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

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

13 Plaintiff,

14 v.

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

17 Defendants.

No. CV2017-013832

**DEFENDANTS' SIXTH
SUPPLEMENTAL RULE 26.1
DISCLOSURE STATEMENT**

18 Defendants Clark Hill PLC, David G. Beauchamp and Jane Doe Beauchamp
19 (collectively, "Defendants") **supplement their** initial disclosure statement according to
20 Arizona Rule of Civil Procedure 26.1. Defendants reserve the right to amend or supplement
21 this disclosure statement as discovery progresses. **Supplements are in bold.**

22 This case is **in process** and thus the content of this disclosure statement is preliminary
23 and subject to supplementation, amendment, explanation, change and amplification. Because
24 **discovery is continuing**, there may be information, documents, and materials related to the
25 various allegations and defenses set forth in the pleadings of which Defendants are presently
26 unaware. Defendants note that they do not currently have access to all potentially relevant

1 documents of the Plaintiff, or third parties, and that this disclosure statement is based upon
2 information currently available to Defendants. Nothing in this disclosure statement is
3 intended to be an admission of fact, an affirmation of the existence of any document, or an
4 agreement with or an acceptance of any legal theory or allegation. The information set forth
5 below is provided without waiving (1) the right to object to the use of such information for
6 any purpose in this or any other action due to applicable privilege (including the work-product
7 and attorney-client privileges), materiality, or any other appropriate grounds; (2) the right to
8 object to any request involving or relating to the subject matter of the information in this
9 disclosure statement; or (3) the right to revise, correct, supplement or clarify any of the
10 information provided below. If any part of this statement is ever read to the jury, fairness
11 would require that the jury be read this introductory statement and any supplementation,
12 amendments, explanation, changes or amplifications which may occur or be filed subsequent
13 to this disclosure statement.

14 Defendants also incorporate by reference into this disclosure statement all
15 interrogatory answers, responses to requests for production, responses to requests for
16 admission, other discovery and disclosure statements and supplements thereto in this action,
17 and all transcripts of any deposition taken in this action and any exhibits thereto.

18 **I. FACTUAL BASIS OF CLAIMS AND DEFENSES.**

19 **A. Retention/Scope of Work**

20 For more than 35 years, since graduating with honors from the University of Michigan
21 Law School in 1981, David Beauchamp has represented his clients in the areas of corporate
22 law, securities, venture capital, and private equity with distinction and integrity.

23 One of those clients was DenSco Investment Corporation ("DenSco"), a company
24 solely owned and managed by Denny Chittick. DenSco raised money from investors by
25 issuing general obligation notes to those investors at interest rates that varied depending on
26 the note's maturity date. DenSco then invested those funds primarily by making high interest

1 short-term loans to borrowers buying residential properties out of foreclosure, which loans
2 were intended to be secured by deeds of trusts on those properties. Mr. Beauchamp started
3 providing securities advice to DenSco in the early 2000s, while he was a partner at the law
4 firm Gammage & Burnham. DenSco followed Mr. Beauchamp as a client when he left
5 Gammage to join the law firm Bryan Cave in March 2008, and again when Mr. Beauchamp
6 left Bryan Cave to join Clark Hill in September 2013.

7 Although the various firms' engagement letters with DenSco only specifically
8 identified DenSco as the client, DenSco could not operate or engage with legal counsel
9 except through its president and sole owner, Mr. Chittick. DenSco had no other employees;
10 Mr. Chittick was responsible for all aspects of DenSco's business, and Mr. Chittick
11 understood that Mr. Beauchamp, as an incident to Mr. Beauchamp's representation of
12 DenSco, was also representing Mr. Chittick in his capacity as president of DenSco. The
13 investors understood that as well. The private offering memoranda DenSco provided state
14 that "legal counsel to the Company will represent the interests solely of the Company and its
15 President, and will not represent the interests of any investor."

16 Shortly after Mr. Chittick's death, and in the midst of a chaotic time dealing with the
17 fallout of his passing, Mr. Beauchamp stated in an August 10, 2016 letter to an Arizona
18 Corporation Commission subpoena to Mr. Chittick that he had "not previously represented
19 Denny Chittick" and that the ACC would need to request the personal information it sought,
20 including Mr. Chittick's personal tax returns, from counsel for Mr. Chittick's estate. To the
21 extent that Mr. Beauchamp's statement was not clear or that any clarification was necessary,
22 Mr. Beauchamp averred in an August 17, 2016 declaration under oath that he represented
23 DenSco and "Mr. Chittick as the President of DenSco." Mr. Beauchamp did not represent
24 Mr. Chittick outside of his role as a corporate officer at DenSco.

25 Until mid-2013, Mr. Beauchamp's work as DenSco's securities counsel included,
26 among other things, drafting DenSco's Private Offering Memoranda and related investor

1 documents; advising DenSco regarding Blue Sky laws and state and federal securities
2 reporting and filing requirements; advising DenSco as to the rules and regulations
3 promulgated by state financial and lending authorities; and advising DenSco regarding the
4 applicability of mortgage broker regulations. At times, it would also involve answering
5 DenSco's questions regarding its Reg D filings and obligations. Although Mr. Beauchamp
6 helped DenSco file its first set of Reg D documents in 2003, Mr. Chittick told Mr.
7 Beauchamp thereafter that he did not want to pay a lawyer to review and file the Reg D
8 documents, and that Mr. Chittick would take on that responsibility himself. That was not a
9 surprising request, as Mr. Chittick repeatedly instructed Mr. Beauchamp to keep legal fees
10 to a minimum. Consequently, although Mr. Beauchamp's paralegal initially helped Mr.
11 Chittick understand the filing process and obtain access to the EDGAR filing site, in
12 accordance with his client's wishes Mr. Beauchamp did not review DenSco's Reg D filings.

13 The scope of Mr. Beauchamp's representation of DenSco and its president was
14 narrow. Further, the relationship was friendly, but professional. Mr. Beauchamp did not go
15 to dinner or vacation with Mr. Chittick or his family. They did not play golf or otherwise
16 socialize together.

17 Over the years, Mr. Chittick showed himself to be a trustworthy and savvy
18 businessman, and a good client. He **appeared to be** devoted to his business and investors,
19 many of whom were friends and family. Despite often complaining about the cost of legal
20 services, Mr. Chittick appeared to follow Mr. Beauchamp's advice and provided information
21 when asked for it, **at least until the later years of the representation. It has since become**
22 **clear that Mr. Chittick did not follow certain advice Mr. Beauchamp and his firms**
23 **provided, and that Mr. Chitick did not always provide complete and accurate**
24 **information to his attorneys, particularly in 2013 and 2014.** Further, Mr. Beauchamp
25 understood that DenSco utilized an outside accountant, David Preston, to review DenSco's
26 books and records and file its tax returns. **It appears that Mr. Chittick also failed to**

1 **provide complete and accurate information regarding DenSco and its finances to**
2 **DenSco's accountant.** At no point did Mr. Beauchamp serve as DenSco's general corporate
3 counsel, nor was Mr. Beauchamp engaged to review or approve DenSco financial statements
4 or tax returns or to investigate borrowers.

5 **B. The Private Offering Memoranda**

6 Mr. Beauchamp advised DenSco regarding its Private Offering Memoranda
7 ("POMs"), which DenSco generally updated every two years. He helped draft the 2003,
8 2005, 2007, 2009, and 2011 POMs. The POMs, however, had similar provisions and
9 generally described DenSco's historical performance based on information provided by Mr.
10 Chittick; set forth Mr. Chittick's authority to determine DenSco's "major business decisions
11 and policies", and to make, amend, or deviate from those policies in Mr. Chittick's sole
12 discretion; and set forth DenSco's aspirational lending standards (including its intent to
13 "maintain a loan-to-value ratio below 70%" for both individual trust deeds **that secure loans**
14 **to borrowers from DenSco** and the aggregate loan portfolio, as well as its intent to "achieve
15 a diverse borrower base" with no borrower comprising more than 10-15% of the portfolio).
16 **The POMs also provided information regarding DenSco's lending history and loan**
17 **portfolio. In preparing the POMs, Mr. Beauchamp would generally inquire of Mr.**
18 **Chittick as to how DenSco was administering the loans and performing due diligence**
19 **on the collateral. The Receiver has recently alleged that information in the 2011 POM**
20 **that DenSco was raising and lending more money in 2011 than in prior years should**
21 **have raised purported "red flags" for Mr. Beauchamp. Those allegations are**
22 **unfounded (and irrelevant to the issues DenSco faced, which arose out of Mr. Chittick's**
23 **decision, more than a year later, to lend exorbitant amounts to Menaged without using**
24 **a fiduciary). Among other things, increased hard money lending would not have been**
25 **atypical given the real estate market at the time, and DenSco had provided assurances**
26 **that it had adequate internal procedures to manage its business.**

1 In addition, Mr. Beauchamp and his prior law firms, including Gammage &
2 Burnham, provided advice to DenSco regarding proper loan documentation and
3 procedures since at least 2007. DenSco and Mr. Chittick were both advised, and
4 understood, (a) that DenSco should fund loans through a trustee, title company or other
5 fiduciary, (b) that DenSco was representing to its investors that DenSco's loans would
6 be in first position, and (c) that it was of fundamental importance that DenSco
7 safeguard the use of its investors' funds in conjunction with properly recording liens,
8 in order to ensure that DenSco's loans were in first position.

9 In early summer 2013, Mr. Beauchamp advised DenSco that it needed to update its
10 2011 POM given the passage of time and changes in the scope of DenSco's fund raising. In
11 particular, based on Mr. Chittick's representations to Mr. Beauchamp, DenSco either had or
12 would soon eclipse the \$50 million maximum offering set forth in the 2011 POM.
13 Consequently, Mr. Beauchamp began drafting revisions to the 2011 POM, which included
14 updates to the maximum offering and updates on DenSco's performance to date, among other
15 revisions. Mr. Beauchamp, however, was never able to finalize the 2013 POM. Although
16 Mr. Beauchamp asked for updated investment, loan and financial information regarding
17 DenSco, Mr. Chittick stalled on providing the information, preferring to wait until after he
18 scaled down the amount outstanding to investors. Mr. Beauchamp repeatedly advised
19 DenSco that an update was necessary irrespective of DenSco's plans regarding the
20 outstanding amount of its offerings, but Mr. Chittick continued to delay.

21 C. The FREO Lawsuit

22 On May 24, 2013, Easy Investments, an entity owned by Yomtov "Scott" Menaged
23 ("Menaged"), DenSco, and Ocwen Loan Servicing, were sued by FREO Arizona, LLC
24 ("FREO") regarding liens recorded by Easy Investments in favor of DenSco and Active
25 Funding Corporation, on a parcel of property. In a June 14, 2013 email from Mr. Chittick to
26 Mr. Beauchamp, Mr. Chittick explained that Easy Investments had purchased a property at

1 a trustee's sale using a DenSco loan, which had apparently been previously purchased by
2 FREO, leading to a dispute. A review of the partial Complaint provided to Mr. Beauchamp
3 confirms Mr. Chittick's description. According to its allegations, the loan servicer, Ocwen,
4 failed to cancel a trustee's sale and release the deed of trust after FREO had paid off the debt
5 and acquired the property, thereby allowing Easy Investments to purchase the property again
6 with DenSco's funds. Contrary to the allegations in the Receiver's Complaint, the FREO
7 lawsuit did not concern lien priority or double lien issues. Moreover, a review of the docket
8 reveals that Easy Investments prevailed in the FREO lawsuit when the Court granted
9 summary judgment in favor of Easy Investments and against both FREO and Ocwen (for
10 breach of its duties) on December 6, 2013.

11 Further, although Mr. Chittick forwarded a portion of the Complaint to Mr.
12 Beauchamp, Mr. Chittick did not ask Mr. Beauchamp to represent DenSco in the litigation;
13 nor did he ask Mr. Beauchamp to investigate the factual allegations in the Complaint. To
14 the contrary, he expressly stated that he merely wanted Mr. Beauchamp to "be aware" of the
15 lawsuit. Consequently, although Mr. Beauchamp ran the matter through Bryan Cave's
16 conflict system pursuant to standard firm procedure, Mr. Beauchamp did not represent
17 DenSco in the litigation and did not conduct any further investigation into its merits given
18 his client's instruction not to get involved.

19 Mr. Beauchamp did, however, explain to Mr. Chittick that this lawsuit would need to
20 be disclosed in DenSco's 2013 POM. In addition, Mr. Beauchamp advised Mr. Chittick, as
21 he had done previously, that Mr. Chittick needed to fund DenSco's loans directly to the
22 trustee or escrow company conducting the sale, rather than provide loan funds directly to the
23 borrower, to ensure that DenSco's deed of trust was protected. Mr. Chittick, however,
24 explained to Mr. Beauchamp that this was an isolated incident with a borrower, Menaged,
25 whom Mr. Chittick described in his email as someone he had "done a ton of business
26 with...hundreds of loans for several years...."

1 **D. Mr. Beauchamp leaves Bryan Cave, hears nothing from Mr. Chittick for**
2 **months.**

3 Mr. Beauchamp left Bryan Cave at the end of August 2013. Prior to his departure,
4 Mr. Beauchamp had repeatedly made clear to DenSco and Mr. Chittick that they needed to
5 update DenSco's POM. On August 30, 2013, Mr. Beauchamp and Bryan Cave sent Mr.
6 Beauchamp's clients, including DenSco, a joint separation letter informing them that Mr.
7 Beauchamp was joining Clark Hill effective as of September 1, 2013. The letter invited
8 those clients to either request the transition of their files to Mr. Beauchamp or affirmatively
9 request that the files remain at Bryan Cave. Mr. Chittick initially agreed to transfer a portion
10 of DenSco's files to Clark Hill, but aside from DenSco's authorization letter, Mr. Beauchamp
11 never heard from Mr. Chittick regarding the unfinished 2013 POM, or any other matter, until
12 December 2013.

13 **E. DenSco contacts Mr. Beauchamp in late 2013, slowly reveals scope of**
14 **Menaged issues over several months**

15 In December 2013, Mr. Chittick contacted Mr. Beauchamp for the first time in
16 months. He told Mr. Beauchamp over the phone that he had run into an issue with some of
17 his loans to Menaged, and specifically, that properties securing a few DenSco loans were
18 each subject to a second deed of trust competing for priority with DenSco's deed of trust.
19 Mr. Beauchamp reminded Mr. Chittick that he still needed to update DenSco's private
20 offering memorandum. After briefly discussing the allegedly limited double lien issue, Mr.
21 Chittick emphasized to Mr. Beauchamp that Mr. Chittick wanted to avoid litigation with
22 other lenders. Mr. Chittick, however, did not request any advice or help. **Rather, Mr.**
23 **Chittick indicated that he wanted to continue working on a plan with Menaged to**
24 **resolve the double-lien issue.** Accordingly, Mr. Beauchamp suggested that Mr. Chittick **and**
25 **Menaged** document **their** plan. Nothing more came of the conversation **until January.**

26 Mr. Chittick vastly understated the scope of the problem. On January 6, 2014,
Attorney Bob Miller at Bryan Cave sent Mr. Chittick a letter on behalf of various lenders

1 (the "Miller Lenders"). The letter asserted that the Miller Lenders had advanced purchase
2 money loans directly to trustees to buy more than 50 properties out of foreclosure, and had
3 recorded deeds of trust to evidence their first position security interest. DenSco, however,
4 had likewise recorded mortgages evidencing its purported purchase money loans for the same
5 properties. The Miller Lenders asserted that DenSco's claimed interest was a "practical and
6 legal impossibility since...only the Lenders provided the applicable trustee with certified
7 funds supporting the Borrowers purchase money acquisition for each of the Properties,"
8 demanded that DenSco subordinate its alleged interests to their interests, and threatened to
9 bring claims for fraud, negligent misrepresentation, and wrongful recordation.

10 The issue with the Miller Lenders **could not have been** a surprise to Mr. Chittick.
11 **For one**, although Mr. Chittick's business journals contain hearsay and present questions
12 regarding admissibility **and reliability**, they suggest that Menaged had told Mr. Chittick
13 about the double lien issue in November 2013, and had explained that the issue could affect
14 every property Menaged had purchased using DenSco funds going back as far as 2011. **Mr.**
15 **Chittick, however, did not provide this information to Mr. Beauchamp.**

16 **Second, Mr. Chittick was aware that Menaged had been double liening**
17 **properties using DenSco's funds as far back as *September 2012*. It was at that time that**
18 **Gregg Reichman at Active Funding Group told Mr. Chittick that Menaged had double**
19 **liened multiple properties with loans from both Active Funding Group and DenSco,**
20 **thereby putting in question DenSco's lien priority and loan-to-value ratio. It is unclear**
21 **what Menaged's excuse or explanation to Mr. Chittick was, and it is equally unclear**
22 **whether Mr. Chittick conducted any due diligence with respect to Mr. Menaged's**
23 **apparent propensity for jeopardizing DenSco's first position lien priority through**
24 **double liening. What is clear, is that after the double liening came to light, Mr. Chittick**
25 **drastically increased his lending to Menaged, such that by the end of 2013, more than**
26

1 half of his loan portfolio was tied up with Menaged--well in excess of the promised loan
2 concentrations DenSco had set forth in its disclosures to investors.

3 What is also clear, is that Mr. Chittick failed to provide this information to Mr.
4 Beauchamp, despite numerous opportunities to do so. Those opportunities included,
5 but were not limited to: (a) September 2012 when Mr. Chittick first became aware that
6 Menaged was double liening several properties with DenSco's loans, (b) Summer 2013
7 when Mr. Beauchamp advised Mr. Chittick that he needed to update DenSco's POM,
8 including updates regarding DenSco's borrowers and lending history, and (c) upon the
9 receipt of the FREO lawsuit. Yet despite Mr. Chittick's numerous opportunities to
10 disclose the issue to Mr. Beauchamp, Mr. Chittick concealed the double liening issue
11 from DenSco's counsel. Even when Mr. Chittick finally sought his attorneys' advice in
12 January 2014 (which happened only *after* Mr. Chittick was threatened with a lawsuit),
13 Mr. Chittick still concealed Menaged's lengthy history of double-liening properties
14 with DenSco loans.

15 Further, as set forth below, by the time Mr. Chittick finally provided Mr. Beauchamp
16 with a **minimal** and partial disclosure of the issues facing DenSco, Mr. Chittick and Menaged
17 had already reached a **verbal** agreement on how to deal with the double lien issue in
18 November 2013. Mr. Chittick, however, failed to provide that information to Mr.
19 Beauchamp in December. Nor did he immediately provide Mr. Beauchamp with the full
20 scope of the problem, or reveal the procedure he had agreed to with Menaged to resolve that
21 problem, in December or early January.

22 Instead, Mr. Chittick sent the Miller letter to Mr. Beauchamp on January 6, 2014 with
23 nothing more than a sparse request for Mr. Beauchamp to "read the first two pages." The
24 next day, Mr. Chittick provided Mr. Beauchamp a more expansive, if incomplete,
25 explanation. In his email, Mr. Chittick stated that he had lent Menaged a total of \$50 million
26

1 since 2007 and that he'd "never had a problem with payment or issue that hasn't been
2 resolved."

3 **Mr. Chittick's representations to Mr. Beauchamp regarding DenSco's**
4 **purportedly positive lending relationship with Menaged were grossly misleading.**
5 **While it was true that DenSco had lent Menaged approximately \$50 million since 2007,**
6 **DenSco had lent Menaged \$31 million in 2013 alone, and had \$28.5 million in loans to**
7 **Menaged outstanding as of the end of 2013, a large portion of which were more than**
8 **six months past due, including a significant number of 2012 loans. Further, Mr.**
9 **Chittick had known as of September 2012 that Menaged had double-liened multiple**
10 **properties with DenSco loans, thereby jeopardizing DenSco's lien position, yet not only**
11 **did he keep this a secret, Mr. Chittick thereafter drastically increased DenSco's lending**
12 **to Menaged, from \$4.65 million outstanding at the end of 2012 to more than \$28 million**
13 **outstanding by the end of 2013 (all of which Mr. Chittick also failed to timely disclose**
14 **to Mr. Beauchamp). Rather than provide Mr. Beauchamp with any of this information,**
15 **Chittick instead misrepresented to Mr. Beauchamp in January 2014 that Menaged was**
16 **a good borrower with a sterling track record. Mr. Chittick made similar**
17 **misrepresentations to Mr. Beauchamp regarding his positive lending relationship with**
18 **Menaged when he disclosed the FREO lawsuit.**

19 **Mr. Chittick further explained** that Menaged's wife had become critically ill in the
20 past year, and that Menaged had turned the day-to-day operations of his companies over to
21 his cousin. According to Mr. Chittick, the cousin would receive loan funds directly from
22 DenSco, then request loans for the same property from another lender, including the Miller
23 Lenders. The other lenders, who had funded their loans directly to the trustee, would record
24 their deed of trust, as would DenSco, leaving DenSco in second position. The cousin,
25 unfortunately, then purportedly absconded with the funds DenSco lent directly to Menaged.
26 This "double lien" issue consequently jeopardized DenSco's secured position and its loan-

1 to-value ratios. Mr. Chittick feared that a lawsuit with the Miller Lenders would jeopardize
2 DenSco's entire enterprise.

3 According to Mr. Chittick's email, Menaged purportedly found out about his cousin's
4 scam in November and revealed the fraud to Mr. Chittick at the time. Yet rather than consult
5 legal counsel, Mr. Chittick **devised** a plan to fix the double lien issue with Menaged. The
6 initial plan included DenSco paying off the other lenders. That required additional capital,
7 which Menaged and Mr. Chittick agreed would come from DenSco lending Menaged an
8 additional \$1 million and Menaged investing additional capital, including \$4-\$5 million from
9 the liquidation of other assets, as set forth in a term sheet DenSco and Menaged signed after
10 having already put their plan into effect. As the scope of the problem appeared to grow, Mr.
11 Chittick and Menaged agreed to terms of an expanded plan, which included further
12 investment from both DenSco and Menaged, who would also continue to flip and rent homes
13 to raise the necessary profits needed to pay off the other lenders.

14 Unbeknownst to Mr. Beauchamp, and according to Mr. Chittick's January 7, 2014
15 email, DenSco and Menaged had already been "proceeding with this plan since November
16 [2013]." That is corroborated by the Receiver, who asserts that Mr. Chittick **began lending**
17 **on the \$1 million line of credit** to Menaged to further their private workout plan in December
18 2013. In other words, by the time Mr. Chittick approached Mr. Beauchamp with a partial
19 disclosure of the issues in late 2013 and early 2014, Mr. Chittick had already agreed to a
20 business plan with Menaged to work out the double lien problems, and had already advanced
21 Menaged significant sums pursuant to that agreement. As Mr. Beauchamp explained in a
22 February 20, 2014 email to his colleagues, Mr. Chittick "without any additional
23 documentation or any legal advice...has been reworking his loans and deferring interest
24 payments to assist Borrower...When we became aware of this issue, we advised our client
25 that he needs to have a Forbearance Agreement in place to evidence the forbearance and the
26 additional protections he needs."

1 1. Mr. Beauchamp tells DenSco it cannot accept new funds or roll over
2 prior funds.

3 After receiving Mr. Chittick's January 7, 2014 email, Mr. Beauchamp was alarmed
4 that DenSco may be taking on new investors or rolling over prior investments without
5 disclosing the double lien issue or the workout to which Mr. Chittick and Menaged had
6 agreed. Mr. Beauchamp's advice to Mr. Chittick regarding disclosures Mr. Chittick had to
7 make to investors was immediate, clear, practical, consistent with his practice and
8 experience, and consistent with the standard of care: (a) DenSco was not permitted to take
9 new money without full disclosure to the investor lending the money; (b) DenSco was not
10 permitted to roll over existing investments without full disclosure to the investor rolling over
11 the money; and (c) DenSco needed to update its POM and make full disclosure to all its
12 investors. Mr. Beauchamp provided this advice to DenSco starting with his January 9, 2014
13 meeting with Mr. Chittick, and repeated it routinely over the next few months.

14 **Mr. Chittick clearly understood that he could not accept funds from new**
15 **investors without full disclosure as to the issues created by Menaged. As he told**
16 **Menaged in a February 11, 2014 email, "I've not taken any new investors, so if I do, I**
17 **have to disclose a lot to them, which is all about you." Although Mr. Chittick was aware**
18 **of his obligations on behalf of DenSco, as repeatedly explained to him by Mr.**
19 **Beauchamp, Mr. Chittick did not disclose to Mr. Beauchamp that he was apparently**
20 **raising funds from new investors without disclosing DenSco's situation with Menaged.**
21 **This is one more example of Mr. Chittick keeping Mr. Beauchamp in the dark as to the**
22 **extent of DenSco's problems with Menaged and Mr. Chittick's attempts to solve those**
23 **problems without seeking help.**

24 Mr. Beauchamp was also concerned about the source and use of the funds needed to
25 effectuate **the workout plan independently crafted by Menaged and Chittick.** Yet, as
26 Mr. Chittick explained, the funds for the \$1 million loan (which Mr. Chittick funded prior to

1 engaging Clark Hill) and an additional \$5 million loan Mr. Chittick and Menaged eventually
2 agreed to as part of the workout, would come from (a) Mr. Chittick's investment of additional
3 funds out of his retirement account, (b) Mr. Chittick's personal \$1.5 million line of credit,
4 and (c) DenSco's working capital raised as loans to other borrowers paid off. Again, and at
5 all times Mr. Beauchamp, advised Mr. Chittick that he could not obtain new investor funds
6 or roll over prior investments without full disclosure. Mr. Beauchamp also repeatedly
7 insisted that Mr. Chittick revise his out-of-date POM to provide disclosure to all his investors.
8 Mr. Chittick, however, insisted that DenSco first document the forbearance agreement so
9 that Mr. Chittick would have a plan to show his investors.

10 Further, Mr. Chittick assured Mr. Beauchamp repeatedly that he was making the
11 requisite disclosures to investors on an as-needed basis, and that he had informed a select
12 group of investors as to the double lien issue and proposed workout. That would be in
13 keeping with Mr. Chittick's prior approach to business. As far as Mr. Beauchamp knew, and
14 as Mr. Chittick had previously told him, Mr. Chittick indeed had a select group of investors
15 to whom he turned for advice and approval when confronted with important business
16 decisions, such as, for example, diversifying his investments into different types of
17 properties. Mr. Chittick told Mr. Beauchamp that he was seeking such advice from what Mr.
18 Chittick described as an "advisory council." And again, while the letters Mr. Chittick
19 appears to have authored prior to his passing contain hearsay and present questions regarding
20 admissibility **and reliability**, they include various statements suggesting that Mr. Chittick
21 may have previously told (and received approval from) a select group of investors that he
22 was investing specifically with Menaged, that he was increasing his loan concentration with
23 Menaged above the 10-15% concentration threshold suggested in his POMs, and that his
24 lending process involved funding loans directly to borrowers, rather than a trustee or escrow
25 account.

1 There was no reason for Mr. Beauchamp to question whether Mr. Chittick was in fact
2 providing disclosures to limited investors. Over the more than decade long strong
3 professional relationship Mr. Beauchamp had developed with Mr. Chittick, Mr. Chittick had
4 proven himself to be a trustworthy client with **what appeared to be a strong history of**
5 **sharing information and making prudent decisions with respect to disclosing information**
6 **to investors. It is clear now that Mr. Chittick was disregarding advice regarding loan**
7 **procedures and disclosures to DenSco investors, in addition to disregarding his own**
8 **loan and investment documents, by, for example, devoting the majority of his loan**
9 **portfolio to Menaged in late 2012 and 2013 in contravention of his representations to**
10 **investors regarding loan concentration and loan-to-value.**

11 2. Mr. Beauchamp advises DenSco to enter into a forbearance agreement.

12 Beginning in early January, and over the course of several meetings and telephone
13 conversations with Mr. Chittick, Mr. Beauchamp convinced Mr. Chittick that if he was going
14 to keep doing business with Menaged (and Mr. Chittick never wavered from his insistence
15 on working his way out of the double lien issue with Menaged), DenSco should at least
16 document the issues and workout plan in a forbearance agreement. Entering into a
17 forbearance agreement was sound, practical advice and consistent with the standard of care,
18 particularly where Mr. Chittick and Menaged had already implemented their own workout
19 plan. As Mr. Beauchamp repeatedly explained to Mr. Chittick, the forbearance agreement
20 would, among other things, (a) clarify and set forth the facts that led to the double lien issue,
21 (b) clarify and set forth the scope of the issue with the borrower, (c) acknowledge Mr.
22 Menaged's defaults under his loan documents with DenSco, as well as the amount and
23 validity of any debt owed to DenSco, (d) obtain additional written commitments from
24 Menaged and his entities to fund the workout Mr. Chittick and Menaged had already agreed
25 to; and (e) obtain additional security and other protections from Menaged and his entities to
26 protect DenSco and its investors. Mr. Beauchamp was crystal clear with Mr. Chittick all of

1 this would need to be disclosed to DenSco's investors. Other protections Mr. Beauchamp
2 advocated for, including additional admissions of fault and fraud by Menaged to protect
3 DenSco in the event of a bankruptcy filing by Menaged or his entities, were eventually
4 stricken from the agreement at Menaged and Mr. Chittick's insistence, and over Mr.
5 Beauchamp's objections.

6 Mr. Beauchamp had previously drafted and negotiated countless forbearance
7 agreements. He reasonably anticipated that documenting DenSco's forbearance would take
8 2-3 weeks. Negotiating the forbearance agreement, however, turned out to be more difficult
9 than Mr. Beauchamp could have reasonably imagined. For one, Menaged and his counsel
10 repeatedly insisted on edits and revisions that served only to undermine DenSco's fiduciary
11 duty to its investors. Mr. Beauchamp repeatedly had to undo changes proffered by Menaged
12 or Jeff Goulder, Menaged's attorney, and often by Mr. Chittick at Menaged's direction, in
13 order to protect DenSco's investors. For example, Menaged (and Mr. Goulder) attempted to
14 restrict the type of information that could be disclosed to investors, attempted to obtain
15 releases for Menaged related to his defaults and conduct, and refused to provide additional
16 security or information regarding that additional security. Mr. Beauchamp repeatedly pushed
17 back on these efforts and advised DenSco and Mr. Chittick, both in writing and verbally, that
18 they had fiduciary duties to DenSco's investors, which included disclosure obligations. For
19 example:

- 20 • February 4, 2014 email from Mr. Beauchamp to Mr. Chittick, advising Mr.
21 Chittick that "you cannot obligate DenSco to further help Scott, because that
22 would breach your fiduciary duty to your investors"
- 23 • February 4, 2014 email from Mr. Beauchamp to Mr. Chittick, advising Mr.
24 Chittick that Menaged's proposed changes to the Forbearance Agreement are
25 "substantive changes that clearly transfer significant risk to you and your
26 investors" and that if "even a portion of these changes are allowed to remain,

1 we can no longer describe this as an industry standard 'forbearance
2 agreement' in the description that you HAVE to provide to your investors"

- 3 • February 14, 2014 email from Mr. Beauchamp to Mr. Chittick, advising Mr.
4 Chittick that "[Goulder] clearly thinks he can force you to agree to accept a
5 watered down agreement and give up substantial rights that you should not
6 have to give up. Unfortunately, it is not your money. It is your investors'
7 money. So you have a fiduciary duty"

- 8 • February 25, 2014 email from Mr. Beauchamp to Mr. Chittick, advising Mr.
9 Chittick that Menaged's and his lawyer, Jeff Goulder's, "demands and
10 changes have pretty much killed your ability to sign the Forbearance
11 Agreement, which I believe Jeff wanted to do from the beginning" and that
12 Menaged was asking for concessions that are never included in forbearance
13 agreements

- 14 • March 13, 2014 email from Mr. Beauchamp to Mr. Chittick, advising Mr.
15 Chittick that "we cannot give Scott and his attorney any time to cause further
16 delay in getting this Forbearance Agreement finished and the necessary
17 disclosure prepared and circulated."

18 Mr. Beauchamp and Mr. Chittick also routinely discussed the need for disclosures to
19 investors with respect to, among other things, the double liening, loan concentration, and
20 loan-to-value issues. *See also, inter alia*, Deposition Exhibits 347, 357, 365, 372, and 387.
21 And of course, Mr. Beauchamp and Mr. Chittick had been discussing the general need
22 to disclose material facts to investors for years, at a minimum, during their scheduled
23 updates for the DenSco POM. In any event, Mr. Chittick, who had decades of experience
24 in financing, lending, and making necessary securities disclosures, knew, understood, and
25 appreciated the need to make disclosures to investors. Mr. Beauchamp repeatedly
26 advised Mr. Chittick that DenSco could not accept monies or rollover investments

1 without full disclosure. Mr. Chittick, however, would have been well aware of the need
2 to make disclosures to his investors given his prior experience.

3 Moreover, Mr. Chittick understood Mr. Beauchamp's advice. As noted above,
4 Mr. Chittick went so far as to joke with Menaged in February 2014 that he could not
5 raise funds from investors without telling those investors about Menaged. As Menaged
6 later noted to Chittick in a couple of March 13, 2015 emails, "[Beauchamp] is not going
7 to be happy I don't think, but it is what it is and we are doing what we need to do...",
8 and that "if you listened to [Beauchamp] a year ago we would never be where we are
9 now." In short, Mr. Chittick was going to follow Menaged--to whom he'd lend tens of
10 millions of dollars after learning about the double liening and, at a minimum, in
11 knowing contravention of his representations to investors regarding loan
12 concentration--irrespective of Mr. Beauchamp's advice.

13 Mr. Chittick and Menaged's ongoing conversations during the drafting of the
14 Forbearance Agreement bear this out. Not only did Mr. Chittick repeatedly cast aside
15 DenSco's attorney-client privilege in his conversations with Menaged, but the two were
16 (a) fixated on doing the deal they wanted to do irrespective of, and often in direct
17 contravention of, Mr. Beauchamp's advice and (b) cavalier about DenSco's
18 predicament and their respective roles in harming DenSco. Further, Mr. Chittick was
19 clearly willing to bend over backwards for Menaged. For example (and this list is by
20 no means exhaustive):

- 21 • On February 3, 2014, Chittick wrote to Menaged regarding the efforts to
22 draft a Forbearance Agreement, and asking if Menaged had "put a call in
23 to jeff to get him on the phone with [Mr. Beauchamp] and pound through"
24 what Mr. Chittick dismissively referred to as "their language arts
25 assignment."
26

- 1 • On February 5, 2014, Mr. Chittick wrote that he had directed Mr.
2 Beauchamp to “make some concenssions [sic] that you and I agreed to...”
- 3 • On February 7, 2014, Mr. Chittick wrote that he and Menaged were “going
4 to go over” the draft Forbearance Agreement, and that “after any changes
5 we agree to and make, david will amek [sic] them them [sic]. *I tell david to*
6 *send it to jeff, you tell jeff, the terms are agreeable between us,* and they can
7 only fix the spelling!” (emphasis added)
- 8 • On February 12, 2014, Mr. Chittick told Menaged, who was demanding that
9 he be released from “any fraud claim” by DenSco that Mr. Chittick
10 “understand[s] both sides.”
- 11 • On February 14, 2014, Chittick and Menaged complained amongst
12 themselves that “these lawyers are trying to prevent progress,” and
13 complained about the fees. Chittick asserted that in the interim, “we solved
14 another. What [sic] 20% of the problem.”
- 15 • On February 15, 2014, upset at his attorney, Mr. Beauchamp, for wanting
16 to know what Menaged’s “points of contention” were with respect to the
17 draft Forbearance Agreement, Mr. Chittick complained that “attorneys’
18 sole purpose is to self perserverance [sic].”
- 19 • On February 15, 2014, Menaged explained to Mr. Chittick that he was not
20 generating as much income as he expected, claimed he couldn’t keep
21 borrowing money from friends (who had purportedly paid AFG \$370,000
22 in interest already), and was concerned he’s merely “wasting money.” Mr.
23 Chittick informed Menaged that he had over \$2 million coming in next week
24 “that should allow u [sic] to start buying again.” Chittick never told Mr.
25 Beauchamp that he was raising \$2 million from investors and loaning it to
26 Menaged.

- 1 • On March 20, 2014, Mr. Chittick wrote Menaged that he had told Mr.
2 Beauchamp that "\$5 million should be the max of the work out loan."
3 According to Mr. Chittick's own accounting of the "loan," however, the
4 work out balance would eclipse that purported "maximum" a mere three
5 months later and would nearly double that "maximum" by the end of
6 2014.
- 7 • On April 3, 2014, Menaged told Mr. Chittick that he was signing the
8 Forbearance Agreement "even though it is not anymore a true
9 understanding of what we are doing...*but I signed it so at least you have it*
10 *for and not to have Dave Change it again and again with every move we*
11 *make."* Mr. Chittick did not object.
- 12 • Chittick routinely noted in his corporate "journal" that he did not plan on
13 ever needing or using the Forbearance Agreement.
- 14 • Almost a year after Mr. Beauchamp terminated the client relationship
15 with DenSco, on March 13, 2015, Menaged wrote to Chittick that
16 irrespective of Mr. Beauchamp, they are "doing what we need to do so we
17 are out of this" amidst jokes between the two of them that Mr. Beauchamp
18 only reached out to Mr. Chittick for a "free meal."

19 In addition to Menaged and his counsel's constant **delays and** revisions, the number
20 of loans affected by the double lien issue also kept growing. The number of loans Mr.
21 Chittick asserted were in issue grew from December 2013 to January 2014, and then grew
22 again from January 2014 to February 2014. This resulted in constant changes to the revised
23 workout documents, as well as to Menaged and Mr. Chittick's agreement regarding the
24 manner in which to fund the workout. Mr. Chittick, however, maintained, despite multiple
25 inquiries from Mr. Beauchamp, that he had run the calculations and projections and was
26 confident his plan with Menaged would work. Mr. Chittick also told Mr. Beauchamp that

1 he had gone over those projections with his “advisory council.” As Mr. Chittick described
2 it to Mr. Beauchamp, it was a cash flow issue, not a payment issue, and that with Menaged’s
3 additional investments, the workout would succeed.

4 Nevertheless, Mr. Beauchamp at one point became concerned enough at Menaged’s
5 intransigence and the apparent influence he held over Mr. Chittick, that he reached out to
6 third parties in late January 2014 to inquire about Menaged. Those third parties informed
7 him that Menaged was generally someone to be distrusted and not someone to do business
8 with. Mr. Beauchamp attempted to persuade Mr. Chittick of this during several heated
9 conversations, but Mr. Chittick ignored these admonitions, explaining that while Menaged
10 could be sharp and off-putting, Menaged had always performed on DenSco’s loans in the
11 past, and had stood by Mr. Chittick in tough times. **Unbeknownst to Mr. Beauchamp,**
12 **Menaged had in fact not always performed on DenSco’s loans and previously**
13 **jeopardized DenSco’s lien priorities. Mr. Chittick was well aware of those facts, yet**
14 **failed to share them with Mr. Beauchamp.** Despite Mr. Beauchamp’s efforts, Mr. Chittick
15 could not be convinced to cut ties with Menaged.

16 **F. Mr. Beauchamp terminates representation of DenSco and Mr. Chittick.**

17 When Mr. Beauchamp agreed to represent DenSco with respect to Menaged, Mr.
18 Beauchamp made clear that Mr. Chittick had to immediately update DenSco’s POM and
19 make full disclosure to its investors regarding the double lien issues, the workout with
20 Menaged, and the potential implications thereof on DenSco’s finances and the investors’
21 investments. **To that point,** Mr. Chittick **consistently** acknowledged that responsibility and
22 agreed to make the full disclosure once the forbearance agreement was properly documented.
23 As the forbearance neared completion, Mr. Beauchamp and his **[then-]** associate, Daniel
24 Schenk, began drafting the updated POM in April and May 2014. Specifically, the draft
25 2014 POM would have: provided a description of the forbearance agreement (including all
26 the parties’ funding obligations), the reason it was necessary, and its effect on DenSco’s

1 books; updated DenSco's goals for intended loan-to-value ratios; updated the descriptions
2 regarding DenSco's loan funding and securitizations procedures; updated the number of loan
3 defaults triggering foreclosures; and amended the descriptions regarding DenSco's borrower
4 base, among other things. Further, Mr. Beauchamp explained that the updated POM would
5 need to be accompanied with a cover letter or other communication highlighting the major
6 material changes, including the double lien issue and resulting workout agreement, to ensure
7 that investors were fully informed. Mr. Chittick, however, refused to provide the necessary
8 information to complete the POM and refused to approve the description of the workout or
9 the double lien issue, despite his prior acknowledgement that he would need to make full
10 disclosure to all of his investors about DenSco (as he had been doing through POMs and
11 newsletters since 2003). **Nevertheless, Mr. Chittick clearly understood the need for full**
12 **disclosure and the need to update his POM, yet failed to heed the advice Mr.**
13 **Beauchamp provided. As set forth above, Mr. Chittick joked with Menaged about**
14 **raising money without first providing the disclosures he knew he was required to**
15 **provide. Further, on June 27, 2014, upon learning that Mr. Chittick was going to meet**
16 **with an "investor," Menaged wrote to Chittick "hope you are not meeting with an**
17 **investor who is looking for the memorandum! HaHa." Chittick's response: "no, it's**
18 **my mom's meeting with my other borrowers." Mr. Chittick fully understood and**
19 **appreciated the need to keep his investors apprised, based on more than a decade of**
20 **experience in raising investor money to fund hard money lending, repeated disclosures**
21 **to his investors through POMs and otherwise during his time as a hard money lender,**
22 **and his lawyers' repeated advice and counsel on DenSco's disclosure obligations. Mr.**
23 **Chittick knowingly chose not to make those disclosures.**

24 In May 2014, Mr. Beauchamp left a physical copy of the draft POM at Mr. Chittick's
25 office and thereafter had a conversation with Mr. Chittick where Mr. Beauchamp asked
26 him what Mr. Chittick's specific issues were with the disclosure. Mr. Chittick responded

1 that there was nothing wrong with the disclosure, he was simply not ready to make any kind
2 of disclosures to his investors at **that** stage. Mr. Beauchamp again explained that Mr.
3 Chittick had no choice in the matter and that he had a fiduciary duty to his investors to make
4 these disclosures. Mr. Chittick would not budge. Faced with an intransigent client who was
5 now acting contrary to the advice Mr. Beauchamp was providing, and with concerns that Mr.
6 Chittick may not have been providing any disclosures to anyone since January 2014, Mr.
7 Beauchamp informed Mr. Chittick that Beauchamp and Clark Hill could not and would not
8 represent DenSco any longer. Mr. Beauchamp also told Chittick that he would need to retain
9 new securities counsel, not only to provide the proper disclosure to DenSco's investors, but
10 to protect DenSco's rights under the forbearance agreement. Mr. Chittick suggested that he
11 had already started that process and was speaking with someone else.

12 Thereafter, Mr. Beauchamp and Clark Hill ceased providing DenSco with securities
13 advice. Mr. Chittick accepted that, but asked that Mr. Beauchamp clean up some small issues
14 with the forbearance agreement before ending the relationship entirely. Other than
15 addressing those small forbearance agreement issues in June and July, Clark Hill stopped
16 working with DenSco or Mr. Chittick in any capacity until 2016, when Mr. Chittick
17 requested that Mr. Beauchamp assist with a very limited issue involving an audit by the
18 Arizona Department of Financial Institutions - work Mr. Beauchamp had previously
19 performed for DenSco and that Mr. Chittick characteristically believed could be done most
20 cost-effectively by Mr. Beauchamp rather than by a new lawyer with no background on the
21 issue.

22 **G. Menaged continues to perpetrate fraud on DenSco, which only grows in**
23 **scale.**

24 During the time that he represented it regarding securities matters, Mr. Beauchamp (a)
25 repeatedly advised DenSco that it had to make full disclosure to its investors and then
26 terminated his relationship as securities counsel for DenSco when DenSco refused, (b)

1 explained that DenSco would need to retain new counsel after Mr. Beauchamp withdrew to
2 provide proper disclosures and monitor the forbearance, and (c) repeatedly reminded Mr.
3 Chittick that he needed to fund loans directly to a trustee or escrow company, rather than to
4 the borrower. Mr. Chittick ignored Mr. Beauchamp's advice. It is unclear if DenSco ever
5 engaged or even talked to new counsel. It appears Mr. Chittick never issued an updated POM,
6 a fact which could not have gone unnoticed by DenSco's sophisticated investors, who had
7 gotten used to regular updates from DenSco, not only through updated POMs, but through
8 monthly newsletters and periodic investor meetings. It is quite clear that **despite the double**
9 **liening issue which arose as a direct result of Mr. Chittick's careless practice of lending**
10 **money directly to Menaged,** Mr. Chittick continued to loan funds directly to Menaged in
11 direct contravention of **common sense and** Mr. Beauchamp's repeated advice **to fund loans**
12 **directly to a trustee or escrow company. As discovery has made clear, Mr. Chittick's**
13 **approach to lending was much more reckless than he represented to his investors or that**
14 **he disclosed to his attorney.** Nevertheless, the brazen scope of Menaged's efforts to defraud
15 DenSco **through use of copies of bank issued cashier's checks and falsified trustee's sale**
16 **receipts** was not foreseeable. Nor was the **complicity of Chase Bank and US Bank in what**
17 **the Receiver has termed the "Second Fraud" foreseeable.**

18 After several years of bilking DenSco and others out of millions of dollars, Menaged
19 was eventually arrested. The United States Department of Justice first charged Menaged with
20 defrauding various banks through his purported furniture stores. Menaged used fabricated
21 receipts of purchases made at the furniture store to obtain credit from banks using the names
22 of, and personal identification information of, individuals who had recently died. He would
23 then incur millions of dollars in fraudulent charges on those fake accounts. Incredibly,
24 Menaged acknowledged in his plea agreement that he had perpetrated the bank fraud in order
25 to get cash to continue defrauding DenSco.

1 The Department of Justice then also charged Menaged with money laundering with
2 respect to the DenSco fraud. In his plea agreement, Menaged admitted that from January 2014
3 through June 2016, he embezzled millions of dollars without purchasing properties with the
4 loans obtained from Densco. He explained that Densco would wire money to purchase
5 properties directly to Menaged who, in turn, would send Densco "an image of a bank cashier's
6 check and a copy of a Trustee Certificate of Sale Receipt." No sales, however, actually took
7 place. Menaged would simply redeposit the cashier's check into his account and create bogus
8 receipts for the purchase of the property. Between January 2013 and June 2016, Menaged
9 admitted he obtained 2,172 loans from DenSco totaling approximately \$734,484,440.67. Yet,
10 of the 2,712 loans made by DenSco, only 96 involved actual property transactions. Menaged
11 supposedly used the remaining 2,616 loans for personal expenses, gambling trips, and transfers
12 to his family members and associates. Menaged would also utilize new loans from DenSco to
13 pay back outstanding DenSco loans to conceal the embezzlement. Menaged was sentenced to
14 17 years in jail. As First Assistant U.S. Attorney Elizabeth Strange stated, the "lengthy
15 sentence is a fitting punishment for his egregious crimes."

16 Menaged **appears to have shamelessly duped Mr. Chittick and taken advantage of**
17 **Mr. Chittick's refusal to utilize lending procedures that would protect DenSco's**
18 **investments and first lien priority, notwithstanding his lawyers' advice, common business**
19 **practice, common sense, or the First Fraud (which would have alerted anyone to the risks**
20 **inherent in Mr. Chittick's lending practices).** Documents and recordings suggest that
21 Menaged never invested any money into the workout plan. He never obtained any money from
22 Israel despite purportedly making numerous trips to the country for that very purpose, blatantly
23 lied that funds that could have been used to fund the workout were tied up in his divorce
24 proceedings, and ultimately invented a non-existent investment scheme involving
25 "auction.com" which Menaged falsely claimed was retaining most of DenSco's money (to go
26

1 along with his fabrication of the fraudulent cousin and terminally ill wife). Sadly, Mr. Chittick
2 appears to have bought into all of Menaged's lies, or turned a blind eye, until his last days.

3 **H. Mr. Beauchamp briefly represents DenSco with respect to the Arizona**
4 **Department of Financial Institutions licensing requirements in 2016**

5 In prior years, Mr. Beauchamp had advised DenSco as to whether it would be
6 considered a mortgage broker by the ADFI, and thus, subject to ADFI licensing
7 requirements. In 2016, at Mr. Chittick's request, Mr. Beauchamp again represented
8 DenSco in that limited regard and provided advice as to whether DenSco was subject to
9 ADFI licensure. Mr. Beauchamp again determined that DenSco was not subject to ADFI
10 licensing requirements. The ADFI did not (and has never) contested that conclusion.

11 **I. Mr. Beauchamp briefly helps Shawna Heuer and DenSco after Mr.**
12 **Chittick's passing.**

13 Mr. Beauchamp first found out that Mr. Chittick had committed suicide on July
14 30, 2016, when Shawna Heuer called him while he was driving down State Route 51,
15 forcing him to pull over to the side of the road and collect himself. At that time, Mr.
16 Beauchamp did not have knowledge as to DenSco's business practices or activities after
17 Mr. Beauchamp fired DenSco for failing to make the requisite disclosures to its investors.

18 Mr. Beauchamp communicated with the Arizona Corporation Commission
19 ("ACC") on August 3, 2016 and they became actively involved with respect to DenSco's
20 wind-down.

21 Clark Hill undertook a very limited representation solely to open an estate and
22 arrange for the appointment of Ms. Heuer as the personal representative of Mr.
23 Chittick's estate. Ms. Heuer was appointed on August 4, 2016. On or about August 10,
24 2016, Gammage & Burnham took over representing her in that capacity. By August 18,
25 2016, the Receiver had been appointed over DenSco, at the ACC's request.

1 In the interim, however, DenSco had no employees, officers, or directors other than
2 Mr. Chittick, and Ms. Heuer had no knowledge of DenSco's business, records, or hard
3 money lending in general. Although DenSco had a letter agreement with another hard
4 money lender, Robert Koehler, to step in and wind down DenSco's affairs in the event
5 Mr. Chittick was incapable of doing so, Mr. Koehler declined to do so. Given that DenSco
6 needed to provide information to its investors and the ACC, Mr. Beauchamp briefly
7 stepped in to gather information, maintain the status quo, provide information to the
8 ACC, and provide updates to investors until someone else could be appointed.

9 Mr. Beauchamp's actions during this brief period of time were helpful and
10 necessary and permitted by the Arizona Rules of Professional Conduct. On August 3,
11 2016 Mr. Beauchamp sent an email to the investors alerting them to the situation
12 involving Chittick's death and information then-known about the state of DenSco's
13 finances, after receiving input from Ms. Heuer and Mr. Koehler. Until Mr. Davis was
14 appointed as Receiver for DenSco, Mr. Beauchamp periodically provided status updates
15 to the investors. These communications with the investors were accurate, and contrary
16 to the Receiver's unfounded assertions otherwise, were not misleading. Mr. Beauchamp
17 recommended using a forensic accountant to trace DenSco's funds, supported involving
18 the police to investigate Menaged, and fully cooperated in providing documents and
19 information to both the ACC and the Receiver. Mr. Beauchamp further reasonably
20 relied on Gammage & Burnham, as counsel for the Chittick Estate, to produce
21 information and assert claims of privilege and confidentiality on behalf of Mr. Chittick.
22 Contrary to the Receiver, Mr. Beauchamp did not try to hide or conceal any information,
23 did not misrepresent the scope of his attorney-client relationship, did not use his attorney-
24 client relationship to shield information, and fully cooperated with both the ACC and the
25 Receiver. Mr. Beauchamp was as open as he could be given his limited knowledge of
26 DenSco's affairs in the two years since he fired the client, and the limited information

1 DenSco had provided him. While Mr. Beauchamp understood that given the situation,
2 DenSco's creditors might attempt to point the finger at DenSco's professionals, including
3 Clark Hill and Mr. Beauchamp, in an effort to minimize their losses, Mr. Beauchamp
4 made the prudent and permissible decision under difficult circumstances, at Ms. Heuer's
5 request and when no one else was available, to remain helpful to DenSco, DenSco's
6 investors, the ACC, and the Receiver, for a limited period of time.

7 Defendants further reject recent allegations that Mr. Beauchamp's potential
8 representation of an entity owned by Barry Luchtel gave rise to a conflict. Mr. Luchtel
9 borrowed money from DenSco through his entity AZ Home Buyer LLC, among others,
10 and invested in DenSco through his entity BLL Capital, LLC. In February 2016, Mr.
11 Luchtel communicated with Mr. Beauchamp regarding representing Luchtel entity
12 Kayak Capital, LLC, with respect to ADFI licensing requirements. Years earlier, Mr.
13 Luchtel had requested an electronic version of the DenSco POM, but Denny Chittick
14 declined to share it. Aside from a potential consultation, Mr. Beauchamp does not recall
15 performing any work for Kayak. Clark Hill has not been able to locate a signed
16 engagement letter, and it does not appear that Kayak was ever billed for legal services.
17 Even had Mr. Beauchamp undertaken the representation of Kayak with respect to ADFI,
18 that would not have presented a conflict.

19
20 Discovery is continuing. Defendants may supplement.

21 **II. LEGAL THEORIES OF CLAIMS AND DEFENSES.**

22 **A. Plaintiff's claims**

23 *Legal Malpractice*

24 Receiver asserts that Defendants, in their representation of DenSco, committed
25 malpractice and breached fiduciary duties owed to DenSco. Legal malpractice requires proof
26 of the existence of a duty, breach of duty, that defendant's breach was the actual and proximate

1 cause of damages, and the “nature and extent” of those damages. *Glaze v. Larsen*, 207 Ariz.
2 26, 29 ¶ 12 83 P.3d 26, 29 (Ariz. 2004) (citations and quotations omitted).

3 Receiver cannot prove breach of duty, actual and proximate cause, or resulting damages.
4 To prove breach of duty, Receiver will need to demonstrate that Defendants deviated from the
5 professional standard of care. *Phillips v. Clancy*, 152 Ariz. 415, 418, 733 P.2d 300, 303 (App.
6 1986). Defendants’ advice and conduct in representing DenSco and, in doing so, representing
7 Mr. Chittick as president of DenSco, was consistent with Defendants’ practice and experience,
8 and consistent with the standard of care. Thus, Defendants did not breach their duties to
9 DenSco. Receiver will also need to prove that if Defendants had not purportedly breached the
10 standard of care, that DenSco would not have suffered injury. *Id.* Whatever harm befell
11 DenSco was not an actual or foreseeable result of the advice provided by Defendants. Thus,
12 Receiver’s malpractice claim fails.

13 14 *Aiding and Abetting Breach of Fiduciary Duties*

15 Receiver asserts that Defendants aided and abetted Mr. Chittick in breaching his
16 fiduciary duties to DenSco. Claims of aiding and abetting require proof that: (1) the primary
17 tortfeasor must commit a tort that caused injury to the plaintiff; (2) the defendant must know
18 that the primary tortfeasor’s conduct constitutes a breach of duty; (3) the defendant must
19 substantially assist or encourage the primary tortfeasor in the achievement of that breach and
20 (4) there must be a causal relationship between the defendant’s assistance or encouragement
21 and the primary tortfeasor’s commission of the tort. *Wells Fargo Bank v. Az. Laborers,*
22 *Teamsters and Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 485 (Ariz.
23 2002); *Sec. Title Agency, Inc. v. Pope*, 219 Ariz. 480, 491 (App. 2008). Importantly, “[b]ecause
24 aiding and abetting is a theory of secondary liability, the party charged with the tort must have
25 knowledge of the primary violation.” *Wells Fargo*, 201 Ariz. at 485.

1 It is unclear from the Complaint what actions the Receiver asserts constitute a breach
2 of Mr. Chittick's fiduciary duties to DenSco. In any event, as set forth above, Defendants'
3 advice and conduct in representing DenSco were consistent with the applicable standard of
4 care. Defendants did not "substantially assist or encourage" Mr. Chittick in breaching his
5 duties to DenSco, Defendants did not have knowledge of Mr. Chittick's purported "primary
6 violation," nor is there a causal relationship between Defendants' representation of DenSco
7 and Mr. Chittick's purported tortious conduct with respect to DenSco. Further, as set forth
8 above, whatever harm befell DenSco was not an actual or foreseeable result of Defendants'
9 actions or inactions.

10 **B. Affirmative Defenses**

11 *Statute of Limitations*

12 Both the legal malpractice claim and the aiding and abetting claim have a two-year
13 statute of limitations. See A.R.S. §12-542(1) (An action "[f]or injuries done to the person of
14 another" shall be commenced and prosecuted within two years after the cause of action accrues,
15 and not afterward"). Receiver **who was appointed on August 18, 2016**, did not file the
16 Complaint in this action until October 16, 2017, which was well outside the statute of
17 limitations. DenSco, and potentially the Investors, could have discovered at least as of Summer
18 2014, that DenSco's loans to Menaged (or his entities) and DenSco's lending practices with
19 respect to Menaged, could give rise to potential causes of action against Mr. Chittick or his
20 agents. Consequently, because the statute of limitations ran, at the latest, in the Summer of
21 2016, the Complaint is barred in its entirety.

22 *In pari delicto and unclean hands*

23 Arizona law recognizes the doctrine of in pari delicto. *Brand v. Elledge*, 89 Ariz. 200,
24 205, 360 P.2d 213, 217 (1961) (quoting *Furman v. Furman*, 34 N.Y.S.2d 699, 704 (N.Y. Sup.
25 Ct. 1941), *aff'd*, 40 N.E.2d 643 (N.Y. 1942)). In pari delicto is an affirmative defense by which
26

1 a party is barred from recovering damages if his losses are substantially caused by activities
2 the law forbade him to engage in.” *Stewart v. Wilmington Trust SP Servs., Inc.*, 112 A.3d 271,
3 301–02 (Del. Ch.), *aff’d*, 126 A.3d 1115 (Del. 2015) (quotation omitted). The defense may
4 be raised against a receiver. *Id.* (“no cogent reason for sparing the innocent Receiver the effect
5 of in pari delicto while equally innocent stockholders or policyholders would be barred from
6 relief in the derivative context”); *Knauer v. Jonathon Roberts Fin. Grp., Inc.*, 348 F.3d 230,
7 236 (7th Cir. 2003) (affirming dismissal of the receiver’s claims against the broker dealers,
8 concluding that they were barred by the defense of in pari delicto).

9 Here, to the extent there are claims against the Defendants, DenSco, into whose shoes
10 the Receivers steps, bears fault for damages about which it complains. Thus, the Receiver’s
11 claims are barred by doctrine of *in pari delicto* and, to the extent it specifically seeks equitable
12 relief, by the related doctrine of unclean hands.

13 14 *Laches*

15 A claim is barred by laches when the delay in bringing the claim is “unreasonable under
16 the circumstances” given “the party’s knowledge of his or her right” and “any change in
17 circumstances caused by the delay has resulted in prejudice to the other party sufficient to
18 justify denial of relief.” *Mathieu v. Mahoney*, 174 Ariz. 456, 459, 851 P.2d 81, 84 (1993).
19 Receiver seeks to recover potentially millions of dollars in alleged damages resulting from
20 loans Mr. Chittick made to Menaged. DenSco would have been aware of the harms that could
21 befall DenSco and its investors as a result of DenSco’s loans to, and lending practices with,
22 Menaged, by Summer 2014 at the latest. DenSco’s inaction for several years, up through the
23 death of Mr. Chittick, to seek relief against any potential third party for harms suffered by
24 DenSco was unreasonable in light of DenSco’s knowledge. Because the Receiver steps into
25 DenSco’s shoes, the claims are barred.

1 *Setoff*

2 Clark Hill filed a proof of claim in the DenSco Receivership for unpaid fees incurred
3 by Clark Hill on behalf of DenSco after Mr. Chittick's death. The Receiver improperly denied
4 the claim on the basis of an alleged conflict of interest. To the extent Defendants are found to
5 owe Plaintiff anything, that debt must be reduced any sums Plaintiff owes Clark Hill.

6
7 *Non-Parties at Fault*

8 As set forth in Defendants' Notice of Third Parties at Fault, various third parties,
9 including, but not limited to, Mr. Chittick, Menaged, Menaged's banks (Chase Bank
10 and US Bank), and Gregg Reichman/AFG, over whom Defendants have no authority or
11 control, are at fault for any damages suffered. The Receiver concurs.

12 With respect to Mr. Chittick, the Receiver filed a claim against Mr. Chittick's
13 estate for \$48,811,635.54, asserted on numerous occasions that Mr. Chittick engaged in
14 a Ponzi scheme pursuant to which Mr. Chittick defrauded DenSco investors, and
15 obtained repayment of DenSco proceeds from net Ponzi "winners" based on the
16 allegation that Mr. Chittick had committed fraud. Further, it is clear that Mr.
17 Chittick's lending practices were at best careless and that Mr. Chittick concealed
18 critical information from his investors and his counsel. For example, Mr. Chittick was
19 aware of Menaged's misuse of DenSco's funds and double liening of properties as far
20 back as September 2012, yet did not provide this information to Mr. Beauchamp or his
21 investors. Instead, Mr. Chittick chose to drastically increase his lending to Menaged,
22 from \$4.65 million at the end of 2012 to more than \$28 million by the end of 2013 (none
23 of which he disclosed to Mr. Beauchamp at the time, or even when he first sought Mr.
24 Beauchamp's counsel in January 2014). Further, although Mr. Chittick understood
25 that the double liening issue arose as a direct result of Mr. Chittick's practice of lending
26 money directly to borrowers, Mr. Chittick refused to change his lending practices,

1 thereby allowing Menaged to perpetrate yet another fraud on DenSco. Even when Mr.
2 Chittick expressed suspicion of Menaged and his business practices , Mr. Chittick
3 ignored his suspicions. For example, as described above, Mr. Chittick dramatically
4 increased his lending to Menaged *after* learning that Menaged was double liening
5 properties in 2012. And although Defendants do not concede the accuracy, reliability,
6 or admissibility of Mr. Chittick's journals, Mr. Chittick noted in his corporate journal
7 as early as June 10, 2014 that he was aware that none of his loans with Menaged were
8 being secured by deeds of trust, yet he continued to lend Menaged hundreds of millions
9 of dollars. Mr. Chittick hid or misrepresented many of the details regarding his lending
10 practices and finances from DenSco's professionals, including its attorneys and
11 accountants.

12 With respect to Menaged, the Receiver settled a claim against Menaged, who has
13 pled guilty to defrauding DenSco, for \$31 million in damages caused to DenSco as a
14 result of Menaged's fraud (See Deposition Exhibit 510 and Receiver's Petition No. 32).

15 With respect to Menaged's banks, the Receiver has retained counsel to pursue
16 Chase Bank and US Bank and has testified that he believes the Receivership has viable
17 claims against the banks for aiding and abetting Menaged's fraud by allowing Menaged
18 to withdraw and immediately redeposit nearly \$320 million dollars of DenSco funds.
19 Discovery is ongoing, but it is believed the banks allowed Menaged to circumvent their
20 own policies and procedures with respect to the withdrawal and deposit of funds, that
21 the banks knew DenSco wired the loan proceeds into Menaged's accounts to fund the
22 purchase of real property but that Menaged did not use DenSco's funds for the purpose
23 intended, and that the banks facilitated Menaged's fraudulent conduct.

24 With respect to AFG and its employees and agents, the Receiver has likewise
25 retained counsel to pursue those persons and entities for aiding and abetting Menaged's
26 fraud or, potentially, for aiding and abetting Mr. Chittick's breach of fiduciary duty to

1 his DenSco or his investors. AFG learned that Menaged was double liening properties
2 with AFG and DenSco loans in the Fall of 2012, then (much like DenSco), responded by
3 lending Menaged even more money. Upon information and belief, AFG made those
4 loans to Menaged knowing that DenSco would end up in second position on AFG's
5 collateral, and may have benefitted from Menaged's fraudulent use of DenSco's funds.
6 Discovery is ongoing.

7
8 Additional defenses:

- 9 • Densco is at fault for any damages suffered. Among other things, DenSco
10 represented to its investors that it would obtain first position liens,
11 understood the proper loan practices and procedures that would ensure
12 DenSco's loans would be in first position, and received advice from its
13 lawyers' regarding such practices and procedures, yet chose to engage in
14 riskier lending practices by funding directly to his borrowers, including
15 Menaged. After the First Fraud, DenSco again ignored his lawyers' advice
16 and standard lending practices, thereby exposing DenSco and its investors
17 to the same risks, this time manifested in the Second Fraud. DenSco also
18 ignored its lawyers' advice regarding necessary disclosure prior to raising
19 or rolling over investor funds. Further, DenSco knew it had made
20 representations to its investors regarding loan concentrations and secured
21 first position priority, yet nevertheless lent excessive amounts of money to
22 Menaged after learning of Menaged's habit of double liening properties, in
23 direct contravention of those representations (and without informing his
24 attorney).
- 25 • Densco, in to whose shoes the Receiver steps, assumed the risk of any actions
26 taken or not taken by DenSco or Mr. Chittick. *Hildebrand v. Minyard*, 16 Ariz.

1 App. 583, 585, 494 P.2d 1328, 1330 (1972) (“A plaintiff who by contract or
2 otherwise expressly agrees to accept a risk of harm arising from the defendant’s
3 negligent or reckless conduct cannot recover for such harm”) (*quoting*
4 Restatement (Second) of Torts § 496(B) (1965)).

- 5 • Receiver cannot demonstrate proximate cause or loss causation because
6 Defendants are not the actual or proximate cause of any damages suffered.
7 **Among other things: (a) the damages were caused by Menaged, DenSco,**
8 **and Mr. Chittick, as well as the actions of AFG and Menaged’s banks, (b)**
9 **all damages associated with the First Fraud (including the alleged**
10 **“damages” associated with the \$1 million note and the \$5 million note)**
11 **were incurred before Mr. Chittick ever sought Mr. Beauchamp’s counsel**
12 **in January 2014, (c) Plaintiff’s attempts to make Defendants responsible**
13 **for damages that predated their involvement by alleging that Defendants**
14 **should have been aware of earlier purported “red flags” or that**
15 **Defendants aided and abetted the use of expired POMs, fail both factually**
16 **and legally, and (d) damages associated with the Second Fraud were**
17 **incurred as a result of DenSco’s failure to abide by its attorneys’ advice,**
18 **DenSco’s ongoing failure to abide by its loan documents, Menaged’s**
19 **fraudulent conduct, and the banks’ aiding and abetting of that fraudulent**
20 **conduct. Further, as set forth above, Mr. Chittick was intent on working**
21 **together with Menaged to “solve” the double lien issues, irrespective of**
22 **DenSco’s professionals’ advice.**
- 23 • Any damages suffered were the result of intervening or superseding events or
24 causes over which the Defendants had no control and were not legally
25 responsible. *See above.*
- 26 • Receiver’s claims are barred by doctrines of waiver and estoppel.

1 Discovery is continuing. Defendants may supplement.

2 **III. WITNESSES.**

3 Because **discovery is not complete**, Defendants have not yet identified all persons it
4 may call as witnesses at trial, but reserves the right to call any of the following persons to
5 testify as a witness at trial:

- 6 1. David Beauchamp
7 c/o Coppersmith Brockelman, PLC
8 2800N. Central Avenue, Suite 1900
9 Phoenix, Arizona 85004

10 Mr. Beauchamp is expected to testify regarding the allegations in the Complaint and
11 his representation of DenSco and of Mr. Chittick in his capacity as president of DenSco.

- 12 2. Peter Davis, Receiver of DenSco Investment Corporation
13 c/o Osborn Maledon, P.A.
14 2929 N. Central Avenue, Suite 2100
Phoenix, Arizona 85012

15 Mr. Davis is expected to testify regarding the allegations in the Complaint; the
16 Receiver's evaluations, analyses, and determinations regarding all aspects of DenSco's
17 finances, including, but not limited to, DenSco's loans, lending practices, record keeping,
18 financial transactions, and solvency; the Receiver's maintenance of any DenSco or Chittick
19 records or property, including, but not limited to, electronic records, websites, and email
20 communications; the Receiver's communications with third parties related to DenSco,
21 including communications with financial institutions, investors, and accountants and other
22 professionals; the Receiver's determinations regarding the Receiver's evaluation and analysis
23 regarding the potential fault, liability, or culpability of any third party with respect to any
24 losses suffered by DenSco, including, but not limited, to Chase Bank, U.S. Bank, Yomtov
25 Menaged, Active Funding Group, LLC, and/or Gregg Seth Reichman.

1 3. David Preston
2 c/o Gammage & Burnham
3 2 N. Central Avenue, Suite 15
4 Phoenix, Arizona 85004

5 Mr. Preston is expected to testify with respect to and consistently with his
6 **deposition testimony, and is expected to testify** regarding DenSco and Mr. Chittick's
7 finances and tax returns, **Mr. Chittick's lack of complete or accurate disclosures to Mr.**
8 **Preston, DenSco's accountant, regarding DenSco's finances; Mr. Chittick's retirement**
9 **planning and his withdrawal of investments in DenSco for his own personal benefit;**
10 **and the investments Mr. Preston and his mother-in-law made in DenSco and Mr.**
11 **Chittick's representations to them regarding those investments. Mr. Preston is also**
12 **expected to testify regarding Mr. Chittick's character and personality, and the history**
13 **and nature of his relationship with Mr. Chittick.**

14 4. Daniel Schenk
15 c/o Coppersmith Brockelman, PLC
16 2801 N. Central Avenue, Suite 1900
17 Phoenix, Arizona 85004

18 Mr. Schenk is expected to testify regarding the work he performed on behalf of
19 DenSco and Mr. Chittick in his capacity as president of DenSco. Mr. Schenk is also
20 **expected to testify regarding** Menaged's communications with Beauchamp, Menaged's
21 communications with Mr. Chittick, and Mr. Beauchamp's communications with Mr. Chittick.
22 **Mr. Schenk is expected to testify regarding Clark Hill's advice to DenSco that it could**
23 **not raise money from investors without full disclosure to those investors, Mr. Chittick's**
24 **ultimate refusal to provide disclosures to his investors, and Clark Hill's termination of**
25 **its representation of DenSco.**

26 5. Robert Anderson
 c/o Coppersmith Brockelman, PLC
 2802 N. Central Avenue, Suite 1900
 Phoenix, Arizona 85004

1 Mr. Anderson is expected to **testify** regarding the work he performed on behalf of
2 DenSco and Mr. Chittick in his capacity as president of DenSco. **Mr. Anderson is also**
3 **expected to testify regarding Clark Hill's advice to DenSco.**

4 **6. Robert Koehler**

5 **Mr. Koehler is expected to have knowledge regarding, and testify about, hard**
6 **money lending practices and procedures used by hard money lenders to protect their**
7 **investments; how typical hard money lending practices compare to those used by**
8 **DenSco; his investment in DenSco; DenSco's communications with Mr. Koehler**
9 **regarding his investment; Mr. Koehler's agreement to windup DenSco's affairs in the**
10 **event Mr. Chittick was unable to continue leading the company; Mr. Koehler's**
11 **relationship and communications with Mr. Chittick; Mr. Beauchamp's efforts on behalf**
12 **of DenSco after Mr. Chittick's passing; and Mr. Chittick's sophistication and**
13 **knowledge of prudent hard money lending practices.**

14 **7. Victor Gojgaj**
15 **c/o David Knapper Law Office**
16 **1599 East Oranewood #125**
Phoenix, Arizona 85020

17 **Mr. Gojgaj is expected to have knowledge regarding, and testify about, his**
18 **borrowing relationship with DenSco; DenSco's lax lending procedures; DenSco's**
19 **collection and enforcement procedures; his relationship with Mr. Chittick; Mr. Chittick**
20 **character and personality traits; and Mr. Chittick's sophistication and knowledge of**
21 **prudent hard money lending practices.**

22 **8. Steve Bunger**
23 **c/o David Knapper Law Office**
24 **1599 East Oranewood #125**
Phoenix, Arizona 85020

25 **Mr. Bunger is expected to testify about his relationship with Mr. Chittick and**
26 **DenSco; his investments in DenSco; his communications with Mr. Chittick regarding**

1 his investments in DenSco; his understanding of DenSco's lending practices and
2 procedures; Mr. Chittick's character and personality traits; and Mr. Chittick's
3 sophistication and knowledge of prudent hard money lending practices.

4 9. **Brian Imdieke**
5 **c/o David Knapper Law Office**
6 **1599 East Oranewood #125**
7 **Phoenix, Arizona 85020**

8 **Mr. Imdieke is expected to testify about his relationship with Mr. Chittick and**
9 **DenSco; his investments in DenSco; his communications with Mr. Chittick regarding**
10 **his investments in DenSco; his understanding of DenSco's lending practices and**
11 **procedures; Mr. Chittick's character and personality traits; and Mr. Chittick's**
12 **sophistication and knowledge of prudent hard money lending practices**

13 10. Any witnesses disclosed by other parties.

14 11. Any witnesses that become known through discovery.

15 12. Custodian or other foundational witnesses necessary to admit exhibits.

16 Discovery is continuing. Defendants may supplement.

17 **IV. ADDITIONAL PERSONS WHO MAY HAVE RELEVANT INFORMATION.**

18 13. Yomtov "Scott" Menaged

19 Scott Menaged is expected to have knowledge regarding all aspects of any personal,
20 financial, or business dealings he may have had with DenSco and Mr. Chittick; all aspects of
21 the fraud(s) he perpetrated on DenSco and Mr. Chittick, either directly, or through one of his
22 entities, including, but not limited to, Easy Investments, LLC, Arizona Home Foreclosures,
23 LLC, Furniture King, LLC, and Scott's Fine Furniture; all aspects of actions or conduct
24 related to his criminal indictment, plea bargain, or sentencing in the United States District
25 Court for the District of Arizona; his communications with DenSco and Mr. Chittick; his
26 communications with Mr. Beauchamp; **his relationship and communications with AFG**

1 and its principals; his use of AFG to further his fraud against DenSco; his relationship
2 with his banks; his use of those banks to further his fraud against DenSco.

3 14. PMK Easy Investments, LLC
4 10510 East Sunnyside Drive
5 Scottsdale, AZ 85259

6 See Description for Scott Menaged.

7 15. PMK Arizona Home Foreclosures, LLC
8 7320 West Bell Road
9 Glendale, AZ 85308

10 See Description for Scott Menaged.

11 16. PMK Furniture King, LLC
12 3200 North Central Avenue
13 Suite 2460
14 Phoenix, AZ 85012

15 See Description for Scott Menaged.

16 17. PMK Scott's Fine Furniture

17 See Description for Scott Menaged.

18 18. Veronica Castro aka Veronica Gutierrez Reyes
19 c/o Thomas W. Warshaw Attorney at Law
20 33147 North 71st Way
21 Scottsdale, AZ 85266

22 Ms. Castro is expected to have knowledge regarding Menaged's personal, financial, or
23 business dealings with DenSco and Mr. Chittick; the fraud(s) Menaged perpetrated on
24 DenSco and Mr. Chittick, either directly, or through one of Menaged's entities; Menaged's
25 communications with DenSco and Mr. Chittick; Menaged's communications with Mr.
26 Beauchamp; the actions or conduct related to Menaged's criminal indictment, plea bargain,
or sentencing in the United States District Court for the District of Arizona; and Ms. Castro's
communications with DenSco and Mr. Chittick.

1 19. Luigi Amoroso

2 Mr. Amoroso is expected to have knowledge regarding Menaged's personal, financial,
3 or business dealings with DenSco and Mr. Chittick; the fraud(s) Menaged perpetrated on
4 DenSco and Mr. Chittick, either directly, or through one of Menaged's entities; Menaged's
5 communications with DenSco and Chittick; Menaged's communications with Mr.
6 Beauchamp; the actions or conduct related to Menaged's criminal indictment, plea bargain,
7 or sentencing in the United States District Court for the District of Arizona; and Mr.
8 Amoroso's communications with DenSco and Mr. Chittick.

9 20. Alberto Pena
10 c/o Law Office of Cameron A. Morgan
11 4356 North Civic Center Plaza
12 Suite 101
13 Scottsdale, AZ 85251

14 Mr. Pena may have knowledge regarding Menaged's personal, financial, or business
15 dealings with DenSco and Chittick; the fraud(s) Menaged perpetrated on DenSco and
16 Chittick, either directly, or through one of Menaged's entities; Menaged's communications
17 with DenSco and Mr. Chittick; and the actions or conduct related to Mr. Pena's and
18 Menaged's criminal indictment, plea bargain, or sentencing in the United States District
19 Court for the District of Arizona.

20 21. Troy Flippo
21 c/o Storrs Law Firm PLLC
22 1421 East Thomas Road
23 Phoenix, AZ 85014

24 Mr. Flippo may have knowledge regarding Menaged's personal, financial, or business
25 dealings with DenSco and Mr. Chittick; the fraud(s) Menaged perpetrated on DenSco and
26 Mr. Chittick, either directly, or through one of Menaged's entities; Menaged's
communications with DenSco and Chittick; and the actions or conduct related to Flippo's and
Menaged's criminal indictment, plea bargain, or sentencing in the United States District
Court for the District of Arizona.

1 22. Menaged family members, including, Joseph Menaged, Michelle Menaged,
2 Jennifer Bonfiglio, Joy Menaged, Jess Menaged, **and Short Term Finance,**
3 **LLC, an entity solely owned by Joseph Menaged**

4 Menaged's family may have knowledge regarding Menaged's personal, financial, or
5 business dealings with DenSco and Chittick; the fraud(s) Menaged perpetrated on DenSco
6 and Chittick, either directly, or through one of Menaged's or his Family's entities;
7 **Menaged's family's receipt and use of millions of dollars transferred to them by**
8 **Menaged, including money Menaged fraudulently obtained from DenSco, as alleged by**
9 **the Chapter 7 Bankruptcy Trustee of the Menaged bankruptcy estate in Case No. 2:17-**
10 **ap-00776-PS filed in the Bankruptcy Court for the District of Arizona; Menaged's**
11 communications with DenSco and Chittick; and the actions or conduct related to Menaged's
12 criminal indictment, plea bargain, or sentencing in the United States District Court for the
District of Arizona.

13 23. Shawna Heuer
14 c/o Bonnett Fairbourn, PC
15 2325 E. Camelback Road
16 Phoenix, Arizona 85016

17 Ms. Heuer is expected to **testify consistently with her deposition testimony**
18 regarding Mr. Beauchamp's work on behalf **Ms. Heuer and DenSco** after Mr. Chittick's
19 death and her communications with Mr. Beauchamp, **the Receiver, the Arizona**
20 **Corporation Commission, DenSco's investors, and other third parties regarding**
21 **DenSco. Ms. Heuer is also expected to testify about Mr. Chittick's character and**
22 **personality.** Ms. Heuer may also have knowledge regarding Mr. Chittick and DenSco's
23 business, and Mr. Chittick's communications with Mr. Beauchamp, Menaged, or DenSco's
24 investors.
25
26

1 24. Jeff Goulder
2 Stinson Leonard Street
3 1850 North Central Avenue, Suite 2100
4 Phoenix, Arizona 85004

5 Mr. Goulder is expected to have knowledge regarding the negotiations of the
6 Forbearance Agreement. Mr. Goulder also may have knowledge regarding Menaged's
7 businesses, business practices, and finances. Mr. Goulder also may have knowledge
8 regarding Menaged's communications with Mr. Beauchamp.

9 25. PMK Chase Bank
10 3800 North Central Avenue
11 Suite 460
12 Phoenix, AZ 85012

13 Chase Bank is expected to have knowledge regarding Menaged's banking practices,
14 including Menaged's use of Chase Bank to perpetrate his fraud on DenSco and Chittick.

15 26. PMK US Bank
16 3800 North Central Avenue
17 Suite 460
18 Phoenix, AZ 85012

19 US Bank is expected to have knowledge regarding Menaged's banking practices,
20 including Menaged's use of Chase Bank to perpetrate his fraud on DenSco and Chittick.

21 27. Gregg Seth Reichman/Jody Angel/Tony Crabill/Active Funding Group
22 Attention: Andrew Abraham
23 702 East Osborn Road
24 Suite 200
25 Phoenix, AZ 85014

26 **Active Funding Group and its employees, directors, managers, or**
27 **representatives, including Mr. Reichman, Mr. Angel, and Mr. Crabil may have**
28 **knowledge regarding Menaged's businesses, business practices, and finances; the fraud(s)**
29 **Menaged perpetrated on DenSco and Mr. Chittick, either directly, or through one of**
30 **Menaged's entities; and Active Funding Group's (and its employees, directors, managers,**

1 or representatives participation in any of those fraudulent schemes (as suggested by the
2 Receiver's Petition No. 45).

3
4 28. **Michelle Tran**
5 c/o Coppersmith Brockelman, PLC
6 2803 N. Central Avenue, Suite 1900
7 Phoenix, Arizona 85004

8 Ms. Tran is expected to have knowledge regarding Clark Hill's limited
9 representation of Ms. Shawna Heuer in her capacity as the Personal Representative of
10 Denny Chittick's estate.

11 29. **Mark Sifferman**
12 c/o Coppersmith Brockelman, PLC
13 2804 N. Central Avenue, Suite 1900
14 Phoenix, Arizona 85004

15 Mr. Sifferman is expected to have knowledge regarding any non-privileged
16 communications or work he performed with respect DenSco or Mr. Chittick, in his
17 capacity as assistant general counsel for Clark Hill.

18 30. **Ryan Anderson**
19 Gutilla Murphy Anderson
20 5415 East High Street, Phoenix, Arizona 85054

21 Mr. Anderson is expected to have knowledge regarding communications between
22 the DenSco Receiver and his agents, including Mr. Anderson, and Clark Hill and David
23 Beauchamp related to DenSco; Clark Hill and David Beauchamp's cooperation with
24 the DenSco Receiver's requests and demands; Clark Hill and David Beauchamp's
25 disclosure of documents and information to the DenSco Receiver and the timing
26 thereof; the DenSco Receiver's investigation into DenSco and Denny Chittick's business
(including any frauds perpetrated upon DenSco and Denny Chittick), the information
obtained as a result of that investigation, and the timing thereof; the Receivership's
claims against, among others, AFG, the Chittick Estate, Menaged, Chase Bank, and US

1 Bank; the cooperation agreement the Receivership entered into with Menaged, and
2 Menaged's actions and communications with the Receivership.

3 31. Kevin Merritt
4 Gammage & Burnham
5 2 North Central Avenue, 15th Floor
6 Phoenix, Arizona 85004

7 Mr. Merritt is expected to have knowledge regarding Gammage & Burnham's
8 representation of the Estate of Denny Chittick and Shawna Heuer as Personal
9 Representative for the Estate; Gammage & Burnham's communications with Clark
10 Hill and David Beauchamp regarding the representation of the Estate of Denny
11 Chittick and Shawna Heuer; the disclosure of documents and information to the
12 DenSco Receiver and its work and communications with Clark Hill and David
13 Beauchamp with respect to that production, including the Estate's assertions or
14 concerns regarding privileged communications; the timing of that disclosure;
15 Gammage & Burnham's work generally, and Kevin Merritt's work specifically, in
16 representing DenSco and Mr. Chittick, including, the drafting and creation of DenSco's
17 loan documents, and the advice provided regarding those documents and loan
18 procedures.

19 32. James Polese
20 Gammage & Burnham
21 2 North Central Avenue, 15th Floor
22 Phoenix, Arizona 85004

23 Mr. Polese is expected to have knowledge regarding Gammage & Burnham's
24 representation of the Estate of DennyDenny Chittick and Shawna Heuer as Personal
25 Representative for the Estate; Gammage & Burnham's communications with Clark
26 Hill and David Beauchamp regarding the representation of the Estate of DennyDenny
Chittick and Shawna Heuer; Gammage & Burnham's disclosure of documents and
information to the DenSco Receiver and its work and communications with Clark Hill

1 and David Beauchamp with respect to that production, including the Estate's assertions
2 or concerns regarding privileged communications; and the timing of that disclosure.

3 **33. Samantha Kumbalek**

4 Ms. Kumbalek, a current or former employee at Chase Bank, is expected to have
5 knowledge regarding Yomtov Menaged's banking relationship and practices at Chase
6 Bank, including Menaged's use of Chase Bank to perpetrate fraud(s) upon DenSco and
7 DennyDenny Chittick as set forth in the Receiver's Petition #36 and in Yomtov
8 Menaged's December 8, 2017 interview with Kenneth Frakes.

9 **34. Vikram Dadlani**

10 Vikram, a current or former employee at Chase Bank, is expected to have
11 knowledge regarding Yomtov Menaged's banking relationship and practices at Chase
12 Bank, including Menaged's use of Chase Bank to perpetrate fraud(s) upon DenSco and
13 Denny Chittick as set forth in the Receiver's Petition #36 and in Yomtov Menaged's
14 December 8, 2017 interview with Kenneth Frakes.

15 **35. Person Most Knowledgeable, Federal Bureau of Investigation**

16 The FBI is expected to have knowledge regarding the investigation into Yomtov
17 Menaged and the fraud he perpetrated on DenSco, Mr. Chittick, and others.

18 **36. Gary Clapper and Wendy Coy**
19 1300 W. Washington, 3rd Floor
20 Phoenix, Arizona 85007

21 Mr. Clapper and Ms. Coy are expected to have knowledge regarding the Arizona
22 Corporation Commission's investigation of DenSco; its decision to appoint a Receiver
23 for DenSco; and the ACC's requests to, and communications with, Mr. Beauchamp.
24
25
26

1 37. **Ellen Bolduc**
2 **Suburban Mortgage, Inc.**
3 **7500 North Dreamy Draw, #110**
 Phoenix, Arizona 85020

4 **Ms. Bolduc is expected to have knowledge regarding DenSco and Menaged's**
5 **lending relationship and practice, and Menaged's lending relationships and practices**
6 **with other lenders.**

7 38. **Debbie Pihl**
8 **Magnus Title Agency**
 6991 East Camelback Road, Suite C100
9 **Scottsdale, Arizona 85251**

10 **Ms. Pihl is expected to have knowledge regarding DenSco and Menaged's lending**
11 **relationship and practice, and Menaged's lending relationships and practices with other**
12 **lenders.**

13 39. **Ranasha Chittick**

14 **Ms. Ranasha Chittick is expected to have knowledge regarding Denny Chittick's**
15 **business practices and procedures; Menaged's relationship with Mr. Chittick; Mr.**
16 **Chittick mental and psychological makeup over time; Mr. Chittick's relationships with**
17 **his family and friends; the impact of various life events on Mr. Chittick, including the**
18 **Chitticks' divorce and the responsibility of running DenSco.**

19 40. **Sharla Chittick Trainor**

20 **Ms. Trainor is expected to have knowledge regarding Denny Chittick mental and**
21 **psychological makeup over time; Mr. Chittick's relationships with his family and**
22 **friends; the impact of various life events on Mr. Chittick, including the Chitticks'**
23 **divorce and the responsibility of running DenSco.**

24 41. **Scott Gould**

25 **Mr. Gould is expected to have knowledge regarding Mr. Chittick's business**
26 **practices, and the practices and procedures Mr. Chittick learned or witnessed while**

1 working with Mr. Gould; hard money lending and the practices and procedures used
2 by hard money lenders to protect their investments; his investment in DenSco;
3 DenSco's communications with Mr. Gould regarding his investment; Mr. Gould's
4 understanding of DenSco's practices and procedures; and Mr. Chittick's sophistication
5 and knowledge of prudent hard money lending practices.

6 42. Christopher Hughes

7 Mr. Hughes is expected to have knowledge regarding the practices and
8 procedures used by hard money lenders to protect their investments; his borrowing
9 relationship with DenSco and DenSco/Chittick's practices and procedures with respect
10 to DenSco's loans to borrowers; and his communications with DenSco regarding his
11 loans.

12
13 43. Barry Luchtel

14 Mr. Luchtel is expected to have knowledge regarding, and testify about, his
15 borrowing relationship with DenSco; DenSco's lax lending procedures; DenSco's
16 collection and enforcement procedures; the practices and procedures used by hard
17 money lenders; his investment in DenSco; DenSco's communications with Mr. Luchtel
18 regarding his investment; Mr. Luchtel's understanding of DenSco's practices and
19 procedures; his relationship with Mr. Chittick; and Mr. Chittick character and
20 personality traits.

21 44. Kurt Johnson

22 Mr. Johnson is expected to have knowledge regarding his relationship with
23 DenSco, whether as an attorney or otherwise and any legal advice provided to DenSco.
24
25
26

1 45. DenSco Investors

2 The Investors are expected to have knowledge regarding Mr. Chittick's
3 communications to the Investors and their knowledge of DenSco's business, the status of
4 their investments, and the status of DenSco's loans at all relevant times.

5 **V. PERSONS WHO HAVE GIVEN STATEMENTS.**

6 **Aside from the various witnesses who have been deposed in the above captioned**
7 **matter:** Scott Menaged testified at his Section 341 Meeting of Creditors and his Rule 2004
8 exam as part of his Chapter 7 bankruptcy proceeding. Mr. Menaged also provided a
9 statement to Mr. Ken Frakes, whom the Receiver has retained as counsel to pursue claims
10 against Menaged's banks. The Receiver is believed to be the custodian of the resulting
11 transcripts. Luigi Amoroso gave deposition testimony as well. The Receiver is believed to
12 be the custodian of the transcript.

13 **VI. EXPERT WITNESSES.**

14 Defendants will identify expert witnesses in accordance with the schedule ordered by
15 the Court.

16 **VII. COMPUTATION AND MEASURE OF DAMAGES.**

17 Plaintiff is not entitled to recover damages against Defendants **nor is Plaintiff**
18 **entitled to prejudgment interest, as the asserted damages are not liquidated. Further,**
19 **Plaintiff is not entitled to punitive damages. Defendants did not breach the standard of**
20 **care or aid and abet any breach of fiduciary duty, there is no evidence that Defendants**
21 **acted with an evil mind at any point in time, nor did Defendants actions, taken after the**
22 **alleged breaches (and which Plaintiff alleges form the basis of a punitive damage claim),**
23 **have any causal link to Plaintiff's alleged damages.**

24 Discovery is continuing. Defendants **will address Plaintiff's computation and**
25 **measure of damages through expert testimony to be disclosed in accordance with the**
26 **schedule ordered by the Court.**

1 **VIII. EXHIBITS.**

2 Defendants have not yet identified which of the documents listed in Section IX below
3 will be used at trial, and therefore expressly reserve the right to introduce any of the listed
4 documents as exhibits at trial. Defendants may also use any documents identified in any other
5 party's disclosure statement or otherwise disclosed in this matter. By reserving the right to
6 introduce any of the listed documents as exhibits at trial, Defendants do not waive their right
7 to object to the introduction of any of these documents at the time of trial. Defendants will
8 supplement this initial disclosure statement in accordance with Arizona Rules of Civil
9 Procedure 26.1(b)(2).

10 Discovery is continuing. Defendants may supplement.

11 **IX. LIST OF RELEVANT DOCUMENTS.**

12 Defendants have not yet identified any additional relevant documents. The following
13 documents, or categories of documents, may be relevant or lead to discovery of admissible
14 evidence in this action and have already been exchanged or are being produced herewith:

- 15 1. Documents previously produced by Clark Hill bates labeled CH_0000001-
16 13330.
- 17 2. Additional documents produced herewith by Clark Hill bates labeled
18 CH_0013331-13374.
- 19 3. Documents previously produced by Plaintiff including bates labeled
20 DIC000001-25330, 28634-53950 and Quickbooks backup.
- 21 4. Documents previously produced by Plaintiff including bates labeled D126751-
22 128731 and 130972-133111.
- 23 5. Documents previously produced by Bryan Cave in response to Subpoena Duces
24 Tecum bates labeled BC000001-3188.
- 25 6. Documents produced herewith by Dave Preston in response to Subpoena Duces
26 Tecum bates labeled DP000001-601.

- 1 7. Any and all documents in CR-17-00680, United States of America v. Yomtov
2 Scott Menaged, et al.
- 3 8. All documents produced by any party or third party in this litigation.
- 4 9. All pleadings, filings, minute entries, orders and judgments.
- 5 10. All deposition or hearing transcripts in the above captioned litigation.
- 6 11. All transcripts from any Section 341 creditor meetings, Rule 2004 examinations,
7 depositions, or hearings in Yomtov Menaged's bankruptcy pending in the United
8 States Bankruptcy Court for the District of Arizona at 2:16-bk-04268.
- 9 12. Additional documents produced by Clark Hill bates labeled CH_000013387-
10 13616.
- 11 13. Documents produced by Sell Wholesale Funding in response to Subpoena Duces
12 Tecum bates labeled SELL000001-766.
- 13 14. Documents produced by Azben Limited, LLC in response to Subpoena Duces
14 Tecum bates labeled AZBEN000001-5248.
- 15 15. Documents produced by Geared Equity in response to Subpoena Duces Tecum
16 bates labeled GE000001-257.
- 17 16. Documents produced by Active Funding in response to Subpoena Duces Tecum
18 bates labeled AF000001-2448.
- 19 17. Documents produced in Defendant Clark Hill's Responses to Plaintiff's First Set
20 of Requests for Production bates labeled CH_0013617-13623 (previously
21 produced to counsel on 6/21/18).
- 22 18. Documents produced in Defendant David Beauchamp's Responses to Plaintiff's
23 First Set of Requests for Production bates labeled CH_0013624-13946
24 (previously produced to counsel on 6/21/18).
- 25 19. Additional documents produced by Clark Hill bates labeled CH_0013947-
26 17849.

- 1 20. Documents produced by Geared Equity in response to Subpoena Duces Tecum
2 bates labeled GEAR000001-203.
- 3 21. Documents produced by 50780 L.L.C. in response to Subpoena Duces Tecum
4 bates labeled 50780LLC - 000001-65.
- 5 22. Additional documents produced by Clark Hill bates labeled CH_0017997-
6 18010 (previously produced to opposing counsel on 8/29/18).
- 7 23. Additional documents produced by Clark Hill bates labeled CH_0018012-
8 18013 (previously produced to opposing counsel on 8/30/18)(NOTE:
9 CH_0018011 not used)
- 10 24. Additional documents produced by Sell Wholesale Funding in response to
11 Subpoena Duces Tecum bates labeled SELL000767-1636.
- 12 25. Additional documents produced by Active Funding in response to Subpoena
13 Duces Tecum bates labeled AF002449-2644.
- 14 26. Additional documents produced by Azben Limited, LLC in response to
15 Subpoena Duces Tecum bates labeled AZBEN005249-5318.
- 16 27. Additional documents produced by Geared Equity LLC in response to
17 Subpoena Duces Tecum bates labeled DIETHELM 0001 – DIETHELM
18 0211.
- 19 28. Additional documents produced by 50780 LLC in response to Subpoena
20 Duces Tecum bates labeled HOEBING 0001 – HOEBING 0057.
- 21 29. Additional documents produced by Clark Hill bates labeled CH_0018014-
22 18023 (previously produced to opposing counsel on 9/21/18).
- 23 30. Additional documents produced by Clark Hill bates labeled
24 CH_EstateSDT_00000001-0072926 (previously produced to opposing
25 counsel on 12/21/18).
- 26 31. Documents previously produced by Plaintiff bates labeled D133112-135602.

1 **ORIGINAL** mailed and emailed this
13th day of March, 2019 to:

2 Colin F. Campbell, Esq.
3 Geoffrey M. T. Sturr, Esq.
4 Joshua M. Whitaker, Esq.
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