John E. DeWulf (006850)
Marvin C. Ruth (024220)
Vidula U. Patki (030742)
COPPERSMITH BROCKELMAN PLC
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
T: (602) 224-0999
F: (602) 224-0620
jdewulf@cblawyers.com
mruth@cblawyers.com
vpatki@cblawyers.com

Attorneys for Defendants

SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

Peter S. Davis, as Receiver of DenSco Investment Corporation, an Arizona corporation, Plaintiff, v. Clark Hill PLC, a Michigan limited liability company; David G. Beauchamp and Jane Doe Beauchamp, husband and wife, Defendants.	No. CV2017-013832 **DEFENDANTS' MOTION TO COMPEL CHASE BANK TO COMPLY WITH SUBPOENA DUCES TECUM** (Assigned to the Hon. Daniel Martin)

Defendants Clark Hill PLC and David G. Beauchamp (together "Clark Hill") move pursuant to Ariz.R.Civ.P. 37(a)(3)(b)(v) and 45(c) to compel Chase Bank ("Chase") to produce documents responsive to a subpoena duces tecum. The Plaintiff-Receiver in this case has (1) asserted that Chase may have aided and abetted a now convicted felon, Yomtov Menaged, in defrauding DenSco Investment Corporation, a former Clark Hill client; (2) retained special counsel to pursue that claim; and (3) obtained information from a deposition of Menaged that further serves to implicate Chase and certain of its employees. Clark Hill, consequently, has named Chase and two of its employees as non-parties at fault, and has sought discovery from Chase related to the conduct of its employees, and the policies and

procedures implicated by that conduct. Chase, however, has objected to the subpoena, almost in its entirety, and has refused to produce the requested documents, largely on boilerplate relevancy and confidentiality grounds. As the parties have not been able to resolve this discovery dispute, Clark Hill hereby requests that the Court compel Chase to produce the requested documents.

I. BACKGROUND AND RELEVANT FACTS

A. DenSco is defrauded by a third party; Receiver files suit against its securities counsel

The Plaintiff in this case is the Receiver for DenSco Investment Corporation ("DenSco"). DenSco was a "hard money" lender that lent money to borrowers to purchase real estate, with the loans intended to be secured by first position deeds of trust.

DenSco was the victim of fraudulent schemes perpetrated by borrower Yomtov "Scott" Menaged that ultimately cost DenSco (and its investors) tens of millions of dollars. According to the Receiver, those schemes can be organized into the First Fraud and the Second Fraud. Broadly speaking, in the First Fraud, Menaged requested loans from DenSco to purchase properties after having already solicited secured loans from other lenders for the same property. This left DenSco under secured on hundreds of properties for a total loss, according to the Receiver, of more than $14 million.

In the Second Fraud, Menaged never bothered to purchase any properties at all. Instead, DenSco would wire money to Menaged's bank accounts for the express purpose of purchasing real estate at trustee's sales. As the Receiver described, DenSco had "began requiring Menaged to provide DenSco with copies of the cashier's checks issued to the trustees as well as copies of the receipts received from the trustee for the purchase of the property at a trustee's sale," presumably, "to ensure that DenSco was the senior lienholder on all of its loans to Menaged . . . ." *See* Receiver's Dec. 23, 2016 Status Report at § 3.2, portions of which are attached hereto as **Exhibit B**. Menaged, however, never purchased any

properties. Instead, Menaged began providing DenSco with falsified trustee's sale receipts and copies of cashiers' checks that were never actually given to the trustee. According to the Receiver, DenSco advanced Menaged more than $700 million for fraudulent loans resulting from the Second Fraud, thereby incurring a loss of more than $28 million. *Id.*

When DenSco's sole owner and officer, Dennis Chittick, began to understand the scope of his problems with his loans to Menaged, he committed suicide. Menaged eventually pled guilty to, among other things, Conspiracy to Commit Money Laundering for defrauding DenSco by obtaining millions of dollars under the false pretense that the money would be used to purchase real estate. He is currently serving a 17-year prison sentence in a federal facility in New Mexico.

The Receiver filed the above-captioned lawsuit against DenSco's securities counsel, David Beauchamp, and Mr. Beauchamp's law firm, Clark Hill, asserting that Defendants are responsible for all of the losses arising from the First Fraud and the Second Fraud.

The discovery at issue in this Motion to Compel concerns the Second Fraud.

B. Chase helps Menaged perpetrate the Second Fraud

Menaged's Second Fraud appears to have been enabled by an otherwise reputable financial institution—Chase. Specifically, as alleged by the Receiver himself, after DenSco wired money to Menaged's bank account at Chase to purchase specific properties noted in the wiring information, Menaged, would obtain a Chase cashiers' check, take a picture of the check, email a copy of the picture to DenSco, then immediately re-deposit the cashier's check back into his Chase account. *See* Receiver's December 22, 2017 Status Report at § 2.6.2, portions of which are attached hereto as **Exhibit C**. Incredibly, according to the Receiver's analysis, "Menaged procured at least 1,383 legitimate cashier's checks totaling *$319,292,828*, including *1,340 cashier's checks from Chase* . . . during the period from

January 2014 through June 2015." *Id.* (emphasis added).[1] US Bank processed the other 43 cashier's checks identified by the Receiver.

The Receiver sought Court permission to retain Bergin, Frakes, Smalley & Oberholtzer, PLLC as Special Counsel to the Receiver, to investigate Chase and US Bank, on the grounds that "certain financial institutions may have been instrumental in allowing [Menaged] to operate a massive fraudulent loan scheme upon DenSco." *See* DenSco Receivership Petition No. 36 attached hereto as **Exhibit D** at ¶¶ 3-4. The Court granted the petition on October 18, 2017.

Bergin Frakes then deposed Menaged in the Receivership matter. Menaged made further allegations with respect to Chase's assistance in the Second Fraud. Menaged testified that he would provide a teller at Chase Bank, Samantha Kumbalek, with information as to the name of the trustee and the address of the property Menaged was purportedly purchasing with DenSco's funds, in order to place that information in the reference line of the cashier's check. Ms. Kumbalek would then prepare the checks prior to Menaged's arrival, hand the checks over to Menaged when he arrived, watch as he took pictures of the checks to send to DenSco, then immediately redeposit those checks back into Menaged's bank account at his request, often using deposit slips she had already prepared in advance. According to Menaged's testimony, Ms. Kumbalek would at times override Chase system safeguards to allow this endless cycling of millions of dollars through Menaged's accounts, increase his debit withdrawal limits to allow him to remove up to $40,000 or $50,000 from his account at a time, and advise Menaged on how to deposit smaller sums of cash to avoid IRS reporting requirements. Menaged also testified that the branch manager, Vikram Dadlani, was aware

---

[1] Menaged's Federal Criminal Information Statement, which incorporated Menaged's crimes against DenSco and added money laundering to the list of charges against him, likewise alleged that Menaged "caused the issuance of cashier's checks drawn on his bank accounts representing the purchase amount for the properties and emailed . . . an image of the checks to Densco . . . Menaged then immediately redeposited the cashier's checks into accounts he controlled and did not utilize the funds to make the identified real estate purchases."

of this procedure, and participated in issuing and redepositing cashier's checks when Ms. Kumbalek was not available.[2]

As a result of the Receiver's allegations and Menaged's testimony, Clark Hill timely named Chase, Ms. Kumbalek, and Mr. Dadlani as non-parties at fault pursuant to Ariz.R.Civ.P. 26(b)(5) and A.R.S. § 12-2506(B).

C. Clark Hill seeks discovery from Chase regarding its non-party at fault defense; Chase objects to all of the requests

On January 8, 2019, Clark Hill served a subpoena duces tecum on Chase. Chase responded on February 6, 2019. A copy of Chase Bank's Response to the Subpoena, which includes both the requests and Chase's objections, is attached hereto as **Exhibit A**. The requests at issue in this Motion fall into three categories:

- Documents related to any investigation or disciplinary actions taken by Chase related to Menaged, as well as Ms. Kumbalek, Mr. Dadlani, and Ms. Lazar's personnel files. *See* Exh. A at No. 6, 7.
- Chase's policies and procedures related to the issuance and cancellation of cashier's checks, the withdrawals and deposits of funds, and any incentives provided to employees related to same. *Id.* at No. 3, 4, 5, 11.
- Chase email communications related to Menaged, particularly those involving Kumbalek or Dadlani. *Id.* at No. 8.[3]

---

[2] Menaged also testified that a Chase private client banker, Susan Lazar, once told him that she owed him breakfast because Chase had done so well given the high dollar volume of his accounts. He also testified that he believed Ms. Lazar knew about the high volume of transactions and cash withdrawals involving his accounts.

[3] Clark Hill's other requests are not at issue in this Motion. Clark Hill requested Kumbalek and Dadlani's desk files. Exh. A at No. 9. Chase has informed Clark Hill that no such documents exist. Clark Hill also requested the bank's organizational charts. *Id.* at No. 10. It is Clark Hill's understanding that Chase has agreed to provide that information, although Chase has yet to produce those documents. Finally, Clark Hill requested Menaged's account statements and documents evidencing the issuance, cancellation, re-deposit of cashier's checks from those accounts.. *Id.* at No. 2. Chase asserts it had already provided that information to the Receiver, and Clark Hill has obtained those documents from the Receiver to the extent they were already produced.

Chase did not, and has not, produced any responsive documents. Instead, Chase has objected to each request, largely through boilerplate assertions that the discovery sought is irrelevant and that the documents are confidential. Chase's subsequent February 26, 2019 email to the Court regarding this dispute also asserts that its status as a non-party whom no one has sued yet should offer additional protections.[4] As those objections are unfounded, Clark Hill respectfully requests that the Court compel Chase to respond to the subpoena.

II. ARGUMENT

A. Clark Hill's discovery is proper; Chase's status as a nonparty that is not yet subject to a lawsuit does not absolve Chase from producing relevant documents pursuant to Rule 45

Arizona's version of the Uniform Contribution Among Tortfeasors Act ("UCATA") addresses nonparties at fault. A.R.S. § 12-2506 allows the factfinder to consider the fault of a nonparty if notice is given before trial. In assessing percentages of fault the trier of fact shall consider the fault of all persons who contributed to the alleged injury, death or damage to property, regardless of whether the person was, or could have been, named as a party to the suit.

Here, the Receiver has filed suit against Clark Hill asserting that it is responsible for the damages caused by the Second Fraud (and the First Fraud), while concurrently employing special counsel to pursue Chase Bank for "allowing" the Second Fraud to take place. Clark Hill, which admittedly has the burden of establish the comparative fault of the alleged nonparties at fault, may properly seek discovery from that nonparty to advance its defense. *See Ryan v. San Francisco Peaks Trucking Co.*, 228 Ariz. 48, ¶ 22, 262 P.3d 863, 869 (App. 2011) ("Because an allegation of comparative fault relating to nonparties is an affirmative defense, the defendant must prove the nonparty is actually at fault."). In fact, Clark Hill's failure to seek discovery in support of the comparative fault defense could ultimately

[4] According to the Receiver's testimony, the Receiver and Chase have discussed tolling agreements, although none had been signed at the time of the Receiver's deposition.

preclude Clark Hill from advancing the defense at all. *See e.g., Soto v. Brinkerhoff,* 183 Ariz. 333 (1995) (defendant precluded from naming another physician as a nonparty at fault where defendant had notice of potential issues yet failed to timely subpoena requisite factual information from nonparty physician needed to support the claim). Nothing in Rule 45 suggests that a party is more limited in seeking discovery with respect to its non-party at fault defense, merely because the nonparty has not been named in a lawsuit. Chase Bank's Objection does not cite anything to the contrary, nor has Chase Bank pointed to such authority in subsequent meet-and-confer conversations.

Likewise, the mere fact that Chase may have defenses to a lawsuit against it does not prevent Clark Hill from pursuing discovery to develop its non-party at fault defense. A.R.S. § 12-2506(B) expressly provides that the trier of fact shall consider the fault of persons who contributed to the alleged injury "regardless of whether the person was, or could have been, named as a party to the suit." Consequently, a defendant can name a nonparty at fault even if the plaintiff or defendant is prohibited from directly naming, or recovering from, that party. *Ocotillo West Joint Venture v. Superior Court,* 173 Ariz. 486, 488, 844 P.2d 653, 655 (App. 1992).[5]

Clark Hill has asserted through its non-party at fault notice that Chase facilitated the Second Fraud (as set forth in the Receiver's own status reports and Menaged's deposition testimony). Claims of aiding and abetting tortious conduct require proof of three elements: (1) the primary tortfeasor must commit a tort that causes injury to the plaintiff; (2) the defendant must know that the primary tortfeasor's conduct constitutes a breach of duty; and (3) the defendant must substantially assist or encourage the primary tortfeasor in the achievement of the breach. *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement*

[5] Arizona courts have a "tendency to apply comparative fault principles regardless of the relationship between the parties and the nature of the duty owed." *Natseway v. City of Tempe,* 184 Ariz. 374, 376, 909 P.2d 441, 443 (App. 1995). The cases also "reflect a recognition of the legislature's strong desire to ensure that comparative fault principles are applied in most cases where the actions of more than one party combine to cause harm." *Id.* at 377, 909 P.2d at 444.

Masons Local No. 395 Pension Tr. Fund, 201 Ariz. 474, 485, 38 P.3d 12, 23 (2002), as corrected (Apr. 9, 2002) (citing Restatement (Second) of Torts § 876(b)). Given that Menaged has been convicted for his crimes against DenSco, there can be no dispute that Menaged orchestrated a fraudulent scheme. Clark Hill, however, still has the burden of proving Chase's knowledge of, and substantial assistance to, the Second Fraud. The discovery sought is tailored to those elements. That information may be sensitive, and Chase may face additional discovery in the event the Receiver pursues the bank, but that has no bearing on whether Clark Hill is properly seeking that information.

B. The requested employee personnel files and investigative/disciplinary reports are relevant and must be produced.

Menaged's testimony implicates at least two, and perhaps three Chase employees: Kumbalek, Dadlani, and Lazar. Chase, however, has refused to produce those employees' personnel files, and has refused to produce documents related to any investigation it may have undertaken related to the Second Fraud, based solely on boilerplate relevancy and confidentiality objections.[6] Those objections are unfounded.

First, the actions of Chase employees, Chase's knowledge of those actions, and Chase's implementation of disciplinary or other procedures with respect to those actions (if any) are highly relevant to the Defendants non-party at fault claim. To that end, the personnel files of the three employees are directly relevant to any knowledge, scienter, or

[6] In meet and confer conversations, Chase has also vaguely asserted that the USA Patriot Act (8 U.S.C. § 1701 *et seq.*) might somehow prohibit the production of a bank employee's personnel file. To the extent that Chase continues to rely on that excuse, Clark Hill will respond in its Reply. To the extent, however, that Chase is withholding documents on the grounds that they may constitute Suspicious Activity Reports ("SAR"), Clark Hill has made clear during the meet and confer process that it is not seeking the production of any SARs filed by Chase. Defendants recognize that "no national bank, and no director, officer, employee or agent of a national bank, shall disclose a SAR or any information that would reveal the existence of a SAR." 12 C.F.R. § 21.11(k)(1). However, "the underlying facts, transactions, and documents upon which a SAR is based" are discoverable and are specifically exempted from the confidentiality protections of 12 C.F.R. § 21.11(k)(1). *See* 12 C.F.R. § 21.11(k)(1)(ii)(A)(2).

intent element of a claim against Chase. Such documents would go to show, among other things, (a) whether Chase, through its employees, knew about the transactions that enabled Menaged's fraudulent scheme, (b) the extent and nature of the employees' participation in the scheme, and (c) the extent to which Chase attempted, or failed, to remedy or curb its employees' actions. *See Freedman & Gersten, LLP v. Bank of America, N.A.*, 2010 WL 5139874 at *5 (D.N.J. Dec. 8, 2010) ("[e]valuative documents regarding an employee's conduct in handling suspicious activity contained in personnel files are generally discoverable"). As *Freedman* further noted, to the extent the bank "undertook any investigation to reveal [its employees'] potential negligence or fraudulent conduct, documentation evidencing or contradicting same is relevant and may lead to admissible evidence." *Id.*[7] Thus, the personnel files for the bank employees that Menaged directly implicated in his scheme, and documents regarding any investigation prompted by those actions, are directly relevant to Chase's knowledge of Menaged's scheme and its substantial assistance in enabling that scheme.[8]

Chase's blanket confidentiality objection also fails. For one, the Court has entered a protective order that governs the production of confidential documents and guards against any impermissible disclosure of such documents.[9] Second, the request is narrowly tailored to investigative documents and the personnel files of three specific bank employees who either personally processed Menaged's transactions (and allegedly manipulated Chase's system safeguards in order to do so), oversaw the processing of those transactions, or coddled

---

[7] *See also In re Mongelluzzi*, Case No. 8:11-ap-00653-CED, 2015 WL 4389564, at *1-2 (Bankr. M.D.Fla. July 14, 2015) (bank ordered to produce portions of its standard practice records of investigating suspicious activity, including investigatory reports and documents, computer generated monitoring reports . . . or alerts concerning the customer's banking activity).

[8] Information regarding bonus structures or other incentives that may have encouraged Chase's employees to ignore Chase's policies and procedures is likewise relevant. If those incentives are minimal, as Chase has suggested in the meet and confer process, then it should not be problematic for Chase to provide that information.

[9] Clark Hill provided Chase with a copy of the Protective Order. Chase has never identified any shortcomings with the Protective Order, nor has Chase sought or requested any additional protections.

Menaged into maintaining his apparently profitable relationship with Chase. As the Court aptly noted in *Cason v. FirstSource-Se. Grp., Inc.*:

> [W]here the files sought are those of employees whose action or inaction has a direct bearing on Plaintiff's claims or Defendant's affirmative defenses and especially where, as here, the court has issued an appropriate confidentiality order, personnel files are subject to discovery.

159 F.Supp.2d 242, 247 (W.D.N.C. 2001). Given the limited scope of the information sought coupled with the broad protective order, the Court should compel production of the requested personnel files and the documents related to the investigation, if any, that Chase instituted related to Menaged and the Second Fraud.

C. Chase's policies and procedures regarding withdrawals, deposits, and the use of cashiers' checks are relevant and must be produced

Clark Hill has subpoenaed Chase for its "internal policies and procedures regarding limits on . . . withdrawals, deposits, and cashier's check purchases" as well as its "policies and procedures . . . related to the issuance or cancellation of cashier's checks." Exh. A at No. 3, 4. The requests are limited to the time period from January 2014 through December 2016. Chase once again objects on the grounds of relevancy. Notwithstanding Chase's objection, Chase's policies and procedures governing the very actions that allowed the Second Fraud to flourish (to the extent such policies exist) are highly relevant to Chase's knowledge of, and substantial assistance to, Menaged's scheme to defraud DenSco. *See Freedman & Gersten, LLP v. Bank of America, N.A.*, 2010 WL 5139874 at *5 (D.N.J. Dec. 8, 2010) (bank ordered to produce "policies and procedures for handling suspicious activity and risk management. . . " and "policies and procedures related to check fraud and preventative procedures"); *Nelson v. Union Bank of California, N.A.*, 290 F.Supp. 2d 1101, 1120 (C.D. Cal. 2003) ("That the Banks utilized atypical banking procedures to service Slatkin's accounts, rais[ed] an inference that they knew of the Ponzi scheme and sought to accommodate it by altering their normal ways of doing business."). The policies must be produced.

D. Chase's emails regarding Menaged and the Second Fraud should be produced, to the extent it can be done cost effectively

Finally, Clark Hill has requested "Kumbalek, Vikram's and Lazar's emails or other communications related to Menaged or [Menaged's] Accounts." Exh. A at No. 8. It should go without saying that communications by Chase's employees regarding the atypical treatment of Menaged and his accounts is relevant to Clark Hill's defense. In addition to an unfounded relevancy objection, however, Chase also verbally explained that email communications from the relevant time period have been deleted. Fair enough. Apparently, however, Chase retains the ability to pull those emails from its archives, yet has asserted during meet and confer conversations that pulling those emails, and conducting a search, would cost the bank tens of thousands of dollars. Chase should be required to provide a more fulsome, written explanation as to the purported efforts and costs that would be involved in obtaining and searching the emails of three employees over a two year time period, so that Clark Hill can determine for itself whether such a search is worth the cost involved.

III. CONCLUSION

Based on the arguments set forth above, the Court should enter an order compelling Chase to produce documents responsive to categories numbers 3, 4, 5, 6, 7 and 11, and order Chase to provide further explanation as to the purported cost involved in producing documents responsive to category number 8, while rejecting Chase's relevancy and confidentiality objections. The Court should further order Chase (a) to produce documents responsive to request number 10, which Chase has already agreed to provide, and (b) to produce any documents responsive to request number 2, to the extent any such responsive documents were not previously produced to the Receiver.

RESPECTFULLY SUBMITTED this 4th day of March, 2019.

COPPERSMITH BROCKELMAN PLC

By:/s/*Marvin C. Ruth*
John E. DeWulf
Marvin C. Ruth
Vidula U. Patki
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
Attorneys for Defendants

ORIGINAL filed and a **COPY** hand delivered this 4th day of March, 2019 to:

Nicole M. Goodwin, Esq.
Aaron T. Lloyd, Esq.
GREENBERG TRAURIG, LLP
2375 E. Camelback Rd., Suite 700
Phoenix, AZ 85016

Colin F. Campbell, Esq.
Geoffrey M. T. Sturr, Esq.
Joshua M. Whitaker, Esq.
OSBORN MALEDON, P.A.
2929 N. Central Ave., Suite 2100
Phoenix, AZ 85012-2793
Attorneys for Plaintiff

/s/ Verna Colwell

Exhibit A

GREENBERG TRAURIG, LLP
ATTORNEYS AT LAW
SUITE 700
2375 EAST CAMELBACK ROAD
PHOENIX, ARIZONA 85016
(602) 445-8000

Nicole M. Goodwin, SBN 024593
goodwinn@gtlaw.com
Aaron T. Lloyd, SBN 027987
lloyda@gtlaw.com
Attorneys for JPMorgan Chase Bank, N.A.

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, v. CLARK HILL PLC, a Michigan limited liability company; DAVID G. BEAUCHAMP and JANE DOE BEAUCHAMP, husband and wife, Defendants.	Case No. CV2017-013832 **NON-PARTY JPMORGAN CHASE BANK, N.A.'S RESPONSES AND OBJECTIONS TO SUBPOENA DATED JANUARY 8, 2019**

Non-Party JPMorgan Chase Bank, N.A., ("Chase"), by and through its undersigned counsel, hereby objects and responds to the Subpoena served upon Chase by Defendants Clark Hill PLC and David G. Beauchamp (collectively "Defendants") on January 8, 2019, and states as follows:

GENERAL OBJECTIONS

1. Chase objects to the Subpoena in its entirety as it does not provide a reasonable time to comply, as it affords fewer than nine (9) business days for compliance.

2. Chase objects to the Requests to the extent they fail to reflect reasonable steps taken to avoid imposing undue burden or expense on Chase.

3. Chase objects to the Requests to the extent they seek duplicative information.

4. Chase objects to the Requests to the extent they purport to impose any obligations on Chase other than those set forth in the Arizona Rules of Civil Procedure.

5. Chase objects to the Requests to the extent they seek documents not in the possession, custody, or control of Chase; already in the possession, custody, or control of Defendants; or in the possession, custody, or control of third parties.

6. Chase objects to the Requests as unduly burdensome and oppressive to the extent they seek documents or information that have been produced by or are readily available through discovery from a party in the underlying lawsuit. Chase will not produce documents that have already been produced by, or which were readily available through discovery from, a party in the underlying lawsuit.

7. Chase objects to the Requests to the extent they seek documents that are protected from disclosure by the attorney-client privilege, work-product doctrine, or are otherwise protected from disclosure under the law. Nothing contained in this Response is intended to be, nor should be construed as, a waiver of any privilege. Should Chase inadvertently respond with documents or information protected by any such privilege, such response shall in no way be intended, nor shall it be construed, as a waiver of such privilege.

8. Chase objects to the Requests to the extent they seek documents that contain confidential information and/or information that Chase is under an obligation to a third party not to disclose.

9. Chase objects to the Requests to the extent that they seek documents that are not relevant to any party's claim or defense and/or are not proportional to the needs of the underlying lawsuit.

10. Chase objects to the Requests to the extent that they assume facts that do not exist or are incorrect or relate to the construction of applicable law. Any statement herein does not indicate, and should not be construed as an agreement by Chase as to, the

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 700
PHOENIX, ARIZONA 85016
(602) 445-8000

truth or accuracy of any of Defendants' characterizations of fact or law, the factual expressions or assumptions contained in any Request, the propriety of the Request, or the relevance or admissibility of any Request.

11. Chase objects to the Requests to the extent they contain vague, ambiguous, undefined or argumentative terms, or require speculation.

12. Chase objects to the Requests to the extent they call for the production of information that is too voluminous to compile and is of little if any probative value, or to the extent the Requests require compilations not kept in the ordinary course of business.

13. Each of the foregoing General Objections is incorporated in each of the following specific objections.

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST NO. 1:

All of Your internal policies and procedures related to the opening of the Accounts at the time any of the Accounts were opened.

RESPONSE:

Chase objects to this Request as it seeks documents that are not relevant under Rule 401 of the Arizona Rules of Evidence and, therefore, not a proper subject of discovery. Chase further objects to this Request as it is overly broad and unduly burdensome insofar as it requests "all" policies and procedures "related" to account opening. Chase further objects to this Request insofar as it seeks confidential and proprietary business information.

REQUEST NO. 2:

All documents reflecting or relating to cashier's checks You issued to Menaged, including all documents relating to the issuance of any such cashier's checks and any documents related to the cancellation or re-deposit of any such cashier's checks, including, but not limited to, all withdrawal or deposit slips.

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 700
PHOENIX, ARIZONA 85016
(602) 445-8000

RESPONSE:

Chase objects to this Request insofar as it seeks confidential and/or non-public personal identifying information of current or former Chase customer(s). Chase further objects to this Request as overly broad and unduly burdensome, insofar as it is not limited in time. Chase further objects to this Request insofar as it seeks confidential and proprietary business and/or customer information. Subject to and without waiving the foregoing objections, to the extent certain records responsive to this Request have been produced in related litigation, Chase is not required to re-produce those documents pursuant to this Request per agreement between Chase and Defendants.

REQUEST NO. 3:

All of Your internal policies and procedures from January 14, 2014 through December 2016 related to the issuance or cancellation of cashier's checks, including, but not limited to documents detailing or explaining (a) Your record keeping procedures and requirements with respect to the issuance or cancellation of cashier's checks; (b) any holds or waiting periods You required with respect to the cancellation or re-deposit of cashier's checks; (c) any fees charged or reimbursed to the bank customer by You with respect to the issuance or cancellation of cashier's checks; (d) any limits or guidelines related to the number of cashier's checks or total dollar amount of cashier's checks that may be issued to, or canceled by, a bank customer during any given time period; and (e) any guidelines, protocols, or requirements related to the cancellation or re-deposit of cashier's check, including requirements related to any notations or explanations that must be included on a cancelled cashier's check.

RESPONSE:

Chase objects to this Request as it seeks documents that are not relevant under Rule 401 of the Arizona Rules of Evidence and, therefore, not a proper subject of discovery. Chase further objects to this Request as it is overly broad and unduly burdensome. Chase further objects to this Request insofar as it seeks confidential and proprietary business information.

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 700
PHOENIX, ARIZONA 85016
(602) 445-8000

REQUEST NO. 4:

All of Your internal policies and procedures from January 2014 through December 2016 regarding limits on the cash amounts of a customer's withdrawals, deposits, and cashier's check purchases.

RESPONSE:

Chase objects to this Request as it seeks documents that are not relevant under Rule 401 of the Arizona Rules of Evidence and, therefore, not a proper subject of discovery. Chase further objects to this Request as it is overly broad and unduly burdensome. Chase further objects to this Request insofar as it seeks confidential and proprietary business information.

REQUEST NO. 5:

Any documents reflecting any incentives, bonuses, or other benefits provided to bank employees related to the issuance or cancellation of cashier's checks.

RESPONSE:

Chase objects to this Request as it seeks documents that are not relevant under Rule 401 of the Arizona Rules of Evidence and, therefore, not a proper subject of discovery. Chase further objects to this Request as it is overly broad and unduly burdensome. Chase further objects to this Request insofar as it seeks confidential, proprietary and/or non-public personal, and business, information.

REQUEST NO. 6:

Kumbalek's, Vikram's and Lazar's personnel file from January 2014 through the present.

RESPONSE:

Chase objects to this Request as it seeks documents that are not relevant under Rule 401 of the Arizona Rules of Evidence and, therefore, not a proper subject of discovery. Chase further objects to this Request as it is overly broad and unduly

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 700
PHOENIX, ARIZONA 85016
(602) 445-8000

burdensome. Chase further objects to this Request insofar as it seeks confidential and/or non-public personal information related to Chase's current or former employees.

REQUEST NO. 7:

Any investigative or disciplinary files regarding any bank employee, including, but not limited to, Kumbalek, Vikram, and Lazar, related in any way to Menaged or the Accounts.

RESPONSE:

Chase objects to this Request as it seeks documents that are not relevant under Rule 401 of the Arizona Rules of Evidence and, therefore, not a proper subject of discovery. Chase further objects to this Request as it is overly broad and unduly burdensome. Chase further objects to this Request insofar as it seeks confidential and/or non-public personal information related to Chase's current or former employees.

REQUEST NO. 8:

All of Kumbalek's, Vikram's, and Lazar's emails or other communications related to Menaged or the Accounts, including, but not limited to, any emails received from or sent to Menaged, Veronica Castro, or Veronica Gutierrez Reyes.

RESPONSE:

Chase objects to this Request as it seeks documents that are not relevant under Rule 401 of the Arizona Rules of Evidence and, therefore, not a proper subject of discovery. Chase further objects to this Request as it is overly broad and unduly burdensome. Chase further objects to this Request insofar as it seeks confidential and/or non-public personal identifying information related to Chase's current or former employees and/or customers. Chase further objects to this request to the extent it seeks information protected by the attorney-client privilege, the work-product doctrine, or any other privilege or immunity.

REQUEST NO. 9:

Kumbalek, Vikram, and Lazar's desk files related to Menaged or the Accounts.

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 700
PHOENIX, ARIZONA 85016
(602) 445-8000

RESPONSE:

Chase objects to this request the term "desk files" is vague and ambiguous and is undefined. Chase objects to this Request as it seeks documents that are not relevant under Rule 401 of the Arizona Rules of Evidence and, therefore, not a proper subject of discovery. Chase further objects to this Request as it is overly broad and unduly burdensome.

REQUEST NO. 10:

All organizational charts, from January 2010 through December 2016 for (a) the branch at 8999 East Shea Boulevard, Floor 1, Scottsdale, Arizona 85260, (b) any branch that held any of the Accounts, and (c) the regional organization that oversees those branch operations identified in subparts (a) and (b).

RESPONSE:

Chase objects to this Request as it seeks documents that are not relevant under Rule 401 of the Arizona Rules of Evidence and, therefore, not a proper subject of discovery. Chase further objects to this Request as it is overly broad and unduly burdensome insofar as it covers documentation for a six-year period.

REQUEST NO. 11:

All Documents setting forth the bonus structures for profitable accounts for any branch identified in Request #10, as well as the bonus structures for any regional organization that oversees those branch operations.

RESPONSE:

Chase objects to this Request as it seeks documents that are not relevant under Rule 401 of the Arizona Rules of Evidence and, therefore, not a proper subject of discovery. Chase further objects to this Request as it is overly broad and unduly burdensome. Chase further objects to this Request insofar as it seeks confidential and proprietary business information.

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 700
PHOENIX, ARIZONA 85016
(602) 445-8000

DATED this 4th day of February 2019.

GREENBERG TRAURIG, LLP

By: */s/ Nicole M. Goodwin*
Nicole M. Goodwin
Aaron T. Lloyd
Attorneys for JPMorgan Chase Bank, N.A.

COPY of the foregoing served via E-Mail this 4th day of February 2019 to:

John E. DeWulf
Marvin C. Ruth
Vidula U. Patki
Coppersmith Brockelman, PLC
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
jdewulf@cblawyers.com
mruth@cblawyers.com
vpatki@cblawyers.com

/s/ Tammy Mowen
Employee, Greenberg Traurig

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 700
PHOENIX, ARIZONA 85016
(602) 445-8000

Exhibit B

SIMON
Consulting, LLC

Arizona Corporation Commission
v.
DenSco Investment Corporation

(Case No. CV 2016-014142)

Status Report
of
Peter S. Davis, as Receiver of DenSco Investment Corporation

December 23, 2016

FORENSIC ACCOUNTING & ECONOMICS • RECEIVERSHIP • RESTRUCTURING
3200 NORTH CENTRAL AVENUE • SUITE 2460 • PHOENIX, AZ 85012 • 602.279.7500 • (FAX) 602.279.7510 • WWW.SIMONCONSULTING.NET

Exhibit "A"

As of the date of the receivership, DenSco's books and records report two (2) unsecured receivables due from Menaged, including $13,336,807.24 classified as "Work Out 5 Million" and $1,002,532.55 classified as "Work Out 1 Million," for a total of $14,339,339.79. The loans recorded in these workout loan categories relate to overages on properties that date back to August 2012 and the First Fraud through November 2013. All prior DenSco loans that may have been double-encumbered before August 2012 were paid off in full without causing any additional losses.

3.2. The Second Fraud

In January 2014, Menaged began requesting loans from DenSco for properties that neither Menaged nor his entities actually purchased at trustees' sales or otherwise. Based on analyses of various emails between Chittick and Menaged, the Receiver understands that after the First Fraud, Chittick began requiring Menaged to provide DenSco with copies of the cashier's checks issued to the trustees as well as copies of the receipts received from the trustee for the purchase of a property at a trustee's sale. This was presumably done to ensure that DenSco was the senior lienholder on all of its loans to Menaged, even though DenSco continued to wire funds to Easy or AHF instead of directly to the trustees. However, Menaged began providing Chittick with falsified trustee's sale receipts[26] and copies of checks that were never actually given to the trustees. Instead, most of the cashier's checks were deposited back to Easy or AHF bank accounts. The Receiver refers to this fraud scheme perpetrated by Menaged as the "Second Fraud."

Of the 2,712 loans that Menaged and his entities received from DenSco from January 2014 through June 2016, only ninety-six (96) of them were secured by the actual purchase of real estate. As shown in **Table 2** below, DenSco advanced a total of $734,484,440.67 to Menaged for fraudulent loans resulting from the Second Fraud.

Table 2:
Summary of Menaged Loans
January 2014 through June 2016

	Purchased		Not Purchased	
Year	Amount	Count	Amount	Count
2014	$ 15,001,843.42	96	$ 181,058,229.00	803
2015	-	-	361,021,611.67	1,316
2016	-	-	192,404,600.00	593
Total	**$ 15,001,843.42**	**96**	**$ 734,484,440.67**	**2,712**

On average, Menaged paid off the fraudulent loans plus 18% accrued interest within approximately three (3) weeks. Because Menaged was paying interest on these loans but was not actually making any money from the purchase and sale of real estate, the number and frequency of the fraudulent loans increased over time, which dramatically increased the principal loan

[26] The Receiver believes Menaged provided the false trustee's sale receipts to DenSco; however, Menaged testified that he did not send DenSco the trustee's sale receipts and didn't know that they were being sent. Menaged further testified that they must have been sent by his employee, Veronica Castro Gutierrez. See the transcript from the 10/20/16 Rule 2004 Examination of Scott Menaged; pages 171-174.

balance due to DenSco. The records analyzed to date indicate that Menaged essentially obtained new loans from DenSco in order to repay DenSco the principal and interest due on the older loans.

As of the date of the receivership, DenSco's balance sheet reported eighty-four (84) loans totaling $28,332,300.00 due from Menaged for properties that neither Menaged nor his entities actually purchased.

4. Solvency Analysis

The Receiver analyzed DenSco's balance sheet in light of the information presented above regarding the First Fraud and Second Fraud perpetrated by Menaged to determine when DenSco's liabilities exceeded its assets. The Receiver made the following adjustments to DenSco's balance sheet to properly account for the disposition of the Menaged loans (See **Exhibit 1**).

Adjustment for the First Fraud

As a result of the First Fraud, DenSco's balance sheet reported the Menaged loans as assets at their face value despite the fact that many of the underlying properties were double-encumbered and, in several cases, the property values were insufficient to repay both DenSco and the third party lenders. Accordingly, for those properties where DenSco paid the deficit and classified the same as an unsecured "Work Out" loan, the Receiver reduced the balance sheet assets by the workout loan balance as of the date of DenSco's original loan(s) on the property.

For example, as discussed in **Section 3.1** above, DenSco loaned $250,000.00 to Menaged for the Grayhawk Property on August 20, 2012, plus an additional $116,474.60 on January 30, 2014. When the property was sold in July 2014, DenSco was repaid the principal balance of $366,474.60, but paid the deficit of $348,873.28, resulting in an unsecured workout loan of $348,873.28. Accordingly, the Receiver adjusted DenSco's balance sheet to exclude the $250,000.00 Grayhawk loan asset as of the original loan date of August 20, 2012. The Receiver further adjusted DenSco's balance sheet to exclude $98,873.28[27] of the additional $116,474.60 loan asset as of January 30, 2014. Thus, the Grayhawk Property transactions resulted in a total loss of $348,873.28, of which $250,000.00 was removed from the balance sheet effective August 20, 2012, and $98,873.28 was removed from the balance sheet effective January 20, 2014.

Adjustment for the Second Fraud

As a result of the Second Fraud, DenSco's balance sheet reported the Menaged loans as assets at their face value despite the fact that the underlying properties were never actually purchased by Menaged. Accordingly, the Receiver adjusted DenSco's balance

[27] Total loss of $348,873.28 minus $250,000.00 previously accounted for equals $98,873.28.

Exhibit C

SIMON
CONSULTING
Clarity. Integrity. Results.

Arizona Corporation Commission
v.
DenSco Investment Corporation

(Case No. CV 2016-014142)

Status Report
of
Peter S. Davis, as Receiver of DenSco Investment Corporation

December 22, 2017

FORENSIC ACCOUNTING & ECONOMICS • RECEIVERSHIP • RESTRUCTURING
3200 NORTH CENTRAL AVENUE • SUITE 2460 • PHOENIX, AZ 85012 • 602.279.7500 • (FAX) 602.279.7510 • WWW.SIMONCONSULTING.NET

Exhibit "A"

breach fiduciary duties he owed to DenSco and its investors. The damages DenSco seeks include losses suffered on loans made to Menaged and his entities after DenSco learned of the First Fraud.

On November 15, 2017, the Court granted the defendants an extension of the deadline to respond to the Receiver's complaint. During the first quarter of 2018, Special Counsel expects that Beauchamp and Clark Hill will answer the complaint, a pre-trial schedule will be established, and discovery will begin.

2.6.2. DenSco claims against Financial Institutions

The Receiver has determined that DenSco may hold significant claims against certain financial institutions including JP Morgan Chase Bank, NA ("Chase") and US Bank, NA ("US Bank") for their participation in Menaged's massive fraudulent loan scheme upon DenSco.

As discussed in **Section 3.2** of the Receiver's December 23, 2016 Status Report, Chittick began requiring Menaged to provide DenSco with copies of the cashier's checks issued to the trustees as well as copies of the receipts received from the trustee for the purchase of a property at a trustee's sale. However as part of the Second Fraud, Menaged began providing Chittick with falsified trustee's sale receipts and copies of cashier's checks that were never actually given to the trustees. Instead, most of the cashier's checks were deposited back to Easy or AHF bank accounts.

The Receiver has since learned that after Menaged took a picture of each cashier's check to send to DenSco, he returned to the financial institution to cancel the cashier's check, typically only a few hours after the cashier's check was issued. The Receiver's analysis of Menaged's bank accounts revealed that Menaged procured at least 1,383 legitimate cashier's checks totaling $319,292,828, including 1,340 cashier's checks from Chase and 43 cashier's checks from US Bank, during the period from January 2014 through June 2015.

Accordingly, on September 19, 2017, the Receiver filed a *Petition for Order to Approve the Engagement of Bergin Frakes Smalley & Oberholtzer, PLLC to Represent the Receiver as Special Counsel* (see Petition No. 36) to assist the Receiver in the investigation and potential prosecution, trial, or settlement of claims against financial institutions who allowed Menaged to issue and cancel the cashier's checks used to defraud DenSco. The Court signed the *Order Re: Petition No. 36* approving the engagement of special counsel Bergin Frakes Smalley & Oberholtzer, PLLC on October 18, 2017.

The attorneys at Bergin Frakes Smalley & Oberholtzer, PLLC, who have significant experience in the areas of banking and banking regulation and can not only assist the Receiver in the investigation of DenSco's potential claims, but also provide sound advice and counsel to the Receiver in all aspects of potential legal claims and possible remedies that may arise from actions or omissions of Chase and/or US Bank.

Bergin Frakes Smalley & Oberholtzer, PLLC has completed its preliminary investigation into DenSco's potential claims against Chase Bank and US Bank and has submitted a memorandum

to the Receiver setting forth its findings and recommendations and continues to investigate the potential claims.

2.6.3. DenSco claims against Active Funding Group, LLC

The Receiver has determined that DenSco may hold claims against Active Funding Group, LLC and its principals (collectively, "Active") for their participation in Menaged's fraudulent loan scheme upon DenSco.

As discussed in **Section 3.1** of the Receiver's December 23, 2016 Status Report, in approximately 2011, Menaged began requesting loans from DenSco for properties on which he had also solicited other lenders for loans. In an effort to deceive both lenders, Menaged essentially obtained two loans on hundreds of properties with the lenders believing that they were in first position. The Receiver refers to this fraud scheme perpetrated by Menaged as the "First Fraud."

The Receiver has since learned that after Active uncovered Menaged's scheme to defraud DenSco and other lenders, Active worked in concert with Menaged by taking actions to protect its historical loans to Menaged and enabling him to continue to defraud DenSco, while ensuring that Active's future loans to Menaged were secured by first position liens.

Accordingly, on November 22, 2017, the Receiver filed a *Petition for Order to Approve the Engagement of Ajamie, LLP to Represent the Receiver as Special Counsel* (see Petition No. 45) to assist the Receiver in the investigation and potential prosecution, trial, or settlement of claims against Active. This petition is currently pending before the Court.

The attorneys at Ajamie, LLP have significant experience in the areas of complex commercial and financial fraud litigation and can not only assist the Receiver in the investigation of DenSco's potential claims, but also provide sound advice and counsel to the Receiver in all aspects of potential legal claims and possible remedies that may arise from actions or omissions of Active.

Ajamie, LLP is in the process of investigating DenSco's potential claims and preparing a detailed memorandum of these claims with an estimation of the probable costs to pursue such claims. Upon receipt of this memorandum and after the Court's approval of Petition No. 45, the Receiver will determine if it is appropriate to pursue DenSco's claims against Active.

2.6.4. Claims to Funds Seized and Forfeited from Joseph Menaged

On November 27, 2017, the Federal District Court entered an Order preliminarily forfeiting $709,405.40 that was seized by the United States from a bank account in the name of Joseph Menaged. The Receiver believes these funds are directly traceable to DenSco monies misappropriated by Menaged. The Receiver will be undertaking efforts to recover these funds for the benefit of the DenSco Receivership.

Exhibit D

GUTTILLA MURPHY ANDERSON
Ryan W. Anderson (Ariz. No. 020974)
5415 E. High St., Suite 200
Phoenix, Arizona 85054
Email: randerson@gamlaw.com
Phone: (480) 304-8300
Fax: (480) 304-8301

Attorneys for the Receiver

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR MARICOPA COUNTY

ARIZONA CORPORATION COMMISSION, Plaintiff, v. DENSCO INVESTMENT CORPORATION, an Arizona corporation, Defendant.	Cause No. CV2016-014142 PETITION NO. 36 PETITION FOR ORDER TO APPROVE THE ENGAGEMENT OF BERGIN, FRAKES, SMALLEY & OBERHOLTZER, PLLC TO REPRESENT THE RECEIVER AS SPECIAL COUNSEL (Assigned to the Honorable Teresa Sanders)

Peter S. Davis, as the Court appointed Receiver of DenSco Investment Corporation ("DenSco"), respectfully petitions the Court for an Order approving the engagement of Bergin, Frakes, Smalley & Oberholtzer, PLLC., as Special Counsel to the Receiver, as follows:

1. On August 18, 2016, this Court entered its *Order Appointing Receiver*, which appointed Peter S. Davis as Receiver of DenSco Investment Corporation ("Receivership Order").

Guttilla Murphy Anderson, P.C.
5415 E. High Street, Suite 200
Phoenix, AZ 85054
(480) 304-8300

2. The Receivership Order authorizes the Receiver to, among other things, employ attorneys and other professionals that are necessary and proper for the collection, preservation and maintenance of the Receivership Assets. [See ¶16 of the Receivership Order]

3. The Receiver has initially determined that DenSco may hold significant claims against financial institutions including JP Morgan Chase Bank, N.A and U.S. Bank N.A for their participation in a scheme to defraud DenSco. The Receiver has determined that certain financial institutions may have been instrumental in allowing Yomtov Scott Menaged ("Menaged") to operative a massive fraudulent loan scheme upon DenSco. The Receiver has determined that starting in January 2014, as part of the DenSco's underwriting requirements, Menaged was required to provide DenSco with a copy of each specific cashier check, issued by Menaged's financial institution, to the respective foreclosure trustee for the purchase of a property by Menaged at a foreclosure trustee's auction/sale.

4. The Receiver's investigation has determined that Menaged was able to procure at least 1,383 legitimate cashier's checks from financial institutions in a period of two years for a collective face value of at least $319,292,828.

5. However, the cashier's checks were used by Menaged to make it appear that Menaged was actually using DenSco loan proceeds to purchase property from a foreclosure trustee, when in fact, Defendant obtained the cashier's check for the sole purpose of simply taking a picture of the cashier's check to send to DenSco to make it appear that the DenSco funds were being used to purchase real property. Moreover, the Receiver has learned that

Gutilla Murphy Anderson, P.C.
5415 E. High Street, Suite 200
Phoenix, AZ 85054
(480) 304-8300

after Menaged took a picture of the cashier's check to send to DenSco he returned to the financial institution to cancel the cashier's check, typically only a few hours after the cashier's check was issued. The sheer volume of issued and then immediately cancelled cashier's checks by Menaged is staggering.

6. The Receiver has determined that he requires the legal services of the law firm of Bergin, Frakes, Smalley & Oberholtzer, PLLC., to assist the Receiver in his ongoing investigation of these potential claims and the potential prosecution, trial or settlement of any claims that the DenSco may have against the financial institutions who allowed Menaged to issue and cancel the cahsier's checks used to defraud DenSco.

7. The Receiver has determined that he requires the expertise of Bergin, Frakes, Smalley & Oberholtzer, PLLC, as these accomplished lawyers have significant experience in the areas of banking and banking regulation and can not only assist the Receiver in the investigation of DenSco's potential claims, but also to provide sound advice and counsel to the Receiver in all aspects of potential legal claims and possible remedies that may arise from actions or omissions of the financial institutions in question.

8. Bergin, Frakes, Smalley & Oberholtzer, PLLC, has agreed to serve as Special Counsel pursuant to the terms of the Engagement Agreement as set forth in Exhibit 'A". Pursuant to the Engagement Agreement, Special Counsel will complete an investigation into DenSco's potential claims and provide a detailed memorandum of the claims with an estimation of probable costs of pursuit of the claims within thirty (30) days from the Court's approval of this Petition.

Gutilla Murphy Anderson, P.C.
5415 E. High Street, Suite 200
Phoenix, AZ 85054
(480) 304-8300

9. Thereafter, assuming the Receiver determines that DenSco's claims should be advanced, the Receiver will have the option to elect either an hourly or contingent fee as the basis for future compensation to Special Counsel. If the Receiver elects to proceed on an hourly basis, Bergin, Frakes, Smalley & Oberholtzer's professionals will be compensated on an hourly rate basis pursuant to the professional rate schedule as set forth in Exhibit 'A". If the Receiver elects to proceed on a contingency fee basis, Special Counsel has agreed to a sliding scale for the potential contingency fee as set forth in Exhibit 'A". Specifically, Special Counsel would be compensated Thirty-three and one-third percent (33.33%) of any gross recovery between $00.00 and $6,000,000.00; Twenty-Five percent (25%) of any gross recovery between $6,000,000.00 and $12,000,000.00; Fifteen percent (15%) of any gross recovery between $12,000,000.00 and $20,000,000.00; and ten percent (10%) of any gross recovery above $20,000,000.00.

10. The Receiver believes that both the hourly rates and sliding scale for the potential contingency fee are reasonable in light of the substantial experience of the professionals at Bergin, Frakes, Smalley & Oberholtzer, PLLC and the nature of the DenSco claims.

WHEREFORE, the Receiver respectfully requests that the Court enter an order:

1. Appointing the law firm of Bergin, Frakes, Smalley & Oberholtzer, PLLC, as special counsel to the Receiver;

2. Approving the engagement agreement with the law firm of Bergin, Frakes, Smalley & Oberholtzer, PLLC, attached as Exhibit "A" to ; and

Guttilla Murphy Anderson, P.C.
5415 E. High Street, Suite 200
Phoenix, AZ 85054
(480) 304-8300

3. Directing the Receiver to file a notice with the Court when the Receiver has made his election to either proceed with compensation of Special Counsel on an hourly basis or on a contingency basis.

Respectfully submitted this 19th day of September, 2017.

GUTTILLA MURPHY ANDERSON, P.C.

/s/Ryan W. Anderson
Ryan W. Anderson
Attorneys for the Receiver

2359-001(296673)

Guttilla Murphy Anderson, P.C.
5415 E. High Street, Suite 200
Phoenix, AZ 85054
(480) 304-8300

FEE AGREEMENT

BERGIN, FRAKES, SMALLEY & OBERHOLTZER, PLLC

The law firm of BERGIN, FRAKES, SMALLEY & OBERHOLTZER, PLLC ("Attorneys"), agrees to represent Peter S. Davis, as receiver of DenSco Investment Corporation (hereinafter "DenSco"), in receivership in CV 2016-014142 ("Client"), in the investigation, prosecution, trial or settlement of any claims that DenSco may have against JP Morgan Chase Bank, N.A.

1. **Flat Fee, Memorandum of Claim.** Receiver shall seek approval from the Court to retain Attorneys. If approval is given, Attorneys will prepare a memorandum of claim for the Receiver setting out an analysis of claims the Receiver may pursue. In preparing the memorandum, Attorneys shall review relevant documentation, setting out the factual and legal basis of any claims, and possible remedies. The memorandum will set out the probable costs of pursuing the claims. The memorandum will be submitted to the Receiver within thirty days of the approval of this agreement by the Court. Attorneys will prepare the memorandum of claim for a flat fee of $20,000, with the understanding that the Receiver will seek approval from the Court to pay that fee after receipt of the memorandum.

2. **Election of Hourly or Contingent Fee.** If the Receiver decides to pursue the claims, then the Receiver may choose to proceed with the case either on a standard hourly rate basis or on a contingent fee basis.

3. **Hourly Rate.** If a decision is made to proceed on an hourly rate basis, Attorneys will be paid in accordance with the standard form hourly rate retention agreement that is attached to this Fee Agreement.

4. **Contingent Fee.** If a decision is made to proceed on a contingent fee basis, Client agrees to pay and assign to Attorneys:

(1) Thirty-three and one third percent (33 1/3%) of any gross recovery between zero and $6,000,000 obtained by reason of settlement or trial; and, in addition

(2) Twenty-five percent (25%) of any gross recovery between $6,000,000 and $12,000,000 obtained by reason of settlement or trial; and, in addition

(3) Fifteen percent of any gross recovery between $12,000,000 and $20,000,000 obtained by reason of settlement or trial; and, in addition

(4) Ten percent of any gross recovery above $20,000,000.

The term "gross recovery" shall mean actual receipt by Client (or its representatives) of the proceeds of a settlement, a court or arbitration award and/or a jury verdict; and the gross recovery is "obtained" either on receipt or on the date on which there is an enforceable settlement agreement with any Defendant or other relevant person or entity.

Any award of attorneys' fees, if allowed and ordered by the Court, will be included in calculating the gross recovery.

Except as provided in Paragraph 8 below, attorneys' fees, expenses and costs will be payable only out of recovery, and if no recovery is obtained, no fees or costs shall be payable to Attorneys except for the flat fee for the memorandum of claim.

Client consents to the payment of any recovery directly to Attorneys. If any recovery is paid by a joint check to Attorneys and Client, Client shall endorse such check over to Attorneys, and Attorneys shall disburse the proceeds in accordance with this Agreement, after deducting unreimbursed costs and its attorneys' fees.

Client agrees that the attorneys' fee calculated shall be a lien on any amount recovered, by settlement or otherwise.

5. **Appeal.** Attorneys shall respond to any appeal or special action filed by an adverse party. Attorneys shall initiate any appeal or special action requested by the Receiver.

6. **Future Payments.** If a settlement is reached or a judgment provided which provides that clients shall receive money and/or other benefits to be paid or conferred over some future period of time, any contingent fee will be based upon the present value of the recovery. In that event, the current value of such money or benefits shall be determined by fair and reasonable means, and that current value shall be the amount recovered. If practicable, Attorneys may take any contingent fee at the time a future payment is made; for example, if there is an annuity, Attorneys may take any contingent fee when an annuity is paid.

7. **Expenses.** Under the ethical rules governing lawyers and lawsuits in Arizona, Attorneys are allowed to, and hereby agree to, advance the expenses of representation. If an hourly rate basis is selected, Client will reimburse Attorneys for all expenses so advanced. If a contingent fee basis is selected, expenses advanced by Attorneys, and not otherwise reimbursed to Attorneys, for example by a recovery of taxable costs, shall be deducted from Client's share of the amount recovered. If nothing is recovered, then Client shall not have to reimburse Attorneys for any expenses advanced.

8. **Expenses includes Taxable Costs.** In the event that the case is litigated to a judgment, Client may, if the Client prevails, recover "taxable costs." Taxable costs include such items as filing fees, and the costs of depositions, subpoenas, etc. Any taxable costs recovered shall be used to reimburse Attorneys for the taxable costs and expenses which they have advanced in the course of the litigation, and will not become part of the gross amount recovered if a contingent fee basis is selected.

9. **Withdrawal.** Attorneys may withdraw as counsel for Client at any time upon giving reasonable notice. This Agreement may also be terminated at any time by Client before settlement or ultimate recovery after reasonable notice to Attorneys.

In the event a contingent fee basis is selected and this Agreement is terminated by Attorneys for no cause before settlement or ultimate recovery, no fees shall be payable to Attorneys. In the event that Attorneys withdraw for good cause, then the Attorneys shall be paid their ordinary hourly rates for work performed up to the time of their withdrawal. If Client and Attorneys cannot agree on the issue of good cause, then that issue shall be determined in a single arbitrator arbitration conducted according to the commercial arbitration rules of the American

Arbitration Association, in confidential proceedings. The result of the Arbitration will be submitted to the Court for approval, and the parties agree that the Court may review the result as to the reasonableness of the hourly fees awarded.

In the event a contingent fee basis is selected and this Agreement is terminated by Client before settlement or ultimate recovery, Client agrees to pay to Attorneys from any recovery ultimately obtained a fee that fairly represents the value of Attorneys services, taking into account all the facts and circumstances, including the fee specified in this agreement, the status of the litigation at the time of the termination, and the pro rata division of time between Attorneys and any subsequent law firm. If disputed, that fee shall be set by the Court.

10. **Settlement.** No settlement shall be binding without the consent of Client, and the approval of the Court.

11. **Requirement of Reasonableness and Court approval.** Pursuant to ER 1.5, Rule 42, Rules of the Arizona Superior Court, Attorneys will review any fees billed if an hourly rate basis is selected to assure that the fees are reasonable in light of the factors set forth in ER 1.5, and will adjust their fees to the extent necessary to assure that they are reasonable and comport with ER 1.5.

Pursuant to the Receivership Order, the Court must approve the reasonableness of all attorneys' fees and costs and expenses. No attorneys' fees, costs or expenses shall be paid until approved by the Receiver and the Court.

12. **Retention of Documents.** In the course of the representation, Attorneys are likely to come into possession of copies or originals of documents or other materials belonging to Client or others. Once the particular matter to which those materials relate has been concluded, Attorneys will have no further responsibility to maintain such materials unless expressly agreed otherwise. If Client has not sought the return of such materials within one year of the closing of the matter to which such materials relate, Attorneys may destroy such materials in accordance with their normal file retention policies.

13. **Client's Duties.** Client agrees to be truthful with Attorneys, to cooperate in the prosecution of the Claim, to keep Attorneys informed of all relevant developments, and to keep Attorneys advised of Client's address, telephone number, and whereabouts.

Dated this 12th day of September, 2017

Peter S. Davis, Receiver

BERGIN, FRAKES, SMALLEY & OBERHOLTZER, PLLC

By_____
Kenneth M. Frakes

By_____
Brian M. Bergin

Exhibit "A"

FEE AGREEMENT
BERGIN, FRAKES, SMALLEY & OBERHOLTZER, PLLC

Representation. The law firm of Bergin, Frakes, Smalley & Oberholtzer, PLLC (hereinafter "us" or "we") has agreed to represent Peter S. Davis, as receiver of DenSco Investment Corporation, in receivership in CV 2016-014142 (hereinafter "DenSco" or "you"), in the investigation, prosecution, trial or settlement of any claims that DenSco may have against its former legal advisors, including any claims against JP Morgan Chase Bank, N.A.

Fees and Costs. You agree to pay us for legal services at our regular hourly rates which will be billed to you and which are to be paid each month.

Our fee will be determined by multiplying the number of hours worked on your behalf by the standard hourly rate of each attorney, law clerk, paralegal, and other assistant. A rate schedule for the attorneys and others who we expect to work on your case is attached. We adjust our standard billing rates periodically. A rate schedule is available to you at any time on request.

We record and bill for our time in tenths of an hour. Our bills will include the time we spend on researching factual and legal issues, negotiations, conferences, preparation of various documents or pleadings, conducting discovery, court appearances, travel, and telephone calls.

In addition to our fees, you will be responsible for any charges and expenses we incur on your behalf. We normally advance the cost of court fees, deposition expenses, and travel expenses, and charge them to you monthly as bills are received and processed by the firm. We may also submit certain outside charges to you for direct payment, and you have agreed to hire, pay directly, and be solely responsible for the charges of all experts, investigators, and local counsel. We will bill you for photocopies ($.20/page), data duplication (from $10 to $45), computer-assisted research (at average imputed cost), messenger services (from $7 to $30 or more, depending on distance), automobile travel (53.5¢/mile), extraordinary staff overtime (at cost), long distance telephone calls (at average imputed cost), and certain specialized technical services, such as computerized litigation support, at $155 to $200 per hour.

We prepare statements each month for mailing by the 15th. The statements will show the fees and charges incurred during the previous month and any balance of your trust account after payment of the statement. We will address our statements to you at the above address unless directed otherwise.

Payment of each month's statement is due 30 days after the date of the statement. However, if there are funds in the trust account we may immediately pay our statement from those funds. We would encourage you to examine our statements with as much care as you deem appropriate and to contact us immediately if you have any questions or concerns. We may withdraw from the representation, after reasonable notice, if our bills are not paid when due, or if you do not comply with the other terms of this Agreement. We reserve the right, upon ten days advance notice to you, to charge interest on past due amounts at 1.5% per month.

The responsible attorney will review your statements to make any adjustments we believe are appropriate. We would ask you to alert us promptly to any questions you may have about the statement or the work for which you were billed by contacting the attorney with whom you are working or the firm's controller. We are always willing to discuss our fees with you if you have

questions or feel the charges may be inappropriate. It is our desire to provide you with the best representation possible at a price which is fair and reasonable and to build an ongoing relationship of trust, confidence, and fair dealing.

You may terminate our representation at any time. If you do so, you will be responsible for our fees and costs to the date of the termination plus any fees and costs incurred in withdrawing and in assisting new counsel during the termination.

Retention and Destruction of Documents. During our representation, we are likely to receive copies or originals of documents or other materials belonging to you or others. Once the matter to which those materials relate has been concluded, we will retain and eventually return these materials to you or destroy them in accordance with our file retention policy, a copy of which is enclosed. Please inform us of any change of address so that we can contact you when it is time to return the file.

Electronic Communications. Communication through email, cellular, and wireless devices is cost-efficient and convenient. We take reasonable internal precautions and safety measures to prevent disclosure of client sensitive information when using these forms of communication. But, we have no control regarding Internet providers, the Internet itself, wireless communications, or where and how you store confidential information. You must understand it is possible for such communications to be intercepted, misdirected, viewed, heard, or otherwise accessed by third parties, either accidentally or intentionally. You authorize us to communicate with you and third parties via email, cellular, and wireless methods, and you understand and accept all confidentiality risks associated with such use. It is important for you to let us know if there are email or other electronic addresses to which we should avoid sending confidential information.

Arbitration of Fee Disputes. In the event of a dispute involving our fees or costs, you and we agree to submit the matter to the fee arbitration process conducted by the Arizona State Bar. The decision of the arbitrators will be final and non-appealable. You and we waive the right to file suit in court concerning disputed fees or costs.

Binding Contract. If you agree to the terms set forth in this Agreement, please execute the enclosed copy and return it to us as soon as possible. When signed by you, this agreement constitutes a binding contract. You are encouraged to seek separate legal counsel if you desire independent legal advice concerning the meaning or effect of this agreement.

Dated this 12th day of September, 2017.

Peter S. Davis, Receiver

BERGIN, FRAKES, SMALLEY & OBERHOLTZER, PLLC

By_____
Kenneth M. Frakes

By_____
Brian M. Bergin

Exhibit "A"

RATE SCHEDULE

Kenneth M. Frakes	$325
Brian M. Bergin	$325
Michael Smalley	$325
Carolyn K. Oberholtzer	$405
Kevin M. Kasarjian	$295
Bradley Scott	$235
Tyler Brown	$225
Paralegal	$125
Planner	$175
Law Clerk	$140
Planning Assistant	$75

Exhibit "A"

File Retention Policy

Bergin, Frakes, Smalley & Oberholtzer, PLLC
(Effective May 1, 2015)

The State Bar of Arizona has issued Opinion No. 08-02 (December 2008) furnishing file retention guidelines for Arizona lawyers. Bergin, Frakes, Smalley & Oberholtzer, PLLC (the "Firm") has adopted this File Retention Policy to comply with such guidelines.

1. **Disclosure.** Each client will be notified in writing at the commencement of the representation of the Firm's file retention policy. In most cases, this will be accomplished by enclosing a copy of this policy with the retention letter or agreement. Existing clients shall be furnished a copy of this policy with their next statement.

2. **Retention Period.** Most files ("Short Term Files") will be held by the Firm for a period of five years after the earlier of (a) the closing of the file, or (b) the last recorded activity for the file (normally filing a document or retrieving a document). Other files ("Long Term Files") will be held for an indefinite period. Long Term Files include probate, estate planning, or trust matters, capital cases, homicide cases, life sentence cases, life probation cases, and other cases where the responsible attorney believes that indefinite file storage is appropriate to protect the interests of the client. Long Term Files will be destroyed only when the responsible attorney or the Firm's President has reviewed the file and has determined that there is no reasonable possibility that the file may ever be needed by the client. The Firm may store files in either hard copy or digital format; effective as of May 1, 2015, files and client documents generally will be stored only electronically and will not be retained in paper format.

3. **Disposition Procedure.** After the expiration of the five-year period described above, the file room supervisor will notify the responsible attorney in writing to ask the attorney whether the client should be contacted to determine if the client desires the file to be returned to the client. If the attorney responds in the negative, the file will continue to be held for another year, at which time the attorney will again be queried. If the attorney responds in the affirmative, the supervisor will attempt to contact the client by mail to offer the client the choice of taking possession of the file, or having the file destroyed by the Firm. If the client responds, the supervisor will take the action requested by the client after a review of the file as set forth below. This procedure will be followed for both Short Term Files and Long Term Files as it may not be apparent to the file room supervisor whether a file is Short Term or Long Term—this judgment is to be made by the responsible attorney. In addition, even Long Term Files are appropriate for destruction at some point.

4. **Unresponsive Client.** If no answer is received from the client within a reasonable period of time, the supervisor will make an additional effort to locate the client, and again query the client by mail about the disposition of the file. If no response is received within a reasonable period of time after this second inquiry, the supervisor will ask the attorney in writing if the file may be destroyed. If the attorney responds in the affirmative, the file will be given to the attorney for review as set forth below, and if appropriate the file will be destroyed.

Exhibit "A"

If the attorney responds in the negative, the file will be held an additional year, at which time the attorney will again be queried by the supervisor. The Firm is under no obligation to continue to store Short Term Files for more than five years or Long Term Files which are appropriate for destruction if the client cannot be located or if the client fails to respond. In addition, the Firm is under no obligation to continue to store any file if the client fails, after reasonable notice, to retrieve a file the client has indicated it wants.

5. **Return of File.** When a file is returned to a client, the complete file, including any portion of the file stored electronically, is to be returned, except only internal practice management memoranda. Arrangements for the return of the file are to be made between the filing supervisor and the client. If the client does not wish to pick up the file, it will be delivered or shipped at the client's expense unless it can be mailed for less than $10.00 in postage, in which case the Firm shall pay the postage. The client is to be notified that the Firm is not keeping a copy of the file, and that the client should safeguard the file if it may be needed for future use or reference. The Firm may retain photocopies of all or any portion of the file at the Firm's expense. The responsible attorney is to review the file prior to its return to remove internal practice memoranda and any information relating to another client that may have been inadvertently placed in the file. The Firm is not responsible for any file lost in transit if the client chooses not to personally retrieve the file at the Firm's offices.

6. **Early Return.** A client's file belongs to the client and may be retrieved by the client at any time, so long as the return of the file does not interfere with the ongoing representation of the client.

7. **Destruction of File.** Destruction of files shall be done in a manner that preserves client confidences and confidentiality. In no event will a file be destroyed until it has been reviewed by the responsible attorney or the Firm's president to insure that no original documents tendered by the client are in the file and that there is no reason to continue to store the file.

Verna Colwell

From: CustomerService=turbocourt.com@smtp.turbocourt.com on behalf of TurboCourt Customer Service <CustomerService@TurboCourt.com>
Sent: Monday, March 4, 2019 3:43 PM
To: Verna Colwell; Naomi Jorgensen
Subject: AZTurboCourt E-Filing Courtesy Notification

PLEASE DO NOT REPLY TO THIS EMAIL.

A party in this case requested that you receive an AZTurboCourt Courtesy Notification.

AZTurboCourt Form Set #3240012 has been DELIVERED to Maricopa County - Superior Court.

You will be notified when these documents have been processed by the court.

Here are the filing details:
Case Number: CV2017-013832 (Note: If this filing is for case initiation, you will receive a separate notification when the case # is assigned.)
Case Title: Davis Vs. Clark Hill P L C, Et.Al.
Filed By: Marvin Ruth
AZTurboCourt Form Set: #3240012
Keyword/Matter #: 2800.001
Delivery Date and Time: Mar 04, 2019 3:43 PM MST

Forms:
Summary Sheet (This summary sheet will not be filed with the court. This sheet is for your personal records only.)

Attached Documents:
Motion to Compel: Defendants' Motion to Compel Chase Bank to Comply with Subpoena Duces Tecum
Exhibit/Attachment (Supporting): Exhibits A-D