

- UC Berkeley School of Law, Berkeley, CA
 - J.D. degree awarded 1984
 - Associate Editor, *International Tax & Business Lawyer*
 - Judicial Extern for Associate Justice Stanley Mosk at the California Supreme Court
- UC Hastings College of the Law, San Francisco, CA
 - Ranked number 5 in first-year class of 503 students (top 1%)
 - Transferred to UC Berkeley School of Law after first year
 - Law Review (awarded based on both grades and writing competition)

Undergraduate:

- UC Berkeley School of Business Administration, Berkeley, CA
 - B.S. degree awarded 1980 in Management Science
 - Member, Honor Students Society
 - Alumni Scholarship Award Recipient

* * *

Recognitions & Honors

- "AV Preeminent" peer review rated (5.0 out of 5.0) on Martindale-Hubbell (Present)
- Quoted as authority (since 2017) in *Ethics News*, *Royal Gazette*, *Financial Times*, *Bloomberg Law*, *The Daily Journal*, *Los Angeles Times*, *NBC News*, *ABC News*, *CBC News*, *The Daily Beast*, *Legal Talk Network*, *The*

Hollywood Reporter, Law360 and Variety

- Profiled in *The Lexis Practice Advisor Journal* (Spring 2016): "An Overview of Corporate Transactional Practice & Expert Witnessing: Q&A with Neil J Wertlieb"
- Led transactions for which Milbank received an "M&A Advisor" Award for Deal of the Year and an "M&A Advisor Turnaround" Award from *The M&A Advisor* (2014)
- Advised underwriters on an initial public offering selected by *The Daily Journal* as one of the Top 10 IPOs (2013)
- Recognized in *The Legal 500* for M&A work (2012)
- Led two transactions for which Milbank received the "Top Legal Advisor" Award for M&A from *Bloomberg New Energy Finance* (2009)
- Recognized by *Who's Who* as a Top Lawyer (Present)
- Recognized by *Super Lawyers* as a Top Rated Mergers & Acquisitions Attorney and for his Corporate Finance work (2004)
- Profiled in *California Law Business* (October 30, 2000): "The 100 Most Influential Lawyers in California"
- Profiled in *Los Angeles Business Journal* (October 16, 2000): "Who's Who Banking & Finance: Roadkill Warriors"
- Profiled in *California Law Business* (October 9, 2000): "Dealmaker of the Week"
- Profiled in *Los Angeles Business Journal* (September 20-26, 1999): "Wall Street West: Cyber Lawyer"

* * *

Bar Admissions & Memberships

- Admitted to practice in California, New York & Washington, D.C.
- Member:
 - California Lawyers Association
 - Association of Professional Responsibility Lawyers
 - Los Angeles County Bar Association
 - American Bar Association

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APR 03 2019

Attorneys for Plaintiff

8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
9
10 IN AND FOR THE COUNTY OF MARICOPA

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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 DISCLOSURE OF
EXPERT WITNESS REPORT RE
STANDARD OF CARE**

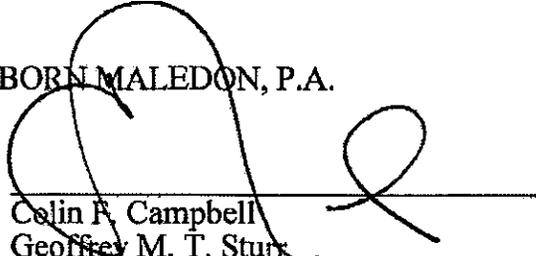
(Commercial case)

(Assigned to the
Honorable Daniel Martin)

Pursuant to the scheduling order entered in this matter, Plaintiff Peter S. Davis, as Receiver of DenSco Investment Corporation, hereby discloses the attached report of Neil J. Wertlieb, which addresses the applicable standard of care, Defendants' departure from the standard of care and how that departure caused injury to DenSco.

1 DATED this 3rd day of April 2019.

2 OSBORN MALEDON, P.A.

3
4 By 

5 Colin F. Campbell

6 Geoffrey M. T. Sturx

7 Joshua M. Whitaker

8 2929 N. Central Avenue, Suite 2100

9 Phoenix, Arizona 85012-2793

10 Attorneys for Plaintiff

11 Original hand-delivered and
12 copy send by e-mail this
13 3rd day of April, 2019, to:

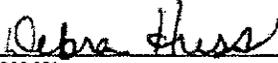
14 John E. DeWulf, Esq.

15 Coppersmith Brockelman PLC

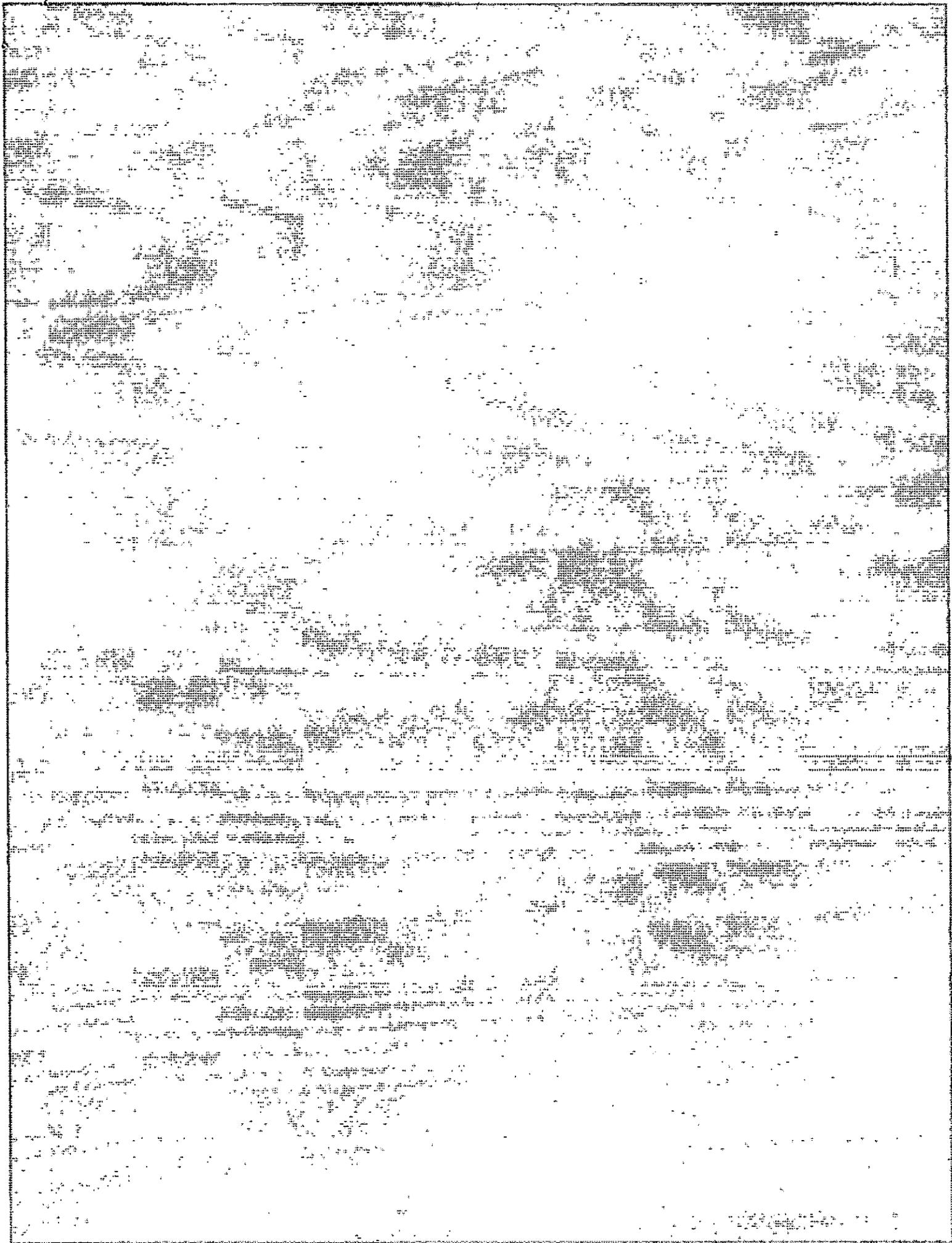
16 2800 N. Central Avenue, Suite 1900

17 Phoenix, AZ 85004

18 *Attorneys for Defendants*

19 

20 7998651





EXPERT REPORT OF NEIL J WERTLIEB

In the matter of

Peter S. Davis, as Receiver of DenSco Investment Corporation

v.

Clark Hill PLC, David G. Beauchamp and Jane Doe Beauchamp

Submitted on March 26, 2019

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EXPERT REPORT OF NEIL J WERTLIEB

In the matter of

Peter S. Davis, as Receiver of DenSco Investment Corporation

v.

Clark Hill PLC, David G. Beauchamp and Jane Doe Beauchamp

Submitted on March 26, 2019

I. INTRODUCTION

By letters dated June 15, 2017 and October 3, 2017, the law firm of Osborn Maledon, P.A. (“Osborn Maledon”) retained me (through Wertlieb Law Corp, where I am principal) to serve as an expert witness in the matter of *Peter S. Davis, as Receiver of DenSco Investment Corporation v. Clark Hill PLC, David G. Beauchamp and Jane Doe Beauchamp* (this “Case”).¹

This Expert Report of Neil J Wertlieb (this “Report”) contains my opinions, together with the facts and analysis upon which my opinions are based and the reasons for my conclusions.

A. My Background and Qualifications

I am the principal of Wertlieb Law Corp, where (among other things) I have served as an expert witness in disputes involving business transactions and corporate governance, and in cases involving attorney malpractice and attorney ethics. I also serve as a Special Deputy Trial Counsel on behalf of the State Bar of the State of California, in which capacity I investigate and, when appropriate, prosecute attorney misconduct in certain matters where the State Bar’s Office of Chief Trial Counsel has determined that it may have a conflict of interest.

Prior to founding Wertlieb Law Corp in 2017, I was a partner at the law firm of Milbank, Tweed, Hadley & McCloy LLP (“Milbank”), where for over two decades my practice focused on corporate transactions, primarily securities offerings, acquisitions and restructurings. I have represented clients in a wide variety of business matters, including formation and early round financings, mergers and acquisitions, private placements and public offerings, international securities offerings and other international transactions, fund formations, joint ventures, real estate and hospitality matters, partnerships and limited liability companies, reorganizations and restructurings, independent investigations, and general corporate and contractual matters.

¹ See Plaintiff’s Disclosure of Areas of Expert Testimony dated September 7, 2018 (“the [Receiver] discloses the following areas of expert testimony he anticipates offering at trial: ... The applicable standard of care, Defendants’ departure from the standard of care and how that departure caused injury to DenSco. Departure from the standard of care will encompass all allegations in the Complaint, both legal malpractice and breaches of fiduciary duty, and will be premised on all actions described in Plaintiff’s Rule 26.1 statement of facts. Expert testimony may also address whether the departures from the standard of care are gross departures from the standard of care.”).

I would estimate that in the course of my 34 years of practicing law, I have worked on securities offerings that raised over \$20 billion in proceeds. Such offerings have included: initial public offerings and other securities offerings registered with the Securities and Exchange Commission (the "SEC"); international and intrastate securities offerings which have been outside of the jurisdictional scope of federal securities regulation; and venture capital and early stage financings, fund financings, real estate related financings, and private placements and other offerings which have been exempt from SEC registration. My responsibilities in such offerings included the following tasks: evaluating compliance with federal, state and foreign securities regulations; preparing, reviewing and advising with respect to disclosures and SEC filings; preparing, reviewing and advising with respect to other documentation, including subscription agreements and investor suitability questionnaires; rendering legal opinions and conducting due diligence; assessing the risks associated with non-compliance, conducting internal compliance investigations, and advising with respect to rescission offers and other remedies; and other tasks associated with the offer and sale of securities. I have also advised securities issuers and other entities, as well as their directors, officers and managers, with respect to their fiduciary duty obligations.

Prior to joining Milbank in 1995, I was the general counsel for a public telecommunications and broadcast company. I also served as the General Counsel and a member of the Board of Directors of the Los Angeles Kings Hockey Team. And before that, I worked for eight years at the law firm of O'Melveny & Myers LLP, as a transactional associate in the firm's Corporate Department.

I am also an Adjunct Professor of Law at the UCLA School of Law where (since 2002) I teach a transaction skills course, entitled "Life Cycle of a Business," which focuses on business transactions, negotiation, contract drafting and attorney ethics. The course subjects include fiduciary duties, securities offerings, disclosure documents and materiality.

I have been engaged by Harvard Law School Executive Education as Senior Advisor, Milbank@Harvard. This professional development program provides Milbank associates with immersive week-long programs to build leadership and business skills each year for four years, as they progress from mid-level associates to senior associates. Led by Harvard Law and Business School faculty, the program covers topics such as business, finance, accounting, marketing, law, management skills, client relations and personal and professional development. As Senior Advisor, I provide input, guidance and assistance in formulating the program and connecting it to the practice of law.

I am a former Chairman of each of the following committees of the California State Bar: the Executive Committee of the Business Law Section; the Corporations Committee; and the Committee on Professional Responsibility and Conduct. I am currently the Chairman of the Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association. I also served as a Judicial Extern for Justice Stanley Mosk on the California Supreme Court.

I am the general editor of the legal treatise *Ballantine & Sterling: California Corporation Laws*. I have been recognized in *The Legal 500* for my mergers and acquisitions work and was

recognized as one of the top 100 most influential lawyers in California (*California Law Business*, October 30, 2000).

I received my law degree in 1984 from the UC Berkeley School of Law, and my undergraduate degree in Management Science from the School of Business Administration also at the University of California at Berkeley. I am admitted to practice law in California, New York and Washington, D.C.

My qualifications are described in more detail in my curriculum vitae, a current copy of which is attached as Exhibit A to this Report. A list of all cases in which I have testified as an expert at a deposition, hearing or trial during the past four years is attached as Exhibit B to this Report.

B. Description of this Case

This Case was initiated by the filing of a Complaint on October 16, 2017, by Peter S. Davis, as the court-appointed receiver (the "Receiver") of DenSco Investment Corporation, an Arizona corporation ("DenSco"), following the death of Denny Chittick, DenSco's sole owner, shareholder and operator. In the Complaint, the Receiver states two claims for relief against the law firm of Clark Hill PLC ("Clark Hill") and David G. Beauchamp (collectively, the "Defendants")²: (1) legal malpractice; and (2) aiding and abetting breach of fiduciary duties. The claims arise from the legal representation of DenSco by the Defendants.

C. Scope of Engagement

In the course of this engagement, I have reviewed certain documents provided or made available to me by, and have been in communication with, Osborn Maledon, the law firm representing Peter S. Davis, as Receiver of DenSco in this Case. The documents which have been provided or made available to me are listed on Exhibit C attached to this Report. In the event new information becomes available to me, I reserve the right to modify my opinions and conclusions accordingly.

At times during the course of this engagement, I have utilized the services of Christa Chan-Pak, who has acted an associate attorney at Wertlieb Law Corp during the preparation of this Report.

For purposes of this engagement, Wertlieb Law Corp charges Osborn Maledon an hourly rate of \$1,000 for my time. The compensation Wertlieb Law Corp receives for the services provided in formulating the opinions stated herein is not in any way contingent upon the conclusions I have reached in, or on the final outcome of, this Case.

D. Summary of Opinion

It is my opinion, as detailed below and based on the record that I have reviewed, that the Defendants violated the applicable standard of care in their representation of DenSco.

² Mr. Beauchamp's wife, identified as Jane Doe Beauchamp, is also named as a defendant in the Complaint.

II. SUMMARY OF FACTS

A. The Defendants and DenSco

Mr. Beauchamp started his legal career in 1981 and has practiced at no less than seven different law firms, starting as an associate at Fennemore Craig.³ Following Fennemore Craig, he moved to Storey & Ross, then to Moya Bailer Bowers & Jones, then to Quarles & Brady, then to Gammage & Burnham, then to Bryan Cave.⁴ In September 2013, Mr. Beauchamp joined Clark Hill,⁵ where he is currently a Member.⁶ His primary practice areas are corporate law, securities, venture capital and private equity transactions.⁷

Defendant Clark Hill is an international law firm. According to its website, it is “one of the largest firms in the United States - with more than 650 attorneys and professionals in 25 offices, spanning the United States as well as Dublin and Mexico City.”⁸

Denny Chittick formed DenSco in April 2001.⁹ Prior to forming DenSco, Mr. Chittick worked at Insight Enterprises, Inc. (“Insight”), a publicly traded company, for approximately 10 years. When he left Insight, he began investing his own money, and subsequently established DenSco where he invested his own money and solicited money from other investors.¹⁰

DenSco made “high-interest loans with defined loan-to-value ratios to residential property remodelers ... who purchase[d] houses through ... foreclosure sales all of which [were] secured by real estate deeds of trust (“Trust Deeds”) recorded against Arizona residential properties.”¹¹ “From April, 2001, through June, 2011 [DenSco] engaged in 2622 loan transactions.”¹² Mr. Chittick was the sole shareholder, director, officer and employee of DenSco.¹³ Mr. Chittick raised money from investors by issuing general obligation notes (the “Notes”) at variable interest rates. The Notes were “secured by a general pledge of all assets owned by or later acquired by”

³ See page 33, line 21, Deposition of David G. Beauchamp on July 19 and 20, 2018 (“Deposition of Mr. Beauchamp”).

⁴ See page 33, lines 9-17, Deposition of Mr. Beauchamp.

⁵ See page 33, lines 17-18, Deposition of Mr. Beauchamp.

⁶ See Clark Hill website, <https://www.clarkhill.com/people/david-g-beauchamp> (retrieved March 2, 2019).

⁷ See Clark Hill website, <https://www.clarkhill.com/people/david-g-beauchamp> (retrieved March 2, 2019).

⁸ Clark Hill website, <https://www.clarkhill.com/pages/about> (retrieved March 2, 2019).

⁹ See page 1, *Arizona Corporation Commission v. DenSco Investment Corporation* (Case No. CV 2016-014142), Preliminary Report of Peter S. Davis, as Receiver of DenSco Investment Corporation, dated September 19, 2016.

¹⁰ See page 40, DenSco’s Confidential Private Offering Memorandum dated July 1, 2011 (the “2011 POM”); printout of the “Company Management” page from the DenSco website dated June 17, 2013.

¹¹ Page 1, 2011 POM.

¹² Page 1, 2011 POM.

¹³ Pages 40-41, 2011 POM.

DenSco.¹⁴ DenSco's largest assets were the Trust Deeds,¹⁵ which were intended to be secured through first position trust deeds.¹⁶

Mr. Beauchamp began providing securities advice to DenSco in the early 2000s.¹⁷ As DenSco's securities lawyer, Mr. Beauchamp, among other things, drafted DenSco's Private Offering Memoranda ("POMs")¹⁸ and related investor documents.¹⁹ The POMs offered Notes according to the terms set forth therein. In addition, Mr. Beauchamp advised DenSco on federal and state securities laws, mortgage broker regulations and rules and regulations promulgated by state and financial lending authorities.²⁰

Mr. Beauchamp "advised DenSco regarding its Private Offering Memoranda, which DenSco generally updated every two years. He helped draft the 2003, 2005, 2007, 2009 and 2011 POMs."²¹

B. Events from Mid-2013 to Mid-2014

1. DenSco's 2011 POM Expired

The 2011 POM provided for a two-year offering period.²² Thus, by its own terms, the 2011 POM expired on July 1, 2013. However, the Defendants never finalized and provided DenSco with an update to the 2011 POM or a replacement POM.

¹⁴ Page (i), 2011 POM.

¹⁵ Page (i), 2011 POM.

¹⁶ Page 37, 2011 POM.

¹⁷ Page 3, lines 2-3, Defendants' Sixth Supplemental Rule 26.1 Disclosure Statement dated March 12, 2019 ("Defendants' DS").

¹⁸ As discussed below, a private offering memorandum is a disclosure document used to solicit investment in private securities transactions. A POM is provided to prospective investors to provide such investors with information regarding the issuer and the securities it intends to issue. Generally, a POM describes the business, the investment opportunity, the associated risks, the management team, historical performance and expected performance of the business. Disclosures made in a POM are regulated under the federal securities laws by, among other laws and rules, Rule 10b-5 promulgated under the Securities Exchange Act of 1934.

¹⁹ See pages 3-4, lines 25-1, Defendants' DS.

²⁰ Page 4, lines 2-4, Defendants' DS.

²¹ Page 5, lines 7-8, Defendants' DS; see, also, pages 256-257, lines 22-3, Deposition of Mr. Beauchamp (Mr. Beauchamp testified that it was his practice to revise the POM every two years based on a suggestion "made by a former SEC official, that given the nature of this industry, two years would be an appropriate time. However, if something material happened before then, you need to tell your client this has to be disclosed.").

²² See page (i), 2011 POM ("The Company intends to offer the Notes on a continuous basis until the earlier of (a) the sale of the maximum offering, or (b) two years from the date of this memorandum.").

In early May 2013, Mr. Chittick prompted Mr. Beauchamp (who was then at Bryan Cave) to begin work on an updated POM.²³ On May 9, 2013, Mr. Beauchamp met with Mr. Chittick. However, when Mr. Beauchamp learned that DenSco was close to issuing \$50 million of Notes,²⁴ he ceased working on an updated POM.²⁵ Because of his concern that DenSco was approaching the maximum offering size, he began reaching out to his colleagues at Bryan Cave for advice on federal and state laws.²⁶ It appears that Mr. Beauchamp's concerns were misplaced, as no such legal issues existed.²⁷

Ultimately, the Defendants *never* completed the updated disclosure.²⁸

2. The Freo Lawsuit (the First of Four "Red Flag" Warnings)

On June 14, 2013, Mr. Chittick emailed Mr. Beauchamp to alert him that a lawsuit had been filed against DenSco (the "Freo Lawsuit"), and included the first four pages of the complaint.²⁹ Mr. Chittick stated that DenSco was being sued along with one of its borrowers – a borrower that DenSco "had done a ton of business with, millions in loans and hundreds of loans for several years."³⁰ The borrower was Scott "Yomtov" Menaged, together with the businesses he operated through two Arizona limited liability companies, Easy Investments, LLC and Arizona Home Foreclosures, LLC.

²³ See email dated May 1, 2013 from Mr. Chittick to Mr. Beauchamp ("it's the year when we have to do the update on the memorandum, when do you want to start?").

²⁴ See DIC0003345, Mr. Beauchamp's handwritten notes, dated May 9, 2013, that state "\$50MM (what is this a threshold for)."

²⁵ See email dated June 25, 2013 from Mr. Beauchamp to Elizabeth Kearny Sipes, his then colleague at Bryan Cave ("*We stopped updating [the POM] when we were told that the investments from the investors had jumped to approximately \$47.5 million. Given that significant increase I have been asking for help to determine what other federal or state laws might be applicable. Bob Pederson out of NY has said that the Trust Indenture Act will not be applicable so long as the client is under the Regulation D, Rule 506 exemption. The other big issues have waited for your help to discern if we need to comply with the Investment Advisors Act of 1940 and the Registered Investment Advisors requirements.*" [italics added]).

²⁶ *Ibid.*

²⁷ See email dated July 1, 2013 from Ms. Sipes to Mr. Beauchamp ("I don't believe DenSco would ... need to register as an investment adviser.... It is also not necessary to count accredited investors at this time. DenSco is offering the notes under [SEC Rule] 506 which permits an unlimited number of accredited investors.").

²⁸ See page 53, lines 11-13, Deposition of Mr. Beauchamp ("We never ... issued a private offering memorandum at Clark Hill for DenSco"); see, also, pages 178-179, lines 22-3 ("Q: So you made a decision with Mr. Chittick that you would not disclose anything until we had a private offering memorandum, irregardless of fiduciary duties? ... A. I did not have that agreement with Mr. Chittick. Over time, that's what evolved.").

²⁹ Email dated June 14, 2013 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("David: I have a borrower, to which I've done a ton of business with, million in loans and hundreds of loans for several years, he's getting sued along with me.").

³⁰ *Ibid.*

The complaint in the Freo Lawsuit alleged that Mr. Menaged had secured two mortgages on one property: "Easy [Investments] attempted to encumber the property with deeds of trust to Active [Funding Group, LLC, an Arizona limited company, the other lender] and DenSco."³¹ Mr. Beauchamp recognized that the Freo Lawsuit was material to DenSco's investors, and immediately told Mr. Chittick, "we will need to disclose this in POM."³² Mr. Chittick readily agreed.³³ The Freo Lawsuit put Mr. Beauchamp on notice that DenSco's 2011 POM may be materially misleading because, if the allegations in the complaint were correct, DenSco was not following the methodology and procedures stated in the 2011 POM for funding its loans.³⁴ Based on the record I have reviewed in this Case, it appears that such disclosure was never made to DenSco's investors nor included in any draft updates to the 2011 POM prepared by the Defendants.

Mr. Chittick also informed Mr. Beauchamp that Mr. Menaged's attorney was working on the defense of the Freo Lawsuit, and that Mr. Chittick intended to "piggy back" on his borrower's defense.³⁵ Despite this clear conflict of interest, and Mr. Chittick's instruction that he speak with Mr. Menaged's attorney³⁶ – and Mr. Menaged's offer to pay for his time³⁷ – Mr. Beauchamp apparently took no action with respect to the Freo Lawsuit.³⁸

The Freo Lawsuit was the first of what I consider to be four "red flag" warnings, as discussed below.

³¹ See paragraph 20, Complaint dated May 24, 2013, *Freo Arizona, LLC v. Easy Investments, LLC, Active Funding Group, LLC, DenSco Investment Corporation, et al.*, brought in The Superior Court for the State of Arizona in and for the County of Maricopa.

³² Email dated June 14, 2013 from Mr. Beauchamp to Mr. Chittick.

³³ Email response dated June 14, 2013 from Mr. Chittick to Mr. Beauchamp ("ok 1 sentence should suffice!").

³⁴ See page 6, Defendants' DS ("DenSco and Mr. Chittick were both advised, and understood, ... that DenSco was representing to its investors that DenSco's loans would be in first position, and ... that it was of fundamental importance that DenSco safeguard the use of its investors' funds in conjunction with properly recording liens, in order to ensure that DenSco's loans were in first position."). See also paragraph 121 of Plaintiff's Fifth Disclosure Statement dated November 14, 2018 ("Plaintiff's DS") ("It was apparent from the Freo complaint that Chittick had not conducted any due diligence before loaning money to Easy Investments to acquire this particular home, since the property had been sold, according to public records, five days before a trustee's sale.").

³⁵ Email dated June 14, 2013 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("Easy Investments, has his attorney working on it, I'm ok to piggy back with his attorney to fight it.").

³⁶ See *Ibid* ("Easy Investments [sic] willing to pay the legal fees to fight it. I just wanted you to be aware of it, and talk to his attorney. Contact info is below.").

³⁷ Reply email dated June 14, 2013 from Mr. Menaged ("David Please bill me for your services and utilize my attorney for anything you may need.").

³⁸ Mr. Beauchamp testified that he did not speak to the borrower's attorney, Mr. Goulder, at this time. See page 240, lines 9-19, Deposition of Mr. Beauchamp.

3. Mr. Chittick's Instruction (the Second of Four "Red Flag" Warnings)

Although Mr. Beauchamp did some work on an updated POM in July and August of 2013 (after the 2011 POM had expired),³⁹ he was also preoccupied with changing law firms.⁴⁰ In late August 2013, he informed Mr. Chittick that he was leaving Bryan Cave for Clark Hill.⁴¹

In his deposition, Mr. Beauchamp asserted that the delay in updating the POM was caused by Mr. Chittick, and that Mr. Chittick instructed Mr. Beauchamp to stop working on the POM in August 2013 ("Mr. Chittick's Instruction").⁴² Based on the record I have reviewed, it appears there is no evidence confirming Mr. Beauchamp's assertion.⁴³ While I do not find Mr. Beauchamp's assertion credible under the circumstances, for the reasons discussed below, any such instruction from Mr. Chittick would not relieve Mr. Beauchamp of his obligation to take some form of corrective action.

In September 2013, Mr. Beauchamp left Bryan Cave and moved to Clark Hill. An engagement letter dated September 12, 2013 was signed by Mr. Beauchamp on behalf of Clark Hill, and by Mr. Chittick on behalf of DenSCO as a new client at Clark Hill. Mr. Beauchamp requested that Mr. Chittick have certain DenSCO files transferred from Bryan Cave to Clark Hill, including

³⁹ See Bryan Cave invoice dated August 14, 2013 to DenSCO for legal services rendered through July 31, 2013 (Mr. Beauchamp billed 9.7 hours for work on the DenSCO POM in July); Bryan Cave invoice dated September 14, 2013 to DenSCO for legal services rendered through August 31, 2013 (0.4 hours regarding subscription documents and procedures in August).

⁴⁰ See pages 46-47, lines 22-1, Deposition of Mr. Beauchamp ("I don't remember when I first talked to Clark Hill ... but you are talking I believe the end of June – to mid-August [2013] was the time period where I explored different options and tried to deal with it.").

⁴¹ See Mr. Beauchamp's handwritten notes dated August 26, 2013 ("TCW Denny Chittick (8/26/13) – left message – need to work on the latest version of POM that Denny has w/ the prior experience charts – need to discuss timing + update. TCW Denny Chittick (8/26/13) – explained delay w POM – need to get copy of Denny's latest POM make changes to it – BC will be sending a letter to Denny + letting Denny decide if he wants files kept at BC or move to CH").

⁴² Page 289, lines 15-25, Deposition of Mr. Beauchamp ("Q. And you write, in your handwriting: Explained delay with POM. Did you write that? A. Yes, I did. ... I believe it was a reference, again, to his decision to put it on hold for the time being, because he wasn't able to focus on it and get us the information. Q. You weren't explaining your delay on the POM, Mr. Beauchamp? A. No."); page 290, lines 11-14 ("Q. But unequivocally, it's your testimony under oath that by August 26, 2013, he told you to stop working on the POM? A. That is correct."). But see Deposition of Mr. Hood, page 101, lines 17-22 ("Q. So would you agree with me that in September 2013, *while he is working at Clark Hill*, Mr. Beauchamp is ordered by Mr. Chittick to stop working on the POM? A. Well, that's what appears to have been the case, according to Mr. Beauchamp's interrogatory answers, yes." [italics added]).

⁴³ See page 288, lines 5-7, Deposition of Mr. Beauchamp ("Q. And again, this wasn't by letter or email. You think this was a telephone conversation? A. That's how Denny preferred it.").

"2011 and 2013 Private Offering."⁴⁴ Although he asserts that Mr. Chittick directed him to stop all work on the POM just two weeks earlier,⁴⁵ Mr. Beauchamp also completed a "New Client/Matter Form" at Clark Hill to "Finish Private Offering Memorandum."⁴⁶

Despite taking on DenSco as a client in September 2013, the Defendants appear to have done no work in updating the expired 2011 POM, nor made any effort to provide DenSco with a replacement POM, for over three months. By mid-December 2013, Mr. Chittick apparently had to prompt Mr. Beauchamp to resume work on an updated POM.⁴⁷

Mr. Chittick's Instruction was the second of four "red flag" warnings, as discussed below.

4. The December 2013 Phone Call (the Third of Four "Red Flag" Warnings)

In December 2013, Mr. Chittick informed Mr. Beauchamp that certain properties DenSco had lent against had other liens competing for priority (the "December 2013 Phone Call"): "In December 2013, Mr. Chittick ... told Mr. Beauchamp over the phone that he had run into an issue with some of his loans to Menaged, and specifically, that properties securing a few DenSco loans were each subject to a second deed of trust competing for priority with DenSco's deed of trust."⁴⁸ When Mr. Beauchamp found out about the double lien issue, he advised Mr. Chittick to document a "plan" with Mr. Menaged to resolve the double lien issue.⁴⁹ Based on the record I have reviewed, and despite this potentially material problem with a borrower that Mr. Beauchamp knew to be very important to DenSco's business (and the very same borrower that

⁴⁴ See email dated September 12, 2013 from Mr. Beauchamp to Mr. Chittick ("Denny: There should not be a cost associated with transferring your files. However, to be safe, we should just do the following: AZ Practice Review (contains previous research); Blue Sky Issues; Garnishments; General Corporate; 2011 and 2013 Private Offering.").

⁴⁵ Page 289, lines 15-25, and page 290, lines 11-14, Deposition of Mr. Beauchamp.

⁴⁶ See DIC0008653, Clark Hill-New Client/Matter Form signed by Mr. Beauchamp on September 13, 2013.

⁴⁷ See email dated December 18, 2013 from Mr. Chittick to Mr. Beauchamp ("Since you moved, we've never finished the update on the memorandum."). The Defendants attempt to contradict the clear implication of this email by asserting that it was Mr. Beauchamp who reminded Mr. Chittick. See Defendants' DS, page 8 ("Mr. Beauchamp reminded Mr. Chittick that he still needed to update DenSco's private offering memorandum."). While I do not find Defendants' assertion credible under the circumstances, for the reasons discussed below, the Defendants were still obligated to take some form of corrective action.

⁴⁸ Defendants' DS, page 8.

⁴⁹ Defendants' DS, page 8 ("After briefly discussing the allegedly limited double lien issue, Mr. Chittick emphasized to Mr. Beauchamp that Mr. Chittick wanted to avoid litigation with other lenders. Mr. Chittick, however, did not request any advice or help. Rather, Mr. Chittick indicated that he wanted to continue working on a plan with Menaged to resolve the double-lien issue. Accordingly, Mr. Beauchamp suggested that Mr. Chittick and Menaged document their plan.")

was the apparent cause of the Freo Lawsuit),⁵⁰ there was no discussion or effort to update the POM to disclose this fact, nor does it appear that the Defendants did any investigation into the matter.

The December 2013 Phone Call was the third of four “red flag” warnings, as discussed below.

5. The Bryan Cave Demand Letter (the Fourth of Four “Red Flag” Warnings)

On January 6, 2014, Mr. Beauchamp received a copy of a demand letter sent by Bryan Cave to DenSco (the “Bryan Cave Demand Letter”).⁵¹ The letter stated that Bryan Cave represented certain lenders and lienholders that had loaned money to Easy Investments, LLC and/or Arizona Home Foreclosures, LLC (both entities owned and controlled by Mr. Menaged), to enable such borrowers to purchase various properties. The letter asserted that DenSco engaged in a practice of recording a mortgage on those same properties on or around the same time that the Bryan Cave lenders were recording their deeds of trust. The Bryan Cave Demand Letter demanded that DenSco agree to sign subordination agreements in favor of such lenders and lienholders with respect to the properties.

It is clear that, despite this very serious and material problem with a borrower that Mr. Beauchamp knew to be very important to DenSco’s business (and the very same borrower that was the apparent cause of both the Freo Lawsuit and the December 2013 Phone Call),⁵² there was no effort made to update the POM to disclose this fact, nor does it appear that the Defendants did any investigation into the matter. In fact, as discussed below, once the Bryan Cave Demand Letter came to his attention, Mr. Beauchamp’s priority became drafting and negotiating the Forbearance Agreement (as defined below),⁵³ not updating the 2011 POM.

The Bryan Cave Demand Letter was the fourth of four “red flag” warnings, as discussed below:

6. The Defendants’ Efforts to Paper Over the Menaged Problem

⁵⁰ Email dated June 14, 2013 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged (“I’ve done a ton of business with [Mr. Menaged], million in loans and hundreds of loans for several years”).

⁵¹ Email dated January 6, 2014 from Mr. Chittick to Mr. Beauchamp, attaching letter dated January 6, 2014 from Bryan Cave to DenSco, re: “Mortgage Recordation; Demand for Subordination.”

⁵² Email dated June 14, 2013 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged (“I’ve done a ton of business with [Mr. Menaged], million in loans and hundreds of loans for several years”).

⁵³ See page 59, lines 19-24, Deposition of Mr. Beauchamp (“I was giving him clear advice as far as what to do, he would not let me independently confirm that he was giving that advice, which I – he said I’ve never lied to you, and on that basis, that was true, so we proceeded *the priority was the Forbearance Agreement at that time.*” [italics added])

**a. Mr. Beauchamp Learned of the Menaged Fraud and DenSco's
Improper and Risky Lending Practices**

The day after receiving the Bryan Cave Demand Letter, Mr. Beauchamp was told that Mr. Chittick had not been following proper funding procedures to ensure DenSco's first lien position, and instead "would wire the money to [Mr. Menaged's] account and [Mr. Menaged, not DenSco] would pay the trustee."⁵⁴ Mr. Chittick explained his funding procedure, and also admitted that he did the same thing with several other borrowers and with respect to every auction property.⁵⁵ By funding directly to a borrower, rather than to a trustee or escrow company or in some other manner so as to ensure that DenSco had a perfected first lien priority position on the property securing its loan, DenSco was taking significant and unnecessary risk that it might not be in a first lien position with respect to such loans.⁵⁶ In fact, because DenSco was funding directly to borrowers *in anticipation* of a property acquisition, there was no way for DenSco to even ensure that the loan proceeds were actually used for such purpose. Mr. Beauchamp was well aware of the risks associated with this funding procedure as he had "provided advice to DenSco regarding proper loan documentation procedures since at least 2007."⁵⁷

⁵⁴ Email dated January 7, 2014 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("I've been lending to Scott Menaged through a few different LLC's and his name since 2007. I've lent him 50 million dollars and I have never had a problem with payment or issue that hasn't been resolved. ... Because of our long term relationship, when Scott needed money, I would wire the money to his account and he would pay the trustee.").

⁵⁵ Ibid ("I do this same thing with several borrowers and bidding co's. As an example, he would buy a property at auction for 100k it's worth 145k, he would ask me for 80k. I would wire it to him, he would pay the trustee with my 80k and his 20k and he would sign the RM, which I've attached (all docs you have reviewed and have been reiveid [sic] by a guy at your last law firm, maybe two firms ago in 2007). I've attached them. I would record the RM the day he paid for the property. Then once the trustee's deed was recorded, which during the last few years has been at times 6 weeks from the auction date to the recorded date, I then would record my DOT. This is a practice that I have done for 14 years. It's recognized by all the escrow co's. Some title agents won't see anything before the trustee's deed recording as a valid lien, some look at the whole chain. For me to be covered, I would record the RM to muddy up title then record the DOT after the trustee's deed to ensure my first position lien. ... Again, *this is what I do on every single auction property no matter who is the borrower.*" [italics added]). See, also, Plaintiff's DS ¶ 211.

⁵⁶ Mr. Menaged testified in his Rule 2004 Examination conducted on behalf of the Receiver on October 20, 2016 that: DenSco's lending practices were not as uniform or *careful* as other lenders (page 27); DenSco *never* declined a loan amount proposed by Mr. Menaged (page 38); "There was never anything not approved" (page 53); DenSco would wire the funds directly to Mr. Menaged (pages 43-44); DenSco would wire funds before receiving signed documents (page 54); DenSco did not require proof of insurance (page 56); "The only way that DenSco ended up in this position is because he wired the money to the borrower, me, and did not pay the trustee directly" (page 74); and "I guess in general terms, *it was just a very laxed hard money lending practice, very, very, laxed*" (page 39 [italics added]).

⁵⁷ See page 6, Defendants' DS ("Mr. Beauchamp ... provided advice to DenSco regarding proper loan documentation procedures since at least 2007. DenSco and Mr. Chittick were both advised,

These improper and risky funding procedures were not disclosed in the 2011 POM. In fact, the 2011 POM incorrectly stated that DenSco's loans were funded so as to ensure first lien positions on such properties.⁵⁸

Mr. Menaged fabricated a story to explain the double lien issue – a story which we now know to be false. As told by Mr. Menaged, because he was distracted with his wife's illness, he turned over certain business operations to his "cousin." The cousin would obtain a loan from DenSco, which DenSco wired directly, and the cousin would also obtain a loan from another lender, which lender would wire funds directly to the trustee. The cousin would file deeds of trust on behalf of both lenders, and then ultimately absconded with DenSco's funds.⁵⁹

In fact, there was no such cousin. A simple search of records available on the County of Maricopa website showed that it was Mr. Menaged who executed those deeds of trust in the presence of a notary, and not any "cousin."⁶⁰

b. Mr. Chittick and Mr. Menaged Create the "Plan"

Mr. Chittick shared with Mr. Beauchamp that he thought his options were limited. Mr. Chittick claimed that DenSco could not sign the subordination agreements demanded by the Bryan Cave

and understood, (a) that DenSco should fund loans through a trustee, title company or other fiduciary, (b) that DenSco was representing to its investors that DenSco's loans would be in first position, and (c) that it was of fundamental importance that DenSco safeguard the use of its investors' funds in conjunction with properly recording liens, in order to ensure that DenSco's loans were in first position.").

⁵⁸ See, e.g., page 37, 2011 POM ("All real estate loans funded by the Company have been and are intended to be secured through first position trust deeds.").

⁵⁹ See email dated January 7, 2014 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("Sometime last year, [Mr. Menaged's] wife became ill with cancer. His cousin was working with him and took on a stronger day to day role as scott [sic] was distracted with his wife. Scott always was the one that determined what properties to buy, how much etc. his cousin doing paperwork, checks and management of the day to day. At some point his cousin decided to take advantage of our relationship and started to steal money. Scott would request a loan from me, his cousin would request a loan from another borrower (I would say there are as many as ½ dozen different lenders in total.) ... What his cousin was doing was receiving the funds from me, then requesting them from the other lenders. These other lenders would cut a cashiers [sic] check for the agreed upon loan amount and then take it to the trustee and receive the receipt. ... The cousin absconded with the funds."). See, also, Plaintiff's DS ¶ 215.

⁶⁰ See, e.g., Exhibit 103 (Deed of Trust and Security Agreement with Assignment of Rents, recorded in the Official Records of Maricopa County Recorder March 25, 2013, for property located at "7089 W Andrew Lane Peoria, AZ 85383." The Trustor is Easy Investments, LLC. The Beneficiary is Active Funding Group, LLC.); see, also, Exhibit 104 (Deed of Trust and Assignment of Rents, recorded in the Official Records of Maricopa County Recorder April 2, 2013, for property located at "7089 W Andrew Lane Peoria, AZ 85383." The Trustor is Easy Investments, LLC. The Beneficiary is DenSco.).

Demand Letter, because doing so would be contrary to the disclosures made by Mr. Chittick to DenSco's investors.⁶¹ Further, Mr. Chittick claimed that DenSco could not litigate with the other lenders over the priority issue because doing so would somehow limit its ability to collect high interest on its loans.⁶²

Mr. Chittick also shared with Mr. Beauchamp that he did not want to disclose the problem to DenSco's investors until the problem had been addressed and DenSco's exposure had been minimized.⁶³ Otherwise, DenSco would start to "unravel."⁶⁴ Mr. Chittick was concerned that when investors learned of the situation, there would be a "run on the bank."⁶⁵ Presumably, any such disclosure would also be viewed as an acknowledgment that Mr. Chittick failed in his responsibilities to properly manage DenSco's mortgage loans and investor funds, and thus he fell prey to Mr. Menaged's fraud.

Instead, Mr. Chittick shared with Mr. Beauchamp that he and Mr. Menaged had come up with a plan (the "Plan") to get the other lenders paid off, which would keep them satisfied,⁶⁶ avoid

⁶¹ Email dated January 7, 2014 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("I know that I can't sign the subordination because that goes against everything that I tell my investors.").

⁶² See pages 169-170, lines 25-9, Deposition of Mr. Beauchamp ("He had expressed that if we ended up in litigation, that he would have limitations on his ability to collect the high interest on his loans to his borrowers, so he would not be able to make the payments to his investors, which would in fact cause it to unravel. He had a very specific thought that he was concerned with, and that is why he wanted to be able to show: We have a plan to work this out. We have thought it through. And that was his whole focus, get the forbearance done first.").

⁶³ See Exhibit 360, email dated February 25, 2014 from Mr. Chittick to Mr. Beauchamp ("what both of us [Mr. Menaged and Mr. Chittick] are really concerned about is that when I tell my investors the situation, they request their money back. I want to be able to say, this was a problem, we've eliminated this much of the problem and this is what it left. I want to be able to say what is left is as small as possible."). See, also, pages 169-170, lines 25-9, Deposition of Mr. Beauchamp.

⁶⁴ See pages 169-170, lines 25-9, Deposition of Mr. Beauchamp.

⁶⁵ See excerpt from DIC0009464, Chittick Investor Letter dated July 28, 2016 ("Why I didn't 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 ... I also feared that there would be a classic run on the bank.").

⁶⁶ See, e.g., email dated January 12, 2014 from Mr. Chittick to Mr. Menaged, copying Mr. Beauchamp ("Greg [Reichman, Principal of Active Funding Group, LLC, an Arizona corporation, the other lender with a deed of trust on the property that was the subject of the Freo lawsuit] has confirmed with Scott and has told me, as long as he gets his interest and payoffs come, he's happy.").

litigation,⁶⁷ and give Mr. Chittick time to minimize the damage caused by Mr. Menaged's fraud.⁶⁸

Mr. Chittick's Plan was to be memorialized in a forbearance agreement, which Mr. Beauchamp spent over three months negotiating until it was finalized and executed on April 16, 2014 (the "Forbearance Agreement").⁶⁹

Despite learning of the very serious issues raised by the Bryan Cave Demand Letter (which were consistent with the problems Mr. Beauchamp learned about earlier in the Freo Lawsuit and the December 2013 Phone Call), the material deficiencies in DenSco's funding procedures, the significant deficiencies in DenSco's first lien positions, and the fraud perpetrated on DenSco, the Defendants appear to have done no work in updating the 2011 POM, nor made any effort to provide DenSco with a replacement POM, for the entire period of time that Mr. Beauchamp was working on the Forbearance Agreement.

c. The Forbearance Agreement

⁶⁷ See, e.g., email dated January 7, 2014 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("What we need is an agreement that as long as the other lenders are being paid their interest and payoffs continue to come (we have 12 more houses in escrow currently, all planned to close in the next 30 days), that no one initiates foreclosure for obvious reasons, which will give us time to execute our plan").

⁶⁸ Ibid ("The Plan: 1. All lenders will be paid their interest, except me, I'm allowing interest to accrue. 2. I'm extending him a million dollars against a home at 3%. 3. He is bringing in 4-5 million dollars over the next 120 days from liquidating some assets as well as getting some money back that the cousin stole, and other sources. 4. He's got a majority of these houses rented, this brings in a lot of money every month. 5. The houses that he's buying now and will be flipping will bring in money every week starting next week or two. 6. As the houses become vacant either because of ending the lease or the tenant leaves, scott [sic] will fix up the house and sell it retail. This will drive the order in which the houses will be sold. 7. He owns dozens of houses that only have one lien on them and have substantial equity in them, and he'll be selling these as the tenants vacate.").

⁶⁹ Forbearance Agreement dated April 16, 2014 by and among Arizona Home Foreclosures, LLC, Easy Investments, LLC (collectively defined therein as the "Borrower"), Mr. Menaged and DenSco (as "Lender").

The magnitude of the problems with Mr. Menaged are readily apparent from the Forbearance Agreement, which recited that as of April 16, 2014, “the total principal sum now due and payable under the [scheduled] Loans, in aggregate, is \$35,639,880.71.”⁷⁰

Although the Forbearance Agreement required Mr. Menaged to “acknowledge and agree that the Loans are in Default,”⁷¹ the principal economic commitment made by Mr. Menaged was for the Borrower to “use its *good faith efforts*” to pay off the other lenders, with “*any balance* to be paid to [DenSco] to reduce the amount of [DenSco’s] Additional Loan ... to Borrower as provided herein.”⁷² As Mr. Menaged testified, he was unwilling to make an unconditional commitment to do so.⁷³

On the other hand, the Forbearance Agreement imposed material obligations and economic burdens on DenSco, including:

- DenSco agreed to forbear from collecting on the loans to Mr. Menaged and his affiliated entities (the “Menaged Loans”), or otherwise exercising any of its rights or remedies under the Loan Documents and applicable law, for so as long as Mr. Menaged and the Borrower were in compliance with the Forbearance Agreement.⁷⁴
- DenSco agreed to extend the maturity date on all of the Menaged Loans to February 1, 2015 and reserved the right to further extend the maturity date for another year.⁷⁵

⁷⁰ Section 1, Forbearance Agreement. See also pages 9-10, lines 25-2; Defendants’ DS (“by the end of 2013, more than half of [DenSco’s] loan portfolio was tied up with Menaged--well in excess of the promised loan concentrations DenSco had set forth in its disclosures to investors”).

⁷¹ Section 2, Forbearance Agreement.

⁷² Sections 6(A) and 6(H), Forbearance Agreement [italics added]. The Forbearance Agreement did provide DenSco with a separate corporate guaranty from Furniture King, LLC (see Section 6(D)); however, Mr. Beauchamp failed to cause a UCC-1 to be filed against the new guarantor, and such entity ended up having no value. See email dated August 5, 2016 from Mr. Beauchamp to DenSco’s Noteholders.

⁷³ See pages 117-119, lines 23-9, Mr. Menaged’s Rule 2004 Examination conducted on behalf of the Receiver on October 20, 2016 (“Q. And did -- so at the time, when you signed [the Forbearance Agreement], did you believe that this was never going to happen? A. I said that I would make my best effort to do so, and in front of Beauchamp and DenSco I did explain to him -- what they both told me, both of them told me was, ‘Hey, this is all really best efforts. You do your best, but we’re going into this forbearance agreement. It’s protecting everyone. End of story.’ That’s all I really know about this forbearance agreement. Q. Okay. But these funds were not delivered on these dates and times, right? A. Correct. Q. And the reason for that was why? A. Like I said, it was best effort. My best effort couldn’t deliver those funds.”).

⁷⁴ Section 4, Forbearance Agreement.

⁷⁵ Section 5, Forbearance Agreement.

- DenSco committed to fund not less than an additional \$6 million to the Borrower, most of which would be used to pay off the other lenders.⁷⁶
- DenSco agreed to defer the collection of interest on all Managed Loans,⁷⁷ and to waive its right to charge default interest on all defaulted loans.⁷⁸
- Contrary to the disclosures made in the 2011 POM, DenSco agreed to increase its loan-to-value ratio to up to 120% for loans on the double lien properties (meaning that the debt on such properties was materially in excess of the realizable value of such properties).⁷⁹
- DenSco committed, for the benefit of Mr. Menaged, to limit the information that DenSco could disclose to its investors (including omitting the names of Mr. Menaged and his entities), and granted Mr. Menaged the right to review and comment on any disclosure prior to it being released.⁸⁰

As a result, the benefit of the Forbearance Agreement to DenSco (as opposed to Mr. Menaged and perhaps Mr. Chittick individually) is unclear.⁸¹ In substance, because it had the effect of subordinating DenSco's recovery to the recovery of the other lenders (by conceding the priority of the other lenders' liens), the Forbearance Agreement was essentially the same as the subordination agreements that Mr. Chittick rejected as being inconsistent with assurances made to DenSco's investors. By allowing the other lenders to be paid off before DenSco, Mr. Chittick's Plan, as effectuated by the Forbearance Agreement, had the effect of worsening DenSco's financial position by increasing the leverage on the double lien properties such that there was insufficient residual equity value to repay DenSco's loans in full.

It does not appear to be the case that execution of the Forbearance Agreement itself (as opposed to the speculative benefits DenSco might possibly receive going forward, when and if so received) would provide Mr. Chittick with the positive message he wanted to share with investors that DenSco's exposure had been minimized (especially since DenSco committed to extend at least another \$6 million to Mr. Menaged). In other words, because Mr. Chittick had

⁷⁶ Sections 7(B) and 7(D), Forbearance Agreement.

⁷⁷ Section 7(C), Forbearance Agreement.

⁷⁸ Section 7(E), Forbearance Agreement.

⁷⁹ Section 7(A), Forbearance Agreement.

⁸⁰ Section 18, Forbearance Agreement ("With respect to the limitation on Lender's disclosure to its investors ... Lender agrees ... to limit such disclosure as much as legally possible").

⁸¹ See page 92 of Mr. Menaged's Rule 2004 Examination conducted on behalf of the Receiver on October 20, 2016, in which his testimony suggests that Mr. Chittick proposed the Forbearance Agreement in order to protect Mr. Chittick ("Q. ... Was it -- you know, when you learn or when you tell him that he's in second position, how does this forbearance agreement come to light? How does this get negotiated and drafted and prepared? A. He said to me that he was going to contact his attorney and *have an agreement drawn up to protect him*. That's how it came to light." [italics added]). See, also, page 98 ("He needed, the attorney, he needed to draft the agreement in a way that will *protect Denny* from any kind of liability with the investors." [italics added]).

explained to Mr. Beauchamp that he did not want to make disclosures until much of the double lien problem had been resolved,⁸² Mr. Beauchamp could not have reasonably believed that the completion of the Forbearance Agreement itself would prompt Mr. Chittick to make appropriate disclosures. In fact, the Defendants pursuit of the Forbearance Agreement had the effect of further delaying and limiting required disclosures to DenSco's investors.

7. Defendants Allege They Withdrew from Representing DenSco in May 2014

Mr. Beauchamp claimed he was not aware that DenSco had been continuing to offer Notes until after completion of the Forbearance Agreement, at the end of April or May 2014. Mr. Beauchamp further claimed that the Defendants withdrew from the attorney-client relationship with DenSco in May 2014 when Mr. Chittick refused to send updated disclosures to investors.⁸³

However, based on the record I have reviewed, and for the following reasons, it is clear that Mr. Beauchamp was aware that DenSco was continuing to offer Notes without updated disclosures, after the expiration of the 2011 POM, and despite his knowledge of the problems revealed in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter.

First, despite his initial delay in updating the 2011 POM due to unfounded legal concerns about the size of the offering, there is no evidence that Mr. Beauchamp communicated to Mr. Chittick to cease offering Notes until an updated POM could be provided to investors.⁸⁴

⁸² See email dated February 25, 2014 from Mr. Chittick to Mr. Beauchamp ("I want to be able to say, this was a problem, we've eliminated this much of the problem and this is what it left. I want to be able to say what is left is as small as possible." [italics added]). See, also, Mr. Chittick's entry in his DenSco Journal on February 21, 2014 ("I talked to Dave ... we talked about telling my investors, we are going to put that off as long as possible so that we can improve the situation as much as possible.").

⁸³ See page 81, lines 1-8, Deposition of Mr. Beauchamp ("I was not aware that he was taking any new money from new investors or rollovers ... until the end of April or May [2014] which forced us to give him the disclosure ... for the Forbearance Agreement and say ... we have to finish this thing ... we need to send this to everybody before you proceed. ... And he did not do it so we quit."); Defendants' DS, page 23 ("In May 2014, ... Mr. Beauchamp informed Mr. Chittick that Beauchamp and Clark Hill could not and would not represent DenSco any longer.").

⁸⁴ I note, however, that Mr. Beauchamp asserted in his deposition testimony that he told Mr. Chittick that "he could not take any money from any new client [and]; he could not take any rollover money from an existing client, without giving them full disclosure." See page 78, lines 16-19, Deposition of Mr. Beauchamp. For the reasons stated herein, I do not find this assertion credible. However, even if true, such statement appears to simply be paying lip service to proper advice. See also Deposition of Mr. Hood, pages 83-84, lines 24-10 ("Q. Mr. Beauchamp never gave that advice prior to January 9th, 2014.... Clark Hill verified he gave the advice starting on January 9, 2014, and thereafter. True? ... THE WITNESS: ... I think that was right at the time that this issue was presented to Mr. Beauchamp."), pages 85-86, lines 21-5 ("Q. All right. In December 2013, Mr. Beauchamp did not tell Mr. Chittick he had to stop lending money. True? ... THE WITNESS: I - - I don't believe that he told Mr. Chittick that, no. Q. And in December

Second, Mr. Beauchamp knew that between June and December 2013, DenSco had 60 Notes that were scheduled to mature and that, consistent with Mr. Chittick's practice, a significant portion of those outstanding Notes would be rolled over into the issuance of new Notes.⁸⁵

Third, several days *after* receipt of the Bryan Cave Demand Letter and Mr. Chittick's explanation of his funding procedures, the Menaged fraud, and his Plan to address the problem, Mr. Chittick specifically informed Mr. Beauchamp that he was soliciting new investors. On January 12, 2014, Mr. Chittick emailed Mr. Beauchamp, stating that he had "spent the day contacting every investor that [had] told [him] they want[ed] to give [him] more money," and that he expected to raise between \$5 million and \$6 million from the sale of Notes.⁸⁶ Mr. Chittick further inquired whether such actions were acceptable to Mr. Beauchamp: "that's my plan, shoot holes in it."⁸⁷ Mr. Beauchamp responded that same day, and not only did he fail to "shoot holes in it" (e.g., by instructing Mr. Chittick to not sell Notes without updated and corrected disclosures), he congratulated Mr. Chittick for his ability to "raise that amount of money that quickly."⁸⁸

Fourth, shortly after receipt of the Bryan Cave Demand Letter, Mr. Chittick made a statement to such effect in the corporate journal that he maintained (the "DenSco Journal"). On January 10, 2014, he wrote in the DenSco Journal: "I can raise money according to Dave."⁸⁹

2013, he didn't tell Mr. Chittick that he couldn't take any rollover monies. True? ... THE WITNESS: I - - I don't believe so.").

⁸⁵ See email dated June 20, 2013 from Mr. Beauchamp to several colleagues at Bryan Cave ("According to his note schedule, Denny has approximately 60 investor notes that are scheduled to expire in the next 6 months (and to probably be rolled over into new notes)"). See also Plaintiff's DS ¶ 18 ("Beauchamp knew that the vast majority of DenSco's investors purchased two-year promissory notes. For example, Beauchamp's notes reflect that Chittick told him during a May 3, 2007 meeting that 90% of the promissory notes DenSco had issued to investors were two-year notes."); Plaintiff's DS ¶ 19 ("Beauchamp also knew that the vast majority of DenSco's investors did not redeem their promissory notes when those notes matured, and instead 'rolled over' their investments by executing a subscription agreement and buying a new promissory note when a previous promissory note matured. As Beauchamp wrote in a June 15, 2007 e-mail to Richard Carney, who was then doing 'Blue Sky' work for DenSco, 'DenSco has regular sales of roll-over investments' and an 'ongoing roll-over of the existing investors every 6 months or so.'").

⁸⁶ Email dated January 12, 2014 from Mr. Chittick to Mr. Beauchamp ("*I've spent the day contacting every investor that has told me they want to give me more money... I feel like if all goes well, I'll have my money in total of ... 5-6 million in this time frame. ... that's my plan, shoot holes in it.*" [italics added]).

⁸⁷ *Ibid.*

⁸⁸ Email response dated January 12, 2014 from Mr. Beauchamp to Mr. Chittick ("You should feel very honored that you could raise that amount of money that quickly.").

⁸⁹ See, also, Mr. Chittick's entry in the DenSco Journal on February 21, 2014 ("I talked to Dave ... we talked about telling my investors, we are going to put that off as long as possible so that we can improve the situation as much as possible.").

Fifth, although Mr. Beauchamp claimed that he believed Mr. Chittick provided full disclosure to every investor about the fraud,⁹⁰ that is implausible based on the record I have reviewed. Mr. Beauchamp knew that Mr. Chittick did not want to make *any* disclosures until the Plan had been implemented and the damage contained. Further, although the Defendants assert to the contrary,⁹¹ Mr. Beauchamp knew that there was no proper disclosure mechanism other than pursuant to a new or supplemental POM, and Mr. Beauchamp had neither provided nor reviewed any such documentation – oral disclosures by Mr. Chittick would have been insufficient (as Mr. Beauchamp acknowledged in his deposition).⁹² Mr. Beauchamp’s claim that Mr. Chittick had provided full disclosure about the fraud is also inconsistent with the purported rationale for withdrawing from the representation of DenSco. In other words, had Mr. Chittick on his own in fact prepared and actually made such disclosures (as Mr. Beauchamp asserted he believed at the time, according to his deposition testimony), then presumably Mr. Beauchamp would have no reason for withdrawing based on Mr. Chittick’s supposed failure to have done so.

Sixth, it does not appear that the Defendants in fact provided DenSco with the necessary disclosures that they claim Mr. Chittick refused to send to investors. Although the Defendants prepared a draft markup of the 2011 POM (the “Draft 2014 POM”),⁹³ that draft – which failed to even mention the Menaged fraud – did not contain adequate disclosure of the problems that DenSco had suffered, nor of its failures to comply with the commitments made in the 2011 POM, nor of the magnitude of DenSco’s potential losses.⁹⁴ Further, it is not clear from the

⁹⁰ See pages 343-344, lines 12-2, Deposition of Mr. Beauchamp (“Q. Mr. Beauchamp, are you telling me under oath that you thought from ... the end of January that he ... talked [to] every investor who had money in DenSco and told them about the fraud? ... A. Yes, I did believe he had.”); see, also, page 79, lines 3-6 (“he had assured me he wasn’t taking any new money or any rollover money, which was deemed new under the circumstances, from any investor without telling them exactly what was going on.”).

⁹¹ See page 15, lines 1-2, Defendants’ DS (“There was no reason for Mr. Beauchamp to question whether Mr. Chittick was in fact providing disclosures to limited investors.”).

⁹² See page v, 2011 POM (“No person has been authorized to give any information or to make any representations concerning the Company other than as contained in this Confidential Private Offering memorandum, and if given or made, such other information or representations must not be relied upon.” [quoted text was upper case bold in original]). See, also, page 161, lines 7-24, Deposition of Mr. Beauchamp (“His representations that he had advised everybody and told them to the contrary, we needed something much more formal than that.”).

⁹³ See Exhibit 11, Clark Hill invoice dated June 19, 2014 for services rendered through May 31, 2014 (“5/14/14 [Daniel A. Schenck]... Additional revisions to Private Offering Memorandum; finish first draft.”); pages 92-95, lines 7-8, Deposition of Daniel Schenck on June 19, 2018 (“Q. So it looks like you finished the first draft on May 14th, 2014, right? A. Yes.”). See, also, Exhibit 407 to the Deposition of Mr. Beauchamp, draft Confidential Offering Memorandum dated May 2014.

⁹⁴ While the Draft 2014 POM added a detailed (although incomplete) summary of the terms of the Forbearance Agreement, in my opinion such disclosure was inadequate for the following reasons. First, the added disclosure was buried on pages 39 and 40 of the 63-page Draft 2014 POM. Second, in neither the added disclosure nor anywhere else in the Draft 2014 POM did the

record I have reviewed that the Draft 2014 POM prepared by the Defendants was ever shared with Mr. Chittick.⁹⁵

Seventh, in a letter Mr. Chittick sent to his sister, Shawna Heuer (also known as “Iggy”; the “Iggy Letter”),⁹⁶ Mr. Chittick repeatedly stated that Mr. Beauchamp never made him tell investors about the Menaged fraud.⁹⁷ The letter also stated, “Shame on him. He shouldn’t have allowed me. He even told me once I was doing the right thing.”⁹⁸

Defendants include any mention of either of the following material facts: (a) DenSco’s improper and risky funding procedures (i.e., wiring funds directly to the borrower instead of a trustee or escrow agent) led to the Menaged fraud; and (b) DenSco had been named as a defendant in the Freo Lawsuit. Third, although the added disclosure may have suggested otherwise, the remainder of the Draft 2014 POM remained unchanged from the 2011 POM with respect to the following material and prominent disclosures: (i) “[t]he proceeds of the offering will be used as working capital primarily for lending secured by, and the purchase of, Trust Deeds” (see page 2, Draft 2014 POM), even though the additional loans to Mr. Menaged and his affiliated entities under the Plan were being used to pay off the other lenders; (ii) “[t]he Company does not intend to exceed a maximum loan size of \$1,000,000.00” (see page 1, Draft 2014 POM), even though DenSco agreed in the Forbearance Agreement to loan Mr. Menaged and his affiliated entities up to \$6 million; (iii) “[t]he Company intends to maintain a loan-to-value ratio below 70% in the aggregate for all loans in the portfolio” (see page 1, Draft 2014 POM), even though presumably most if not all of the properties subject to the Forbearance Agreement had a loan-to-value ratio well in excess of 100% (see pages 39-40, Draft 2014 POM: “many of the Forbearance Properties having an aggregate loan-to-value ratio in excess of 100%”); and (iv) “one borrower [would] not comprise more than 10 to 15 percent of the total portfolio” (see page 37, Draft 2014 POM), even though it was apparent that Mr. Menaged and his affiliated entities materially exceeded that cap. And, fourth, the “Risk Factors” section of the Draft 2014 POM (beginning on page 12) was not updated to address any of the foregoing risks nor to add any disclosure of the risks associated with the prior sale of Notes pursuant to materially inaccurate and outdated disclosures, including potential exposure to claims for rescission and securities fraud.

⁹⁵ See Plaintiff’s DS ¶ 326 (“Neither the Clark Hill file nor Clark Hill’s billing statement reflect that Beauchamp ever sent the draft POM to Chittick or discussed it with him.”).

⁹⁶ DIC0009476, the Iggy Letter dated July 28, 2016, the date Mr. Chittick committed suicide. On that date, Mr. Chittick also prepared, but did not send out, a letter to investors. Instead, he sent the investor letter to Mr. Beauchamp and Ms. Heuer, instructing Ms. Heuer to let Mr. Beauchamp “handle it.” See Iggy Letter dated July 28, 2016 (“I decided not to send the investor letter out, but I sent it to my attorney and you ... Don’t share it with anyone. Let Dave Beauchamp – 480-684-1100, handle it (keep his name and number you may need it later. [sic] The legal consequences are going to be huge.”).

⁹⁷ Ibid (“Dave did a work out agreement with Scott ... yet Dave never made me tell the investors”; “I talked Dave my attorney in to allowing me to continue without notifying my investors.”; “Dave my attorney ... let me get the workout signed not tell the investors and try to fix the problem. That was a huge mistake.”).

⁹⁸ Ibid. See, also, excerpt from DenSco Journal dated July 31, 2014, maintained by Mr. Chittick (“It’s all going in the right direction, just not sure if it’s going fast enough. *As long as David doesn’t bug me*, I feel like we are doing the right thing.” [italics added]).

Eighth, because Mr. Chittick would have been required to disclose, among other things, DenSco's failures with respect to its first lien positions, loan-to-value ratios, and diversity of its borrowers, and the cause of such failures (including Mr. Chittick's negligence), as well as its exposure to civil and criminal consequences for securities fraud (including the possible right of all Noteholders to demand rescission), Mr. Beauchamp could not have reasonably believed that the sophisticated accredited investors targeted by DenSco would have been inclined to invest in Notes.

As to Mr. Beauchamp's claim that the Defendants withdrew in May 2014 when Mr. Chittick refused to send updated disclosures to investors, the record I have reviewed does not contain any written communication or other documentation to corroborate such claim.⁹⁹ In my experience, based on custom and practice, I would have expected under these circumstances that the Defendants would have communicated the fact of their withdrawal in writing to Mr. Chittick, and would have also had some form of internal documentation as well (i.e., to close the file).¹⁰⁰ In addition, although they were no longer working toward updating the POM,¹⁰¹ the Defendants continued to provide, and bill for, legal services to DenSco through mid-July 2014,¹⁰² and solicited additional legal work from DenSco as late as August 20, 2014¹⁰³ – which further suggests that they did not withdraw at the time they assert they did.

⁹⁹ See Arizona Rules of Professional Conduct, Rule 1.3, Comment [4] (“If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, *preferably in writing*, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so.” [italics added]).

¹⁰⁰ Not only did the Defendants not close their files, but Mr. Beauchamp continued to bill his time in 2016 to the “General” and “Business Matters” file matters that Clark Hill established in January 2014. See Plaintiff's DS ¶¶ 393(c) & 393(d).

¹⁰¹ See pages 218-219, lines 24-1, Deposition of Mr. Beauchamp (“Q. Were you bugging [Mr. Chittick] to do a private offering memorandum in July 2014? A. No.”).

¹⁰² See Exhibit 12, Clark Hill invoice dated July 19, 2014 for services rendered through June 31, 2014 (e.g., “06/11/14 DGB [David G. Beauchamp] Review and respond to multiple emails; transmit information to D. Chittick”; and “06/13/14 DAS [Daniel A. Schenck] Revise Authorization form and prepare new slip sheets for updated figures; attorney conference regarding Authorization form; prepare instruction letter to client”); Exhibit 13, Clark Hill invoice dated August 19, 2014, for services rendered through July 31, 2014 (e.g., “07/15/14 DGB Review, work on and respond to several emails; review documents, spread sheets and outline issues and additional schedule needed”; and “07/15/14 DAS Multiple correspondence regarding loan balance spreadsheets.”).

¹⁰³ See letters dated May 23, June 25, July 16 and August 20, 2014, from Mr. Beauchamp to Mr. Chittick, transmitting invoices for legal services (“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.*” [italics added]).

Although it is not at all clear from the record that the Defendants in fact withdrew, it is apparent that Mr. Chittick and Mr. Beauchamp had limited or no contact between July 2014 and March 2015. On March 13, 2015, Mr. Beauchamp emailed Mr. Chittick, expressing a desire to meet with Mr. Chittick, to discuss “how things have progressed for [Mr. Chittick] since [the prior] year.”¹⁰⁴ Mr. Beauchamp informed Mr. Chittick that he had been reflecting on the events surrounding the Menaged fraud, that he had second guessed himself about many things in the process, and that he wanted to protect Mr. Chittick as much as he could during the forbearance settlement process.¹⁰⁵ Mr. Beauchamp’s email suggests that the Defendants did not in fact withdraw, but rather Mr. Beauchamp just stopped calling Mr. Chittick so as to avoid any concerns Mr. Chittick might have had that he “was just trying to add more attorneys fees.”¹⁰⁶

Mr. Chittick’s entries in the DenSco Journal regarding Mr. Beauchamp’s invitation to meet and their subsequent lunch meeting suggest that the Defendants did not in fact withdraw from representing DenSco, but rather were simply giving him time to implement his Plan. Mr. Chittick wrote in his DenSco Journal on March 13, 2015, “At 11pm I got an email from Dave my attorney wanting to meet. *He gave me a year to straighten stuff out we’ll see what pressure I’m under to report now.*”¹⁰⁷ In a further entry dated March 24, 2015 (the date of their lunch meeting), Mr. Chittick wrote, “I had lunch with David Beauchamp, *I was nervous he was going to put a lot of pressure on me.* However, he was thrilled to know where we were at and I told him by April 15th, we’ll be down to 16 properties with seconds on them ... *He said he would give me 90 days ... I’m going to slow down the whole memorandum process too.*”¹⁰⁸

¹⁰⁴ Email dated March 13, 2015 from Mr. Beauchamp to Mr. Chittick (“Denny: I would like to meet for coffee or lunch ... so we can sit down and talk about how things have progressed for you since last year. I also would like to listen to you about your concerns, and frustrations with how the forbearance settlement and the documentation process was handled ... I have second guessed myself concerning several steps in the overall process, but I wanted to protect you as much as I could. When I felt that your frustration had reached a very high level, I stopped calling you about how things were going so that you did not feel I was just trying to add more attorneys fees. I planned to call you after about 30 days, but then I let it slip all of last year because I kept putting it off. I even have tried to write you several different emails, but I kept erasing them before I could send them. I acknowledge you were justifiably frustrated and upset with the expense and how the other lenders (and Scott at times) seemed to go against you as you were trying to get things resolved last year for Scott. I have tried to let time pass so that we can discuss if you are willing to move beyond everything that happened and still work with me. If not, I would like you to know that I still respect you, what you have done and I would like to still consider you a friend. You stood up for Scott when he needed it and I truly believe it was more than just a business decision on your part.”).

¹⁰⁵ Ibid. Notably, Mr. Beauchamp did not state that he wanted to protect DenSco.

¹⁰⁶ Ibid (“When I felt that your frustration had reached a very high level, I stopped calling you about how things were going so that you did not feel I was just trying to add more attorneys fees.”). Had the Defendants in fact withdrawn, there would have been no basis for Clark Hill to charge DenSco for any such calls.

¹⁰⁷ Excerpt from DenSco Journal dated March 13, 2015 [italics added].

¹⁰⁸ Excerpt from DenSco journal dated March 24, 2015 [italics added].

Mr. Chittick and Mr. Beauchamp resumed actively working together again in 2016, when Mr. Beauchamp began helping Mr. Chittick with an issue involving an audit by the Arizona Department of Financial Institutions.¹⁰⁹ Mr. Beauchamp testified that, at that time, Mr. Chittick confirmed he had made full disclosure to DenSco's investors.¹¹⁰ However, it does not appear that Mr. Beauchamp asked any questions or took any action to verify Mr. Chittick's alleged statement, and I have seen no evidence that such alleged statement was in fact true.

C. Events Following Mr. Chittick's Suicide

In the months following Mr. Chittick's suicide on July 28, 2016, the Defendants continued representing DenSco.¹¹¹ Based on Clark Hill's invoices, it appears that beginning on July 30, 2016, and continuing at least through September 23, 2016, Mr. Beauchamp billed DenSco for matters relating to the wind down or transition of DenSco's business.¹¹² In August 2016, Mr. Beauchamp completed a New Business Intake Form to open a new matter for DenSco, entitled "Business Wind Down."¹¹³ In completing the Form, Mr. Beauchamp affirmed that "a check [had] been run for any client, issue or business conflict," and checked the box indicating "no" in response to the inquiry "Is there any potential for a client, issue or business conflict?"

During this same time period, the Defendants began representing the Estate of Denny J. Chittick (the "Chittick Estate").¹¹⁴ Also in August 2016, Mr. Beauchamp completed a New Business

¹⁰⁹ See page 23, Defendants' DS ("Clark Hill stopped working with DenSco and Mr. Chittick in any capacity until 2016, when Mr. Chittick requested that Mr. Beauchamp assist with a very limited issue involving an audit by the Arizona Department of Financial Institutions.")

¹¹⁰ See page 230, lines 4-8, Deposition of Mr. Beauchamp ("Q. Before you took him on as a client and billed him, did you ask him if he had ever complied with your advice and issued a new private offering memorandum? A. I had asked him if he had done full disclosure to his investors and he said yes.")

¹¹¹ See, e.g., Exhibit 425, Affidavit of Ryan Lorenz dated June 21, 2017 (in which Mr. Lorenz, a "member in the firm of Clark Hill," confirmed that after Mr. Chittick's death, "the Firm transitioned the subject matter of its work to advice and guidance to DenSco to assist it in winding down its business.")

¹¹² See Clark Hill invoices dated August 10, 2016 (e.g., time entry on July 30, 2106 referencing "Telephone call ... regarding transition after death of D. Chittick"), September 12, 2016 ("RE: Business Wind Down") and October 18, 2016 ("RE: Business Wind Down"). Such invoices reflect that Mr. Beauchamp recorded 164.8 hours of services from July 30, 2016 through September 23, 2016.

¹¹³ Clark Hill New Business Intake Form, Exhibit 708 to Deposition of Edward Joseph Hood, the Co-General Counsel of Clark Hill, on February 8, 2019. Although the Form appears to have been approved by Mr. Beauchamp on August 23, 2016, as indicated in the Clark Hill invoices Mr. Beauchamp began billing his time to this new matter on August 1, 2016.

¹¹⁴ See Exhibit 213 to Deposition of Mr. Beauchamp, email dated August 3, 2016 from Mr. Beauchamp to DenSco investors ("As part of the plan moving forward, we have filed the Will of Denny J. Chittick ('Denny's Will') and the necessary filings with the Probate Court to have Shawna designated as the Personal Representative of Denny's Estate, which is what Denny's Will provides.")

Intake Form for the Chittick Estate as a new client.¹¹⁵ In completing this Form, Mr. Beauchamp also affirmed that “a check [had] been run for any client, issue or business conflict,” and checked the box indicating “no” in response to the inquiry “Is there any potential for a client, issue or business conflict?”. Clark Hill entered into an engagement letter with Mr. Chittick’s sister, Shawna Heuer, dated August 2, 2016, with respect to the Chittick Estate.¹¹⁶

Despite the fact that Mr. Beauchamp indicated on both New Business Intake Forms that there was no potential for a conflict of interest, Mr. Beauchamp testified that he had “extensive” discussions with Ms. Heuer regarding the attorney-client relationship, including potential conflicts that he and Clark Hill had with respect to representing DenSco, and that Clark Hill was concerned about potential claims that could be made against it regarding Mr. Beauchamp’s representation of DenSco.¹¹⁷ In addition, Edward Joseph Hood, the Co-General Counsel of Clark Hill, testified that, as of early August 2016, “it was a possibility” that Clark Hill could reasonably anticipate that a receiver for DenSco might sue the firm for damages.¹¹⁸ I have seen no evidence in the record I have reviewed of any conflict waivers provided by or on behalf of either DenSco or the Chittick Estate.

With the assistance of Clark Hill as counsel to the Chittick Estate, Ms. Heuer was appointed the personal representative of the Chittick Estate on August 4, 2016.¹¹⁹ Mr. Beauchamp testified that the Defendants resigned from representing the Chittick Estate immediately after the probate proceeding,¹²⁰ although the record I have reviewed does not contain any paperwork terminating

¹¹⁵ Exhibit 707 to Deposition of Mr. Hood, Clark Hill New Business Intake Form. This Form appears to have been approved by Mr. Beauchamp on August 3, 2016.

¹¹⁶ Exhibit 707, Deposition of Mr. Hood.

¹¹⁷ See pages 447-448, lines 19-15, Deposition of Mr. Beauchamp (“Q. Did you have a discussion with Shawna about what the attorney/client relationship was with her, with respect to your representation of DenSco? A. Yes, extensive. Q. Did you discuss with her potential conflicts of interest that you and Clark Hill would have with respect to representing DenSco? A. Yes. ... Q. Did you disclose to her that Clark Hill was concerned about potential claims that could be made against Clark Hill regarding your representation of DenSco? A. Yes.”).

¹¹⁸ See page 140, lines 10-20, Deposition of Mr. Hood (“Q. All right. On August 2nd, August 3rd, 2016, with all of the information that Clark hill [sic] knew, could Clark Hill reasonably anticipate that a receiver might sue Clark Hill for damages? ... THE WITNESS: ... I suppose it was a possibility”). See also page 145, Deposition of Mr. Beauchamp (referring to a letter dated August 9, 2016 from Kevin Merritt of Gammage & Burnham to Mr. Beauchamp: “Since you are meeting with Wendy, for the moment it seems that you are still representing DenSco in some capacity. *While you have conflict issues, do you expect Clark Hill to have to resign from all representations or do you think Clark Hill can continue to represent the estate since your firm filed the probate, or is it still being sorted through?*” [italics added]).

¹¹⁹ See Exhibit 216, Deposition of Mr. Beauchamp, Letters of Appointment of Personal Representative and Acceptance of Appointment as Personal Representative, submitted by Clark Hill, signed by Clerk of the Superior Court on August 4, 2016.

¹²⁰ See page 476, lines 5-20, Deposition of Mr. Beauchamp (“Let’s turn to Exhibit 216. And just to get it in our timeframe, this is the probate petition ... for the appointment of a personal representative for Mr. Chittick’s estate. A. Correct. Q. So it’s filed on August 4th, and Clark Hill is representing the petitioner, right? A. And we resigned immediately after this. Q. Right. And

the attorney-client relationship with the Chittick Estate. However, on August 15, 2016, Mr. Beauchamp, in responding to an email inquiry from a title insurance company, stated that the Defendants were no longer counsel to the Chittick Estate, and that they had resigned “[d]ue to potential conflicts of interest.”¹²¹ Mr. Beauchamp’s former firm, Gammage & Burnham, became legal counsel for the Chittick Estate.

Despite concerns with respect to such conflicts of interest, on August 3, 2016, Mr. Beauchamp began corresponding directly with DenSco’s investors stating his intent “to determine the best procedure to close down DenSco’s business and return the capital contributed by DenSco’s investors.”¹²²

In his email to investors on August 3, 2016, Mr. Beauchamp suggested that it was not in the financial interests of the investors to have a receiver or trustee appointed to conduct the wind down of DenSco (nor in the financial interests of any investor to have a supervisory role by being appointed to DenSco’s board of directors):

“If whoever is in charge of DenSco does not work with the Investors, then DenSco will either be put into bankruptcy or have a Receiver appointed, which will incur costs on behalf of the Investors and DenSco that will *significantly reduce what 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...* In order to maximize the available return to all of the Investors ... we would like to keep DenSco out of a protracted bankruptcy or a contentious Receivership proceeding... As indicated above, various studies have shown that the third party costs and legal and other professional fees and costs and the inherent delays in bankruptcy and / or Receivership proceedings can consume more than 35% of the available money that should or would otherwise be available to be returned to Investors.... If we are going to proceed informally to keep costs down, ... we would like to create an ‘Advisory Board’ of 5 Investors to meet with and to advise DenSco with respect to the information obtained and how that information can be used to cost-effectively help DenSco recover funds that are owed to DenSco. *We intend to structure*

this was the issue you said you had a discussion with her about the conflict of interest and she waived it. True? ... A. I had the discussion, Michelle Tran had the discussion, and, yeah, that was one of the several conversations.”)

¹²¹ Exhibit 288A to Deposition of Mr. Beauchamp, email dated August 15, 2016 from Mr. Beauchamp to Chris Hyman, Executive Vice President, American Title Service Agency (“Given the need to move quickly on certain items, we only represented the Estate so that a Personal Representative would be appointed for The Estate right away. Due to potential conflicts of interest, we have resigned as counsel to the Estate and new counsel has been appointed or is being appointed for the Estate. ... Gammage & Burnham will be representing the Estate going forward.”).

¹²² Exhibit 213 to Deposition of Mr. Beauchamp, email dated August 3, 2016 from Mr. Beauchamp to DenSco investors (in which Mr. Beauchamp also indicates that part of the DenSco wind down includes the “need to better understand ... claims that DenSco has against either Auction.com or Scott Menaged (*or some other parties*)” [italics added]).

this as an Advisory Board to protect the members of this Advisory Board from any potential liability based upon their role with DenSco. Specifically, the Advisory Board would only have an advisory position with DenSco as opposed to a full authority position, which is to distinguish this situation from having these Investors appointed to the Board of Directors."¹²³

Similarly, in his email correspondence with investors on August 8 and 9, 2016, Mr. Beauchamp suggested that it was not in the financial interests of the investors to have the Securities Division of the Arizona Corporation Commission take an active role either:

"We need to be willing but not overly anxious to turn it over to the Securities Division. Several people in government made names and careers with the Mortgages Ltd. matter and we do not want this to turn into anything like that."¹²⁴

"With respect to your question concerning the Wednesday meeting, the Director of Enforcement had someone from her office relay a message to me that they do not want any Investors (or attorneys for Investors) at the Wednesday meeting."¹²⁵

In contrast, at the court hearing to appoint a receiver little more than one week later, both new counsel for Chittick's Estate's, Mr. Polese of Gammage & Burnham, and Wendy Coy, Director of Enforcement, Securities Division, Arizona Corporation Commission, testified that it was urgent that a receiver be appointed.¹²⁶

¹²³ See Exhibit 213, email dated August 3, 2016 (11:35 pm) from Mr. Beauchamp to DenSco investors [italics added]. Curiously, it appears that earlier in the day, Mr. Beauchamp was instructed by the Director of Enforcement, Securities Division, Arizona Corporation Commission, that a receiver in fact may need to be appointed. See Exhibit 217 to Deposition of Mr. Beauchamp, letter dated August 4, 2016 from Wendy Coy, Director of Enforcement, Securities Division, Arizona Corporation Commission, to Mr. Beauchamp ("Thank you for contacting the Securities Division yesterday. I appreciate your willingness to speak with us and to take control of a very sad and problematic situation. We look forward to working with you to resolve any issues that may arise.... In addition, we discussed that *no assets should be dissipated until a receiver and/or a forensic accountant has reviewed the books and records of DenSco Investments Corporation and a plan is in place regarding the business.*" [italics added]).

¹²⁴ Exhibit 256, Deposition of Mr. Beauchamp, email dated August 9, 2016 from Mr. Beauchamp to investor Craig Hood, copying other investors.

¹²⁵ Exhibit 256, Deposition of Mr. Beauchamp, email dated August 8, 2016 from Mr. Beauchamp to investor Craig Hood, copying other investors.

¹²⁶ See Reporter's Transcript of Digital Recording (pages 5-6, Mr. Polese: "In fact, we think the receiver needs to be appointed as soon as possible.... Everybody knows that we need to get somebody in place to protect the good notes that are out there that -- that are going to be collected"; page 6, Ms. Coy: "We, too, agree and believe that a receiver needs to be immediately appointed.").

Mr. Beauchamp continued communicating directly with investors.¹²⁷ In addition, it appears that Mr. Beauchamp took it upon himself to act as a quasi-receiver or liquidator with respect to the wind down of DenSco. The time entries in the Clark Hill invoices for August and September 2016 (especially prior to the appointment of the Receiver) suggest that Mr. Beauchamp was much more involved in the wind down aspects of DenSco's business than, in my opinion, attorneys normally would be, and doing so with limited supervision or oversight by, or instruction from, an authorized and competent representative of his client DenSco.¹²⁸ Further, in the absence of a receiver or trustee, Mr. Beauchamp should have reasonably expected that he would bear considerable responsibility for the multitude of non-legal tasks required to liquidate DenSco's assets and wind down its business – e.g., collecting, properly handling, and accounting for funds received from borrowers; negotiating with borrowers and/or pursuing foreclosure proceedings; monitoring, analyzing and monetizing all other loans; completing projects and selling properties where appropriate; valuations; allocating and distributing funds to investors; and maintaining books and records, preparing financial statements; filing tax returns and paying taxes, reporting interest income of investors, and numerous other tasks.¹²⁹

On August 17, 2016, the Arizona Corporation Commission filed legal action alleging that DenSco violated various Arizona securities laws.¹³⁰ The Arizona Corporation Commission requested that the court appoint a receiver to preserve DenSco's assets for the benefit of its

¹²⁷ See, e.g., email dated August 20, 2016 from an investor, Robert Brinkman ("Mr. Beauchamp ... Can you please let me know if there was a POM for 2013 and 2015 or if 2011 was the last POM?"), to which Mr. Beauchamp responds one day later ("My law firm started preparing the 2013 POM, but we were put on hold. After the Forbearance agreement [sic] was signed by Scott Menaged, we started to amend the 2013 draft POM, but we stopped and withdrew as securities Counsel [sic] for DenSco. Denny was supposed to get other counsel and finish the POM in 2014, but I do not know if that happened. After that issue, I only was asked to help DenSco with the audit by the AZ Department of Financial Institutions.")). See also Exhibit 709, Deposition of Mr. Hood, letter dated August 9, 2016 from Scott A. Swinson (attorney for Mr. Brinkman) to Michelle Tran at Clark Hill ("I represent Rob Brinkman, as an investor/creditor of DenSco Investment Corporation. He has forwarded to me the various e-mails regarding Densco [sic] generated by Mr. Beauchamp. From some of the statements Mr. Beauchamp has made in his e-mails, it sounds as though your firm represented either Mr. Chittick and/or Densco prior to Mr. Chittick's death. If this is in fact the case, *I would appreciate a confirmation from your firm that you have considered the potential of a conflict of interest in your representation of the Chittick estate and you [sic] determination that no conflict exists.*" [italics added]).

¹²⁸ See, e.g., Clark Hill invoice time entries for 8/17/16 ("several telephone calls ... regarding loan payoffs, issues and procedure"); 8/19/16 and 8/23/16 ("several telephone calls with escrow agents, borrowers and real estate agents concerning loan payoffs, issues and procedure"). See also page 27, lines 2-3, Defendants' DS ("Ms. Heuer had no knowledge of DenSco's business, records, or hard money lending in general.").

¹²⁹ See section entitled "DenSco was a 'One-Man Shop'" below.

¹³⁰ Verified Complaint dated August 17, 2016 *Arizona Corporation Commission, Plaintiff v. DenSco, Defendant.*

investors.¹³¹ On August 18, 2016, the court held a receivership hearing and appointed Peter Davis as the Receiver for the assets of DenSco.¹³²

Although he made a contrary statement only one week prior,¹³³ at the receivership hearing Mr. Beauchamp testified that “he concurrently represented both DenSco and Denny Chittick personally.”¹³⁴ That assertion created certain joint attorney-client privilege issues that complicated and delayed the Receiver’s ability to obtain and utilize DenSco’s files from Clark Hill.¹³⁵ Accordingly, to obtain and utilize certain DenSco files in this Case, the Receiver needed to obtain a waiver of privilege from the Chittick Estate, which delayed the Receiver’s receipt of DenSco’s files and its ability to bring claims against the Defendants.

On December 9, 2016, the Receiver filed a Notice of Claim against the Chittick Estate based on the frauds perpetrated by Mr. Menaged and asserted, among other things, claims that Mr. Chittick breached his fiduciary duties owed to DenSco.¹³⁶

¹³¹ See paragraph 23, Verified Complaint dated August 17, 2016 *Arizona Corporation Commission, Plaintiff v. DenSco, Defendant* (“The ACC requests this Court appoint a Receiver on an interim basis to take control of the assets of DenSco and to marshal and preserve its assets for the benefit of the defrauded investors.”).

¹³² See page 1, Preliminary Report of Peter S. Davis, as Receiver of DenSco dated September 19, 2016 (“On August 18, 2016, Peter Davis (“Receiver”) was appointed the Receiver for the assets of DenSco by the Honorable Lori Horn Bustamante of the Maricopa County Superior Court.”).

¹³³ See Mr. Beauchamp’s letter dated August 10, 2016 to Ms. Coy, in which he claimed “I have not previously represented Denny Chittick.” But see pages 118-119, lines 23-9, Deposition of Mr. Beauchamp (Mr. Beauchamp asserted that he took action to correct the statement made to Ms. Coy).

¹³⁴ See Exhibit 317, email dated August 30, 2016 from Kevin Merritt (attorney for the Chittick Estate, and also Mr. Beauchamp’s former colleague at Gammage & Burnham) to Mr. Beauchamp and Ryan Anderson (an attorney representing the Receiver), copying the Receiver, Mr. Polese (attorney for the Chittick Estate), among others (“I would like to remind everyone that David testified at the receivership hearing that he concurrently represented both DenSco and Denny Chittick, personally.”); see also email dated August 15, 2016 from Mr. Polese to Ms. Coy, copying Mr. Beauchamp, among others (“It is my view and that of Dave Beauchamp; Denny viewed David as both his company attorney and personal attorney.”). See pages 133-134, lines 7-11, Deposition of Mr. Beauchamp (“Based on the information that I have now ... I would say it’s not true [that “Mr. Chittick considered that I was his counsel as well as counsel for DenSco”]. ... At the time I did this declaration [draft received August 17, 2016], I had a different understanding of what counsel was, ... I have since understood that, no, I’m representing the company”).

¹³⁵ See, e.g., Order Appointing Receiver dated August 18, 2016 (“It is further ordered the Receiver may not waive the attorney-client privilege as to Chittick’s communications with Beauchamp without the Estate’s consent. The Receiver must obtain court approval before waiving the privilege as to DenSco if the Estate does not consent to the waiver.”).

¹³⁶ See Notice of Claim Against Estate of Denny J. Chittick filed December 9, 2016 (“the Receiver has the following claims against Chittick: Conversion, common law fraud, breach of fiduciary duty as director and officer of DenSco, fraudulent transfer (both actual and

On September 14, 2017, the Receiver filed a petition seeking to initiate this Case. That petition was granted on October 10, 2017, and the Complaint in this Case was filed on October 16, 2017.¹³⁷

III. APPLICABLE STANDARD OF CARE

The standard of care generally applicable to the Defendants required the exercise of that degree of skill, care and knowledge commonly exercised by a member of the legal profession in similar circumstances.

A. General Application

Both the Model Rules of Professional Conduct adopted by the American Bar Association and the Restatement of the Law (Third), The Law Governing Lawyer's Civil Liability, adopted by the American Law Institutes, provide guidance in this regard:

- § 50 Duty of Care to a Client, Restatement of the Law (Third): "For purposes of liability ..., a lawyer owes a client the duty to exercise care within the meaning of § 52 in pursuing the client's lawful objectives in matters covered by the representation."
- § 52 The Standard of Care, Restatement of the Law (Third): "a lawyer who owes a duty of care must exercise the competence and diligence normally exercised by lawyers in similar circumstances."
- § 16A Lawyer's Duties to a Client – In General, Restatement of the Law (Third): "To the extent consistent with the lawyer's other legal duties and subject to the other provisions of this Restatement, a lawyer must, in matters within the scope of the representation: (1) proceed in a manner reasonably calculated to advance a client's lawful objectives, as defined by the client after consultation; (2) act with reasonable competence and diligence; [and] (4) fulfill valid contractual obligations to the client."
- Rule 1.1 (Competence) of the Model Rules of Professional Conduct: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."¹³⁸

constructive) pursuant to A.R.S §§ 44-1004 et seq., unjust enrichment, or, alternatively, gross negligence or negligence as an officer or director of DenSco."). See also Plaintiff's DS ¶ 408.¹³⁷ See Plaintiff's DS ¶¶ 413 & 415.

¹³⁸ See, also, Model Rules of Professional Conduct, Rule 1.1, Comment [1] ("In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter. ... Expertise in a particular field of law may be required in some circumstances."); and Comment [5] ("Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and

- Rule 1.3 (Diligence) of the Model Rules of Professional Conduct: “A lawyer shall act with reasonable diligence and promptness in representing a client.”¹³⁹
- Preamble (A Lawyer’s Responsibilities) [20] to the Model Rules of Professional Conduct: “since the Rules do establish standards of conduct by lawyers, a lawyer’s violation of a Rule may be evidence of breach of the applicable standard of conduct.”

Further, lawyers may not assist a client in conduct the lawyer knows is fraudulent. This prohibition is contained in paragraph (d) of Rule 1.2 (Scope of Representation and Allocation of Authority between Client and Lawyer), and illuminated in certain of the Comments to the Rule:

- “Comment [10]: When the client’s course of action has already begun and is continuing, the lawyer’s responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a).
...
- Comment [11]: Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.”

Lawyers take on enhanced responsibilities when the client is an organization, because an organization can only act through its individual representatives, who are not the client. See, for example, Rule 1.13 (Organization as Client) of the Model Rules of Professional Conduct:

- “(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.”).

¹³⁹ See, also, Model Rules of Professional Conduct, Rule 1.3, Comment [3] (“A client’s interests often can be adversely affected by the passage of time ...”); and Comment [4] (“Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. ... If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, *preferably in writing*, so that the client will not mistakenly suppose the lawyer is looking after the client’s affairs when the lawyer has ceased to do so.” [italics added]).

- (b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization.¹⁴⁰

Lawyers must also be sensitive to conflicts of interest, both among clients and between clients and themselves. See, for example, Rule 1.7 (Conflict of Interest: Current Clients) of the Model Rules of Professional Conduct:

- “(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.¹⁴¹

¹⁴⁰ See, also, Model Rules of Professional Conduct, Rule 1.13, paragraph (c) (“[...] if (1) despite the lawyer’s efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.”); and Comment [3] (“Paragraph (b) makes clear, however, that when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, *the lawyer must proceed as is reasonably necessary in the best interest of the organization*. As defined in Rule 1.0(f), knowledge can be inferred from circumstances, and *a lawyer cannot ignore the obvious*.” [italics added]).

¹⁴¹ See, also, Model Rules of Professional Conduct, Rule 1.7, Comment [1] (“Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client. Concurrent conflicts of interest can arise from the lawyer’s responsibilities to another client ... or from the lawyer’s own interests.”); Comment [2] (“Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing.”); Comment [3] (“A conflict of interest may exist before representation is undertaken, in which event *the representation must be declined*, unless the lawyer obtains the informed consent of each client”); Comment [6] (“... absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, *even when the matters are wholly unrelated*.” [italics added]); Comment [8] (“Even where there is no direct adverseness, *a conflict of interest exists if there is a significant risk that a lawyer’s ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited*”).

- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: ... (4) each affected client gives informed consent, confirmed in writing.”

Under certain circumstances, a lawyer must withdraw from an attorney-client representation. See, for example, Rule 1.16 (Declining or Terminating Representation) of the Model Rules of Professional Conduct:

- “(a) ... a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the rules of professional conduct or other law;”¹⁴²

The Rules of Professional Conduct in Arizona (where DenSco was based and Mr. Beauchamp was admitted to practice) are consistent with such Model Rules of Professional Conduct adopted by the American Bar Association.¹⁴³

In the course of working on a matter, lawyers sometimes make mistakes. However, not every mistake made by a lawyer is considered a violation of the standard of care. Instead, a violation of the standard of care happens when a lawyer handles a matter inappropriately due to a failure to exercise the ordinary care of a reasonably competent lawyer in the same or similar circumstances. The mistake must be viewed within the context of the facts and circumstances of the particular engagement, specifically considering whether the mistake made under such circumstances rises to the level of violating the standard of care. A lawyer may be liable only if the mistake rises to the level of violating the standard of care.

as a result of the lawyer's other responsibilities or interests. ... The conflict in effect forecloses alternatives that would otherwise be available to the client. ... The critical questions [include] whether [the difference in interests] will ... foreclose courses of action that reasonably should be pursued on behalf of the client.” [italics added]; and Comment [10] (“The lawyer’s own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer’s own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice.”).

¹⁴² See, also, Model Rules of Professional Conduct, Rule 1.16, Comment [2] (“A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law.”). See also Model Rules of Professional Conduct, Rule 1.2, Comment [10] (“In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like.”).

¹⁴³ See Arizona Rules of Professional Conduct, <https://www.azbar.org/ethics/rulesofprofessionalconduct/>. One difference between the Model Rules of Professional Conduct and the Arizona Rules of Professional Conduct is worth noting here: Comment [11] of Rule 1.2 of the Arizona Rules of Professional Conduct makes clear that “a lawyer may be required to disclose information relating to the representation to avoid being deemed to have assisted the client’s crime or fraud.”

It is important to evaluate compliance with the standard of care in each instance where relevant. The facts and circumstances of each engagement, and with respect to each task within each engagement, are different and often unique, and compliance must be measured by taking into account the particular facts and circumstances of each such engagement and task. And because the proper exercise of the standard of care is dependent on the knowledge of the lawyer, the particular facts and circumstances should take into account the information that the lawyer knew or should have known at all relevant times.

Further, in evaluating compliance with the standard of care, it is important to note the distinction between standard of care and best practices. While standard of care refers to the exercise of that degree of skill, care and knowledge commonly exercised by a member of the legal profession in similar circumstances, best practices is a much higher standard, one to which lawyers should aspire. Lawyers may be liable for failing to meet the standard of care, but not for failing to engage in best practices.

In my experience, when a lawyer or law firm takes on a new client engagement, there is an allocation of tasks and other responsibilities as between the lawyers, on the one hand, and the client or the client's other advisors, agents and representatives, on the other hand. Sometimes such allocations are expressly addressed in an engagement letter or some other documentation, but quite frequently such allocations are casually discussed, or even implicitly understood, between lawyers and their clients based on prior history, course of conduct and/or reasonable expectations. And when the client is an entity with limited personnel, and no in-house legal team, the lawyer should reasonably expect that he or she may need to play a more active role in the course of the attorney-client relationship, than under other circumstances.

Regardless of the allocation of responsibilities between the client and the lawyer, an experienced lawyer engaged on a legal matter is expected to have greater experience and expertise in that particular area of the law, especially where the lawyer has worked on similar matters in the specific area of the law many times, such as in securities offerings. The applicable standard of care may require that the lawyer take the time to ensure that the client understands its responsibilities and that it is capable of performing such responsibilities, and that the lawyer properly coordinates the client's responsibilities with the lawyer's responsibilities. For example, the applicable standard of care may require that the lawyer pay special attention to the adequacy of disclosures made in a securities offering, particularly when the offering is done on a continuous basis.

In addition, a law firm is generally subject to civil liability for the acts or omissions of any principal of the firm who was acting in the ordinary course of the firm's business.¹⁴⁴ "When a client retains a lawyer with [an affiliation with a law firm], the lawyer's firm assumes the

¹⁴⁴ Restatement (Third) of the Law Governing Lawyers § 58 (2000) ("A law firm is subject to civil liability for injury legally caused to a person by any wrongful act or omission of any principal or employee of the firm who was acting in the ordinary course of the firm's business or with actual or apparent authority.").

authority and responsibility of representing that client, unless the circumstances indicate otherwise ... and the firm is liable to the client for the lawyer's negligence."¹⁴⁵

B. Securities Laws

From the early 2000s to at least mid-2014,¹⁴⁶ Mr. Beauchamp provided securities advice to DenSco in connection with its offer and sale of Notes.¹⁴⁷ He "advised DenSco regarding its Private Offering Memoranda, which DenSco generally updated every two years. He helped draft the 2003, 2005, 2007, 2009 and 2011 POMs."¹⁴⁸ Because of his role as securities counsel for DenSco, the standard of care applicable to Mr. Beauchamp required a basic understanding of securities law applicable to DenSco's offering of Notes, including the following.

The issuance of securities is regulated by federal and state law. Under both the federal Securities Act of 1933 and the Arizona Securities Act, the offer and sale of securities must be registered with the appropriate regulatory agency (i.e., the SEC or the Arizona Corporation Commission, respectively), or be subject to an exemption from such registration. Issuers must strictly adhere to the requirements of an exemption, as the failure to do so results in an unlawful offering, with the accompanying penalties and liabilities, including potential criminal liability. DenSco's offerings were intended to fall within the "private placement" exemption from registration pursuant to Regulation D promulgated under the Securities Act of 1933.¹⁴⁹

Although Regulation D itself does not mandate that any specific disclosures be provided to investors that are "accredited investors,"¹⁵⁰ other provisions of the securities laws regulate disclosures provided to investors, including pursuant to a private placement. For example, SEC

¹⁴⁵ *Staron v. Weinstein*, 701 A.2d 1325 (N.J. Super. Ct. App. Div. 1997) at 1328 (citing Restatement (Third) of the Law Governing Lawyers § 79 (Tentative Draft No. 8, 1997) [ellipses in original]).

¹⁴⁶ See pages 3-4, Defendants' DS.

¹⁴⁷ See pages 2-3, Defendants' DS.

¹⁴⁸ Page 5, lines 7-8, Defendants' DS; see, also, pages 256-257, lines 22-3, Deposition of Mr. Beauchamp (Mr. Beauchamp testified that it was his practice to revise the POM every two years based on a suggestion "made by a former SEC official, that given the nature of this industry, two years would be an appropriate time. However, if something material happened before then, you need to tell your client this has to be disclosed.").

¹⁴⁹ See page ii, 2011 POM ("The Notes are offered pursuant to exemptions provided by Section 4(2) of the [Securities Act of 1933]; Regulation D thereunder, certain state securities laws and certain rules and regulations promulgated pursuant thereto." [quoted text was upper case bold in original]).

¹⁵⁰ Defined in Rule 501(a) of Regulation D to include high net worth individuals and certain other persons or entities. Rule 502(b) of Regulation D specifies the type of information that must be furnished "a reasonable time prior to sale" to any purchaser that is not an accredited investor. It is good practice to provide such information to accredited investors in addition to non-accredited investors.

Rule 10b-5, promulgated under Section 10(b) of the Securities Exchange Act of 1934,¹⁵¹ provides that it is unlawful, in connection with the sale of securities, “to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.”¹⁵²

Disclosures that are provided to investors in a private placement offering are typically contained in a written document, often called a private offering memorandum. Such a POM is a disclosure document used to solicit investment in private securities transactions. A POM is provided to prospective investors to provide such investors with information regarding the issuer and the securities it intends to issue. Generally, a POM describes the business, the investment opportunity, the associated risks, the management team, historical performance and expected performance of the business. Disclosures made in a POM are regulated under the federal securities laws by, among other laws and rules, Rule 10b-5. DenSco’s POMs offered Notes according to the terms set forth therein.

An important concept to bear in mind in private placement offerings is called “integration.” Essentially, Regulation D provides that all sales that are part of the same private placement offering are integrated, such that each and every sale of a security must meet all of the requirements for offerings pursuant to Regulation D.¹⁵³ In other words, unless the offerings of Notes by DenSco pursuant to its various sequential POMs were not of the “same or a similar class” as the Notes offered pursuant to the immediately prior POM, or such offerings were separated by at least six months, then under Regulation D *all* sales of Notes by DenSco would be integrated and treated as a single continuous offering (notwithstanding language to the contrary in the POMs).¹⁵⁴ As a result, if the sale of even a single Note was not made in compliance with the requirements of Regulation D, then by virtue of integration, the private placement exemption

¹⁵¹ The 2011 POM prepared by Mr. Beauchamp incorrectly refers to this provision of federal securities laws as “Section 10b-5.” See page 24.

¹⁵² 17 CFR 240.10b-5 [Employment of manipulative and deceptive devices]; see also Arizona Revised Statutes Section 44-1991 [Fraud in purchase or sale of securities] (“It is a fraudulent practice and unlawful for a person, in connection with a transaction or transactions within or from this state involving an offer to sell or buy securities, or a sale or purchase of securities, ... directly or indirectly to do any of the following: ... 2. Make any untrue statement of material fact, or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.”).

¹⁵³ Rule 502(a) of Regulation D (“All sales that are part of the same Regulation D offering must meet all of the terms and conditions of Regulation D. Offers and sales that are made more than six months before the start of a Regulation D offering or are made more than six months after completion of a Regulation D offering will not be considered part of that Regulation D offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under Regulation D, other than those offers or sales of securities under an employee benefit plan as defined in rule 405 under the [Securities Act of 1933].”).

¹⁵⁴ See page (i), 2011 POM (“The Company intends to offer the Notes on a continuous basis until the earlier of (a) the sale of the maximum offering, or (b) two years from the date of this memorandum.”).

may have been rendered unavailable – resulting in an unlawful offering with respect to the sale of all Notes.

Continuous offerings, such as those conducted by DenSco, are especially challenging due to the continuous and uninterrupted obligation to be compliant with the exemption and other legal requirements. For example, under both federal and Arizona law, there is a risk that issuers may be committing securities fraud if they fail to provide current and accurate disclosures to investors in connection with the sale of securities. As a result, because of the continuous nature of its securities offerings, DenSco needed to be able to timely update the disclosures provided to investors so as to correct any material misstatement or omission before such investors purchased (or committed to purchase) DenSco securities.¹⁵⁵ This would require both the constant monitoring of the accuracy of the content of the POMs and the ability to promptly correct and distribute updated disclosures.

In my opinion, the applicable standard of care would require that Mr. Beauchamp be aware of at least the following requirements under the federal securities laws and advise his client DenSco accordingly:

- The offer and sale of all Notes was subject to compliance by DenSco with Regulation D and Rule 10b-5.
- If at any point in time, the applicable POM was no longer in compliance with Rule 10b-5, DenSco must immediately cease offering and selling Notes (whether to new or existing investors, and whether for new monetary consideration or in consideration of the rollover of Notes).
- In the event that the applicable POM was no longer in compliance with Rule 10b-5, DenSco must not resume offering or selling Notes unless and until updated and compliant disclosures are provided to investors.
- Because of the continuous nature of the offerings, both pursuant to each individual POM and presumably across all POMs, the apparently arbitrary two-year time period limitation imposed by Mr. Beauchamp and as set forth in the POMs would have had no impact on integration or compliance under Regulation D and Rule 10b-5.

¹⁵⁵ See page 24, 2011 POM (“In order to continue offering the Notes during this [two year] period, the Company will need to update this Memorandum from time to time. Keeping the information in the Memorandum current will cause the Company to incur additional costs. *A failure to update this Memorandum as required could result in the Company being subject to a claim under Section 10b-5 [sic] of the Securities Act for employing manipulative or deceptive device in the sale of securities, subjecting the Company, and possibly the management of the Company, to claims from regulators and investors.*” [italics added]). See, also, pages 92-95, lines 7-8, Deposition of Daniel Schenck on June 19, 2018 (“My understanding would be that [the POM] needs to be amended, you know, when there is new information or a change in circumstances from what’s described in there. That was my understanding”).

- DenSco's failure to comply at all times with Regulation D and Rule 10b-5 could result in material penalties and liabilities, including potential criminal liability.

IV. ANALYSIS AND OPINIONS

A. DenSco was a "High-Risk" Client

Prior to engaging with a new client and forming an attorney-client relationship with that new client, an attorney should evaluate the goals and requirements of the client and the ability of the attorney to reasonably address those requirements. This is implicit in the duties owed by attorneys to their clients once the attorney-client relationship is formed, including the obligation to "provide competent representation to a client"¹⁵⁶ and "act with reasonable diligence and promptness in representing a client."¹⁵⁷ In making such evaluation, it is important for the attorney to do an "analysis of the factual and legal elements"¹⁵⁸ and consider "the relative complexity and specialized nature of the matter."¹⁵⁹ Consistent with such obligations, in my opinion attorneys should, and in accordance with custom in practice do, evaluate and assess whether, and to what extent, the client is able to understand and comply with its legal obligations and the advice of the attorney in the particular matter.

In my experience, certain clients may require extraordinary monitoring and counseling due to the nature of their business operations, the regulatory environment in which they operate, a lack of critical resources (including manpower) or internal controls, an inability (or unwillingness) to comply with legal obligations and attorney advice, and other factors. Such a client poses a material risk to both itself and to its attorneys in the event of failure, crises or other material adverse events. Such risks to the client may include civil or criminal liability, financial losses or other damages to the client and its various constituencies (including investors), and an inability to achieve the goals of the subject of the representation. Attorneys should be aware that such a client also creates an enhanced risk of malpractice and related claims against the attorney, brought by or on behalf of the client. As a result, for purposes of this Report, I refer to such clients as "high-risk" clients.

In accepting DenSco as a client, and continuing to represent DenSco thereafter, the Defendants should have recognized that DenSco was a high-risk client. The factors that indicate DenSco was a high-risk client include the following:

1. DenSco was Engaged in a Highly Regulated Business

A core element of DenSco's business was raising money from investors, which in turn would be used to make mortgage loans. As noted above, the issuance of securities is regulated by federal

¹⁵⁶ Rule 1.1 of the Arizona Rules of Professional Conduct. See also ABA Model Rule 1.1.

¹⁵⁷ Rule 1.3 of the Arizona Rules of Professional Conduct. See also ABA Model Rule 1.3.

¹⁵⁸ Comment [5] to Rule 1.1 of the Arizona Rules of Professional Conduct. See also Comment [5] to ABA Model Rule 1.1.

¹⁵⁹ Comment [1] to Rule 1.1 of the Arizona Rules of Professional Conduct. See also Comment [1] to ABA Model Rule 1.1.

and state law. Under both the federal Securities Act of 1933 and the Arizona Securities Act, the offer and sale of securities must be registered with the appropriate regulatory agency (i.e., the SEC or the Arizona Corporation Commission, respectively), or be subject to an exemption from such registration. Issuers must strictly adhere to the requirements of an exemption, as the failure to do so results in an unlawful offering, with the accompanying penalties and liabilities, including potential criminal liability. DenSco's offerings were intended to fall within an exemption from registration.¹⁶⁰

Further, under Rule 10b-5, because of the continuous nature of its securities offerings, DenSco needed to be able to timely update the disclosures provided to investors so as to correct any material misstatement or omission before such investors purchased (or committed to purchase) DenSco securities.¹⁶¹ This would require both the constant monitoring of the accuracy of the content of the POMs and the ability to promptly correct and distribute updated disclosures.

Activities related to DenSco's mortgage lending business were also subject to regulation and licensing.¹⁶² DenSco potentially may have been subject to regulation and licensing under the Investment Advisers Act of 1940,¹⁶³ the Investment Company Act of 1939,¹⁶⁴ the Truth in Lending Act, the Homeownership and Equity Protection Act of 1994, the Equal Credit

¹⁶⁰ See page ii, 2011 POM ("The Notes are offered pursuant to exemptions provided by Section 4(2) of the [Securities Act of 1933], Regulation D thereunder, certain state securities laws and certain rules and regulations promulgated pursuant thereto." [quoted text was upper case bold in original]).

¹⁶¹ See page 24, 2011 POM ("In order to continue offering the Notes during this [two year] period, the Company will need to update this Memorandum from time to time. Keeping the information in the Memorandum current will cause the Company to incur additional costs. A failure to update this Memorandum as required could result in the Company being subject to a claim under Section 10b-5 [sic] of the Securities Act for employing manipulative or deceptive device in the sale of securities, subjecting the Company, and possibly the management of the Company, to claims from regulators and investors."). See, also, pages 92-95, lines 7-8, Deposition of Daniel Schenck on June 19, 2018 ("My understanding would be that [the POM] needs to be amended, you know, when there is new information or a change in circumstances from what's described in there. That was my understanding").

¹⁶² See page 8, 2011 POM ("The financing of construction loans and other types of real estate transactions are regulated by various federal and state government agencies, including the Arizona Department of Financial Institutions."). See, also, Arizona Revised Statutes, Chapter 9 [Mortgage Brokers, Mortgage Bankers and Loan Originators].

¹⁶³ See page 9, 2011 POM (The Company's management believes that it is not required to register or be licensed as an investment adviser with the State of Arizona or with the U.S. Securities Exchange Commission ('SEC') pursuant to the Investment Advisers Act of 1940"); page 23, 2011 POM ("The Company intends to take all reasonable steps to avoid such classification.").

¹⁶⁴ See page 22, 2011 POM ("If the Company was subject to the Investment Company Act of 1940, the Company would be required to comply with significant ongoing regulation which would have an adverse impact on its operations. ... The Company intends to take all reasonable steps to avoid such classification.").

Opportunity Act, the Fair Credit Reporting Act, the Real Estate Settlement Procedures Act, and the Home Mortgage Disclosure Act,¹⁶⁵ and similar state laws and regulations. To the extent applicable, such activities would require monitoring, periodic reporting and other documentation, and compliance generally.¹⁶⁶

2. DenSco was Handling High Volumes of Investor Money

At its core, DenSco was soliciting money from investors, which would be transferred to borrowers as mortgage loans. Such borrowers would pay interest and principal back to DenSco, which in turn would then use such funds to pay interest and principal back to its investors (with DenSco profiting from the arbitrage due to the difference in such interest rates). Rather than providing goods or services, DenSco was in the business of handling large sums of money. As of the date of the 2011 POM, DenSco had funded *over \$300 million* in loans.¹⁶⁷ As a result, DenSco was acting in a fiduciary capacity with its investors, and would have required prudent internal controls, careful accounting and secure money management.

3. DenSco was a "One-Man Shop"

Based on the record I have reviewed, it is clear that DenSco had only a single shareholder, director, officer and employee: namely, Denny Chittick.¹⁶⁸ The regulatory environment in which DenSco operated, as well as the volume of its business, would have necessitated active involvement by the management team at DenSco. Having only one member in its management team (its sole employee), would suggest that DenSco's ability to manage its business operations and compliance obligations was severely constrained.

¹⁶⁵ See page 19, 2011 POM.

¹⁶⁶ Although DenSco may have concluded that it was not subject to such regulation and licensing, it was still required to take action to *avoid* the application of such regulation and licensing to its lending activities. See page 8, 2011 POM ("The Company's management believes that it is not required to be licensed by the Arizona Department of Financial Institutions as a mortgage broker or mortgage banker nor under certain federal laws, such as Truth-In-Lending Act or the Real Estate Settlement Procedures Act. The Company intends to take the necessary steps to ensure that the borrowers it lends to and the projects covered by such loans will not fall within the requirements imposed by the foregoing agency and acts."); page 19, 2011 POM ("If it is determined that the Company has not structured its operations so that it is exempt from regulation, *the Company could become subject to extensive regulation*" [italics added]).

¹⁶⁷ Page 39, 2011 POM ("Since inception through June 30, 2011, the Company has participated in 2622 loans, with an average loan amount of \$116,000, with the highest single loan being \$800,000 and the lowest being \$12,000. *The aggregate amount of loans funded is \$306,786,893 with property values totaling \$470,411,170.*" [italics added]).

¹⁶⁸ Page 40, 2011 POM ("The Director and Executive Officer of the Company are [sic]: Denny J. Chittick, 4, President, Vice President, Treasurer, and Secretary. ... With the assistance of outside consultants on an as-needed basis, *Mr. Chittick intends to operate the Company as its primary employee, analyzing, negotiating, originating, purchasing and servicing Trust Deeds by himself.*" [italics added]).

On the mortgage lending side of its business, DenSco made on average one loan every single weekday since its formation in 2001.¹⁶⁹ The level of its lending activity increased over the years, such that during the six months leading up to the 2011 POM, DenSco was making on average nearly three loans every single weekday,¹⁷⁰ and was seeking to further increase the volume of its lending business.¹⁷¹ These statistics are particularly significant in light of the required tasks to support that volume of business (as described below), which suggests an inordinate burden on Mr. Chittick in managing just the mortgage lending side of DenSco's business.

As described in the 2011 POM, before purchasing a trust deed or funding a loan, DenSco would "conduct a due diligence review by interviewing its owner, verifying the documentation and performing limited credit investigations ... and visiting the subject property in a timely manner."¹⁷²

The 2011 POM also describes certain standards for each loan to be made by DenSco.¹⁷³ Because of its stated goal of having each loan be secured by a first lien deed of trust,¹⁷⁴ DenSco would need to ensure that the loan documentation for each of its loans was properly prepared and timely recorded. Because of its stated goal of maintaining a loan-to-value ratio of between 50% and 65% across its portfolio of loans,¹⁷⁵ DenSco would need to conduct adequate and reliable property appraisals prior to consummating each loan, update such property appraisals periodically, and calculate the portfolio's loan-to-value ratio on a continuous basis. Because of its stated goal of maintaining diversity among its borrowers and the properties under

¹⁶⁹ See page 37, 2011 POM (2622 loans funded from April 2001 through June 2011).

¹⁷⁰ See page 37, 2011 POM (378 loans funded in 2011 through June 30, 2011).

¹⁷¹ See page 15, 2011 POM ("Success of the Company depends to a large extent on its ability to achieve growth in the number of applications and closings, the due diligence and servicing of these loans and the ability to manage growth effectively.").

¹⁷² Page 6, 2011 POM. Although DenSco disclosed that such work could be done on its behalf by "an authorized representative," Mr. Chittick himself would still need to spend the time to select and engage with the representative, direct the work of the representative, and review and evaluate the reports, conclusions and recommendations of the representative.

¹⁷³ Although DenSco reserved the right "to amend or revise [certain] policies, or approve transactions that deviate from these policies, from time to time without a vote of the Noteholders" (see page 25, 2011 POM), such reservation of rights and lack of Noteholder control had little relevance to a change in circumstances that may have occurred *prior* to the time an investor committed to become a Noteholder, thus potentially rendering the disclosures made in the POM materially misleading.

¹⁷⁴ See page 37, 2011 POM ("All real estate loans funded by the Company have been and are intended to be secured through first position trust deeds.").

¹⁷⁵ See page 37, 2011 POM ("The loan to value ratio of the Company's overall portfolio has averaged less than 70% and the Company intends to maintain a loan to value ratio of 50% to 65%."); page 10, 2011 POM ("the Company intends to maintain general loan-to-value guidelines that currently range from 50 percent to 65 percent (but it is intended not to exceed 70%), to help protect the Company's portfolio of loans.").

mortgage,¹⁷⁶ DenSco would need to monitor and track the identity of its borrowers (and their affiliates), and the location and type of properties in which it was taking an interest. And because of its goal of avoiding certain licensing requirements, DenSco would need “to take the necessary steps to ensure that the borrowers it lends to and the projects covered by such loans will not fall within [such licensing] requirements.”¹⁷⁷

In addition to the work involved with the initiation of each mortgage loan, DenSco’s mortgage lending business also required the servicing and monitoring of all loans.¹⁷⁸ As described in the 2011 POM, if a borrower were to become delinquent in making a payment, DenSco would contact the borrower within three to five days, and closely monitor the account until payment was made.¹⁷⁹ If a payment was late by more than five days, the company could impose a late charge, and if a payment was more than 30 days delinquent, the company could impose a default rate of interest and begin foreclosure proceedings.¹⁸⁰ Alternatively, DenSco could request the borrower execute a deed in lieu of foreclosure. Whether by virtue of a foreclosure sale or a deed in lieu of foreclosure, once DenSco gained control of the property, it would either “market the subject property at retail, which may require additional monies to improve the property to retail ready condition, or to wholesale the subject property ‘as is.’ The Company may also decide to rent the subject property as an investment property.”¹⁸¹ In addition, the repossessing of a property may require that DenSco “complete a project so repossessed by it, ... [and] inject additional capital.”¹⁸²

¹⁷⁶ See pages 36-37, 2011 POM (“The Company has endeavored to maintain a large and diverse base of borrowers as well as a diverse selection of properties as collateral for its loans to the borrowers.... The Company continues to strive to achieve a diverse borrower base by attempting to ensure that *one borrower will not comprise more than 10 to 15 percent of the total portfolio.*” [italics added]). See, also, page 10, 2011 POM (“The Company will attempt to maintain a diverse portfolio of Trust Deeds and loans by seeking a large borrowing base Currently, the Company’s base of borrowers exceed [sic] 150 approved and qualified borrowers. It is the Company’s plan that the base of borrowers eventually will exceed 250 qualified contractors and foreclosure specialists.”).

¹⁷⁷ See page 8, 2011 POM (“The Company’s management believes that it is not required to be licensed by the Arizona Department of Financial Institutions as a mortgage broker or mortgage banker nor under certain federal laws, such as Truth-In-Lending Act or the Real Estate Settlement Procedures Act. The Company intends to take the necessary steps to ensure that the borrowers it lends to and the projects covered by such loans will not fall within the requirements imposed by the foregoing agency and acts.”).

¹⁷⁸ See page 7, 2011 POM (“The Company services the contracts it purchases and originates.”); page 13, 2011 POM (“The Company’s ability to generate cash in amounts sufficient to pay interest on the Notes and to repay or otherwise refinance the Notes as they mature depends upon the Company’s receipt of payments due under the loans that are in the Company’s portfolio.”).

¹⁷⁹ Ibid.

¹⁸⁰ Ibid. See, also, page 13, 2011 POM (“The Company is responsible for collecting payments from loan obligors and for foreclosing under an applicable Trust Deed in the event of default by an obligor.”).

¹⁸¹ See page 7, 2011 POM.

¹⁸² See page 18, 2011 POM.

On the fund-raising side of its business, DenSco was conducting continuous offerings. Mr. Chittick himself was “making the private placement of the Notes on behalf of the Company.”¹⁸³ In my experience, such work would entail, at a minimum: (a) identifying, meeting with, and soliciting existing and new investors, and responding to their inquiries;¹⁸⁴ (b) preparing, distributing, collecting and reviewing all the necessary paperwork to accept new investors;¹⁸⁵ and (c) consummating each investor’s investment by the acceptance of payment and the issuance of a Note.

In order for DenSco’s offerings to fall within the private placement exemption from registration, the 2011 POM stated that Notes were “offered only to persons who are: (1) ‘Accredited Investors’ within the meaning of Rule 501(a) of Regulation D promulgated under the [Securities Act of 1933] and applicable state securities law; (2) able to bear the economic risk of an investment in the Notes, including a loss of the entire investment; and (3) sufficiently knowledgeable and experienced in financial and business matters to be able to evaluate the merits and risks of an investment in the Notes”¹⁸⁶ It was Mr. Chittick’s responsibility to devote the time, energy and resources to ensure that each investor in DenSco satisfied each of these requirements.¹⁸⁷

The 2011 POM also references a number of additional tasks to be completed by DenSco in connection with the issuance of each Note to investors. Because each POM offering was limited in size,¹⁸⁸ Mr. Chittick would need to monitor the aggregate proceeds received under each offering. Because each Note may have different terms, including principal amount, maturity

¹⁸³ Page iii, 2011 POM.

¹⁸⁴ See page 49, 2011 POM (“The offer to sell Notes must be directly communicated to the investor by [Mr. Chittick]”); page vi, 2011 POM (“Prior to the sale of any Notes offered hereby, the Company will make available to each investor the opportunity to ask questions of and receive answers from Mr. Chittick”) [quoted text was upper case bold in original]; page 50, 2011 POM (“The Company must have furnished and made available for inspection all documents and information that the investor has reasonably requested relating to an investment in the Company, including its Articles of Incorporation, stock records and financial account records.”); page 11, 2011 POM.

¹⁸⁵ Such paperwork would include a subscription agreement and suitability questionnaire for each investor. See pages vi and 55-57, 2011 POM.

¹⁸⁶ Page iv, 2011 POM [quoted text was upper case bold in original].

¹⁸⁷ See page iv, 2011 POM (“The Notes are not offered and will not be sold to any prospective investor unless such investor has established, *to the satisfaction of Denny J. Chittick*, that the investor meets all of the foregoing criteria.” [italics added; quoted text was upper case bold in original]).

¹⁸⁸ See cover page of 2011 POM (“The Company intends to offer the Notes on a continuous basis until the earlier of (a) the sale of the maximum offering [\$50 million in the case of the 2011 POM], or (b) two years from the date of this memorandum”).

date, interest rate, and timing and method of interest payments,¹⁸⁹ such terms would need to be carefully documented and monitored to ensure DenSco's compliance with all payment terms.

Because DenSco's offerings of Notes were continuous offerings, the applicable POMs would need to be updated from time to time. As acknowledged in the 2011 POM, "*failure to update this Memorandum as required could result in the Company being subject to a claim under Section 10b-5 [sic] of the Securities Act for employing manipulative or deceptive device in the sale of securities*, subjecting the Company, and possibly the management of the Company, to claims from regulators and investors."¹⁹⁰ As a result, Mr. Chittick would need to constantly monitor the activities of DenSco, and the environment in which it operated, to ensure that the POM was up to date and accurate.

Even once Notes were issued, DenSco (and therefore Mr. Chittick) had continuing responsibilities with respect to investors who became Noteholders. For example, in addition to timely and appropriately making interest and principal payments to Noteholders (as discussed

¹⁸⁹ See page 2, 2011 POM ("The interest rates of the Notes will vary and will depend on the denomination of the Note and the term selected by the investor. The Notes are offered in denominations ranging from \$50,000 to \$1,000,000.00 Investors may elect to have interest paid monthly, quarterly or at maturity."); page 17, 2011 POM ("Notes ... may be issued at higher or lower interest rates and shorter or longer maturities, depending upon market conditions and other factors."); pages 45-46, 2011 POM ("Interest is payable on the last day of each period to the investors of the Notes at the principal office of the Company in Chandler, Arizona. At the option of the Company, interest payments may be paid by check mailed to the address of the investor entitled thereto as it appears on the Subscription Agreement for the Notes. An investor may request in writing to the Company that a deposit be made to a designated bank or investment account.").

¹⁹⁰ Page 24, 2011 POM ("Until the maximum offering proceeds are attained or the Company terminates this Offering, *the Company expects to offer the Notes for placement on a continuing basis* for two years from the date of this Memorandum unless the Company changes its operations or method of offering in any material respect prior to the expiration of the two year offering period. ... *In order to continue offering the Notes during this period, the Company will need to update this Memorandum from time to time.* Keeping the information in the Memorandum current will cause the Company to incur additional costs. *A failure to update this Memorandum as required could result in the Company being subject to a claim under Section 10b-5 [sic] of the Securities Act for employing manipulative or deceptive device in the sale of securities*, subjecting the Company, and possibly the management of the Company, to claims from regulators and investors. In addition, an investor might seek to have the sale of the Notes hereunder rescinded which would have a serious adverse effect on the Company's operations." [italics added]). See, also, page 45, 2011 POM ("If the Company changes its operations ... in any material respect, *the Company will update the Memorandum as necessary to provide correct information to investors.*" [italics added]).

above), Noteholders were entitled to request from DenSco certain information and certifications,¹⁹¹ permission to transfer their Notes,¹⁹² and early redemption of their Notes.¹⁹³

In addition to the specific responsibilities associated with mortgage lending and fund-raising, DenSco would have had the same general responsibilities of any business, such as maintaining books and records, preparing financial statements, filing tax returns and paying taxes, reporting interest income of its Noteholders, and other tasks.

In my experience, the volume of business being conducted by DenSco, and the responsibilities of a single individual to adequately manage that business, are quite striking. There was no deep bench or internal team to support Mr. Chittick's enormous responsibilities, no one to cover in the event Mr. Chittick were to become ill or otherwise become unavailable, and no meaningful succession plans to replace Mr. Chittick.¹⁹⁴

4. Significant Risk of Confusion as to the Identity of the Defendants' Client

Although the engagement letter between Clark Hill and DenSco only identified DenSco as the client,¹⁹⁵ the nature of the attorney-client relationship with such a "one-man shop" was subject to an enhanced risk of confusion and conflict.

¹⁹¹ See page 46, 2011 POM ("On an annual basis and upon written request from an investor, the Company will certify to the requesting investor(s) that the aggregate outstanding principal amount of all cash accounts, other property and Trust Deeds is at least equal to the principal amount of outstanding Notes as of the date of the request.").

¹⁹² See page 46, 2011 POM ("The Notes are not transferable without the prior written consent of the Company").

¹⁹³ See page 47, 2011 POM ("the Company intends to use its good faith efforts to accommodate written requests from an investor to prepay any Note prior to maturity").

¹⁹⁴ Although the 2011 POM (under the heading "Contingency Plan in the Event of Death or Disability of Mr. Chittick") references a "written agreement with Robert Koehler ... to provide or arrange for any necessary services for the Company" should Mr. Chittick become "unable to perform his duties to continue the operation of the Company in any capacity," such agreement does not constitute a succession plan. In fact, the only action expected of Mr. Koehler pursuant to such agreement was "to close down the Company's business by collecting all of the monies due on the Trust Deeds and ... return all of the principal and interest owed to the investors pursuant to the Notes." Page 41, 2011 POM. It is unclear whether such agreement was enforceable (e.g., due to a lack of consideration), but it is apparent that Mr. Koehler in fact did not perform as described. See page 68, lines 18-23, Deposition of Shawna Chittick Heuer (Mr. Chittick's sister) on August 22, 2018 ("I remember ... Robert saying ... I don't want to be a part of this. I don't feel comfortable. ... I have my own business. This is too much for me to take on, is what I believe I remember him telling me.").

¹⁹⁵ Engagement Letter dated September 12, 2013, executed by Mr. Beauchamp on behalf of Clark Hill, and Mr. Chittick on behalf of DenSco ("This letter serves to record the terms of our engagement to represent DenSco Investment Corporation (the 'Client'), with regard to the legal matters transferred to Clark Hill PLC from Bryan Cave, LLP."). Such Engagement Letter was

As the only shareholder, director, officer and employee of DenSco, Mr. Chittick was the only point of contact for the Defendants in interacting with their client, DenSco. Based on the record I have reviewed, it does not appear that Mr. Chittick had separate legal counsel to represent him and his interests in his capacity as shareholder, director, officer or employee of DenSco. This situation could easily lead Mr. Chittick to reasonably believe that the Defendants were not only DenSco's attorneys, but his own as well.

Mr. Beauchamp himself appears to have been confused as to the identity of his client, as reflected in the 2011 POM which he prepared: "Legal counsel to the Company will represent the interests solely of the Company *and its President.*"¹⁹⁶ Further, at the hearing to determine the appointment of the Receiver, Mr. Beauchamp testified that "he concurrently represented both DenSco and Denny Chittick personally."¹⁹⁷ In addition, as he testified in his deposition, Mr. Beauchamp apparently understood that Mr. Chittick was also his client, at least in some capacity, and that Mr. Chittick considered he was his attorney.¹⁹⁸

expressly "supplemented by our Standard Terms of Engagement for Legal Services, attached, which are incorporated in this letter and apply to this matter and the other matter(s) for which you engage us." The attached Standard Terms of Engagement for Legal Services, under the caption "Whom We Represent," provided: "The person or entity whom we represent is the person or entity identified in our engagement letter and *does not include any affiliates or related parties of such person or entity such as ... employees, officers, directors, shareholders of corporation, ... and/or other constituents of named client unless our engagement letter expressly provides otherwise*" [italics added].

¹⁹⁶ See page 30, 2011 POM [italics added].

¹⁹⁷ See Exhibit 317, email dated August 30, 2016 from Kevin Merritt (attorney for the Chittick Estate) to Mr. Beauchamp and Ryan Anderson (an attorney representing the Receiver), copying the Receiver, Mr. Polese (attorney for the Chittick Estate), et al. ("I would like to remind everyone that David testified at the receivership hearing that he concurrently represented both DenSco and Denny Chittick, personally."); see, also, email dated August 15, 2016 from Mr. Polese to Ms. Coy, copying Mr. Beauchamp, et al. ("It is my view and that of Dave Beauchamp, Denny viewed David as both his company attorney and personal attorney."). Although Mr. Beauchamp claimed that he corrected the statement made to Ms. Coy (see pages 118-119, lines 23-9, Deposition of Mr. Beauchamp), there appears to be no evidence of such action, and it appears to be contrary to his other testimony. See pages 133-134, lines 7-11, Deposition of Mr. Beauchamp ("Based on the information that I have now ... I would say it's not true [that "Mr. Chittick considered that I was his counsel as well as counsel for DenSco"]. ... At the time I did this declaration [draft received August 17, 2016], I had a different understanding of what counsel was, ... I have since understood that, no, I'm representing the company").

¹⁹⁸ See page 3, Defendants' DS ("Mr. Beauchamp averred in an August 17, 2016 declaration under oath that he represented DenSco and 'Mr. Chittick as the President of DenSco.' Mr. Beauchamp did not represent Mr. Chittick outside of his role as a corporate officer at DenSco."). See, also, pages 133-134, lines 7-11, Deposition of Mr. Beauchamp (counsel quotes from Exhibit 435 (paragraph 5, draft Declaration of David Beauchamp, dated August 27, 2016): "Q: ... 'During my involvement with Mr. Chittick and DenSco, I understood that Mr. Chittick considered that I was his counsel as well as counsel for DenSco.' That is not true, correct? A.

It is important to note that the interests of an entity client are not always aligned with, and are often in conflict with, the interests of the client's shareholders, directors, officers and employees, even when only one individual occupies all of those roles. As noted above, the Rules of Professional Conduct make clear that, when representing an entity as client, the attorney *must* recognize that it is the entity whose interests are to be protected, and *not* the interests of the individual or individuals through whom the entity acts.¹⁹⁹ As a result, it is important for the attorney to properly identify his or her client, and to ensure that when the client is an entity, such individual(s) understand who is and who is not the client of the attorney.²⁰⁰

This situation creates a material risk that each of the entity client, such individual(s) and perhaps even the attorney - in this Case, DenSco, Mr. Chittick and the Defendants, respectively - may be confused or conflicted with respect to the attorney-client relationship.

5. Implications

For the above reasons, in my opinion the applicable standard of care dictates that the Defendants should have recognized that DenSco was a high-risk client. To be clear, I am not suggesting that it was a violation of the standard of care for an attorney to engage with a high-risk client. However, in accepting and continuing to represent DenSco as a client, the Defendants should have recognized the enhanced risks associated with such representation, including the substantial risk (if not likelihood) that: (1) DenSco may be unable to comply with applicable law and the other requirements and guidelines as set forth in the 2011 POM; (2) investors may bring claims for securities fraud and/or breach of fiduciary duties; (3) disabling conflicts of interest may arise between DenSco and Mr. Chittick, thereby jeopardizing the role of the Defendants; and (4) malpractice and related claims may be brought against the Defendants by or on behalf of DenSco.

Based on the information that I have now ... I would say it's not true. Q. Did you ever think it was true? A. At the time I did this declaration, I had a different understanding of what counsel was, *and it was if you are providing advice to somebody as an officer or director of a company, then you represent them too.* And - Q. Individually? A. - *and that they would have the right to rely upon it and object.* ... Q. Okay but during the time you were representing DenSco at the material events in this case, you thought Mr. Chittick was your individual client? A. Not as an individual client. ... as an officer or director of DenSco ... And my analysis was based upon the right to rely upon the information provided, which I understand is not the appropriate standard now, determining who is your individual client." [italics added].

¹⁹⁹ See Arizona Rules of Professional Conduct, Rule 1.13 [Organization as Client] ("A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents."); see also ABA Model Rule 1.13.

²⁰⁰ See Deposition of Mr. Hood, page 110, lines 8-19 ("Q.... To your knowledge, from what you have reviewed, did Mr. Beauchamp ever clarify with Mr. Chittick that he was representing only DenSco? A. I don't know. Q. Okay. He should have, if there was any confusion. Don't you agree? ... THE WITNESS: If there was confusion, then I agree that the Rule 1.13 would require that David have a discussion with Mr. Chittick.").

As a result, the applicable standard of care dictates that the Defendants should have: (a) engaged in extraordinary monitoring and counseling with respect to DenSco; (b) maintained clear documentation of advice provided and actions taken; and, most importantly, (c) been prepared to recognize, and quickly act in response to, “red flag” warnings or indications of any problems (such as those described below). In my opinion, failure to do so would constitute a violation of the Defendants’ duties under the Rules of Professional Conduct, including but not limited to Rules 1.1 (Competence), 1.3 (Diligence) and 1.13 (Organization as Client) of the Arizona Rules of Professional Conduct and the ABA Model Rules.

B. The Four Red Flag Warnings that DenSco Needed Immediate and Focused Attention and Protection

1. The Freo Lawsuit

The Freo Lawsuit put Mr. Beauchamp on notice of allegations that one of DenSco’s major borrowers, Mr. Menaged and his affiliated entities, was taking money from DenSco and another third-party lender to purchase the same property and provide both lenders with a deed of trust on that same property – thereby potentially having the effect of subordinating DenSco’s interest in the property to that of the other lender (and diminishing the value of DenSco’s interest).

Mr. Beauchamp knew, or should have known, that DenSco’s interests (as lender) and Mr. Menaged’s interests (as borrower) were not aligned in the Freo Lawsuit and that, as a result, DenSco needed to have independent legal counsel, and not simply “piggy back” on Mr. Menaged’s defense.²⁰¹ Despite this clear conflict of interest, and Mr. Chittick’s instruction that he speak with Mr. Menaged’s attorney,²⁰² Mr. Beauchamp took no action with respect to the Freo Lawsuit.²⁰³

Had Mr. Beauchamp investigated the allegations in the complaint in the Freo Lawsuit, “he would have found within minutes, by reviewing records available through the Maricopa County Recorder’s website relating to the property described in the Freo lawsuit: (i) a Deed of Trust and Security Agreement With Assignment of Rents given by Easy Investments in favor of Active Funding Group, that Menaged had signed on March 25, 2013; and (ii) a Deed of Trust and Assignment of Rents given by Easy Investments in favor of DenSco, that Menaged had signed on April 2, 2013. Both signatures were witnessed by the same notary public.”²⁰⁴

²⁰¹ Email dated June 14, 2013 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged (“Easy Investments, has his attorney working on it, I’m ok to piggy back with his attorney to fight it.”).

²⁰² See Ibid (“Easy Investments [sic] willing to pay the legal fees to fight it. I just wanted you to be aware of it, and talk to his attorney. Contact info is below.”).

²⁰³ Mr. Beauchamp testified that he did not speak to the borrower’s attorney, Mr. Goulder, at that time. See page 240, lines 9-19, Deposition of Mr. Beauchamp.

²⁰⁴ Plaintiff’s DS ¶ 129.

Upon becoming aware of the Freo Lawsuit, Mr. Beauchamp should have advised Mr. Chittick of the following action items, and should have assisted him in the completion of these action items:

- investigate the policies and procedures, and the trustworthiness, of Mr. Menaged and his affiliated entities;
- investigate where the excess funds from two different mortgage loans went;
- suspend making any further loans to Mr. Menaged and all entities managed by Menaged;
- review all other outstanding loans to Mr. Menaged and his affiliated entities to confirm that DenSco was the only lender on the property with a first lien deed of trust;
- review and reevaluate DenSco's internal procedures to ensure that it was not vulnerable to the type of double lien issue alleged in the Freo Lawsuit;
- contact the other lender to investigate the allegations; and
- evaluate the accuracy of the disclosures made in the 2011 POM, and update and correct them as may be necessary.

Based on the record I have reviewed, Mr. Beauchamp provided no such advice or assistance following the Freo Lawsuit. In fact, from mid-June 2013 when Mr. Beauchamp first learned of the significant allegations in the Freo Lawsuit,²⁰⁵ until at least January of the following year, Mr. Beauchamp took no such action to protect his client, DenSco.²⁰⁶

²⁰⁵ See email dated June 14, 2013 from Mr. Beauchamp to Mr. Chittick ("we will need to disclose this in POM").

²⁰⁶ If, instead, the Defendants had investigated and done proper due diligence with respect to the red flag warning raised by the Freo Lawsuit at or around the time that Mr. Beauchamp transitioned from Bryan Cave to Clark Hill, they would have discovered the magnitude of the damage caused by the Menaged fraud and Mr. Chittick's failure to follow proper funding procedures. Because of the materially inaccurate and incomplete disclosures made in the expired 2011 POM, upon such discovery the Defendants should have then instructed DenSco to immediately cease the offer and sale of all Notes. Any Rule 10b-5 compliant disclosures at that time would be required to disclose, among other things, DenSco's failures with respect to its first lien positions, loan-to-value ratios, and diversity of its borrowers, and the cause of such failures (including Mr. Chittick's negligence), as well as its exposure to civil and criminal consequences for securities fraud (including the possible right of all Noteholders to demand rescission). Because such disclosures would by necessity be so negative (especially in comparison to the disclosures contained in the 2011 POM), it appears to me unlikely that the sophisticated accredited investors targeted by DenSco would have been inclined to continue to invest in Notes. Further, because DenSco's business model was based on soliciting and investing money provided by Noteholders, and because many of the double lien properties were overleveraged, in my opinion the proper advice to be given to DenSco at that time would have been to conduct an

2. Mr. Chittick's Instruction

At the time of Mr. Chittick's Instruction to stop working on updating the POM, the 2011 POM was already out of date, had expired by its own terms, and contained no information regarding the Freo Lawsuit. As discussed above, because I have seen no evidence that Mr. Beauchamp communicated to Mr. Chittick to cease offering Notes until an updated POM could be provided to investors, he should have expected that Mr. Chittick would continue to solicit new investors. Further, Mr. Beauchamp knew that DenSco had dozens of Notes that were scheduled to mature, and that a significant portion of those Notes would be rolled over into new Notes.²⁰⁷

However, rather than take corrective action (such as insisting that Mr. Chittick cooperate in updating the POM or cease offering new Notes and/or terminating the attorney-client relationship), the Defendants instead accepted DenSco as a new client at Clark Hill, and continued to do no work in updating the expired 2011 POM for over three months.

In my opinion, Mr. Chittick's Instruction is an inflection point, in that it evidenced both (a) an inability or unwillingness on the part of Mr. Chittick to work with the Defendants in complying with applicable securities laws, and (b) a willingness on the part of the Defendants to knowingly accept and tolerate as a new client one that was failing to comply with applicable securities laws.

3. The December 2013 Phone Call

The December 2013 Phone Call once again put Mr. Beauchamp on notice that there were serious lien priority problems in connection with DenSco's dealings with Mr. Menaged and his affiliated entities.

Once again, following the December 2013 Phone Call, Mr. Beauchamp should have advised and assisted Mr. Chittick with respect to the above action items – this time with more urgency given the prior Freo Lawsuit and Mr. Chittick's Instruction. Instead, Mr. Beauchamp simply advised Mr. Chittick to document a “plan” to resolve the double lien issue.²⁰⁸

4. The Bryan Cave Demand Letter

The cumulative effect of the Freo Lawsuit, Mr. Chittick's Instruction, the December 2013 Phone Call and the Bryan Cave Demand Letter put the Defendants on notice that there were very serious problems at DenSco, especially with respect to Mr. Menaged and his affiliated entities (borrowers that the Defendants knew were material to DenSco's business). Further, it should

orderly liquidation (presumably in a Chapter 7 bankruptcy proceeding) for the benefit of its Noteholders.

²⁰⁷ See email dated June 20, 2013 from Mr. Beauchamp to several colleagues at Bryan Cave (“According to his note schedule, Denny has approximately 60 investor notes that are scheduled to expire in the next 6 months (and to probably be rolled over into new notes)”).

²⁰⁸ Defendants' DS, page 8 (“Mr. Beauchamp suggested that Mr. Chittick and Menaged document their plan ... to resolve the double-lien issue.”)

have become clear to Mr. Beauchamp that Mr. Chittick's strategy to "piggy back" on Mr. Menaged's defense in the Freo Lawsuit,²⁰⁹ and Mr. Chittick's Plan to resolve the double lien issue raised in the December 2013 Phone Call, had not only failed to address those problems, but were inappropriate actions to take on behalf of DenSco.

5. Call to Action

In my opinion, under such circumstances a reasonably prudent attorney would have immediately taken the following measures to protect DenSco and its Noteholders – none of which were taken by the Defendants:

a. Conduct Due Diligence

As discussed above, Arizona's Rules of Professional Conduct, Rule 1.3 (Diligence) would obligate such an attorney to "act with reasonable diligence and promptness in representing a client."²¹⁰

The Defendants themselves should have investigated the claims involving Mr. Menaged and his affiliated entities, which were raised in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter, including Mr. Menaged's fabricated story involving his "cousin." As part of such investigation, the Defendants should have looked into where the proceeds from DenSco's loans went. The Defendants should have also reviewed all other outstanding loans to Mr. Menaged and his affiliated entities – and all other borrowers – so as to determine whether the problem was limited to the properties identified in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter.

The Defendants themselves should have reviewed and reevaluated DenSco's internal procedures to ensure that it was not vulnerable to the type of double lien issue raised in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter. As part of such review, the Defendants should have investigated the funding procedure used by DenSco to ensure that it was in fact obtaining first lien deeds of trust in properties owned by its borrowers (as it disclosed in the 2011 POM).

b. Terminate All Dealings with Mr. Menaged

The Defendants should have urged DenSco to sever its relationship with Mr. Menaged and his affiliated entities, and to immediately stop providing any additional funds to Mr. Menaged and his affiliated entities.

²⁰⁹ Email dated June 14, 2013 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("Easy Investments, has his attorney working on it, I'm ok to piggy back with his attorney to fight it.").

²¹⁰ See, also, Comment [1] to Arizona Rule 1.3 ("A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client.").

The Defendants should have also researched, and advised DenSco with respect to, its rights and remedies with respect to Mr. Menaged and his affiliated entities and with respect to the double lien properties and the other lenders, and should have urged DenSco to take appropriate action against Mr. Menaged and his affiliated entities for fraud.

c. Update the 2011 POM Immediately and Cease All Solicitations

By the time of the Bryan Cave Demand Letter, the 2011 POM had already expired by its own terms over a half year earlier. In addition, it did not include any information about the Menaged fraud or DenSco's exposure in the Freo Lawsuit or pursuant to the Bryan Cave Demand Letter, nor did it describe Mr. Chittick's Plan. And, based on the information contained in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter, the Defendants knew that the disclosures made in the 2011 POM were materially inaccurate,²¹¹ especially with respect to DenSco's first lien position,²¹² its loan-to-value ratio,²¹³ and the diversity of its borrowers.²¹⁴

The Defendants knew that the "failure to update [the 2011 POM] as required could result in the Company being subject to a claim under Section 10b-5 [sic] of the Securities Act for employing *manipulative or deceptive device in the sale of securities*, subjecting the Company, and possibly the management of the Company, to claims from regulators and investors."²¹⁵ Further, as Mr. Beauchamp acknowledged in February 2014, he was concerned that Mr. Chittick had committed securities fraud because the loan documents he had Mr. Menaged sign did not comply with DenSco's representations in the 2011 POM.²¹⁶ In addition, as Mr. Beauchamp testified, by "the end of April, beginning of May of 2014 ... *I believed he had committed a securities violation, and it was paramount that we get the disclosure statement out in writing to all of the investors as quickly as possible.*"²¹⁷

²¹¹ See Mr. Beauchamp's handwritten notes of a telephone call with Mr. Chittick on February 11, 2104 ("Material Disclosure – exceeds 10% of the overall portfolio").

²¹² See page 37, 2011 POM.

²¹³ See pages 10 & 37, 2011 POM.

²¹⁴ See pages 10 & 36-37, 2011 POM. See also pages 9-10, lines 25-2, Defendants' DS ("by the end of 2013, more than half of [DenSco's] loan portfolio was tied up with Menaged--well in excess of the promised loan concentrations DenSco had set forth in its disclosures to investors").

²¹⁵ Page 24, 2011 POM.

²¹⁶ Exhibit 70, email dated February 7, 2014 from Mr. Beauchamp to Mr. Goulder (Mr. Menaged's attorney), copying Mr. Chittick ("Based on your previous changes, the Forbearance Agreement would be prima facie evidence that Denny Chittick had committed securities fraud because the loan documents he had Scott sign did not comply with DenSco's representations to DenSco's investors in its securities offering documents.").

²¹⁷ See, also, page 161, lines 7-24, Deposition of Mr. Beauchamp ("Q. Was there any point in time, sir, where you learned that Mr. Chittick was continuing to raise money? A. ... *the end of April, beginning of May of 2014.* ... Q. And once you learned that, you knew he was committing a securities violation? ... A. I – *at that point in time, I believed he had committed a securities violation, and it was paramount that we get the disclosure statement out in writing to all of the*

For the reasons stated above,²¹⁸ it is clear that Mr. Beauchamp was aware that DenSco was continuing to offer Notes without updated disclosures, after the expiration of the 2011 POM, and despite his knowledge of the problems revealed in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter.

Under these circumstances, and notwithstanding Mr. Chittick's Instruction, the Defendants should have insisted that DenSco immediately cease all solicitations of investors (including new investors and rollover investors) unless and until an updated and corrected POM, in compliance with Rule 10b-5, was prepared and provided to all such investors.

d. Advise Mr. Chittick of His Fiduciary Duties to DenSco and its Investors

As a result of the problems revealed in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter, the Defendants should have advised Mr. Chittick of his fiduciary duties both to DenSco and to its Noteholders. For example, the duty of loyalty mandated that Mr. Chittick, as director,²¹⁹ officer²²⁰ and sole shareholder²²¹ of DenSco, act in the best interests of DenSco. Among other things, the Defendants should not have merely accepted and followed Mr. Chittick's Instruction, but rather urged Mr. Chittick of his obligations to update the POM.

And, to the extent that such problems may have rendered DenSco insolvent, Mr. Chittick would owe fiduciary duties to its creditors, and would be obligated to treat all assets of DenSco as "existing for the benefit" of the Noteholders and other creditors.²²² As a result, the Defendants should have assessed whether DenSco was insolvent or in the "zone of insolvency."

Because of such duties, the Defendants also should have urged Mr. Chittick, on behalf of their client DenSco, to protect and preserve the corporation's assets, and to not pursue a Plan that

investors as quickly as possible. His representations that he had advised everybody and told them to the contrary, we needed something much more formal than that." [italics added].

²¹⁸ See the section entitled "Defendants Allege They Withdrew from Representing DenSco in May 2014" above in this Report.

²¹⁹ See Arizona Revised Statutes, Section 10-842 ("an officer's duties shall be discharged ... [i]n a manner the officer reasonably believes to be in the best interests of the corporation.").

²²⁰ See Arizona Revised Statutes, Section 10-830 ("a director's duties ... shall be discharged ... [i]n a manner the director reasonably believes to be in the best interests of the corporation.").

²²¹ See *Sports Imaging of Arizona, L.L.C. v. 1993 CKC Trust*, No. 1 CA-CV 05-0205, 2008 WL 4448063, *12 (unpublished opinion, Ariz. Ct. App. 2008) ("shareholders that have the ability to control a corporation owe a fiduciary duty to the corporation").

²²² See *A.R. Teeters & Assocs. v. Eastman Kodak Co.*, 172 Ariz. 324, 836 P.2d 1034 (Ariz. Ct. App. 1992) ("all of the assets of a corporation, immediately on its becoming insolvent, exist for the benefit of all of its creditors" [internal citation omitted]). See, also, *Dooley v. O'Brien*, 226 Ariz. 149, 244 P.3d 586 (Ariz. Ct. App. 2010); *Dawson v. Withycombe*, 216 Ariz. 84, 163 P.3d 1034 (Ariz. Ct. App. 2007).

would benefit Mr. Chittick individually (such as to preserve his reputation and/or equity stake in DenSco) at the risk of DenSco or the Noteholders.

Further, as legal counsel to DenSco, the Defendants should have advised Mr. Chittick as to how to best protect and preserve the corporation's assets, especially with respect to those outstanding loans that were not adequately protected by first lien mortgages. In order to render such advice, the Defendants would have needed to conduct due diligence and research in order to properly consider available alternatives.

e. Protect DenSco from the Negligent, Reckless and Disloyal Actions of Mr. Chittick

Because DenSco, and not Mr. Chittick, was the client, the Defendants owed duties to DenSco exclusively.²²³ Because the Defendants knew, or should have known, that Mr. Chittick was acting in a manner that violated his legal obligations to DenSco (e.g., breach of fiduciary duties), and that constituted a violation of the law that would be imputed to DenSco (e.g., securities fraud), in both instances that was likely to result in substantial injury to DenSco, the Defendants were obligated to "proceed as is reasonably necessary in the best interest of the organization."²²⁴ In accordance with Arizona's Rules of Professional Conduct, Rule 1.13 (Organization as Client), paragraph (c), such obligation may have included reporting Mr. Chittick to the proper authorities and/or the Noteholders in order protect DenSco against Mr. Chittick.²²⁵

Here, again, is an issue that arises because DenSco is a high-risk client with only one person making all decisions. The Defendants did not have an opportunity to report to anyone else at DenSco that Mr. Chittick was causing harm to DenSco. Although Rule 1.13(c) itself does not mandate "reporting out," Rule 1.2 makes clear that, under the right set of circumstances, "a lawyer may be required to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud."²²⁶ Because the Defendants were obligated to protect their client against Mr. Chittick, in my opinion the standard of care applicable to them would have obligated them to report Mr. Chittick's inappropriate actions to either the proper authorities or the Noteholders or both.

f. Withdraw from the Representation of DenSco

²²³ See Arizona's Rules of Professional Conduct, Rule 1.13 (Organization as Client).

²²⁴ Arizona's Rules of Professional Conduct, Rule 1.13(b).

²²⁵ Arizona's Rules of Professional Conduct, Rule 1.13(c) ("if (1) despite the lawyer's efforts in accordance with ER 1.13(b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or refusal to act, that is clearly a violation of law, and (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then *the lawyer may reveal information relating to the representation ... only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.*" [italics added]).

²²⁶ Comment [11] of Rule 1.2 (Scope of Representation and Allocation of Authority between Client and Lawyer) of the Arizona Rules of Professional Conduct.

Once it becomes clear that disclosures being provided to investors in DenSco fail to comply with Rule 10b-5, a reasonably prudent attorney would have three options: (1) cause DenSco to immediately update and correct the disclosures made available to all investors; (2) cause DenSco to immediately cease soliciting investors (including rollover investors); or (3) withdraw from the representation of DenSco. (In my experience, the threat to withdraw often induces an otherwise reluctant client to abide by one of the other options.)

Under the circumstances, because the Defendants failed to cause DenSco to update and correct the 2011 POM or cease soliciting investors, the Defendants had no option but to immediately withdraw from the representation of DenSco. Arizona's Rules of Professional Conduct, Rule 1.16 (Mandatory Withdrawal from the Representation), mandates that a lawyer "*shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law.*"²²⁷ Further, because the Defendants were aware that DenSco was committing securities fraud by continuing to solicit investors without adequate disclosures, in my opinion such withdraw should have been made clear by written notice to Mr. Chittick on behalf of DenSco, together with a statement disaffirming the 2011 POM.²²⁸

C. The Defendants' Conduct Fell Below the Standard of Care

In my opinion, the Defendants' conduct fell below the applicable standard of care in each of the following respects:

1. The Defendants' Failures with Respect to the Menaged Fraud

a. The Defendants Failed to Recognize that DenSco was a High-Risk Client

For all the reasons stated above under "DenSco was a 'High-Risk' Client," the Defendants should have recognized that DenSco was a high-risk client, and apparently failed to do so. Had they recognized that DenSco was a high-risk client, the applicable standard of care dictates that they would have (a) engaged in extraordinary monitoring and counseling with respect to DenSco, (b) maintained clear documentation of advice provided and actions taken, and (c) been prepared to recognize, and quickly act in response to, red flag warnings or indications of any problems.

b. The Defendants Failed to Conduct any Due Diligence on Mr. Menaged or on DenSco's Funding Procedure

²²⁷ Italics added.

²²⁸ Comment [11] to Rule 1.2 of Arizona's Rules of Professional Conduct ("In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like."). See also Model Rules of Professional Conduct, Comment [10] to Rule 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer).

The Defendants were put on notice of the Menaged fraud by each of the four red flag warnings: the Freo Lawsuit, Mr. Chittick's Instruction, the December 2013 Phone Call, and the Bryan Cave Demand Letter. However, based on the record I have reviewed, at no point in time did the Defendants conduct any due diligence or investigation into the claims involving Mr. Menaged and his affiliated entities. A simple search of records available on the County of Maricopa website would have called into question the veracity of Mr. Menaged's fabricated story about his "cousin."²²⁹

Even if Mr. Menaged's story were credible, the fraud supposedly committed by his "cousin" still reflected gravely on Mr. Menaged's reliability, management and supervision – all issues that should have been investigated by the Defendants. Further, there appeared to be no inquiry into where the proceeds from DenSco's loans disappeared to.

The Defendants should have reviewed and reevaluated DenSco's internal procedures to ensure that it was not vulnerable to the type of double lien issue raised first in the Freo Lawsuit, then in the December 2013 Phone Call, and again in the Bryan Cave Demand Letter. As part of such review, the Defendants should have investigated the funding procedure used by DenSco to ensure that it was obtaining first lien deeds of trust in properties owned by its borrowers (as it disclosed in the 2011 POM).

Further, the Defendants apparently took no effort to investigate the magnitude of the double lien issue, relying instead only on those issues and properties specifically identified in the Freo Lawsuit, the December 2013 Phone Call, and the Bryan Cave Demand Letter.

In my opinion, these failures violated Rule 1.3 (Diligence) of the Arizona Rules of Professional Conduct and violated the standard of care applicable to the Defendants.

c. The Defendants Failed to Protect DenSco from Mr. Menaged

²²⁹ See, e.g., Exhibit 103 (Deed of Trust and Security Agreement with Assignment of Rents, recorded in the Official Records of Maricopa County Recorder March 25, 2013, for property located at "7089 W Andrew Lane Peoria, AZ 85383." The Trustor is Easy Investments, LLC. The Beneficiary is Active Funding Group, LLC.); see, also, Exhibit 104 (Deed of Trust and Assignment of Rents, recorded in the Official Records of Maricopa County Recorder April 2, 2013, for property located at "7089 W Andrew Lane Peoria, AZ 85383." The Trustor is Easy Investments, LLC. The Beneficiary is DenSco.). See also Plaintiff's DS ¶ 228 ("Beauchamp also knew from his January 6 review of the demand letter and the hours he had devoted on January 7 and 8 to analyzing Chittick's email and other information he had received from Chittick, that Menaged's 'cousin' story was implausible and that by accepting the story without investigation and planning to continue DenSco's lending relationship with Menaged, Chittick was breaching his fiduciary duties to DenSco."). See also Plaintiff's DS ¶¶ 207(b) & 207(c) ("In January 2014, the Maricopa County Recorder's Office had a free "Recorded Document Search" function. The same tool is available today. If Beauchamp had used that tool, two brief searches would have shown that ... Menaged, not 'a guy in his office,' had secured both loans.").

The Defendants failed to advise DenSco to sever its relationship with, and immediately stop providing additional funds to, Mr. Menaged and his affiliated entities. The Defendants also failed to advise DenSco of its rights and remedies with respect to either Mr. Menaged or the other lenders. Instead of urging DenSco to take appropriate action against Mr. Menaged and his affiliated entities for fraud, the Defendants did just the opposite – by encouraging and facilitating Mr. Chittick’s Plan.

The Defendants failed to recognize that the Forbearance Agreement provided little or no benefit to DenSco. In my experience, a forbearance agreement is utilized to provide short-term relief to a borrower that is experiencing a temporary hardship (such as a cash flow issue). As the name of the agreement suggests, a lender sometimes agrees to *forbear* from exercising its remedies, and delay exercising its right to institute foreclosure proceedings, for a limited period of time in order to provide the borrower with an opportunity to recover.²³⁰ However, the Forbearance Agreement here further acerbated DenSco’s risk and exposure by essentially conceding that Mr. Menaged’s other lenders had a superior lien position and allowing them to extract value out of the mortgaged properties ahead of DenSco.

Mr. Beauchamp’s failures with respect to the Forbearance Agreement raise a troubling question as to whether he simply fell below the applicable standard of care by failing to appreciate the potential damage to DenSco caused by pursuing the agreement, or whether he was in fact motivated by other interests, such as a conflicted desire to give Mr. Chittick’s Plan a chance to work so as to minimize the problems caused by Mr. Beauchamp’s negligent delay in providing updated and corrected disclosures.²³¹ To the extent Mr. Beauchamp’s pursuit of the Forbearance Agreement was motivated by such a personal conflict of interest, such conduct was so reckless and irresponsible that, in my opinion, it constituted a gross departure from the applicable standard of care.

2. The Defendants’ Failures with Respect to Disclosures

a. The Defendants Failed to Timely Update the 2011 POM

Because the 2011 POM provided for a two-year offering period,²³² by its own terms it expired on July 1, 2013. However, based on the record I have reviewed, it appears that the Defendants

²³⁰ It appears that the Defendants believed that it was in DenSco’s interest to forbear from exercising its remedies. See page 12, lines 21-26, Defendants’ DS (“As Mr. Beauchamp explained in a February 10, 2014 email to his colleagues, “we advised our client that *he needs to have a Forbearance Agreement in place to evidence the forbearance and the additional protections he needs.*” [italics added]).

²³¹ See Plaintiff’s DS ¶ 249.

²³² See page (i), 2011 POM (“The Company intends to offer the Notes on a continuous basis until the earlier of (a) the sale of the maximum offering, or (b) two years from the date of this memorandum.”).

never finalized and provided DenSco with an update to the 2011 POM nor a replacement POM.²³³

The July 1, 2013 deadline for updating the 2011 POM was known to Mr. Beauchamp, as he was the one who prepared the 2011 POM and advised DenSco with respect to such matters. The applicable standard of care obligated Mr. Beauchamp to be diligent in preparing an updated POM prior to July 2013 in order that DenSco could timely distribute the updated POM to investors. Mr. Beauchamp's apparent concern about DenSco being close to issuing \$50 million of Notes was misplaced,²³⁴ and in no event excused him from updating the 2011 POM as DenSco remained obligated to provide required disclosures to its investors.

Further, with each red flag warning, the Defendants were increasingly aware of the significance of the Menaged fraud and DenSco's inadequate funding procedures, and yet never provided DenSco with any Rule 10b-5 compliant disclosure document that described the facts and circumstances – and material consequences – of the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter. Even with the first red flag warning, Mr. Beauchamp recognized that the Freo Lawsuit needed to be disclosed to investors, and Mr. Chittick was cooperative,²³⁵ but no such disclosure was ever prepared by Mr. Beauchamp nor provided to Mr. Chittick.

Mr. Beauchamp appears to assert in the alternative that the Defendants were not obligated to update or correct the 2011 POM because either (1) Mr. Chittick on his own was providing the required disclosures to investors or (2) Mr. Beauchamp had advised Mr. Chittick to discontinue offering Notes to investors. In my opinion, under the circumstances described above, neither assertion is plausible nor in compliance with the standard of care applicable to the Defendants. Further, the Defendants' conduct in this regard was so reckless and irresponsible that such conduct, in my opinion, constituted a gross departure from the applicable standard of care.

²³³ Further, it does not appear that Mr. Beauchamp *ever* prepared, or advised DenSco to prepare, any update to any of DenSco's POMs during the two-period when such POMs were in effect. See Plaintiff's DS ¶¶ 28 & 29 ("DenSco's records do not reflect that DenSco ever took steps to '[k]eep[] the information in the [POMs DenSco issued in 2007, 2009 and 2011] current' by issuing updates to those POMs during the two-year period each of those POMs was in effect. The files that Beauchamp maintained, and the billing statements issued to DenSco by his respective law firms, do not reflect that Beauchamp ever advised DenSco to '[k]eep[] the information in the [POMs DenSco issued in 2007, 2009 and 2011] current' by issuing updates to those POMs during the two-year period each of those POMs was in effect."). Also see Plaintiff's DS ¶¶ 161 & 162 ("Clark Hill's records show that neither Beauchamp nor any other Clark Hill attorney performed any work on a new POM during September, October, or November 2013. The records also show that neither Beauchamp nor any other Clark Hill attorney even attempted to contact Chittick about the new POM.").

²³⁴ See DIC0003345, Mr. Beauchamp's handwritten notes dated May 9, 2013; email dated June 25, 2013 from Mr. Beauchamp to Ms. Sipes; email dated July 1, 2013 from Ms. Sipes to Mr. Beauchamp.

²³⁵ See email exchange dated June 14, 2013 between Mr. Beauchamp and Mr. Chittick.

b. The Defendants Failed to Conform DenSco Policies and Procedures to Those Disclosed in the POM – and Vice Versa

With each red flag warning, the Defendants became increasingly aware that material statements contained in the 2011 POM were no longer in compliance with Rule 10b-5, especially with respect to DenSco's first lien position,²³⁶ its loan-to-value ratio,²³⁷ and the diversity of its borrowers.²³⁸ In addition, the 2011 POM touted DenSco's historical success rate, including that "no Noteholder has sustained any diminished return or loss on their investment."²³⁹

In my opinion, the Defendants should have recognized that each of these statements was materially inaccurate in light of the Menaged fraud and DenSco's improper and risky funding procedure, and yet the Defendants failed to make any effort to update or correct these statements until after the Forbearance Agreement was completed in mid-April 2014. And even in the Draft 2014 POM which the Defendants prepared after the Forbearance Agreement was executed, the Defendants failed to modify or correct such statements.

3. The Defendants' Failures with Respect to Mr. Chittick

a. The Defendants Failed to Recognize that DenSco, and not Mr. Chittick, was the Client

The record is replete with evidence that the Defendants considered Mr. Chittick to be their client and/or that it was their responsibility to protect him. For example, in February 2014, Mr. Beauchamp communicated to Mr. Goulder (Mr. Menaged's attorney) that the Forbearance Agreement "needs to comply with *Denny's* fiduciary obligation to his investors as well as not become evidence to be used against *Denny* for securities fraud."²⁴⁰ Shortly thereafter, Mr. Beauchamp communicated to Mr. Chittick that the Forbearance Agreement "has to have the necessary and essential terms to protect *you* from potential litigation from investors and third parties."²⁴¹

²³⁶ See page 37, 2011 POM.

²³⁷ See pages 10 & 37, 2011 POM.

²³⁸ See pages 10 & 36-37, 2011 POM. See also pages 9-10, lines 25-2, Defendants' DS ("by the end of 2013, more than half of [DenSco's] loan portfolio was tied up with Menaged—well in excess of the promised loan concentrations DenSco had set forth in its disclosures to investors").

²³⁹ See page 39, 2011 POM ("Since inception through June 30, 2011, ... [e]ach and every Noteholder has been paid the interest and principle due to that Noteholder in accordance with the respective terms of the Noteholders 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 the Company.").

²⁴⁰ Email dated February 7, 2014 from Mr. Beauchamp to Mr. Goulder (Mr. Menaged's attorney), copying Mr. Chittick [italics added].

²⁴¹ Email dated February 9, 2014 from Mr. Beauchamp to Mr. Chittick [italics added]. See, also, email dated March 13, 2015 from Mr. Beauchamp to Mr. Chittick ("I wanted to protect *you* as much as I could." [italics added]); Mr. Beauchamp's handwritten notes of his telephone call with

Mr. Beauchamp failed to understand or recognize that it was DenSco, and not Mr. Chittick, that was his client and that of Clark Hill, even though the Clark Hill Engagement Letter that he signed made expressly clear that Mr. Chittick was *not* the client.²⁴² In my opinion, such failure was in violation of Rule 1.13 of the Arizona Rules of Professional Conduct and in violation of the applicable standard of care.

b. The Defendants Failed to Properly Advise Mr. Chittick as an Officer and Director of DenSco

The Defendants failed to properly advise Mr. Chittick that he was causing DenSco to engage in securities fraud by continuing to sell Notes based on disclosures in the outdated, incorrect and expired 2011 POM.

For the reasons stated above,²⁴³ the Defendants' conduct fell below the standard of care to the extent that they were relying on any purported claim by Mr. Chittick that he was making proper disclosures to investors without an updated and corrected POM.

The Defendants failed to properly advise Mr. Chittick that the Defendants would be required to withdraw from the attorney-client relationship unless he caused DenSco to either cease soliciting investors or provide investors with Rule 10b-5 compliant disclosures.

The Defendants failed to properly advise Mr. Chittick of his fiduciary duties to DenSco. The Defendants further failed to assess whether DenSco was insolvent (or in the zone of insolvency) as a result of the Menaged fraud, in which case Mr. Chittick should also have been advised of his fiduciary duties to the Noteholders.

The Defendants failed to properly advise Mr. Chittick that it was his obligation to protect and preserve DenSco's assets, and to not pursue a Plan that would benefit Mr. Chittick individually (such as to preserve his reputation and/or equity stake in DenSco) at the risk of DenSco or the Noteholders. The Defendants failed to promptly and definitively instruct Mr. Chittick to not fund loan proceeds to borrowers. When Mr. Chittick informed Mr. Beauchamp by email that he provides funds directly to Mr. Menaged and most other borrowers to acquire properties at auctions,²⁴⁴ rather than reaffirm the "fundamental importance" of adhering to the advice that he

Mr. Chittick on February 27, 2014 ("will need Forbearance Agmt to ... protect *Denny*" [italics added]).

²⁴² Engagement Letter dated September 12, 2013 (referenced above).

²⁴³ See "Defendants Allege They Withdrew from Representing DenSco in May 2014" above.

²⁴⁴ Email dated January 9, 2014 from Mr. Chittick to Mr. Beauchamp ("If i cut cashiers check and take it to the trustee myself, i dont' get receipt that DenSco Paid for it. i get a receipt saying that property was paid for, for X \$'s vested in borrower's name. my name doesn't appear on it. other than having a cashiers check receipt saying that i made a check out for it, there isn't anything from the trustee saying that it was my check. i could wire Scott the money, he could produce cashiers check that says remitter is DenSco and it would have the exact same affect as if

had been giving since 2007,²⁴⁵ Mr. Beauchamp simply replied “Let me see what the other lenders got from the Trustee and we can make a better decision.”²⁴⁶ There is nothing in the record that I have reviewed that indicates Mr. Beauchamp followed up with Mr. Chittick on this exchange or took appropriate action to ensure that Mr. Chittick ceased this improper and risky funding procedure.

And the Defendants failed to advise Mr. Chittick as to how to best protect and preserve the corporation’s assets, especially with respect to those outstanding loans that were not adequately protected by first lien mortgages. Nor did they conduct the requisite due diligence and research in order to properly consider available alternatives.

The Defendants conduct fell below the applicable standard of care by, in effect, aiding and abetting Mr. Chittick’s wrongful conduct by focusing their attention on the Forbearance Agreement rather than on DenSco’s rights and remedies in connection with the Menaged fraud and on updating and correcting the 2011 POM. In other words, by failing to terminate the attorney-client relationship, the Defendants provided substantial assistance in Mr. Chittick’s wrongful conduct. The Defendants’ conduct in this regard was so reckless and irresponsible that such conduct, in my opinion, constituted a gross departure from the applicable standard of care.

4. The Defendants Failed to Protect DenSco from Mr. Chittick

The Defendants’ conduct fell below the applicable standard of care by failing to realize, and act on the fact, that Mr. Chittick’s interests conflicted with those of DenSco’s. As the director, officer and sole shareholder of DenSco, Mr. Chittick had a fiduciary duty to act in the best interest of DenSco, and not in his own self-interest.

The Defendants failed to recognize that, while Mr. Chittick’s Plan and the Forbearance Agreement benefited Mr. Menaged and perhaps Mr. Chittick, the speculative benefit to DenSco (if any) was greatly outweighed by the burdens to DenSco. As discussed above, the Forbearance Agreement imposed material obligations and economic burdens on DenSco, including the obligation (in accordance with Mr. Chittick’s Plan) to misuse DenSco’s funds by throwing good

i got cashiers check that said I’m the remitter. i don’t just do this with scott, i do this with 90% of the guys that i fund at the auctions.” [SIC]),

²⁴⁵ See page 6, Defendants’ DS (“Mr. Beauchamp ... provided advice to DenSco regarding proper loan documentation procedures since at least 2007. DenSco and Mr. Chittick were both advised, and understood, (a) that DenSco should fund loans through a trustee, title company or other fiduciary, (b) that DenSco was representing to its investors that DenSco’s loans would be in first position, and (c) that it was of fundamental importance that DenSco safeguard the use of its investors’ funds in conjunction with properly recording liens, in order to ensure that DenSco’s loans were in first position.”).

²⁴⁶ Email dated January 9, 2014 from Mr. Beauchamp to Mr. Chittick. See, also, Plaintiff’s DS ¶ 213(a) (“Chittick had been grossly negligent in managing DenSco’s loan portfolio, by not complying with the terms of the Mortgage, which called for DenSco to issue a check payable to the Trustee, and instead wiring money to Menaged, trusting Menaged to actually use those funds to pay a Trustee.”).

money after bad in a manner that was inconsistent with the disclosures made to investors in the 2011 POM.

The Defendants fell below the applicable standard of care by allowing and assisting Mr. Chittick in protecting his own self-interest, by among other things: (1) continuing to provide additional funds to Mr. Menaged; (2) delaying disclosure to investors; (3) implementing Mr. Chittick's Plan before making appropriate disclosures to investors; and (4) negotiating and entering into the Forbearance Agreement to the detriment of DenSco and its Noteholders.

Under the circumstances, in accordance with Rules 1.13(b) and 1.2 of the Arizona Rules of Professional Conduct, the Defendants could have – and in my opinion should have – reported Mr. Chittick's breaches to the proper authorities and/or the Noteholders in order protect DenSco against Mr. Chittick.

5. The Defendants' Conflicts of Interest

The Defendants fell below the standard of care, and violated the applicable Rules of Professional Conduct, by failing to recognize and properly address two conflicts of interest: first, the conflict of interest created by concurrently representing both DenSco and the Chittick Estate, when DenSco had potential claims against the Estate for malfeasance by Mr. Chittick; and second, the conflict of interest in representing DenSco in wind down matters when DenSco had potential claims against the Defendants for malfeasance.

a. The Defendants Failed to Recognize the Concurrent Conflict of Interest Between DenSco and the Chittick Estate

For the reasons stated above, the Defendants knew that Mr. Chittick had violated his fiduciary duties to DenSco, and that as a result DenSco had potential claims against Mr. Chittick and, following his death, against the Chittick Estate.²⁴⁷ However, rather than consider and pursue such claims against the Chittick Estate, the Defendants concurrently took on the representation of the Chittick Estate. Such representation was in violation of Rule 1.7 of the Arizona Rules of Professional Conduct: “a lawyer shall not represent a client if ... the representation of one client will be directly adverse to another client.” It would have been contrary to the interests of the Chittick Estate for DenSco to consider or pursue claims against the Chittick Estate for Mr. Chittick's malfeasance, and yet, as wind down counsel to DenSco, it was the obligation of the Defendants to consider and pursue such claims (as independent legal counsel to DenSco would have done, and as the Receiver in fact has done).²⁴⁸

²⁴⁷ See, e.g., Exhibit 288A to Deposition of Mr. Beauchamp, email dated August 15, 2016 from Mr. Beauchamp to Mr. Hyman (“Due to potential conflicts of interest, we have resigned as counsel to the Estate and new counsel has been appointed or is being appointed for the Estate.”).

²⁴⁸ See Arizona Rules of Professional Conduct, Rule 1.7, Comment [3] (“A conflict of interest may exist before representation is undertaken, in which event the representation must be declined”); Comment [4] (“If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation”); Comment [6] (“Loyalty to a current client prohibits undertaking representation directly adverse to that client a lawyer may not act

The Defendants failed to secure informed consent, confirmed in writing, to such conflict, as required by Rule 1.7. In fact, it's not clear that anyone could have provided such consent on behalf of the Chittick Estate prior to the appointment of Ms. Heuer as the personal representative of the Chittick Estate (which appointment was done during the course of the Defendants' representation of the Chittick Estate), and even after Ms. Heuer was appointed, it does not appear that the Defendants sought or received the required consent from her.

b. The Defendants Failed to Recognize the Conflict of Interest Between Wind Down Work for DenSco and the Defendants' Interests

For all the reasons stated above, the Defendants' conduct fell below the standard of care, resulting in potential claims that DenSco may bring against the Defendants for malfeasance. The Defendants were well aware of such risk and the resulting conflict of interest.²⁴⁹ Despite such conflict of interest, the Defendants actively stepped into the role as legal counsel to DenSco in connection with wind down and transition matters, and Mr. Beauchamp took it upon himself to act as a quasi-receiver or liquidator with respect to the wind down of DenSco.

Such representation was in violation of Rule 1.7 of the Arizona Rules of Professional Conduct: "a lawyer shall not represent a client if ... there is a significant risk that the representation ... will be materially limited ... by a personal interest of the lawyer." It would have been contrary to the personal interests of the Defendants for DenSco to consider or pursue claims against the Defendants for their malfeasance, and yet, as wind down counsel to DenSco, it was the

as an advocate in one matter against a person the lawyer represents in some other matter"); Comment [8] ("a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's responsibilities The conflict in effect forecloses alternatives that would otherwise be available to the client. ... The critical questions [include] whether [the difference in interests] will ... foreclose courses of action that reasonably should be pursued on behalf of the client.").

²⁴⁹ See, e.g., DIC0009476, the Iggy Letter dated July 28, 2016 ("Dave never made me tell the investors"; "I talked Dave my attorney in to allowing me to continue without notifying my investors."; "Dave my attorney ... let me get the workout signed not tell the investors and try to fix the problem. That was a huge mistake."); email dated March 13, 2015 from Mr. Beauchamp to Mr. Chittick ("I have second guessed myself concerning several steps in the overall process, but I wanted to protect you as much as I could."); pages 447-448, lines 19-15, Deposition of Mr. Beauchamp ("Q. Did you discuss with [Ms. Heuer] potential conflicts of interest that you and Clark Hill would have with respect to representing DenSco? A. Yes. ... Q: Did you disclose to her that Clark Hill was concerned about potential claims that could be made against Clark Hill regarding your representation of DenSco? A. Yes."); page 140, lines 10-20, Deposition of Mr. Hood ("Q. ... On August 2nd, August 3rd, 2016, with all of the information that Clark hill [sic] knew, could Clark Hill reasonably anticipate that a receiver might sue Clark Hill for damages? ... THE WITNESS: ... I suppose it was a possibility").

obligation of the Defendants to consider and pursue such claims (as independent legal counsel to DenSco would have done, and as the Receiver in fact has done).²⁵⁰

The Defendants failed to secure informed consent, confirmed in writing, to such conflict, as required by Rule 1.7. In fact, it's not clear that anyone could have provided such consent on behalf of DenSco following the death of Mr. Chittick, and even after Ms. Heuer was appointed as the personal representative of the Chittick Estate (not that such appointment would have necessarily given her the authority to consent to the conflict of interest on behalf of DenSco), it does not appear that the Defendants sought or received the required consent from her.

Following Mr. Chittick's death, rather than consider and pursue claims that DenSco might have against the Defendants, it appears that Mr. Beauchamp actively tried to protect himself and Clark Hill. As discussed above, it appears that Mr. Beauchamp took it upon himself to act as a quasi-receiver or liquidator with respect to the wind down of DenSco, despite not necessarily having the requisite skills to do so nor having an authorized and competent client representative from whom to take instruction, receive approvals or seek guidance. Further, Mr. Beauchamp advocated against each of the following: (1) having a receiver or trustee appointed to conduct the wind down of DenSco;²⁵¹ (2) having any investor become an authorized representative of DenSco;²⁵² and (3) having the state regulator take any active role.²⁵³

In my opinion, these actions violated the standard of care applicable to Mr. Beauchamp, and suggest that Mr. Beauchamp was attempting to persuade the investors to support him as the

²⁵⁰ See Arizona Rules of Professional Conduct, Rule 1.7, Comment [8] ("a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's ... interests. ... The conflict in effect forecloses alternatives that would otherwise be available to the client. ... The critical questions [include] whether [the difference in interests] will ... foreclose courses of action that reasonably should be pursued on behalf of the client."); Comment [10] ("The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice.")

²⁵¹ See, e.g., Exhibit 213, email dated August 3, 2016 from Mr. Beauchamp to DenSco investors ("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").

²⁵² See, e.g., Exhibit 213, email dated August 3, 2016 from Mr. Beauchamp to DenSco investors ("We intend to structure this as an Advisory Board to protect the members of this Advisory Board from any potential liability based upon their role with DenSco. Specifically, the Advisory Board would only have an advisory position with DenSco as opposed to a full authority position, which is to distinguish this situation from having these Investors appointed to the Board of Directors").

²⁵³ See, e.g., Exhibit 256, Deposition of Mr. Beauchamp, email dated August 9, 2016 from Mr. Beauchamp to investor Craig Hood, copying other investors ("We need to be willing but not overly anxious to turn it over to the Securities Division. Several people in government made names and careers with the Mortgages Ltd. matter and we do not want this to turn into anything like that.").

appropriate person to wind down the business, thereby avoiding or delaying the pursuit of claims that DenSco might have against the Defendants. One could reasonably infer that Mr. Beauchamp wanted to control the wind down so as to protect himself because if a receiver were to be appointed, he or she would file a claim against the Defendants on behalf of DenSco -- which is exactly what happened in this Case.

In addition, Mr. Beauchamp's testimony at the receiver appointment hearing that he represented both DenSco and Mr. Chittick, together with his former law firm's assertion of a joint attorney-client privilege premised on that testimony, further complicated and delayed the Receiver's ability to obtain and utilize DenSco's files from Clark Hill. One could also reasonably infer that Mr. Beauchamp intended such result so as to protect himself, especially with respect to preventing disclosure of the Iggy Letter, the Chittick Investor Letter dated July 28, 2016, and the DenSco Journal, all of which implicate the Defendants.

Under the circumstances, the Defendants' conduct in this regard was so reckless and irresponsible that such conduct, in my opinion, constituted a gross departure from the applicable standard of care.

6. The Defendants Failed to Withdraw from Representing DenSco

Finally, in my opinion, the Defendants failed to properly withdraw from the representation of DenSco on a timely basis, as required by Rules 1.16 and 1.2 of the Arizona Rules of Professional Conduct.

V. CONCLUSION

It is my opinion, as detailed above and based on the record I have reviewed, that the Defendants violated the applicable standard of care in their representation of DenSco.

* * *

I reserve the right to supplement, update or amend my opinions as new information becomes available or is brought to my attention.


Neil J Wertlieb

March 26, 2019

Exhibit A

Curriculum Vitae of Neil J Wertlieb

NEIL J WERTLIEB
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Pacific Palisades, CA 90272
(424) 265-9659
Neil@WertliebLaw.com



CURRENT PROFESSIONAL ACTIVITIES



Wertlieb Law Corp
Principal

2017 – Present

- Wertlieb Law Corp provides expert witness and expert consulting services to attorneys in their litigation and arbitration matters
 - Our engagements have been focused primarily in two areas:
 - Disputes involving business transactions, corporate governance and fiduciary duties
 - Cases involving attorney ethics and attorney malpractice
 - I have served as an expert in dozens of such disputes and cases
 - I have testified numerous times, in court (both bench and jury trials), in arbitration and in depositions
- Other services provided by Wertlieb Law Corp include:
 - Mediation services for business disputes
 - Board of director appointments
 - Ethics consulting
 - MCLE presentations
 - Legal services
- For more detailed information, see www.WertliebLaw.com



UCLA School of Law
Adjunct Professor / Lecturer in Law

2002 – Present

- I teach a transaction skills course entitled “Life Cycle of a Business,” a course of my own design focusing on deals, negotiation, contract drafting and ethics
- 3-unit course satisfies one of the requirements for students seeking a Business Law and Policy Specialization



Ballantine & Sterling: California Corporation Laws
General Editor

2012 – Present

- 7-volume treatise on the laws governing businesses in the State of California
- In-depth practical guidance concerning the formation, operation and dissolution of corporations, partnerships, limited liability companies and other business entities
- Cited as authority in over 500 federal and state court opinions, 25 SEC No-Action Letters and other administrative reference materials, and 50 law review articles



Milbank@Harvard
Senior Advisor

2018 – Present

- Engaged by Harvard Law School Executive Education
- This professional development program provides attorneys at Milbank, Tweed, Hadley & McCloy LLP with immersive week-long programs to build leadership and business skills each year for four years, as they progress from mid-level associates to senior associates
- Led by Harvard Law School and Harvard Business School faculty, the program covers topics such as business, finance, accounting, marketing, law, management skills, client relations and personal and professional development
- As Senior Advisor, I attend program sessions at Harvard and provide input, guidance and assistance in formulating the program and connecting it to work at Milbank



State Bar of California, Office of Chief Trial Counsel
Special Deputy Trial Counsel

2017 – Present

- The State Bar Office of Chief Trial Counsel must recuse itself when it receives a disciplinary complaint against an attorney who has a close professional, personal, family or financial connection with the State Bar of California
- To avoid an appearance of impropriety under such circumstances, an independent Special Deputy Trial Counsel is appointed, with all the powers and duties of the Chief Trial Counsel, to investigate and, if warranted, prosecute alleged misconduct by such an attorney
- Since my appointment as a Special Deputy Trial Counsel, I have worked on several such matters

EMPLOYMENT HISTORY



Milbank, Tweed, Hadley & McCloy LLP, Los Angeles
Partner

1995 – 2016

- General Practice Areas: Business transactions, primarily acquisitions, finance, securities offerings and restructurings
- Representative transactions:
 - Represented an NYSE-listed company as regular outside corporate counsel in numerous transactions, including IPO, acquisitions, financings and a change-in-control transaction
 - Represented underwriters in the initial public offering of a California-based home builder, considered by *The Daily Journal* to be one of the Top 10 IPOs of 2013
 - Led the restructuring of a social network company for which Milbank received an “M&A Advisor” Award for Deal of the Year (2014) from *The M&A Advisor*
 - Represented the finance subsidiary of one of the world’s largest automotive companies in numerous debt financings totaling almost \$20 billion

- Represented the venture capital investing subsidiaries of three major public companies – a multinational conglomerate, a leading telecom company and a large U.S. bank – in over 50 different investments in early stage companies
- Represented two different alternative energy companies in sale transactions for which Milbank received the “Top Legal Advisor Award for M&A” from *Bloomberg New Energy Finance*
- Represented family owners in disposition transactions for a fashion optical company, a broadcast company and a hair care company
- Represented unsecured lenders in the restructuring of a print media company with over \$10 billion in debt
- Administrative Responsibilities:
 - Chair of Ethics Group for California Practices
 - Corporate Governance Group
 - Professional Development Committee
 - Milbank@Harvard (training program for associates)
 - Hiring Partner for Los Angeles Office



IDB Communications Group, Inc., Culver City, CA
Vice President, General Counsel & Secretary

1992 – 1995

- IDB was the fourth-largest U.S.-based provider of international telephone service when it was acquired by WorldCom, Inc. in December 1994
- As General Counsel, responsible generally for all legal matters, including acquisitions, financings and loan transactions, securities law compliance, litigation and crisis management, employment disputes, real estate transactions, board of director meetings, corporate records and customer contracts
- Responsibilities included what was then the second largest equity offering by a NASDAQ-listed company
- Named Executive Officer & Member of Executive Committee
- Established and supervised legal department of nine attorneys and five legal assistants



Los Angeles Kings Hockey Team, Culver City, CA
General Counsel (part-time) & Director

1994 – 1995

- Responsible for the acquisition transaction in which the Chairman of IDB Communications Group, Inc. acquired a controlling interest in the Kings
- General ongoing responsibilities included management, player and broadcast contracts and interaction with the National Hockey League and lenders
- Member of Board of Directors



O'Melveny & Myers, Los Angeles, CA
Associate

1984 – 1992

- Practice Areas: Transactional work focused on public and private securities financings (including initial public offerings), mergers and acquisitions, joint ventures and general corporate and contractual matters

- **Administrative Responsibilities:** Monitoring of legislative developments in California, training seminars, summer committee, executive compensation group, and “blue sky overseer”



California Supreme Court, San Francisco, CA
Judicial Extern for Associate Justice Stanley Mosk

1983

- Responsible for reviewing and evaluating Petitions for Hearing and drafting judicial opinions for the longest-serving justice on the California Supreme Court

EDUCATION

UC Berkeley School of Law, Berkeley, CA 1982 – 1984
Juris Doctor Degree

- Juris Doctor awarded 1984
- Associate Editor, *International Tax & Business Lawyer*

UC Hastings College of the Law, San Francisco, CA 1981 – 1982

- Top 1% (ranked number 5 in first-year class of 503 students)
- Transferred to UC Berkeley School of Law after first year
- Law Review (awarded based on both grades and writing competition)

UC Berkeley School of Business Administration, Berkeley, CA 1976 – 1980
Bachelor of Science Degree

- Bachelor of Science awarded 1980 in Management Science
- Honor Students Society
- Alumni Scholarship Award
- Dormitory Government Chairman

LEADERSHIP POSITIONS

STATE BAR OF CALIFORNIA & CALIFORNIA LAWYERS ASSOCIATION

- **Committee on Professional Responsibility and Conduct** 2008 – 2014
Chairman
 - COPRAC is a standing committee of the Board of Trustees of the State Bar of California, whose primary charge is the development and issuance of advisory ethics opinions to assist attorneys in understanding their professional responsibilities under the California Rules of Professional Conduct
 - Chair during 2012-2013, Vice Chair during 2011-2012, Advisor during 2013-2014
 - Organized, moderated and participated on numerous panel presentations on various ethical issues, including at the Annual Meeting of the State Bar and at the Annual Ethics Symposium

- Authored several ethics opinions and, as Chair of COPRAC's Rules Revision Commission Subcommittee, led COPRAC's efforts in reviewing and commenting on proposed new rules of professional conduct
- **Business Law Section** 2003 – 2008
Chairman
 - The Business Law Section serves as a forum to educate attorneys on recent developments and current issues in all fields of business law
 - Chair during 2006-2007, Vice Chair for Legislation during 2005-2006, and Member of the Executive Committee the remaining duration of my 5-year term
- **Corporations Committee** 1999 – 2003
Chairman
 - The Corporations Committee is a standing committee of the Business Law Section, focused on the laws relating to corporations and business transactions
 - Co-Chair during 2001-2002, Vice Chair for Legislation during 2000-2001
 - As Vice Chair for Legislation, responsible for the Section's efforts to prepare and advocate for legislative proposals to amend the California Corporations Code
- **Business Litigation Committee** 2016 – Present
Vice Chair
 - The Business Litigation Committee is a standing committee of the Business Law Section, focused on the laws relating to business disputes in California
 - Co-Vice Chair during 2018-2019
- **Business Law News** 2008 – Present
Editorial Advisor
 - The *Business Law News* is the official publication of the Business Law Section of the California Lawyers Association (formerly the California State Bar)
 - Providing advice and guidance to the Editorial Board of the *Business Law News*

LOS ANGELES COUNTY BAR ASSOCIATION

- **Professional Responsibility and Ethics Committee** 2013 – Present
Chairman
 - PREC is a standing committee of the Board of Trustees of the Los Angeles County Bar Association, whose primary mission is to prepare written opinions and responses to questions concerning the ethical duties and responsibilities of lawyers
 - Chair during 2018-2019, Vice Chair during 2017-2018, Secretary during 2016-2017
 - As Chair of PREC's Rules Revision Commission Subcommittee, led PREC's efforts in reviewing and commenting on proposed new rules of professional conduct

BOARD APPOINTMENTS

- **Windward School** 2013 – Present
Chair & Member, Board of Trustees
 - Windward School is an independent middle and high school in Los Angeles

- Also served on Executive Committee and as Co-Chair of Committee on Trustees and Chair of Strategic Planning Committee

- **Los Angeles Arts Association** 2010 – 2018
Member, Board of Directors
 - As a 501(c)(3) nonprofit organization, LAAA's mission since 1925 is to provide opportunities, resources, services and exhibition venues for Los Angeles artists, with an emphasis on emerging talent

- **Village School** 2008 – 2014
Member, Board of Trustees & Executive Committee
 - Village School is a TK through Sixth Grade independent school in Los Angeles
 - Also served on the Finance Committee and as Chair of the Legal Committee

- **Los Angeles Kings Hockey Team** 1994 – 1995
Member, Board of Directors
 - Also served as General Counsel of this National Hockey League team

- **821 Bay Street Homeowners Association, Inc.** Early 1990s
President & Member, Board of Directors
 - Homeowners association for 15-unit condominium complex in Santa Monica

- **Co-Opportunity Consumers Cooperative, Inc.** Late 1980s
Member, Board of Directors
 - The “co-op” is a community owned and operated market based in Santa Monica

RECOGNITIONS, SPEAKING ENGAGEMENTS & PUBLICATIONS

Recognitions & Honors

- “AV Preeminent” peer review rated (5.0 out of 5.0) on Martindale-Hubbell (Present)
- Profiled in *The Lexis Practice Advisor Journal*: “An Overview of Corporate Transactional Practice & Expert Witnessing: Q&A with Neil J Wertlieb” (Spring 2016)
- Led transactions for which Milbank received an “M&A Advisor” Award for Deal of the Year and an “M&A Advisor Turnaround” Award from *The M&A Advisor* (2014)
- Advised underwriters on an initial public offering selected by *The Daily Journal* as one of the Top 10 IPOs (2013)
- Recognized in *The Legal 500* for M&A work (2012)
- Led two transactions for which Milbank received the “Top Legal Advisor” Award for M&A from *Bloomberg New Energy Finance* (2009)
- Recognized by *Super Lawyers* as a Top Rated Mergers & Acquisitions Attorney and for his Corporate Finance work (2004)
- Profiled in *California Law Business*: “The 100 Most Influential Lawyers in California” (October 30, 2000)
- Profiled in *Los Angeles Business Journal*: “Who’s Who Banking & Finance: Roadkill Warriors” (October 16, 2000)

- Profiled in *California Law Business*: “Dealmaker of the Week” (October 9, 2000)
- Profiled in *Los Angeles Business Journal*: “Wall Street West: Cyber Lawyer” (September 20-26, 1999)

Speaking Engagements (since 2000)

- Presenter, “California’s New Rules of Professional Conduct,” presentations to various law firms and other organizations in Southern California (2018 – Present)
- Moderator, “Ethical Issues for In-House Counsel,” Lowell Milken Institute for Business Law and Policy at UCLA School of Law, Palo Alto, CA (January 30, 2019)
- Presenter, “The New Rules of Professional Conduct,” California Lawyers Association, Webinar (January 29, 2019)
- Presenter, “The New Rules of Professional Conduct,” J. Reuben Clark Law Society, Irvine, CA (January 17, 2019)
- Presenter, “The New Rules of Professional Conduct (for Transactional Lawyers),” Los Angeles County Bar Association’s Business and Corporations Law Section, Webinar (January 15, 2019)
- Panelist, “Ethics – All You Need to Know: Conflicts, Conflicts, Conflicts – What the New Rules and the *Sheppard Mullin v. J-M* Case have To Say,” Los Angeles County Bar Association’s Annual Program on Ethics, Los Angeles, CA (January 13, 2019)
- Moderator, “How to Keep Your Expert In and Their Expert Out,” California Lawyers Association’s Business Law Section, Webinar (November 6, 2018)
- Presenter, “A New Chapter in Professional Responsibility,” Lowell Milken Institute for Business Law and Policy at UCLA School of Law, Los Angeles, CA (October 30, 2018)
- Presenter, “Trials and Tribulations – Tactics, Strategies and Updates for the Business Litigator: The Ethical Use of Expert Witnesses,” California Lawyers Association’s Solo and Small Firm Section, Los Angeles, CA (October 18, 2018)
- Panelist, “Conflict Waivers, Mediation Waivers, New Rules - Oh My! Avoiding Ethical Traps Triggered by Recent Developments Under California Law,” Beverly Hills Bar Association, Los Angeles, CA (October 11, 2018)
- Presenter, “New Rules of Professional Conduct go into Effect on November 1, 2018 – Are You Ready?,” California Lawyers Association Annual Meeting, San Diego, CA (September 14, 2018)
- Panelist, “New Rules of Professional Conduct go into Effect Later this Year – *ARE YOU READY?*,” Los Angeles County Bar Association, Los Angeles, CA (August 21, 2018)
- Panelist, “Brave New World: What Business Lawyers Need to Know About the Sea Change to New Rules Of Professional Conduct,” Beverly Hills Bar Association, Beverly Hills, CA (July 12, 2018)
- Presenter, “Contracts 101: The Contract of the Year – *But is it Enforceable?*” presentations to various law firms and other organizations in Southern California (2018)
- Presenter, “Teach the Basics of Contract Drafting, Corporate Governance & Transactional Law . . . *in One Single Sentence!*” Emory Law’s 6th Biennial Conference on Teaching Transactional Law and Skills, Atlanta, GA (June 1, 2018)

- Panelist, “Advising Clients on the Formation of Legal Entities in California – Ethical Issues,” California Lawyers Association’s Business Law Section, Los Angeles, CA (March 30, 2018)
- Presenter, “The Proposed Rules of Professional Conduct – What Every Litigator Should Know,” California Lawyers Association’s Litigation Section, Webinar (March 1, 2018)
- Presenter, “Proposed Changes to California Professional Conduct Rules for Transactional Attorneys,” Los Angeles County Bar Association’s Business and Corporations Law Section, Webinar (January 29, 2018)
- Presenter, “The Proposed Rules of Professional Conduct,” presentations to various law firms in Southern California (2017 – 2018)
- Moderator, “Conflicts of Interest: Guidelines for Every Lawyer’s Success,” American Bar Association’s Center for Professional Development, Webinar (July 20, 2017)
- Panelist, “Ethics Issues Relating to the Use of Expert Witnesses,” American Bar Association’s National Conference on Professional Responsibility, St. Louis, MO (June 2, 2017)
- Panelist, “Ethics in, and Negotiating and Preserving Privilege in, M&A Transactions,” American Bar Association’s Business Law Section Spring Meeting, New Orleans, LA (April 6, 2017)
- Moderator, “Venture Capital Panel,” Law and Entrepreneurship Association of UCLA School of Law, Los Angeles, CA (April 4, 2017)
- Panelist, “Ethics – All You Need to Know: The Ethical Use of Expert Witnesses,” Los Angeles County Bar Association’s Annual Program on Ethics, Los Angeles, CA (January 14, 2017)
- Presenter, “The Ethical Use of Expert Witnesses,” presentations to various litigation groups in Southern California (2016 – Present)
- Panelist, “The Effective and Ethical Use of Expert Witnesses,” Annual Meeting of the California State Bar, San Diego, CA (September 30, 2016)
- Presenter, “Key Ethical Issues When Ending the Attorney-Client Relationship,” Bloomberg BNA Ethics, Webinar (April 12, 2016)
- Panelist, “Phantom Clients and How to Exorcise Them,” LMRM Conference, Chicago, IL (March 3, 2016)
- Presenter, “How to Be, and How to Use, an Expert Witness,” California State Bar, Webinar (November 4, 2015)
- Presenter, “Ethics for the In-House Attorney,” presentations to 15 legal departments in California and New York, approximately 1,000 in-house attorneys (2011 – 2014)
- Panelist, “Ethics Update 2014: Significant Developments in the Law of Lawyering,” Annual Meeting of the California State Bar, San Diego, CA (September 12, 2014)
- Panelist, “Ethics Update 2013: Significant Developments in the Law of Lawyering,” Annual Meeting of the California State Bar, San Jose, CA (October 11, 2013)
- Moderator, “Doing Good Made Easy (or at Least Easier): Ethical Issues Arising in *Pro Bono* Representations,” Annual Ethics Symposium of the California State Bar, Los Angeles, CA (April 20, 2013)
- Panelist, “Ethics Update 2012: Significant Developments in the Law of Lawyering,” Annual Meeting of the California State Bar, Monterey, CA (October 12, 2012)
- Moderator, “The No Contact Rule: Up Close and Personal,” Annual Ethics Symposium of the California State Bar, San Francisco, CA (May 19, 2012)

- Co-Teacher, “Negotiations: Creating and Claiming Value,” Harvard University, Cambridge, MA (February 16, 2012 & November 17, 2011)
- Co-Teacher, “Negotiations: Strategies of Influence,” Harvard University, Cambridge, MA (November 15, 2011)
- Moderator & Panelist, “Dealing with Difficult Clients While Maintaining Your Professional Responsibility,” Annual Meeting of the California State Bar, Long Beach, CA (September 17, 2011)
- Moderator, “Ethics on the Inside (Ethical Issues Faced by In-House Attorneys),” Annual Ethics Symposium of the California State Bar, Irvine, CA (April 9, 2011)
- Moderator & Panelist, “Conflicts for Lawyers: How to Get Yourself Disqualified, Sued and Disciplined,” Annual Meeting of the California State Bar, Monterey, CA & San Diego, CA (September 24, 2010 & September 11, 2009)
- Panelist, “When Private Equity Comes Calling: The Role of Corporate Counsel in Takeover Transactions,” 2007 Institute for Corporate Counsel, Los Angeles, CA (December 6, 2007)
- Presenter, “Basics of Mergers & Acquisitions,” Southern California Chapter of ACCA, Los Angeles & Orange Counties, CA (November 8, 2006)
- Panelist, “Developments in Corporate Governance: Revisiting Director Voting and other Hot Potatoes,” ABA Business Bar Leaders Conference, Chicago, IL (May 10, 2006)
- Panelist, “Legislation: Turning Ideas into Law: Effective Legislative Strategies for Business Law Organizations,” ABA Business Bar Leaders Conference, Chicago, IL (May 10, 2006)
- Panelist, “Mergers & Acquisitions: Growth, Access to Capital and Liquidity through Mergers, Acquisitions and Strategic Alliances,” The Investment Capital Conference 2004, Los Angeles, CA (April 27, 2004)
- Guest Lecturer, “Corporate Governance,” USC Business School, Course on Advanced Finance, Los Angeles, CA (July 26, 2004)
- Moderator & Panelist, “Doing Business Online: Financing Online Operations,” Law Seminars International, Los Angeles, CA (August 25, 2000)

Publications (since 2004)

- *Ballantine & Sterling: California Corporation Laws*, General Editor (2012 – Present)
- *Life Cycle of a Business: Transaction Skills*, UCLA Law Course Reader, Editor (2002 – Present)
- *Lexis Practice Advisor: Ethics For In-House Counsel*, Contributing Author (2015 – Present)
- “Teach the Basics of Contract Drafting, Corporate Governance & Transactional Law in One Sentence,” *20 Tennessee Journal of Business Law* 387 (2019)
- “An Update: Rules of Professional Conduct,” *The Practitioner* (Summer 2018)
- “New Rules of Professional Conduct,” *Business Law News* (2018)
- “New Rules: The Entirely New Rules,” *The Daily Journal* (Part 3 of 3-part series) (June 1, 2018)
- “New Rules of Conduct: The Uncontroversial, But Important,” *The Daily Journal* (Part 2 of 3-part series) (May 25, 2018)

- “New Rules of Conduct: The Disruptive and Controversial,” *The Daily Journal* (Part 1 of 3-part series) (May 18, 2018)
- “Proposed New Ethics Rules, and Their Impact on Solo Practitioners,” *The Practitioner* (Spring 2018)
- “The Proposed Rules of Professional Conduct,” *Business Law News* (2018)
- “Proposed New Ethics Rules: What You Need to Know,” *Family Law News* (2018)
- “Best Behavior: Proposed Conduct Rules,” *Los Angeles Lawyer* (November 2017)
- “Ethics Issues in the Use of Expert Witnesses,” *The Professional Lawyer* (2017)
- “Special Coverage – Proposed Rules of Professional Conduct: Lawyer as Third-Party Neutral (Rule 2.4),” *The Daily Journal* (September 11, 2017)
- “Special Coverage – Proposed Rules of Professional Conduct: Organization as Client (Rule 1.13),” *The Daily Journal* (April 24, 2017)
- “What Transactional Lawyers Should Know About Conflicts of Interest,” *Business Law News* (with Nancy T. Avedissian) (2016)
- “The No Contact Rule Actually DOES Apply to Transactional Lawyers,” *Business Law News* (with Nancy T. Avedissian) (2015)
- “The Rules of Professional Conduct DO Apply to In-House Lawyers,” *Business Law News* (with Adam S. Bloom) (2015)
- “Ethical Issues for the In-House Transactional Lawyer,” *Business Law News* (with Adam S. Bloom) (2010)
- “Ex Parte Communications in a Transactional Practice,” *Business Law News* (with Nancy T. Avedissian) (2009)
- “Addressing Conflicts of Interest in a Transactional Practice,” *Business Law News* (with Nancy T. Avedissian) (2008)
- “Hostage Situation: Holders of Preferred Stock Can Become the Victims of Legal Blackmail by Common Stockholders When an Early-Stage Firm Fails – Unless They Take a Simple Step Up Front,” *The Deal* (October 25, 2004)

Quoted as Authority (since 2017)

- “Rules of Professional Conduct Approved by the Supreme Court,” *Ethics News*, State Bar of California website (2018 – Present)
- “Avenatti Saga Spotlights Attorney Ethics, When to Draw Lines,” *Bloomberg Law* (March 26, 2019)
- “Women on board: California law requiring female corporate directors could be unconstitutional,” *CBC News* (March 8, 2019)
- “Michael Avenatti’s Ex Mareli Miniutti Got Money Allegedly Hidden From Bankruptcy Court,” *The Daily Beast* (February 18, 2019)
- “Former Client Accuses Michael Avenatti of Operating Law Firm Like a ‘Ponzi Scheme,’” *The Daily Beast* (January 22, 2019)
- “Michael Avenatti Preps for Two Weeks of Hell: Child Support, Debts, and Abuse Allegations,” *The Daily Beast* (December 3, 2018)
- “Raging Wildfires Bring Concerns of Legal Fraud in California,” *Bloomberg Law* (November 16, 2018)
- “California Rules of Professional Conduct Update,” *Legal Talk Network* (October 16, 2018)

- “Media Companies Could Run Afoul of California Law Banning All-Male Boardrooms,” *The Hollywood Reporter* (October 4, 2018)
- “California is One of Few States Implementing New Anti-Harassment Rule,” *The Daily Journal* (September 27, 2018)
- “Judge Puts Brief Pause on CBS-Shari Redstone Legal Battle,” *Variety* (May 16, 2018)
- “Trump Boasts NDAs a Common Practice for ‘Celebrities and People of Wealth,’” *NBC News* (May 3, 2018)
- “Hidden Expert-Pay Ruling Won’t Improve J&J Odds at Retrial,” *Law360* (April 30, 2018)
- “Federal Judge Rejects Stormy Daniels’ Request for Expedited Trial,” *ABC News* (March 29, 2018)
- “Porn Star Raising Funds for Legal Expenses in Trump Disclosure Fight,” *ABC News* (March 14, 2018)
- “Corporations Must Embrace Diversity to Prevent Misconduct and Liability Costs from Sexual Harassment,” *Variety* (December 13, 2017)
- “Weinstein Scandal Triggers Questions of Corporate Liability and Even Complicity,” *Variety* (October 25, 2017)
- “California Cases To Watch In 2017,” *Law360* (January 2, 2017)

MISCELLANEOUS

Bar Admissions & Memberships

- Admitted to practice in California, New York & District of Columbia
- Member:
 - American Bar Association
 - Association of Professional Responsibility Lawyers
 - California Lawyers Association
 - Los Angeles County Bar Association

Personal

- Married; father to 3 teenage boys
- Marathon runner: New York, Los Angeles, Ventura, Long Beach . . . and still going!



Exhibit B

List of Cases in Which I Have Testified as an Expert During the Past Four Years

Robert Hayman v. Michael Treiman

- Arbitration, Los Angeles County; Arbitrator Barbara A. Reeves (JAMS Case No. 1210035620)

Feldman v. GearShift Inc., T. Blinn, N. Safyurtlu, E. Cwiertny & N. Tribe

- Superior Court of the State of California for the County of Orange, Civil Complex Center; Judge Ronald L. Bauer (Case No. 30-2017-00951741)

Kenneth D. Rickel v. Martin W. Enright, Littman Krooks, LLP, et al.

- Superior Court of the State of California for the County of Los Angeles, Central District; Honorable Frederick C. Shaller (Case No. BC595770)

Jeffrey I. Golden, Trustee of Aletheia Research and Management, Inc., v. O'Melveny & Myers LLP, Steven J. Olson and J. Jorge deNeve

- Arbitration, Orange County; Arbitrator Honorable Gary A. Feess (Phillips ADR)

Adam Levin v. Weingarten Brown LLP et al.

- Arbitration, Los Angeles County; Arbitrator Edward J. Wallin (JAMS Ref. No. 1200051061)

William Atkins, Gregory Smith, and John Waite v. Allen Z. Sussman

- Arbitration, Los Angeles County; Arbitrator Irma E. Gonzalez (JAMS Ref. No. 1240054486)

Sork v. Slaughter

- Superior Court of the State of California for the County of San Diego, North County District; Honorable Timothy M. Casserly (Case No. 30-2015-00783369-CU-MC-CJC)

Marino, et al. v. Greenberg Traurig, P.A.

- Florida Circuit Court, Palm Beach County (Case No. 50-2016-CA-007297)

EQT Production Company v. Vorys, Sater, Seymour and Pease LLP and John Keller

- United States District Court, Eastern District of Kentucky, Southern Division (Case No. 6:15-CV-00146-DLB)

Brezoczky v. Domtar Corporation and Polsinelli PC

- United States District Court, Northern District of California (Case No. 5:16-CV-04995-EJD)

Drake Kennedy v. Regency Outdoor Advertising, Inc. et al.

- Superior Court of the State of California, Los Angeles County (Case No. BC522560)

Association for Los Angeles Deputy Sheriffs v. Armando Macias, Bruce Nance, et al.

- Superior Court of the State of California, Los Angeles County (Case No. BC540789)

Thomas A. Vogele, Gimino Vogele Associates, LLP v. Richard D. Williams, Susan D. Lintz, Kelly Lytton & Williams, LLP

- Superior Court of the State of California, Orange County; Honorable Michael Brenner, Judge Presiding (Case No. 30-2012-00558522-CU-NP-CJC)

Wood River Capital Resources, LLC, et al. v. CapitalSource, Inc., et al. (Asset Real Estate & Investment Company Consolidated Cases)

- Superior Court of the State of California, Los Angeles County; Honorable Elihu M. Berle (Case No. JCCP-4730)

Dyadic International, Inc. v. Ernst & Young, LLP, et al.

- Florida Circuit Court, Palm Beach County; Circuit Judge Richard Oftedal (Case No. 50 2009 CA 010680 XXXXMBAA)

maxIT Healthcare Holdings, Inc. v. Acumen Technology Solutions for Healthcare, LLC

- Arbitration, Orange County; Honorable Gary L. Taylor (JAMS Ref. No. 1200046297)

Exhibit C

Documents Provided or Made Available

1. Verified complaint of Arizona Corporation Commission (“ACC”) against DenSco Investment Corporation (8/17/16)
2. ACC’s Memorandum of Points and Authorities in Support of Application for Preliminary Injunction and Appointment of Receiver (8/17/16)
3. Receiver’s Preliminary Report (9/19/16)
4. Receiver’s Status Report (12/23/16)
5. Declaration of David Beauchamp (8/17/16)
6. Letter from D. Beauchamp to D. Chittick (5/7/07)
7. DenSco Confidential Private Offering Memorandum (6/1/07)
8. Letter from D. Beauchamp to D. Chittick (3/18/08)
9. E-mail exchanges between D. Beauchamp and D. Chittick and e-mail exchange between D. Beauchamp and M. McCoy (4/1/09)
10. D. Beauchamp handwritten notes (4/9/09)
11. E-mail exchanges between D. Beauchamp and R. Burgan (4/22/09)
12. E-mail exchanges between D. Beauchamp, D. Chittick and R. Burgan (4/23/09)
13. E-mail exchanges between D. Beauchamp and D. Chittick (5/15/09)
14. D. Beauchamp handwritten notes (6/30/09)
15. DenSco Confidential Private Offering Memorandum (7/1/09) w/ handwritten notes from 2011
16. E-mail exchanges between D. Beauchamp and D. Chittick (4/6/11)
17. D. Beauchamp handwritten notes (4/13/11)
18. E-mail exchanges between D. Beauchamp, D. Chittick and G. Schneider (5/3/11)
19. E-mail exchanges between D. Beauchamp, D. Chittick and G. Schneider (5/25/11)
20. E-mail exchanges between D. Beauchamp, D. Chittick and G. Schneider (6/10/11)
21. E-mail exchanges between D. Beauchamp, D. Chittick and G. Schneider (6/14/11)
22. E-mail exchanges between D. Beauchamp, D. Chittick and G. Schneider (6/20/11)
23. E-mail exchanges between D. Beauchamp and D. Chittick (7/11/11)
24. DenSco Confidential Private Offering Memorandum (7/1/11)
25. E-mail from D. Chittick to D. Beauchamp, DenSco investors (7/19/11)
26. Letter from Arizona Department of Financial Institutions (“ADFI”) to DenSco (8/11/11)
27. Letter from D. Beauchamp to ADFI (8/22/11)
28. E-mail exchanges between D. Beauchamp and D. Chittick (5/1/13)
29. D. Beauchamp handwritten notes re mtg. w/ D. Chittick (5/9/13)
30. Excerpt from DenSco corporate journal maintained by D. Chittick (5/9/13)
31. Draft DenSco Confidential Private Offering Memorandum (5/XX/13)
32. E-mail from D. Beauchamp to R. Pederson (6/10/13)
33. E-mail exchange between D. Beauchamp and M. Weakley (6/10/13)
34. E-mail exchanges between D. Beauchamp and D. Chittick (6/11/13)
35. E-mail from D. Chittick to D. Beauchamp (6/14/13)
36. E-mail from S. Menaged to D. Beauchamp, D. Chittick (6/14/13)
37. E-mail exchanges between D. Beauchamp and D. Chittick (6/14/13)
38. E-mail exchanges between D. Beauchamp and R. Wang (6/17/13)

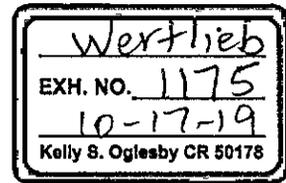
39. Excerpt from DenSco website (6/17/13)
40. D. Beauchamp handwritten notes re call w/ D. Chittick (6/17/13)
41. E-mail from D. Beauchamp to R. Wang (6/17/13)
42. D. Beauchamp handwritten notes re call w/ R. Wang (6/17/13)
43. E-mail from D. Beauchamp to M. Weakley (6/17/13)
44. Excerpt from DenSco corporate journal maintained by D. Chittick (6/17/13)
45. D. Beauchamp handwritten notes re call w/ R. Wang (6/18/13)
46. D. Beauchamp handwritten notes re call w/ M. Weakley (6/18/13)
47. E-mail exchanges between D. Beauchamp, R. Wang, K. Henderson, R. Endicott, G. Jensen (6/20-21/13)
48. E-mail from D. Beauchamp to E. Sipes (6/25/13)
49. D. Beauchamp handwritten notes re E. Sipes (6/25/13)
50. D. Beauchamp handwritten notes re call w/ E. Sipes (6/27/13)
51. D. Beauchamp handwritten notes re call w/ D. Chittick (6/27/13)
52. E-mails from D. Chittick to D. Beauchamp (6/27/13)
53. E-mail exchange between E. Sipes and D. Beauchamp (7/1/13)
54. E-mail exchanges between D. Beauchamp and D. Chittick (7/10/13)
55. E-mail exchanges between D. Beauchamp and D. Chittick (7/11/13)
56. Draft DenSco Confidential Private Offering Memorandum (7/XX/13)
57. E-mail exchanges between D. Beauchamp and G. Jensen (8/6/13)
58. D. Beauchamp handwritten notes re calls w/ D. Chittick (8/26/13)
59. Letter from D. Beauchamp and J. Zweig to D. Chittick (8/30/13)
60. E-mail exchanges between D. Beauchamp and D. Chittick (9/12/13)
61. Letter from D. Beauchamp to D. Chittick (9/12/13)
62. E-mail exchanges between D. Beauchamp and D. Chittick (9/12/13)
63. Clark Hill New Client/New Matter form (9/13/13)
64. E-mail from S. Brewer to L. Stringer (9/17/13)
65. E-mail from D. Chittick to D. Beauchamp re "few things" (12/18/13)
66. E-mail from D. Chittick to D. Beauchamp re "2011 memorandum" (12/18/13)
67. E-mail from D. Beauchamp to D. Chittick re "2011 memorandum" (12/18/13)
68. E-mail exchange between D. Chittick and D. Beauchamp (1/5/14)
69. E-mail from D. Chittick to D. Beauchamp (1/6/14)
70. E-mail from D. Chittick to D. Beauchamp (1/7/14)
71. D. Beauchamp handwritten notes from meeting with D. Chittick and S. Menaged (1/9/14)
72. E-mail exchange between D. Chittick and D. Beauchamp (1/9/14)
73. Clark Hill New Client/Matter form (1/10/14)
74. D. Beauchamp handwritten notes from telephone call with D. Chittick (1/10/14)
75. Excerpt from DenSco corporate journal (1/10/14)
76. E-mail exchange between D. Chittick and D. Beauchamp (1/12/14)
77. E-mail from D. Beauchamp to D. Chittick (1/15/14)
78. E-mail from S. Menaged to D. Beauchamp and D. Chittick (1/16/14)
79. E-mail exchange between D. Chittick and D. Beauchamp (1/16/14)
80. E-mail exchange between D. Chittick, D. Beauchamp, S. Menaged, J. Goulder (1/17/14)
81. Executed Term Sheet (1/17/14)
82. E-mail exchange between D. Chittick and D. Beauchamp (1/21/14)
83. E-mail exchange between D. Chittick and D. Beauchamp (1/21/14)

84. E-mail exchange between D. Chittick and D. Beauchamp (1/21/14)
85. Excerpt from DenSco corporate journal (1/10/14)
86. E-mail exchange between D. Chittick and D. Beauchamp (1/23/14)
87. E-mail exchange between D. Chittick and D. Beauchamp (1/31/14)
88. E-mail from D. Beauchamp to D. Chittick (2/4/14)
89. E-mail from D. Beauchamp to D. Chittick (2/4/14)
90. D. Beauchamp handwritten notes from call with D. Chittick (2/6/14)
91. E-mail exchange between D. Beauchamp and D. Chittick (2/7/14)
92. E-mail exchange between D. Beauchamp and D. Chittick (2/7/14)
93. D. Beauchamp handwritten notes from call with D. Chittick and S. Menaged (2/7/14)
94. D. Beauchamp handwritten notes from calls with D. Chittick (2/7/14)
95. Excerpt from DenSco journal (2/7/14)
96. E-mail exchange between D. Beauchamp and D. Chittick (2/9/14)
97. E-mail exchange between D. Beauchamp and D. Chittick (2/10/14)
98. D. Beauchamp handwritten notes from calls with D. Chittick (2/11/14)
99. E-mail exchange between D. Beauchamp and D. Chittick (2/14/14)
100. E-mail exchange between D. Beauchamp and D. Chittick (2/15/14)
101. E-mail exchange between D. Beauchamp and D. Chittick (2/20/14)
102. E-mail exchange between D. Beauchamp and D. Chittick (2/20/14)
103. D. Beauchamp handwritten notes from meeting with D. Chittick, S. Menaged, J. Goulder (2/20/14)
104. Excerpt from DenSco journal (2/20/14)
105. D. Beauchamp handwritten notes from call with D. Chittick (2/21/14)
106. Excerpt from DenSco journal (2/21/14)
107. D. Beauchamp handwritten notes from call with D. Chittick (2/24/14)
108. Excerpt from DenSco journal (2/24/14)
109. E-mail exchange between D. Beauchamp and D. Chittick (2/25/14)
110. Excerpt from DenSco journal (2/25/14)
111. E-mail exchange between D. Beauchamp and D. Chittick (2/26/14)
112. E-mail exchange between D. Beauchamp and D. Chittick (2/26/14)
113. E-mail exchange between D. Beauchamp and B. Price (2/26/14)
114. Excerpt from DenSco journal (2/26/14)
115. D. Beauchamp handwritten notes from call with D. Chittick (2/27/14)
116. E-mail exchange between D. Beauchamp and B. Price (2/27/14)
117. Excerpt from DenSco journal (2/26/14)
118. D. Beauchamp handwritten notes from call with D. Chittick (3/3/14)
119. Excerpt from DenSco journal (3/3/14)
120. E-mail exchange between D. Beauchamp and D. Chittick (3/4/14)
121. D. Beauchamp handwritten notes from call with D. Chittick (3/7/14)
122. Excerpt from DenSco journal (3/7/14)
123. E-mail exchange between D. Beauchamp and D. Chittick (3/10/14)
124. D. Beauchamp handwritten notes from calls with D. Chittick (3/11/14)
125. Excerpt from DenSco journal (3/11/14)
126. D. Beauchamp handwritten notes from calls with D. Chittick (3/12/14)
127. D. Beauchamp handwritten notes from calls with D. Chittick and S. Menaged (3/12/14)
128. E-mail exchange between D. Beauchamp and D. Chittick (3/12/14)

129. E-mail exchange between D. Beauchamp and D. Chittick (3/12/14)
130. E-mail exchange between D. Beauchamp and D. Chittick (3/13/14)
131. E-mail exchange between D. Beauchamp and D. Chittick (3/13/14)
132. E-mail exchange between D. Beauchamp and D. Chittick (3/13/14)
133. E-mail exchange between D. Beauchamp and D. Chittick (3/14/14)
134. Excerpt from DenSco journal (3/17/14)
135. E-mail exchange between D. Beauchamp and D. Chittick (3/17/14)
136. E-mail exchange between D. Beauchamp and D. Chittick (3/18/14)
137. E-mail exchange between D. Beauchamp and D. Chittick (3/19/14)
138. Excerpt from DenSco journal (3/20/14)
139. Forbearance Agreement (4/16/14)
140. Excerpt from DenSco journal (4/16/14)
141. E-mail exchange between D. Beauchamp and D. Chittick (4/18/14)
142. D. Beauchamp handwritten notes from call with D. Chittick (4/24/14)
143. E-mail from D. Chittick to D. Beauchamp (4/24/14)
144. Copy of DenSco Confidential Private Offering Memorandum dated July 2011 with handwritten notes (4/24/14)
145. E-mail exchange between D. Beauchamp and D. Chittick (4/25/14)
146. E-mail exchange between D. Beauchamp and D. Chittick (4/28/14)
147. E-mail exchange between D. Beauchamp and D. Chittick (4/28/14)
148. E-mail exchange between D. Beauchamp and D. Chittick (4/28/14)
149. D. Beauchamp handwritten notes from calls with D. Chittick (4/29/14)
150. D. Beauchamp handwritten notes re private offering memorandum (4/29/14)
151. Excerpt from DenSco journal (4/29/14)
152. D. Beauchamp handwritten notes re private offering memorandum (5/13/14)
153. E-mail from D. Schenck to D. Beauchamp (5/14/14)
154. Draft of DenSco Confidential Private Offering Memorandum (5/14/14)
155. Draft of DenSco Confidential Private Offering Memorandum (5/14/14)
156. E-mail exchanges between D. Beauchamp and D. Chittick (6/12/14)
157. E-mail exchange between D. Beauchamp and D. Schenck (6/13/14)
158. Authorization to Update Forbearance Documents (6/18/14)
159. Excerpt from DenSco journal (7/2/14)
160. Excerpt from DenSco journal (7/25/14)
161. Excerpt from DenSco journal (7/31/14)
162. E-mail exchange between D. Beauchamp and D. Chittick (3/13/15)
163. E-mail exchange between D. Chittick and S. Menaged (3/13/15)
164. Excerpt from DenSco journal (3/13/15)
165. Excerpt from DenSco journal (3/24/15)
166. Excerpt from DenSco journal (6/18/15)
167. Letter to Investors (7/28/16)
168. Iggy List (7/28/16)
169. E-mail from D. Beauchamp to DenSco investors (8/3/16)
170. E-mail from D. Beauchamp to DenSco investors (8/5/16)
171. E-mail exchange between D. Beauchamp and K. Johnson (8/8/16)
172. E-mail exchange between D. Beauchamp and R. Brinkman (8/21/16)
173. E-mail exchange between D. Beauchamp and R. Brinkman (8/21/16)

174. Letter from D. Beauchamp to D. Chittick with enclosed invoices (2/20/14)
175. Letter from D. Beauchamp to D. Chittick with enclosed invoices (3/14/14)
176. Letter from D. Beauchamp to D. Chittick with enclosed invoices (4/24/14)
177. Letter from D. Beauchamp to D. Chittick with enclosed invoices (5/23/14)
178. Letter from D. Beauchamp to D. Chittick with enclosed invoices (6/25/14)
179. Letter from D. Beauchamp to D. Chittick with enclosed invoice (7/16/14)
180. Letter from D. Beauchamp to D. Chittick with enclosed invoice (8/20/14)
181. Plaintiff's Initial Disclosure Statement w/ Appendices (3/9/18)
182. Defendant's Initial Disclosure Statement (3/9/18)
183. Notice of Service of Preliminary Expert Opinion Declaration – M.Hiraide (3/9/18)
184. Plaintiff's Second Disclosure Statement documents (3/27/18), [RECEIVER_000001-1497]
185. Plaintiff's Third Disclosure Statement documents (5/15/18), [RECEIVER_000001-1497]
186. Defendant's Third Supplemental Disclosure Statement documents (6/13/18), [AF000001-002448, AZBEN000001-005248, CH_0013387-0013616, GE000001-000257, SELL000001-000766]
187. Beauchamp's Responses to Plaintiff's First Set of Non-Uniform Interrogatories No.1 thru 14; including breakdown of each NUI with the referenced documents (6/21/18)
188. Plaintiff's Fourth Disclosure Statement documents (7/11/18), [RECEIVER_001498-001548]
189. Daniel Schenck Deposition Transcript, Exhibits, Errata sheet (6/19/18)
190. Robert Anderson Deposition Transcript and Exhibits (6/21/18)
191. David Beauchamp Deposition Transcript, Exhibits, Errata sheet and video deposition (7/19-20/18)
192. Shawna Heuer Deposition Transcript (8/22/18)
193. Mark Sifferman Deposition Transcript (8/31/18)
194. Scott Menaged 2004 Exam Transcript
195. Edward Hood Deposition Transcript and Exhibits (2/8/19)
196. Letter from R. Miller to D. Chittick w/ attachment re Mortgage Recordation; Demand for Subordination (1/6/14), [CH_0000828-0000848]
197. Notice of Claim Against Estate of Denny J. Chittick (12/9/16)
198. Exhibits A thru H re Motion to Modify Receivership Order re Alleged Joint Privilege (12/7/17)
199. Receiver's Petition No. 48 for Reconsideration of the Order Appointing Receiver with Respect to Alleged Joint Attorney Client Privilege (12/11/17)
200. Chittick Estate's Response to Receiver's Petition No. 48 re Attorney-Client Relationship (1/3/18)
201. Chittick Estate's Sur-Response to Receiver's Petition No. 48 re Attorney-Client Relationship (1/9/18)
202. Receiver's Reply in Support of Petition No. 48 for Reconsideration of the Order Appointing Receiver with Respect to Alleged Joint Attorney Client Privilege (1/12/18)
203. Plaintiff's Third Set of Requests for Production of Documents to Defendant Clark Hill (8/1/18)
204. Defendants' Sixth Supplemental Disclosure Statement (3/13/19)
205. Blackline Fifth Supplemental Disclosure Statement to Sixth Supplemental Disclosure Statement (3/13/19)

206. Signed Verification to Defendants' Sixth Supplemental Disclosure Statement (3/12/19)



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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 DISCLOSURE OF
REBUTTAL EXPERT WITNESS
REPORT RE STANDARD OF CARE**

(Commercial case)

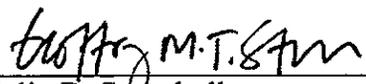
(Assigned to the
Honorable Daniel Martin)

Pursuant to the scheduling order entered in this matter, Plaintiff Peter S. Davis, as Receiver of DenSco Investment Corporation, hereby discloses the attached rebuttal report of Neil J. Wertlieb, which addresses the Preliminary Expert Report of J. Scott Rhodes and the Expert Report of Kevin Olson, served by Defendants on April 5, 2019.

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DATED this 7th day of June 2019.

OSBORN MALEDON, P.A.

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**REBUTTAL REPORT OF NEIL J WERTLIEB
TO DEFENDANTS' EXPERT REPORTS**

In the matter of

Peter S. Davis, as Receiver of DenSco Investment Corporation

v.

Clark Hill PLC, David G. Beauchamp and Jane Doe Beauchamp

Submitted on June 4, 2019

**REBUTTAL REPORT OF NEIL J WERTLIEB
TO DEFENDANTS' EXPERT REPORTS**

In the matter of

Peter S. Davis, as Receiver of DenSco Investment Corporation
v.
Clark Hill PLC, David G. Beauchamp and Jane Doe Beauchamp

Submitted on June 4, 2019

I. INTRODUCTION

By letters dated June 15, 2017 and October 3, 2017, the law firm of Osborn Maledon, P.A. ("Osborn Maledon") retained me (through Wertlieb Law Corp, where I am principal) to serve as an expert witness in the matter of *Peter S. Davis, as Receiver of DenSco Investment Corporation v. Clark Hill PLC, David G. Beauchamp and Jane Doe Beauchamp* (this "Case").

This Case was initiated by the filing of a Complaint on October 16, 2017, by Peter S. Davis, as the court-appointed receiver (the "Receiver") of DenSco Investment Corporation, an Arizona corporation ("DenSco"), following the death of Denny Chittick, DenSco's sole owner, shareholder and operator. In the Complaint, the Receiver states two claims for relief against the law firm of Clark Hill PLC ("Clark Hill") and David G. Beauchamp (collectively, the "Defendants"): (1) legal malpractice; and (2) aiding and abetting breach of fiduciary duties. The claims arise from the legal representation of DenSco by the Defendants.

I submitted an Expert Report in this Case on March 26, 2019 ("my Expert Report").¹ On April 5, 2019, the Defendants filed the Preliminary Expert Declaration of J. Scott Rhodes (the "Rhodes Declaration") and the Expert Report of Kevin Olson (the "Olson Report"). Mr. Rhodes' deposition (the "Rhodes Deposition") was taken on May 15, 2019, and Mr. Olson's deposition (the "Olson Deposition," and together with the Rhodes Deposition, the "Defendants' Experts' Depositions") was taken on May 17, 2019. This Rebuttal Report contains my observations with respect to the Rhodes Declaration and the Olson Report and the Defendants' Experts' Depositions.

II. THE RHODES DECLARATION AND DEPOSITION

With respect to the Rhodes Declaration and the Rhodes Deposition:

- First, I note that Mr. Rhodes expressly qualified his Declaration by stating that he is not opining with respect to "the standard of care specific to lawyers practicing in the area of

¹ Terms used in my Expert Report which are referenced in this Rebuttal Report without definition are intended to have the same meaning as used in my Expert Report.

securities law.”² Further, Mr. Rhodes acknowledged in his deposition that he has not practiced in the area of securities law,³ nor was he asked to form any opinions regarding the standard of care of securities lawyers with respect to securities laws in the state of Arizona.⁴ Consequently, in my opinion, Mr. Rhodes is not qualified to opine on what Mr. Beauchamp would have or should have known in his capacity as the securities lawyer for DenSco, nor is he qualified to opine on Mr. Beauchamp’s responsibilities and obligations in light of the risks of securities fraud and related aiding and abetting (as discussed in my Expert Report).

- Mr. Rhodes informs his opinions on Mr. Beauchamp’s conduct based on “Chittick’s history of substantially following Mr. Beauchamp’s advice over the years.”⁵ However, Mr. Chittick in fact was not following Mr. Beauchamp’s advice, at least with respect to his advice as to how to fund DenSco’s loans so to ensure that such loans were in a first lien position (as disclosed in the 2011 POM).⁶ As described in my Expert Report, Mr. Beauchamp had a series of “red flag” warnings that Mr. Chittick was not following such advice, beginning with the Freo Lawsuit in June 2013, through the December 2013 Phone Call, and culminating with the Bryan Cave Demand Letter in early January 2014. Certainly by January 7, 2014, when Mr. Chittick expressly acknowledged that he was not following Mr. Beauchamp’s advice, if not earlier, it was undeniable that Mr. Beauchamp knew Mr. Chittick was not following his advice on this matter of fundamental importance (as characterized by Mr. Beauchamp). Because of the materially inaccurate statements and material omissions made in the 2011 POM, which Mr. Chittick was continuing to use to solicit investors, Mr. Beauchamp knew that his client was committing securities fraud. As a result, any reliance that Mr. Beauchamp may have placed on his incorrect belief as to Mr. Chittick’s history of following legal advice was misplaced and should be irrelevant in evaluating the Defendants’ conduct following the red flag warnings.
- The Rhodes Declaration asserts that, “In late 2013 and early 2014, Mr. Beauchamp had no reason to suspect, much less to ‘know’ that Chittick himself was engaging [...] in any illegal conduct.”⁷ The Rhodes Declaration further asserts that “Beauchamp was ethically

² Rhodes Declaration, paragraph D, Qualifications.

³ Rhodes Deposition, page 23, lines 5-7. Mr. Rhodes also acknowledged in his deposition that he does not practice in the area of drafting private offering memorandums (page 23), hard-money lending (page 23), fiduciary duties owed by a hard-money lender to its investors (page 23), forbearance agreements (page 30), and when a corporation owes fiduciary duties to its stockholders or its investors (page 79).

⁴ Rhodes Deposition, page 28, lines 20-24.

⁵ Rhodes Declaration, paragraph 25; see also paragraph 31.

⁶ See page 6, Defendants’ DS (“DenSco and Mr. Chittick were both advised [...] that it was of *fundamental importance* that DenSco safeguard the use of its investors’ funds in conjunction with properly recording liens, in order to ensure that DenSco’s loans were in first position.” [italics added]).

⁷ Rhodes Declaration, paragraph 26. Note that “a violation of law” is only one of two categories of misconduct that trigger an attorney’s obligations under Rule 1.13. The other category is “violation of a legal obligation to the organization” (such as a breach of fiduciary duty).

prohibited in late 2013 and early 2014 from taking any action [pursuant to] ER 1.13's requirement to take action contrary to Chittick's business decisions."⁸ However, beginning in June 2013, Mr. Beauchamp had a series of red flag warnings that, as DenSco's securities lawyer, should have at least given him reason to suspect illegal conduct on the part of Mr. Chittick. Further, Mr. Beauchamp knew that, beginning in July 2013, Mr. Chittick was causing DenSco to improperly issue securities based on the expired and out-of-date 2011 POM. Regardless, by January 7, 2014, Mr. Beauchamp knew Mr. Chittick was not following his advice, which was causing his client DenSco to commit securities fraud. The Rhodes Declaration does not dispute this fact. As described in my Expert Report, this knowledge imposed an obligation on the part of the Defendants to immediately withdraw from the representation of DenSco. However, the Rhodes Declaration acknowledges that this did not happen.⁹

- The Rhodes Declaration asserts that "Mr. Beauchamp acted within the standard of care [...] by promptly communicating [...] about the legal ramifications to DenSco of the 'double lien' issue."¹⁰ However, in my opinion (as described in my Expert Report), merely paying lip service to the client's disclosure obligations does not satisfy the standard of care applicable to a securities lawyer when that lawyer knows that his client was committing securities fraud, and is continuing to commit securities fraud following such communication. The Rhodes Declaration also asserts that "Chittick never indicated he would not disclose; the only issue appeared to be about when he would disclose."¹¹ However, this assertion ignores the fact that it was the timing of such updated and corrected disclosure that was critically important, due to the fact that Mr. Chittick was causing DenSco to commit securities fraud in the interim.
- The Rhodes Declaration asserts that Mr. Beauchamp was acting within the standard of care by deferring to Mr. Chittick's "plan to resolve the 'double lien' issue so as to include the plan with the disclosure of the issue to investors."¹² This assertion, however, ignores the fact that the Chittick Plan included preparation of a Forbearance Agreement, an unnecessary document that delayed disclosure by three months, while Mr. Beauchamp's client continued to offer and sell securities in violation of the disclosure requirements under applicable securities laws. The Rhodes Declaration further asserts that Mr. Beauchamp was not obligated "to seize control of the DenSco decision-making process from Chittick."¹³ This assertion, however, ignores the fact that Mr. Beauchamp was not simply passive with respect to the Chittick Plan, but rather he encouraged Mr. Chittick to

⁸ Rhodes Declaration, paragraph 30.

⁹ Rhodes Declaration, paragraph 42; page 12, lines 21-26, Defendants' DS ("As Mr. Beauchamp explained in a February 10, 2014 email to his colleagues, 'we advised our client that he needs to have a Forbearance Agreement in place to evidence the forbearance and the additional protections he needs.'").

¹⁰ Rhodes Declaration, paragraph 28.

¹¹ Rhodes Declaration, paragraph 35.

¹² Rhodes Declaration, paragraph 33.

¹³ Rhodes Declaration, paragraph 33.

document the Plan and Mr. Beauchamp himself took the lead in documenting and in advocating for the Forbearance Agreement.¹⁴

- The Rhodes Declaration asserts that Mr. Beauchamp was not obligated “to perform an independent investigation into Menaged,” and that “to have done so [...] would have violated his ethical duties” – “[u]nless Chittick had asked him to investigate Menaged.”¹⁵ The Rhodes Declaration, however, ignores the fact that Mr. Chittick specifically asked Mr. Beauchamp to do exactly that, at the time of the Freo Lawsuit.¹⁶
- The Rhodes Declaration includes the following statement: “Beauchamp reasonably could consider that [...] DenSco and Chittick were one client.”¹⁷ This strikes me as an incorrect and fundamentally flawed statement of the law. While DenSco was wholly-owned by Mr. Chittick, they are not the same person nor the same client, nor should they have been treated as such by the Defendants. It was DenSco, and not Mr. Chittick, that was issuing Notes to investors, and it was DenSco, and not Mr. Chittick, that was using the proceeds from those sales to fund mortgage loans. The problems with Mr. Rhodes’ statement become obvious when viewed in the context of the events that occurred in this Case. Following the death of Mr. Chittick, Mr. Beauchamp acknowledged that it was a conflict of interest for the Defendants to represent both DenSco and its owner, the Chittick Estate.¹⁸ Further, as described in my Expert Report, the fiduciary duties owed individually by Mr. Chittick as director, officer and sole shareholder shifted to DenSco’s creditors once DenSco became insolvent (or entered the zone of insolvency), such that Mr. Chittick was obligated to treat all assets of DenSco as “existing for the benefit” of the Noteholders and other creditors.
- The Rhodes Declaration asserts as a factual matter that Mr. Beauchamp “terminated the attorney-client relationship in May 2014.”¹⁹ However, the Rhodes Declaration fails to cite to any evidence in support of this factual assertion, and Mr. Rhodes in his deposition acknowledged that he had “seen no writing indicating one way or another whether Mr. Chittick believed that Clark Hill had withdrawn.”²⁰ Mr. Rhodes conceded during his deposition that, if in fact Mr. Beauchamp did not withdraw in May 2014, “he did not

¹⁴ Defendants’ DS, page 8 (“Mr. Beauchamp suggested that Mr. Chittick and Menaged document their plan.”);

¹⁵ Rhodes Declaration, paragraph 34.

¹⁶ Email dated June 14, 2013 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged (“Easy Investments [sic] willing to pay the legal fees to fight it. I just wanted you to be aware of it, and talk to [Menaged’s] attorney. Contact info is below.”).

¹⁷ Rhodes Declaration, paragraph 27.

¹⁸ Exhibit 288A to Deposition of Mr. Beauchamp, email dated August 15, 2016 from Mr. Beauchamp to Chris Hyman, Executive Vice President, American Title Service Agency (“Due to potential conflicts of interest, we have resigned as counsel to the Estate”).

¹⁹ Rhodes Declaration, paragraph 42.

²⁰ Rhodes Deposition, pages 49-50, lines 19-2.

meet his duties.”²¹ As discussed in my Expert Report, there is substantial evidence that the Defendants did not in fact terminate its relationship with DenSco in May 2014.

- The Rhodes Declaration suggests that it was appropriate for the Defendants to represent both DenSco and the Chittick Estate following the death of Mr. Chittick because “Lawyers are permitted to give legal assistance in an emergency if the assistance is ‘limited to that reasonably necessary under the circumstances,’” citing to Rule 1.1, Comment [3], of the Arizona’s Rules of Professional Conduct.²² What the Rhodes Declaration ignores, however, is that Rule 1.1 is the rule relating to competence. As such, Rule 1.1, as extended by Comment [3] with respect to emergency situations, only pertains to competence (e.g., the quality of the work performed in an emergency) and not as to whether the attorney is otherwise permitted to engage with a particular client. As discussed in my Expert Report, the Defendants failed to recognize and properly address the conflicts of interest they had (a) in representing DenSco in wind down efforts due to their own interests, and (b) in representing DenSco and the Chittick Estate due to the potential claims that DenSco had against the Chittick Estate. While the sudden and unexpected death of Mr. Chittick may have created an emergency of the type contemplated by Rule 1.1, such emergency does not excuse the Defendants’ violation of Rule 1.7 pertaining to conflicts of interest – whether in taking on a new matter for an existing or former client (in the case of DenSco) or taking on an entirely new client (in the case of the Chittick Estate). In other words, contrary to what is suggested in the Rhodes Declaration, there is no emergency exemption to Rule 1.7, and therefore no excuse for the Defendants’ improper representation of DenSco or the Chittick Estate following the death of Mr. Chittick.
- Finally, at his deposition, Mr. Rhodes offered an additional opinion on the above topic: that there was no conflict of interest for the Defendants in opening a file after Mr. Chittick’s death to represent DenSco in wind down efforts.²³ Mr. Rhodes appeared to be of the opinion that no conflict of interest could exist until someone asserted a claim against Clark Hill.²⁴ He further testified that eventually “Clark Hill informed individuals that they were going to be withdrawing because they anticipated that there was a conflict, and that’s because they had received some indications of questions being posed about their conduct.”²⁵ But Mr. Rhodes was unable to identify when the obligation to withdraw arose, because he was “not sure when the first communication came to Clark Hill that [...] gave them the first indication of an actual review of their conduct.”²⁶ Mr. Beauchamp approved the opening of the file for wind down efforts on August 23, 2016, five days after the Receiver was appointed. The Defendants represented DenSco in wind down efforts for at least eight weeks following Mr. Chittick’s suicide (beginning on July

²¹ Rhodes Deposition, pages 186-187, lines 24-2.

²² Rhodes Declaration, paragraph 42.

²³ Rhodes Deposition, page 194, lines 15-17, and page 196, line 4. Mr. Rhodes offered no such opinion with respect the Defendants’ representation of the Chittick Estate.

²⁴ Rhodes Deposition, page 196, lines 17-24.

²⁵ Rhodes Deposition, page 198, lines 18-22.

²⁶ Rhodes Deposition, page 200, lines 10-15.

30, 2016, and continuing at least through September 23, 2016). Even absent the assertion of a claim against Clark Hill, the Defendants were well aware of the risk that claims for malfeasance could be brought against them on behalf of DenSco, as evidenced, *inter alia*, in the Iggy Letter and by Mr. Beauchamp's "extensive" discussions with Ms. Heuer regarding potential conflicts he had in representing DenSco.²⁷ Contrary to Mr. Rhodes' apparent opinion, Arizona Rule 1.7 (Conflict of Interest: Current Clients) does not require that a claim be asserted on behalf of a client in order for a conflict to exist: "A [...] conflict of interest exists if [...] there is a significant risk that the representation [...] will be materially limited [...] by a personal interest of the lawyer." As stated in Comment [10] to the Rule: "The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice." In my opinion, that is exactly what occurred here. As stated in my Expert Report, independent legal counsel to DenSco would have considered and pursued claims against the Defendants for their malfeasance; instead, it appears that Mr. Beauchamp actively tried to protect himself and Clark Hill against such claims.

III. THE OLSON REPORT AND DEPOSITION

With respect to the Olson Report and the Olson Deposition:

- Consistent with my Expert Report, the Olson Report acknowledges that "DenSco did not have any directors, officers, or employees other than Mr. Chittick," who "was responsible for managing DenSco's business, with only occasional assistance from experts, consultants and contractors."²⁸ The Olson Report appears to dismiss this serious problem by explaining that Mr. Chittick "sought to operated DenSco with very low overhead."²⁹ While perhaps a desirable goal on the part of Mr. Chittick, the Olson Report fails to recognize that DenSco's ability to manage its business operations and compliance obligations was severely constrained – a serious problem that should have been obvious to Mr. Beauchamp, as described in my Expert Report.
- Like Mr. Rhodes, Mr. Olson informs his opinions on Mr. Beauchamp's conduct based on Mr. Chittick appearing to be "trustworthy [...] and a good client," who "appeared to follow Mr. Beauchamp's advice."³⁰ Under a section entitled "Reasonableness of Mr. Beauchamp's reliance on Mr. Chittick," the Olson Report states that Mr. Chittick "appeared to have followed appropriate procedures," which "properly informed Mr. Beauchamp's perception of, and advice to, Mr. Chittick."³¹ However, Mr. Chittick in fact was not following Mr. Beauchamp's advice, at least with respect to his advice as to

²⁷ See pages 447-448, lines 19-15, Deposition of Mr. Beauchamp.

²⁸ Olson Report, page 2.

²⁹ Olson Report, page 2.

³⁰ Olson Report, page 4.

³¹ Olson Report, page 14.

how to fund DenSco's loans so to ensure that such loans were in a first lien position (as disclosed in the 2011 POM).³² As described in my Expert Report, Mr. Beauchamp had a series of "red flag" warnings that Mr. Chittick was not following such advice, beginning with the Freo Lawsuit in June 2013, through the December 2013 Phone Call, and culminating with the Bryan Cave Demand Letter in early January 2014. Certainly by January 7, 2014, when Mr. Chittick expressly acknowledged that he was not following Mr. Beauchamp's advice, if not earlier, it was undeniable that Mr. Beauchamp knew Mr. Chittick was not following his advice on this matter of fundamental importance (as characterized by Mr. Beauchamp). Because of the materially inaccurate statements and material omissions made in the 2011 POM, which Mr. Chittick was continuing to use to solicit investors, Mr. Beauchamp knew that his client was committing securities fraud. As a result, any reliance that Mr. Beauchamp may have placed on his incorrect belief as to Mr. Chittick's history of following legal advice was misplaced and should be irrelevant in evaluating the Defendants' conduct following the red flag warnings.

- I generally agree in concept with the summary description of "Securities Regulations and Context" contained on pages 4 through 8 of the Olson Report.³³ However, this description (and other portions of the Olson Report, as described below) fails to recognize that, while the issuer of securities in a Rule 506 offering to accredited investors "is not required to provide substantive information in *any particular format*,"³⁴ because the disclosure of such information is subject to Rule 10b-5 (among other applicable securities laws and rules), the issuer's own statements regarding such format are highly relevant. As noted in my Expert Report, the 2011 POM contained the following statements:
 - The Company intends to offer the Notes on a continuous basis until the earlier of (a) the sale of the maximum offering, or (b) two years from the date of this memorandum.³⁵
 - In order to continue offering the Notes during this [two year] period, the Company will need to update this Memorandum from time to time. [...] A failure to update this Memorandum as required could result in the Company being subject to a claim under Section 10b-5 [sic] of the Securities Act for employing manipulative or deceptive device in the sale of securities, subjecting the Company, and possibly the management of the Company, to claims from regulators and investors.³⁶

³² See page 6, Defendants' DS ("DenSco and Mr. Chittick were both advised [...] that it was of *fundamental importance* that DenSco safeguard the use of its investors' funds in conjunction with properly recording liens, in order to ensure that DenSco's loans were in first position." [italics added]).

³³ Although it appears that the last sentence of Section 4.5 of the Olson Report is misstated.

³⁴ Olson Report, page 7 [italics added].

³⁵ 2011 POM, page (i).

³⁶ 2011 POM, page 24.

- No person has been authorized to give any information or to make any representations concerning the Company other than as contained in this Confidential Private Offering memorandum, and if given or made, such other information or representations must not be relied upon.³⁷

These statements, taken together, convey to investors that Notes were being offered exclusively pursuant to written POMs, that such POMs will be updated or replaced as required, and that any information provided outside of a POM should be disregarded. As a result, because of the language contained in the 2011 POM prepared by Mr. Beauchamp, DenSco was not permitted to offer Notes by providing substantive information in “any particular format” nor was it permitted to provide such information verbally.

- At his deposition, Mr. Olson was questioned about the form of Subscription Agreement utilized by DenSco with its investors in April 2013 and thereafter, which form was prepared by Mr. Beauchamp. The Subscription Agreement contained the following representations and warranties to be made by investors:
 - Section 2(a): “The undersigned has carefully reviewed the POM [incorrectly defined as the 2009 POM]. The undersigned has relied solely on the information contained therein, and information otherwise provided to me *in writing* by the Company.”³⁸
 - Section 2(b): “No representations have been made or information furnished to me or my advisor(s) relating to the Company or the Note which were *in any way inconsistent with the POM*.”³⁹

Contrary to the language of such representations, Mr. Olson suggested that it was reasonable and acceptable for Mr. Beauchamp to rely on Mr. Chittick’s alleged assurances in January 2014 that he was making disclosures to investors, orally and not in writing, that were inconsistent with the applicable POM.⁴⁰ In my experience, POMs are often used in private placement offerings to accredited investors, even though not required under the securities laws.⁴¹ One of the principal reasons for doing so is to create a paper trail such that, if there is a subsequent dispute with an investor as to the adequacy of disclosures made, the issuer can introduce the POM as clear evidence of what was disclosed. Relying solely on oral disclosures to update and correct material misstatements and omissions in a POM creates unnecessary exposure to the issuer. Further, the language of the Subscription Agreement indicates to investors that they must not even take into account any disclosures made orally nor any disclosures (whether orally or in writing) that were inconsistent with the POM. For these reasons, I disagree

³⁷ 2011 POM, page (v).

³⁸ Italics added.

³⁹ Italics added.

⁴⁰ See, e.g., Olson Deposition, page 68, lines 10-14; pages 71-72, lines 13-4.

⁴¹ Mr. Olson is in accord. See Olson Deposition, pages 74-75, lines 16-1.

with Mr. Olson. In my opinion, it would have been neither reasonable nor acceptable for Mr. Beauchamp to rely on any such assurances by Mr. Chittick.

- The Olson Report appears to suggest that, “[f]rom the start of its capital raising efforts, DenSco’s offerings [...] were intended to qualify under Regulation D, Rule 506(c) and appear to have so qualified.”⁴² However, Rule 506(c) did not go into effect until September 23, 2013, months after the 2011 POM expired.
- The Olson Report asserts that “DenSco could comply with its Regulation D obligations by disclosing information orally,” that “DenSco could stop using the expired POM entirely, but make other disclosures (both orally and in writing) to replace those in the expired POM,” and that “DenSco could continue to use the POM [...] and use it’s [sic] supplemental oral and written disclosures to bring the information provided to investors up to date.”⁴³ As explained above, however, because of the statements made in the 2011 POM, DenSco could do no such thing. As described in my Expert Report, the failure to provide updated and corrected information, in the manner required by the 2011 POM, resulted in a violation of Rule 10b-5 and constituted securities fraud. Further, as described in my Expert Report, Mr. Beauchamp knew or should have known that Mr. Chittick was not providing the disclosures (whether orally or in writing) that would have been required in order to update and correct the information contained in the 2011 POM.
- The Olson Report suggests that, *because* Notes were only being offered in a manner that did not mandate “specific written information that the SEC requires in [...] non-accredited investor offerings,” the Defendants did “not have to [...] confirm the information.”⁴⁴ This suggestion, however, is incorrect. Regardless of whether they were required by the specific disclosure requirements of Regulation D, POMs were in fact utilized, and as DenSco’s securities lawyer, Mr. Beauchamp bears certain responsibility for ensuring their accuracy – especially when he knew that the disclosures contained therein were materially inaccurate or incomplete.
- The Olson Report attempts to deflect what he characterizes as the Receiver’s position that “Mr. Chittick [had] taken on too much responsibility,” by observing that “[t]he amount of money being lent and raised was consistent with a ‘hot’ market as the real estate market finally recovered from the 2007 to 2010 collapse.”⁴⁵ However, although such observation may explain *why* Mr. Chittick had taken on too much responsibility, it in no way explains *how* he could possibly manage such responsibility. As detailed in my Expert Report, DenSco was operating a high-volume business in a regulated environment that would have necessitated active involvement by Mr. Chittick. Because DenSco was a “one-man shop,” its ability to manage its business operations and compliance obligations was severely constrained – a fact that should have been readily apparent to Mr. Beauchamp.

⁴² Olson Report, page 8.

⁴³ Olson Report, page 9.

⁴⁴ Olson Report, page 10.

⁴⁵ Olson Report, page 12.

- The Olson Report asserts as a factual matter that it was Mr. Chittick, and not Mr. Beauchamp, that caused delay in timely preparing the 2013 POM: “Mr. Chittick [...] did not provide all the updated detail, including financial detail, that was needed for the 2013 POM. Mr. Beauchamp also understood that Mr. Chittick preferred to wait to issue an updated POM until after he scaled down the amount outstanding to investors. Mr. Beauchamp advised against waiting.”⁴⁶ However, the Olson Report fails to cite to any evidence in support of this factual assertion. As discussed in my Expert Report, it was Mr. Chittick who prompted Mr. Beauchamp to begin work on the 2013 POM in early May 2013, but shortly thereafter it was Mr. Beauchamp who stopped working on the POM when he identified what he thought was an issue with respect to the amount outstanding. After consulting with his colleagues, Mr. Beauchamp learned that the amount outstanding was a non-issue, but by then the 2013 POM had already expired – and the Defendants never completed the updated disclosure.
- Even though it acknowledges that Mr. Chittick specifically asked Mr. Beauchamp to speak with Mr. Menaged’s attorney, the Olson Report asserts that “Mr. Chittick did not ask Mr. Beauchamp to [...] investigate the factual allegations in the [Freo Lawsuit] Complaint.”⁴⁷ The Olson Report further asserts that “neither the information in the FREO lawsuit, nor the information Mr. Chittick shared with Beauchamp about the FREO lawsuit, would have or should have prompted Mr. Beauchamp to raise additional concerns about DenSco’s business practices.”⁴⁸ Despite this, the Olson Report acknowledges that Mr. Beauchamp explained to Mr. Chittick that the Freo Lawsuit would need to be disclosed to investors.⁴⁹ However, Mr. Beauchamp failed to follow through with Mr. Menaged’s attorney as instructed by Mr. Chittick,⁵⁰ and failed to prepare any disclosures with respect to the Freo Lawsuit or ensure that such disclosures were provided to investors. As described in my Expert Report, the Freo Lawsuit was the first in a series of red flag warnings that alerted Mr. Beauchamp to the fact that his client was committing securities fraud.
- The Olson Report asserts that, aside from correspondence transitioning a portion of DenSco’s files from Bryan Cave to Clark Hill, there was no communication between Mr. Chittick and Mr. Beauchamp from August 2013 to December 2013.⁵¹ This appears to be contrary to the Defendants’ position that Mr. Chittick instructed Mr. Beauchamp to stop working on the POM in either August or September 2013, as referenced in footnote 42 in my Expert Report. Further, because Mr. Beauchamp knew that DenSco was continuing to sell Notes to investors, and that the 2011 POM contained outdated and inaccurate information – in addition to failing to disclose the Freo Lawsuit, which Mr. Beauchamp

⁴⁶ Olson Report, page 14.

⁴⁷ Olson Report, page 15.

⁴⁸ Olson Report, page 15.

⁴⁹ Olson Report, page 15.

⁵⁰ Mr. Beauchamp testified that he did not speak to the borrower’s attorney, Mr. Goulder, at this time. See page 240, lines 9-19, Deposition of Mr. Beauchamp.

⁵¹ Olson Report, page 16.

knew needed to be disclosed to investors – Mr. Beauchamp knew or should have known that his client was committing securities fraud during this time period.

- The Olson Report asserts that “Mr. Beauchamp’s advice regarding, and documentation of, a Forbearance Agreement, was an appropriate approach to provide a framework to resolve the problems with Menaged’s loans.”⁵² The Olson Report further asserts that “it was appropriate for Mr. Beauchamp to try and ascertain the facts and determine a course of action before a wholesale and meaningful disclosure to the investors could be made.”⁵³ However, as detailed in my Expert Report, the Forbearance Agreement imposed material obligations and economic burdens on DenSco, including subordinating DenSco’s recovery to the recovery of the other lenders, and had the effect of further delaying and limiting required disclosures to DenSco’s investors. The Forbearance Agreement was entered into as of mid-April 2014, nearly a year after the 2011 POM expired and three months after the Defendants’ undeniably knew that the disclosures contained in the 2011 POM were outdated and contained materially incorrect information and that the 2011 POM omitted material information required to be contained therein. And Mr. Beauchamp knew that his client had committed and was continuing to commit securities fraud during this entire time period.
- The Olson Report asserts that “[i]t was reasonable for Mr. Beauchamp to rely on Mr. Chittick’s description of the timing and extent of the double liening and other issues with Menaged,” based on (among other factors) Mr. Chittick being “a seemingly competent and reasonable client.”⁵⁴ However, as described above, Mr. Chittick in fact was not following Mr. Beauchamp’s advice, at least with respect to his advice as to how to fund DenSco’s loans so to ensure that such loans were in a first lien position (as disclosed in the 2011 POM). Certainly by January 7, 2014, when Mr. Chittick expressly acknowledged that he was not following Mr. Beauchamp’s advice, if not earlier, it was undeniable that Mr. Beauchamp knew Mr. Chittick was not following his advice on this matter of fundamental importance (as characterized by Mr. Beauchamp). This knowledge, as well as the series of red flag warnings, should have informed the Defendants’ actions thereafter.
- The Olson Report asserts that “Mr. Beauchamp informed Mr. Chittick [in early January 2014] that Mr. Chittick could not accept new money, or roll over existing investments, unless he informed the investors involved about the Menaged issues,” and that “Mr. Chittick had represented that he was following Mr. Beauchamp’s advice.”⁵⁵ The Olson Report further asserts that “[s]o long as the disclosures were being made, the update to the POM was not urgent and it was reasonable to wait to update the POM until the Forbearance Agreement was complete.”⁵⁶ However, as described in detail (with eight

⁵² Olson Report, page 20.

⁵³ Olson Report, pages 21-22.

⁵⁴ Olson Report, page 22.

⁵⁵ Olson Report, page 24.

⁵⁶ Olson Report, page 25.

distinct supporting points) in my Expert Report, it is clear that Mr. Beauchamp was aware that DenSco was continuing to offer Notes without updated disclosures.

- The Olson Report appears to attach some significance to the fact that Mr. Chittick may have informed an “advisory council” consisting of “a select group of investors [presumably existing investors] to whom he turned for advice and approval” regarding “the double line issue and proposed workout.”⁵⁷ I fail to see any significance to this, even if true. As Mr. Beauchamp knew, Rule 10b-5 and the other disclosure requirements under applicable securities laws relate to the adequacy of the disclosures made to each investor as of the time that such investor makes a commitment to invest. Disclosures made to an advisory council of Noteholders, and any advice or approvals received from such council, are simply not relevant to the issue of whether Mr. Beauchamp’s client was committing securities fraud with respect to any other investors.
- The Olson Report asserts as a factual matter that Mr. Beauchamp informed Mr. Chittick in May 2014 that the Defendants would no longer represent DenSco on securities matters.⁵⁸ However, the Olson Report fails to cite to any evidence in support of this factual assertion. As discussed in my Expert Report, there is substantial evidence that the Defendants did not in fact terminate its representation in May 2014.
- The Olson Report asserts that “Mr. Beauchamp’s conduct after Mr. Chittick’s suicide, including helping Mr. Chittick’s sister Shawna to get appointed P.R. of Chittick’s Estate, communicating with investors and coordinating with the Arizona Corporation Commission was a *reasonable* effort to help resolve the problems Mr. Chittick had created.”⁵⁹ The Olson Report, however, fails to recognize that the Defendants were prohibited by the applicable Rules of Professional Conduct from undertaking the representation of either DenSco or the Chittick Estate at that time. As discussed in my Expert Report, the Defendants failed to recognize and properly address the conflicts of interest they had (a) in representing DenSco in wind down efforts due to their own interests, and (b) in representing DenSco and the Chittick Estate due to the potential claims that DenSco had against the Chittick Estate. In his deposition, Mr. Olson acknowledged that he was expressing no opinion as to whether there was a conflict of interest, and that he was deferring to Mr. Rhodes as to such issues.⁶⁰ As a result, it is unclear what was intended by Mr. Olson’s use of the term “reasonable” in this context, as he expresses no opinion with respect to the Mr. Beauchamp’s compliance with the standard of care after Mr. Chittick’s suicide.

⁵⁷ Olson Report, page 26.

⁵⁸ Olson Report, page 27.

⁵⁹ Olson Report, page 29 [italics added].

⁶⁰ Olson Deposition, page 100, lines 15-22.

IV. CONCLUSION

There is nothing in the Rhodes Declaration or the Olson Report, nor in the Defendants' Experts' Depositions, that has caused me to alter any of my opinions in my Expert Report.

* * *

I reserve the right to supplement, update or amend my opinions as new information becomes available or is brought to my attention.


Neil J Wertlieb

June 4, 2019

Law Practice,
Ethics/Professional Responsibility
Oct. 17, 2018

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The disruptive and controversial new rules

See more on The disruptive and controversial new rules

Part one of a three-part series on the new ethics rules.



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Wertlieb
EXH. NO. 1176
10-17-19
Kelly S. Oglesby CR 50178

Attachments

- New Rules Order



NEW RULES OF PROFESSIONAL CONDUCT

(Parts II and III)

On May 10, the California Supreme Court has approved the first comprehensive rewrite of the attorney Rules of Professional Conduct in nearly three decades. Last year, the State Bar of California submitted 70 proposed new and amended Rules of Professional Conduct to the California Supreme Court. On May



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10, the court approved 27 of the proposed rules in the form submitted by the State Bar, approved another 42 of the proposed rules as modified by the court, and denied one proposed rule.

On Nov. 1, these 69 approved rules will replace the 46 Rules of Professional Conduct that currently govern the conduct of all attorneys in California. Several of the new rules implement important changes to the current rules or impose new obligations in California. Every California attorney should be aware of these changes, as failure to comply with the rules may result in discipline, including being disbarred from the practice of law. See new Rule 8.5(a). Failure to comply in a litigation matter may also result in disqualification from a matter.

California is the only state that does not base its rules on the American Bar Association's Model Rules of Professional Conduct. Until the new rules take effect, California remains the only state with its own unique set of rules.

The last comprehensive revision of the California rules became operative in 1989. Since then, numerous changes have influenced the practice of law, including technological advances, multijurisdictional practices, and a focus more on the practice of law as a business -- all with potential ethical implications.

In 2001 and 2002, the ABA revised its Model Rules, which prompted the State Bar Board of Governors to appoint a Commission for the Revision of the Rules of Professional Conduct to do a comprehensive review of the California rules. After more than a decade of work, however, in 2014 the California Supreme Court granted the State Bar's request to restart the effort. In January 2015, a second commission was appointed with the goal of submitting proposed rules by March 2017. After soliciting public comment, the commission presented a set of proposed rules to the Board of Trustees (the successor to the Board of Governors), which (with some modification) became the set of rules the Supreme Court approved last week.

One of the most significant (although nonsubstantive) changes is to the numbering scheme of the new rules. The commission determined that the rules should generally conform to the organization and rule numbering of the Model Rules. This change allows for easier comparison and review across various jurisdictions.

Today we begin a three-part series discussing the new rules. In part one, we will consider some of the most controversial rules adopted by the Supreme Court. In parts two and three we will consider some of the less controversial, yet important changes as well as the entirely new rules adopted by the state Supreme Court.

Sexual Relations with Current Client

Current Rule 3-120 effectively permits a lawyer to engage in "sexual relations" (as defined in the rule) with a client, provided that the lawyer does not: (1) Require or demand sexual relations with a client incident to or as a condition of any professional representation; (2) Employ coercion, intimidation, or undue influence in entering into sexual relations with a client; or (3) Continue representation of a client with whom the [lawyer] has sexual relations if such sexual relations cause the member to perform legal services incompetently in violation of rule 3-110 [Falling to Act Competently].*

Most other jurisdictions have adopted a version of Model Rule 1.8(j), which imposes a bright-line standard that generally prohibits all sexual relations between a lawyer and client unless the sexual relationship was consensual and existed at the time the lawyer-client relationship commenced.

New Rule 1.8.10 reflects a major shift from current Rule 3-120, and substantially adopts the bright-line prohibition approach of Model Rule 1.8(j): "A lawyer shall not engage in sexual relations with a current client who is not the lawyer's spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the lawyer-client relationship commenced."

The new prohibition carries forward the exceptions in current Rule 3-120 for spousal and preexisting sexual relationships. Also, under both the current and new rule, when the client is an organization, the person overseeing the representation is considered to be the client. Current Rule 3-120, Discussion; new Rule 1.8.10, Comment [2].

This change attracted much commentary during the public review process and in the press. The commission itself recognized that the change represents a significant departure from California's current rule, and may implicate important privacy concerns. The members of the commission, however, concluded that the current rule had not worked as intended -- evidenced by the fact that in the 25 years since the rule's adoption, there had been virtually no successful disciplinary prosecutions under Rule 3-120.

Prohibited Discrimination, Harassment and Retaliation

New Rule 8.4.1, like current Rule 2-400 (which it replaces), will prohibit unlawful discrimination, harassment and retaliation in connection with the representation of a client, the termination or refusal to accept the representation of any client, and law firm operations. However, new Rule 8.4.1 reflects a fundamental change from current Rule 2-400. New Rule 8.4.1 eliminates the current requirement that there be a final civil determination of such unlawful conduct before a disciplinary investigation can commence or discipline can be imposed.

In addition, new Rule 8.4.1 expands the scope of current Rule 2-400, which only applies to "the management or operation of a law practice," and does not expressly cover retaliation.

The current rule requires a prior adjudication by a tribunal of competent jurisdiction (i.e., not the State Bar Court): "No disciplinary investigation or proceeding may be initiated by the State Bar against a member under this rule unless and until a tribunal of competent jurisdiction ... shall have first adjudicated a complaint of alleged discrimination and found that unlawful conduct occurred." Current Rule 2-400(C).

A majority of the members of the commission believed that the prior adjudication requirement rendered the current rule difficult to enforce. The commission cited to the fact that no discipline appears to have ever been imposed under the current rule. Further, no other rule contains a similar limitation on the original jurisdiction of the State Bar Court.

New Rule 8.4.1 was one of the more controversial proposed rules. In fact, the Board of Trustees, on its own initiative, mandated that an alternative version of this rule be sent out for public comment -- the only rule as to which the board took such action. In its final vote on the proposal, the board was evenly split 6-to-6, with the State Bar president breaking the tie in favor of the version of the rule proposed by the commission.

Some of the primary concerns raised by the elimination of the prior adjudication requirement include the following: First, State Bar complaints may be filed by aggrieved clients and employees without the usual concern for the negative consequences typically associated with filing complaints in litigation, such as being subject to claims for malicious prosecution or attorney fees. Second, the State Bar Court is not properly experienced or staffed to become the forum of first resort for a victim of discriminatory, harassing or retaliatory conduct committed by a lawyer. And third, the disciplinary process before the State Bar Court does not provide for the same due process protections to lawyers as a tribunal of competent jurisdiction. For example, lawyers are afforded only limited discovery in matters before the State Bar Court. On the other hand, the deficiencies identified in the current rule (with respect to enforceability) led several commission members, as well as members of the public (as reflected in public commentary), to view the current rule as discriminatory in and of itself.

In response to the public concern with respect to the elimination of the prior adjudication requirement, the commission modified the rule to impose a self-reporting obligation on a lawyer who receives notice of disciplinary charges for violating the rule. This modification requires the lawyer to provide a copy of a notice of disciplinary charges pursuant to new Rule 8.4.1 to the California Department of Fair Employment and Housing, the U.S. Department of Justice, Coordination and Review Section, or to the U.S. Equal Employment Opportunity Commission, as applicable. New Rule 8.4.1(e). The purpose of this modification is to provide to the relevant government agencies an opportunity to become involved in the matter so that they may implement and advance the broad legislative policies with which they have been charged. Further, a comment to the new rule clarifies that the rule would not affect the State Bar Court's discretion in abating a disciplinary investigation or proceeding in the event that a parallel administrative or judicial proceedings arises from the same lawyer misconduct allegations (new Rule 8.4.1, Comment [7]), thus giving a tribunal of competent jurisdiction an opportunity to adjudicate the matter before the State Bar Court takes action.

Safekeeping Funds and Property of Clients and Other Persons

Current Rule 4-100 requires that all funds received or held for the benefit of clients by a lawyer or law firm be deposited into a client trust account. Such funds include settlement payments and other funds received from third parties as well as advances for costs and expenses. But while best practices may dictate otherwise, the current rule does not require the lawyer or law firm to deposit into a client trust account advance fee retainers or deposits. Such payments are not currently required to be segregated from the lawyer's or law firm's funds, and may be deposited into a law firm's operating account. By including the word "fees," new Rule 1.15 mandates that advances for legal fees be deposited into a client trust account. Comment [2] to the new rule defines "advances for fees" as "a payment intended by the client as an advance payment for some or all of the services that the lawyer is expected to perform on the client's behalf."

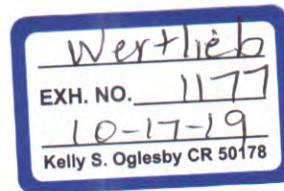
The permissive nature of current Rule 4-100 has led many lawyers and law firms to simply deposit all such fees into their operating accounts, some due to the operational needs of the type of practice at issue. In fact, lawyers in certain practice areas have not even needed to maintain a trust account due to the nature of their practices. This will change under new Rule 1.15.

Similar to current Rule 4-100, new Rule 1.15 applies to funds "received or held" by a lawyer or law firm, and requires that the bank account into which funds are deposited be "maintained in the State of California" (subject to a limited exception). New Rule 1.15(a). The addition of a simple four-letter word (i.e., "fees") to the

rule may cause material disruption to practitioners in California. First, because new Rule 1.15 is not just prospective (by applying to funds received following the effectiveness of the new rule), but applies to funds "held" by a lawyer or law firm for the benefit of a client, funds received prior to the effectiveness of the new rule and deposited into the firm's operating account would have to be identified, traced and deposited into a trust account. The formulation of new Rule 1.15 means this would essentially be given retroactive effect. Second, because the trust account must be maintained in California, firms based outside of the state or that otherwise maintain their banking relationships outside of the state will be required to establish new banking relationships within the state.

The requirement to deposit advance fees into a trust account does not apply to a "true retainer," which is defined in new Rule 1.5 as "a fee that a client pays to a lawyer to ensure the lawyer's availability to the client during a specified period or on a specified matter." Such a fee is earned upon receipt, not as compensation for legal services to be performed, and as such may be deposited directly into a firm's operating account. Similarly, new Rule 1.15 permits a flat fee paid in advance for legal services to be deposited into an operating account, but only if the lawyer discloses to the client in writing that (i) the client has a right to require the flat fee be deposited into a trust account until the fee is earned and (ii) the client is entitled to a refund of any unearned amount of the fee in the event the representation is terminated or the services for which the fee has been paid are not completed; and if the flat fee exceeds \$1,000, the client must consent in writing. New Rule 1.15(b).

In part two of this three-part series, we will consider some less controversial changes that are nevertheless important for all California attorneys to know.



The uncontroversial, but important new rules

See more on The uncontroversial, but important new rules

Part two of a three-part series on the new ethics rules.



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Attachments



NEW RULES OF PROFESSIONAL CONDUCT

(Parts I and III)

On May 10, the California Supreme Court adopted the first major overhaul of the Rules of Professional Conduct in three decades. On November 1, these 69 approved rules will replace the 46 Rules of Professional Conduct that currently govern the conduct of all attorneys in California. Several of the new rules



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implement important changes to the current rules or impose new obligations in California. Every California attorney should be aware of these changes, as failure to comply with the rules may result in discipline, including being disbarred from the practice of law. See new Rule 8.5(a). Failure to comply in a litigation matter may also result in disqualification from a

matter.

In part one of this three-part series, we discussed some of the more controversial rules adopted by the court. Today in part two, we will look at some of the less controversial, yet nevertheless important changes that every California lawyer should know. In part three, we will consider certain entirely new rules adopted by the state Supreme Court.

Communication with Clients

Current Rule 3-500 articulates a broad requirement likely intuitive to most practitioners: Lawyers must keep their clients "reasonably informed about significant developments relating to the representation." But the current rule provides little guidance as to precisely what and how much information lawyers must share.

New Rule 1.4 is generally consistent with current Rule 3-500 but it adds clarifying language from the corresponding Model Rule that has been adopted by most other states. This language is intended to enhance public protection by more clearly stating a lawyer's obligations to clients with regard to communication.

New Rule 1.4 requires that lawyers promptly inform their clients of any decision or circumstance with respect to which disclosure or the client's informed consent is required by the rules, and advise the client of any relevant limitation on the lawyer's conduct when the lawyer knows the client expects assistance that may not be permitted under the rules. As a result, lawyers must not only inform clients as to what they will do, they must also advise clients as to what they cannot do.

New Rule 1.4 provides that a lawyer must explain matters to the extent reasonably necessary for clients to make informed decisions regarding the representation, and also requires that a lawyer reasonably consult with the client about the means employed to accomplish the client's objectives. Combined, these obligations help to ensure that the client understands the information conveyed and empower the client to be an active participant in the matter.

Conflicts of Interest: Current Clients

Current Rule 3-310 governs conflicts of interest among current clients. The provisions of this current rule are viewed as taking a "checklist" approach to identifying conflicts because they describe discrete situations that might arise in representations that trigger a duty to provide written disclosure to a client or obtain a client's informed written consent in order to continue the representation. For example, these situations include a representation where a lawyer has a relationship with a party or witness in the case, or where a lawyer has a financial interest in the subject matter of the representation.

New Rule 1.7 replaces the current "checklist" approach with generalized standards that follow the Model Rules approach to current client conflicts. Under this new approach, the inquiry for assessing whether a conflict is present is to simply ask whether there is either direct adversity "to another current client in the same or a separate matter" or "a significant risk that the lawyer's representation of a current client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client, or by the lawyer's own interests."

As is the case under current Rule 3-310, new Rule 1.7 provides that, if such a conflict of interest exists, the lawyer shall not proceed with the conflicted representation without informed written consent from each affected client.

Organization as Client

Both new Rule 1.13 and current Rule 3-600 make clear that, in representing an organization, it is the organization itself -- and not its directors, officers, employees or other constituents -- that is the client of the lawyer. As an entity, the organization can only act through its authorized officers, employees and other individuals, and such individuals are not the client even though the lawyer may take direction from such persons. New Rule 1.13, however, makes the following substantive changes to current Rule 3-600:

First, current Rule 3-600 permits a lawyer to refer a matter to a higher authority within the organization under certain circumstances, including when the lawyer becomes aware that a constituent of the organization is acting, or intends to act, in a manner that either may be a violation of law imputable to the organization or is likely to result in substantial injury to the organization. (Such an action by the lawyer is often referred to as "reporting up the corporate ladder.") New Rule 1.13 mandates reporting up in certain circumstances. This mandate is consistent with the ABA Model Rule and the rules of many other states, but it diverges from current Rule 3-600 which permits, but does not require, a lawyer to take such action. (New Rule 1.13 carries forward the requirement in current Rule 3-600 that a lawyer must maintain his or her duty of confidentiality when taking action pursuant to the rule. In particular, it is important to note that, while lawyers may be permitted or obligated to report misconduct up the corporate ladder, they are generally precluded by their duty of confidentiality from "reporting out" such misconduct, e.g., to a regulatory body or prosecutor.)

Second, while the circumstances which trigger reporting up the corporate ladder under current Rule 3-600 are based on the lawyer's actual knowledge, a lawyer's duty to report under new Rule 1.13 will be triggered by two separate scienter standards: (1) a subjective standard that would require actual knowledge by the lawyer that a constituent is acting, intends to act, or refuses to act; and (2) an objective standard that asks whether the lawyer knows or reasonably should know that the constituent's actions would be (a) a violation of either a legal duty to the organization or law reasonably imputable to the organization, and (b) likely to result in substantial injury to the organization.

Third, unlike current Rule 3-600 which permits a lawyer to take corrective action if there is either a violation of law or likely to be substantial injury to the organization, new Rule 1.13 requires that both be present before a lawyer's duty to report up the corporate ladder is triggered.

Fourth, under new Rule 1.13, a lawyer will be required to notify the highest authority in the organization if the lawyer has been discharged or forced to withdraw as a result of his or her reporting up obligation. No such notification is required by current Rule 3-600.

Candor Toward the Tribunal

Similar to current Rule 5-200, new Rule 3.3 will prohibit a lawyer from knowingly making a false statement of fact or law to a tribunal (or failing to correct such a material statement previously made by the lawyer); or failing to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel, or knowingly misquoting to a tribunal the language of a book, statute, decision or other authority; or offering evidence that the lawyer knows to be false.

However, while current Rule 5-200 does not specify the duration of the lawyer's obligation, new Rule 3.3 expressly provides that the foregoing duties of candor to a tribunal continue to the conclusion of the proceeding. Interestingly, the version of Rule 3.3 proposed last year by the State Bar provided that such duties would continue to "the conclusion of the proceeding *or the representation, whichever comes first*." There was some dissension among the members of the Commission for the Revision of the Rules of Professional Conduct with this formulation (which deviates from the corresponding ABA Model Rule), in that it would allow lawyers to circumvent their duties by simply withdrawing from the representation.

The Supreme Court, in approving Rule 3.3, rejected this possibility. As a result, under new Rule 3.3 it is clear that the duty of candor toward a tribunal continues to the conclusion of the proceeding, even if the lawyer's representation has terminated prior to such time.

In part three, we will consider some of the entirely new rules adopted by the state Supreme Court.

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10-17-19
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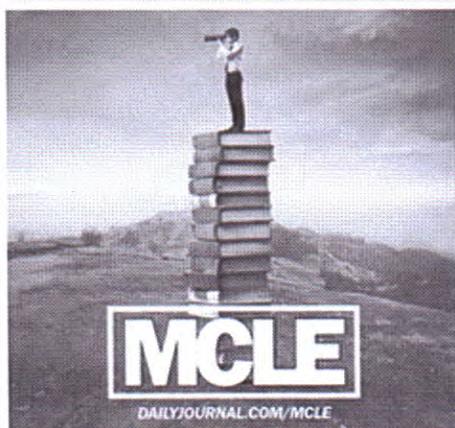
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NEW RULES OF PROFESSIONAL CONDUCT

(Parts I and II)

On May 10, the California Supreme Court adopted the first major overhaul of the Rules of Professional Conduct in three decades. On November 1, these 69 approved rules will replace the 46 Rules of Professional Conduct that currently govern the conduct of all attorneys in California. Several of the new rules implement important changes to the current rules or impose new obligations in California. Every California attorney should be aware of these changes, as failure to comply with the rules may result in discipline, including being disbarred from the

practice of law. See new Rule 8.5(a). Failure to comply in a litigation matter may also result in disqualification from a

matter.

In part one of this three-part series, we discussed some of the more controversial rules adopted by the court. In part two, we considered some of the less controversial, yet nevertheless important changes to the rules. Today in the final installment of this series, we consider some of the entirely new rules adopted by the state Supreme Court.

Imputation of Conflicts of Interest: General Rule

New Rule 1.10 represents an important development for California lawyers. New Rule 1.10 sets forth the noncontroversial concept that, subject to certain limited exceptions, the conflicts of interest of an attorney in a law firm may be imputed to all attorneys in the firm: "While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by [the conflict of interest] rules."

However, new Rule 1.10 goes further and establishes, for the first time in the rules, an acknowledgment that ethical screens may be effective (in limited circumstances) to cure what would otherwise be an imputed conflict of interest.

Although support exists for the effectiveness of ethical screens in case law, ethical screens are not sanctioned in the current rules. See, e.g., *Kirk v. First American Title Insurance Co.*, 183 Cal. App. 4th 776 (2010). Such cases typically involve disqualification of conflicted counsel. New Rule 1.10 clarifies that the use of ethical screens may mitigate against discipline under the rules (although the circumstances where an ethical screen may be utilized are limited to those specified in the rule). See New Rule 1.10(a).

Duties to Prospective Clients

New Rule 1.18 imposes duties upon lawyers relating to consultations with a prospective client -- i.e., a "person who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal services or advice from the lawyer in the lawyer's professional capacity." New Rule 1.18(a). In particular, lawyers have the obligation to preserve the confidentiality of information acquired during a consultation prior to the establishment of an attorney-client relationship. Even if no attorney-client relationship is established, under this new rule, a lawyer is prohibited from using or revealing confidential information learned as a result of the consultation.

Although concepts articulated in this new rule are already the law in California and do not establish new standards (see, e.g., California Evidence Code Section 951; Business and Professions Code Section 6068(e)), the commission acknowledged the importance of including these concepts in the rules so as to alert lawyers to this important duty and provide lawyers with guidance through a clearly-articulated disciplinary standard on how to comport themselves during a consultation.

New Rule 1.18 further prohibits a lawyer from representing a client with interests adverse to those of the prospective client in the same or substantially related subject matter, absent informed written consent from

the prospective client, if the lawyer has obtained confidential information material to the matter.

The prohibition in this new rule would be imputed to the lawyer's law firm, such that no lawyer at the firm may knowingly undertake or continue representation in such a matter, unless the lawyer is properly screened from participation in the matter.

Truthfulness in Statements to Others

It has long been recognized in California that attorneys may be disciplined for intentionally deceiving a tribunal or opposing counsel, and that attorneys may be civilly liable to a third party for making false statements of material fact on behalf of a client. Further, Section 6106 of the Business and Professions Code provides that attorneys may be disciplined for committing acts involving "moral turpitude, dishonesty or corruption."

New Rule 4.1 prohibits lawyers, in the course of representing a client, from "knowingly" making a "false statement of material fact or law to a third person," or failing to disclose to a third person a material fact necessary to avoid assisting in a client's criminal or fraudulent conduct.

This rule new reflects an important change by expressly including in the rules a disciplinary standard for misrepresentations to third parties where no such disciplinary standard existed. Further, it differs from the legal standard applicable to civil liability for fraudulent representation, because a violation under the new rule does not require proof of reliance or damages.

Dealing with Unrepresented Person

Both the current rules and the new rules contain a version of the No Contact Rule, which prohibits a lawyer from communicating about the subject of a representation with a person represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. See current Rule 2-100; new Rule 4.2. New Rule 4.3 imposes duties in connection with communications with unrepresented persons.

New Rule 4.3 prohibits a lawyer when communicating on behalf of a client with an unrepresented person from stating or implying that the lawyer is disinterested. If the lawyer knows (or reasonably should know) that the unrepresented person incorrectly believes the lawyer is disinterested in the matter, the lawyer is obligated to make reasonable efforts to correct that misunderstanding. Further, if the lawyer knows (or reasonably should know) that the interests of the unrepresented person are in conflict with the interests of the client, the lawyer must not give legal advice to that person (although the lawyer may advise the person to seek legal counsel). Rule 4.3(a).

New Rule 4.3 also prohibits a lawyer when communicating on behalf of a client with an unrepresented person from seeking to obtain privileged or other confidential information that the lawyer knows (or reasonably should know) the person is precluded from revealing without violating a duty to someone else or which the lawyer is not entitled to receive. Rule 4.3(b).

As stated in Comment [1] to the rule, this new rule is intended to protect unrepresented persons from being misled in communications with a lawyer who is acting on behalf of a client.

Duties Concerning Inadvertently Transmitted Writings

No rule existed that addressed a lawyer's duties to third persons when presented with inadvertent disclosure of privileged materials. New Rule 4.4 provides: "Where it is reasonably apparent to a lawyer who receives a writing relating to a lawyer's representation of a client that the writing was inadvertently sent or produced, and the lawyer knows or reasonably should know that the writing is privileged or subject to the work product doctrine, the lawyer shall: (a) refrain from examining the writing any more than is necessary to determine that it is privileged or subject to the work product doctrine, and (b) promptly notify the sender."

While new Rule 4.4 is consistent with California case law (*see, e.g., Rico v. Mitsubishi*, 42 Cal. 4th 807, 817 (2007)), the commission concluded that adopting this new rule would help protect the public and the administration of justice, as well as inform attorneys of their ethical obligations. Consistent with such case law, Comment [1] to the new rule provides the lawyer with the following options when a lawyer determines the rule applies to a transmitted writing: "the lawyer should return the writing to the sender, seek to reach agreement with the sender regarding the disposition of the writing, or seek guidance from a tribunal."

Responsibilities of Managerial & Supervisory Lawyers, of a Subordinate Lawyer and Regarding Nonlawyer Assistants

The only reference to a lawyer's duty to supervise subordinates is contained in a comment to current Rule 3-110 (Failing to Act Competently): "The duties set forth in rule 3-110 include the duty to supervise the work of subordinate attorney and non-attorney employees or agents." New Rules 5.1, 5.2 and 5.3 detail what that duty to supervise requires.

New Rule 5.1 provides that lawyers who manage law firms, both individually and collectively, "shall make reasonable efforts to assure that all lawyers in the firm comply" with the rules. New Rule 5.1 also requires lawyers who supervise other lawyers, whether or not a member or an employee of the same law firm, to make similar "reasonable efforts to ensure compliance by the lawyer supervised." A lawyer will be vicariously responsible for another lawyer's violation of the rules if "(1) the lawyer orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or (2) the lawyer, individually or together with other lawyers, possesses managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, whether or not a member or employee of the same law firm, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."

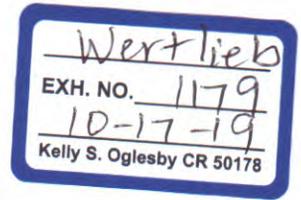
Consistent with case law in California (*see, e.g., Jay v. Mahaffey*, 218 Cal. App. 4th 1522 (2013); *In re Aguilar*, 34 Cal. 4th 386 (2004)), new Rule 5.2 makes it clear that, notwithstanding the vicarious responsibility imposed on a managing or supervising lawyer by new Rule 5.1, a subordinate lawyer has an independent duty to comply with the rules. The comment to the new rule further provides that "[i]f the subordinate lawyer believes that the supervisor's proposed resolution of the question of professional duty would result in a violation of these rules or the State Bar Act, the subordinate is obligated to communicate his or her professional judgment regarding the matter to the supervisory lawyer."

New Rule 5.3 holds lawyers similarly responsible for non-lawyer employees. Managerial and supervisory lawyers must make reasonable efforts to ensure that the conduct of the nonlawyers they supervise is compatible with the professional obligations of the lawyer.

The above changes and additions to the Rules of Professional Conduct have been approved the California Supreme Court. These rules, as well as the rest of the 69 new rules, will become effective on November 1, at which time all attorneys in California will be subject to the new rules.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL



Case No. CR 14-471-GW Date November 7, 2016

Present: The Honorable GEORGE H. WU, UNITED STATES DISTRICT JUDGE

Interpreter NONE

<u>Javier Gonzalez</u> <i>Deputy Clerk</i>	<u>Katie Thibodeaux</u> <i>Court Reporter/Recorder, Tape No.</i>	<u>Rebecca S. Kanter; Benjamin J. Weir</u> - by telephone <i>Assistant U.S. Attorney</i>
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<u>U.S.A. v. Defendant(s):</u>	<u>Present</u>	<u>Cust.</u>	<u>Bond</u>	<u>Attorneys for Defendants:</u>	<u>Present</u>	<u>App.</u>	<u>Ret.</u>
James Robert Miller	✓		✓	Cuauhtemoc Ortega; Sonam Henderson, DPFs	✓		✓

PROCEEDINGS: UNITED STATES' MOTION IN LIMINE TO EXCLUDE THE TESTIMONY OF NEIL WERTLIEB [68]

The Court's Tentative Ruling is circulated and attached hereto. Court and counsel confer. Based on the Tentative, and for reasons stated on the record, the Government's motion is GRANTED IN PART and DENIED IN PART.

_____ : _____ 11
Initials of Deputy Clerk JG

U.S. v. Miller, Case No. 2:14-cr-00471-GW-1
Tentative Ruling re Motion in Limine to Exclude Expert Testimony

I. Background

Defendant James Robert Miller (“Miller”) was employed as President of MWRC Internet Sales, LLC (“MWRC”) from approximately 2000 to 2012. *See* Superseding Indictment ¶ 1, Docket No. 25. As part of his duties at MWRC, Miller had check writing authority for MWRC. *Id.* ¶ 2. On many occasions Miller affixed his signature to MWRC’s checks but failed to disclose to the banks that MWRC had not authorized those payments to him. *Id.* ¶ 6. From 2009 through 2012, Miller wrote checks to himself transferring more than \$300,000. *Id.* ¶¶ 4-7. During the same period, Miller filed federal tax returns without reporting the money transferred to himself as personal income. *Id.* ¶¶ 9-12. Based on these facts, Plaintiff the United States of America charged Miller with wire fraud in violation of 18 U.S.C. § 1343 and for filing false tax returns in violation of 26 U.S.C. § 7206(1). *Id.* ¶¶ 3-8, 9-12.

On October 9, 2015, Plaintiff filed a motion in limine to exclude the testimony of Defendant’s expert, Neil Wertlieb (“Wertlieb”) on subjects relating to the creation and operation of limited liability companies. *See* Mot. in Lim. (“Motion”), Docket No. 68. On January 19, 2016, Defendant opposed the Motion. *See* Opp’n, Docket No. 148. On September 8, 2016, during oral arguments for the Motion, the Court ordered Defendant to file an offer of proof by September 15, 2016, in support of Wertlieb’s anticipated testimony. *See* Order, Docket No. 188. On September 16, 2016, a day after the deadline set by the Court, Defendant filed the offer of proof. *See* Def.’s Offer of Proof (“Offer of Proof”), Docket No. 189. On October 21, 2016, Plaintiff filed a response to the Offer of Proof. *See* Pl.’s Response to Offer of Proof (“Response”), Docket No. 193. On October 31, 2016, Defendant filed a “reply,” opposing the Response. *See* Def.’s Reply in Supp. of Offer of Proof (“Reply”), Docket No. 196.

For the reasons discussed below, the Motion is denied in part and granted in part.

II. Legal Standard

Rule 702 of the Federal Rules of Evidence governs admission of expert testimony in the federal courts:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

Fed. R. Evid. 702. The Ninth Circuit has interpreted Rule 702 with respect to what is helpful to the trier of fact to mean that “[e]xpert testimony . . . be both relevant and reliable.” *United States v. Vallejo*, 237 F.3d 1008, 1019 (9th Cir. 2001); *Estate of Barabin v. AstenJohnson, Inc.*, 740 F.3d 457, 463 (9th Cir. 2014) (en banc); see also *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 597 (1993) (stating that district courts have a general “gatekeeping” duty to ensure that proffered expert testimony “both rests on a reliable foundation and is relevant to the task at hand.”); *Greenawalt v. Sun City W. Fire Dist.*, 23 F. App’x 650, 652 (9th Cir. 2001) (“Expert testimony must be relevant and reliable, and it must relate to some form of specialized knowledge.”) (citing *Guidroz-Brault v. Missouri Pac. R.R. Co.*, 254 F.3d 825, 829 (9th Cir. 2001)).

The relevancy component requires the court to assess “fit,” *i.e.*, whether the expert testimony is logically tied to the pertinent inquiry. *Daubert*, 509 U.S. at 591-92; see also *Hemmings v. Tidymans Inc.*, 285 F.3d 1174, 1184 (9th Cir. 2002) (“Whether testimony is helpful within the meaning of Rule 702 is in essence a relevancy inquiry.”). The test for reliability, on the other hand, requires courts to “assess the expert’s reasoning or methodology” rather than “the correctness of the expert’s conclusions.” *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036 (9th Cir. 2014) (citations omitted). In assessing reliability, courts may consider “criteria such as testability, publication in peer-reviewed literature, known or potential error rate, and general acceptance.” *Id.*; *Jinro Am. Inc. v. Secure Invs., Inc.*, 266 F.3d 993, 1005 (9th Cir. 2001), *opinion amended on denial of reh’g*, 272 F.3d 1289 (9th Cir. 2001) (stating that the Supreme Court “expressly extended *Daubert*’s standard of ‘evidentiary reliability’ to all experts, not just scientific ones”) (quoting *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147-48 (1999)). “Basically,” a court’s responsibility under Rule 702 is “to screen the jury from unreliable nonsense opinions, but not exclude opinions merely because they are impeachable.” *Alaska Rent-A-Car, Inc. v. Avis Budget Grp., Inc.*, 738 F.3d 960, 969 (9th Cir. 2013); see also *Metabolife Int’l, Inc. v. Wornick*, 264 F.3d 832, 840-41 (9th Cir. 2001) (“[T]he district court acts as a gatekeeper, excluding bad science that does not carry sufficient indicia of reliability for admission under Rule 702.”).

Even if expert testimony is admissible under Rule 702, it could still be excluded under Rule 403, which provides that relevant evidence may be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” Fed. R. Evid. 403. That said, “[s]haky but admissible evidence is to be attacked by cross examination, contrary evidence, and attention to the burden of proof, not exclusion.” *Primiano v. Cook*, 598 F.3d 558, 564 (9th Cir. 2010).

III. Discussion

The proponent of the expert testimony has the burden of establishing Rule 702’s admissibility requirements by a preponderance of the evidence. See *United States v. 87.98 Acres of Land More or Less in the Cty. of Merced*, 530 F.3d 899, 904 (9th Cir. 2008) (citing *Lust v. Merrell Dow Pharm., Inc.*, 89 F.3d 594, 598 (9th Cir. 1996)).

Defendant, as the proponent of Wertlieb’s testimony, contends that the offered testimony is relevant to disprove the elements of wire fraud, particularly whether Miller understood his

authority at MWRC to include making of personal loans. *See* Reply at 1. Plaintiff argues only that Wertlieb’s testimony is not relevant to the case. *See generally* Response. Relevancy simply requires that “[t]he evidence . . . logically advance a material aspect of the party’s case.” *Cooper v. Brown*, 510 F.3d 870, 942 (9th Cir. 2007); *Daubert*, 509 U.S. at 591 (“Expert testimony which does not relate to any issue in the case is not relevant and, ergo, non-helpful.”) (citation omitted). Accordingly, the Court agrees with Defendant, but only to the extent Wertlieb’s anticipated testimony is outlined in the Offer of Proof.

In his testimony, Wertlieb is expected to contrast the structure of limited liability companies (“LLCs”) with that of corporations. Offer of Proof ¶ 1. In essence, he will explain, based on his experience, that unlike corporations, where executives have clearly established functions and authority, LLCs – because they are operated under an operating agreement – allow flexibility to their managers and strict compliance with the terms of an operating agreement is not the norm. *Id.* ¶ 2. Indeed, when LLCs experience fundamental changes such as a change in management or sale of business, the testimony will further explain, they ratify prior actions to ensure compliance with the operating agreement. *Id.* ¶¶ 3-4.

Based on this Offer of Proof, Wertlieb’s “specialized knowledge” will help the jury evaluate and determine whether Miller understood his acts to be in compliance with the terms of MWRC’s operating agreement. *See* Fed. R. Evid. 702(a). As such, and given the low bar of admissibility under the relevancy prong, the testimony is relevant to the intent to defraud element of the wire fraud charge under 18 U.S.C. § 1343 and will “logically advance a material aspect of” Defendant’s case. *Cooper*, 510 F.3d at 942. Wertlieb can therefore explain, for example, what managers of LLCs do or are allowed to do under LLC operating agreements; the applicable statutes or governing law; the general practice in California as to managers or LLCs; and whether or not, as a general rule, managers would have the authority to make loans to themselves. As such, exclusion is not warranted; instead Plaintiff could counter the proffered explanation “by cross examination, contrary evidence, and attention to the burden of proof.” *Primiano*, 598 F.3d at 564.

But the Offer of Proof also sets the outer limits to Wertlieb’s testimony. Beyond what is outlined in the Offer of Proof, Wertlieb can neither interpret MWRC’s operating agreement or terms therein¹ – the Court will do so and instruct the jury accordingly – nor evaluate: (1) whether Miller complied with the operating agreement by acting as he did, (2) what was Miller’s understanding as to the meaning of the provisions in MWRC’s operating agreement, or (3) whether MWRC ratified his actions post hoc – the jury will be sufficiently informed, with the Court’s legal instructions and the context about LLCs provided by Wertlieb, to do so. *See Mukhtar v. Cal. State Univ., Hayward*, 299 F.3d 1053, 1066 n.10 (9th Cir. 2002) (“[A]n expert witness cannot give an opinion as to her legal conclusion, i.e., an opinion on an ultimate issue of law.” (emphasis in original)); *Hangarter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1016

¹ However, an expert can give testimony that a term in an agreement has a particular meaning within an industry, *see generally Constr. Interior Sys v. Marriott Family Restaurants*, 984 F.2d 749, 756 (6th Cir. 1993), or involves technical language, *BOKF, N.A. v. BCP Land Co., LLC*, 2016 U.S. Dist. LEXIS 29975 *48-49 (W.D. Mo. March 9, 2016).

(9th Cir. 2004) (“[I]nstructing the jury as to the applicable law ‘is the distinct and exclusive province’ of the court.”) (citing *United States v. Weitzenhoff*, 35 F.3d 1275, 1287 (9th Cir. 1993)).²

By staying within these limits, Wertlieb’s testimony will also adhere to Rule 704(b), which requires that “[i]n a criminal case, an expert witness must not state an opinion about whether the defendant did or **did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.**” Fed. R. Evid. 704(b); *Nationwide Transp. Fin. v. Cass Info. Sys., Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008); *United States v. Campos*, 217 F.3d 707, 710-12 (excluding expert testimony because if it were credited, it “necessarily follow[ed]” that the defendant lacked the requisite *mens rea*).

Besides, the Court is not persuaded that Wertlieb’s testimony, based only in his legal experience (and given that the Offer of Proof is devoid of any factual underpinnings of his testimony), **if directly applied by him to the facts at issue here to conclude that Defendant’s actions were authorized by the operating agreement or ratified by MWRC, would be “the product of reliable principles and methods.”** Fed. R. Evid. 702(c); *Lanphere Enterprises, Inc. v. Jiffy Lube Int’l Inc.*, 138 F. App’x 20, 22 (9th Cir. 2005) (“The court need not admit an expert opinion that is connected to the underlying data ‘only by the *ipse dixit* of the expert.’”) (citing and quoting *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)); *Joiner*, 522 U.S. at 146 (1997) (holding that even if an expert relies on valid scientific studies, a judge may properly exclude the expert’s conclusions where there is “too great an analytical gap” between the data studied and the opinion proffered). The Court cannot, without proper factual basis, allow suppositions or unfounded extrapolations to guide jury’s determinations.

In setting proper limits to Wertlieb’s testimony, the Court is also guided by the pragmatic consideration that legal arguments or conclusions do not become evidence merely because an attorney takes the stand and passes them off as “specialized knowledge” under Rule 702.

IV. Conclusion

For the foregoing reasons, the Motion is denied in part and granted in part. Defendant’s expert may testify to the extent his actual testimony adheres to the submitted Offer of Proof.

² As observed in *Goldman v. Bracewell & Patterson, L.L.P.*, 2005 U.S. Dist. LEXIS 45620 *6 (M.D. Fla. Sept. 13, 2005): “it would be inappropriate for a lawyer, as an expert witness, to testify before a jury about matters of domestic law (United States law). *United States v. Oliveros*, 275 F.3d 1299, 1307 (11th Cir. 2001). In contrast to the proof of foreign law, *see* Fed.R.Civ.P. 44.1, 1 domestic law is properly considered and determined by the [trial] Court.”

Message

From: Denny Chittick [dcmoney@yahoo.com]
Sent: 6/14/2013 12:23:35 PM
To: Scott Menaged [smena98754@aol.com]
Subject: Re: Attorney

Wertlieb
EXH. NO. 1180
10-17-19
Kelly S. Oglesby CR 50178

i'm going to keep him from running up any unecessary bills, just talk to your guy and hadn it off ot him.
thx
dc

DenSco Investment Corp
www.denscoinvestment.com/
602-469-3001
602-532-7737 f

From: Scott Menaged <smena98754@aol.com>
To: Denny Chittick <dcmoney@yahoo.com>
Cc: David Beauchamp <David.Beauchamp@bryancave.com>
Sent: Friday, June 14, 2013 12:20 PM
Subject: Re: Attorney

David

Please bill me for your services and utilize my attorney for anything you may need

Thanks

Sent from my iPhone

On Jun 14, 2013, at 12:07 PM, Denny Chittick <dcmoney@yahoo.com> wrote:

David:

I have a borrower, to which i've done a ton of business with, million in loans and hundreds of loans for several years, he's getting sued along with me.

He bought a property at auction, was issued a trustee's deed, i put a loan on it. Evidently the trustee had already sold it before the auction and received money on it FREO Arizona, LLC.

Easy Investments, has his attorney working on it, i'm ok to piggy back with his attorney to fight it, Easy Investments willing to pay the legal fees to fight it. I just wanted you to be aware of it, and talk to his attorney. contact info is below.

thx
dc

DenSco Investment Corp
www.denscoinvestment.com/
602-469-3001
602-532-7737 f

----- Forwarded Message -----

From: Scott Menaged <smena98754@aol.com>
To: Denny Chittick <dcmoney@yahoo.com>
Sent: Friday, June 14, 2013 11:53 AM
Subject: Attorney

Denny,

Here is my attorneys info. If your attorney needs anything, just let me know!
Thanks

Jeffrey J. Goulder | Partner | Stinson Morrison Hecker LLP
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<Easy Investments Lawsuit.pdf>