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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiff,

v.

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

Defendants.

No. CV2017-013832

**PLAINTIFF'S THIRD SET OF  
REQUESTS FOR PRODUCTION OF  
DOCUMENTS TO DEFENDANT  
CLARK HILL**

Pursuant to Rule 34(a), Plaintiff Peter S. Davis, as the court-appointed receiver of DenSco Investment Corporation (the "Receiver"), asks Defendant Clark Hill to produce the documents described herein.

**PREFATORY NOTE**

The Receiver seeks financial records from Clark Hill relevant to his claim for punitive damages. As the Receiver has previously disclosed, punitive damages are appropriately awarded when, as here, an attorney breaches fiduciary duties, acts out of self-interest, and attempts to conceal his misconduct. *See, e.g., Elliott v. Videan*, 164 Ariz. 113, 791 P.2d 639 (App. 1989) (punitive damages were appropriate where attorney had conflict of interest, concealed it from client, and acted to benefit himself at client's expense); *Asphalt Engineers v. Galusha*, 160 Ariz. 134, 770 P.2d 1180 (App. 1989)

1 (affirming award of punitive damages against attorney who breached ethical duties to his  
2 client and concealed his misconduct). Clark Hill is “vicariously liable in punitive  
3 damages for acts that its partner [David Beauchamp] performed in the ordinary course of  
4 the partnership’s business.” *Hyatt Regency Phoenix Hotel Co. v. Winston & Strawn*, 184  
5 Ariz. 120, 130, 907 P.2d 504 (App. 1995).

6 The Receiver is entitled to this discovery because he has established a prima facie  
7 case for punitive damages based on David Beauchamp’s and Clark Hill’s: (i) aiding and  
8 abetting Denny Chittick’s breaches of fiduciary duty to DenSco and investors of  
9 DenSco, which in turn breached duties they owed DenSco; (ii) conflicts of interest; and  
10 (iii) actions taken to conceal their misconduct. *See Larriva v. Montiel*, 143 Ariz. 23, 25,  
11 691 P.2d 735, 737 (App. 1984) (plaintiff who makes prima facie showing – whether  
12 through discovery, evidentiary means, or an offer of proof – that he will be entitled to  
13 present the issue of punitive damages to a jury, is entitled to discovery of defendant’s  
14 financial information). Evidence of that prima facie case is drawn from the documents  
15 produced by Clark Hill to date, the firm’s Rule 26.1 Initial Disclosure Statement,  
16 Defendant David Beauchamp’s answers to interrogatories, and the depositions and  
17 exhibits thereto of Daniel Schenck, Robert Anderson and Mr. Beauchamp. Without  
18 limiting the evidence on which the Receiver may rely, the evidence developed to date  
19 includes the following facts or inferences drawn therefrom:

20 a. DenSco was a hard money lender to entities that were buying  
21 properties through foreclosure. Denny Chittick was the president of DenSco. DenSco  
22 was a “one man” shop, as Mr. Chittick was the company’s only employee. As DenSco’s  
23 loan volume grew, DenSco’s and Mr. Chittick’s lending practices became lax and  
24 grossly negligent.

25 b. Mr. Beauchamp represented DenSco for many years, and Mr.  
26 Beauchamp and Clark Hill represented DenSco from September 1, 2013 until  
27 September 23, 2016.

28

1           c.     In late 2013 and early 2014, DenSco and Clark Hill discovered that  
2 Scott Menaged, a hard money borrower, had committed a massive fraud upon DenSco.  
3 Menaged's companies had obtained loans on more than 100 properties from DenSco  
4 which Menaged's companies purchased at foreclosure sales. The funds DenSco had  
5 loaned to acquire those properties were not used for that purpose, and the liens DenSco  
6 placed on those properties were not in first position. Rather, Menaged acquired the  
7 properties with loans from other hard money lenders and, as a result, two deeds of trust  
8 from two different borrowers (DenSco and another hard money lender) were on the  
9 property. As a result of Menaged's fraud, DenSco was insolvent or in the zone of  
10 insolvency.

11           d.     DenSco and Mr. Chittick, DenSco's President, had a fiduciary duty  
12 of disclosure to DenSco's investors to advise them of Menaged's fraud.

13           e.     DenSco and Mr. Chittick, as DenSco's President, had a fiduciary  
14 duty of diligence to investigate the circumstances of Menaged's fraud and make  
15 decisions based upon that investigation.

16           f.     DenSco and Mr. Chittick, as DenSco's President, had a fiduciary  
17 duty of loyalty to not advance their own self-interest at the expense of DenSco's  
18 investors.

19           g.     Mr. Beauchamp and Clark Hill aided and abetted Mr. Chittick in  
20 violating his fiduciary duties of disclosure, diligence and loyalty. In doing so, Mr.  
21 Beauchamp and Clark Hill violated the fiduciary duties they owed their client, DenSco.

22           h.     Mr. Chittick, DenSco's president, did not want to disclose to  
23 DenSco's investors the fraud that had been perpetrated on DenSco by Menaged. He told  
24 Mr. Beauchamp in early January 2014 that he feared it would cause "a run on the bank."  
25 Failure to disclose the Menaged fraud was a breach of fiduciary duty that DenSco owed  
26 its investors.

27           i.     Mr. Chittick, DenSco's president, wanted to continue doing  
28 business with Menaged so that DenSco could attempt to work its way out of the

1 problem; and wanted DenSco to continue raising monies from investors and rolling over  
2 investor loans while Mr. Chittick worked to fix the Menaged problem. Continuing to do  
3 business with Menaged and continuing to operate the DenSco business without  
4 disclosures to its investors were a breach of fiduciary duty that DenSco owed its  
5 investors and that Mr. Chittick owed DenSco.

6 j. Mr. Chittick, DenSco's president, did not want to investigate  
7 Menaged's fraud. Failing to investigate Menaged's fraud was a breach of fiduciary duty  
8 that DenSco owed its investors and Mr. Chittick owed DenSco.

9 k. Beginning in January 2014, Mr. Beauchamp and Clark Hill aided  
10 and abetted Mr. Chittick's decision as President of DenSco not to disclose material  
11 information until Mr. Chittick could fix the problem and blunt the damage done by  
12 Menaged's fraud on the company; aided and abetted Mr. Chittick's decision as President  
13 of DenSco to keep raising monies without disclosure; and aided and abetted Mr.  
14 Chittick's decision as President of DenSco not to investigate Menaged and to continue  
15 loaning money to Menaged and his companies..

16 l. Mr. Beauchamp and Clark Hill aided and abetted Mr. Chittick in  
17 preparing a so-called "forbearance agreement" between January and April 2014 that was  
18 intended to protect Mr. Chittick from suits from investors, and justify a delay in  
19 disclosing material information to investors. Mr. Chittick's actions were a breach of  
20 fiduciary duty to DenSco's investors. They were also a breach of fiduciary duties Mr.  
21 Chittick owed DenSco.

22 m. Beginning in January 2014, Mr. Beauchamp and Clark Hill aided  
23 and abetted Mr. Chittick by looking the other way and allowing Mr. Chittick to continue  
24 raising monies from investors without making adequate disclosure of the Menaged fraud  
25 and other material facts, and telling Mr. Chittick DenSco could wait to provide  
26 disclosure at some distant future time. Mr. Chittick's actions were a breach of fiduciary  
27 duty to DenSco's investors. They were also a breach of duties Mr. Chittick owed  
28 DenSco.

1           n.       In January 2014, Mr. Beauchamp and Clark Hill negligently  
2 advised DenSco about the procedures it should follow in loaning additional funds to  
3 Menaged. DenSco followed that negligent advice, which allowed Menaged to perpetrate  
4 a second fraud on DenSco, resulting in tens of millions of dollars in additional losses.

5           o.       Mr. Beauchamp and Clark Hill had a conflict of interest while  
6 advising DenSco between January and May 2014 because of his negligent representation  
7 of DenSco before January 2014 and his own self-interest in avoiding or minimizing the  
8 disclosure of the fraud that had been perpetrated against DenSco. That conflict was  
9 imputed to Clark Hill.

10          p.       Mr. Beauchamp and Clark Hill had a conflict of interest while  
11 advising DenSco between January and May 2014 because they were seeking to represent  
12 the interests of Mr. Chittick, including protecting Mr. Chittick from claims by DenSco's  
13 investors, whose interests were adverse to DenSco's interests.

14          q.       Despite those conflicts of interest, Mr. Beauchamp and Clark Hill  
15 continued to represent DenSco, including representing DenSco between March and July  
16 2016 to prevent the Arizona Department of Financial Institutions from regulating  
17 DenSco and investigating its lending practices.

18          r.       Despite those conflicts of interest, and despite receiving Mr.  
19 Chittick's pre-death writings in which he blamed Mr. Beauchamp and Clark Hill for  
20 failing to properly advise DenSco about the fraudulent schemes Menaged had  
21 perpetrated against DenSco, Mr. Beauchamp and Clark Hill agreed to represent both  
22 DenSco and the Estate of Denny Chittick in August 2016.

23          s.       Despite those conflicts of interest, and despite receiving Mr.  
24 Chittick's pre-death writings in which he blamed Mr. Beauchamp and Clark Hill for  
25 failing to properly advise DenSco about the fraudulent schemes Menaged had  
26 perpetrated against DenSco, Mr. Beauchamp and Clark Hill agreed in August 2016 to  
27 represent DenSco in the "wind down" of DenSco's business. That role allowed Mr.  
28 Beauchamp and Clark Hill to make false or materially misleading statements to

1 investors, the Securities Division of the Arizona Corporation Commission (“ACC”), and  
2 the Receiver about DenSco’s past lending practices and their role in advising DenSco,  
3 which Mr. Beauchamp and Clark Hill made in an attempt to cover up their negligence  
4 and reduce the risk that they would be sued for their role in DenSco’s demise and  
5 resulting losses to investors.

6 t. Among the false statements that Mr. Beauchamp and Clark Hill  
7 made to investors, the ACC, and the Receiver was that they “terminated” their  
8 representation of DenSco in May 2014 because Mr. Chittick allegedly refused to follow  
9 their advice. In fact, Mr. Beauchamp and Clark Hill never terminated their  
10 representation of DenSco despite Mr. Chittick’s numerous breaches of fiduciary duty to  
11 DenSco and its investors, and at all times sought to advance Mr. Chittick’s and their own  
12 interests by continuing to represent DenSco.

13 u. In August 2016, Mr. Beauchamp and Clark Hill concealed their role  
14 in advising DenSco in January 2014 about the lending practices it should follow in  
15 making loans to Menaged, and have since tried to blame Mr. Chittick for those lending  
16 practices or otherwise conceal the negligent advice they gave.

17 v. Mr. Beauchamp and Clark Hill took actions in August 2016 to aid  
18 and protect the Estate of Denny Chittick and to deter the Receiver from performing his  
19 duties to investigate the circumstances that caused DenSco’s demise, marshal the  
20 company’s remaining assets, and pursue claims against third parties, such as Mr.  
21 Beauchamp and Clark Hill, who are responsible for the losses that DenSco and its  
22 investors suffered. Among other acts and omissions, Mr. Beauchamp did not  
23 immediately turn over to the investors or the Receiver the investor letter drafted by Mr.  
24 Chittick before his death or a letter his sister received and gave to Mr. Beauchamp which  
25 contained important information about DenSco’s books and records and financial affairs,  
26 because these letters evidenced Mr. Beauchamp’s and Clark Hill’s negligence and  
27 breaches of fiduciary duty. Mr. Beauchamp and Clark Hill also knowingly supported  
28 the submission of a false declaration given by Mr. Beauchamp to the court assigned to

1 appoint a receiver for DenSco, and related claims that the Estate of Denny Chittick made  
2 to the receivership court that were intended to impede the Receiver from acquiring and  
3 using relevant information about Mr. Beauchamp's and Clark Hill's representation of  
4 DenSco.

5 The Receiver's experts have requested five years of financial documents  
6 regarding Clark Hill, as it is more difficult to assess net worth in a law firm business  
7 than an ordinary non-professional business. The Receiver agrees that the records can be  
8 produced under the protective order in the case and that his experts will agree to hold  
9 them under a protective order.

#### 10 INSTRUCTIONS FOR USE

11 1. The requested documents should be produced within 30 days at the offices  
12 of Osborn Maledon, P.A., 2929 N. Central Avenue, Suite 2100, Phoenix, Arizona  
13 85012, or some other date, time, or location as counsel should agree.

14 2. Electronically stored information should be produced as bates labeled  
15 TIFF files with a load file.


#### 16 REQUESTS FOR PRODUCTION

##### 17 REQUEST NO. 6

18 For the last five years, produce for each fiscal year, Clark Hill's final year-end  
19 financial statement, balance sheets, statements of profitability, and tax returns, including  
20 K-1 forms.

21 DATED this 1<sup>st</sup> day of August, 2018.

22 OSBORN MALEDON, P.A.

23  
24 By   
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Attorneys for Plaintiff

1 COPY of the foregoing hand delivered  
2 this 1st day of August, 2018, on:

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