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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,

v.

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

Defendants.

No. CV2017-013832

**STATEMENT OF FACTS IN
SUPPORT OF MOTION FOR
DETERMINATION THAT
PLAINTIFF HAS MADE A PRIMA
FACIE CASE FOR PUNITIVE
DAMAGES FOR AIDING AND
ABETTING BREACH OF
FIDUCIARY DUTY**

(Assigned to the Honorable
Daniel Martin)

Plaintiff files the following Statement of Facts in support of its motion for
determination that Plaintiff has made a prima facie case for punitive damages.

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

1. DenSco's Formation and Operations Through 2003

1. DenSco was established in April 2001 as an Arizona corporation. (*See*
pg. 1 Arizona Corporation Commission v. DenSco Investment Corporation (Case No.
CV 2016-014142), Beauchamp Dep. Exhibit 292 attached as **SOF Ex. 1**).

2. Denny Chittick formed DenSco to make short-term loans to companies
buying or investing in real estate. DenSco used money raised from investors to make
those loans. (*See* pg. 40, 2011 POM, Beauchamp Dep. Exhibit 432 attached as **SOF**

1 **Ex. 2;** printout of the “Company Management” page from DenSco website dated
2 June 17, 2013, Beauchamp Dep. Exhibit 115 attached as **SOF Ex. 3).**

3 3. Denny Chittick was the sole shareholder, director, officer and employee
4 of DenSco. (See pages 40-41, 2011 POM, Beauchamp Dep. Exhibit 432 attached as
5 **SOF Ex. 2).**

6 4. From April 2001, through June 2011 [DenSco] engaged in 2622 loan
7 transactions.” (See pg. 1, 2011 POM, Beauchamp Dep. Exhibit 432, attached as **SOF**
8 **Ex. 2).**

9 5. DenSco made “high-interest loans with defined loan-to-value ratios to
10 residential property remodelers ... who purchase[d] houses through ... foreclosure sales
11 all of which [were] secured by real estate deeds of trust (‘Trust Deeds’) recorded against
12 Arizona residential properties. (See pg. 1, DenSco’s Confidential Private Offering
13 Memorandum dated July 1, 2011 (the “2011 POM”), Beauchamp Dep. Exhibit 432
14 attached as **SOF Ex. 2).**

15 6. Mr. Chittick raised money from investors by issuing general obligation
16 notes (the “Notes”) at variable interest rates. The Notes were “secured by a general
17 pledge of all assets owned by or later acquired by” DenSco. (See pg. (i), 2011 POM,
18 Beauchamp Dep. Exhibit 432, attached as **SOF Ex. 2).**

19 7. DenSco’s largest assets were the Trust Deeds, which were intended to be
20 secured through first position trust deeds. (See pg. (i), 2011 POM, Beauchamp Dep.
21 Exhibit 432, attached as **SOF Ex. 2).**

22 **2. Beauchamp Was DenSco’s Securities Lawyer**

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

25 8. David Beauchamp is an attorney. He describes himself as practicing
26 primarily in the areas of corporate law, securities, venture capital and private equity
27 transactions. (See Beauchamp bio, Schenck Dep. Exhibit 3, attached as **SOF Ex. 4).**

28

1 9. Mr. Beauchamp started providing securities advice to DenSco in the early
2 2000s, while he was a partner at the law firm Gammage & Burnham. (*See* Schenck
3 Dep. Exhibit 4 at pg. 3, ln. 2-4, attached as **SOF Ex. 5**).

4 10. DenSco followed Mr. Beauchamp as a client when he left 5 Gammage to
5 join the law firm Bryan Cave in March 2008, and again when Mr. Beauchamp 6 left
6 Bryan Cave to join Clark Hill in September 2013. (*See* Schenck Dep. Exhibit 4, pg. 3,
7 ln. 4-6, attached as **SOF Ex. 5**).

8 11. Beauchamp has stated in his Rule 26.1 Statement that his work for
9 DenSco included drafting private offering memoranda for distribution to investors of
10 DenSco in compliance with law, and advising on securities reporting requirement. *See*
11 Beauchamp Dep. Exhibit 4, page 3-4, attached as **SOF Ex. 5**)

12 **b. Beauchamp Prepared Private Offering Memoranda**
13 **that DenSco Issued to Investors in 2003, 2005, 2007,**
14 **2009, and 2011 to Sell Promissory Notes.**

15 12. Mr. Beauchamp advised DenSco regarding Private Offering Memoranda
16 (“POMs”), which DenSco generally updated every two years. (*See* Schenck Dep.
17 Exhibit 4, at pg. 5, ln. 2-3, attached as **SOF Ex. 5**).

18 13. DenSco issued private offering memoranda in 2003, 2005, 2009, and
19 2011, which DenSco used to sell promissory notes to investors (*See* Schenck Dep.
20 Exhibit 4 at pg. 5, ln. 2-3, attached as **SOF Ex. 5**).

21 14. Mr. Beauchamp testified that it was his practice to revise the POM every
22 two years based on a suggestion “made by a former SEC official, that given the nature
23 of this industry, two years would be an appropriate time. However, if something
24 material happened before then, you need to tell your client this has to be disclosed.”).
(*See* Beauchamp Dep. Transcript pp. 256:22-257:3, attached as **SOF Ex. 6**).

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

1 a. Beauchamp began working on a POM in early May 2007, after a
2 May 3, 2007 meeting with Chittick, and completed his work in approximately
3 thirty days. (See Beauchamp handwritten notes dated May 3, 2007, attached as
4 **SOF Ex. 7**; Beauchamp handwritten notes dated June 1, 2007, attached as **SOF**
5 **Ex. 8**; Beauchamp Dep. Exhibit No. 430, attached as **SOF Ex. 15**).

6 b. Beauchamp began working on a POM in April 2009, after an
7 April 9, 2009 meeting with Chittick, and completed his work in approximately
8 ninety days. (See Beauchamp handwritten notes dated April 9, 2009, attached as
9 **SOF Ex. 9**; Beauchamp handwritten notes dated April 17, 2009, attached as
10 **SOF Ex. 10**; Beauchamp handwritten notes, attached as **SOF Ex. 11**; E-mail
11 exchange between D. Beauchamp and D. Chittick re POM, dated July 6, 2009
12 attached as **SOF Ex. 12**; Beauchamp Dep. Exhibit No. 431, attached as **SOF Ex.**
13 **14**).

14 c. Beauchamp began working on a POM in April 2011, after an
15 April 13, 2011 meeting with Chittick, and completed his work in approximately
16 ninety days. (See Beauchamp handwritten notes, dated April 13, 2011 attached
17 as **SOF Ex. 13**; Beauchamp Dep. Exhibit No. 432, attached as **SOF Ex. 2**; E-
18 mail exchange between D. Beauchamp, M. Parsons, D. Chittick, dated July 18,
19 2011 attached as **SOF Ex. 16**).

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

21 (1) **DenSco Sold Promissory Notes**

22 16. In the POMs it issued in 2007, 2009 and 2011, DenSco offered to sell
23 investors promissory notes of \$50,000 or more with the following durations and interest
24 rates: six months at 8%; one year at 10%; and two to five years at 12%. The notes
25 were “paid ‘interest only’ during the terms, with principal payable only at maturity.”
26 Investors had the ability to “have interest paid monthly, quarterly, or at maturity.” (See
27 Beauchamp Dep. Exhibit 432, pp. 2, 17, 45-46, attached as **SOF Ex. 2**).

1 secure investments. (*See* Beauchamp Dep. Exhibit 430, at pp. 36-37, attached as **SOF**
2 **Ex. 15**, Beauchamp Dep. exhibits 431 at pp. 34-37 attached as **SOF Ex. 14** and
3 Beauchamp Dep. exhibit 432 at pp. 36-39 attached as **SOF Ex. 2**).

4 22. For example, the POM that DenSco issued in 2011 stated that:

5 a. DenSco had sold promissory notes worth \$25.9 million to
6 new and existing investors since 2001, and “ha[d] never defaulted on either
7 interest or principal” on any of those notes. (*See* Beauchamp Dep. Exhibit 432
8 at pg. 36, attached as **SOF Ex. 2**).

9 b. “All real estate loans funded by [DenSco] have been and
10 are intended to be secured through first position trust deeds.” (*See* Beauchamp
11 Dep. Exhibit 432 at pg. 36, attached as **SOF Ex. 2**).

12 c. DenSco would “attempt to maintain a diverse [loan]
13 portfolio . . . by seeking a large borrowing base” and by “attempting to ensure
14 that one borrower will not comprise more than 10 to 15 percent of the total
15 portfolio.” (*See* Beauchamp Dep. Exhibit 432 at pp. 10 and 37, attached as **SOF**
16 **Ex. 2**).

17 d. DenSco “intend[ed] to maintain general loan-to-value
18 guidelines that currently range from 50 percent to 65 percent, (but it is not
19 intended to exceed 70%), to help protect the Company’s portfolio of loans.” (*See*
20 Beauchamp Dep. Exhibit 432 at pg. 10, attached as **SOF Ex. 2**).

21 e. “Because of these varying degrees of diversification, the
22 relatively short duration of each of the loans, and management’s knowledge of
23 the Phoenix metropolitan market, [DenSco’s] management anticipates that it
24 will not experience a significant amount of losses.” (*See* Beauchamp Dep.
25 Exhibit 432 at pg. 10 attached as **SOF Ex. 2**, see also Fenix Financial expert
26 report at pp. 2-10, attached to Motion for Determination of Prima Facie Case as
27 an Exhibit B).

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1 f. DenSco's "objective is to have sufficient cash coming in
2 from Trust Deed payoffs to be able to redeem all Notes as they come due and
3 maintain reserves without any need to sell assets or issue new Notes to repay the
4 earlier maturing Notes." (See Beauchamp Dep. Exhibit 432 at pg. 6, attached as
5 **SOF Ex. 2**).

6 23. The POMs DenSco issued to existing and potential investors in 2007,
7 2009 and 2011 each included a "Prior Performance" section which summarized the
8 dollar value of promissory notes sold in preceding years, the number of loans made in
9 each year, the value of those loans, the value of the property securing those loans, and
10 losses incurred in each of those years. (See Beauchamp Dep. exhibits 430 at pp. 32-35
11 attached as **SOF Ex. 15**; Beauchamp Dep. exhibits 431 at pp. 34-37 attached as **SOF**
12 **Ex. 14** and Beauchamp Dep. exhibit 432 at pp. 36-39 attached as **SOF Ex. 2**).

13 24. The Prior Performance section in each POM concluded with a statement
14 that was intended to give existing and potential investors the impression that the
15 promissory notes sold by DenSco were safe, secure investments: "Each and every
16 Noteholder has been paid the interest and principle due to that Noteholder in accordance
17 with the respective terms of the Noteholder's Notes. Despite any losses incurred by the
18 Company from its borrowers, no Noteholder has sustained any diminished return or
19 loss on their investment in a Note from [DenSco]." (See Beauchamp Dep. Exhibit 430,
20 attached as **SOF Ex. 15**; Beauchamp Dep. exhibits 431 at pg. 37 attached as **SOF Ex.**
21 **14** and Beauchamp Dep. exhibits 432 at pg. 39 attached as **SOF Ex. 2**).

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

25 25. Each POM that DenSco issued to existing and potential investors in 2007,
26 2009 and 2011 stated that DenSco "intends to offer [promissory notes for sale] on a
27 continuous basis until the earlier of (a) the sale of the maximum offering," which was
28 \$50 million, "or (b) two years from the date of this memorandum." They went on to

1 state that DenSco “reserves the right to amend, modify and/or terminate this offering.”
2 (*See* Beauchamp Dep. Exhibit 432, at pg. 2, attached as **SOF Ex. 2**).

3 26. DenSco’s records do not reflect that it ever told existing and potential
4 investors that “the maximum offering proceeds” offered through the 2007, 2009 and
5 2011 POMs had been raised, or that it had terminated any of those offerings.

6 27. The files that Beauchamp maintained, and the billing statements issued
7 to DenSco by his respective law firms, do not reflect that Beauchamp ever advised
8 DenSco to “[k]eep[] the information in the [POMs DenSco issued in 2007, 2009 and
9 2011] current” by issuing updates to those POMs during the two-year period each of
10 those POMs was in effect. (*See* Schenck Dep. Exhibit 6, attached as **SOF Ex. 20**;
11 Schenck Dep. Exhibit 7, attached as **SOF Ex. 21**; Schenck Dep. Exhibit 9, attached as
12 **SOF Ex. 22**; Schenck Dep. Exhibit 10, attached as **SOF Ex. 23**; Schenck Dep. Exhibit
13 11, attached as **SOF Ex. 24**; Schenck Dep. Exhibit 12, attached as **SOF Ex. 25**; Schenck
14 Dep. Exhibit 13, attached as **SOF Ex. 26**; Schenck Dep. Exhibit 14, attached as **SOF**
15 **Ex. 27**; Schenck Dep. Exhibit 15, attached as **SOF Ex. 28**; Schenck Dep. Exhibit 16,
16 attached as **SOF Ex. 29**; Schenck Dep. Exhibit 17, attached as **SOF Ex. 30**; Schenck
17 Dep. Exhibit 18, attached as **SOF Ex. 31**; Schenck Dep. Exhibit 19 attached as **SOF**
18 **Ex. 32**; Beauchamp Dep. Exhibit 106A, attached as **SOF Ex. 33**; Beauchamp Dep.
19 Exhibit 119, attached as **SOF Ex. 34**; Beauchamp Dep. Exhibit 132, attached as **SOF**
20 **Ex. 35**; Beauchamp Dep. Exhibit 133, attached as **SOF Ex. 36**; Beauchamp Dep.
21 Exhibit 139, attached as **SOF Ex. 37**; Schenck Dep. Exhibit 19, attached as **SOF Ex.**
22 **32**).

23 28. As a result, the POM that was dated June 1, 2007 expired on June 1,
24 2009; the POM that was dated July 1, 2009 expired on July 1, 2011; and the POM that
25 was dated July 1, 2011 expired on July 1, 2013. (*See* expert report of Neil Wertlieb,
26 attached to Motion for Determination of Prima Facie Case, pp. 59-60.).

27 29. The POMs DenSco issued to existing and potential investors in 2007,
28 2009 and 2011 each stated that “[i]n order to continue offering the Notes during this

1 [two-year] period, [DenSco] will need to update this Memorandum from time to time.”

2 Each POM went on to state that

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

12 (See Beauchamp Dep. Exhibit 432, at pg. 24, attached as **SOF Ex. 2**).

13 30. Each POM that DenSco issued in 2007, 2009 and 2011 prominently
14 warned potential purchasers of DenSco’s promissory notes that “NO PERSON HAS
15 BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY
16 REPRESENTATIONS CONCERNING THE COMPANY OTHER THAN AS
17 CONTAINED IN THIS CONFIDENTIAL PRIVATE OFFERING MEMORANDUM,
18 AND IF GIVEN OR MADE, SUCH OTHER INFORMATION OR
19 REPRESENTATIONS MUST NOT BE RELIED UPON.”

20 (See Beauchamp Dep. exhibit 432 at pg. v, attached as **SOF Ex. 2**).

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

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

27 Since inception through June 30, 2011, [DenSco] has participated in
28 2622 loans, with an average amount of \$116,000, with the highest loan
being \$800,000 and lowest being \$12,000. The aggregate amount of loans
funded is \$306,786,893 with property valued totaling \$470,411,170. . .
These loans have borne interest rates of 18% per annum. The interest rate
paid to noteholders has ranged from 8% to 12% per annum through such
date. Each and every Noteholder has been paid the interest and principle
due to that Noteholder in accordance with the respective terms of the
Noteholder’s Notes. Despite any losses incurred by the Company from its
borrowers, no Noteholder has sustained any diminished return or loss on
their investment in a Note from [DenSco].”

(See Beauchamp Dep. Exhibit 432 at pg. 39, attached as **SOF Ex. 2**).

1 32. But the information disclosed in the 2011 POM's Prior Performance
2 section clearly raised a "red flag" about DenSco's lending activities. Among the
3 information disclosed in that section was the following.

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

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12 *See* Beauchamp Dep. Exhibit 432 at pp. 36-37, attached as **SOF Ex. 2**).

13 33. This information raised a red flag because Chittick was DenSco's sole
14 employee. In addition to selling promissory notes, making interest payments, and
15 issuing statements to investors, Chittick was the only person who was conducting due
16 diligence and underwriting and documenting DenSco's loans. He was also responsible
17 for collecting loan payments and ensuring compliance with loan agreements. *See* report
18 of Neil Wertlieb attached to Motion for Determination of Prima Facie Case.

19 34. Since 2009, when the previous POM had been issued, Chittick made more
20 than one loan a day: 412 in 2009; 390 in 2010; and 378 in just the first six months of
21 2011. (*See* Beauchamp Dep. Exhibit 432 at pp. 36-37, attached as **SOF Ex. 2**).

22 35. Any concerns about DenSco's lending practices would have been
23 heightened by the increased amount of money Chittick had raised in the first half of
24 2011 (\$1.9 million more than the \$2.8 million that had been raised in all of 2010), and
25 the overall amount of money DenSco had raised since 2001 through the sale of
26 promissory notes (\$26.9 million as of June 30, 2011). (*See* Beauchamp Dep. Exhibit
27 432 at pp. 36-37, attached as **SOF Ex. 2**).

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

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

5 37. The POM that DenSco issued in July 2011 expired on July 1, 2013.
6 DenSco did not issue a POM in July 2013, or at any time after July 2013, to replace the
7 POM that expired on July 1, 2013.

8 38. Between May 9 and July 1, 2013, Beauchamp took some preliminary
9 steps to prepare a new POM but did not begin drafting a new POM. He also failed to
10 conduct the due diligence that a reasonable securities lawyer would have undertaken.
11 (*See* Beauchamp Dep. Exhibit 133, attached as **SOF Ex. 36**).

12 39. The July 1, 2013 deadline for updating the 2011 POM was known to Mr.
13 Beauchamp, as he was the one who prepared the 2011 POM and advised DenSco with
14 respect to such matters. (*See* Beauchamp Dep. Exhibit 107, attached as SOF Ex. 40;
15 Beauchamp Dep. Exhibit 125, attached as SOF Ex. 41 and Beauchamp Dep. Exhibit
16 129, attached as **SOF Ex. 42**).

17 40. On June 14, 2013, Mr. Chittick emailed Mr. Beauchamp to alert him that
18 a lawsuit had been filed against DenSco (the “*Freo* Lawsuit”) and included the first four
19 pages of the complaint. (*See* Beauchamp Dep. Exhibit 111, attached as **SOF Ex. 43**).

20 41. Mr. Chittick stated that DenSco was being sued along with one of its
21 borrowers – a borrower that DenSco “had done a ton of business with, millions in loans
22 and hundreds of loans for several years. (*See* Beauchamp Dep. Exhibit 111, attached as
23 **SOF Ex. 43**).

24 42. The *Freo* Lawsuit put Mr. Beauchamp on notice that DenSco’s 2011
25 POM may be materially misleading because, if the allegations in the complaint were
26 correct, DenSco was not following the methodology and procedures stated in the 2011
27 POM for funding its loans. (*See* Paragraph 121 of Plaintiff’s Fifth Disclosure Statement
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1 dated November 14, 2018, Davis Dep. Exhibit attached as **SOF Ex. 44** and Beauchamp
2 Dep. Exhibit 111, attached as **SOF Ex. 43**).

3 43. Mr. Chittick also informed Mr. Beauchamp that Mr. Menaged's attorney
4 was working on the defense of the Freo Lawsuit, and that Mr. Chittick intended to
5 "piggy back" on his borrower's defense. (See Beauchamp Dep. Exhibit 112, attached
6 as **SOF Ex. 45**).

7 44. Mr. Beauchamp took no action with respect to the Freo Lawsuit. He
8 testified that he did not speak to the borrower's attorney, Mr. Goulder, at this time. (See
9 Beauchamp Dep. Transcript at pg. 240:9-19, attached as **SOF Ex. 6**).

10 45. Although Mr. Beauchamp did some work on an updated POM in July and
11 August of 2013 (after the 2011 POM had expired), he was also preoccupied with
12 changing law firms. (See Beauchamp Dep. Exhibit 133, attached as **SOF Ex. 36**, and
13 Beauchamp Dep. Exhibit 139, attached as **SOF Ex. 37**).

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

16 46. One apparent reason for Beauchamp's inattention to DenSco's need for a
17 new POM was that he spent the summer months looking for a new job. See Beauchamp
18 Dep. Transcript at pp. 46-47, attached as **SOF Ex. 6**).

19 47. Shortly after June 4, 2013, Beauchamp was informed by Bryan Cave's
20 management committee that the firm wanted to end its relationship with Beauchamp
21 and that he would need to find a new law firm where he could practice law. (See
22 Beauchamp Dep. Transcript at pp. 38:25-44:14, attached as **SOF Ex. 6**).

23 48. Bryan Cave's decision understandably was not well received by
24 Beauchamp. As he wrote in a January 15, 2014 email to his former partner Bob Miller
25 explaining why he did not wish to attend a meeting at Bryan Cave's offices, "[m]y last
26 few months [at Bryan Cave] were more than a little difficult and I do not want to go
27 back to that." (See Beauchamp Dep. Exhibit 162, attached as **SOF Ex. 46**).

1 49. Beauchamp finalized the terms of his employment by Clark Hill by mid-
2 to late-August 2013. (Beauchamp Dep. Transcript at pp. 44:5-47:4, attached as **SOF**
3 **Ex. 6**).

4 50. Beauchamp’s notes reflect that he spoke to Chittick on August 26, 2013
5 and told him that “BC will be sending a letter to Denny & letting Denny decide if he
6 wants files kept at BC or moved to CH.” (See Beauchamp Dep. Exhibit 134, attached
7 as **SOF Ex. 47**).

8 51. On August 30, 2013, Beauchamp sent Chittick by email a letter that he
9 and Jay Zweig, the managing partner of Bryan Cave’s Phoenix office, both signed,
10 informing DenSco that Beauchamp would be leaving Bryan Cave effective August 31,
11 2013, and that Beauchamp would be joining Clark Hill. (See Beauchamp Dep. Exhibit
12 135, attached as **SOF Ex. 48**).

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

15 52. The files that Beauchamp maintained at Bryan Cave and Bryan Cave’s
16 billing statements reflect that Chittick had to prompt Beauchamp to start working on a
17 new POM in 2013. (See Beauchamp Dep. Exhibit 133, attached as **SOF Ex. 36** and
18 139, attached as **SOF Ex. 37**).

19 a. On March 17, 2013, Chittick sent Beauchamp an email proposing
20 to meet in April to begin working on an updated private offering memorandum.
21 (See Chittick email to Beauchamp, dated March 17, 2013 attached as **SOF Ex.**
22 **49**).

23 b. On May 1, 2013, Chittick sent another email to Beauchamp which
24 stated: “it’s the year we have to do the update on the memorandum, when do you
25 want to start?” (See Beauchamp Dep. Exhibit 105A, attached as **SOF Ex. 50**).

26 c. Beauchamp responded by email that day and scheduled a meeting
27 for May 9, 2013. (See Beauchamp Dep. Exhibit 105A, attached as **SOF Ex. 50**).

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1 53. Beauchamp caused a new matter to be established in Bryan Cave’s
2 accounting and filing systems for the preparation of a 2013 POM which identified
3 DenSco as Bryan Cave’s client. (See Beauchamp Dep. Exhibit 119, attached as **SOF**
4 **Ex. 34**).

5 54. When the matter was opened, Bryan Cave established a “due diligence”
6 file for a 2013 POM. (See Beauchamp Dep. Exhibit 136, attached as **SOF Ex. 51**).

7 55. Before the May 9, 2013 meeting, Beauchamp prepared or caused to be
8 prepared a draft private offering memorandum dated “May __, 2013” (the “draft 2013
9 POM”). (See Beauchamp Dep. Exhibit 106, attached as **SOF Ex. 52**; Beauchamp Dep.
10 Exhibit 124, attached as **SOF Ex. 53**).

11 56. With the exception of the title page, the draft 2013 POM was a duplicate
12 of a preliminary draft of the 2011 POM, which Bryan Cave attorney Gus Schneider had
13 sent to Chittick on June 15, 2011 at Beauchamp’s direction, when Schneider and
14 Beauchamp were working on the 2011 POM. (See Schenck Dep. Exhibit 100, attached
15 as **SOF Ex. 54**; Beauchamp Dep. Exhibit 106, attached as **SOF Ex. 52**).

16 57. During the May 9 meeting, Beauchamp took a few notes and apparently
17 underlined or circled a few passages in the draft 2013 POM. (See Beauchamp Dep.
18 Exhibit 107, attached as **SOF Ex. 40**).

19 58. Beauchamp’s notes reflect that Chittick told him during the meeting that
20 DenSco had as of that date raised over \$50 million from 75 to 80 investors who
21 collectively held 114 accounts. (See Beauchamp Dep. Exhibit 107, attached as **SOF**
22 **Ex. 40**).

23 59. Beauchamp stopped working on the draft 2013 POM after learning how
24 much money DenSco had raised since the 2011 POM. As he would later tell Bryan
25 Cave partner Elizabeth Sipes through a June 25, 2013 email: “We stopped the updating
26 when we were told that the investments from the investors had jumped to approximately
27 \$47.5 million. Given that significant increase, I have been asking for help to determine
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1 what other federal or state laws might be applicable.” (See Beauchamp Dep. Exhibit
2 125, attached as **SOF Ex. 41**).

3 60. According to Bryan Cave’s billing statement, the only work Beauchamp
4 performed during May 2013 on the draft 2013 POM was for less than thirty minutes of
5 “[w]ork on issues and follow-up” on May 10 and less than thirty minutes of “[w]ork on
6 issues and information for Private Offering Memorandum” on May 31, 2013. (See
7 Beauchamp Dep. Exhibit 119, attached as **SOF Ex. 34**).

8 **3. During June 2013, Beauchamp Learned From Another Bryan**
9 **Cave Lawyer That DenSco’s Website Violated Federal**
10 **Securities Laws.**

11 61. Although Beauchamp learned on May 9, 2013 that DenSco had nearly
12 \$50 million of investor loans and told his Bryan Cave colleagues that he stopped
13 working on the draft 2013 POM when he learned of that fact so that he could investigate
14 what federal or state laws were implicated by the substantial increase in DenSco’s sales
15 of promissory notes, Beauchamp waited until June 10, 2013 before seeking assistance
16 from other Bryan Cave attorneys. (Beauchamp Dep. Exhibit 107, attached as **SOF Ex.**
17 **40**; Beauchamp Dep. Exhibit 119, attached as **SOF Ex. 34**; Beauchamp Dep. Transcript
18 at pp. 258:13-260:14, attached as **SOF Ex. 6**).

19 a. On June 10, 2013, Beauchamp sent an email to Ken Henderson,
20 an attorney in Bryan Cave’s New York City office, copied to William Seabaugh,
21 an attorney in Bryan Cave’s St. Louis office. (See Beauchamp Dep. Exhibit 108,
22 attached as **SOF Ex. 55**).

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

1 aggregate investor loans outstanding.” (See Beauchamp Dep. Exhibit 108,
2 attached as **SOF Ex. 55**).

3 c. Beauchamp said he was seeking “guidance or direction” as to
4 whether DenSco, with close to \$50 million of investor funds, was subject to
5 certain federal securities acts and regulations. (See Beauchamp Dep. Exhibit
6 108, attached as **SOF Ex. 55**).

7 d. Henderson suggested by email that Beauchamp confer with Robert
8 Pedersen, an attorney in Bryan Cave’s New York City office, and Elizabeth
9 Sipes, an attorney in Bryan Cave’s Denver office. (See Beauchamp Dep. Exhibit
10 108 at DIC0003668, attached as **SOF Ex. 55**).

11 62. On June 11, 2013, Beauchamp sent an email to Chittick which stated:
12 “How many investors hold notes from DenSco? We are trying to determine what
13 exclusions DenSco could qualify for with respect to the other applicable federal
14 statutes. I do not have that number in my notes.” (See Beauchamp Dep. Exhibit 110,
15 attached as **SOF Ex. 56**).

16 63. Chittick responded by email that day, telling Beauchamp DenSco had 114
17 individual accounts, held by approximately 80 families. (*Id.*)

18 64. On June 17, 2013, Beauchamp received an email from Pedersen.
19 Pedersen noted that he had reviewed DenSco’s website, and had asked Randy Wang,
20 an attorney in Bryan Cave’s St. Louis office, whether DenSco was in compliance with
21 the Securities Act of 1933. Pedersen wrote: “Randy questioned whether in the DenSco
22 Investment Corp. case, the existence of, and/or statements made on, the DenSco
23 [website] which I had brought to his attention, made the transaction exemption
24 unavailable to DenSco. In any event you may wish to discuss further with Randy.” (See
25 Beauchamp Dep. Exhibit 114, attached as **SOF Ex. 57**).

26 65. Beauchamp then printed information from DenSco’s website, which
27 included a section captioned “Investor Requirements” that purported to provide an
28 “abbreviated description” of “legal definitions” found in the 2011 POM and related

1 subscription agreement, including a definition of accredited investor. (*See* Beauchamp
2 Dep. Exhibit 115, attached as **SOF Ex. 3**).

3 66. Although Beauchamp had been representing DenSco since 2003, and his
4 files reflect that he regularly reviewed DenSco's website, it was another Bryan Cave
5 lawyer, with no prior involvement in Bryan Cave's representation, who immediately
6 identified this significant issue. (*See* Beauchamp Dep. Exhibit 116, attached as **SOF**
7 **Ex. 58**, *See* also Beauchamp Dep. Transcript at 276:5-277:23, attached as **SOF Ex. 6**).

8 67. Beauchamp wrote an email to Wang on June 17, 2013, which stated:
9 "With respect to the client's statements on its website, I was not aware that the client
10 had added his personal description of what is an eligible 'accredited investor' to the
11 DenSco website. I will have him take it down. I also have a call into him to ask when
12 he added that language. Previously, his website was just for potential borrowers and
13 for existing investors. It included his view of the real estate lending market and
14 explained the status of the properties that DenSco had commenced or might have to
15 commence a Trustee Sale to take ownership of the security for a loan. Given his
16 'layman's description of an accredited investor' on the website, does that constitute
17 general solicitation, which will cause the offering to no longer qualify under Regulation
18 D? If so, can we discuss what we need to tell him that he needs to do to resolve the loss
19 of his exempt security status?" (*See* Beauchamp Dep. Exhibit 114, attached as **SOF Ex.**
20 **57**).

21 68. Beauchamp's notes reflect that he spoke to Wang on June 17, 2013. (*See*
22 Beauchamp Dep. Exhibit 116, attached as **SOF Ex. 58**).

23 69. Beauchamp's notes also reflect that he spoke to Chittick on June 17, 2013.
24 (*See* Beauchamp Dep. Exhibit 116, attached as **SOF Ex. 58**).

25 70. After talking to Chittick, Beauchamp sent an email to Wang on June 17,
26 2013, which stated, in part: "I talked to Denny Chittick, the owner of DenSco. Denny
27 has already had the website modified. Denny also reviewed the list of his investors
28 (there are only 114 individual investors from approx 80 families). All of his investors

1 were either family or friends (or verified referrals from family or friends). . . . According
2 to his note schedule, Denny has approximately 60 investor notes that are scheduled to
3 expire in the next six months, so he would prefer to not be shut down and have to return
4 all of that investment money to his investors until he could commence operations
5 again.” (See Beauchamp Dep. Exhibit 117, attached as **SOF Ex. 59**).

6 71. Beauchamp received an email from Chittick late in the day on June 17,
7 2013, through which Chittick forwarded his email exchange with a vendor confirming
8 that information regarding interest rates offered for promissory notes and the entire
9 “Investor Requirements” section had been removed from DenSco’s website. (See June
10 17, 2013 email from Chittick, part of Beauchamp Dep. Exhibit 118, attached as **SOF**
11 **Ex. 60**).

12 72. Beauchamp spoke to Wang on June 18, 2013. His notes reflect that Wang
13 “does not have a clean path for the private placement” and that he and Beauchamp
14 discussed a number of “judgment calls” which were described in Beauchamp’s notes
15 as follows: (i) “whether website constitutes ‘General Solicitation’ – probably yes”; (ii)
16 “would a waiver of Right of Rescission be helpful – probably not → that just resolves
17 the individual claim + not the offering itself”; (iii) “would starting a new company be
18 helpful – probably not – still would be integrated offering.” Beauchamp’s notes
19 concluded by stating “Randy does not have a solution” and a list of the names of other
20 Bryan Cave attorneys Beauchamp should contact. (See Beauchamp Dep. Exhibit 120,
21 attached as **SOF Ex. 61**).

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

25 DenSco “is a client which makes high interest loans (18% with no other
26 fees) secured by first lien position against Arizona real estate. . . . As part
27 of our due diligence for this offering, we reviewed the client’s website. On
28 its website, the client lists several pieces of information concerning Arizona
real estate, but the client has also added Denny Chittick’s personal
description of who or what is an eligible ‘accredited investor.’ In addition,
the website also referenced the interest rate paid by DenSco to its investors.

1 *After we advised the client that this could be deemed to be “general*
2 *solicitation” in violation of Regulation D, the client immediately took*
3 *down these references from its website. . . . Randy and I are concerned that*
4 *if this information on the website is deemed to constitute ‘general*
5 *solicitation’ then the offering will no longer qualify under Regulation D. .*
6 *. . . According to his note schedule, Denny has approximately 60 investor*
7 *notes that are scheduled to expire in the next 6 months (and to probably*
8 *be rolled over into new notes), so he would prefer to not be shut down and*
9 *to have to return all of that investment money to his investors until he*
10 *could commence operations again. Issue: Does anyone have any*
11 *suggestion or thoughts that we can advise the client (short of closing down*
12 *its business for six months) that he needs to do to resolve the loss of his*
13 *exempt security status?” (Emphasis added.)*

14 (See Beauchamp Dep. Exhibit 122, attached as **SOF Ex. 62**).

15 74. Henderson and Wang responded to Beauchamp’s email on June 20, 2013,
16 discussing when the “‘JOBS Act’ requirement that the SEC eliminate the general
17 solicitation requirement for all accredited investors offerings [would] become
18 effective[.]” (See Beauchamp Dep. Exhibit 122, attached as **SOF Ex. 62**).

19 75. On June 25, 2013, Beauchamp sent an email to Sipes which stated, in
20 part: “Attached is the previous POM for the client which has only had the date changed.
21 We stopped the updating when we were told that the investments from the investors
22 had jumped to approximately \$47.5 million. Given that significant increase, I have
23 been asking for help to determine what other federal or state laws might be applicable.
24 Bob Pederson of NY has said that the Trust Indenture Act will not be applicable so long
25 as the client is under the Regulation D, Rule 506 exemption. The other big issues [that]
26 have waited for your help to discern [is] if we need to comply with the Investment
27 Advisors Act of 1940 and the Registered Investment Advisors requirements.” (See
28 Beauchamp Dep. Exhibit 125, attached as **SOF Ex. 41**).

 76. Beauchamp spoke to Sipes on June 27, 2013. Beauchamp’s notes reflect
 that Sipes told him the 2011 POM had incorrectly referenced an exemption under the
 Investment Company Act, that she was considering other issues, and that she would
 follow up by email. (See Beauchamp Dep. Exhibit 126, attached as **SOF Ex. 63**).

1 77. Beauchamp spoke to Chittick on June 27, 2013. Beauchamp’s notes
2 reflect that he shared with Chittick the information he had received from Sipes. (*See*
3 Beauchamp Dep. Exhibit 127, attached as **SOF Ex. 64**).

4 78. Chittick sent Beauchamp an email on June 27, 2013 to again confirm that
5 the requested changes to the website had been completed. He added, “Oh ya I just took
6 in another 1.1 million yesterday.” (*See* Beauchamp Dep. Exhibit 128, attached as **SOF**
7 **Ex. 65**).

8 **4. During June 2013, Beauchamp Learned That Representations**
9 **Made In the 2011 POM About DenSco’s Lending Practices**
10 **Were Materially Misleading But Failed to Conduct any**
11 **Investigation Of DenSco’s Lending Practices.**

12 79. Beauchamp received an email from Chittick on June 14, 2013.

13 80. Chittick’s email, which was copied to Yomtov “Scott” Menaged, said, in
14 part: “I have a borrower, to which I’ve done a ton of business with, million[s] in loans
15 and hundreds of loans for several years[.] [H]e’s getting sued along with me. . . . Easy
16 Investments [] has his attorney working on it[.] [I]’m okay to piggy back with his
17 attorney to fight it[.] Easy Investments [is] willing to pay the legal fees to fight it. I
18 just wanted you to be aware of it, and talk to his attorney, [whose] contact info is
19 below.” (*See* Beauchamp Dep. Exhibit 111, attached as **SOF Ex. 43**).

20 81. Chittick’s email included a forwarded email from Menaged which
21 provided contact information for his attorney, Jeffrey J. Goulder. (*See* Beauchamp Dep.
22 Exhibit 111 at DIC0000055, attached as **SOF Ex. 43**).

23 82. Copies of a summons, the first four pages of a complaint, a certificate of
24 compulsory arbitration, and a lis pendens were attached to the email. (*See* Beauchamp
25 Dep. Exhibit 111 at DIC0000059-69, attached as **SOF Ex. 43**).

26 83. Menaged responded to the email by telling Beauchamp in an email to
27 “bill me for your services and utilize my attorney for anything you may need.” (*See*
28 Beauchamp Dep. Exhibit 112, attached as **SOF Ex. 45**).

1 84. The complaint and other documents Beauchamp received identified by
2 street address and legal description of the foreclosed home at issue in the lawsuit; they
3 also identified the names of the former owners. (*See* Beauchamp Dep. Exhibit 111 at
4 DIC0000069, attached as **SOF Ex. 43**).

5 85. After reviewing these documents, Beauchamp sent an email to Chittick
6 on June 14, 2013 which said: “*We will need to disclose this in POM.*” (Emphasis
7 added.) (*See* Beauchamp Dep. Exhibit 113, attached as **SOF Ex. 66**).

8 86. Bryan Cave’s billing records reflect that Beauchamp billed DenSco for
9 30 minutes of time on June 14, 2013 devoted to “[e]mail to D. Chittick regarding need
10 to disclose pending litigation in Private Offering Memorandum; review email from D.
11 Chittick; review requirements.” (*See* Beauchamp Dep. Exhibit 132 at BC_003082-83,
12 attached as **SOF Ex. 35**).

13 87. The complaint had been filed in Maricopa County Superior Court by Freo
14 Arizona, LLC against DenSco; Easy Investments, LLC; Active Funding Group, LLC;
15 Ocwen Loan Servicing, LLC; and another defendant. (*See* Beauchamp Dep. Exhibit,
16 111 at DCI0000059, attached as **SOF Ex. 43**).

17 88. According to the excerpt of the complaint that Beauchamp received,

18 a. A home in Peoria, Arizona was to be sold at a trustee’s sale. (*See*
19 Beauchamp Dep. Exhibit 111 at DCI0000063-65, attached as **SOF Ex. 43**).

20 b. Freo claimed to have purchased the home on March 18, 2013,
21 before the date of the scheduled trustee’s sale, by paying Ocwen Loan Servicing
22 the payoff amount for the mortgage, and that the sale was documented in a
23 warranty deed that had been recorded with the Maricopa County Recorder’s
24 Office. (*Id.*)

25 c. Ocwen failed to timely instruct the trustee to cancel the trustee’s
26 sale. (*Id.*)

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

4 e. Freo filed its lawsuit to establish that it owned the property free
5 and clear of liens asserted by Active Funding Group and DenSco. (*Id.*)

6 89. The *Freo* complaint put Beauchamp on notice that DenSco's 's 2011
7 POM was materially misleading because DenSco was not following the "proper method
8 and procedures for funding a loan" which, according to Beauchamp's interrogatory
9 answers, were described in the 2011 POM as including "'due diligence to verify certain
10 information in connection with funding a Trust Deed'" and "'conduct[ing] a due
11 diligence review by . . . verifying the documentation.'" (*See* Beauchamp Response to
12 Plaintiffs First Set of Non-Uniform Interrogatories at pg. 6, Beauchamp Dep. Exhibit
13 422 attached as **SOF Ex. 67**).

14 90. It was apparent from the *Freo* complaint that Chittick had not conducted
15 any due diligence before loaning money to Easy Investments to acquire this particular
16 home, since the property had been sold, according to public records, five days before a
17 trustee's sale. Under such circumstances, the loan funded by DenSco could not have
18 been a loan "intended to be secured through [a] first position trust deed[]," as DenSco
19 had represented in the 2011 POM. (*See* Beauchamp Dep. Exhibit 111, attached as **SOF**
20 **Ex. 43** and see also Beauchamp Dep. Exhibit 432 at pg. 37, attached as **SOF Ex. 2**).

21 91. It was also apparent from the *Freo* complaint that Chittick had not
22 exercised appropriate care in loaning money to Easy Investments, since Freo alleged
23 that Easy Investments had "attempted to encumber the property with deeds of trust to
24 Active [Funding Group] and DenSco." That allegation called into question both the
25 due diligence Chittick had employed in selecting Easy Investments as a borrower and
26 the practices Chittick followed in funding loans made by DenSco. (*See* Beauchamp
27 Dep. Exhibit 111 at DIC0000064, ¶20, attached as **SOF Ex. 43**).

28

1 92. Although the files Beauchamp maintained and Bryan Cave’s billing
2 records reflect that the only actions Beauchamp took after receiving Chittick’s June 14,
3 2013 email were to spend 30 minutes to “review email from D. Chittick” and to send
4 “[e]mail to D. Chittick regarding need to disclose pending litigation in Private Offering
5 Memorandum,” Beauchamp claims in Defendants’ initial disclosure statement (at 6-7)
6 that he did more than that. (See Beauchamp Dep. Exhibit 132 at BC_003082-83,
7 attached as **SOF Ex. 35** and Schenck Dep. Exhibit 4 at pp. 6-7, attached as **SOF Ex.**
8 **5**).

9 93. Beauchamp claims that after reviewing the *Freo* complaint, he “advised
10 Mr. Chittick . . . that Mr. Chittick needed to fund DenSco’s loans directly to the trustee
11 or escrow company conducting the sale, rather than provide loan funds directly to the
12 borrower, to ensure that DenSco’s deed of trust was protected.” This is an admission
13 by Beauchamp that he knew in June 2013 that the 2011 POM was materially
14 misleading. (See Schenck Dep. Exhibit 4 at pg. 6, ln. 22-26, attached as **SOF Ex. 5**).

15 94. Beauchamp goes on to say in Defendants’ initial disclosure statement that
16 “Mr. Chittick, however, explained to Mr. Beauchamp that this was an isolated incident
17 with a borrower, Menaged, whom Mr. Chittick described in his email as someone he
18 had ‘done a ton of business with . . . hundreds of loans for several years’” (See
19 Schenck Dep. Exhibit 4 at pg. 6, ln. 26 - pg. 7, ln. 3, attached as **SOF Ex. 5**).

20 95. If a jury believes that Beauchamp actually had this discussion with
21 Chittick, despite the absence of any email, note or billing record to support
22 Beauchamp’s claim, it should conclude that Beauchamp decided not to take any steps
23 to investigate Chittick’s admission that DenSco had lax lending practices, or was
24 preoccupied with his efforts to find a new law firm and did not take the time to do so.
25 (See Beauchamp Dep. Exhibit 133, attached as **SOF Ex. 36**, and Beauchamp Dep.
26 Exhibit 139, attached as **SOF Ex. 37**).

27 96. Beauchamp did not conduct an investigation of the allegations in the *Freo*
28 lawsuit regarding DenSco’s lending practices, or of DenSco’s lending practices

1 generally, in June 2013 (before the 2011 POM expired on July 1, 2013) or at any time
2 thereafter. (*See* Beauchamp Dep. Transcript at pg. 240:9-19, attached as **SOF Ex. 6**;
3 Beauchamp Dep. Exhibit 132 at BC_003082-83, attached as **SOF Ex. 35** and Schenck
4 Dep. Exhibit 4 at pp. 6-7, attached as **SOF Ex. 5**).

5 97. If Beauchamp had investigated the allegations in the *Freo* complaint, he
6 would have found within minutes, by reviewing records available through the Maricopa
7 County Recorder's website relating to the property described in the *Freo* lawsuit: (i) a
8 Deed of Trust and Security Agreement With Assignment of Rents given by Easy
9 Investments in favor of Active Funding Group, that Menaged had signed on March 25,
10 2013; and (ii) a Deed of Trust and Assignment of Rents given by Easy Investments in
11 favor of DenSco, that Menaged had signed on April 2, 2013. Both signatures were
12 witnessed by the same notary public. (*See* generally Maricopa County Recorder's
13 website, <https://recorder.maricopa.gov/recdocdata/> , and see also Beauchamp Dep.
14 Exhibit 103, attached as **SOF Ex. 68** and Beauchamp Dep. Exhibit 104, attached as
15 **SOF Ex. 69**).

16 98. Those documents confirmed the allegation in the *Freo* complaint that
17 DenSco was not in first position on a loan it had made to Easy Investments. (*See*
18 Beauchamp Dep. Exhibit 103, attached as **SOF Ex. 68**, and Beauchamp Dep. Exhibit
19 104, attached as **SOF Ex. 69**).

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

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

26 100. After failing to do any investigation of the allegations in the *Freo* lawsuit
27 or of DenSco's lending practices generally, an apparently distracted Beauchamp took
28 minimal steps in July and August 2013 to prepare a new POM. (*See* Beauchamp Dep.

1 Transcript at pg. 240:9-19, attached as **SOF Ex. 6**; Beauchamp Dep. Exhibit 132 at
2 BC_003082-83, attached as **SOF Ex. 35** and Schenck Dep. Exhibit 4 at pp. 6-7,
3 attached as **SOF Ex. 5**).

4 101. On July 1, 2013, Beauchamp received an email from Sipes which stated,
5 in part, that she didn't believe DenSco would be considered an investment advisor
6 under the Investment Company Act or the Investment Advisers Act and did not believe
7 DenSco needed to limit the number of accredited investors to whom it offered
8 promissory notes. (See Beauchamp Dep. Exhibit 129 at DIC0003495, attached as **SOF**
9 **Ex. 42**).

10 102. On July 10, 2013, Beauchamp forwarded to Chittick a news report that
11 the SEC had just decided to end the ban on general solicitation. (See Beauchamp Dep.
12 Exhibit 130A, attached as **SOF Ex. 70**).

13 103. Bryan Cave's billing statements reflect that between July 12, 2013 and
14 July 31, 2013, Beauchamp recorded time to "revise disclosure in Private Offering
15 Memorandum" and "[w]ork on and revise Private Offering Memorandum" and had
16 additional time entries to "[w]ork on revisions to Private Offering Memorandum" or
17 "[w]ork on issues for Private Offering Memorandum." (See Beauchamp Dep. Exhibit
18 133, attached as **SOF Ex. 36**).

19 104. But the only document in Bryan Cave's file that reflects any revisions
20 Beauchamp made to the draft of a 2013 POM is a draft containing several of his
21 handwritten edits. They included a note on the cover of the draft to "revise to new
22 version for B/L purposes," but no blacklined draft of a 2013 POM exists in Bryan
23 Cave's file. (See Beauchamp Dep. Exhibit 130, attached as **SOF Ex. 71**).

24 105. Bryan Cave's billing records reflect that the only work Beauchamp
25 performed on the draft 2013 POM during August 2013 was to exchange emails on
26 August 6, 2013 with Jensen asking for a form subscription agreement to comply with
27 changes to Rule 506. (See Beauchamp Dep. Exhibit 139, attached as **SOF Ex. 37**).

28

1 106. When Beauchamp left Bryan Cave in August 2013, the “due diligence”
2 file for the draft 2013 POM contained only three documents: (1) a June 18, 2013 article
3 captioned “Determining whether a company is an investment company”; (2) a printout
4 from DenSco’s website dated June 17, 2013; and (3) a July 28, 2010 article captioned
5 “Private Fund Investors Advisors Registration Act of 2010: New Law Changes
6 Regulatory Framework for Alternative Investment Advisors.” (See Beauchamp Dep.
7 Exhibit 136, attached as **SOF Ex. 51**).

8 107. Beauchamp’s notes reflect that he left a voicemail message for Chittick
9 on August 26, 2013 regarding “need to work on the latest version of POM that Denny
10 has w/ the prior experience charts. Need to discuss timing and update.” (See
11 Beauchamp Dep. Exhibit 134, attached as **SOF Ex. 47**).

12 108. His notes go on to reflect that he spoke to Chittick on August 26, 2013
13 and that he “explained delay w/ POM,” discussed the “need to get copy of Denny’s
14 latest POM & make changes to it,” and discussed that “BC will be sending a letter to
15 Denny & letting Denny decide if he wants files kept at BC or moved to CH.” (*Id.*)

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

20 109. In Defendants’ initial disclosure statement (at 5), Beauchamp claims that
21 he “was never able to finalize the 2013 POM” because of Chittick. He says that
22 “[a]lthough [he] asked for updated investment, loan and financial information regarding
23 DenSco, Mr. Chittick stalled on providing the information, preferring to wait until after
24 he scaled down the amount outstanding to investors.” (See Schenck Dep. Exhibit 4,
25 attached as **SOF Ex. 5**).

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

1 promptly gave Beauchamp the information he requested, and followed Beauchamp's
2 advice, such as when Chittick promptly changed DenSco's website after Beauchamp
3 told him to do so. (*See* Beauchamp Dep. Exhibit 128, attached as **SOF Ex. 65**).

4 111. Moreover, the corporate journal Chittick maintained for 2013 (the "2013
5 Corporate Journal") does not reflect any entries by Chittick about requests from
6 Beauchamp for information or his declination to provide that information. (*See* Schenck
7 Dep. Exhibit 20, attached as **SOF Ex. 72**).

8 112. The only reference in the 2013 Corporate Journal to the preparation of
9 the 2013 POM is a June 17, 2013 entry which stated: "I am going back and forth with
10 David about how to circumvent this 50 million issue on size." That entry is consistent
11 with Beauchamp's communications of the same date as to whether DenSco had
12 engaged in general solicitation, an issue which, as noted above, was resolved on
13 July 10, 2013. (*See* Schenck Dep. Exhibit 20 at RECEIVER_00020, attached as **SOF**
14 **Ex. 72**).

15 **7. A Distracted Beauchamp, After Failing to Prepare a New**
16 **POM by July 1, 2013, Did Not Advise DenSco to Stop Selling**
17 **Promissory Notes Until a New POM Was Issued.**

18 113. By its terms, the 2011 POM expired on July 1, 2013. (*See* Beauchamp
19 Dep. Exhibit 432, attached as **SOF Ex. 2**).

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

24 115. Beauchamp, preoccupied with finding a new law firm where he could
25 continue to practice law, failed to give that advice, even though he knew, as he told his
26 Bryan Cave colleagues in a June 20, 2013 email, that DenSco had "approximately 60
27 investor notes that are scheduled to expire in the next 6 months (and to probably be
28

1 rolled over into new notes).” (See Beauchamp Dep. Exhibit 122, attached as **SOF Ex.**
2 **62**).

3 116. And while Beauchamp claims in Defendants’ initial disclosure statement
4 (at 7) that “[p]rior to his departure” from Bryan Cave, he “repeatedly made clear to
5 DenSco and Mr. Chittick that they needed to update DenSco’s POM,” there is no
6 documentary support for that claim. (See generally Beauchamp Dep. Exhibit 133,
7 attached as **SOF Ex. 36** and Beauchamp Dep. Exhibit 139, attached as **SOF Ex. 37**).

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

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

16 118. Because Beauchamp failed to prepare a new POM by July 1, 2013 and
17 failed to tell Chittick that DenSco could not sell promissory notes until a new POM was
18 issued, Chittick caused DenSco, during July and August 2013, to sell promissory notes
19 to some of the “approximately 60 investor[s]” whose notes Beauchamp knew were
20 “scheduled to expire in the next 6 months (and to probably be rolled over into new
21 notes).” (See Beauchamp Dep. Exhibit 122, attached as **SOF Ex. 62**).

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

Investor	Amount	Date
Jeff Phalen	\$100,000	7/1/13
Gary Thompson	\$250,000	7/3/13
Kaylene Moss	\$10,000	7/12/13

1	Branson & Sandra Smith	\$250,000	7/13/13
2	Ralph Kaiser IRA	\$170,653.47	7/17/13
3	Jimmy Trainor	\$122,000	7/22/13
4	Russ Grisswold IRA	\$50,000	7/24/13
5	William Alber	\$60,000	7/28/13
6	Carol Wellman	\$50,000	7/28/13
7	Tom Smith	\$400,000	8/2/13
8	GE Seigford	\$70,000	8/2/13
9	GE Seigford	\$40,000	8/2/13
10	Carysn Smith	\$10,000	8/2/13
11	McKenna Smith	\$10,000	8/3/13
12	Gary Thompson	\$145,000	8/3/13
13	Carol & Mike Wellman	\$25,000	8/5/13
14	Stacy Grant IRA	\$75,000	8/8/15
15	GE Seigford	\$50,000	8/18/15
16	Tom Smith	\$400,000	8/24/15
17	Dale Hickman	\$50,000	8/30/15

18
19 120. In addition to these “rollover” promissory note sales, Chittick caused
20 DenSco to sell \$926,567 of new promissory notes to existing and new investors during
21 July and August 2013. Those sales are summarized in the following chart.

Investor	Amount	Date	Maturity
Laurie Weiskopf	\$100,000	7/10/13	7/10/15
Carol McDowell	\$100,000	7/3/13	7/3/15
Kevin Potempa	\$100,000	7/29/13	1/26/16
Wayne Ledet	\$30,567	8/23/13	8/23/15
Tom Smith	\$500,000	8/26/13	2/26/15

Kirk Fischer	\$70,000	8/26/13	8/26/18
Carsyn Smith	\$8,000	8/26/13	8/26/15
McKenna Smith	\$8,000	8/26/13	8/26/15
Averill Cate	\$10,000	8/29/13	8/29/14

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

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

121. On September 11 and 12, 2013, Beauchamp exchanged emails with Chittick about taking steps to have certain DenSco files transferred from Bryan Cave to Clark Hill: “AZ Practice Review”; “Blue Sky Issues”; “Garnishments”; “General Corporate”; and “2011 and 2013 Private Offering.” (*See* Beauchamp Dep. Exhibit 136A, attached as **SOF Ex. 73**).

122. On September 12, 2013, Beauchamp sent Chittick an engagement letter, which Chittick signed and returned that day. (*See* Beauchamp Dep. Exhibit 137, attached as **SOF Ex. 74** and Beauchamp Dep. Exhibit 138, attached as **SOF Ex. 75**).

123. The letter, which was captioned “Representation of DenSco Investment Corporation,” stated that it would “serve[] to record the terms of [Clark Hill’s] engagement to represent DenSco Investment Corporation (the ‘Client’), with regard to the legal matters transferred to Clark Hill PLC from Bryan Cave LLP.” (*See* Beauchamp Dep. Exhibit 137, attached as **SOF Ex. 74**).

124. Clark Hill’s engagement letter, like those Beauchamp had sent DenSco when he was at Gammage & Burnham and Bryan Cave, identified DenSco as Clark Hill’s client. (*See* Beauchamp Dep. Exhibit 138 at DIC0008653, attached as **SOF Ex. 75**).

125. But Clark Hill’s engagement letter went further, and expressly stated that Clark Hill was representing only DenSco, and was not representing Chittick in any capacity. (*See* Beauchamp Dep. Exhibit 137, attached as **SOF Ex. 74**).

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

4 b. The “Standard Terms of Engagement for Legal Services” included
5 a section called “Whom We Represent.” That section stated: “The . . . entity
6 whom we represent is the . . . entity identified in our engagement letter and does
7 not include any . . . employees, officers, directors, shareholders of a corporation
8 . . . unless our engagement letter expressly provides otherwise.” (Beauchamp
9 Dep. Exhibit 137 at CH_0000806, attached as **SOF Ex. 74**).

10 126. Even though this engagement letter clearly and expressly stated that Clark
11 Hill represented only DenSco and was not also representing Chittick, Clark Hill and
12 Beauchamp say in their initial disclosure statement (at 3) that “Chittick understood that
13 Mr. Beauchamp, as an incident to Mr. Beauchamp’s representation of DenSco, was also
14 representing Mr. Chittick in his capacity as president of DenSco.” (*See* Schenck Dep.
15 Exhibit 4, attached as **SOF Ex. 5**).

16 127. On September 13, 2013, Beauchamp took steps to open a new matter for
17 DenSco in Clark Hill’s accounting and filing systems that was mis-identified as “2003
18 Private Offering Memorandum.” Beauchamp’s notes stated that the file was being
19 opened to “[f]inish 2013 POM for client. Started POM update at Bryan Cave.” (*See*
20 Beauchamp Dep. Exhibit 138 at DIC0008653, attached as **SOF Ex. 75**).

21 128. Beauchamp opened this file, obligating Clark Hill to provide securities
22 advice to DenSco and to diligently and promptly “finish [the] 2013 POM,” knowing
23 that the 2011 POM had expired on July 1, 2013, no new POM had been issued, and that
24 as of June 20, 2013, “[a]ccording to [Chittick’s] note schedule, [DenSco] ha[d]
25 approximately 60 investor notes that are scheduled to expire in the next 6 months (and
26 to probably be rolled over into new notes).” (*See* Beauchamp Dep. Exhibit 122, attached
27 as **SOF Ex. 62** and Beauchamp Dep. Exhibit 138 at DIC0008653, attached as **SOF Ex.**
28 **75**).

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

4 129. Clark Hill's records show that neither Beauchamp nor any other Clark
5 Hill attorney performed *any* work on a new POM during September, October, or
6 November 2013.

7 130. The records also show that neither Beauchamp nor any other Clark Hill
8 attorney even attempted to contact Chittick about the new POM. (*See* Schenck Dep.
9 Exhibit 6, attached as **SOF Ex. 20**; Schenck Dep. Exhibit 19, attached as **SOF Ex. 32**).

10 **a. On December 18, 2013, Chittick Asked Beauchamp By**
11 **Email Why the New POM Had Not Been Finished.**

12 131. The first time entry in Clark Hill's billing records relating to a new POM
13 is a twelve-minute entry by Beauchamp on December 18, 2013 to "review email;
14 telephone conversation with D. Chittick; review POM." Schenck Dep. Exhibit 6,
15 attached as **SOF Ex. 20**).

16 132. The email referenced in that time entry is an email that Chittick sent to
17 Beauchamp on December 18, 2013, saying "since you've moved, we've never finished
18 the update on the memorandum. Warren is asking where it is."¹ (*See* Beauchamp Dep.
19 Exhibit 139A, attached as **SOF Ex. 76**).

20 133. Beauchamp did not send Chittick a response to that email.

21 134. There are not any notes in Clark Hill's files made by Beauchamp that
22 summarized his December 18, 2013 call with Chittick. (*See* Beauchamp Dep. Exhibit
23 139A, attached as **SOF Ex. 76**; Schenck Dep. Exhibit 6, attached as **SOF Ex. 20**;
24 Schenck Dep. Exhibit 4 at pg. 7, ln. 17-26 attached as **SOF Ex. 5**).

25 135. Beauchamp apparently asked Chittick during that call to send him a copy
26 of the 2011 POM, since Chittick emailed Beauchamp an electronic copy of the final

27 ¹ Chittick was apparently referring to Warren Bush, an investor who had
28 reviewed and commented on a draft of the 2011 POM, and had communicated with
Beauchamp about that draft.

1 2011 POM during the late morning of December 18, 2013. Beauchamp promptly
2 responded, saying simply “[t]hank you. Have a wonderful holiday season.” (See
3 Beauchamp Dep. Exhibit 140, attached as **SOF Ex. 77**).

4 136. Beauchamp forward Chittick’s e-mail to his secretary that afternoon,
5 asking her to “put this on our system for DenSco Investment Corporation/2013 POM.”
6 (See Beauchamp Dep. Exhibit 141, attached as **SOF Ex. 78**).

7 **b. Clark Hill Claims That Beauchamp Learned During the**
8 **December 18, 2018 Call With Chittick About Problems**
9 **in DenSco’ Loan Portfolio but Clark Hill Did Nothing**
10 **to Investigate Those Problems Nor Did It Begin**
11 **Preparing a New POM.**

12 137. In their initial disclosure statement (at 7), Clark Hill and Beauchamp
13 make claims about Beauchamp’s December 18, 2013 telephone call with Chittick that
14 are at odds with Clark Hill’s file, including its billing statement. They allege that
15 Chittick told Beauchamp “he had run into an issue with some of his loans with
16 Menaged, and specifically, that properties securing a few DenSco loans were each
17 subject to a second deed of trust competing for priority with DenSco’s deed of trust.”
18 (See Schenck Dep. Exhibit 4 at pg. 7, ln. 17-26 attached as **SOF Ex. 5**).

19 138. Clark Hill and Beauchamp claim that, “[a]fter briefly discussing the
20 allegedly limited double lien issue, Mr. Chittick emphasized to Mr. Beauchamp that
21 Mr. Chittick wanted to avoid litigation with other lenders. Mr. Chittick, however, did
22 not request any advice or help. Accordingly, Mr. Beauchamp suggested that Mr.
23 Chittick develop and document a plan to resolve the double liens, and nothing more
24 came of the conversation.” (See Schenck Dep. Exhibit 4 at pg. 7, ln. 22-26 attached as
25 **SOF Ex. 5**).

26 139. Lastly, Clark Hill and Beauchamp claim that during the telephone
27 conversation “Mr. Beauchamp reminded Mr. Chittick that he still needed to update
28 DenSco’s private offering memorandum.” (See Schenck Dep. Exhibit 4 at pg. 7, ln.
21-22 attached as **SOF Ex. 5**).

1 140. No document in Clark Hill’s file, such as the handwritten notes that
2 Beauchamp consistently and regularly kept to record his telephone conversations and
3 meetings with Chittick, exists.

4 141. The 2013 Corporate Journal does not have any entries by Chittick
5 reflecting that he had such a conversation with Beauchamp in December 2013. (*See*
6 Schenck Dep. Exhibit 20, attached as **SOF Ex. 72**).

7 142. December 12, 2013 bill shows “[r]eview email and outline Florida
8 research.” (*See* Schenck Dep. Exhibit 6, at CH_0002310, attached as **SOF Ex. 20**).

9 143. Between December 20, 2013 and December 23, 2013, both Beauchamp
10 and Schenck recorded time to conducting research and analysis on “Florida broker
11 issues,” “hard money regulatory lender requirements in Florida,” and “Florida lending
12 licenses.” (*Id.*)

13 144. On December 23, 2013, Beauchamp recorded 42 minutes of time to
14 “[r]eview Florida research from D. Schenck; discuss research and follow up with D.
15 Schenck; email to D. Chittick.” (*See* Schenck Dep. Exhibit 6, at CH_0002310,
16 attached as **SOF Ex. 20**).

17 145. On Christmas Eve, December 24, 2013, Beauchamp sent Chittick an
18 email which stated: “Happy Holidays! Quick Status: Based on a review of the Florida
19 statutes, you would be considered a ‘Mortgage Lender’ which requires a license in
20 Florida. The Florida government office that regulates ‘Mortgage Lender’ [sic] has been
21 difficult to reach, but we will try again on Thursday. I want to confirm if you might be
22 able to qualify for a limited license to operate in Florida and check a few other
23 questions.” (*See* Schenck Dep. Exhibit 31, attached as **SOF Ex. 79**). If a jury were to
24 believe Beauchamp’s claim that he had such a conversation with Chittick on December
25 18, 2013, despite the lack of evidence, it could only conclude that Clark Hill and
26 Beauchamp were negligent by:

- 27 a. Failing to immediately investigate the information Beauchamp
28 received about the Menaged loan problem, since Clark Hill had an affirmative

1 duty to diligently and timely prepare a new POM, having agreed to do so in
2 September 2013; and

3 b. Failing to expressly instruct Chittick that DenSco could not sell
4 *any* promissory notes, since the 2011 POM had expired and a new POM had not
5 yet been issued.

6 ii. By merely “reminding” Chittick that DenSco needed to
7 “update” the 2011 POM, knowing that one-half of its investors would be
8 “rolling over” promissory notes during the last six months of 2013,
9 Beauchamp effectively advised Chittick that DenSco could indefinitely
10 delay “updating” the 2011 POM while continuing to sell promissory
11 notes.

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

15 146. In Chittick’s December 18, 2013 email to Beauchamp, Chittick wrote,
16 after asking about the status of Clark Hill’s work on a new POM, about his plans to
17 expand DenSco’s business to Florida. He wrote: “[I]’ve got two of my best borrowers
18 moving to F[L][.] [T]hey are begging me to look at lending in FL. [I] don’t know
19 anything about the market there, but [I] trust these guys. [I]’ve done 20 million with
20 them over the past 5 yrs. [I]s it easy to find out the challenges, issues, etc with me
21 lending there?” (See Beauchamp Dep. Exhibit 139A, attached as **SOF Ex. 76**).

22 147. While Beauchamp did nothing in response to Chittick’s question about
23 the status of a new POM, he immediately forwarded Chittick’s e-mail to Clark Hill
24 attorney Daniel Schenck, asking “[w]ill you have time to do the research for Florida or
25 should I find someone else?” (See Schenck Dep. Exhibit 30, attached as **SOF Ex. 80**).

26 148. On December 26 and 30, 2013, Beauchamp and Schenck recorded time
27 to obtaining information from the Florida Office of Financial Regulation and other
28 information relevant to Chittick’s December 18, 2013 inquiry about expanding

1 DenSco's lending operations to Florida. (*See* Schenck Dep. Exhibit 6 at CH_0002310,
2 attached as **SOF Ex. 20**).

3 **4. Clark Hill Blames Chittick for Its Failure to Prepare a New**
4 **POM in 2013.**

5 149. In their initial disclosure statement (at 7), Clark Hill and Beauchamp
6 blame Chittick for their failure to do anything to prepare a new POM, which Clark Hill
7 agreed to undertake in early September 2013. They say that after Chittick signed Clark
8 Hill's engagement letter on September 12, 2013 and directed Bryan Cave to transfer
9 certain files to Clark Hill, "...Mr. Beauchamp never heard from Mr. Chittick regarding
10 the unfinished 2013 POM, or any other matter, until December 2013." (*See* Schenck
11 Dep. Exhibit 4, pg. 7, ln. 13-15, attached as **SOF Ex. 5**).

12 150. When he was deposed, Beauchamp offered a new excuse for Clark Hill's
13 failure to do any work on a new POM. He testified that Clark Hill did nothing to prepare
14 a new POM for DenSco because Chittick instructed him, as a condition of signing Clark
15 Hill's engagement letter, that Clark Hill not do any work on a new POM "until I'm
16 ready to go," and Beauchamp agreed. (*See* Beauchamp Dep. Transcript at pg. 295:10-
17 19, attached as **SOF Ex. 6**).

18 151. Beauchamp did not include this material limitation on Clark Hill's
19 representation in the engagement letter he asked DenSco to sign. (*See* Beauchamp Dep.
20 Exhibit 137, attached as **SOF Ex. 74**).

21 152. When Clark Hill agreed to abide by Chittick's request, neither
22 Beauchamp nor any other Clark Hill attorney separately advised Chittick that DenSco
23 could not sell any promissory notes until it authorized Clark Hill to prepare a new POM
24 and DenSco had issued the POM.

1 **5. Clark Hill Was Negligent By Failing to Instruct DenSco That**
2 **it Could Not Sell Any Promissory Notes Until a New POM Was**
3 **Issued, and Aided and Abetted Chittick to Breach Fiduciary**
4 **Duties He Owed DenSco by Following Chittick’s Instructions**
5 **to Not Prepare a New POM for DenSco, Knowing DenSco Was**
6 **Continuing its Business Operations and Selling Rollover**
7 **Promissory Notes.**

8 153. Clark Hill was negligent by never advising Chittick that DenSco could
9 not sell any promissory notes until it had issued a new POM.

10 154. The evidence that will be presented to a jury will establish that if Clark
11 Hill had done so, DenSco would have followed that advice and worked diligently with
12 Clark Hill to prepare a new POM so that it could resume selling promissory notes.

13 a. Among other evidence is Clark Hill and Beauchamp’s admission
14 in their initial disclosure statement (at 4), that “[o]ver the years, Mr. Chittick
15 showed himself to be a trustworthy and savvy businessman, and a good client.
16 . . . Despite complaining about the cost of legal services, Mr. Chittick appeared
17 to follow Mr. Beauchamp’s advice and provided information when asked for it.”
18 (See Schenck Dep. Exhibit 4, at pg. 4, ln. 19-21, attached as **SOF Ex. 5**).

19 b. Moreover, approximately six weeks before Clark Hill was
20 retained, DenSco had immediately followed Bryan Cave’s advice to modify its
21 website, and Bryan Cave’s files reflect that Chittick was prepared to cause
22 DenSco to refund all investor loans if that was necessary to correct the “general
23 solicitation” problem Bryan Cave had identified(See Beauchamp Dep. Exhibit
24 117, attached as **SOF Ex. 59**; Beauchamp Dep. Exhibit 128, attached as **SOF**
25 **Ex. 65**, Beauchamp Dep. Transcript at pp. 285:19-286:7, attached as **SOF Ex.**
26 **6**).

27 155. Beauchamp, by testifying that Clark Hill did not work on a new POM in
28 2013 because Chittick conditioned DenSco’s execution of the firm’s engagement letter
 on Clark Hill’s agreement to not perform any work on a new POM until Chittick was
 “ready to go” -- when he and Clark Hill knew that one-half of DenSco’s investors would
 “roll over” their investments and purchase new promissory notes during the last six

1 months of 2013 --has admitted that from the moment DenSco retained Clark Hill in
2 September 2013, Clark Hill aided and abetted Chittick in breaching fiduciary duties
3 Chittick owed DenSco. (*See* Beauchamp Dep. Transcript at pp. 299:2-302:6, attached
4 as **SOF Ex. 6**).

5 156. Between September and December 2013, Clark Hill substantially assisted
6 Chittick in breaching his fiduciary duties to DenSco by:

7 a. accepting DenSco as a client for purposes of preparing a new
8 POM, and then abiding by Chittick's instruction to not do any work on that
9 POM, knowing DenSco was continuing its business operations, including the
10 sale of promissory notes; (Schenck Dep. Exhibit 6, attached as **SOF Ex. 20**).

11 b. failing to appropriately advise DenSco about, and investigate facts
12 regarding, DenSco's loan portfolio because Chittick was allegedly "dealing"
13 with those problems; and (*See* Beauchamp Dep. Exhibit 350, attached as **SOF**
14 **Ex. 81**).

15 c. advising Chittick that DenSco could indefinitely delay the
16 issuance of an "update" to the 2011 POM (Beauchamp Dep. Exhibit 134,
17 attached as **SOF Ex. 47**).

18 157. The ongoing sale of "roll over" and new promissory notes was necessary
19 for DenSco to continue its business operations, and Clark Hill enabled DenSco to obtain
20 investor funds for a four-month period without making adequate disclosures to those
21 investors, exposing DenSco to substantial liability to its investors. (*See* Beauchamp
22 Dep. Exhibit 150, attached as **SOF Ex. 129**; Beauchamp Dep. Transcript at pp. 189:15-
23 193:12, attached as **SOF Ex. 6**).

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

1 158. As a result of Clark Hill’s and Beauchamp’s conduct, Chittick caused
2 DenSco between September and December 2013 to sell promissory notes to some of
3 the “approximately 60 investor[s]” whose promissory notes Beauchamp knew were
4 “scheduled to expire [during the last six months of 2013] (and to probably be rolled
5 over into new notes).” (See Beauchamp Dep. Exhibit 117, attached as **SOF Ex. 59**;
6 Beauchamp Dep. Transcript at pp. 277:24-278:24, attached as **SOF Ex. 6**).

7 159. In each case, an investor who had purchased a two-year promissory note
8 in 2011, which expired in September, October, November or December 2013,
9 purchased a new two-year promissory note. Those sales, which total \$4,148,162.79,
10 are summarized in the following chart. (See Beauchamp Dep. Exhibit 422, attached as
11 **SOF Ex. 67**, Schenck Dep. Exhibit 21 attached as **SOF Ex. 82**; Schenck Dep. Exhibit
12 51 attached as **SOF Ex. 83**, Beauchamp Dep. Transcript at pp. 432:2-436:3, attached
13 as **SOF Ex. 6**).

Investor	Amount	Date
Van Butler	\$50,000	9/1/13
Arden & Nina Chittick	\$100,000	9/1/13
Carysn Smith	\$10,000	9/2/13
Michael & Diana Gumbert	\$100,000	9/8/13
Kaylene Moss	\$10,000	9/8/13
McKenna Smith	\$10,000	9/8/13
Glen Davis	\$20,000	9/12/13
Averill Cate, Jr.	\$10,000	9/13/13
Craig Brown	\$25,000	9/20/13
Judy & Gary Siegford	\$40,000	9/20/13
Bill & Jean Locke	\$15,000	9/25/13
Bill & Jean Locke	\$30,000	9/25/13
Ralph Hey	\$60,000	9/29/13

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Michael & Diana Gumbert	\$100,000	9/30/13
Mary Kent	\$100,000	10/1/13
Jim McArdle	\$100,000	10/3/13
Caro McDowell	\$100,000	10/7/13
Jeff Phalen	\$20,000	10/14/13
Jeff Phalen	\$20,000	10/14/13
Jeff Phalen – IRA	\$200,000	10/18/13
Brian Imdieke	\$250,000	10/19/13
Bill Hughes – IRA	\$314,700	10/24/13
Judy Hughes – IRA	\$14,300	10/24/13
Manual A. Lent – IRA	\$40,000	10/25/13
Dave Preston	\$60,000	10/26/13
Michael & Diana Gumbert	\$100,000	11/1/13
Jolene Page	\$50,000	11/1/13
Stanley Scholz – IRA	\$50,000	11/5/13
Wade Underwood	\$50,000	11/5/13
Paul A. Kent	\$112,161.79	11/9/13
Scott D. Detota	\$50,000	11/14/13
Tom Smith	\$800,000	11/21/13
Mary Kent	\$100,000	11/21/13
Les Jones	\$100,000	11/21/13
Vince & Sharry Muscat	\$200,000	11/23/13
Lillian Lent – IRA	\$17,000	11/25/13
Jolene Page	\$50,000	12/1/13
Gary Thompson	\$20,000	12/4/13
Kennen Burkhart	\$150,000	12/15/13
Mo & Sam Chittick	\$50,000	12/20/13

Jolene Page	\$200,000	12/22/13
Brian Imdieke	\$250,000	12/23/13

160. In addition to these “rollover” promissory note sales, Chittick caused DenSco to sell \$4,029,066.71 of new promissory notes to existing and new investors during September, October, November and December 2013. Those sales are summarized in the following chart.²

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

(See Exhibit A to Davis Dep. Exhibit 479, attached as **SOF Ex. 84**).

² Each note was a two-year note, except those marked with an *, which were one-year notes, and the note marked with **, which matured on 3/31/14.

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

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

7 161. On Sunday, January 5, 2014, Beauchamp received an email from Chittick
8 asking if he had time to meet with him during the coming week. (See Chittick email at
9 CH_0000852-853, attached as **SOF Ex. 85**).

10 **a. On January 6, 2014, Beauchamp Received a Demand**
11 **Letter That Called into Question 52 Loans DenSco Had**
12 **Made to Menaged.**

13 162. On Monday, January 6, 2014, Beauchamp received an email from
14 Chittick which stated: “read the first two pages, then give me a call.” Attached to the
15 email was a three-page demand letter from Bryan Cave attorney Robert J. Miller;
16 Exhibit A, a list of 52 properties; and two subordination agreements. (See Beauchamp
17 Dep. Exhibit 142, attached as **SOF Ex. 86**).

18 163. The letter was written on behalf of Azben Limited, LLC; Geared Equity,
19 LLC; and 50780, LLC (the “Lienholders”). It asserted that Geared Equity, 50780, and
20 Sell Wholesale Funding, LLC (the “Lenders”) had each loaned money to Arizona Home
21 Foreclosures, LLC and Easy Investments, LLC, and that the loans Sell Wholesale
22 Funding had made were subsequently assigned to Azben. (See Beauchamp Dep. Exhibit
23 142 at CH_0000829, attached as **SOF Ex. 86**).

24 164. Exhibit A to the letter identified, with reference to specific loan numbers
25 and street addresses, 52 loans that the Lenders had made to Easy Investments and
26 Arizona Home Foreclosures to acquire 52 homes at trustee sales. (See Beauchamp Dep.
27 exhibit 142 at CH_0000832, attached as **SOF Ex. 86**).

28 165. The letter asserted that the Lenders’ loans had been made by “certified
funds delivered directly to the trustee” and secured by “promptly recorded deeds of

1 trust confirming a senior lien position on each of the Properties.” (See Beauchamp Dep.
2 Exhibit 142 at CH_0000829, attached as **SOF Ex. 86**).

3 166. The letter went on to assert that DenSco had “engaged in a practice of
4 recording a ‘mortgage’ on each of the [52 properties] on around the same time as the
5 Lenders were recording their senior deeds of trust” and that *each such mortgage falsely*
6 *stated that DenSco had “provided purchase money funding” and that its “loans are*
7 *‘evidenced by a check payable’ to the trustee for each of the Properties.*” (Emphasis
8 added.) (*Id.*)

9 167. The letter asserted that DenSco could not claim to be in a senior lien
10 position on those properties “since in each and every instance, only the Lenders
11 provided the applicable trustee with certified funds supporting the Borrower’s purchase
12 money acquisition for each of the Properties.” (See Beauchamp Dep. Exhibit 142 at
13 CH_0000830, attached as **SOF Ex. 86**)

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

19 169. The letter included “two forms of subordination agreement – one form
20 document applies to the Azben loans and the other form applies to the loans of Geared
21 Equity, LLC and 50780, LLC.” A footnote stated that “[p]roperty addresses and other
22 ‘form’ information will need to be included in each subordination agreement. My firm
23 will only commence preparing a subordination agreement for each loan when written
24 confirmation is provided that DenSco has unconditionally agreed to execute each
25 subordination agreement in the form enclosed herein.” (*Id.*)

26 **b. On January 6, 2014, Beauchamp Reviewed the Demand**
27 **Letter, Which Provided Clear Evidence That Chittick**
28 **Had Breached His Fiduciary Duties to DenSco and**
Exposed DenSco to Substantial Financial Loss.

1 170. Beauchamp spoke to Chittick by telephone that day, after receiving the
2 letter. Beauchamp's notes from that call state that Chittick told him DenSco's "largest
3 borrower" – who Beauchamp knew or should have known from the *Freo* lawsuit he
4 had received in June 2013 was Menaged – "had a guy working in his office and was
5 getting 2 loans on each property," and that Chittick and Menaged "had already fixed
6 about 6 loans." The notes reflect that Beauchamp planned to meet with Chittick on
7 Thursday, January 9, 2014. (*See* Beauchamp Dep. Exhibit 143, attached as **SOF Ex.**
8 **87**).

9 171. Clark Hill's billing records reflect that Beauchamp billed 2.4 hours on
10 January 6, 2014 to "[r]eview, work on and ; review statutory references; telephone
11 conversation with office of D. Chittick [a reference to having left a voice-mail message
12 for Chittick, since he worked alone from his home office]; telephone conversation with
13 D. Chittick regarding demand letter, issues, background information and requirements;
14 review notes and statute requirements; review documents." (*See* Schenck Dep. Exhibit
15 6 at CH_0002313, attached as **SOF Ex. 20**).

16 172. From the demand letter alone, Beauchamp knew that:

17 a. Chittick had failed to follow the lending procedures called for by
18 the Receipt and Mortgage document Beauchamp had approved in 2007. That
19 document called for DenSco's borrower to present a "check payable to _____
20 ('Trustee')" to the Trustee. It was evident from the demand letter that DenSco
21 had not done so. DenSco could not have issued 52 checks payable to Trustees,
22 since the letter asserted that the Lenders had issued checks to the Trustees when
23 they acquired those 52 properties. (*See* Beauchamp Dep. Exhibit 142 at
24 CH_000829-830, attached as **SOF Ex. 86**).

25 b. DenSco's borrowers, Arizona Home Foreclosures and Easy
26 Investments – which were both owned by Menaged – had obtained 52 loans from
27 the Lenders and 52 loans from DenSco, that were to be secured by the same 52
28 properties. If, as the Lenders claimed, they had actually paid a Trustee for each

1 property, DenSco had effectively made 52 unsecured loans and the disposition
2 of those monies was unknown.

3 c. The potential financial impact on DenSco was substantial.
4 Beauchamp knew from the 2011 POM that DenSco's average loan amount was
5 \$116,000, so that DenSco's potential losses from the 52 loans, if the loan
6 proceeds could not be traced and recovered, was \$6 million or more, or
7 approximately 13% of the \$47 million that Beauchamp understood DenSco had
8 raised from investors as of June 2013. (*See* Fenix Financial expert report at
9 pp. 2-10, attached to Motion for Determination of Prima Facie Case as Exhibit
10 B; Beauchamp Dep. Exhibit 432, attached as **SOF Ex. 2**).

11 173. Beauchamp could have easily conducted a limited investigation to
12 evaluate the claims in the demand letter that the Lenders were in first position on each
13 of the 52 properties, or to assess the information he had received during his telephone
14 call with Chittick that "a guy working in [Menaged's] office . . . was getting 2 loans
15 on each property." (*See* Beauchamp Dep. Exhibit 142, attached as **SOF Ex. 86**).

16 174. Beauchamp could have done so by searching for publicly recorded
17 documents that were identified in the two subordination agreements attached to the
18 demand letter. (*See* Beauchamp Dep. Exhibit 142, at CH_0000834 -848, attached as
19 **SOF Ex. 86**).

20 a. The first of those subordination agreements identified, by
21 reference to the instrument number assigned by the Maricopa County Recorder
22 (2013-0832534), the Mortgage DenSco had recorded on September 16, 2013 on
23 the property at issue. The subordination agreement also identified, by reference
24 to a recorded instrument number (2013-0833010), the deed of trust that Sell
25 Wholesale Funding, LLC had recorded on September 16, 2013 for the same
26 property. (*See* Schenck Dep. Exhibit 28, attached as **SOF Ex. 88**).

1 b. In January 2014, the Maricopa County Recorder’s Office had a
2 free “Recorded Document Search” function. The same tool is available today.
3 (See generally <https://recorder.maricopa.gov/recdocdata/>)

4 c. If Beauchamp had used that tool, two brief searches would have
5 shown that the DenSco Mortgage (2013-0832534) was signed by Menaged
6 before a notary on September 16, 2013, and that Menaged also signed the Sell
7 Wholesale Funding deed of trust (2013-0833010) before a notary on
8 September 16, 2013. Those searches would also have identified the property in
9 question as 977 S. Colonial Drive in Gilbert, Arizona. (See Schenck Dep. Exhibit
10 29, attached as **SOF Ex. 89**).

11 Those two documents show that Menaged, not “a guy working in his
12 office,” had secured both loans. (See Schenck Dep. Exhibit 28, attached as **SOF**
13 **Ex. 88**; Schenck Dep. Exhibit 29, attached as **SOF Ex. 89**; Beauchamp Dep.
14 Exhibit 143, attached as **SOF Ex. 87**; Beauchamp Dep. Transcript at pp. 320:3-
15 322:8, attached as **SOF Ex. 6**).

16 d. The second of the subordination agreements attached to the
17 demand letter identified, by reference to a recorded instrument number (2013-
18 0717135), the Mortgage DenSco had recorded on August 6, 2013 on the property
19 at issue. The subordination agreement also identified, by reference to a recorded
20 instrument number (2013-0721399), the deed of trust that Geared Equity, LLC
21 had recorded on August 7, 2013 for the same property. (See Beauchamp Dep.
22 Exhibit 142, attached as **SOF Ex. 86**; see also Geared Equity Deed of Trust at
23 RECEIVER_001117, attached as **SOF Ex. 90**).

24 e. If Beauchamp had used the Recorded Document Search tool, two
25 brief searches would have shown that the DenSco Mortgage (2013-0717135)
26 was signed by Menaged before a notary on August 6, 2013, and that Menaged
27 also signed the Sell Wholesale Funding deed of trust (2013-0721399) before a
28

1 notary on August 6, 2013. Those searches would have identified the property in
2 question as 39817 Messner Way in Anthem, Arizona.

3 (See <https://recorder.maricopa.gov/recdocdata/>)

4 f. Those two documents show that Menaged, not “a guy working in
5 his office”, had secured both loans. (See Beauchamp Dep. Exhibit 143, attached
6 as **SOF Ex. 87**).

7 175. As for the remaining 49 properties on Exhibit A to the demand letter,
8 Beauchamp could have, either by himself, or through a paralegal, quickly discovered
9 that in each case, Menaged, and not “a guy working in his office,” had signed the
10 documents at issue. (See Beauchamp Dep. Exhibit 142, attached as **SOF Ex. 86**;
11 Beauchamp Dep. Exhibit 143, attached as **SOF Ex. 87**).

12 a. This could have been done by using a free search function on the
13 Maricopa County Assessor’s Office website that allows anyone to search for
14 property records using a street address (such as those given in Exhibit A to the
15 demand letter), or other means of customary due diligence. The Assessor’s
16 website provides a link to a recorded instrument on the Maricopa County
17 Recorder’s Office website for each property, and that information could have in
18 turn been used to quickly locate both the deed of trust recorded by the Lenders
19 and DenSco’s competing Mortgage by using the Recorded Document Search
20 tool. (See <https://recorder.maricopa.gov/recdocdata/>)

21 b. Such a search, which would take less than five minutes for each
22 property, would produce records showing that for each of the 49 properties,
23 Menaged had signed both a DenSco Mortgage and another lender’s deed of trust
24 before a notary, providing further evidence that Menaged, not “some guy
25 working in his office,” had secured all of the loans in question, and had
26 purposefully defrauded DenSco. (See Beauchamp Dep. Exhibit 143, attached as
27 **SOF Ex. 87**; See also <https://recorder.maricopa.gov/recdocdata/>)

1 c. **On January 7, 2014, Clark Hill Received an Email From**
2 **Chittick in Which He Admitted That He Had Grossly**
3 **Mismanaged DenSco’s Loan Portfolio, Failed to**
4 **Comply With the Lending Practices Disclosed in the**
5 **2011 POM, and Caused DenSco to Suffer Substantial**
6 **Losses.**

7 176. On Tuesday, January 7, 2014, Beauchamp received an email from
8 Chittick, copied to Menaged, which contained information relevant to the demand letter
9 and said that Chittick was bringing Menaged to the planned January 9, 2014 meeting.
10 (See Beauchamp Dep. Exhibit 144, attached as **SOF Ex. 91**).

11 177. Chittick’s email said that DenSco had, since 2007, loaned \$50 million to
12 “a few different LLC’s” controlled by Menaged. Beauchamp knew or should have
13 known that those companies included the two entities identified in the demand letter:
14 Easy Investments (a defendant in the June 2013 *Freo* lawsuit) and Arizona Home
15 Foreclosures. (See Beauchamp Dep. Exhibit 144 at CH_0005916, attached as **SOF Ex.**
16 **91**).

17 178. Chittick’s email said that “[b]ecause of our long term relationship, *when*
18 *[Menaged] needed money, [I] would wire the money to his account and he would pay*
19 *the trustee*” (emphasis added), Menaged would sign a Mortgage that referenced the
20 payment to the trustee, and Chittick would cause the Mortgage to be recorded. (See
21 Beauchamp Dep. Exhibit 144 at CH_0005917, attached as **SOF Ex. 91**).

22 179. Chittick attached to his email a form of Mortgage, Deed of Trust, and
23 Note Secured by Deed of Trust that he routinely used in making loans to Menaged,
24 which Chittick described as “docs you have reviewed and have been reviewed by a guy
25 at your last law firm, maybe two firms ago in 2007.” (*Id.*)

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

 a. Chittick had been grossly negligent in managing DenSco’s loan
 portfolio, by not complying with the terms of the Mortgage, which called for

1 DenSco to issue a check payable to the Trustee, and instead wiring money to
2 Menaged, trusting Menaged to actually use those funds to pay a Trustee.

3 b. Chittick's admitted practice of giving DenSco's funds directly to
4 Menaged, rather than paying them directly to a Trustee through a check made
5 payable to the Trustee, made the statements in the 2011 POM about DenSco's
6 lending practices materially misleading.

7 (See Beauchamp Dep. Exhibit 142, attached as **SOF Ex. 86**; Beauchamp Dep. Exhibit
8 144, attached as **SOF Ex. 91**).

9 181. Chittick's reference to "docs you have reviewed and have been reviewed
10 by a guy at your last law firm, maybe two firms ago in 2007" suggested that Chittick
11 might blame Beauchamp for the problems DenSco now faced because of DenSco's use
12 of those documents. (See Beauchamp Dep. Exhibit 144 at CH_0005917, attached as
13 **SOF Ex. 91**).

14 182. Chittick's email went on to say that Menaged had told him in November
15 2013 that DenSco had been defrauded by Menaged's "cousin," who allegedly worked
16 with Menaged in managing Easy Investments and Arizona Home Foreclosures.
17 Menaged claimed that his "cousin" had "receiv[ed] the funds from [DenSco], then
18 request[ed] them from . . . other lenders [who] cut a cashiers check for the agreed upon
19 loan amount . . . [took] it to the trustee and . . . then record[ed] a [deed of trust]
20 immediately." (See Beauchamp Dep. Exhibit 144 at CH_0005918, attached as **SOF Ex.**
21 **91**).

22 183. Chittick explained that "sometimes" DenSco had recorded its mortgage
23 before another lender's deed of trust was recorded, but in other cases it had not. (*Id.*)

24 184. According to Chittick, "[t]he cousin absconded with the funds.
25 [Menaged] figured this out in mid November. He came to me and told me what was
26 happening. He said he talked to the other lenders and they agreed that this was a mess,
27 and as long as they got their interest and were being paid off they wouldn't foreclose,
28 sue or anything else." (*Id.*)

1 185. Chittick went on to describe the “plan” that he and Menaged had been
2 executing since November: to “sell off the properties and pay off both liens with
3 interest and make everyone whole.” He acknowledged that there were “short falls” on
4 each property, representing the difference between the value of the property and the
5 combined amount of the two loans, and that “[c]oming up with the short fall on all these
6 houses is a challenge, but we believe it is doable. Our plan is a combination of injecting
7 capital and extending cheaper money.” (See Beauchamp Dep. Exhibit 144 at
8 CH_0005918-19, attached as **SOF Ex. 91**).

9 186. Chittick described the basic terms of the agreement with the “other
10 lenders” as including the following: (1) “all lenders will be paid their interest, except
11 [DenSco], I’m allowing [its] interest to accrue”; and (2) DenSco is “extending
12 [Menaged] a million dollars against a home at 3%.” (See Beauchamp Dep. Exhibit 144
13 at CH_0005918, attached as **SOF Ex. 91**).

14 187. Chittick claimed that he and Menaged had “already cleared up about 10%
15 of the total \$’s in question” with the “other lenders.” (See Beauchamp Dep. Exhibit 144
16 at CH_0005919, attached as **SOF Ex. 91**).

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

25 189. Chittick went on to state: “***I know that [I] can’t sign the subordination***
26 ***[agreement] because that goes against everything that [I] tell [DenSco’s] investors.***”
27 (Emphasis added.) (See Beauchamp Dep. Exhibit 144 at CH_0005920, attached as **SOF**
28 **Ex. 91**).

1 190. He also wrote that “there are several other lenders waiting to see what [I]
2 do[.] [I]f I sign with this group, they want to have me sign for them too.” (*Id.*)

3 191. Chittick concluded his email by stating “[w]hat we need is an agreement
4 that as long as the other lenders are being paid their interest and payoffs continue to
5 come . . . that no one initiates foreclosure for obvious reasons, which will give us time
6 to execute our plan.” (*Id.*)

7 **d. On January 7 and 8, 2014, Beauchamp Reviewed the**
8 **Demand Letter and Chittick’s January 6, 2014 Email,**
9 **Including a Review of “Lien Dispute Information.”**

10 192. Clark Hill’s billing records reflect that Beauchamp billed 1.8 hours on
11 January 7, 2014 to “[r]eview legislative history for purchase money security interest;
12 review documents and follow-up information” and “telephone conversation with office
13 of D. Chittick,” which was a reference to having left a voicemail message for Chittick.
14 (*See* Schenck Dep. Exhibit 6 at CH_0002313, attached as **SOF Ex. 20**).

15 193. Clark Hill’s billing records reflect that Beauchamp billed 1.7 hours on
16 January 8, 2014 to “[r]eview information from D. Chittick; review and outline follow-
17 up questions; prepare for meeting; review lien dispute information.” (*Id.*)

18 194. As of January 8, 2014, Beauchamp knew that:

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

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

26 c. the scope of DenSco’s financial exposure was greater than the 52
27 properties identified in the demand letter, since it included the “other lenders”
28 with whom Menaged had reached an informal agreement in November 2013;

1 (See Fenix Financial expert report at pp. 2-10, attached to Motion for
2 Determination of Prima Facie Case as an Exhibit B).

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

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

17 (See Beauchamp Dep. Exhibit 144, attached as **SOF Ex. 91**; Beauchamp Dep. Exhibit
18 142, attached as **SOF Ex. 86**; Beauchamp Dep. Exhibit 143 attached as **SOF Ex. 87**;
19 Schenck Dep. Exhibit 6 at CH_0002313, attached as **SOF Ex. 20**).

20 195. Beauchamp also knew from his January 6 review of the demand letter and
21 the hours he had devoted on January 7 and 8 to analyzing Chittick's email and other
22 information he had received from Chittick, that Menaged's "cousin" story was
23 implausible and that by accepting the story without investigation and planning to
24 continue DenSco's lending relationship with Menaged, Chittick was breaching his
25 fiduciary duties to DenSco. (See Schenck Dep. Exhibit 6 at CH_0002313, attached as
26 **SOF Ex. 20**; Beauchamp Dep. Exhibit 142, attached as **SOF Ex. 86**).

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

1 have also reviewed the information attached to Chittick's January 6, 2014 email
2 regarding a loan for which Chittick claimed DenSco was in first position. (*See*
3 Beauchamp Dep. Exhibit 142 at CH_0000829-830, attached as **SOF Ex. 86**;
4 Beauchamp Dep. Exhibit 144, attached as **SOF Ex. 91**).

5 197. If Beauchamp had used the information in the settlement statement
6 attached to Chittick's email to investigate Chittick's claim that DenSco was in first
7 position with respect to the "Pratt" property, he could have used the Recorded
8 Document Search tool on the website maintained by Maricopa County Recorder's
9 Office. (*See* Beauchamp Dep. Exhibit 144, attached as **SOF Ex. 91**).

10 198. A few brief searches would have confirmed Chittick's claim that DenSco
11 was the first to record: DenSco's Mortgage was recorded on September 17, 2013 as
12 instrument number 2013-0837513, while Geared Equity's deed of trust was recorded
13 on September 19, 2013 as instrument number 2013-0842640. (*See* Schenck Dep.
14 Exhibit 29 attached as **SOF Ex. 89**; Geared Equity Deed of Trust at
15 RECEIVER_001117, attached as **SOF Ex. 90**).

16 199. But those two documents would also have shown that Menaged signed
17 each document before a notary on September 17, 2013, making clear that Menaged, not
18 his "cousin," had secured both loans. (*See* Schenck Dep. Exhibit 29, attached as **SOF**
19 **Ex. 89**; Geared Equity Deed of Trust at RECEIVER_001122, attached as **SOF Ex. 90**).

20 200. Moreover, because the demand letter claimed that Geared Equity had
21 delivered funds to the Trustee, and Chittick had admitted he had not, the question
22 remained as to where DenSco's funds had gone and whether they could be recovered.
23 (*See* Beauchamp Dep. Exhibit 142, attached as **SOF Ex. 86**; Beauchamp Dep. Exhibit
24 144, attached as **SOF Ex. 91**).

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2. Clark Hill Failed to Properly Advise DenSco.

a. After Receiving the Demand Letter and Chittick’s January 6 Email, Beauchamp Should Have Insisted on Meeting with Chittick Alone So That He Could Advise Chittick of the Actions He Was Required to Take to Protect DenSco From Further Harm, But Beauchamp Failed to Do So.

201. Beauchamp, as DenSco’s attorney, should have recognized that he had an obligation to meet privately with Chittick, without Menaged present, to confirm relevant facts, and advise Chittick, as DenSco’s President, of the actions DenSco needed to take and the consequences to DenSco if it failed to do so. (See Neil Wertlieb expert report at pp. 40; 55; 62-63, attached to Motion for Determination of Prima Facie Case.

202. While the specific actions Beauchamp should have taken on January 8, 2014 is the subject of expert testimony, which will be disclosed in accordance with the scheduling order that has been entered in this case, the Receiver anticipates that those actions would have included the following:

- a. Telling Chittick he should not bring Menaged to their scheduled January 9, 2014 meeting;
- b. Telling Chittick that DenSco’s sale of promissory notes since July 1, 2013 to investors exposed DenSco and Chittick to civil and criminal liability;
- c. Telling Chittick that DenSco should not have sold any notes without first issuing a new POM and should not use the proceeds of sales made since July 1, 2013 until the investors who bought those notes had been given a new POM and afforded an opportunity to rescind those transactions;
- d. Telling Chittick that DenSco could not sell any new promissory notes until Clark Hill was able to conduct an adequate investigation of DenSco’s lending practices and other material information and a new POM had been issued;

1 e. Telling Chittick that DenSco should immediately cease doing
2 business with Menaged based on the implausibility of the “cousin” story and the
3 readily available public records discussed above;

4 f. Telling Chittick that, at a minimum, DenSco should not have any
5 further business dealings with Menaged until it had investigated the true facts of
6 the alleged fraud by Menaged’s “cousin”;

7 g. Telling Chittick that after discovering the true facts about
8 Menaged’s dealings with DenSco (whether through a review of public records
9 or some other investigation), DenSco should rescind all lending agreements it
10 had made with Menaged since November 2013 on the grounds of fraud in the
11 inducement, and seek to enforce its remedies for all other loans that Menaged
12 had obtained through fraud; and

13 h. Telling Chittick that DenSco had to assess the impact of the fraud
14 on DenSco’s financial position, and if that assessment resulted in a finding that
15 DenSco was insolvent, DenSco had to consider duties owed to its investors and
16 other creditors in making all business decisions.³

17 i. Telling Chittick that, at a minimum, DenSco should not have any
18 further business dealings with Menaged until it had investigated the true facts of
19 the alleged fraud by Menaged’s “cousin”;

20 j. Telling Chittick that after discovering the true facts about
21 Menaged’s dealings with DenSco (whether through a review of public records
22 or some other investigation), DenSco should rescind all lending agreements it
23 had made with Menaged since November 2013 on the grounds of fraud in the
24 inducement, and seek to enforce its remedies for all other loans that Menaged
25 had obtained through fraud; and

26
27 ³ DenSco was indisputably insolvent in January 2014, as Chittick’s statements
28 to Beauchamp at the time made clear and as the Receiver was able to determine after
reviewing DenSco’s QuickBooks records.

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

5 (See Neil Wertlieb expert report at pp. 57-67, attached to Motion for Determination of
6 Prima Facie Case.

7 203. This advice should have been documented in writing.

8 204. If Chittick declined to follow the advice, Beauchamp should have
9 threatened to withdraw from representing DenSco, which may have caused Chittick to
10 relent and follow the advice. See Neil Wertlieb expert report at pg. 67 attached to
11 Motion for Determination of Prima Facie Case.

12 205. Beauchamp did not tell Chittick he should not bring Menaged to the
13 planned January 9, 2014 meeting and did not give the advice described above. (See Neil
14 Wertlieb expert report at pp. 40; 55; 62-63, attached to Motion for Determination of
15 Prima Facie Case.

16 206. The Receiver intends to offer evidence at trial establishing that if
17 Beauchamp had taken these actions, Chittick would have caused DenSco to follow that
18 advice. (See Schenck Dep. Exhibit 4 at pg. 4, ln. 17-21, attached as **SOE Ex. 5**; Neil
19 Wertlieb expert report attached to Motion for Determination of Prima Facie Case.

20 207. Evidence of Chittick’s long professional relationship with Beauchamp
21 and numerous instances of Chittick following Beauchamp’s legal advice establish that
22 if Beauchamp had properly advised DenSco during the first week of January 2014,
23 Chittick would have caused DenSco to: (i) stop selling promissory notes; (ii) terminate
24 its relationship with Menaged and his companies; (iii) pursue its remedies against
25 Menaged and his companies; and (iv) explore whether DenSco could survive as a going
26 concern or would have to liquidate. Such evidence includes:

27 a. Clark Hill and Beauchamp’s admission in their initial disclosure
28 statement (at 4), that “[o]ver the years, Mr. Chittick showed himself to be a

1 trustworthy and savvy businessman, and a good client. . . . Despite complaining
2 about the cost of legal services, Mr. Chittick appeared to follow Mr.
3 Beauchamp's advice and provided information when asked for it." (See Schenck
4 Dep. Exhibit 4 at pg. 4, ln. 17-25, attached as **SOF Ex. 5**).

5 b. Moreover, only six months earlier, DenSco had immediately
6 followed Bryan Cave's June 2013 advice to modify its website, and Bryan
7 Cave's files reflect that Chittick was prepared to cause DenSco to refund all
8 investor loans if that was necessary to correct the "general solicitation" problem
9 Bryan Cave had identified. (See Beauchamp Dep. Exhibit 128, attached as **SOF**
10 **Ex. 65**; Beauchamp Dep. Exhibit 117, attached as **SOF Ex. 59**; Beauchamp Dep.
11 Exhibit 116, attached as **SOF Ex. 58**; Beauchamp Dep. Exhibit 115, attached as
12 **SOF Ex. 3**; Beauchamp Dep. Exhibit 114, attached as **SOF Ex. 57**).

13 **3. During the January 9, 2014 Meeting with Chittick and**
14 **Menaged, Beauchamp Learned That DenSco Faced an Even**
15 **Larger Financial Exposure as a Result of Chittick's**
16 **Mismanagement Than the Exposure Presented by the**
17 **Demand Letter, And Chittick Wanted to Try to Cover Up His**
18 **Mismanagement By Pursuing a "Work Out" Plan With**
19 **Menaged.**

20 208. Clark Hill's billing records reflect that Beauchamp billed 4.3 hours on
21 January 9, 2014 to "[p]repare for and meeting with D. Chittick and S. Menages [sic];
22 review and work on notes from meeting and outline follow-up; review and respond to
23 several emails; review documents and information." (See Schenck Dep. Exhibit 6 at pg.
24 CH_0002313, attached as **SOF Ex. 20**).

25 209. Beauchamp's notes from the January 9, 2014 meeting reflect that Chittick
26 and Menaged confirmed that DenSco faced exposure from both the Lienholders
27 identified in the January 6, 2014 demand letter and other lenders, including Active
28 Funding Group. (See Beauchamp Dep. Exhibit 145, attached as **SOF Ex. 92**).

29 210. According to Beauchamp's notes, the number of loans made by DenSco
30 that were not in first position and were either unsecured or under-secured was between

1 100 and 125. Based on that information and the 2011 POM's average loan amount of
2 \$116,000, Beauchamp knew or should have known that DenSco's loans to Menaged
3 represented a potential loss of between \$11.6 and \$14.5 million, or between 25% and
4 30% of the \$47 million that Beauchamp understood DenSco had raised as of June 2013.
5 (*Id.*)

6 211. Beauchamp's notes from the January 9, 2014 meeting also reflect that
7 Chittick did not know what had happened to as much as \$14.5 million that DenSco had
8 loaned to Menaged, and that Chittick was not taking any meaningful steps to investigate
9 the loss and seek to recover those funds. The notes state: "What happened to the
10 money? -- Will pursue something or his cousin a but trying to determine where the
11 money has gone." (*Id.*)

12 212. Beauchamp's notes from the January 9, 2014 meeting also reflect that,
13 although the money DenSco previously loaned Menaged was missing and Chittick had
14 taken no steps to investigate the circumstances under which the loan losses had occurred
15 and their impact on DenSco, Chittick and Menaged had agreed to pursue a "work out"
16 of the loan losses caused by Chittick's gross mismanagement of DenSco's lending
17 practices. (*Id.*)

18 **4. After the January 9, 2014 Meeting, Clark Hill Helped Chittick**
19 **Breach Fiduciary Duties He Owed to DenSco and Negligently**
20 **Advised DenSco About the Practices It Should Follow in**
21 **Continuing to Loan Money to Menaged.**

22 213. After the January 9, 2014 meeting, Clark Hill helped Chittick breach
23 fiduciary duties he owed DenSco by negotiating a "Forbearance Agreement" that was
24 not in DenSco's interest and was instead intended to cover up Chittick's
25 mismanagement of DenSco's lending practices and protect Chittick from potential
26 claims by DenSco's investors. (*See* Beauchamp Dep. Exhibit 168, attached as **SOF Ex.**
27 **93**; Beauchamp Dep. Exhibit 360, attached as **SOF Ex. 94**; Beauchamp Dep. Exhibit
28 361, attached as **SOF Ex. 95**; Beauchamp Dep. Exhibit 362, attached as **SOF Ex. 96**;

1 Beauchamp Dep. Exhibit 363, attached as **SOF Ex. 97**; Beauchamp Dep. Exhibit 364,
2 attached as **SOF Ex. 98**).

3 214. Clark Hill also helped Chittick breach fiduciary duties by advising
4 Chittick that DenSco could continue to raise money from investors while Chittick was
5 implementing his “work out” plan, and that DenSco could indefinitely delay issuing a
6 new POM until Chittick felt comfortable doing so. (*See* Beauchamp Dep. Exhibit 350,
7 attached as **SOF Ex. 81**; Beauchamp Dep. Exhibit 168, attached as **SOF Ex. 93**;
8 Beauchamp Dep. Transcript at pp. 405:5- 408:9, attached as **SOF Ex. 6**).

9 215. These actions served Chittick’s interests, who hoped to “fix” the problem
10 created by his mismanagement and delay telling his investors about the problem until
11 he had minimized the financial harm and delay or avoid making disclosures to
12 DenSco’s investors about the Forbearance Agreement and how it came to be put in
13 place. (*See* Neil Wertlieb expert report attached to Motion for Determination of Prima
14 Facie Case.

15 216. Clark Hill and Beauchamp, on the other hand, having failed to properly
16 advise Chittick in September 2013 that it could not sell promissory notes without first
17 issuing a new POM, and having agreed with Chittick to indefinitely delay work on the
18 POM, similarly saw the Forbearance Agreement as an opportunity to cover up their
19 negligence and potentially mitigate their exposure. (*See* Beauchamp Dep. Exhibit 360,
20 attached as **SOF Ex. 94**; Beauchamp Dep. Exhibit 361, attached as **SOF Ex. 95**;
21 Beauchamp Dep. Exhibit 362, attached as **SOF Ex. 96**; Beauchamp Dep. Exhibit 363,
22 attached as **SOF Ex. 97**; Beauchamp Dep. Exhibit 364, attached as **SOF Ex. 98**;
23 Beauchamp Dep. Exhibit 350, attached as **SOF Ex. 81**; Beauchamp Dep. Transcript at
24 pp. 405:5-408:9, attached as **SOF Ex. 6**).

25 217. At the same time that it was drafting the Forbearance Agreement, which
26 obligated DenSco to continue loaning money to Menaged, Clark Hill failed to properly
27 advise DenSco about how the loans should be made. (*See* Neil Wertlieb expert report
28 at pp. 13-19, attached to Motion for Determination of Prima Facie Case .

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

8 218. On January 10, 2014, Beauchamp opened a “new matter” for DenSco in
9 Clark Hill’s accounting and filing systems that was called “work-out of lien issue” to
10 enable and implement the “work out” plan Chittick and Menaged had developed.⁴ (*See*
11 Schenck Dep. Exhibit 6 at CH_0002312, attached as **SOF Ex. 20**; Beauchamp Dep.
12 Transcript at pp. 405:5-408:9, attached as **SOF Ex. 6**).

13 219. Over the next three months, Beauchamp helped negotiate and finalize a
14 Forbearance Agreement that was not in DenSco’s interests and was, as Beauchamp said
15 multiple times in writing, intended to protect Chittick from potential claims by his
16 investors by making it appear that the loan losses DenSco faced were caused by
17 Menaged, rather than by Chittick’s gross mismanagement of DenSco’s lending
18 practices, and that Chittick had taken appropriate steps to protect DenSco’s interests.
19 (*See* Beauchamp Dep. Exhibit 168 attached as **SOF Ex. 93**; Schenck Dep. Exhibit 97,
20 attached as **SOF Ex. 99**; Beauchamp Dep. Transcript at pp. 373:21-376:8, attached as
21 **SOF Ex. 6**).

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

24 220. During the week of January 12, 2014, Beauchamp prepared a
25 nondisclosure agreement and a term sheet. Beauchamp negotiated with Menaged’s
26 attorney, Jeff Goulder, over the term sheet. (*See* Schenck Dep. Exhibit 43, attached as
27 **SOF Ex. 100**; Schenck Dep. Exhibit 45, attached as **SOF Ex. 101**; Schenck Dep.
28 Exhibit 40 at DIC0007013, attached as **SOF Ex. 102**; Schenck Dep. Exhibit 39,

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

1 attached as **SOF Ex. 103**; Beauchamp Dep. Exhibit 422 at pg. 10, ln. 7-16, attached as
2 **SOF Ex. 67**).

3 221. Beauchamp also communicated with Bryan Cave attorney Bob Miller,
4 who withdrew from representing his clients on January 16, 2014 because of a conflict
5 issue raised by Beauchamp and the scope of the consent DenSco would give Bryan
6 Cave. (*See* Schenck Dep. Exhibit 44, attached as **SOF Ex. 104**).

7 222. Chittick (for DenSco) and Menaged signed the nondisclosure agreement
8 and term sheet on Friday, January 17, 2014. The term sheet contemplated that DenSco
9 would advance additional funds to Menaged, some of which would be used to pay off
10 (by February 28, 2014) the loans held by the lenders represented by Bryan Cave. The
11 term sheet also outlined the elements of a Forbearance Agreement and a process to
12 resolve the claims of the other competing lenders. (*See* Beauchamp Dep. Exhibit 192
13 at DIC0007522 and DIC0007525, attached as **SOF Ex. 105**).

14 **b. During February 2014, Beauchamp Negotiated the**
15 **Terms of the Forbearance Agreement With Menaged's**
16 **Counsel, Repeatedly Stating That the Agreement Was**
17 **Needed to Protect Chittick's, Rather Than DenSco's**
18 **Interests.**

19 223. During the first week of February, Beauchamp began negotiating with
20 Goulder over the terms of a Forbearance Agreement. (*See* Schenck Dep. Exhibit 70,
21 attached as **SOF Ex. 106**).

22 224. It is evident from Beauchamp's communications with Chittick and
23 Goulder during February 2014 that Clark Hill was looking out for Chittick's interests,
24 rather than the interests of DenSco and its investors. (*See* Schenck Dep. Exhibit 70,
25 attached as **SOF Ex. 106**; Beauchamp Dep. Exhibit 168, attached as **SOF Ex. 93**;
26 Beauchamp Dep. Exhibit 191, attached as **SOF Ex. 107**).

27 225. One example of Clark Hill's misplaced loyalty to Chittick is a February
28 4, 2014 email that Beauchamp sent to Chittick, which said:

1 a. “Before we all get into a room, you and I need to make sure we
2 have a clear understanding of what you can do and what you cannot do without
3 going to all of your investors for approval. We have a deal that works for you
4 and your investors and is fair to [Menaged]. Now [Goulder] is trying to better
5 the deal for [Menaged]. But you already have been more than generous trying
6 to help [Menaged] out of [Menaged’s] problem. Again, *this goes back to*
7 *[Goulder] not acknowledging that this is [Menaged’s] problem and instead*
8 *insisting that this is your problem because you did not make sure that*
9 *[Menaged] handled the loans properly and that you did not take the necessary*
10 *actions so that DenSco had a first lien on each property. . . . [Goulder] is trying*
11 *to have you think that you have significant responsibility for creating this*
12 *problem as opposed to this being created by [Menaged’s] cousin working for*
13 *[Menaged]. . . . [Goulder] is trying to make you feel that you are guilty so you*
14 *have to assume a significant responsibility in the agreement to share*
15 *[Menaged’s] problem, but nobody stole the money from you. You can help and*
16 *have helped [Menaged], but you cannot OBLIGATE DenSco to further help*
17 *[Menaged], because that would breach your fiduciary duty to your investors.”*
18 (Emphasis added.) (See Beauchamp Dep. Exhibit 337, attached as **SOF Ex.**
19 **108**).

20 226. And in an email Beauchamp sent to Goulder on Friday, February 7, 2014
21 Beauchamp wrote: “*Based on your previous changes, the Forbearance Agreement*
22 *would be prima facia evidence that Denny Chittick had committed securities fraud*
23 *because the loan documents he had [Menaged] sign did not comply with DenSco’s*
24 *representations to DenSco’s investors in its securities offering documents.*
25 Unfortunately, this agreement needs to not only protect [Menaged] from having this
26 agreement used as evidence of fraud against him in litigation, *the agreement needs to*
27 *comply with Denny’s fiduciary obligation to his investors as well as not become*
28 *evidence to be used against Denny for securities fraud. . . .* We wanted the document

1 to set forth the necessary facts for Denny to satisfy his securities obligations to his
2 investors (including that the original loans had to have been written and secured by a
3 first lien on real property and that the workout agreed to by Denny complied with his
4 workout authorization) without having [Menaged] admit to facts that could cause
5 trouble to him. . . .To try to balance the respective interests, I have inserted sections
6 from the loan documents into the Forbearance Agreement. Referencing the language
7 of the Loan Documents is needed to satisfy Denny’s fiduciary obligations, but I have
8 also modified the other provisions so that the Borrower is not admitting that it was
9 required to provide first lien position in connection with the loans.” (Emphasis added.)
10 (See Schenck Dep. Exhibit 70 attached as **SOF Ex. 106**).

11 227. In an email exchange on Sunday, February 9, 2014 Beauchamp told
12 Chittick “[p]lease understand that you are limited in what risk or liability you can
13 assume. Your fiduciary duty to your investors makes this a difficult balancing act.”
14 (See Beauchamp Dep. Exhibit 345 at DIC0006703, attached as **SOF Ex. 109**).

15 228. Chittick’s response was that he “trusts that we are in balance and I have
16 even more confidence that [Menaged] and I can solve this problem without issue and
17 we never have to use the document that we’ve worked so long on getting completed.”
18 (See Beauchamp Dep. Exhibit 345 at DIC0006702, attached as **SOF Ex. 109**).

19 229. Beauchamp responded: “Your point is understood. If possible, please
20 recognize and understand that *you will ‘use’ the document even if you and [Menaged]*
21 *never refer to it again. It has to have the necessary and essential terms to protect you*
22 *from potential litigation from investors and third parties.*” (Emphasis added.) (*Id.*)

23 230. In his notes from a February 11, 2014 call with Chittick, which touched
24 on the status of Chittick’s and Menaged’s plan to pay off loans on the double-escrowed
25 properties, Beauchamp wrote “‘Material Disclosure’ – exceeds 10% of the overall
26 portfolio.” But in his discussions with Chittick about requests from Goulder for further
27 concessions, including an agreement not to pursue civil claims for fraud, Beauchamp’s
28 focus was on protecting Chittick’s interests, including protecting him from a potential

1 investor claim. (See Beauchamp Dep. Exhibit 347, attached as **SOF Ex. 110**;
2 Beauchamp Dep. Exhibit 337, attached as **SOF Ex. 108**).

3 231. In a February 14, 2014 email to Chittick, Beauchamp wrote: “[Goulder]
4 clearly thinks he can force you to agree to accept a watered down agreement and give
5 up substantial rights that you should not have to give up. Unfortunately, it is not your
6 money. It is your investors’ money. So you have a fiduciary duty. . . . **[Menaged] is**
7 ***the one responsible for this and not you.*** (Emphasis added.) He failed to put out the
8 proper protection systems in place so his cousin could not do what his cousin did. . . .
9 ***[Menaged’s] actions to comply with the terms of this agreement will have a big effect***
10 ***on whether or not you have to deal with a third party lawsuit filed against you in***
11 ***court.*** (Emphasis added.) In this situation, you can have an action brought against you
12 by any of the other lenders, and/or by any of your investors. . . . In addition, ***you could***
13 ***also face an action by the SEC or by the Securities Division of the ACC if an investor***
14 ***is able to convince someone in a prosecutor’s office that you*** somehow assisted
15 [Menaged] to cover up this fraud or you ***were guilty of gross negligence by failing to***
16 ***perform adequate due diligence (on behalf of your investors’ money) to determine***
17 ***what was going on.*** . . . (Emphasis added.) [Y]our duty and obligation is not to be fair
18 to [Menaged], but to completely protect the rights of your investors. I am sorry if
19 [Menaged] is hurt through this, but [Menaged’s] hurt will give [Menaged] the necessary
20 incentive to go after his cousin. Your job is to protect the money that your investors
21 have loaned to DenSco.” (See Schenck Dep. Exhibit 75, at DIC0006804-6805, attached
22 as **SOF Ex. 111**).

23 232. Beauchamp advised Chittick not to make any further concessions.
24 Beauchamp then sought input from bankruptcy lawyers within Clark Hill about the
25 risks DenSco faced if Chittick were to agree to the concessions Goulder sought with
26 respect to a potential civil fraud claim. (See Schenck Dep. Exhibit 80, attached as **SOF**
27 **Ex. 112**).

28

1 233. Chittick ultimately followed Beauchamp’s advice, and the concessions
2 sought by Goulder were not included in the final Forbearance Agreement. (*See*
3 Beauchamp Dep. Exhibit 402, attached as **SOF Ex. 113**).

4 234. On February 20, 2014, Beauchamp met with Chittick, Menaged and
5 Goulder to discuss the Forbearance Agreement. As Chittick described the meeting in
6 the DenSco journal, Beauchamp and Goulder “were no better in person than they were
7 in email. David lost his temper more than once. We went back and forth for 3 hours.
8 We broke up and came together, finally we are down to one point about the release.
9 The lawyers are trying to word it to make each other happy.” (*See* Schenck Dep. Exhibit
10 21 at RECEIVER_000051, attached as **SOF Ex. 82**).

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

22 236. Beauchamp’s notes from that day contain a summary of DenSco’s
23 exposure to Menaged. They state: “Approx. \$31 MM outstanding to [Menaged’s]
24 entities – total fund up to \$62-63 MM. Problem loans down to about \$17 MM for 122
25 loans.” (*See* Beauchamp Dep. Exhibit 352 at DIC0005446, attached as **SOF Ex. 114**).

26 237. Chittick’s February 21, 2014 entry in the 2014 Corporate Journal has a
27 consistent summary of the advice he received from Beauchamp: “I talked to Dave, he
28 found out what we already suspected; there is no way we can give what [Menaged]

1 wants. I'm not sure where this will lead us. We talked about telling my investors; we
2 are going to put that off as long as possible so that we can improve the situation as much
3 as possible. We've got another 15 more that are closing next few weeks. We could be
4 close to under a 100 problem loans within a month. I just have to keep telling myself
5 I'm doing the right thing to fix it, no matter how much anxiety I have over this issue."
6 (See Schenck Dep. Exhibit 21 at RECEIVER_000051, attached as **SOF Ex. 82**).

7 238. During the last week of February 2014, discussions with Goulder on the
8 Forbearance Agreement ended after Goulder sent Beauchamp a revised draft on
9 February 25, 2014. (See Beauchamp Dep. Exhibit 361, attached as **SOF Ex. 95**).

10 239. Chittick sent Beauchamp an email that day describing his ongoing
11 discussions with Menaged about taking a different approach to the double encumbrance
12 problem by having DenSco advance additional monies to Menaged so that Menaged
13 could sell homes more quickly: "[H]e's throwing out all sorts of ideas in how this can
14 be done. [I] would be willing to release the UCC if he was able to secure the funds and
15 use them to pay some of these loans. [W]e've got about 3 more ideas, *but what both*
16 *of us are really concerned about is that when [I] tell my investors the situation, they*
17 *request their money back. [I] want to be able to say, this was the problem, we've*
18 *eliminated this much of the problem and this is what is left. [I] want to be able to say*
19 *what is left is as small as possible.*" (Emphasis added.) (See Beauchamp Dep. Exhibit
20 360 at DISC0006758, attached as **SOF Ex. 94**).

21 240. Beauchamp responded by saying "[g]ood ideas and probably something
22 we need to work on" in light of the breakdown of discussions on the Forbearance
23 Agreement. (Emphasis added.) (*Id.*)

24 241. Chittick sent Beauchamp an email the following day, February 26, 2014
25 describing his continuing discussions with Menaged. He wrote: "[W]hat if [Menaged]
26 just starts selling everything [I] take losses[.] [A]long with the several million that
27 [Menaged's] going to bring in from outside sources, we wipe the whole thing out in,
28 name a time frame, 90 days. [T]o secure the loss, [Menaged] signs a promissory note

1 with terms of repayment. [W]hat happens? [I] take a huge hit to my books, but [I] get
2 the money back in my hands. [I]’m no longer in violation of anything with my
3 investors. [I]’m in possession of money that now [I] can put to work with new loans
4 that are actually paying me interest versus right now that [I]’m having no interest
5 coming in. [O]r I can return the money to investors if I can’t put it to work. [F]rom a
6 P/L standpoint it looks horrible, but at least [I] have the majority of the money back
7 except maybe 2-4 million. [Menaged] agrees to pay me interest and principle [sic] back
8 every month for whatever I write off[,] which fills in that hole. [I] put the money I get
9 back to work and make money on it, that fills the hole. ***[I] [would] rather take the loss
10 short term now, and get working on trying to make the money work th[a]n drag this
11 thing out over a year or more. . . . [I] don’t have anything in my docs that say I have
12 to be profitable. [I] see this is a negative year obviously, but [I]’ll be profitable next
13 year; the problem is gone[.]*** [Menaged] will be paying me back interest and principle
14 [sic] for the loss that I took. [N]ow I know there are 100 legal things here, ***but now I’m
15 thinking this is the best way to get the problem solved from a fiduciary standpoint. . . .***
16 [I] know this may sound crazy, but [I] can’t come up with anything else that will bring
17 an end to this situation quickly. [T]ime is crucial. [L]et me know your thoughts.”
18 (Emphasis added.) (See Beauchamp Dep. Exhibit 362 at DIC0006687-6688, attached
19 as **SOF Ex. 96**; Beauchamp Dep. Exhibit 363, attached as **SOF Ex. 97**).

20 242. Beauchamp’s email response was: ***“Good ideas.*** Can we talk later today
21 to clarify a few things?” (Emphasis added.) Beauchamp also told Clark Hill attorney
22 Bill Price, who emailed him to say that the release provision in Goulder’s latest draft of
23 the Forbearance Agreement was unacceptable, that “[t]here is another possibility to
24 resolve this,” on which Beauchamp would be focusing his attention. (See Beauchamp
25 Dep. Exhibit 362 at DIC0006686, attached as **SOF Ex. 96**; Beauchamp Dep. Exhibit
26 364 attached as **SOF Ex. 98**).

27 243. Chittick’s DenSco entry in the 2014 Corporate Journal for February 26,
28 2014 contains a consistent summary of his discussions with Menaged and Beauchamp:

1 “We’ve decided it’s better to sell these properties as quickly as possible, take the losses
2 and move on. [Menaged] will sign a promissory note, it frees up from paying interest,
3 I take a big hit, . . . and we move on. *It will take me 2 years to get back to profitability*
4 *I’m guessing. This may allow me not to do what David wants me to do, I don’t know.*
5 *I never got to talk to him. But what we are doing isn’t going to work fast enough and*
6 *we’ll have a big hill to climb in the end.* (Emphasis added.) I’m just so sick over this I
7 can’t function.” (See Schenck Dep. Exhibit 21 at RECEIVER_000052, attached as **SOF**
8 **Ex. 82**).

9 244. Beauchamp’s notes reflect that he discussed the proposed new plan with
10 Chittick the following day, February 27, 2014. They state, in part: “Denny explained
11 procedure and Denny is taking all of the shortfall. [Menaged] wants this resolved.
12 Denny wants this resolved because Denny is losing money to make payments to his
13 investors if DenSco is not getting paid interest from [Menaged]. Denny willing to take
14 loss this year -- so DenSco can return cash to investors and reduce interest obligation.
15 *How to write this up for investors -- discussed. Do we still need Forbearance Agmt.*
16 *- yes but will be less problematic. Will need Forbearance Agmt. to explain procedures*
17 *and protect Denny for future revisions.* (Emphasis added.) Will need multiple advance
18 not (unsecured) so DenSco can advance cash on house w/ double loans to be sold.” (See
19 Beauchamp Dep. Exhibit 365, attached as **SOF Ex. 115**).

20 245. Chittick’s entry in the 2014 Corporate Journal for that day is consistent
21 with Beauchamp’s notes. It states, in part: “I talked to [Menaged] again, he agreed to
22 everything this morning on how to work this out. I talked to David, he thinks its fine.
23 So we are done. . . . [N]ow we just need to get this signed and start working towards
24 selling these houses.” (See Schenck Dep. Exhibit 21, at RECEIVER_000052, attached
25 as **SOF Ex. 82**).

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

5 246. Beauchamp had a telephone conversation with Chittick on March 3,
6 2014. Chittick’s entry in the 2014 Corporate Journal that day says, in part: “David
7 called me telling me of ad lib info to scare me about dealing with [Menaged]. I can’t
8 control what others are saying in the lawyer community. I have to get this done so that
9 I have something in writing and do the best deal that I can do.” (See Schenck Dep.
10 Exhibit 21, at RECEIVER_000053, attached as **SOF Ex. 82**).

11 247. Chittick sent Beauchamp an email on March 4, 2014 in apparent response
12 to that conversation. It stated, in part: “About what you said, I have no idea of the
13 timing of that person you [mentioned] as to when he spoke to [Goulder] about our
14 situation. I don’t doubt perhaps that he was positioning himself in some way; seems
15 logical for him to think that way. However, *now that [Menaged] has agreed to sign*
16 *the terms sheet that we originally agreed to, allowing you to write it, he says he’s not*
17 *going to have [Goulder] review because [Goulder] already told him not to sign*
18 *anything*. Plus he’s signing the promissory note which also confirms the situation . . .
19 in not so many words. But the fraud occurred and he’s taking responsibility for it. . . .
20 *You probably have the only chance in your career to write an agreement without*
21 *conflicting counsel*. You can write it to our liking and in our best interests. *We CYA*
22 *as broad as the Grand Canyon*. I think that is pretty advantageous.” (Emphasis added.)
23 (Beauchamp Dep. Exhibit 368, attached as **SOF Ex. 116**).

24 248. Beauchamp’s response was: “*Your thoughts make sense*, but we still
25 need an agreement that works.” (Emphasis added.) (*Id.*)

26 249. Beauchamp sent Chittick a draft of the Forbearance Agreement on
27 March 7, 2014. (See Beauchamp Dep. Exhibit 370, attached as **SOF Ex. 117**).

28 250. Chittick gave him comments on March 10,2014 one of which reflected
 Chittick’s and Menaged’s request to modify the draft’s confidentiality provision. As

1 Chittick described it in an email to Beauchamp: *“Only time I can disclose info is if*
2 *I’m legally required by investors. He wants me to not say a word unless I’m legally*
3 *required to*, because the reputation with his investors and buyers, clients etc. could be
4 harmed.” (Emphasis added.) (See Beauchamp Dep. Exhibit 371 at DIC0006875,
5 attached as **SOF Ex. 118**).

6 251. In his email response, Beauchamp wrote: “The confidentiality change is
7 a problem, because who makes the decision if the disclosure is required? *I had*
8 *language that you could disclose if such disclosure is reasonably needed to be*
9 *disclosed to your investors or if a governmental agency requires such disclosure*
10 *(after you give [Menaged] notice and an opportunity to get the agency to change its*
11 *mind)*. Those are standard confidentiality exceptions. *I will look at them again to see*
12 *if there is anything we can do to make it tighter.”* (Emphasis added.) (See Beauchamp
13 Dep. Exhibit 371 at DIC0006875, attached as **SOF Ex. 118**).

14 252. Beauchamp’s notes reflect that he had a telephone conference with both
15 Chittick and Menaged on March 11, 2014 to discuss the release and confidentiality
16 provisions of the Forbearance Agreement, as well as the terms of a \$ 1 million “workout
17 loan.” (See Beauchamp Dep. Exhibit 372, attached as **SOF Ex. 119**).

18 253. Beauchamp’s notes reflect that he had a telephone conference with both
19 Chittick and Menaged on March 12, 2014 to discuss the release and confidentiality
20 provisions of the Forbearance Agreement. (*Id.*)

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

1 and you as the promoter of DenSco’s offering have to make the decisions as to what is
2 to be disclosed or not.” (Emphasis added.) (See Beauchamp Dep. Exhibit 383, attached
3 as **SOF Ex. 120**).

4 255. Between March 14 and March 20, 2014, Beauchamp communicated with
5 Chittick about revisions to the Forbearance Agreement, relying on Chittick to convey
6 drafts to Menaged and communicating with Menaged through Chittick. (See
7 Beauchamp Dep. Exhibit 385, attached as **SOF Ex. 121**; Beauchamp Dep. Exhibit 386,
8 attached as **SOF Ex. 122**; Beauchamp Dep. Exhibit 387, attached as **SOF Ex. 123**;
9 Beauchamp Dep. Exhibit 388, attached as **SOF Ex. 124**; Beauchamp Dep. Exhibit 389,
10 attached as **SOF Ex. 125**; Beauchamp Dep. Exhibit 390, attached as **SOF Ex. 126**;
11 Beauchamp Dep. Exhibit 391 attached as **SOF Ex. 127**).

12 256. One of the topics Beauchamp discussed with Chittick was his plans to
13 loan funds to Menaged and the impact of those loans, including loans up to 120% of
14 value. Beauchamp stated that he “*completely agree[s] that [the proposed lending plan]*
15 *makes a lot of sense, but I am concerned about the disclosure to your investors.*”
16 (Emphasis added.) (See Beauchamp Dep. Exhibit 387, attached as **SOF Ex. 123**).

17 257. Chittick’s entry in the 2014 Corporate Journal for March 20, 2014 stated,
18 in part: “[Menaged] finally agreed to [the] agreement. That’s done. I have to do some
19 numbers to fill in the blanks, but otherwise it’s ready to be signed. *I have no idea if it*
20 *will ever be used, but David assured me I’m in a good position.*” (Emphasis added.)
21 (See Schenck Dep. Exhibit 21, attached as **SOF Ex. 82**).

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

23 258. The Forbearance Agreement was signed by Chittick (for DenSco) and
24 Menaged (for himself and his entities) on April 16, 2014. (See Beauchamp Dep. Exhibit
25 402, attached as **SOF Ex. 113**).

26 259. Under the Forbearance Agreement, Menaged agreed to pay off the loans
27 of DenSco and other lenders by, inter alia, (i) liquidating various assets, (ii) renting or
28

1 selling real estate assets, (iii) attempting to recover the missing funds that his cousin
2 allegedly stole, and (iv) obtaining \$4.2 million in outside financing. (*Id.*)

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

8 261. The Forbearance Agreement included a schedule of the loans DenSco had
9 made to Menaged, members of his family, Easy Investments, and Arizona Home
10 Foreclosures, including loans DenSco made between December 2013 and April 15,
11 2014. *Those loans totaled \$37,456,620.47, well over half of the aggregate amounts*
12 *DenSco had raised from investors.* (See Beauchamp Dep. Exhibit 402 at DIC0010745-
13 10749, attached as **SOF Ex. 113**).

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

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

1 allow Borrower to have 48 hours to review and comment upon such
2 disclosure.

3 (See Beauchamp Dep. Exhibit 402 at DIC0010741, attached as **SOF Ex. 113**).

4 **6. Clark Hill Advised Chittick That DenSco Could Continue**
5 **Selling Promissory Notes Without First Issuing a New POM,**
6 **and that DenSco Could Indefinitely Delay Issuing a New POM.**

7 263. Clark Hill and Beauchamp claim in their initial disclosure statement
8 (at 10-11) that Beauchamp advised Chittick “during his January 9, 2014 meeting with
9 Mr. Chittick” and repeatedly thereafter that: (a) DenSco was not permitted to take new
10 money without full disclosure to the investor lending the money; (b) DenSco was not
11 permitted to roll over existing investments without full disclosure to the investor rolling
12 over the money; and (c) DenSco needed to update its POM and make full disclosure to
13 all its investors. (See Schenck Dep. Exhibit 4 at pg. 10, ln. 14-19, attached as **SOF Ex.**
14 **5**).

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

16 265. There are no documents, such as notes, emails or letters, which reflect
17 that Beauchamp *ever* gave that advice.

18 266. The documents in the file instead show that Beauchamp told Chittick that
19 DenSco could sell promissory notes, and that DenSco could put off preparing a new
20 POM while Chittick pursued his “work out” plan. (See Beauchamp Dep. Exhibit 350,
21 attached as **SOF Ex. 81**; Beauchamp Dep. Exhibit 168, attached as **SOF Ex. 93**;
22 Beauchamp Dep. Transcript at pp. 405:5-408:9, attached as **SOF Ex. 6**; Beauchamp
23 Dep. Exhibit 145, attached as **SOF Ex. 92**; Schenck Dep. Exhibit 6 at CH_0002312,
24 attached as **SOF Ex. 20**).

25 267. Moreover, Beauchamp admitted in his deposition that he knew Chittick
26 had caused DenSco to sell promissory notes but claims that he understood Chittick did
27 so only after making disclosures to each investor who purchased a promissory note.
28 (See Beauchamp Dep. Transcript at pp. 78:8-83:23, attached as **SOF Ex. 6**).

1 268. Clark Hill and Beauchamp make a similar claim in their initial disclosure
2 statement (at 11) that “Mr. Chittick assured Mr. Beauchamp repeatedly that he was
3 making the requisite disclosures to investors on an as needed basis, and that he had
4 informed a select group of investors as to the double lien issue and the proposed
5 workout.” (See Schenck Dep. Exhibit 4 at pg. 11, ln. 7-9, attached as **SOF Ex. 5**).

6 **a. In early January 2014, Clark Hill Advised DenSco It**
7 **Could Sell Promissory Notes Without First Issuing a**
8 **New POM**

9 269. Chittick’s entry for January 9, 2014 in a corporate journal he maintained
10 during 2014 (the “2014 Corporate Journal”) says nothing about having been instructed
11 by Beauchamp that DenSco could not sell promissory notes. The entry states, in part:
12 “Scott and I met with David. He never read my email. We spent two hours. . . . He’s
13 going to contact the lawyer tomorrow and let us know.” (See Schenck Dep. Exhibit 21
14 at RECEIVER_000045, attached as **SOF Ex. 82**).

15 270. Beauchamp’s handwritten notes from a call with Chittick on Friday,
16 January 10, 2014 state, in part, “Need to get back up plan in place. *Denny does not*
17 *want to talk to his investors until he is ready* – will not take long.” (Emphasis added.)
18 (See Beauchamp Dep. Exhibit 157, attached as **SOF Ex. 128**).

19 271. Chittick’s entry for that date in the 2014 Corporate Journal states, in part,
20 “at 5pm Dave called, said they would give us time to clean it up. I talked to Scott; he
21 is going to try to bring in money. *I can raise money according to Dave.*” (Emphasis
22 added.) (See Schenck Dep. Exhibit 21 at RECEIVER_000045, attached as **SOF Ex.**
23 **82**).

24 272. On Sunday, January 12, 2014, Chittick sent Beauchamp an email which
25 stated, in part, “*I’ve spent the day contacting every investor that has told me they want*
26 *to give me more money. I don’t have an answer on specifically how much I can raise;*
27 *I’ll know that in a day or two.*” (Emphasis added.) He went on to say that between
28 new money, current cash on hand, and pending real estate closings, he would have

1 **between \$5 and \$10 million** in the next ten days. His email summarized the outline of
2 the plan he and Menaged had discussed the previous Friday, which included, for the
3 group of lenders represented by Bryan Cave: (i) identifying all properties in which
4 another party claimed an interest; (ii) providing that information to an escrow agent;
5 (iii) buying out the other parties as cash was put into escrow; and (iv) memorializing
6 the arrangement through a term sheet and a written contract. “[I]f both Scott and I can
7 **raise enough money**, we should be able to have this all done in 30 days easy, less than
8 three weeks would be my goal.” (Emphasis added.) As for the other lenders, Chittick
9 stated that the plan was to pay them off as Menaged was able to raise additional capital.
10 Chittick concluded the email by stating, “**that’s my plan, shoot holes in it.**” (Emphasis
11 added.) (See Beauchamp Dep. Exhibit 150, attached as **SOF Ex. 129**).

12 273. Beauchamp responded in an email sent later that day which stated, in part,
13 “[y]ou should feel very honored that you could raise that amount of money that
14 **quickly**. I will outline a few thoughts tomorrow and get back to you.” (Emphasis
15 added.) (*Id.*)

16 274. The “few thoughts” that Beauchamp conveyed the next day were
17 questions about the sources from whom Menaged would raise money. Beauchamp did
18 not tell Chittick that DenSco could not raise new money by selling promissory notes
19 without first issuing a new POM. (See Beauchamp Dep. Exhibit 151, attached as **SOF**
20 **Ex. 130**).

21 **b. During February, March and April 2014, While the**
22 **Forbearance Agreement Was Negotiated, Clark Hill**
23 **Advised Chittick That DenSco Could Delay Issuing a**
24 **New POM.**

25 275. After telling Chittick that DenSco could continue selling promissory
26 notes without first issuing a new POM, Beauchamp would periodically tell Chittick that
27 a new POM had to be issued to reveal information about DenSco’s operations, but let
28 Chittick believe the issuance of the POM could be delayed. (See Beauchamp Dep.
Transcript at pp. 78:8-83-23, attached as **SOF Ex. 6**).

1 276. In a February 4, 2014 email that Beauchamp sent to Chittick, Beauchamp
2 wrote that the Forbearance Agreement would need to be described in a document “that
3 you HAVE to provide to your investors.” (See Beauchamp Dep. Exhibit 336, attached
4 as **SOF Ex. 131**).

5 277. Chittick’s February 7, 2014 entry in the 2014 Corporate Journal states, in
6 part, “I was on the phone with David and [Menaged] off and on trying to find middle
7 ground in this crap to make this agreement final. *Now [D]avid is telling me I have to*
8 *tell my investors.*” (See Schenck Dep. Exhibit 21 at RECEIVER_000049, attached as
9 **SOF Ex. 82**).

10 278. Beauchamp’s notes reflect that he discussed with Chittick on February
11 21, 2014 DenSco’s upcoming annual meeting, which was scheduled for March 8. He
12 wrote: “*cannot be ready to tell everything.*” (Emphasis added.) (See Beauchamp Dep.
13 Exhibit 357, attached as **SOF Ex. 132**).

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

20 280. Beauchamp’s notes also show that he knew the workout plan was
21 increasing the loan-to-value ratios on many of DenSco’s loans far above what DenSco
22 had disclosed to investors in any previous POM. For example, he wrote: “30 loans are
23 now at 95% LTV.” (*Id.*)

24 281. The entry Chittick made in the 2014 Corporate Journal for March 11,
25 2014 states, in part: “*David changed and said now I have to tell my investors.*
26 (Emphasis added.) [Menaged] and I are going to try to fix this mess in 30 days and that
27 way it will be a minor issue.” (See Schenck Dep. Exhibit 21 at RECEIVER_000054,
28 attached as **SOF Ex. 82**).

1 282. In a March 13, 2014 email to Chittick regarding the inclusion in the
2 Forbearance Agreement of a confidentiality provision that Menaged had sought,
3 Beauchamp wrote: With respect to timing, we are already **very late** in providing
4 information to your **investors about this problem and the resulting material changes**
5 **to your business plan. We cannot give [Menaged] and his attorney any time to**
6 **cause further delay in getting this Forbearance Agreement finished and the**
7 **necessary disclosure prepared and circulated.”** (Emphasis in original.) (See
8 Beauchamp Dep. Exhibit 383, attached as **SOF Ex. 120**).

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

15 283. Chittick’s entry in the 2014 Corporate Journal for April 16, 2014 reflected
16 the signing of the Forbearance Agreement and concludes: “I’ll send it up to David and
17 then he and I can start on the memorandum.” (See Schenck Dep. Exhibit 21, at
18 RECEIVER_000059, attached as **SOF Ex. 82**).

19 284. Beauchamp’s notes show that he had a call with Chittick on April 24,
20 2014. Those notes reflect that Beauchamp knew that DenSco’s total loans to Menaged
21 were approximately \$36 million in principal, with a \$5 million note (of which
22 approximately \$1.78 million was principal), and a \$1 million note (of which
23 approximately \$915,000 was principal). (See Beauchamp Dep. Exhibit 406, attached
24 as **SOF Ex. 133**).

25 285. Under the heading “POM update” he noted that 186 loans were double-
26 encumbered when the workout started, which was down to 94 loans, representing \$12.3
27 million of principal, as of that date, which was down from a previous balance of
28 approximately \$25 million. (*Id.*)

1 286. That same day, Chittick sent Beauchamp by email another copy of the
2 2011 private offering memorandum. (*See* Schenck Dep. Exhibit 99, attached as **SOF**
3 **Ex. 134**).

4 287. It appears from the Clark Hill file that Beauchamp gave a printed copy of
5 the memorandum to Schenck with a handwritten note asking him to mark up the
6 memorandum and add “updates/forbearance, etc.” (*See* Schenck Dep. Exhibit 100,
7 attached as **SOF Ex. 54**).

8 288. Beauchamp’s handwritten notes and documents in the file reflect that
9 some research was done on May 13, 2014 on “Dodd Frank and regulation.” (Schenck
10 Dep. Exhibit 11 at CH_0005226 attached as **SOF Ex. 24**; Beauchamp Dep. Exhibit
11 107, attached as **SOF Ex. 40**).

12 289. On May 14, 2014, Schenck sent Beauchamp by email a redline of a draft
13 private offering memorandum and a separate document with comments, some of which
14 were for Beauchamp’s attention. Schenck’s email concluded by asking Beauchamp to
15 “let me know what changes you prefer before this draft is sent to Denny.” His time
16 entry describes the document as a “first draft.” (*See* Schenck Dep. Exhibit 101 attached
17 as **SOF Ex. 19**; Schenck Dep. Exhibit 11 at CH_0005226 attached as **SOF Ex. 24**).

18 290. The document with comments contained, in the “Prior Performance”
19 section, a discussion of the terms of the Forbearance Agreement, with limited
20 information about the circumstances that gave rise to it and a narrative that accepted,
21 as accurate and reliable, Menaged’s “cousin” story: “According to the Foreclosure
22 Debtors, an agent of the Foreclosure Debtors had secured the Outside Loans without
23 the Foreclosure Debtors’ knowledge.” The draft said nothing about Chittick’s gross
24 negligence in managing DenSco’s lending practices by giving funds directly to
25 Menaged, rather than to a Trustee. (*See* Schenck Dep. Exhibit 101 at pg. 39, attached
26 as **SOF Ex. 19**).

1 291. Clark Hill’s time records reflect that Beauchamp billed 30 minutes of
2 time to “review revisions to POM and work on same.” (See Schenck Dep. Exhibit 11
3 at CH_0005226, attached as **SOF Ex. 24**).

4 292. But there is nothing in the Clark Hill file to reflect that Beauchamp
5 actually made any revisions to this first draft. (See Beauchamp Dep. Transcript at pp.
6 201:12-202:10, attached as **SOF Ex. 6**).

7 293. Neither the Clark Hill file nor Clark Hill’s billing statement reflect that
8 Beauchamp never sent the draft POM to Chittick or discussed it with him. (See Schenck
9 Dep. Exhibit 11, attached as **SOF Ex. 24**).

10 294. Clark Hill’s files show that the firm simply stopped work on a new POM
11 in mid-May 2014. (*Id.*)

12 295. Entries by Chittick in the 2014 Corporate Journal shortly thereafter reflect
13 that Chittick had decided not to issue a new POM at that time, and to continue selling
14 promissory notes while he pursued his “work out” plan in the hope of minimizing
15 DenSco’s losses before making a disclosure to investors. Clark Hill decided to abide
16 by Chittick’s instruction, just as the firm had agreed in September 2013 to prepare a
17 new POM and then followed Chittick’s instruction not to work on the new POM until
18 Chittick was ready to issue it. (See Schenck Dep. Exhibit 21, attached as **SOF Ex. 82**).

19 a. The July 2, 2014 entry states, in part: “We are making progress,
20 just too damn slow, *but I’m sure much quicker than David expected us to do.*”
21 (Emphasis added.) (Schenck Dep. Exhibit 21 at RECEIVER_00069, attached as
22 **SOF Ex. 82**).

23 b. The July 25, 2014 entry states, in part: “My time is running out on
24 updating my private placement memorandum and notifying my investors.”
25 (Schenck Dep. Exhibit 21 at RECEIVER_00072, attached as **SOF Ex. 82**).

26 c. The July 31, 2014 states, in part: “It’s all going in the right
27 direction, just not sure if it’s going fast enough. *As long as David doesn’t bug*
28

1 *me, I feel like we are doing the right thing.*” (Emphasis added.) (Schenck Dep.
2 Exhibit 21 at RECEIVER_00073, attached as **SOF Ex. 82**).

3 296. Clark Hill’s blessing of Chittick’s plan to continue pursuing a work out
4 plan without telling DenSco’s investors is reflected in Beauchamp’s dealings with
5 Chittick the following March. (See Beauchamp Dep. Exhibit 411, attached as **SOF Ex.**
6 **135**; Schenck Dep. Exhibit 22, 3-13 at RECEIVER_000101, attached as **SOF Ex. 136**).

7 297. On March 13, 2015, Beauchamp sent Chittick an email which stated, in
8 part: “I would like to meet for coffee or lunch (at no charge to you) so we can sit down
9 and talk about how things have progressed for you since last year. I would also like to
10 listen to you about your concerns, and frustration with how the forbearance settlement
11 and the documentation process was handled. I have thought back to it a lot and I have
12 second guessed myself concerning several steps in the overall process, *but I wanted to*
13 *protect you as much as I could.* (Emphasis added.) *When I felt that your frustration*
14 *had reached a very high level, I stopped calling you about how things were going so*
15 *that you did not feel I was just trying to add more attorney’s fees.* (Emphasis added.)
16 I planned to call you after about 30 days, but then I let it slip all of last year because I
17 kept putting it off. I even have tried to write you several different emails, but I kept
18 erasing them before I could send them. I acknowledge that you were justifiably
19 frustrated and upset with the expense and how the other lenders (and [Menaged] at
20 times) seemed to go against you as you were trying to get things resolved last year for
21 [Menaged]. I have tried to let time pass so that we can discuss if you are willing to
22 move beyond everything that happened and still work with me. If not, I would like you
23 to know that I still respect you, what you have done and would still like to consider you
24 a friend. You stood up for [Menaged] when he needed it and I truly believe it was more
25 than just a business decision on your part. Hopefully, you will respond to this email and
26 we can try to talk and catch up.” (Beauchamp Dep. Exhibit 411, attached as **SOF Ex.**
27 **135**).

28 298. Chittick responded “[s]ure, give me some options on when to meet.” (*Id.*)

1 299. Chittick forwarded Beauchamp’s email to Menaged, who wrote,
2 “[s]chedule coffee in 18 months when our balance is close to nothing.” (See Beauchamp
3 Dep. Exhibit 412, attached as **SOF Ex. 137**).

4 300. Chittick responded: “*I figure it’s a miracle he left me alone this long!*”
5 (Emphasis added.) (*Id.*)

6 301. In his entry that day in the corporate journal Chittick maintained for 2015
7 (the “2015 Corporate Journal”), Chittick wrote: “*I got an email from Dave my attorney*
8 *wanting to meet. He gave me a year to straighten stuff out. We’ll see what pressure*
9 *I’m under to report now.*” (Emphasis added.) (See Schenck Dep. Exhibit 22 at
10 RECEIVER_000101, attached as **SOF Ex. 136**).

11 302. Chittick had lunch with Beauchamp on March 24, 2015. (See Beauchamp
12 Dep. Transcript at pp. 225:4-226:13, attached as **SOF Ex. 6**; Schenck Dep. Exhibit 22
13 RECEIVER_000102, attached as **SOF Ex. 136**).

14 303. Chittick’s entry in the 2015 Corporate Journal for that date states: “I had
15 lunch with Dave Beauchamp. I was nervous he was going to put a lot of pressure on
16 me. However, *he was thrilled to know where we were at and I told him by April 15th,*
17 *we’ll be down to 16 properties with seconds on them, and by the end of June we hope*
18 *to have all the retail houses sold by then and just doing wholesale. He said he would*
19 *give me 90 days.* (Emphasis added.) I just hope we can sell them all by then and darn
20 near be done with it. *I’m going to slow down the whole memorandum process too.*
21 *Give us as much time as possible to get things in better order.*” (Emphasis added.)
22 (Schenck Dep. Exhibit 22 RECEIVER_000102, attached as **SOF Ex. 136**).

23 304. Chittick’s entry in the 2015 Corporate Journal for June 18, 2015 states, in
24 part: “[Menaged] tried to enlarge the wholesale number saying, well I’m paying down
25 the workout, I can use that for the wholesale. I’m not letting him. That number needs
26 to start dropping! *I have to get his number falling, or it’s going to be hell with Dave.*”
27 (Emphasis added.) (See Schenck Dep. Exhibit 22 RECEIVER_000112, attached as
28 **SOF Ex. 136**).

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

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

Investor	Amount	Date
Brian & Carla Wenig	\$15,000	1/3/14
Dale Hickman	\$150,000	1/13/14
Carol & Mike Wellman	\$30,000	1/14/14
Carol Wellman	\$10,000	1/14/14
Jolene Page	\$150,000	1/14/14
Marvin & Pat Miller	\$200,000	1/15/14
Marvin & Pat Miller	\$100,000	1/15/14
Mark & Debbie Wenig	\$50,000	1/24/14
Kirk Fischer	\$600,000	1/29/14 ⁵
Brian Imdieke	\$500,000	2/11/14 ⁶
Ryan Baughman	\$300,000	2/11/14
Kaylene Moss	\$10,000	3/5/14
Ryan Baughman	\$300,000	4/1/14 ⁷
Wayne Ledet	\$30,000	4/7/14
Alexandra Bunger	\$850,000	5/1/14
Cassidy Bunger	\$850,000	5/1/14
Connor Bunger	\$850,000	5/1/14

⁵ Five-year note.

⁶ Six-month note.

⁷ Three-month note.

1	Bill Hughes	\$6,500	5/1/14
2	Bill Hughes -- IRA	\$6,500	5/1/14

3
4 (See Exhibit A to Davis Dep. Exhibit 479, attached as **SOF Ex. 84**).

5 306. DenSco's sale of those promissory notes was necessary for DenSco to
6 continue its business operations, and Clark Hill enabled DenSco to obtain investor
7 funds during that five-month period without making adequate disclosures to those
8 investors, exposing DenSco to substantial liability for those sales. (See Schenck Dep.
9 Exhibit 22 at RECEIVER_000101, attached as **SOF Ex. 136**; Beauchamp Dep. Exhibit
10 406, attached as **SOF Ex. 133**; Beauchamp Dep. Exhibit 414, attached as **SOF Ex.**
11 **138**).

12 307. The Receiver will update this disclosure statement to identify additional
13 promissory note sales after May 2014.

14 **7. In Addition to Aiding and Abetting Chittick's Breach of**
15 **Fiduciary Duties, Clark Hill Also Negligently Advised Chittick**
16 **That DenSco Could Continue Giving Loan Proceeds to**
Menaged, Rather Than Paying Them Directly to a Trustee.

17 308. As of January 9, 2014, Clark Hill knew that Chittick had been grossly
18 negligent in managing DenSco's lending operations by giving tens of millions of loan
19 proceeds to Menaged, rather than paying them directly to a Trustee. (See Beauchamp
20 Dep. Exhibit 144, attached as **SOF Ex. 91**).

21 309. Clark Hill knew that this practice violated the terms of the Mortgage
22 document Clark Hill knew DenSco routinely employed to document loans, which stated
23 that the "The undersigned borrower ("Borrower") acknowledges receipt of the proceeds
24 of a loan from DenSco Investment Corporation ("Lender") in the sum of \$_____,
25 *as evidenced by check payable to: _____ ("Trustee").* (Emphasis added.) (See
26 Schenck Dep. Exhibit 27, attached as **SOF Ex. 139**; Schenck Dep. Exhibit 29, attached
27 as **SOF Ex. 89**).

1 310. Clark Hill also knew that this practice was an extraordinary breach of the
2 representations in DenSco’s POMs. As Beauchamp has admitted in interrogatory
3 answers, DenSco’s POMs represented that DenSco employed appropriate due diligence
4 and loan procedures in making loans. An essential part of those loan procedures was
5 that “every mortgage evidencing a property purchase made with a DenSco loan stated
6 that the check purchasing the property was made to the Trustee.” (See Beauchamp Dep.
7 Exhibit 422 at pg. 6, ln. 17-19, attached **SOF Ex. 67**).

8 311. Clark Hill also knew, from Beauchamp’s January 9, 2014 meeting with
9 Chittick and Menaged, that Chittick’s failure to follow those loan procedures had
10 exposed DenSco to a substantial potential loss of between \$11.6 and \$14.5 million, or
11 between 25% and 30% of the \$47 million that Beauchamp understood DenSco had
12 raised as of June 2013. (See Beauchamp Dep. Exhibit 145, attached as **SOF Ex. 92**).

13 312. And Clark Hill knew that those potential losses resulted from Chittick’s
14 dealings with one borrower, Scott Menaged. (See Beauchamp Dep. Exhibit 144,
15 attached as **SOF Ex. 91**; Beauchamp Dep. Exhibit 145, attached as **SOF Ex. 92**).

16 313. After Clark Hill learned, through Beauchamp’s January 9, 2014 meeting
17 with Chittick and Menaged, that Chittick intended to cause DenSco to continue loaning
18 money to Menaged, Clark Hill should have issued immediate, clear written advice to
19 Chittick that: (1) DenSco must adhere to the lending practices identified in its POMs
20 and referenced in the Mortgage – i.e., disbursing loan proceeds directly to a Trustee,
21 through a check (as the Mortgage contemplated) or a wire transfer; and (2) never
22 disbursing loan proceeds directly to Menaged (or any other borrower) under any
23 circumstances. (See Neil Wertlieb expert report at pp. 8-17, attached to Motion for
24 Determination of Prima Facie Case).

25 314. Clark Hill had the opportunity to give that advice when Beauchamp
26 received an email from Chittick during the evening of January 9, 2014, in which
27 Chittick posed the following question:
28

1 If [I] [obtain] a cashier's check and take it to the trustee myself, [I] don[']t
2 get a receipt that DenSco [p]aid for it. [I] get a receipt saying that X
3 property was paid for, for X \$'s vested in borrower's name. [DenSco's]
4 name doesn't appear on it. [O]ther than having a cashier's check receipt
5 saying [DenSco] made a check out for it, there isn't anything from the
6 trustee saying that it was [DenSco's] check. ***[I] could wire [Menaged] the
7 money, he could produce a cashier's check that says remitter is DenSco
8 and it would have the exact same [e]ffect as if [I] got [a] cashier's check
9 that said [DenSco's] the remitter.*** . . . [P]ut aside the logistics for a second,
10 what proof or what guarantee is there by me cutting the check and handing
11 it to [S]uzy at the trustee[']s office rather than my borrowers? [I] know [I]
12 must be missing something. (Emphasis added.)

13 (See Beauchamp Dep. Exhibit 147, at CH_0001502, attached as **SOF Ex. 140**).

14 315. Clark Hill failed to tell Chittick that he could not “wire Menaged the
15 money” because: (1) doing so was contrary to representations in the POM and the terms
16 of the Mortgage; (2) doing so had previously exposed DenSco to a potential loss of
17 between \$11.6 and \$14.5 million; and (3) Menaged could not, given obvious questions
18 about the veracity of his “cousin” story, be trusted. (See Beauchamp Dep. Transcript
19 at 79:19-83:23 attached as **SOF Ex. 6**; Beauchamp Dep. Exhibit 147, attached as **SOF**
20 **Ex. 140**; Schenck Dep. Exhibit 4 at pg. 7, ln. 17-16, attached as **SOF Ex. 5**).

21 316. Beauchamp instead responded in an email that night in which he said:
22 ***“Let me see what the other lenders got from the Trustee and we can make a better
23 decision.*** There is either another way to do it or someone described a procedure that
24 does not work.” (Emphasis added.) (See Beauchamp Dep. Exhibit 147, at CH_0001502,
25 attached as **SOF Ex. 140**).

26 317. On January 17, 2014, Beauchamp told two other lawyers at Clark Hill,
27 Dan Schenck and Bob Anderson, who specialized in real estate lending, that the firm
28 needed to review “the demand letter from Bryan Cave asserting the claim from the other
lenders” – i.e., that DenSco had fraudulently filed 52 Mortgage documents claiming
that 52 Trustees had been paid to purchase properties at a Trustee's sale when no such
payment had occurred -- and “[i]f this claim has any merit, [Clark Hill] need[ed] to
advise DenSco to change its internal procedures.” But neither Beauchamp, Schenck,

1 nor Anderson undertook that analysis. (*See* Schenck Dep. Exhibit 53, attached as **SOF**
2 **Ex. 141**).

3 318. Beauchamp later advised Chittick that DenSco could continue wiring
4 money to Menaged, trusting Menaged to pay the loan proceeds to a Trustee, so long as
5 Menaged provided written confirmation that he had done so. As Chittick wrote in July
6 2016:

7 a. “Going back to December of 2013, . . . [Menaged] knew he had to
8 make money to help cover the deficit [that] would be created by the double
9 encumbered properties and shortage that would be created at the time of
10 disposition. He wanted time to still fund him buying properties at auction and
11 flipping them, wholesaling them, etc. *I talked to Dave about this in January*
12 *[2014] and he was in agreement with it as long as I received copies of checks*
13 *and receipts showing that I was paying the trustee.”* (Emphasis added.) (*See*
14 Beauchamp Dep. Exhibit 414 at DIC0009472 attached as **SOF Ex. 138**;
15 Beauchamp Dep. Exhibit 415, attached as **SOF Ex. 38**).

16 b. “Dave, my lawyer, negotiated the work out agreement and
17 endorsed the plan. Then when [Menaged] said hey, let me buy some
18 foreclosures, flip them, wholesale them, etc. so I can make money. *All the other*
19 *lenders wouldn’t lend to him. I needed him to make money now more than*
20 *ever before. We went to Dave, and he gave some constraints on how we were*
21 *to operate.* I have all the documentation. I received copies of checks made out
22 to trustees, receipts from the trustees. I had all my docs signed. I recorded my
23 mortgages. I had evidence of insurance, and I did everything.” (Emphasis
24 added.) (*See* Beauchamp Dep. Exhibit 415 at DIC0009485 attached as **SOF Ex.**
25 **38**).

26 319. Clark Hill and Beauchamp claim in their initial disclosure statement, and
27 Beauchamp claimed when he was deposed, that Clark Hill had advised Chittick in
28 January 2014 that it should not give loan proceeds to Menaged and should instead give

1 them to a Trustee. But a jury will find that this is yet another after-the-fact untruth. No
2 documents in Clark Hill's file – not a letter, email, note or time entry – reflect that the
3 advice was ever given. Moreover, Beauchamp's deposition testimony that he relied on
4 Anderson to give that advice to Chittick and understood it had been given is belied by
5 Anderson's deposition testimony, who said he had not done so. (*See* Beauchamp Dep.
6 Transcript at pp. 252:17-255:15; 352:11-364:16, attached as **SOF Ex. 6**; Anderson Dep.
7 Transcript at pp. 17:5-30:5, attached as **SOF Ex. 142**).

8 320. A jury will reject Clark Hill's claim and find that DenSco followed
9 Beauchamp's negligent advice to Chittick that DenSco could continue its long-standing
10 practice of giving loan proceeds directly to Menaged, trusting him to use those funds
11 only to pay a Trustee for property that would be fully secured, with DenSco in first
12 position. As a result, Menaged continued to have direct access to DenSco's funds,
13 despite the tens of millions of dollars of losses that practice had caused DenSco, which
14 put Menaged in a position to misappropriate those funds, just as he had misappropriated
15 the loan proceeds DenSco had given him in previous years. (*See* expert report of Neil
16 Wertlieb, attached to Motion for Determination of Prima Facie Case, Fenix Financial
17 expert report at pp. 2-10, attached to Motion for Determination of Prima Facie Case as
18 an Exhibit B).

19 321. As a direct consequence of Clark Hill's negligence, DenSco suffered
20 substantial losses. (*Id.*)

21 322. If Clark Hill had instead advised Chittick that DenSco could never give
22 loan proceeds to Menaged and must instead independently cause those funds to be
23 delivered to a Trustee, Chittick would have followed that advice. Indeed, Chittick
24 acknowledged in his January 9, 2014 email that he "must be missing something." (*See*
25 Schenck Dep. Exhibit 36 at CH_0001503, attached as **SOF Ex. 39**).

1 **E. Response to 2016 ADFI Investigation**

2 323. In March 2016, Chittick asked Beauchamp to help DenSco respond to
3 another investigation by the Arizona Department of Financial Institutions. Beauchamp
4 worked on the matter during March, April, May and June 2016, billing his time to a
5 “General” matter he had established in January 2013. As with previous inquiries by
6 ADFI, Clark Hill argued that DenSco should not be licensed and regulated by ADFI,
7 which would have included a review of DenSco’s lending procedures. (*See* Schenck
8 Dep. Exhibit 17, attached as **SOF Ex. 30**; Schenck Dep. Exhibit 18, attached as **SOF**
9 **Ex. 31**; Schenck Dep. Exhibit 14, attached as **SOF Ex. 27**; Schenck Dep. Exhibit 15,
10 attached as **SOF Ex. 28**; Schenck Dep. Exhibit 16, attached as **SOF Ex. 29**).

11 **F. Chittick’s Suicide**

12 324. Chittick committed suicide on July 28, 2016. (*See* Beauchamp Dep.
13 Exhibit 323 at pg. 1, attached as **SOF Ex. 143**).

14 325. Shortly before his death, Chittick wrote an “Investor” letter that was
15 never sent to DenSco’s investors but was among the business records obtained by the
16 Receiver. Among the statements in that letter are the following: “Why didn’t I let all
17 of you know what was going on at any point? It was pure fear. . . . I have 100 investors.
18 I had no idea what everyone would do or want to do or how many would just sue,
19 justifiably. *I also feared that there would be a classic run on the bank. . . I truly*
20 *believe we had a plan that would allow me to continue to operate, my investors would*
21 *receive their interest and redemptions as a normal course of business, and the rest of*
22 *my portfolio was performing. Dave blessed this course of action.* (Emphasis added.)
23 We signed this workout agreement and began executing it.” (*See* Beauchamp Dep.
24 Exhibit 414, attached as **SOF Ex. 138**); Beauchamp Dep. Exhibit 415 attached as **SOF**
25 **Ex. 38**).

26 326. The letter also stated: “Going back to December of 2013, . . . [Menaged]
27 knew he had to make money to help cover the deficit [that] would be created by the
28

1 double encumbered properties and shortage that would be created at the time of
2 disposition. He wanted time to still fund him buying properties at auction and flipping
3 them, wholesaling them, etc. *I talked to Dave about this in January [2014] and he*
4 *was in agreement with it as long as I received copies of checks and receipts showing*
5 *that I was paying the trustee.”* (Emphasis added.) (See Beauchamp Dep. Exhibit 414
6 at DIC0009472 attached as **SOF Ex. 138**).

7 327. Chittick also wrote a detailed letter to his sister, Shawna Heuer (aka Iggy),
8 shortly before his death. He wrote: “[Beauchamp] let me get the workout signed[,]
9 not tell the investors[,] and try to fix the problem. That was a huge mistake. . . . Dave
10 did a workout agreement with [Menaged], we were executing to it and making
11 headway, yet Dave never made me tell the investors. . . . I talked Dave my attorney
12 into allowing me to continue without notifying my investors. Shame on him. He
13 shouldn’t have allowed me. He even told me once I was doing the right thing.”
14 (Emphasis added.) (See Beauchamp Dep. Exhibit 415 at DIC0009482 and DIC0009484
15 attached as **SOF Ex. 38**).

16 328. The letter also stated: “Dave, my lawyer, negotiated the work out
17 agreement and endorsed the plan. (Emphasis added.) Then when [Menaged] said
18 hey, let me buy some foreclosures, flip them, wholesale them, etc. so I can make money.
19 All the other lenders wouldn’t lend to him. I needed him to make money now more
20 than ever before. We went to Dave, and he gave some constraints on how we were to
21 operate. I have all the documentation. I received copies of checks made out to trustees,
22 receipts from the trustees. I had all my docs signed. I recorded my mortgages. I had
23 evidence of insurance, and I did everything.” (See Beauchamp Dep. Exhibit 415 at
24 DIC0009485, attached as **SOF Ex. 38**).

25 329. This “Iggy Letter” contained detailed information about actions Chittick
26 had taken in managing DenSco’s affairs, including the location of funds and how he
27 had transferred funds. (Beauchamp Dep. Exhibit 415, attached as **SOF Ex. 38**).

28

1 **G. After Chittick’s Death, Clark Hill Agreed to Represent Both DenSco**
2 **and Chittick’s Estate, Despite an Unconsentable Conflict.**

3 330. According to Clark Hill’s billing records, Beauchamp learned of
4 Chittick’s suicide on Saturday, July 30, 2016 through a telephone call with Robert
5 Koehler and Shawna Heuer. Beauchamp billed his time for that call to the “Business
6 Matters” file he had caused to be established on January 14, 2014. (*See* Schenck Dep.
7 Exhibit 18 at CH_0008045, attached as **SOF Ex. 31**).

8 331. Robert Koehler was identified in the 2011 POM, under the heading
9 “Contingency Plan in the Event of Death or Disability of Mr. Chittick,” as the person
10 with whom Chittick had entered into a written agreement “to provide or arrange for any
11 necessary services for the Company” upon Chittick’s death or disability. (*See*
12 Beauchamp Dep. Exhibit 432 at pg. 41, attached as **SOF Ex. 2**).

13 332. According to Beauchamp’s notes from his July 30, 2016 telephone
14 conversation with Koehler and Heuer, he was told that Chittick had sent him a letter
15 with instructions and a detailed letter to Koehler. Beauchamp wrote that he needed “to
16 get both letters & discuss how to deal w/ this.” (*See* Beauchamp Dep. Exhibit 416,
17 attached as **SOF Ex. 144**).

18 333. On Sunday, July 31, 2016, Beauchamp exchanged emails with Koehler
19 about scheduling a meeting with Koehler and Heuer the following afternoon. (*See*
20 Email chain between Beauchamp and Koehler at DIC0011907-11908, attached as **SOF**
21 **Ex. 145**).

22 334. Later that day, Beauchamp exchanged emails with Heuer in which
23 Beauchamp approved an email Heuer had drafted to send to DenSco’s investors which
24 stated, in part, “[a] meeting with Denny’s attorney is planned for Monday, August 1st,
25 to form a course of action.” (*See* Beauchamp Dep. Exhibit 420, attached as **SOF Ex.**
26 **146**).

27 335. Heuer sent the e-mail to DenSco investors during the evening of July 31,
28 2016, forwarding a copy to Beauchamp, who thanked her for doing so. (*Id.*)

1 336. Heuer sent Beauchamp before their August 1 meeting a copy of Chittick's
2 Investor Letter and gave him at the meeting or in a meeting the following day a copy
3 of the Iggy Letter. (*See* Beauchamp Dep. Exhibit 414, attached as **SOF Ex. 138**;
4 Beauchamp Dep. Exhibit 415, attached as **SOF Ex. 38**; Beauchamp Dep. Transcript at
5 86:23-87:13, attached as **SOF Ex. 6**).

6 337. During the August 1st meeting, Beauchamp agreed that Clark Hill would
7 represent DenSco, reporting to Heuer, and also represent Heuer in her capacity as the
8 personal representative of the Estate of Denny Chittick. (*See* Beauchamp Dep.
9 Transcript at pp. 464:9-466:19, attached as **SOF Ex. 6**; Beauchamp Dep. Exhibit 206,
10 attached as **SOF Ex. 147**; Beauchamp Dep. Exhibit 207 attached as **SOF Ex. 148**).

11 338. On August 2, 2016, Beauchamp and other Clark Hill attorneys met with
12 Heuer. (*See* Beauchamp Dep. Exhibit 211, attached as **SOF Ex. 149**).

13 339. On August 4, 2016, Clark Hill initiated a probate proceeding and
14 continued to act as counsel for the Estate of Chittick until August 12, 2016 (*See*
15 Beauchamp Dep. Exhibit 216, attached as **SOF Ex. 150**).

16 340. Clark Hill should not have agreed to represent DenSco after Chittick's
17 death and should have instead terminated the representation because Clark Hill knew,
18 based on its own conduct since September 2013 and knowledge of Chittick's conduct,
19 that DenSco had potential claims against the firm. (*See* expert report of Neil Wertlieb
20 at pp. 49-50, attached to Motion for Determination of Prima Facie Case).

21 341. Clark Hill should not have agreed to represent the Estate of Chittick
22 because Clark Hill knew, based on its knowledge of Chittick's conduct, that DenSco
23 had substantial claims against Chittick's Estate for Chittick's gross negligence in
24 managing DenSco's affairs. Indeed, in this litigation Clark Hill has identified the Estate
25 as a non-party at fault and seeks to blame Chittick for DenSco's losses. Moreover, soon
26 after his appointment, the Receiver filed a Notice of Claim in Probate Court against the
27 Estate, based in part on Chittick's gross mismanagement of DenSco and multiple
28

1 breaches of fiduciary duties Chittick owed DenSco. (*See* expert report of Neil Wertlieb
2 at pp. 64-67, attached to Motion for Determination of Prima Facie Case).

3 342. A jury can assume that Clark Hill agreed to continue representing DenSco
4 and jointly represent the Estate of Chittick because it saw those representations as a
5 means to protect itself from liability. The firm’s conduct during the months of August,
6 September and October 2016 provides further evidence that this was Clark Hill’s
7 objective. (*Id.*)

8 **H. Between August 1 and August 18, 2016, Clark Hill Effectively Ran**
9 **DenSco’s Day-to-Day Affairs.**

10 343. After Chittick’s death, Beauchamp, in coordination with Heuer, managed
11 the day-to-day operations of DenSco until the Receiver was appointed on August 18,
12 2016. (*See* Beauchamp Dep. Exhibit 206, attached as **SOF Ex. 147**; *See* Beauchamp
13 Dep. Exhibit 214, attached as **SOF Ex. 151**; *See* Beauchamp Dep. Exhibit 218, attached
14 as **SOF Ex. 152**; *See* Beauchamp Dep. Exhibit 223, attached as **SOF Ex. 153**; *See*
15 Beauchamp Dep. Exhibit 233, attached as **SOF Ex. 154**; *See* Beauchamp Dep. Exhibit
16 234, attached as **SOF Ex. 155**; *See* Beauchamp Dep. Exhibit 240, attached as **SOF Ex.**
17 **156**; Beauchamp Dep. Exhibit 241, attached as **SOF Ex. 157**; Beauchamp Dep. Exhibit
18 242, attached as **SOF Ex. 158**; Beauchamp Dep. Exhibit 243, attached as **SOF Ex. 159**;
19 Beauchamp Dep. Exhibit 244, attached as **SOF Ex. 160**; Beauchamp Dep. Exhibit 418,
20 attached as **SOF Ex. 161**; Beauchamp Dep. Exhibit 419, attached as **SOF Ex. 162**;
21 Beauchamp Dep. Exhibit 420, attached as **SOF Ex. 146**; .

22 344. Beauchamp opened a “Business Wind Down” file to which he charged
23 his time. (*See* Schenck Dep. Exhibit 18 at CH_0008033, attached as **SOF Ex. 31**).

24 345. During that time period, Beauchamp communicated with investors and
25 representatives of the Securities Division of the Arizona Corporation Commission (the
26 “ACC”), which investigated securities law violations by DenSco and initiated on
27 August 17, 2016 a lawsuit alleging that DenSco had violated securities laws and sought
28

1 the appointment of a receiver. (*See* Schenck Dep. Exhibit 18 at CH_0008034-8041,
2 attached as **SOF Ex. 31**).

3 346. Although Clark Hill knew that as securities counsel to DenSco it faced
4 potential claims by the ACC, DenSco's receiver, and/or DenSco's investors, it
5 continued to represent DenSco.

6 347. Clark Hill authored several communications to DenSco's investors
7 between August 1 and August 12, 2016 which failed to disclose information in Clark
8 Hill's possession about Clark Hill's role as DenSco's securities counsel; Chittick's
9 mismanagement of DenSco's lending practices; Chittick's decision to postpone the
10 issuance of a new POM while still selling promissory notes; Chittick's goals in
11 documenting the Forbearance Agreement; the actions Clark Hill had taken to assist
12 Chittick; and Clark Hill's negligent advice to Chittick about DenSco's continued
13 lending to Menaged. (*See* Schenck Dep. Exhibit 18 at CH_0008034-8041, attached as
14 **SOF Ex. 31**; Beauchamp Dep. Exhibit 168, attached as **SOF Ex. 93**; Beauchamp Dep.
15 Exhibit 360, attached as **SOF Ex. 94**; Beauchamp Dep. Exhibit 361, attached as **SOF**
16 **Ex. 95**; Beauchamp Dep. Exhibit 362, attached as **SOF Ex. 96**; Beauchamp Dep.
17 Exhibit 363, attached as **SOF Ex. 97**; Beauchamp Dep. Exhibit 364, attached as **SOF**
18 **Ex. 98**).

19 348. Clark Hill also failed to provide that information to the ACC. (*See*
20 Beauchamp Dep. Transcript at pp. 155:21-156:16, attached as **SOF Ex. 6**).

21 349. The investor communications Clark Hill drafted also suggested that
22 DenSco and its investors would not be well served if a receiver were appointed. For
23 example, in the first email Beauchamp sent to DenSco investors on August 3, 2016, he
24 wrote:

25 [T]he problem with DenSco's Troubled Loans developed over time and it
26 will take some time to understand those Troubled Loans [and] how those
27 loans came into existence. . . . If whoever is in charge of DenSco does not
28 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 that will significantly reduce what will be available to return to the
Investors. For example, *one of the recent reports concerning liquidation*

1 *of companies owing money to investors indicated that the costs associated*
2 *with a bankruptcy or a Receiver can reduce the amount to be paid to*
3 *investors by almost half or even a much more significant reduction. . . .*
4 *[W]e would like to keep DenSco out of a protracted bankruptcy or a*
5 *contentious Receivership proceeding.* As indicated above, various studies
6 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.
(Emphasis added.)

7 (See Beauchamp Dep. Exhibit 213, attached as **SOF Ex. 163**; Beauchamp Dep.
8 Transcript at pp. 472:9-476:4, attached as **SOF Ex. 6**).

9 **I. Beginning on August 15, 2016, Clark Hill Sought to Conceal Its**
10 **Negligence and the Assistance It Gave Chittick in His Breach of**
11 **Fiduciary Duties by Falsely Claiming It Had Terminated Its**
12 **Representation of DenSco, and Continues to Claim, Without Any**
13 **Supporting Records, That It Did So.**

14 350. During its investigation of potential securities law violations by DenSco,
15 the ACC sought documents from Clark Hill about the firm's work for DenSco.
16 (Beauchamp Dep. Transcript at pp. 155:21-156:16, attached as **SOF Ex. 6**).

17 351. It was during that investigation that Clark Hill claimed for the first time
18 that it had terminated its representation of DenSco because Chittick allegedly refused
19 to follow the firm's advice.

20 352. Clark Hill has made inconsistent claims about the alleged termination of
21 its representation of DenSco since August 2016 and continues to claim that the
22 termination occurred despite the absence of any records to support the claim, and
23 records that are inconsistent with the claim. (See Beauchamp Dep. Transcript at pp.
24 158:9-161:24; pp. 180:7-183:22; 195:11-199:14 attached as **SOF Ex. 6**).

25 353. The claim was first made on August 15, 2016, when ACC investigator
26 Gary Clapper sent Beauchamp an email which stated, in part: "Can you please get a
27 copy of the forbearance agreement. Since the offering document is updated every two
28 years can you please get copies of all of them." (See Beauchamp Dep. Exhibit 283 at
DIC0011375 attached as **SOF Ex. 164**).

354. Beauchamp responded: "I only have access to some of DenSco's files.
Despite my requests, Denny Chittick did not request for all of DenSco's previous files

1 to be transferred to me. In addition, *Denny stopped our efforts to do an updated*
2 *offering memorandum in 2013*, so the initial work on that was never finished. Denny
3 also *did not engage us to prepare an amendment to the offering document or to*
4 *prepare a new disclosure document despite several conversations about that issue.*”
5 (Emphasis added.) (See Beauchamp Dep. Exhibit 283 at DIC0011373 attached as **SOF**
6 **Ex. 164**).

7 355. In an August 17, 2016 declaration Beauchamp stated that “[i]n late 2014
8 *or 2015, I ended my formal relationship with Mr. Chittick and DenSco.*” (See
9 Beauchamp Dep. Exhibit 297 at pg. 2 ¶7, attached as **SOF Ex. 165**).

10 356. In an August 21, 2016 email to DenSco investor Rob Brinkman,
11 Beauchamp first wrote that “*my law firm started preparing the 2013 POM, but we*
12 *were put on hold.* After the Forbearance Agreement was signed by Scott Menaged, *we*
13 *started to amend the 2013 draft POM, but we stopped and withdrew as securities*
14 *counsel for DenSco. Denny was supposed to get other counsel and finish the POM*
15 *in 2014, but I do not know if that did happen.*” (Emphasis added.) In a follow-up
16 email to Brinkman, he wrote that “[t]he 2013 POM was never finalized due to attorney
17 *client protected issues that I have been instructed not to discuss.*” (Emphasis added.)
18 (See Beauchamp Dep. Exhibit 305, attached as **SOF Ex. 166**).

19 357. In a February 8, 2017 email to the Receiver’s counsel, Beauchamp made
20 the following unsolicited statement: “Please note that my previous reference to
21 ‘securities work’ was for work done PRIOR to when *my firm terminated doing any*
22 *securities or other legal work for DenSco when Denny Chittick refused to send the*
23 *amended Private Offering Memorandum to his investors.* The amended Private
24 Offering Memorandum that we wanted to be sent described the Forbearance Agreement
25 and the changes to the lending criteria and security ratios that DenSco was to follow
26 when making its loans to Borrowers. *I believe that we terminated our representation*
27 *in approximately July 2014.*” (Emphasis added.) (See Sifferman Dep. Exhibit 457,
28 attached as **SOF Ex. 167**).

1 358. Clark Hill now claims that the firm terminated the representation in May
2 2014, stating in Defendants' initial disclosure statement (at 15) that

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

6 ***In May 2014***, Mr. Beauchamp handed Mr. Chittick a physical copy of the
7 draft POM and asked him what Mr. Chittick's specific issues were with the
8 disclosure. Mr. Chittick responded that there was nothing wrong with the
9 disclosure, he was simply not ready to make any kind of disclosures to his
10 investors at this stage. Mr. Beauchamp again explained that Mr. Chittick
11 had no choice in the matter and that he had a fiduciary duty to his investors
12 to make these disclosures. Mr. Chittick would not budge. ***Faced with an***
13 ***intransigent client who was now acting contrary to the advice Mr.***
14 ***Beauchamp was providing, and with concerns that Mr. Chittick may not***
15 ***have been providing any disclosures to anyone since January 2014, Mr.***
16 ***Beauchamp informed Mr. Chittick that Beauchamp and Clark Hill could***
17 ***not and would not represent DenSco any longer.*** Mr. Beauchamp also
18 told Chittick that he would need to retain new securities counsel, not only
19 to provide the proper disclosure to DenSco's investors, but to protect
20 DenSco's rights under the forbearance agreement. Mr. Chittick suggested
21 that he has already started that process and was speaking with someone
22 else.

23 (See Schenck Dep. Exhibit 4 at pg. 15, ln. 3-20, attached as **SOF Ex. 5**).

24 359. But there is not a single document in Clark Hill's file to support this
25 claim, such as a termination letter that law firms commonly send when ending a client
26 relationship and especially when a law firm believes a client is disregarding advice
27 given by the firm. (See Beauchamp Dep. Transcript at pp. 158:9-161:24; 180:7-183:22;
28 195:11-199:14 attached as **SOF Ex. 6**).

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

 a. Documents generated in June 2014 which reflected work Clark
Hill performed to amend the Forbearance Agreement and correct errors the firm
had made when the Forbearance Agreement was signed in April 2014. Chittick
and Menaged signed those documents on June 18, 2014. (See Beauchamp Dep.
Exhibit 140, attached as **SOF Ex. 77**; Beauchamp Dep. Exhibit 141, attached as

1 **SOF Ex. 78**; Beauchamp Dep. Exhibit 142 attached as **SOF Ex. 86**; Beauchamp
2 Dep. Exhibit 143, attached as **SOF Ex. 87**; Beauchamp Dep. Exhibit 144
3 attached as **SOF Ex. 91**; Beauchamp Dep. Exhibit 338 attached as **SOF Ex. 168**;
4 Beauchamp Dep. Exhibit 339 attached as **SOF Ex. 169**; Beauchamp Dep.
5 Exhibit 340 attached as **SOF Ex. 170**; Beauchamp Dep. Exhibit 334 attached as
6 **SOF Ex. 186**; Beauchamp Dep. Exhibit 410 attached as **SOF Ex. 171**;

7 b. In May, June, July and August 2014, Beauchamp sent Chittick
8 billing statements for work performed for DenSCO through transmittal letters that
9 stated: “Thank you again for allowing Clark Hill and me to provide legal
10 services to DenSCO Investment Corporation. If you have any question or if we
11 can assist you with any other matter(s), please let me know.” (*See* Schenck Dep.
12 Exhibit 10, attached as **SOF Ex. 23**; Schenck Dep. Exhibit 11, attached as **SOF**
13 **Ex. 24**; Schenck Dep. Exhibit 12, attached as **SOF Ex. 25**).

14 c. As noted above, when Chittick asked Clark Hill to respond to the
15 ADFI inquiry in March 2016, Beauchamp billed his time to the “General” matter
16 Clark Hill had established in January 2014. (*See* Schenck Dep. Exhibit 17,
17 attached as **SOF Ex. 30**; Schenck Dep. Exhibit 18, attached as **SOF Ex. 31**;
18 Schenck Dep. Exhibit 14, attached as **SOF Ex. 27**; Schenck Dep. Exhibit 15,
19 attached as **SOF Ex. 28**; Schenck Dep. Exhibit 16, attached as **SOF Ex. 29**).

20 d. As noted above, after Chittick’s death, Beauchamp billed his time
21 to the “Business Matters” file Clark Hill had established in January 2014. (*See*
22 Schenck Dep. Exhibit 18, attached as **SOF Ex. 31**; Schenck Dep. Exhibit 19,
23 attached as **SOF Ex. 32**).

24 e. On June 22, 2017, approximately six months before this lawsuit
25 was filed, Clark Hill submitted two proofs of claim to the Receiver, seeking
26 \$53,820.00 for work performed between June 1, 2016 and August 17, 2016, and
27 \$23,046.00 for work performed between August 18, 2016 and September 30,
28 2016. Clark Hill claimed in an accompanying affidavit that “[i]n 2016 and

1 *earlier, the Firm represented DenSco Investment Corporation,”* providing
2 “general business advice and representation,” and that “[a]fter the death of
3 DenSco’s principal, in July 2016, the Firm transitioned the subject matter of its
4 work to advice and guidance to DenSco to assist in winding down its business.”
5 (Emphasis added.) Clark Hill did not claim then that it had terminated its
6 representation of DenSco at any previous time. (*See* Beauchamp Dep. Exhibit
7 425, attached as **SOF Ex. 172**).

8 361. In claiming that Clark Hill had, in fact, terminated its representation of
9 DenSco in May 2014 – a claim verified by Clark Hill’s General Counsel – Clark Hill
10 concealed material information it should have disclosed pursuant to Rule 26.1. It was
11 only after the Receiver’s counsel served written discovery on Clark Hill that Clark Hill
12 disclosed that it did not close until May 2018 – *after* receiving the Receiver’s written
13 discovery – the files Clark Hill had opened in September 2013 to prepare a new POM
14 and in January 2014 for the “lien workout.” The files established for DenSco’s
15 “General” and “Business Matters” were never closed and remain open. (*Id*)

16 **J. Clark Hill Colluded With the Estate of Chittick to Prevent the**
17 **Receiver From Obtaining Material Information.**

18 362. Clark Hill did not internally consider the conflicts created by its joint
19 representation of DenSco and the Chittick Estate until an investor raised the issue on
20 August 10, 2016. (*See* Beauchamp Dep. Exhibit 434, attached as **SOF Ex. 173**).

21 363. Clark Hill referred Heuer to lawyers whom Clark Hill believed would
22 aggressively protect the Estate from potential claims by investors and the Receiver –
23 Beauchamp’s former colleagues at Gammage & Burnham: James Polese and Kevin
24 Merritt. (*See* Beauchamp Dep. Exhibit 278, attached as **SOF Ex. 174**).

25 364. Clark Hill then began colluding with Gammage & Burnham to protect the
26 Chittick Estate and Clark Hill from the Receiver. (Beauchamp Dep. Exhibit 435
27 attached as **SOF Ex. 175**; Beauchamp Dep. Exhibit 436 attached as **SOF Ex. 176**;
28 Heuer Dep. Exhibit 447, attached as **SOF Ex. 177**; Sifferman Dep. Exhibit 465,

1 attached as **SOF Ex. 178**; Sifferman Dep. Exhibit 466, attached as **SOF Ex. 179**;
2 Sifferman Dep. Exhibit 468 attached as **SOF Ex. 180**).

3 365. Among other evidence of such collusion are emails exchanged between
4 Polese, Merrick and Beauchamp about seeking the appointment of a receiver other than
5 the Receiver. (*Id.*)

6 366. Moreover, shortly before the August 18, 2016 hearing at which the
7 Receiver was appointed, Beauchamp, with the assistance and approval of Clark Hill's
8 Assistant General Counsel, prepared a declaration for the Estate to submit to the
9 Receivership Court which Beauchamp has since acknowledged falsely stated that Clark
10 Hill had jointly represented DenSco and Chittick individually. (*See* Beauchamp Dep.
11 Exhibit 297 attached as **SOF Ex. 165**).

12 367. During the August 18, 2016 hearing, neither Beauchamp nor Clark Hill's
13 Assistant General Counsel corrected false statements by the Estate's counsel to the
14 effect that Clark Hill had jointly represented DenSco and Chittick personally. (*See*
15 Beauchamp Dep. Transcript at pp. 140:21-143:12, attached as **SOF Ex. 6**).

16 368. That claim was integral to the Estate's successful effort to obtain
17 language in the Order appointing the Receiver which recognized the existence of the
18 spurious joint representation claim and materially limited the Receiver's ability to
19 promptly and efficiently obtain relevant records from Clark Hill's files. (Beauchamp
20 Dep. Transcript at pp. 122:8-127:1, attached as **SOF Ex. 6**).

21 369. The Estate and Clark Hill used the Order as an excuse to decline to
22 provide the Receiver with immediate access to relevant records, such as the Iggy Letter,
23 and to "slow walk" Clark Hill's production of its files to the Receiver. (*Id.*)

24 370. The Receiver's counsel sent a letter demanding the immediate production
25 of the files on August 29, 2016. Clark Hill did not produce them until October 13,
26 2016, and only after making multiple demands. During this time period, Clark Hill's
27 Office of General Counsel was actively involved and directed the firm's response to the
28 Receiver's demands. (*See* Sifferman Dep. Exhibit 463, attached as **SOF Ex. 181**).

1 371. In the interim, Clark Hill and the Estate continued using the false claim
2 that Clark Hill had jointly represented DenSco and Chittick personally to delay
3 providing relevant information to the Receiver. (*See* Beauchamp Dep. Exhibit 297,
4 attached as **SOF Ex. 165**).

5 372. The Estate also proposed, with Clark Hill’s implicit consent, a “common
6 interest” agreement between the Estate, DenSco (represented by Clark Hill) and the
7 Receiver, which falsely stated that because of the alleged joint representation by Clark
8 Hill of DenSco and Chittick personally, the Estate, DenSco and the Receiver had a
9 common interest in defending lawsuits that investors might pursue.

10 373. After finally receiving Clark Hill’s files in October 2016, the Receiver
11 discovered critical documents, such as the Iggy Letter, that the Estate had sought to
12 prevent the Receiver from obtaining under a claim of personal privilege. That
13 document contained information that was material to claims the Receiver later brought
14 against the Estate of Chittick. Without the document, the Receiver had been required
15 to devote substantial resources to independently discovering information contained in
16 the Iggy Letter. (*See* Beauchamp Dep. Exhibit 415, attached as **SOF Ex. 38**).

17 **K. Actions Taken by the Receiver**

18 374. After his appointment, the Receiver took possession of and analyzed
19 DenSco’s books and records, issuing a preliminary report on September 19, 2016. (*See*
20 Beauchamp Dep. Exhibit 323, attached as **SOF Ex. 143**).

21 375. On December 9, 2016, the Receiver filed a notice of claim in the probate
22 court against the Estate of Denny Chittick, asserting, inter alia, claims that Chittick had
23 breached fiduciary duties owed DenSco. (*See* Davis Dep. Exhibit 480 attached as **SOF**
24 **Ex. 182**).

25 376. The Estate issued a notice of disallowance of the claim on February 3,
26 2017.

1 377. On December 23, 2016, the Receiver issued a status report. That report
2 contains, among other things, the Receiver’s conclusion that DenSco was insolvent in
3 January 2014. (*See* Davis Dep. Exhibit 479, attached as **SOF Ex. 84**).

4 378. The Receiver monitored and took part in a bankruptcy proceeding that
5 Menaged initiated. Among other things, the Receiver’s counsel conducted an
6 examination of Menaged, and the Receiver filed an adversary complaint and a
7 complaint to determine nondischargeability, and obtained a judgment against Menaged.
8 (*Id.*)

9 379. On June 22, 2017, Clark Hill submitted two proofs of claim to the
10 Receiver, which are discussed above. (*See* Beauchamp Dep. Exhibit 425, attached as
11 **SOF Ex. 172**).

12 380. On September 14, 2017, the Receiver filed a petition with the
13 Receivership Court seeking to file this action. The petition was granted on October 10,
14 2017. (*See* Order attached as **SOF Ex. 183**).

15 381. On September 25, 2017, the Receiver filed in the Receivership Court
16 Petition No. 37 – Petition for Approval of Receiver’s Final Recommendations
17 Approving Claims in DenSco Receivership, in which the Receiver recommended that
18 Clark Hill’s claims be denied “because the Receiver has determined that Clark Hill had
19 a conflict of interest that precluded it from performing the legal services without
20 violating fiduciary duties to DenSco. Despite providing Clark Hill with notice of the
21 Receiver’s recommendation of the denial of its two claims and a copy of the Claims
22 Report, Clark Hill failed to object or respond to the Receiver’s recommendation that
23 their two non-investor claims submitted by Clark Hill be denied.” The Petition was
24 granted on October 27, 2017. (*See* Petition No. 37 and Order attached as **SOF Ex. 184**).

25 382. This action was filed on October 16, 2017.

26 383. On December 22, 2017, the Receiver issued a status report describing the
27 status of the receivership. (*See* Davis Dep. Exhibit 534, attached as **SOF Ex. 185**).

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RESPECTFULLY SUBMITTED this 12th day of April, 2019.

OSBORN MALEDON, P.A.

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Honorable Daniel Martin
Maricopa County Superior Court
101 West Jefferson, ECB-412
Phoenix, Arizona 85003

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SOF Ex. 1	2016-08-17	Verified complaint of Arizona Corporation Commission (“ACC”) against DenSco Investment Corporation	UNNUMBERED	292 Beauchamp
SOF Ex. 2	2011-07-01	DenSco Confidential Private Offering Memorandum	BC_002912 - 002981	432 Beauchamp
SOF Ex. 3	2013-06-17	Printed excerpt from DenSco website	DIC0003429 – 0003434	115 Beauchamp
SOF Ex. 4	2017-06-12	Clark Hill PLC – David Beauchamp bio	RECEIVER_001343 - 001345	3 Schenck
SOF Ex. 5	2018-03-09	Defendants’ Initial Rule 26.1 Disclosure Statement	UNNUMBERED	4 Schenck
SOF Ex. 6	2018-07-19	David Beauchamp Deposition Transcript Excerpts	UNNUMBERED	N/A
SOF Ex. 7	2007-05-03	Handwritten Notes	DIC0000939 - 0000941	N/A
SOF Ex. 8	2007-06-01	Handwritten Notes	DIC0000936	N/A
SOF Ex. 9	2009-04-09	Handwritten Notes	DIC0002433 - 0002434	N/A
SOF Ex.10	2009-04-17	Handwritten Notes	DIC0002431	N/A
SOF Ex.11	2009-06-30	Handwritten Notes	DIC0002427	N/A
SOF Ex.12	2009-07-06	Email from D. Beauchamp to D. Chittick with attachments	DIC0002141 - 0002212	N/A
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SOF Ex.14	2009-07-01	DenSco Confidential Private Offering Memorandum	BC_002357 - 002424	431 Beauchamp
SOF Ex.15	2007-06-01	DenSco Confidential Private Offering Memorandum	DIC0000965 - 0001032	430 Beauchamp
SOF Ex.16	2011-07-18	Email exchange between D. Beauchamp and M. Parsons re Memorandum	DIC0003969 - 0003970	N/A
SOF Ex.17	2013-04-22	Bunger Subscription Agreement Investment #4	DOCID_00065995	621 Bunger
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SOF Ex.21	2014-03-14	Letter from D. Beauchamp to D. Chittick with enclosed invoices	CH_0002673 - 0002680	7 Schenck
SOF Ex.22	2014-04-24	Letter from D. Beauchamp to D. Chittick with enclosed invoices	CH_0004324 - 0004332	9 Schenck
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SOF Ex.24	2014-06-25	Letter from D. Beauchamp to D. Chittick with enclosed invoices	CH_0005221 - 0005226	11 Schenck

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SOF Ex.26	2014-08-20	Letter from D. Beauchamp to D. Chittick with enclosed invoices	CH_0005289 - 0005291	13 Schenck
SOF Ex.27	2016-04-27	Letter from D. Beauchamp to D. Chittick with enclosed invoices	CH_0006381 - 0006383	14 Schenck
SOF Ex.28	2016-05-13	Letter from D. Beauchamp to D. Chittick with enclosed invoices	CH_0006376 - 0006379	15 Schenck
SOF Ex.29	2016-06-15	Letter from D. Beauchamp to D. Chittick with enclosed invoices	CH_0008985 - 0008987	16 Schenck
SOF Ex.30	2016-07-22	Letter from D. Beauchamp to D. Chittick with enclosed invoices	CH_0008940 - 0008942	17 Schenck
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SOF Ex.32	2016-10-20	Letter from D. Beauchamp to D. Chittick with enclosed invoices	CH_0008028 - 0008031	19 Schenck
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SOF Ex.34	2013-06-17	Bryan Cave bill issued to DenSco	BC_003078 – 003080	119 Beauchamp
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SOF Ex.38	2016-07-28	Iggy List	DIC0009476 – 0009487	415 Beauchamp
SOF Ex.39	2014-01-09	E-mail exchange between D. Chittick, D.	CH_0001502 -	36 Schenck
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SOF Ex.51	2013-08-30	Due Diligence folder materials	DIC0003427 – 0003442	136 Beauchamp

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SOF Ex.54	2014-04-24	DenSco Confidential Private Offering Memorandum dated July 2011	DIC0008731 – 0008800	100 Schenck
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SOF Ex.61	2013-06-18	D. Beauchamp handwritten notes	DIC0003340 – 0003341	120 Beauchamp
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SOF Ex.74	2013-09-12	E-mail from D. Beauchamp to D. Chittick	CH_0000803 – 0000810	137 Beauchamp
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SOF Ex.100	2014-01-16	E-mail thread regarding revised term sheet	CH_0001015 - 0001021	43 Schenck
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SOF Ex.125	2014-03-18	E-mail exchanges between D. Beauchamp and D. Chittick	DIC0006958 – 0006960	389 Beauchamp
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SOF Ex.141	2014-01-17	E-mail exchange between D. Beauchamp and R. Anderson	CH_0001445 – 0001465	53 Schenck
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SOF Ex.143	2016-09-16	Receiver's Preliminary Report	UNNUMBERED	323 Beauchamp

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SOF Ex.145	2016-07-31	Email exchange between D. Beauchamp and R. Koehler re Densco Meeting	DIC0011907 - 0011908	N/A
SOF Ex.146	2016-07-31	E-mail exchange between D. Beauchamp and S. Heuer	DIC0011893 – 0011894	420 Beauchamp
SOF Ex.147	2016-08-01	E-mail exchange between S. Heuer and D. Beauchamp	DIC0011892	206 Beauchamp
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SOF Ex.150	2016-08-04	Letters of Appointment of Personal Representative and Acceptance	CH_0010225 – 0010226	216 Beauchamp
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SOF Ex.163	2016-08-03	E-mail exchange between D. Beauchamp and investors	DIC0011836 – 0011838	213 Beauchamp
SOF Ex.164	2016-08-15	E-mail between D. Beauchamp and G. Clapper	DIC0011373 - 0011375	283 Beauchamp
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SOF Ex.166	2016-08-21	E-mail between D. Beauchamp and R. Brinkman	DIC0011813 - 0011815	305 Beauchamp
SOF Ex.167	2017-02-08	E-mail D. Beauchamp to R. Anderson and cc to M. Sifferman et al.	CH_0010428 - 0010432	457 Sifferman
SOF Ex.168	2014-02-06	E-mail exchange between D. Beauchamp and D. Chittick	CH_0002024 – 0002032	338 Beauchamp

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SOF Ex.170	2014-02-06	E-mail exchange between D. Beauchamp and D. Chittick	CH_0001928; CH_0001930 – 0001953	340 Beauchamp
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SOF Ex.172	2017-06-22	Clark Hill letter and two proofs of claims filed with Receiver	UNNUMBERED	425 Beauchamp
SOF Ex.173	2016-08-10	Beauchamp letter to W.Coy	CH_0009195 – 0009196	434 Beauchamp
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SOF Ex.183	2017-10-10	Order re: Petition No. 35 - Ex Parte Petition Seeking Approval for Receiver to File Complaint Against Clark Hill PLC and David Beauchamp	UNNUMBERED	N/A
SOF Ex.184	2017-09-28	Petition No. 37 - Petition for Approval of Receiver's Final Recommendations Approving Claims in Densco Receivership	UNNUMBERED	N/A
SOF Ex.185	2017-12-26	Petition No. 50: Petition for Order Approving Receiver's Status Report	UNNUMBERED	534 Davis
SOF Ex. 186	2014-02-04	Beauchamp email to Schenck re Forbearance Agreement	CH_0006694 - 006708	334 Beauchamp