DECLARATION OF MARK T. HIRAIDE

I, Mark T. Hiraide, hereby declare as follows:

1. I have been retained by the law firm Osborn Maledon, P.A., the attorneys for Plaintiff Peter S. Davis, as Receiver of DenSco Investment Corporation, an Arizona corporation ("DenSco"), in an action the Plaintiff has brought against Defendants Clark Hill PLC, a Michigan limited liability company; David G. Beauchamp and Jane Doe Beauchamp, husband and wife, in the Superior Court of the State of Arizona, Maricopa County, Case No. CV 2017-013832, to give an opinion about the conduct of Defendant Clark Hill PLC ("Clark Hill") and Defendant David G. Beauchamp ("Beauchamp") (Clark Hill and Beauchamp, hereinafter, collectively, the "Attorney Defendants").

2. This affidavit sets forth my preliminary opinions. I understand that it will be disclosed in accordance with A.R.S. § 12-2602(B).

3. My qualifications to give opinions as to the standard of care of the Attorney Defendants include the following:

a. I have practiced corporate and securities law, with an emphasis on securities laws, in private practice for 26 years and as an attorney for the Securities and Exchange Commission for an additional 8 years. I am presently a partner of the law firm of Mitchell Silberberg & Knupp LLP.

b. I have taught securities laws in various continuing education courses for the Los Angeles County Bar Association and Beverly Hills Bar Association and have testified on securities law issues before the Securities Subcommittee of the United States Senate Committee on Banking, Housing, and Urban Affairs, the California Assembly Judiciary Committee, and the California Assembly Banking and Finance Committee.

c. I am a co-author of the legal treatise, Representing Start-Up Companies (Thomson Reuters (current)); the author of Crowdfunding: Commentary and Analysis (Thomson Reuters) (2016); a primary contributing author to Corporations Committee 2005 Opinions Report: Legal Opinions in Business Transactions (State Bar of California) (2007); a member of the Editorial Committee, Guide to California Securities Law Practice (State Bar of California) (2006); a contributing author, Handbook for Incorporating a Business in California (State Bar of California) (2006).

d. I have previously testified as an expert witness on the standard of care of securities attorneys and on securities law related matters.

e. I have studied and applied federal securities statutes, and understand that Arizona's securities statutes contain analogous provisions. I have studied and applied the Model Rules of Professional Conduct, and understand that Arizona's Rules of Professional Conduct are substantially similar. I have studied and applied the Restatement (Third) of the Law Governing Lawyers and understand that Arizona follows the Restatement in the absence of contrary statutory or case authority.

4. I understand, from my review of the file maintained by Osborn Maledon, P.A. relating to its representation of Plaintiff and other records, that the claims against the Attorney Defendants arise from the following facts:

a. Denny J. Chittick was DenSco's sole director, officer and employee.

b. DenSco engaged Attorney Beauchamp and the law firms with which he was associated to provide legal advice relating to DenSco's securities offerings, including preparing DenSco private offering memoranda, dated June 1, 2007, July 1, 2009, July 1, 2011 and a draft dated May _, 2014 (collectively, "POM").

c. At various times during July 2001 to July 2016, DenSco offered and sold securities, in the form of unsecured promissory notes ("Notes"), to investors by disseminating to investors various documents, including the POM. DenSco offered the Notes on a continuous basis until the earlier of (a) the sale of the maximum offering, which was $50 million, or (b) two years from the date of the POM.

d. Each of the 2007, 2009, and 2011 POM, which were substantially the same, made the following representations:

i. Beginning in April 2001, DenSco was in the business of making high-interest loans to residential property remodelers who purchased homes in foreclosure; the loans were to be secured by real estate deeds of trust on the properties, and the loan-to-value ratio was not intended to exceed 70% in the aggregate for all loans in the loan portfolio;

ii. The maximum loan size was $1 million, with most trust deeds between $50,000 to $500,000, according to the 2007 and 2009 POM, and between $25,000 to $500,000, according to the 2011 POM.

iii. In a separately captioned section of the POM entitled, "Diversity of Risk," the POM explained how DenSco intended to mitigate loan concentration risk, disclosing the number of current borrowers in its borrowing base and the number it expected to have. The 2007 and 2009 POM represented that the current base of qualified and approved borrowers exceeded 200, with an expected borrower base of over 500. The 2011 POM represented that the current borrowing base was 150, with an expected base of over 250.

iv. The POM included a "Prior Performance" section listing, among other information, the number of loans funded, loan value, value loans, loans

repaid, loans repaid value, and value of home repaid for each prior year. The 2009 and 2011 POM represented that in response to recent challenging market conditions, DenSco focused on maintaining relationships with borrowers with a good payment and performance history, but that it continued to ensure that one borrower will not comprise more than 10% of the total portfolio, according to the 2009 POM, and 10 to 15% of the total portfolio, according to the 2011 POM.

v. The POM represented that in order to continuously offer the Notes, DenSco would update the POM from time to time in order to keep the information contained therein current.

e. While practicing with the law firm of Bryan Cave, Attorney Beauchamp was familiar with the firm's internal compliance procedures for securities offerings, which included establishing a due diligence file that contains support for each of the statements included in the POM.

f. Attorney Beauchamp was aware since as early as July 2011 that Chittick represented to investors that DenSco relied on Attorney Beauchamp to provide counsel in connection with updating the POM every two years.

g. In June, 2013, Attorney Beauchamp knew that approximately 60 of the investor notes were scheduled to expire in the next six months, and Chittick expressed his intention to resolicit those investors to reinvest in new Notes.

h. On June 14, 2013, Attorney Beauchamp received from Chittick a copy of a Summons and Complaint against DenSco and one of DenSco's major borrowers in an action seeking declaratory relief to quiet title by the buyer of property in a trustee's sale ("Freo Lawsuit"). Chittick informed Attorney Beauchamp that the co-defendant borrower, Easy Investments, Inc. ("Easy Investments"), was a borrower "to which i've

done a ton of business with, million in loans and hundreds of loans for several years..." Chittick stated further that Easy Investments bought the property at auction with funds loaned by DenSco but that the trustee had already sold the property to Plaintiff Freo.

i. Attorney Beauchamp immediately informed Chittick that disclosure would be required in the POM, to which Chittick replied, "ok 1 sentence should suffice!."

j. On June 27, 2013, in an email regarding changes to DenSco's website, Chittick informed Attorney Beauchamp, "All changes u requested r done Oh ya I just took in another 1.1 million yesterday"

k. On September 12, 2013, following Attorney Beauchamp's association with a new law firm, Clark Hill, DenSco entered into an engagement letter with Clark Hill. The Clark Hill New Client/Matter Form states that the nature of the engagement is "Finish Private Offering Memorandum."

l. On January 6, 2014, Chittick forwarded to the Attorney Defendants a demand letter addressed to DenSco by the attorneys for lenders who made purchase money loans to Easy Investments to purchase 52 properties, all identified by street address in an attachment to the letter ("Demand Letter"). The Demand Letter stated that the lenders delivered certified funds delivered directly to the trustee and promptly thereafter recorded deeds of trust on each of the properties, but that it recently learned that DenSco recorded a "mortgage" on the same properties on or around the same time as the lenders.

m. Accompanying the Demand Letter were forms of subordination agreements for each of the properties. Each subordination agreement included the date, time and instrument number of the document recorded in the Records of Maricopa

County by the lender. The Demand Letter threatened to commence litigation, if DenSco failed to sign the subordination agreements.

n. In the week following Attorney Beauchamp's receipt of the Demand Letter, in a meeting with Chittick and email correspondence between the two, Chittick admitted the following to the Attorney Defendants:

i. that he had loaned to Easy Investments and another affiliate owned by Scott Menaged over $50 million;

ii. that he wired money directly to Menaged's bank account, rather than making payments directly to a trustee, as required by the form of Mortgage prepared by Attorney Beauchamp;

iii. that, according to Menaged, Menaged's cousin stole loan proceeds advanced by DenSco to Menaged by requesting loans from other lenders that were also secured by the homes that Menaged or his cousin had simultaneously used a security for loans from DenSco (the "Fraud");

iv. that DenSco had not always recorded its mortgage before another lender's deed of trust was recorded (the "Subject Properties"); and

v. that the number of loans on the Subject Properties, which were under-secured or unsecured and for which the first lien position was at issue, was between 100 and 125.

o. The Attorney Defendants also learned at this time that Chittick and Menaged had a plan to address the fraud ("Remediation Plan"), which entailed continuing DenSco's operations while the DenSco and Menaged's entities sold the

Subject Properties and repaid the other lenders' loans in full with interest. At this time, the Attorney Defendants learned the following about the Remediation Plan:

i. Many of the Subject Properties were purchased in the first half of the previous year, and were "upside down." As a result, the plan's viability depended on both Chittick and Menaged "injecting" additional capital;

ii. That the viability of the plan depended on Menaged contributing $4-5 million over the next 120 days by liquidating assets, as well "getting some money back that the cousin stole"

iii. That the plan depended on revenue generated by Menaged in flipping homes; and

iv. That DenSco would commit yet more investor funds to provide the loans to Menaged to allow him to purchase the additional homes.

p. The Attorney Defendants also learned at this time that Chittick and Menaged had engaged in this Remediation Plan since November 2013 and that Chittick intended to use several millions of dollars of liquid investor funds in his possession. The Attorney Defendants also learned at this time that Chittick had been speaking to investors who "want to give me more money."

q. On January 14, 2014, the Attorney Defendants opened a new matter in connection with a "loan work-out.

r. At least as early as February 20, 2014, the Attorney Defendants knew that DenSco had loaned over $8 million more than the estimated aggregate collateral value.

s. Through April 2014, the Attorney Defendants negotiated a Forbearance Agreement with Menaged, executed on April 16, 2014. The Forbearance Agreement

related to and identified the loans DenSco made to Menaged's affiliated borrowers. The agreement stated that the total principal and sum due and payable by Menaged was in the aggregate $35,639,880, representing over 50% of the aggregate funds DenSco owed to its investors. The Forbearance Agreement also provided that the loan-to-value of certain of the properties was up to 120%, that DenSco had loaned Menaged an additional $1 million, and intended to advance up to an addition $5 million to Menaged to pay off the other lenders.

t. In May 2014, the Attorney Defendants undertook to prepare a draft revised POM but did not complete the draft.

5. The Attorney Defendants owed a duty of care to DenSco that arose from their attorney-client relationship. A private offering memorandum is a disclosure document customarily used by an issuer of securities (in this case, DenSco) to solicit investors and to ensure compliance with disclosure requirements under federal and state securities laws. In preparing the POM in connection with DenSco's securities offerings, the Attorney Defendants undertook to advise DenSco about compliance with various federal and Arizona securities laws, including the following:

a. Rule 10b-5(b) (17 CFR 240.10b-5) promulgated under the Securities Exchange Act of 1934, as amended ("1934 Act") (15 U.S.C. § 78j), and Section 44-1991 of the Arizona Securities Act (A.R.S. § § 44-1801, *et seq.*) provide that in connection with the offer or sale of securities, it shall be unlawful for any person to make any untrue statement of a material fact, or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. A misrepresentation or omission is "material" if there is a substantial likelihood that a reasonable investor would consider it important in determining whether

to invest in the securities. *See T.S.C. Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *see also Basic Inc. v. Levinson*, 485 U.S. 224, 231 (1988).

b. Federal and Arizona state securities law provide civil remedies to investors for rescission and damages for violations of federal and state securities laws, respectively. An investor has a private right of action for a violation of Rule 10b-5. *Herman & MacLean v. Huddleston*, 459 U.S. 375, 380 (1983) To prevail on a claim for violations of Rule 10b-5, a plaintiff must prove six elements: (1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation. Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc., 552 U.S. 148, 157 (2008). In the Ninth Circuit, a plaintiff is not required to prove knowledge to establish scienter; *recklessness* may satisfy the element of scienter. *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1568–69 (9th Cir. 1990) (en banc).

c. Similarly, Section 44-2002 under the Arizona Securities Act provides a civil remedy to recover the amount of seller's damages, with interest, taxable court costs and reasonable attorney fees; provided, however, a person shall not be liable under this section if the person sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the untrue statement or misleading omission. Section 44-2002(B).

d. Section 24 of the Securities Act of 1933, as amended ("1933 Act") (15 U.S.C. 77x) and Section 32(a) of the 1934 Act (15 U.S.C. 78ff(a)) provide for criminal penalties for willful violations of the 1933 and 1934 Acts. Similarly, there are criminal penalties for violating Section 44-1991 under the Arizona Securities Act..

e. In undertaking to prepare the POM, the Attorney Defendants were responsible for (i) gathering sufficient information from DenSco to advise DenSco of the material disclosures required to be made in the POM and (ii) assisting DenSco to conduct a "due diligence" investigation to support a "due diligence" defense and to rebut any claim that it was reckless or did not exercise reasonable care in failing to disclose all material information or in making a material misrepresentation in the POM.

6. The applicable standard of care is based, in part, on relevant provisions of the Arizona Rules of Professional Conduct. *See Stanley v. McCarver*, 208 Ariz. 209, 223 n. 6, ¶ 17, 92 P.3d 849, 853 n.5 (2004) (Arizona Rules of Professional Conduct "may provide evidence of how a professional would act") (citing Ariz. R. Sup. Ct. 42, R. Prof. Resp., Preamble, Scope ¶ 20). As noted above, I understand that the Arizona Rules of Professional Conduct are substantially similar to the Model Rules of Professional Conduct. The standard of care is also reflected in the Restatement (Third) of the Law Governing Lawyers. Courts in Arizona also look to the Restatement in the absence of statutory and case authority. *See, e.g., Jesik v. Maricopa County Com. College Dist.*, 125 Ariz. 543, 546, 611 P.2d 547, 550 (1980).

a. Arizona Ethical Rule 1.13 (which is analogous to Section 96 of the Restatement (Third) of the Law Governing Lawyers) provides in subsection (a) that a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

b. Arizona Ethical Rule 1.13(b) provides that if a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best

interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

c. Arizona Ethical Rule 1.13(f) provides that in dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

Comment 11 to ER 1.13 provides that there are times when the organization's interests may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

d. Arizona Ethical Rule 1.2(d) (which is analogous to Restatement § 94) provides that a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

e. Arizona Ethical Rule 1.16 (which is analogous to Restatement § 32) provides that a lawyer shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law.

f. Arizona Ethical Rule 2.3 (which is analogous to Restatement § 95) provides that a lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

g. Arizona Ethical Rule 4.1 (which is analogous to Restatement § 98) provides that in the course of representing a client a lawyer shall not (a) knowingly make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Ethical Rule 1.6.

h. Arizona Ethical Rule 8.4(d) prohibits a lawyer engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

i. An attorney may not continue to provide services to corporate clients when the attorney knows the client is engaged in a course of conduct designed to deceive others, and where it is obvious that the attorney's compliant legal services may be a substantial factor in permitting the deceit to continue. *In re American Continental Corporation/Lincoln Sav. And Loan Securities Litigation*, 794 F.Supp. 1424, 1452, (D. Ariz. 1992) (*citing Rudolph v Arthur Anderson & Co.*, 800 F.2d 1040 (11th Cir. 1986), *cert denied*, 480 U.S. 946, 107 S.Ct. 1604, 94 L.Ed 2d 790 (1987).

7. In light of the circumstances described above, the Attorney Defendants failed to meet the applicable standard of care in at least the following respects:

a. By failing to advise DenSco in January 2014 that it must cease its Notes offering and must hold in trust investor funds in its possession until the Attorney Defendants were able to determine the scope and magnitude of the Fraud in order to determine what was in the best interests of DenSco and to determine what disclosures were required to be made in connection with a continued offering of new Notes. In January 2014, the Attorney Defendants learned that at least as of January 2014, and possibly as early as June of the previous year when DenSco learned of the Freo Lawsuit, the 2011 POM was materially misleading and omitted to disclose material facts relating to loans DenSco made to Menaged and Easy Investments.

b. By failing to advise DenSco that prior to entering into any agreement with Menaged and prior to continuing to offer and sell securities, it was necessary for it to ascertain the scope and magnitude of the fraud for several reasons, including the following:

i. to evaluate the propriety of the Remediation Plan, to determine whether its dependence on Menaged was reasonable, and to recommend a course of action in the best interests of DenSco;

ii. to ascertain the extent to which Chittick and Menaged's Remediation Plan depended on DenSco using existing investors liquid funds in DenSco's possession and/or continuing sales of securities, in the form of reinvestment by investors whose previous investments were in maturing Notes; and

iii. if DenSco were to resume offering securities, to quantify and disclose to investors potential contingent liabilities, including possible rescission liability to previous investors, incurred by DenSco that could impact DenSco's ability to repay the Notes and the solvency of DenSco.

c. By failing to affirmatively investigate the fraud and Chittick's role, if any, in the fraud, and the circumstances surrounding DenSco's lending procedure that led up to the fraud and resulted in an impairment of DenSco's security interests, including failing to review the conflicting trust deeds and other documents readily available online at the Maricopa County Recorder's Office.

d. By failing to determine whether in continuing to assist Chittick, the Attorney Defendants were assisting DenSco in false or misleading statements to investors in violation of federal and state securities laws.

e. By failing to act in the best interests of DenSco by advising Chittick that they represented only DenSco, that DenSco's interests may be or had become adverse to his interests, and that he may wish to obtain independent representation, and withdrawing from representing DenSco if necessary.

8. The Attorney Defendants failure to comply with the applicable standard of care caused damages to DenSco in at least the following respects:

a. it exposed DenSco to civil claims of rescission and damages for violations of federal and Arizona securities laws by investors who purchased Notes after January 2014 and potential criminal liability;

b. it exposed DenSco to claims of breach of fiduciary duty by investors who purchased Notes before January 2014; and

c. it exposed DenSco to losses that might result from its continued lending relationship with Menaged.

9. The statements and opinions set forth above are true and correct to the best of my knowledge, information and belief. I reserve the right to modify them by addition or deletion, or

to offer revised opinions, after reviewing additional material, including those developed in discovery, or because of changes in the legal theories asserted by the parties in this matter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 8, 2018

Mark T. Hiraide