

CAUSE NO. CC-17-06253-C

UNITED DEVELOPMENT FUNDING, L.P.,	§	IN THE COUNTY COURT
A DELAWARE LIMITED PARTNERSHIP;	§	
UNITED DEVELOPMENT FUNDING II,	§	
L.P., A DELAWARE LIMITED	§	
PARTNERSHIP; UNITED DEVELOPMENT	§	
FUNDING III, L.P., A DELAWARE	§	
LIMITED PARTNERSHIP; UNITED	§	
DEVELOPMENT FUNDING IV, A	§	
MARYLAND REAL ESTATE	§	
INVESTMENT TRUST; UNITED	§	
DEVELOPMENT FUNDING INCOME	§	
FUND V, A MARYLAND REAL ESTATE	§	
INVESTMENT TRUST; UNITED	§	
MORTGAGE TRUST, A MARYLAND	§	
REAL STATE INVESTMENT TRUST;	§	
UNITED DEVELOPMENT FUNDING	§	
LAND OPPORTUNITY FUND, L.P., A	§	AT LAW NO. 3
DELAWARE LIMITED PARTNERSHIP;	§	
UNITED DEVELOPMENT FUNDING	§	
LAND OPPORTUNITY FUND	§	
INVESTORS, L.L.C., A DELAWARE	§	
LIMITED LIABILITY COMPANY	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
	§	
J. KYLE BASS; HAYMAN CAPITAL	§	
MANAGEMENT, L.P.; HAYMAN	§	
OFFSHORE MANAGEMENT, INC.;	§	
HAYMAN CAPITAL MASTER FUND, L.P.;	§	
HAYMAN CAPITAL PARTNERS, L.P.;	§	
HAYMAN CAPITAL OFFSHORE	§	
PARTNERS, L.P.; HAYMAN	§	
INVESTMENTS, LLC	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

**DECLARATION OF ELLEN A. CIRANGLE IN SUPPORT OF PLAINTIFFS' REPLY  
BRIEF RE MOTION TO OBTAIN DOCUMENTS IMPROPERLY  
DESIGNATED AS PRIVILEGED PURSUANT TO THE CRIME-FRAUD EXCEPTION**

My name is Ellen A. Cirangle, my date of birth is July 7, 1963, and my address is 18 Miguel Street San Francisco, California. I declare under penalty of perjury that the foregoing is true and correct.

1. I am over eighteen years of age. I have never been convicted of a felony or a crime of moral turpitude. I am of sound mind, and I am fully competent to make this declaration.
2. I am counsel of record for plaintiffs United Development Funding, L.P. (“UDF I”), United Development Funding II, L.P. (“UDF II”), United Development Funding III, L.P. (“UDF III”), United Development Funding IV (“UDF IV”), United Development Funding Income Fund V (“UDF V”), United Mortgage Trust (“UMT”), United Development Funding Land Opportunity Fund, L.P. and United Development Funding Land Opportunity Fund Investors, LLC (collectively, “Plaintiffs”) in their lawsuit against defendants J. Kyle Bass, Hayman Capital Management, L.P., Hayman Offshore Management, Inc., Hayman Capital Master Fund, L.P., Hayman Capital Partners, L.P., Hayman Capital Offshore Partners, L.P., and Hayman Investments, LLC (collectively, “Defendants”).
3. Attached hereto as Exhibit A is a true and correct copy of an article published in the Wall Street Journal on June 14, 2020, entitled “Investor’s Attack on Texas Real Estate Lender Boomerangs.” The article discloses Defendants are under investigation by the SEC for their attack on UDF. It is available at <https://www.wsj.com/articles/investors-attack-on-texas-real-estate-lender-boomerangs-11592157950>.
4. Attached hereto as Exhibit B are two emails recently produced by Defendants in this case, where Defendants describe their need and intent to “kill off UDF” and Kyle Bass refers to himself as a “gangsta” in the context of a discussion about his UDF scheme.
5. Attached hereto as Exhibit C is a true and correct copy of a Motion for Sanctions filed on September 30, 2014 by Bass and Hayman’s lead counsel in this case, Larry Friedman, in a case entitled *The Estate of Chris Kyle and Taya Kyle v. Chris Kirkpatrick, Esq.*, Cause No. DC14-08840 (Dallas County). In his motion, at page 13, Mr. Friedman states his belief (at page 1) that “Kirkpatrick and Bass’s Greed” fueled them to work together, and together “Bass and Kirkpatrick built a foundation of deception” in order to “steal” from a widow and her children. Mr. Friedman also stated his belief that Mr. Kirkpatrick had made “blatant misrepresentations” and “false statements” to the Court. Mr. Friedman also stated (at page 4) that Mr. Kirkpatrick had assaulted a process server, hitting him with his car, pinning him inside his vehicle and pressing him against a wall.

Executed in the City and County of San Francisco, State of California, on the 6 day of July, 2020.



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Ellen A. Cirangle

# EXHIBIT A

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<https://www.wsj.com/articles/investors-attack-on-texas-real-estate-lender-boomerangs-11592157950>

◆ **WSJ NEWS EXCLUSIVE** | MARKETS

# Investor's Attack on Texas Real-Estate Lender Boomerangs

Short selling paid off for Hayman Capital, but now it faces regulatory scrutiny itself



Hayman Capital's Kyle Bass has been a relentless critic of United Development Funding.

PHOTO: BLOOMBERG NEWS

By [Dave Michaels](#) and [Aruna Viswanatha](#)

June 14, 2020 2:05 pm ET

Kyle Bass's market bet against a Texas real-estate lender seemed like an astute move. Throughout 2015, the hedge-fund manager accused the lender, United Development Funding, of operating like a Ponzi scheme. Authorities opened civil and criminal investigations into UDF, and Mr. Bass counted his winnings as UDF stock eventually fell to \$1.

Today, Mr. Bass is also facing regulatory scrutiny.

After earning some \$34 million by selling short shares of real-estate investment trust UDF IV, Mr. Bass's Dallas-based company is under investigation by U.S. securities regulators, according to people familiar with the matter. They are looking at whether Mr. Bass's relentless criticism of UDF—including his allegations of widespread undisclosed problems in its loan portfolio—conveyed false or misleading statements that amounted to market manipulation, the people said.

Separately, UDF has sued Mr. Bass and his firm, Hayman Capital Management LP, accusing it of distorting the lender's record—a claim Mr. Bass and Hayman deny. A Texas appeals court last year allowed the lawsuit to proceed, rejecting Mr. Bass's argument that his firm's commentary about UDF was protected by the First Amendment.

Mr. Bass declined to answer questions about any Securities and Exchange Commission investigation. A lawyer for Mr. Bass and Hayman said in a letter that UDF perpetrated a “multi-hundred-million-dollar fraud” and that questions about Hayman's conduct were driven by “vendettas of an advance group of charged fraudsters against their whistleblower (Hayman).”

The SEC investigation is in its early stages and may not result in any formal claims.

An SEC spokeswoman declined to comment.

The Texas appeals court didn't come down cleanly on either side, each accusing the other of mischaracterizing the underlying facts. But the court found UDF's claims about Hayman's conduct worth pursuing, saying they resembled “a restaurant menu with too many offerings.”

Short sellers and government authorities can have a symbiotic relationship, sometimes serving each other's interests in examining possible fraud. Mr. Bass or other Hayman representatives communicated in person or on the phone with the SEC and the Federal Bureau of Investigation eight times in 2015 before the FBI raided UDF's headquarters in February 2016, according to records UDF elicited from Hayman in its lawsuit.

The FBI and the U.S. attorney's office in Dallas have declined to comment.

In 2018, two UDF funds—UDF IV and UDF III—and the executives who managed them settled SEC claims that the firm fraudulently overstated the value of one loan and misled investors about its practice of using money from one fund to make distributions to shareholders in the other. The two UDF funds are real-estate investment trusts, or REITs, whose shares can trade on stock exchanges.

Five UDF executives paid more than \$8.2 million; but they, as well as the funds, neither admitted nor denied the allegations. In the settlement, the SEC didn't use the term Ponzi scheme, as Mr. Bass did, and UDF has denied being a Ponzi scheme.

In March, the U.S. Public Company Accounting Oversight Board, a specialized regulator that reports to the SEC, sanctioned the auditors who signed off on the UDF funds' books, saying they failed to sufficiently test the value of some loans and respond to evidence of undisclosed transfers between the two funds. The auditor, Whitley Penn LLP, settled the case with the PCAOB without admitting or denying the findings.

Whitley Penn said the audit was performed seven years ago. “We as a firm have committed substantial resources to assure we have a high-quality audit practice and quality-control procedures that exceed industry standards,” the firm said.

UDF is also battling civil lawsuits brought by former investors and a Dallas home builder. The investors claim they were harmed by the conduct alleged in the SEC case. UDF, which is based in Grapevine, Texas, has denied wrongdoing.

Some of the allegations about the UDF funds that led to the settlement with the SEC in 2018 resembled those made earlier by Hayman. In a letter on a Hayman-sponsored website, “UDFExposed,” Mr. Bass in 2016 accused executives of using newer investor money from UDF IV to pay dividends to shareholders in UDF III.

But Mr. Bass, on that website and elsewhere, also detailed what he saw as possible regulatory violations by UDF that never showed up in the SEC case.

For instance, Hayman accused UDF’s managers of engaging in transactions with a large borrower that weren’t “arm’s-length” and said a separate UDF-affiliated REIT made loans to companies controlled by the UDF executives, then failed to properly value those loans when they weren’t repaid. The range of accusations prompted UDF’s lawsuit, claiming Mr. Bass and Hayman distorted the lender’s record.

If the SEC finds Hayman’s claims about UDF were wrong and the hedge fund knew or should have known they were inaccurate, the regulator could have a basis for a market-manipulation case, said Urska Velikonja, a Georgetown University law professor who studies financial enforcement.

Mr. Bass has made a career of making investments focused on specific themes or sectors, most famously a bet against subprime housing loans ahead of the 2008 financial crisis. He has also bet against other companies involved in alleged frauds and whose conduct he reported to the government, including firms that collapsed or were later sued by the SEC. More recently, he wagered that the Chinese yuan and Hong Kong dollar would depreciate, and he has slipped with investments in oil. As of April 23, he managed \$432 million, regulatory disclosures show.

**“If this was a real business, we would have lost money.”**

— Kyle Bass, speaking of shorting UDF stock.

The 50-year-old investor remains one of the most outspoken hedge-fund managers and frequently criticizes China on his [Twitter](#) account.

The U.S. attorney's office in Dallas is continuing a criminal investigation into UDF, according to people familiar with the matter.

Mr. Bass stands by Hayman's research into UDF, saying its findings were validated by the regulatory actions against the real-estate lender and its auditor. The UDF funds, one of which still trades in the over-the-counter market, stopped disclosing financial results after the FBI raid, and are still fighting the SEC's efforts to remove their publicly traded status.

"If this was a real business, we would have lost money," Mr. Bass said in an interview. "With little or no legitimate earnings, Ponzi schemes collapse. Well, that's what happened from the day we unearthed the fraud."

UDF has denied it is such a scheme, calling Mr. Bass and his funds "no do-gooders." Its attorneys wrote in a court filing: "They wagered millions of dollars on destroying UDF's business and its stock price, and secretly pressured law enforcement and press contacts to try to make it happen."

It started with a lunch.

In 2014, then-Hayman analyst Parker Lewis said he met up with a real-estate restructuring consultant he knew, who proceeded to tip him off to potential troubles at UDF.

Messrs. Bass, Lewis and others visited sites around North Texas where UDF had loaned developers hundreds of millions of dollars. Finding limited evidence of development despite the borrowers having loans outstanding to UDF for years, they grew convinced that something was wrong with the business and that shareholders weren't being told.

Mr. Bass said in the interview that his firm first approached the FBI in early 2015. Hayman also disclosed its short bet, he said.

As of April 2015, Hayman held a short position in more than one million UDF shares, and had conducted an "introductory conference call" with the SEC to discuss the firm's findings.

Within two weeks of the call, FBI agents, prosecutors from the U.S. attorney's office in Dallas and attorneys from the SEC were in Hayman's office for a briefing. The FBI attended three follow-up briefings from the firm.

"This business is about extracting an exorbitant amount of fees from unsuspecting investors," Hayman wrote in an 80-page presentation to government investigators titled "Why the SEC Should Care."

Records provided by Hayman in UDF's lawsuit show that the hedge fund added to its short position at least four times after meeting with the SEC.



After Mr. Lewis visited a vacant lot that belonged to a UDF developer in June 2015, Mr. Bass texted: "Make sure you send along the photos to SEC and FBI." Mr. Lewis, who joined Mr. Bass in the interview, now works for a cryptocurrency firm in Austin.

The records, including emails between Mr. Bass and other Hayman analysts, show the hedge-fund manager anticipating that UDF shares would come under pressure in late 2015, likely making Hayman's short bet profitable. "This will happen in December one way or the other," Mr. Bass wrote in one email in November 2015.

"Based on its thorough analysis of UDF, Hayman expected there to be a UDF bankruptcy," Hayman said in a court filing.

That December, Hayman posted an anonymous attack against UDF on a website that catered to institutional investors. The same day, UDF disclosed it had been under SEC investigation since April 2014. The price of UDF IV shares fell 35%.

In January 2016, on UDFExposed, Hayman put its name to the short bet and said UDF IV faced "significant bankruptcy risk," bringing another 30% stock tumble.

The SEC in recent months has contacted Edelman, the public-relations firm that created the website, asking about its work and how it was compensated, and has sought similar information from a co-founder of Harvest Exchange Corp., whose website hosted the anonymous attack, people familiar with the matter said.

Reached by phone, the co-founder said he is no longer involved with Harvest, and hung up without answering additional questions. An Edelman spokesman declined to comment. Harvest didn't return inquiries seeking comment.

Ms. Velikonja, of Georgetown, said a market-manipulation case against Hayman and Mr. Bass would have to show the hedge-fund manager made intentionally false statements about UDF—even if certain aspects of the attack were accurate—in order to drive down the share price of the publicly traded REIT that Hayman was shorting.

"The UDF price declined after Bass's disclosures, but the challenge [for the SEC] is that the statements were at least partly true," she said.

The SEC has brought a handful of cases involving short sellers whose claims about their targets were allegedly fraudulent. In an ongoing case, the agency accused a priest of spreading untrue claims about a pharmaceutical company, including that it was close to bankruptcy. The priest has denied the allegation, arguing that the SEC brought the case under pressure from the drug company.

Mr. Bass says he feels he did the right thing. “We’ve spent years of our life on this and millions of dollars in legal fees,” he said. “In the end, we were the whistleblowers that stopped an additional billion-dollar fraud.”

—*Emily Glazer contributed to this article.*

**Write to Dave Michaels at [dave.michaels@wsj.com](mailto:dave.michaels@wsj.com) and Aruna Viswanatha at [Aruna.Viswanatha@wsj.com](mailto:Aruna.Viswanatha@wsj.com)**

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# EXHIBIT B

Message

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**From:** Brandon Osmon [bo@haymancapital.com]  
**Sent:** 7/26/2016 2:23:14 PM  
**To:** J. Kyle Bass [k@haymancapital.com]  
**CC:** Dan Babich [DB@haymancapital.com]; Parker Lewis [PL@haymancapital.com]; Davis Hostetter [dh@haymancapital.com]  
**Subject:** RE: Highest New Home Sales since Feb'08 (chart below) -- this bodes well for the MI space

Very true. We rolled a total of \$350 mln HKD (last night and this morning) for HCMF and the full amount of \$40 mln for quantum. All at flat (zero spread) or better.

From: J. Kyle Bass  
Sent: Tuesday, July 26, 2016 9:21 AM  
To: Brandon Osmon  
Cc: Dan Babich; Parker Lewis; Davis Hostetter  
Subject: Re: Highest New Home Sales since Feb'08 (chart below) -- this bodes well for the MI space

We need this to keep going before your VAR shock takes place. It's funny because we need it to die to kill off UDF.

J. Kyle Bass  
Chief Investment Officer  
Hayman Capital Management

On Jul 26, 2016, at 7:12 AM, Brandon Osmon <bo@haymancapital.com<mailto:bo@haymancapital.com>> wrote:  
<image001.png>

Message

**From:** J. Kyle Bass [k@haymancapital.com]  
**Sent:** 10/17/2016 1:41:03 PM  
**To:** Steele Schottenheimer [ss@haymancapital.com]  
**CC:** Brandon Osmon [jbo@haymancapital.com]; Dan Babich [DB@haymancapital.com]; Kathryn E. Mueller [KM@haymancapital.com]; Lauren Schweiger Dillin [ld@haymancapital.com]; Debby LaMoy [dl@haymancapital.com]; Juneau Lee [JL@haymancapital.com]  
**Subject:** Re: Google Alert - "hayman capital"

Damn it feels good to be a gangsta...

J. Kyle Bass  
Chief Investment Officer  
Hayman Capital Management

On Oct 17, 2016, at 6:32 AM, Steele Schottenheimer <ss@haymancapital.com<mailto:ss@haymancapital.com>> wrote:

<http://www.nasdaq.com/article/troubled-kyle-bass-reduces-stake-in-nmi-holdings-cm693790>

Troubled Kyle Bass Reduces Stake in NMI Holdings  
October 14, 2016, 01:47:28 PM EDT By Sydnee Gatewood, GuruFocus<<http://www.nasdaq.com/author/gurufocus>>

Hayman Capital Management's Kyle Bass<<http://www.gurufocus.com/StockBuy.php?GuruName=Kyle+Bass>> ( Trades<<http://www.gurufocus.com/StockBuy.php?GuruName=Kyle+Bass>> , Portfolio<<http://www.gurufocus.com/holdings.php?GuruName=Kyle+Bass>> ) reduced his stake in NMI Holdings Inc. ( NMIH<<http://www.nasdaq.com/symbol/nmi>> ) by -7.-4% on Oct. --. Bass founded Hayman Capital in -.....5. The Dallas-based hedge fund has been struggling recently due mostly to the state of oil prices<<http://www.nasdaq.com/markets/crude-oil.aspx>> . While the firm prospered with Bass' shorting of the subprime mortgage crisis leading up to the Great Recession, he was not so fortuitous in regard to predicting oil prices.

In -...-5, Bass began buying into oil companies such as Concho Resources ( CXO<<http://www.nasdaq.com/symbol/cxo>> ) and Whiting Petroleum ( WLL<<http://www.nasdaq.com/symbol/wll>> ) with the expectation crude oil prices<<http://www.nasdaq.com/markets/crude-oil.aspx>> would rebound in -...-5 and -...-6. They did rise at the beginning of -...-6 but have since fallen. As of Oct. --, crude oil was \$5-.- a barrel.

According to the Wall Street Journal, as of May -, Bass' main fund had experienced a 7% loss so far this year, the biggest losing streak in the firm's history.

In addition to his success during the Great Recession, Bass has also correctly predicted Greece's economic woes and the devaluation of the Japanese yen. The firm also targeted United Development Funding IV ( UDF<<http://www.nasdaq.com/symbol/udf>> ) earlier this year, claiming the company was operating like a Ponzi scheme. It was cleared of fraud on May -7. Bass' latest bet is in regard to Chinese and Hong Kong currency. Bass said he expects the currencies to depreciate approximately 4..% over the next three years. Due to China's heavy debt levels, Bass believes the Chinese government will be forced to inject cash into the system, thus driving down the value of the yuan.

In NMI, the guru sold -,446,995 shares for \$8.-' per share. The transaction had an impact of -9.'7% on the portfolio, and he now holds ',865,657 shares.

NMI Holdings provides private mortgage guaranty insurance through its subsidiaries. It offers primary mortgage insurance and pool insurance. The company was incorporated in -...-- and is based in Emeryville, California.

The company has a market cap of \$467.- million with an enterprise value of \$5..8.- million. It has a forward price-earnings (P/E) ratio of 8.-, a price-book (P/B) ratio of -.- and a price-sales (P/S) ratio of 5.'4.

GuruFocus ranked the company's financial strength 6 of -.... Its Piotroski F-Score of 4 indicates the business is in stable financial condition. The company's equity to asset ratio is ....59, well above the industry median of ....-6. The cash-debt ratio of ....' is far below the industry median of -.4.

GuruFocus ranked NMI's profitability and growth ' of -.... Both its operating margin and net margin are in the negatives and underperform 97% and 98% of competitors. NMI's return on equity (ROE) of --.8% underperforms 94% of companies in the global insurance - property & casualty industry. Similarly, the company's return on assets (ROA) of --.9% underperforms 95% of companies in that industry. Howard Marks (Trades, Portfolio) is the largest shareholder among the gurus. He holds 9.84% of outstanding shares, which is -.5% of his total assets managed. Bass is second with 6.5% of outstanding shares. Other gurus invested in the company are Jim Simons (Trades, Portfolio) and Chuck Royce (Trades, Portfolio).

Bass has been reducing his stake in the company since the second quarter. Financial Services stocks hold a -.-% weight in his portfolio.

Read more: <http://www.nasdaq.com/article/troubled-kyle-bass-reduces-stake-in-nmi-holdings-cm693790#ixzz4NLgUCygv>

Steele Schottenheimer  
Managing Director- Investor Relations  
Hayman Capital Management, L.P.  
2101 Cedar Springs Road, Suite 1400  
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Fax: 214.347.8051  
Email: [ss@haymancapital.com](mailto:ss@haymancapital.com)<<mailto:ss@haymancapital.com>>

From: Google Alerts [<mailto:googlealerts-noreply@google.com>]  
Sent: Saturday, October 15, 2016 12:31 PM  
To: Steele Schottenheimer <[ss@haymancapital.com](mailto:ss@haymancapital.com)<<mailto:ss@haymancapital.com>>>  
Subject: Google Alert - "hayman capital"

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"hayman capital"  
As-it-happens update · October 15, 2016

#### NEWS

Troubled Kyle Bass Reduces Stake in NMI Holdings  
<<https://www.google.com/url?rct=j&sa=t&url=http://www.nasdaq.com/article/troubled-kyle-bass-reduces-stake-in-nmi-holdings-cm693790&ct=ga&cd=CAEYACoUMTQZnJlE1NzMzNDc5MTM5ODI0ODkyGjQ4NWNmZTJmYzAyODIxMWE6Y29tOmVuOlVT&usg=AFQjCNGg-bkDbgyoudGa3nfAD1HI-8ym5Q>>  
Nasdaq

4% on Oct. --. Bass founded Hayman Capital in -.....5. The Dallas-based hedge fund has been struggling recently due mostly to the state of oil prices .  
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<[https://www.google.com/alerts?source=alertsmaill&hl=en&gl=US&msgid=MTQzNjE1NzMzNDc5MTM5ODI0ODk&s=AB2Xq4gKLj8ITx3LPWlNVNm3\\_1CzuxasdDnl-zI&ffu=>](https://www.google.com/alerts?source=alertsmaill&hl=en&gl=US&msgid=MTQzNjE1NzMzNDc5MTM5ODI0ODk&s=AB2Xq4gKLj8ITx3LPWlNVNm3_1CzuxasdDnl-zI&ffu=>)

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# EXHIBIT C



CAUSE NO. DC 14-08840

ESTATE OF CHRIS KYLE and	§	IN THE DISTRICT COURT
TAYA KYLE,	§	
	§	
	§	
Plaintiffs,	§	
	§	
v.	§	191 <sup>st</sup> JUDICIAL DISTRICT
	§	
CHRISTOPHER KIRKPATRICK, ESQ.,	§	
	§	
Defendant.	§	DALLASCOUNTY, TEXAS

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**PLAINTIFFS' MOTION FOR SANCTIONS FOR FRIVOLOUS PLEADING  
PURSUANT TO TEXAS RULE OF CIVIL PROCEDURE 13 AND TEXAS CIVIL  
PRACTICE AND REMEDIES CODE CHAPTER 10**

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TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs, the Estate of Chris Kyle and Taya Kyle ("Plaintiffs"), and file this their Motion for Sanctions for Frivolous Pleading Pursuant to Texas Rule of Civil Procedure 13 and Texas Civil Practice and Remedies Code Chapter 10, complaining of the actions of Defendant Christopher Kirkpatrick, Esq. and his counsel of record, Mike Lynn, Jeremy Fielding, and the law firm of Lynn Tillotson Pinker & Cox LLP and, for cause, would respectfully show unto this Court as follows:

**I. INTRODUCTION & SUMMARY OF ARGUMENT**

1. Kirkpatrick and his Counsel have filed groundless pleadings in this Court and false affidavit of Defendant Kirkpatrick that set forth blatant misrepresentations and false statements to this Court, in what Plaintiffs believe to be a concerted attempt to bully and intimidate Chris Kyle's widow and young children and keep them from seeking their legal rights in this case.

2. Plaintiffs move for sanctions against Christopher Kirkpatrick ("Kirkpatrick") and his counsel of record Mike Lynn, Jeremy Fielding, and the law firm of Lynn Tillotson Pinker & Cox LLP (collectively referred to as "Defendant's Counsel") on the grounds that they filed a frivolous Answer and Anti-Slapp Motion in bad faith, and without making any reasonable inquiry as to the truth of the statements made in said pleadings prior to filing. Moreover, Defendants' Counsel failed to confer with Plaintiffs' counsel prior to the filing of the groundless Anti-Slapp Motion as required by the Dallas Local Rules.

3. Kirkpatrick and his Counsel filed his Answer and Anti-Slapp Motion either knowing the facts and wholly ignoring them or not knowing the facts and failing to investigate them. Moreover, the allegations and other factual contentions pled by Kirkpatrick have no evidentiary support, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery and are being presented for an improper purpose, to wit: to harass Plaintiff and opposing counsel; to cause unnecessary delay; and, to needlessly increase the cost of this litigation.

4. Despite the fact that Defendant's Counsel had a duty to investigate Defendant's claims prior to filing their groundless Anti-Slapp Motion, Defendant's Counsel intentionally and in bad faith filed said Anti-Slapp Motion to Dismiss in which they made numerous false statements and intentional misrepresentations to this Honorable Court in order to leave this Honorable Court with a false impression and delay this case. For example, Kirkpatrick attests to the following in his Affidavit attached to his Anti-Slapp Motion:

It is my understanding that on August 11, 2014, Mr. Friedman contacted Mr. Roberts and demanded a meeting with me and the Vinson & Elkins attorney to discuss a settlement proposal. I responded, through Mr. Roberts, that Mr. Friedman first reduce his proposal to writing so the Noteholders could decide whether the parties were in the same ballpark and a settlement meeting would be worthwhile. Mr. Friedman refused, and I understand that he again demanded, through Mr. Roberts, that I make myself available for a meeting

and, if I did not, Mr. Friedman threaten [sic] to sue me and the Noteholders to force us to have to meet with him.

See ¶ 18 of Kirkpatrick's Affidavit.

5. After the filing of the Anti-Slapp Motion, Mr. Seymour Roberts advised Kirkpatrick's counsel, Mr. Jeremy Fielding, that the statements in Mr. Kirkpatrick's affidavit relating to Mr. Friedman's alleged threat are indeed false, however, Mr. Fielding failed to withdraw the Anti-Slapp Motion. Upon information and belief, Mr. Fielding prepared an affidavit for Mr. Roberts to execute, which Mr. Roberts refused to execute based on the false statements therein. It is understood that Mr. Roberts revised an affidavit, but Mr. Fielding chose not to file it with the Court.

6. Accordingly, Plaintiffs request that this Court sanction Defendant Kirkpatrick and his counsel Mike Lynn, Jeremy Fielding, and the law firm of Lynn Tillotson Pinker & Cox LLP pursuant to Chapter 10 of the Texas Civil Practice and Remedies Code and Rule 13 of the Texas Rules of Civil Procedure.

## II. BACKGROUND

### Kirkpatrick, an Officer of the Court, Evaded Service of Process and Physically Assaulted the Process Server

7. On August 13, 2014, Plaintiffs effectively terminated the legal services of Christopher Kirkpatrick ("Kirkpatrick"), and requested that he return and destroy all legal files concerning or relating to his representation of Chris Kyle and/or Taya Kyle. A true and correct copy of said correspondence is marked as Exhibit "A," and submitted to the Court for *in camera* review. Plaintiffs also requested that Mr. Kirkpatrick preserve all evidence relating to his representation of Chris Kyle and Taya Kyle. A true correct copy of said preservation of evidence letter is marked as Exhibit "B," and is being submitted to the Court for *in camera*

review.

8. On August 14, 2014, Plaintiffs filed their lawsuit against Kirkpatrick for breach of contract, malpractice and breach of fiduciary duty. Kirkpatrick, an attorney and officer of the Court, evaded process of service for several days until he was served on August 22, 2014. *See* Affidavit of Zach Goldberg, a true and correct copy is attached hereto as Exhibit "C," and incorporated herein as if set forth in full. In fact, Mr. Kirkpatrick not only evaded service but when the process server finally caught up with him, he assaulted the process server. He hit Mr. Goldberg with his car and pinned him inside of his vehicle. Then when Mr. Goldberg finally got out of his car to serve Kirkpatrick, Kirkpatrick chest-bumped him, and physically attempted to restrain him – all while Goldberg was trying to serve legal papers that Mr. Kirkpatrick knew were being served upon him in a legal proceeding. *See* Affidavit of Zach Goldberg, a true and correct copy is attached hereto as Exhibit "C."

**A. DEFENDANT'S ANSWER**

**Kirkpatrick Files a Frivolous 13-Page Answer & General Denial Making False Accusations in Bad Faith Without First Making a Reasonable Inquiry Into the Truth of Such Accusations**

9. On September 15, 2014, Mr. Mike Lynn, on behalf of Kirkpatrick, filed a 13-page Answer and General Denial, on file with the Court. Defendant's Answer is nothing more than a spew of unsupported and uncorroborated factual allegations and attacks on Plaintiffs and their counsel. Contained in Defendant's 13-page Answer are four (4) affirmative defenses to Plaintiffs' claims, which are: (i) estoppel; (ii) proportionate responsibility; (iii) failure to mitigate; and, (iv) waiver. Defendant's defenses take up less than one (1) page. In the remaining pages of Kirkpatrick's Answer, it sets forth blatantly false facts and allegations, none of which aid or support any of the purported defenses asserted by Kirkpatrick, and therefore Kirkpatrick's

Answer fails to comply with Rule 85 of the Texas Rules of Civil Procedure. Defendant's Answer reads more like an unsupported TMZ press release, not an Answer to Plaintiffs' Petition guided by the principles of the Texas Rules of Civil Procedure.

**Craft Seeks All the Proceeds ("Blood Money") from the *American Sniper* book in the Craft Bankruptcy**

10. It is clear that Kirkpatrick and his counsel did not make a reasonable inquiry as to the truth of the statements made in Kirkpatrick's Answer before filing such with the Court. For example, Kirkpatrick alleges on page 3 of his Answer that the profits from the book *American Sniper* aka "blood money" was supposed to be donated to SEAL team members' families, even in the event of Chris Kyle's death. However, this statement is simply not true as Chris Kyle specifically set forth how he wished the proceeds to be given in the event of his death – and that was to Taya Kyle and their children. What is even more egregious than Kirkpatrick's flagrant lies is that Craft is seeking ALL of the proceeds (or what they refer to as "blood money") from the *American Sniper* book itself. Kirkpatrick represented Chris Kyle (and Craft, among others) in many aspects of the negotiations concerning the *American Sniper* book, and yet he failed to advise or disclose to Chris Kyle that Craft would or could seek the proceeds from the *American Sniper* book because he wrote the book while employed by Craft. Kirkpatrick failed to disclose his conflict of interest to Chris Kyle in connection with his simultaneous representation of Chris Kyle, Craft, Hayman Capital Management, L.P., ("Hayman Capital"), J. Kyle Bass ("Bass") as well as various other Craft's investors and debt holders when he represented Chris Kyle in the *American Sniper* book negotiations.

11. In this transaction, Kirkpatrick advocated inconsistent positions that is expressly prohibited by the Disciplinary Rules, and which ultimately caused Plaintiffs harm. Moreover, Kirkpatrick failed to consult with Chris Kyle and Craft concerning the implications of the

common representation, including the advantages, the risk and the impact on the attorney-client privileges. Chris Kyle was not properly advised of the risks of allowing Kirkpatrick to negotiate the book deal while Kirkpatrick simultaneously represented Craft, Bass, himself and Hayman Capitals, who are creditors of Craft and who have an interest in the proceeds of the *American Sniper* book. Kirkpatrick's representation of Chris Kyle was prohibited, and ultimately caused harm to the Estate of Chris Kyle and Plaintiffs.

12. As a result of Kirkpatrick's failure to disclose, the Estate of Chris Kyle is now forced to defend against claims from Craft relating to the entitlement of profits from the *American Sniper* book.

**Free Legal Advice Does Not Relieve Kirkpatrick From Liability**

13. Defendant further takes the spurious position that because he gave the legal advice to Chris Kyle and Taya Kyle for "free" and "graciously," he is not bound by the Texas Disciplinary Rules concerning conflicts of interest or protection of attorney-client confidences. Instead, it appears that Kirkpatrick is seeking a community service award based on his purported unselfish conduct in providing such "free" advice to Chris Kyle and Taya Kyle. As Defendant's Counsel should be aware, payment of attorneys' fees is not a prerequisite to a malpractice, breach of contract or breach of fiduciary lawsuit.

**Kirkpatrick Is Attempting to Bully a Widow and Her Young Children to Forego Their Rights to Chris Kyle's Name, Likeness and Image By Making False Allegations Against Them**

14. Although, Kirkpatrick admits on the first page of his Answer that he provided Craft and Chris Kyle with "free business and legal advice," he also makes the unsupported and false allegation that Plaintiffs' lawsuit is nothing more than a retaliation lawsuit regarding claims made in the Craft bankruptcy case.

15. Rather, Defendant's Answer and Anti-Slapp Motion (discussed in further detail below) are nothing more than a blatant attempt to intimidate and bully Chris Kyle's widow and young children from pursuing their legal rights to Chris Kyle's name, likeness and image pursuant to the Texas Property Code.

16. In his Answer, Kirkpatrick claims that "shortly after" Craft's filing of bankruptcy on February 24, 2014, Taya Kyle filed an adversary proceeding. The truth is that more than six (6) months passed after Craft's filing of bankruptcy before Mrs. Taya Kyle was forced to file an adversary proceeding to protect her and her children's rights to Chris Kyle's name, likeness, and image pursuant to common law and the Texas Property Code. Kirkpatrick's characterization of Plaintiffs' filings in the bankruptcy is misleading and deceptive, which warrants sanctions.

17. Despite Kirkpatrick's boisterous allegations concerning Craft's bankruptcy, the undisputed fact remains that Kirkpatrick, an attorney, represented Chris Kyle and Taya Kyle, Craft, Hayman Capital, J. Kyle Bass, CIRM,<sup>1</sup> himself, various investors of Craft, and debt holders of Craft, among others. Kirkpatrick never consulted with either Chris Kyle and Taya Kyle and explained to them the implications of a common and joint representation, including the risks and the effect of the attorney-client privileges as required by Texas Disciplinary Rule 1.07(a)(1). It is further undisputed that Kirkpatrick neither explained nor received a waiver of conflicts of interests from either Chris Kyle or Taya Kyle. It is further undisputed that Kirkpatrick, on behalf of Craft's Noteholders, and as the Noteholders' counsel, negotiated with Gerrit Pronske, counsel for the Estate of Chris Kyle and Taya Kyle. Here, Kirkpatrick's representation of the Noteholders is prohibited by the Texas Disciplinary Rules, and violates the attorney-client relationship that Chris Kyle and Taya Kyle had with Kirkpatrick. Kirkpatrick could not have reasonably believed that his representation of all these clients would not be

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<sup>1</sup> Craft International Risk Management ("CIRM") is a company in which competed with Craft.

adversely affected by such joint representations, because the interests of Craft, Chris Kyle, Hayman Capital, Bass were so complex and convoluted and unusual, especially in connection with Chris Kyle's interests, that no single lawyer could have adequately advised and represented Chris Kyle as well as Craft, Hayman Capital, CIRM, himself or the Noteholders of Craft. No waiver would even allow for such representation.

**Seymour Roberts Will Not Support Defendant's Counsel's Stated Rendition of His Conversation with Mr. Friedman**

18. Kirkpatrick falsely alleges in his Answer that in a phone call between Mr. Friedman and Mr. Seymour Roberts, Craft's bankruptcy attorney, that Mr. Friedman was angry that the Noteholders' representative [Kirkpatrick] would not meet with him, and therefore "he was just going to have to sue them." This is a deliberate misrepresentation of the telephone call between Mr. Roberts and Mr. Friedman. Mr. Friedman was not angry at Seymour Roberts. Mr. Friedman made no such threat in response to the Noteholder's refusal to meet.

19. As set forth in more detail below, it is unlikely that Mr. Roberts will corroborate Kirkpatrick's allegations because they are a false and a deliberate attempt by Kirkpatrick to mislead this Court. In fact, Mr. Roberts advised Mr. Fielding that his rendition of the conversation set forth in Kirkpatrick's pleadings was not accurate and that Mr. Friedman made no such "threats." Plaintiffs move for sanctions against Kirkpatrick and his Counsel for the frivolous allegations set forth in his Answer, which were made in bad faith with no good faith attempt to verify such facts prior to filing such a pleading.



**B. DEFENDANT'S ANTI-SLAPP MOTION TO DISMISS<sup>2</sup>**

**Kirkpatrick Files Anti-Slapp Motion in Bad Faith and Without Making a Reasonable Inquiry Into the Specious Allegations Lodged at Plaintiffs**

20. On or about September 19, 2014, Kirkpatrick and his lawyers filed Defendant's Anti-Slapp Motion to Dismiss. At the crux of Defendant's argument is that because Plaintiffs filed a "plain-vanilla" lawsuit, it is proof that Plaintiffs have no grounds to bring this lawsuit against Kirkpatrick. However, as explained by Mr. Lawrence Friedman to Mr. Mike Lynn on numerous occasions, Plaintiffs filed a basic lawsuit in order to avoid embarrassment to Mr. Kirkpatrick and Mr. J. Kyle Bass. However, at the insistence of Mike Lynn and Jeremy Fielding, Plaintiffs have since amended their Petition, which is attached hereto as Exhibit "D," and incorporated herein as if set forth in full.

21. As set forth in Plaintiffs' Amended Petition, Plaintiffs have set forth additional facts concerning and relating to the irrefutable conflict of interests that existed among and between Chris Kyle, Taya Kyle, J. Kyle Bass, Hayman Partners, Craft, CIRM, himself, Craft's investors and Noteholders, among others, which prevented Kirkpatrick from adequately representing Chris Kyle's or Taya Kyle's best interests. See a true and correct copy of Plaintiffs' Amended Petition, attached hereto as Exhibit "D," and incorporated herein as if set forth in full. As set forth in Plaintiffs' Amended Petition, the conflicts by, among, and between the various clients Kirkpatrick represented are irreconcilable in which Kirkpatrick was prohibited from representing.

**Plaintiffs Demanded That Kirkpatrick Return Their Files to No Avail**

22. On August 13, 2014, Plaintiffs made a demand upon Kirkpatrick to return all of their files, including but not limited to the following: (1) all emails and electronically stored

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<sup>2</sup> Kirkpatrick relies on the same facts asserted in his Answer to support his Anti-Slapp Motion to Dismiss. As such, Plaintiffs incorporates the arguments under Section A herein as if set forth in full.

information and data; (2) all fact and legal research; (3) all attorneys notes; (4) all attorney work-product, and, (5) drafts of all correspondence, pleadings or other documents in their files. A true and correct copy of said correspondence is marked as Exhibit "A," and is being submitted to this Court for *in camera* review. To date, Kirkpatrick has failed and refused, and continues to fail and refuse to turn over Plaintiffs' files to Plaintiffs.

**Kirkpatrick's Counsel is Not Immune from Sanctions**

23. Even more egregious than Kirkpatrick's position that he is not bound by the Texas Disciplinary Rules because he gave "free" advice to Chris Kyle and Taya Kyle, is Mr. Mike Lynn's belief that he is immune from sanctions because he has federal immunity that protects his bad behavior. Mr. Lynn is fully aware of his specious and misleading allegations set forth in Kirkpatrick's Anti-Slapp Motion, and yet, he failed and refused to confer with Plaintiffs' Counsel on his Anti-Slapp Motion, failed and refused to corroborate his allegations with Mr. Seymour Roberts, and failed and refused to provide this Court with any evidence whatsoever to support his allegations against Plaintiffs. As further demonstrated herein, Kirkpatrick's affidavit is false. Moreover, as demonstrated herein, Kirkpatrick and his Counsel have no good faith basis in law or fact to assert an Anti-Slapp Motion against Plaintiffs. Such conduct before this Court warrants sanctions.

**Free Legal Representation Does Not Mean that No Attorney-Client Relationship Was Formed or Existed**

24. Kirkpatrick disingenuously asserts in his Anti-Slapp Motion that at "no point in time during their relationship did Mr. Kyle ever formally retain Mr. Kirkpatrick to represent him as his lawyer." *See* p. 7 of Defendant's Anti-Slapp Motion. Such a statement not only contradicts Kirkpatrick's own allegations, but it is completely and utterly false.

25. Beginning in 2009, Kirkpatrick, at the direction of Bass, not only began

representing and providing legal counsel to Craft, Bass, and Hayman Capital, he also began representing and providing legal counsel to Chris Kyle, individually as well as his wife, Taya Kyle. An attorney-client relationship was formed, and therefore Kirkpatrick was not only bound by the attorney-client privilege and required to hold Chris Kyle and Taya Kyle's secrets and confidences in trust, but Kirkpatrick also owed the Kyles several fiduciary duties, including the one of full candor and disclosure.

26. One of the various services rendered on behalf of Chris and Taya Kyle included the preparation of legal documents relating to the Kyle residence in Ellis County, Texas. Kirkpatrick simultaneously represented the Kyles as the buyer and Hayman Capital as the lender. Kirkpatrick failed to disclose his conflict, failed to consult with the Kyles, and failed to get a written waiver of conflict of interest from the Kyles. Kirkpatrick also served as the trustee of Taya Kyle and Chris Kyle's family trust, and he also provided legal services and gave legal advice in connection with the Kyles' respective estate planning. Again, Kirkpatrick never disclosed any potential conflict to either Chris Kyle or Taya Kyle, explain the implications of the conflict, and never received a waiver from the Kyles.

27. Kirkpatrick also negotiated various contracts and intellectual property rights on behalf of Chris Kyle, individually, and provided Chris Kyle and his wife, Taya, with legal advice concerning their home mortgage while simultaneously representing Hayman Capital as lender, as well as receipt of proceeds from various deals that Chris Kyle had in the works. Kirkpatrick never explained his various conflicts of interests to the Kyles, and therefore the Kyles never had an opportunity to make an informed decision or give their informed consent to Kirkpatrick's legal representation of them.

28. While providing personal legal services to the Kyles, Kirkpatrick was representing Craft, simultaneously negotiating contracts on behalf of Craft and serving as Craft's registered agent. While simultaneously representing Craft and Chris Kyle, and upon information and belief, Kirkpatrick advised Chris Kyle to assign his intellectual rights, of what is now known as the Craft logo, to Craft. Kirkpatrick, however, never disclosed his conflict of interest between Chris Kyle and Craft, Chris Kyle's employer, or his conflict of interest of simultaneously representing Bass and Hayman Capital, and therefore, Chris Kyle never had the opportunity to make an informed decision or consent to Kirkpatrick's representation of him in connection with the transfer of any intellectual property to Craft. Mr. Kirkpatrick is also an individual investor of Craft, but never fully explained his conflict of interest to the Kyles or obtained a Waiver as required under Rule 1.08 of the Texas Disciplinary Rules.

29. Another example of the attorney-client relationship is when Chris Kyle retained Kirkpatrick as his personal counsel in the *Jesse Ventura v. Kyle* matter, and to which it was confirmed in a letter from Faegre Barker Daniels, to Mr. Kyle on February 21, 2012 that: "[w]e further understand that you have requested Christopher Kirkpatrick of Dallas, Texas, to serve as your personal attorney in connection with this matter." Kirkpatrick was copied on this letter. This is one example of many in which Kirkpatrick served as the Kyles' personal attorney and representative. As set forth in Kirkpatrick's own Answer and Anti-Slapp Motion to Dismiss, Kirkpatrick provided numerous legal services on behalf of the Kyles since the inception of Craft in 2009.

30. Kirkpatrick formed an attorney-client relationship with the Kyles, in which he was bound by the attorney-client privilege, and owed the Kyles fiduciary duties, including the one of full candor and disclosure. Just because the Kyles did not pay for Kirkpatrick's legal

services does not insulate him from liability as a result of his bad advice given to the Kyles and his various breaches to the Kyles in various respects and his failure to disclose known numerous conflicts of interests that prohibited him from adequately representing the Kyles.

31. Kirkpatrick's statements concerning the attorney-client relationship with Mr. Kyle and Mrs. Taya are false, malicious, and were deliberately made to mislead this Court. As such, sanctions are warranted.

**Kirkpatrick and Bass' Greed Have Caused them to Attempt to Steal Chris Kyle's Name, Likeness and Image from his Widow and Young Children**

32. Kirkpatrick then alleges that Mrs. Kyle made some "hurtful" statements concerning his and his affiliates' conduct after the death of Mr. Chris Kyle, and it is the fault of Mrs. Taya Kyle in why Craft became insolvent and was forced to file bankruptcy. The truth is that Craft and its creditors could care less about Chris Kyle, his widow, or children. All Kirkpatrick, Craft (represented by Craft), and Craft's creditors (represented by Kirkpatrick) care about is MONEY. Craft, who is being controlled by J. Kyle Bass, the principal of Craft's largest creditor, Hayman Capital, filed bankruptcy in order to dissolve all of Chris Kyle's interests in Craft (now owed by the Estate of Chris Kyle). Kirkpatrick and Bass want to eliminate Chris Kyle's 85% interest – his blood and tears – that went into developing Craft.

33. While grieving the loss of her husband, and grieving with her young fatherless children, Taya Kyle has been forced to spend countless days, nights, and waking moments having to deal with (and further uncover) the deception caused by Kirkpatrick, Craft executives and Bass. Taya Kyle lost her husband, her best friend, and her children's father, and yet, Bass and Kirkpatrick built a foundation of deception during Chris Kyle's lifetime. They continue to lie, cheat, and steal from Chris Kyle and his family, simultaneously threatening to destroy the legacy of a legend if they are not successful in stealing it. Chris Kyle's image, likeness,

honorable service record and intellectual property are not something a grieving family should have to fight for. This widow and her young fatherless children have lost a priceless future with Chris Kyle. The further loss of time with each other due to the hours Taya Kyle now has to spend fending off greed and theft of her husband's legacy is inexcusable and has caused irreparable harm.

34. Kirkpatrick makes brazenly false accusations concerning the reasons behind Plaintiffs filing of this lawsuit against Kirkpatrick, and falsely claims that this is a retaliation lawsuit based on some creditor claims in the unrelated Craft bankruptcy case. This statement could not be further from the truth, and is not supported by any corroborated statement or evidence. As set forth above, the Estate of Chris Kyle and Taya Kyle made claims in the bankruptcy matter more than 6 months after the filing of bankruptcy in order to protect her and her children's legal rights to her late husband's name, likeness and image.

35. Plaintiffs are unclear as to how they are trying to "intimidate and punish Chris Kirkpatrick for exercising his right to petition on behalf of his client." Although this lawsuit is not even subject to the Anti-Slapp statute, Plaintiffs have not sought to interfere with any alleged creditor claims made in the Craft bankruptcy, and have no reason to do so. Mr. Friedman was not talking to Mr. Roberts about Kirkpatrick or about this particular lawsuit, but rather was talking about meeting with the Noteholders. Second, the alleged representations that Mr. Friedman made to Mr. Seymour Roberts, counsel for Craft, as to the effect that Mr. Friedman will just have to "sue" everyone to get any cooperation is simply false, and upon information and belief, Mr. Roberts will attest to the same. Kirkpatrick and his counsel failed to substantiate such allegations with Mr. Roberts, and failed to obtain a sworn statement from Mr. Roberts concerning the alleged conversations that Mr. Friedman and Mr. Roberts had. On information

and belief, Mr. Roberts refused to corroborate the contrived affidavit that Defendant's counsel tried to get him to sign. Kirkpatrick and his counsel are aware of the false statements contained in their Anti-Slapp Motion, but refuse to withdraw their Anti-Slapp Motion.

36. Kirkpatrick and his Counsel have an affirmative duty of candor to advise this Court of the truth. Kirkpatrick and his Counsel have failed to meet this duty, and have maliciously misled this Court by making factual allegations known to be false. Kirkpatrick's Affidavit must also be stricken on the grounds that the statements therein are false, not within his personal knowledge (such as the statements attributed to Mr. Roberts and Mr. Friedman), and such statements constitute inadmissible hearsay, which must be stricken.

37. Kirkpatrick and his attorneys' filing of the Anti-Slapp Motion is not only frivolous, but also made in bad faith. Here, Plaintiffs' claims do not even fall within the purview of Chapter 27 of the Texas Civil Practice and Remedies Code. Second, Kirkpatrick's allegations of the conversations that Mr. Friedman had with Seymour Roberts, who represents Craft in the unrelated bankruptcy case, are simply false. Third, Kirkpatrick's counsel failed to make any reasonable inquiry into the truthfulness of such allegations. Fourth, Kirkpatrick and his counsel failed to not only substantiate any alleged conversations that Mr. Roberts had with Mr. Friedman, but also failed to obtain any sworn statement corroborating such statements. The truth is, Kirkpatrick's version of such telephone conversations is false and a malicious representation.

**C. DEFENDANT'S COUNSEL FAILED TO CONFER WITH PLAINTIFFS' COUNSEL AS REQUIRED BY LOCAL RULE 2.07**

38. Plaintiffs further request that Defendant's Counsel be sanctioned for failing to confer or even attempting to confer with the undersigned prior to their filing of the Anti-Slapp Motion to Dismiss. Local Rule 2.07 specifically provides that "no counsel for a party shall file,

nor shall any clerk set for hearing, any motion unless accompanied with a 'Certificate of Conference' signed by counsel for movant in one of the forms set out in Rule 2.07(c)."

39. Here, Defendant's Counsel failed to comply with Local Rule 2.07 and therefore their Anti-Slapp Motion should be stricken from the record, or in the alternative, their hearing set for hearing on October 29, 2014 should be removed from the Court's docket.

### **III. ARGUMENT AND AUTHORITIES SUPPORTING SANCTIONS**

#### **A. RULE 13 OF THE TEXAS RULES OF CIVIL PROCEDURE**

40. Rule 13 of the Texas Rules of Civil Procedure provides that sanctions may be awarded against an attorney or a party when pleadings are both groundless and either brought in bad faith or for the purpose of harassment.<sup>3</sup> To show that a pleading is groundless, the moving party must show that the pleading has no basis in law or fact.<sup>4</sup> The standard under which courts judge evidence of groundlessness in pleadings is whether or not the party or their attorney made a "reasonable inquiry" into the legal and factual basis of the claims.<sup>5</sup> Under the old Texas Rule of Civil Procedure 13, courts would presume that all pleadings were filed in good faith.<sup>6</sup> There is no such presumption under the new Texas rules.<sup>7</sup> Furthermore, the imposition of Rule 13 sanctions is within the sound discretion of the trial judge and will be set aside only for a clear abuse of discretion.<sup>8</sup>

#### **B. CHAPTER 10 OF THE TEXAS CIVIL PRACTICES AND REMEDIES CODE**

41. Chapter 10 of the Texas Civil Practices and Remedies Code provides that sanctions may be awarded against an attorney or a party when pleadings are brought for an

<sup>3</sup> Tex. R. Civ. P. 13; *GTE v. Tanner*, 856 S.W.2d 725, 731 (Tex. 1993).

<sup>4</sup> *Id.* at 730.

<sup>5</sup> *Home Owners Funding Corp. v. Scheppeler*, 815 S.W.2d 884, 889 (Tex. App.—Corpus Christi 1991, no writ).

<sup>6</sup> See *Trimble v. Itz*, 898 S.W.2d 370, 373 (Tex. App.—San Antonio 1995, writ denied).

<sup>7</sup> *Id.*; Tex. Civ. Prac. & Rem. Code §10.001.

<sup>8</sup> *Tanner*, 856 S.W.2d at 730.



improper purpose, including harassment, delay, or increasing the costs of litigation.<sup>9</sup> Further, chapter 10 requires that the signatory of any pleading perform a reasonable inquiry into each factual allegation or factual contention contained in the pleading.<sup>10</sup> A pleading is frivolous if the allegations or factual contentions have no evidentiary support.<sup>11</sup>

42. Section 10.001 of the Texas Civil Practices & Remedies Code expands the scope of sanctionable conduct previously set forth in Rule 13 of the Texas Rules of Civil Procedure, by deleting any requirement of bad faith or harassment before sanctions may be awarded. There is no presumption under section 10.001 that pleadings are adequately grounded in fact or law, and it is not the movant's burden to demonstrate that they are not grounded in fact or law.<sup>12</sup>

### C. COURT'S INHERENT POWER TO SANCTION

43. It is the Court's province to control the conduct of attorneys and litigants by making its own determination as to whether an attorney had reasonable grounds, either in fact or law, to warrant the fact or claims set forth in a pleading.<sup>13</sup> Courts have inherent powers which they may call upon in the exercise of their jurisdiction, in the administration of justice, and in the preservation of their independence and integrity.<sup>14</sup> This power exists in order to enable courts to perform their judicial functions and to protect their dignity, independence, and integrity.<sup>15</sup> Trial courts have the power to sanction bad faith conduct in litigation.<sup>16</sup>

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<sup>9</sup> Tex. Civ. Prac. & Rem. Code §10.001.

<sup>10</sup> Tex. Civ. Prac. & Rem. Code §10.001(3).

<sup>11</sup> *Id.*

<sup>12</sup> *Tanner*, 856 S.W.2d at 731 (presumption under Rule 13 that pleadings are filed in good faith; no presumption that pleadings warranted under existing fact or law).

<sup>13</sup> See *Cabell v. Petty*, 810 F.2d 463, 466 (4th Cir. 1987) ("The inquiry focuses on whether a reasonable attorney in like circumstances could believe his actions to be factually or legally justified").

<sup>14</sup> *Eichelberger v Eichelberger*, 582 S.W.2d 395, 398 (Tex. 1979).

<sup>15</sup> *Id.* at 399.

<sup>16</sup> See *Shook v. Gilmore & Tatge Mfg. Co.*, 951 S.W.2d 294 (Tex. App.—Waco 1997, pet. denied)(recognizing court's inherent power to sanction for bad faith litigation activities as long as punishment is related to the bad faith actions); *Kutch v. Del Mar College*, 831 S.W.2d 506, 509-10 (Tex. App.—Corpus Christi 1992, no writ) (Texas courts have inherent power to sanction for bad faith conduct during litigation, including for an abuse of the judicial

44. The Court is not limited to sanctioning the parties and attorneys that have directly appeared before it and can sanction any person or entity that is abusing the judicial process.<sup>17</sup> This inherent power to sanction exists to the extent necessary to deter, alleviate, and counteract bad faith abuse of the judicial process.<sup>18</sup>

**D. STANDARD OF REVIEW**

45. Sanctions are appropriate and will be upheld on review, if the following two-part test is met: (1) the sanction must bear a direct relationship to the offensive conduct; and, (2) the sanction must be no more severe than necessary to promote full compliance.<sup>19</sup> Furthermore, death penalty sanctions -- sanctions that have the effect of adjudicating the dispute -- are "just" if the following four-part test is met:

- (1) the sanction must bear a direct relationship to the offensive conduct;
- (2) the sanction must be no more severe than necessary to promote full compliance;
- (3) the trial court generally should attempt to use a lesser sanction first to determine if it is adequate; and,
- (4) the party's conduct must justify the presumption that its claims or defenses lack merit.<sup>20</sup>

It is not necessary that lesser sanctions be attempted first, if the conduct is so egregious that warrants the offender be placed in a worse position than that from which she began and it can be presumed that her claims have no merit.<sup>21</sup>

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process which may not be covered by rule or statute); *Scott v. Watamull*, No. 94-00446-L, 1997 WL 25473, at \*10 (Tex. App.—Dallas Jan. 24, 1997, no writ)(not designated for publication).

<sup>17</sup> See *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43, 111 S.Ct. 2123, 2136, 115 L.Ed.2d 27 (1991)("Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates."); *In re Rainbow Magazine*, 77 F.3d 278, 283 (9th Cir. 1996) (holding that courts have inherent powers to sanction individuals for bad faith even if those persons do not directly appear before them).

<sup>18</sup> See *Kutch*, 831 S.W.2d at 510.

<sup>19</sup> *TransAmerican Nat. Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991); *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 849 (Tex. 1992).

<sup>20</sup> *TransAmerican*, 811 S.W.2d at 918.

<sup>21</sup> *Daniel v. Kelley Oil Corp.*, 981 S.W.2d 230, 235 (Tex. App.—Houston [1st Dist.] 1998 pet. denied).

#### **KIRKPATRICK'S FRIVOLOUS PLEADING WARRANTS THE IMPOSITION OF SANCTIONS**

46. Kirkpatrick's conduct in filing a groundless and false Answer and Anti-Slapp Motion to Dismiss when he knew that he had no evidence or facts to support such allegations, and in fact knew of the falsity of such allegations when making them to the Court is destructive of the integrity of our judicial system. The fact of the matter is that Kirkpatrick knew that he had an attorney-client relationship with Chris Kyle and Taya Kyle, and such a relationship was a conflict to his representation of Hayman Capital, J. Kyle Bass, Craft, CIRM, himself as an investors, the investors and noteholders of Craft. Moreover, Kirkpatrick knew or should have known that the purported conversations that Mr. Seymour Roberts and Mr. Friedman did not occur and are not accurate statements, and had nothing to do with this case. Mr. Kirkpatrick deliberately misrepresented facts to this Court when he knew such facts were not true. Accordingly, Plaintiffs request that Kirkpatrick and his Counsel be sanctioned the reasonable and necessary attorney's fees that Plaintiffs have incurred to file this Motion for Sanctions, which is at least \$15,000.

47. This sanction is justified as a result of Kirkpatrick's and Defendant's Counsel's conduct. First, the sanctions requested above, directly relate to the offending conduct. Kirkpatrick's baseless, groundless Answer and Anti-Slapp Motion against Plaintiffs was made in bad faith and in a deliberate attempt to mislead the Court. Second, the sanction is no more severe than necessary to ensure compliance and deter Kirkpatrick and his Counsel from initiating frivolous claims and filing frivolous motions in the future.

#### **IV. PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiffs the Estate of Chris Kyle and Taya Kyle pray that the Court impose sanctions against Kirkpatrick, his attorneys of record,

Jeremy Fielding, Mike Lynn, and the law firm of Lynn Tillotson Pinker & Cox, LLP; award Plaintiffs their attorney's fees and expenses incurred to bring this Motion; and, for any other relief, general or special, at law or in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

**FRIEDMAN & FEIGER, L.L.P.**

/s/ Shauna A. Izadi

Lawrence J. Friedman

lfriedman@fflawoffice.com

Shauna A. Izadi

State Bar No. 24041170

sizadi@fflawoffice.com

5301 Spring Valley Road, Suite 200

Dallas, Texas 75254

(972) 788-1400 (Telephone)

(972) 788-2667 (Telecopy)

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing document has been served on all counsel of record on this the 30<sup>th</sup> day of September 2014, in accordance with the Texas Rules of Civil Procedure.

/s/ Shauna A. Izadi

Attorney

**CERTIFICATE OF CONFERENCE**

This is to certify that the undersigned attempted to meaningfully confer with opposing counsel on at least three occasions, and Opposing Counsel indicated that they were opposed to the relief sought herein, and therefore this Motion is being presented to this Court for determination.

/s/ Lawrence J. Friedman

Lawrence J. Friedman

# **Exhibit**

**“A”**

**Submitted to Court for *In Camera* review**

**Exhibit**

**“B”**

**Submitted to Court for *In Camera* review**

**EXHIBIT**

**“C”**

**Affidavit of Zachary Goldberg**

CAUSE NO. DC 14-08840

ESTATE OF CHRIS KYLE and	§	IN THE DISTRICT COURT
TAYA KYLE,	§	
	§	
Plaintiffs,	§	
	§	
VS.	§	191 <sup>st</sup> JUDICIAL DISTRICT
	§	
CHRISTOPHER KIRKPATRICK, ESQ.,	§	
	§	
Defendant.	§	DALLASCOUNTY, TEXAS

AFFIDAVIT OF ZACHARY A. GOLDBERG

My name is Zachary A. Goldberg.

I am over the age of eighteen (18), of sound mind, and in all respects, legally competent to make this affidavit. I also attest that I have no interest in the above-captioned matter, nor its outcome.

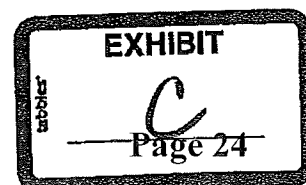
I am a licensed process server, certified by the Texas Supreme Court.

On August 19, 2014, I received an assignment from the Law Firm Friedman & Feiger, LLP to serve a citation upon Defendant (attorney) Christopher Kirkpatrick.

On August 19, 2014 I made my first attempt at service upon Defendant Kirkpatrick at his place of business.

On August 20, 2014 I made my second attempt at service upon Defendant Kirkpatrick at his place of business, and was denied access up to his secured floor. I later the same day reached Defendant Kirkpatrick by phone, advised him of who I was and that I had a document for him. Defendant Kirkpatrick replied by saying, "I'm not interested in your document." I then told Defendant Kirkpatrick that regardless of his interest, that I still needed to get this document to him, and asked that he not make this difficult. Defendant Kirkpatrick replied, "Well that's the road we're going to go," then hung up on me.

I advised the office of Friedman & Feiger that service upon Defendant Kirkpatrick at his place of employment may be difficult without much time being spent on surveillance of the parking area, and that I would begin attempts at his home address once located.



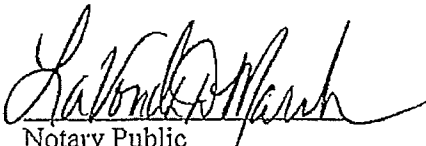


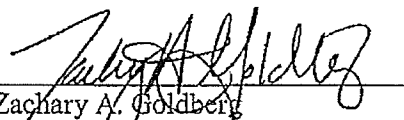
On August 22, 2014 I arrived at 4429 Saint Andrews Blvd. Irving, TX 75036 at 7:20 A.M. Shortly thereafter the garage door opened and the Jeep Wrangler Rubicon owned by Mr. Christopher Kirkpatrick started to pull out. My vehicle was parked at the base of the driveway. Mr. Kirkpatrick stopped his vehicle approximately five feet from mine and when I started to open my driver side door, Mr. Kirkpatrick moved his vehicle into mine hitting the driver side. This action by Mr. Kirkpatrick inhibited me from exiting my vehicle as I was "pinned in" on the driver side.

I then began to climb over to the passenger side to exit the vehicle. As I did this Mr. Kirkpatrick pulled his vehicle away from mine allowing me to exit. Mr. Kirkpatrick exited his vehicle as well and I calmly informed him that I was delivering him his citation. Mr. Kirkpatrick slapped the document out of my hand and began to scream expletives at me and tell me that I was trespassing. He then approached me and began to bump me with his chest. I then attempted to get back into my vehicle to leave and Mr. Kirkpatrick shoved me and positioned himself between me and my vehicle. I tried to enter my vehicle and Mr. Kirkpatrick grabbed me and informed me that I was not leaving. While being physically restrained against my will by Mr. Kirkpatrick, neighborhood security was driving by and stopped about 100ft from us. I broke free from Mr. Kirkpatrick's hold and was able to enter my vehicle. At this point, Mr. Kirkpatrick tried several times to gain entry into my vehicle to get access to me as I was attempting to drive away. At no time did I strike, grab, or otherwise initiate any touching of Mr. Kirkpatrick. The only physical contact between Mr. Kirkpatrick and myself was initiated by Mr. Kirkpatrick, beginning with his bumping me with his chest, Mr. Kirkpatrick shoving and pinning me against my vehicle, and of my trying to break free of Mr. Kirkpatrick's restraint so I could leave.

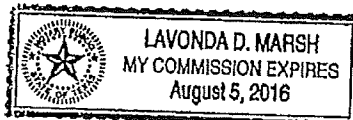
I exited the neighborhood and came to a red light, calling 911 as I left. Mr. Kirkpatrick began to follow me at this point. He went as far as to follow me onto the highway for several exits tailgating me the entire time. While I was on the telephone with the police Mr. Kirkpatrick exited and drove away. The 911 dispatcher and I worked out that I would go to the Chevron gas station at 161 and MacArthur and meet an officer to give my statement. I gave the officer my statement and then left the premises.

SWORN TO AND SIGNED on this the 25th day of September, 2014

  
Notary Public  
In and For the State of Texas

  
Zachary A. Goldberg  
SCH: 10584  
Exp: 10-31-16

AFFIX SEAL:



**EXHIBIT**

**“D”**

**Plaintiffs’ First Amended Petition**

CAUSE NO. DC 14-08840

ESTATE OF CHRIS KYLE and	§	IN THE DISTRICT COURT
TAYA KYLE,	§	
	§	
	§	
Plaintiffs,	§	
	§	
v.	§	191 <sup>st</sup> JUDICIAL DISTRICT
	§	
CHRISTOPHER KIRKPATRICK, ESQ.,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS

**PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

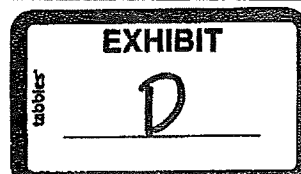
COME NOW Plaintiffs, the Estate of Chris Kyle and Taya Kyle, and file this their First Amended Original Petition, complaining of the actions of Defendant Christopher Kirkpatrick, Esq. and, for cause, would respectfully show this Court as follows:

**I. DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 3 pursuant to T.R.C.P. 190.4.

**II. PARTIES**

2. Plaintiff Taya Kyle is an individual who resides in Ellis County, Texas.
3. Plaintiff Taya Kyle, on behalf and as Executrix of the Estate of Chris Kyle, is a resident of Ellis County, Texas.
4. Defendant Christopher Kirkpatrick ("Kirkpatrick") is an individual who has already entered an appearance in this lawsuit, and may be served through its attorney of record pursuant to the Texas Rules of Civil Procedure.



### III. JURISDICTION AND VENUE

5. Venue is proper in Dallas County, Texas, pursuant to Chapter 15 of the Texas Civil Practice & Remedies Code. Jurisdiction is proper in this Court as the damages fall within the jurisdictional limits of this Court. Pursuant to TEX. R. CIV. P. 47 Plaintiffs seek monetary relief over \$1,000,000.00.<sup>1</sup>

### IV. FACTUAL BACKGROUND

#### LEGEND OF CHRIS KYLE

6. Chris Kyle was a United States Navy SEAL, and not just any Navy SEAL, Chris Kyle was the most lethal sniper in American military history, with 255 confirmed kills. Chris Kyle served four (4) tours in Iraq, during which he survived 6 IED attacks, 3 gunshot wounds and two (2) helicopter crashes. SEALs would sit in a base camp telling stories about serving with "The Legend." Chris Kyle was even the topic of conversations by the enemies. For his deadly track record as a marksman during his deployment to Ramadi, the insurgents named him *Shaitan Ar-Ramadi* (The Devil of Ramadi) and even put a \$20,000.00 bounty on his head that was later increased to \$80,000.00.

7. For all of Chris Kyle's heroics, he was awarded the third highest commendation awarded for acts of heroism, acts of merit, and/or meritorious service in combat zone. Chris Kyle holds two (2) Silver Stars, five (5) bronze stars with valor, two (2) Navy and Marine Corps Achievement Medals, and one (1) Marine Corps Commendation. He was also awarded the Grateful Nation Award by the Jewish Institute for National Security Affairs.

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<sup>1</sup> Plaintiffs reserve the right to amend, decrease and/or increase the amount of damages plead based on evidence developed before trial.

VICTORIOUS WARRIORS WIN FIRST AND THEN GO TO WAR

8. Chris Kyle was born a winner, but lived like a legend. He was honorably discharged from the Navy in 2009 and moved his family from California to Texas with his wife, Taya, and two children. He remained in the spotlight after leaving the Navy whether it was by writing a *New York Times* bestselling autobiography *American Sniper*, going shooting with Texas Governor Rick Perry or developing FITCO Cares Foundation, a non-profit organization that created the Heroes Project to provide, among other things, free in-home fitness equipment to in-need veterans.

9. In addition to his extracurricular activities Chris Kyle co-founded Craft International LLC ("Craft"), a tactical training company for the US military and Law Enforcement communities. Craft is a consulting and training services provider offering a wide range of services and training to federal, state and local customers. Craft specializes in providing turnkey mission solutions to ensure complete operation success. Chris Kyle envisioned Craft to provide a combination of technical expertise, and operational knowledge to provide military training and solutions for its customers.

10. Chris Kyle is and was the face of Craft. He spent years developing Craft and devoted his time, talents and creativity to making it a successful company. At the time of his death, Chris Kyle was the 85% owner of Craft, and therefore his Estate is the holder of the 85% interests in Craft. Craft is currently in bankruptcy, and is represented by Seymour Roberts and the law firm of Neligan and Foley, LLP.

11. On February 2, 2013, Chris Kyle was shot and murdered at a shooting range by a fellow veteran who Kyle had purportedly taken to the gun range.

KIRKPATRICK PROVIDED LEGAL SERVICES TO EVERYONE DESPITE CONFLICT OF INTEREST

12. Prior to the inception of Craft, Chris Kyle met J. Kyle Bass ("Bass"), the principal of Hayman Capital Management, L.P. ("Hayman Capital"), who not only invested in Craft, but also offered Chris Kyle office space for Craft's offices to be similarly located at 2101 Cedar Springs Road where Hayman Capital's offices were located.

13. Mr. Kirkpatrick served, and continues to serve as in-house counsel to Hayman Capital which is also located at 2101 Cedar Springs Road, Dallas Texas. Simultaneously, Kirkpatrick also serves as Bass's personal counsel. Bass, a local self-described billionaire, longed to be associated with the deadliest sniper in American history, and was enamored with Chris Kyle. Bass is used to getting what he wants, and what he wanted was to be an integral part of Chris Kyle's life. In that regard, Bass raised more capital for Craft, and Bass even directed Kirkpatrick to serve as Chris and Taya Kyle's personal attorney on many issues, including, but not limited to the negotiation of Chris Kyle's books and movie deals. Kirkpatrick became Chris Kyle and Taya Kyle's attorney, and formed an attorney-client relationship with them. Chris Kyle and Taya Kyle sought legal advice from Kirkpatrick and Kirkpatrick gave legal advice to them. The Kyles relied on the legal advice that Kirkpatrick gave to them.

14. Kirkpatrick was bound by the Kyles' attorney-client privilege, and was required to hold Chris Kyle and Taya Kyle's secrets and confidences in trust. Bass wanted to live the SEAL lifestyle, and hoped to make an appearance in one of Chris Kyle's books or movies. Bass used Kirkpatrick in order to infiltrate Craft as well as Chris Kyle's personal life.

15. Beginning in 2009, Kirkpatrick, not only began representing and providing legal counsel to Craft, Bass, and Hayman Capital, he also began representing and providing personal

legal counsel to Chris Kyle, individually as well as his wife, Taya Kyle. As a result of the attorney-client relationship that was formed, Kirkpatrick owed the Kyles fiduciary duties, including the one of full candor and disclosure.

16. One of the various services rendered on behalf of Chris and Taya Kyle included the preparation of legal documents relating to the Kyle residence in Ellis County, Texas. Kirkpatrick simultaneously represented the Kyles as the buyer and Hayman Capital as the lender. Kirkpatrick was required to consult with each client concerning the implications of the common representation, including the advantages, the risk and the effect of the attorney-client privileges.<sup>2</sup> Kirkpatrick failed to disclose his conflict, failed to consult with the Kyles, and failed to get a written waiver of conflict of interest from the Kyles. Kirkpatrick also served as the trustee of Taya Kyle and Chris Kyle's family trust, and he also provided legal services and gave legal advice in connection with the Kyles' respective estate planning. Again, Kirkpatrick never disclosed any potential conflict to either Chris Kyle or Taya Kyle, explain the implications of the conflict, and never received a waiver from the Kyles.

17. Kirkpatrick also negotiated various contracts and intellectual property rights on behalf of Chris Kyle, individually, and provided Chris Kyle and his wife, Taya, with legal advice concerning their home mortgage while simultaneously representing Hayman Capital as lender, as well as receipt of proceeds from various deals that Chris Kyle had in the works. Kirkpatrick never explained his various conflicts of interests to the Kyles, and therefore the Kyles never had an opportunity to make an informed decision or give their informed consent to Kirkpatrick's legal representation of them, as mandated by the Texas Disciplinary Rules, in light of Kirkpatrick's numerous conflicts of interest.

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<sup>2</sup> Texas Disciplinary Rule 1.07(a)(1)

Kirkpatrick Simultaneously Represented Chris Kyle and Craft While Employed by Craft's Largest Creditor Without Explaining to Chris Kyle Any Conflict of Interest

18. While providing personal legal services to the Kyles, Kirkpatrick was representing Craft, simultaneously negotiating contracts on behalf of Craft and serving as Craft's registered agent. While simultaneously representing Craft and Chris Kyle, and upon information and belief, Kirkpatrick advised Chris Kyle to assign his intellectual rights, of what is now known as the Craft logo, to Craft. Kirkpatrick, however, never disclosed his conflict of interest between Chris Kyle and Craft, Chris Kyle's employer, or his conflict of interest of simultaneously representing Bass and Hayman Capital, and therefore, Chris Kyle never had the opportunity to make an informed decision or consent to Kirkpatrick's representation of him in connection with the transfer of any intellectual property to Craft. Rule 1.06(b) of the Texas Disciplinary Rules prohibits certain representation that is substantially related to other representation or limited by the lawyer's responsibilities to other persons.<sup>3</sup> In some instances, such as this one, inconsistent positions precluded joint representation.

19. Mr. Kirkpatrick is also an individual investor of Craft, but never fully explained his conflict of interest to the Kyles or obtained a Waiver as required under Rule 1.08 of the Texas Disciplinary Rules. Rule 1.08(a) provides that "a lawyer shall not enter into a business transaction with a client unless: (1) the transaction and the terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed in a manner which can be reasonably understood by the client; (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and (3) the client consents in writing

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<sup>3</sup> The Rule prohibits a lawyer from undertaking representation (1) involving "substantially related matter" in which the prospective client's interests would be "materially and directly adverse to the interests of another client," or (2) when the representation reasonably appears "adversely limited" by responsibilities to another client, a third person or the firm's own interests. *In re B.L.D.*, 113 S.W.3d 340, 346 (Tex. 2003), *cert. denied*, 541 U.S. 945, 124 S. Ct. 1674 (2004) ("Typically, courts look to the ethical rules promulgated by the State Bar to evaluate conflicts of interests in civil cases...Generally, ethical rules prohibit an attorney from jointly representing clients when the clients' interests are adverse to each other.")



thereto.” (Emphasis added). At no time did Kirkpatrick advise Chris Kyle or Craft of these significant issues or obtain Chris Kyle’s or Craft’s consent.

20. Business transactions between a lawyer and a client are subject to the abuse of self-dealing.<sup>4</sup> The burden of establishing its perfect fairness, adequacy, and equity, is thrown upon the attorney, and in this case, Mr. Kirkpatrick. Clients, such as the Kyles, are vulnerable to lawyer overreaching because of their trust in their lawyers and because of their lawyers’ presumed superior professional knowledge and skill...The strict scrutiny standard applies to all business dealings between lawyer and client.<sup>5</sup> Chris Kyle and Taya Kyle placed their trust with Kirkpatrick, and expected that he would serve their interests at all times. However, Kirkpatrick’s loyalty lied with Bass and Hayman Capital, whose interests are directly and substantially adverse to those of Chris Kyle and Taya Kyle. Kirkpatrick was precluded from representing Chris Kyle and Taya Kyle in any fashion due to Kirkpatrick’s personal interests and numerous conflicts of interests as well as his greater interest in Hayman Capital, Bass and Craft.

Kirkpatrick Failed to Disclose His Relationship with J. Mitch Miller Who Abandoned the Estate of Chris Kyle As a Result of Kirkpatrick’s and Bass’ Personal Issues with Taya Kyle

21. Simultaneously, Mr. Kirkpatrick also served as the trustee on Taya Kyle and Chris Kyle’s family trust, and also provided legal services and advice in connection with their respective estate planning. Again, Kirkpatrick never explained his various conflicts of interests to the Kyles so the Kyles never had an opportunity to make an informed decision or give their informed consent to Kirkpatrick’s representation.

<sup>4</sup> *Archer v. Griffith*, 390 S.W.2d 735, 739 (Tex. 1964)

<sup>5</sup> Tex. Comm. On Professional Ethics, Op. 483, 57 Tex. B.J. 200, 202 (1994)(citing *Archer*).

22. Kirkpatrick also referred Chris Kyle and Taya Kyle to J. Mitch Miller to prepare certain estate planning on behalf of the Kyles. Mr. Kirkpatrick, as Chris and Taya Kyle's personal attorney, sat with them in meetings with Mr. Miller. As a result, Mr. Kirkpatrick became privy to confidential information concerning Chris and Taya Kyle's estate planning that was not meant or intended for public dissemination, and was to be held in the strictest confidence. Mr. Kirkpatrick never disclosed his conflict of interest he may have due to his or Mr. Bass' relationship with Mr. Miller and, therefore, the Kyles, once again, never had the requisite opportunity to give their informed consent to either Kirkpatrick's or Miller's representation.

23. After the untimely death of Chris Kyle, Mr. Miller abruptly abandoned Mrs. Taya Kyle after the filing of the probate petition in Ellis County. As a result of Mr. Miller's refusal to take Taya Kyle's phone calls, Taya Kyle was forced to retain the services of another law firm to complete the probate court filings in connection with the death of her husband. Upon information and belief, Mr. Miller was acting at the direction of Kirkpatrick and Bass as opposed to serving the best interests of Chris and Taya Kyle when he unilaterally abandoned Mrs. Taya Kyle during the pendency of the probate matter.

Kirkpatrick Represents Craft's Competitor CIRM While Simultaneously Representing Chris Kyle and Craft Without Full Disclosure of the Conflict and Provides Advice to Chris Kyle for the benefit of CIRM and to the detriment of Chris Kyle

24. Sometime in 2011, another entity was formed, Craft International Risk Management ("CIRM"), wherein Mr. Kirkpatrick not only served as counsel to, but also served as the registered agent, contrary to the interests of the Kyles, Craft, and his position as trustee of the Kyles' family trust. Mr. Kirkpatrick is believed to have prepared all the paperwork in the formation of CIRM, as well as negotiated contracts on behalf of CIRM. CIRM was a direct

competitor of Craft, and on information and belief, is believed to have usurped many contracts and business opportunities from Craft. Again, Kirkpatrick failed to make the mandatory disclosure of the conflicts of interest to Chris Kyle so Chris Kyle never had an opportunity to give his informed consent to Kirkpatrick's representation. It is clearly evident that the interests of Craft, Chris Kyle and CIRM – Kirkpatrick's clients – are directly adverse to the interests of each other. Representation of one client is "directly adverse" (and thus prohibited) to representation of another if the representation would adversely affect the lawyer's independent judgment or the lawyer's willingness or desire to consider any course of action. Such representation is prohibited because it will affect the lawyer in a number of ways, including the lawyer's desire, judgment or ability.<sup>6</sup>

25. Mr. Kirkpatrick advised Chris Kyle on numerous occasions that his ownership in CIRM would be reflected in CIRM's corporate records, however, it was learned after Chris Kyle's death that Kirkpatrick never finalized any such paperwork to reflect Chris Kyle's ownership in CIRM. Kirkpatrick now takes the adverse position that Chris Kyle did not own any interest in CIRM, despite numerous representations to the contrary. This is exactly why Rule 1.06 prohibits such dual representation. Kirkpatrick's representation of CIRM directly affected his ability to represent Chris Kyle's best interests, which has ultimately caused the Estate of Chris Kyle harm. Moreover, Kirkpatrick never disclosed the actual or potential conflict to Chris Kyle and, therefore, never gave him the opportunity to make an informed decision or give his informed consent to Kirkpatrick's representation.

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<sup>6</sup> Texas Disciplinary Rules 1.06, cmt. 6.

Kirkpatrick and Bass Conspire to Take Chris Kyle's Widow and Young Fatherless Children's Home Despite Bass' Promise to Pay off the Mortgage Because Kirkpatrick Failed to Document the Transaction As a Result of His Overriding Loyalty to Bass Over his Duties to Taya Kyle and In A Futile Attempt to Bully Taya Kyle in the Craft Bankruptcy

26. On February 14, 2013 – twelve days after Chris Kyle was murdered – Bass offered to pay off the mortgage on Chris and Taya Kyles' home located in Midlothian, Texas. Bass' generous offer was not the only offer Taya Kyle received after the death of her husband. In fact, Mrs. Kyle received other requests from others asking if they could pay off her mortgage. Taya rejected those offers based on Bass' promise and Kirkpatrick's assurances that Kirkpatrick would not only handle the paperwork and properly document the transaction, but also ensure that it would be done in the most tax advantageous way. Upon information and belief, Bass has made all appropriate mortgage payments to date on behalf of Taya Kyle and the Estate of Chris Kyle. However, Bass and Kirkpatrick have taken the position that Bass is no longer responsible for the mortgage payments as it was simply a promise to promise, and not supported by consideration. Kirkpatrick failed to properly document the transaction on behalf of Taya Kyle, and has given Bass (the person who pays his paycheck) the opportunity to try to rescind the transaction. Taya Kyle detrimentally relied on Bass' and Kirkpatrick's promises, and contends that Bass' promise is enforceable. Taya Kyle and the Estate of Chris Kyle detrimentally relied on Kirkpatrick's legal advice in accepting Bass' promise to pay off the mortgage when she rejected other offers to pay off her and Chris Kyle's home mortgage loan. Kirkpatrick again failed to explain to Taya Kyle his various conflicts of interest in simultaneously representing her and Bass in this transaction so Taya Kyle never had the opportunity to give her informed consent as to Kirkpatrick's representation of her in this

transaction. Rule 1.06(a)(2) bars a lawyer from representing a client where that representation 'reasonably appears to be or becomes limited...by the lawyer's or law firm's own interests.'

27. As demonstrated herein, Kirkpatrick's simultaneous representation of Plaintiffs, Bass, Hayman Capital, Craft, CIRM, and himself all were limited, and as in the case with Bass' offer to pay off Plaintiffs' home mortgage, Kirkpatrick's interests, along with his employer's interests, limited any loyalty he owed to Plaintiffs.

Kirkpatrick failed to disclose to Chris Kyle that Craft could seek the Proceeds from the American Sniper book

28. Despite Kirkpatrick's false allegations regarding the use and purpose of the proceeds from the book of *American Sniper*<sup>7</sup>, it is Craft who is seeking all the proceeds from the *American Sniper* book in the pending bankruptcy matter. Kirkpatrick represented Chris Kyle in the negotiation of the book deal, and at no time did Kirkpatrick disclose to his client Chris Kyle that Craft could claim all the proceeds from the *American Sniper* book. Here, Kirkpatrick was advocating inconsistent positions that is expressly prohibited by the Disciplinary Rules, and which ultimately caused Plaintiffs harm. Moreover, Kirkpatrick failed to consult with Chris Kyle and Craft concerning the implications of the common representation, including the advantages, the risk and the effect of the attorney-client privileges. Chris Kyle was not properly advised of the risks of allowing Kirkpatrick to negotiate the book deal while Kirkpatrick simultaneously represented Craft, Bass and Hayman Capitals, who are creditors of Craft and have an interest in the proceeds of the *American Sniper* book. Kirkpatrick's representation of

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<sup>7</sup> Chris Kyle specifically detailed his wishes as to the proceeds of the *American Sniper* in the event of his death, and such wishes are IN FACT being carried out as set forth by Mr. Kyle. Despite the confidences that Chris Kyle and Taya Kyle shared with Mr. Kirkpatrick, his wishes as to the distribution of profits *after* his death were not disclosed to Mr. Kirkpatrick and were finalized in writing by another advisor. Mr. Kirkpatrick, however, is in breach of his obligation to keep Chris Kyle's and Taya Kyle's confidences secret in connection with his wishes during his lifetime.

Chris Kyle was prohibited, and ultimately caused harm to the Estate of Chris Kyle and Plaintiffs.

**Kirkpatrick's Joint Representation of Chris Kyle, Taya Kyle, Craft, CIRM, Bass and Hayman Capital Is Prohibited by the Texas Disciplinary Rules**

29. Kirkpatrick represented Chris Kyle and Taya Kyle and served as trustee for Taya Kyle's and Chris Kyle's family trust, while simultaneously representing Craft, and simultaneously representing CIRM, and simultaneously representing investors in Craft and simultaneously representing Bass in various combinations on matters in which there are conflicting interests without any explanation of the conflicts of interests that he had and his duty to disclose them to Chris or Taya Kyle, and he further represented Chris Kyle and Taya Kyle in some matters where the conflict was irreconcilable.

30. Kirkpatrick often referred to himself as the "counselor to the situation" and would represent everyone, provide extensive legal advice, despite inherent and irreconcilable conflicts of interest, all without getting a signed engagement letter, disclosing his numerous conflicts of interest, or obtaining a signed waiver of conflicts of interest. Kirkpatrick never disclosed to the Kyles what "counselor to the situation" meant, never got a waiver from the Kyles, and never received informed consent from the Kyles. In certain situations, the conflict was irreconcilable to which no waiver could cure the inherent conflict. Neither Chris Kyle nor Taya Kyle were ever informed by Kirkpatrick of these conflicts of interests. Kirkpatrick also has failed, and continues to fail, to keep Chris Kyle and Taya Kyle's confidences secret. Kirkpatrick has a duty to keep confidences secret despite ongoing litigation, and is only allowed to divulge confidences that directly go to the allegations in this lawsuit. Kirkpatrick, however, has improperly divulged attorney-client confidences that are not subject to disclosure.

31. A lawyer is not even justified in asking a client for a waiver of conflicts when a disinterested lawyer would conclude that the client should not agree to the representation. A disinterested lawyer of ordinary prudence would not have approved a joint representation of Craft, Hayman Capital, Bass, Craft's individual founders, CIRM, Kirkpatrick himself, Taya Kyle, and Chris Kyle as there were multiple conflicts of interest, which prohibited Kirkpatrick from taking on such representation to which he never made full disclosure or obtained a waiver even though his conflicts were irreconcilable.

32. Rule 1.06 of the Texas Disciplinary Rules of Procedure addresses the manner in which a lawyer should deal with conflicts of interest between clients. Here, Kirkpatrick could not have reasonably believed that the representation of each client would not be adversely affected by joint representation, because the interests of Craft, Hayman Capital and CIRM were so complex and convoluted and unusual, especially in connection with Chris Kyle, that no single lawyer could have adequately advised and represented Chris Kyle as well as Craft, Hayman Capital, CIRM, and the other individual co-founders of Craft and CIRM. No waiver would allow such representation.

33. In Kirkpatrick's Original Answer, he alleged that as a representative of the Noteholders in the Craft bankruptcy,<sup>8</sup> he met with Gerrit Pronske, who represents the Estate of Chris Kyle and Taya Kyle in the bankruptcy, to negotiate the Noteholders' claims in connection with the Plaintiffs' claims in the bankruptcy. This action by Kirkpatrick – in of itself – is barred by Rule 1.06(b)(1). Kirkpatrick's representation of the Craft's Noteholders is materially and directly adverse to the interests of Kirkpatrick's other clients – the Kyles and Craft. Again, Kirkpatrick made no disclosure to Plaintiffs, and did not receive any informed consent from

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<sup>8</sup> See *In Re: Craft International, LLC, Debtor*; Cause No. 14-32605-Bjh11; pending in The United States Bankruptcy Court For The Northern District Of Texas Dallas Division

them as to Kirkpatrick's representation. Kirkpatrick is prohibited from representing any of the parties in the Craft bankruptcy.

34. Rule 1.06 (c)(2) requires "full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any." Here, Kirkpatrick made no disclosures, and these issues were not disclosed in writing, as required by the standard of care where, as here, the clients were unsophisticated as to legal matters. Moreover, as a practical matter, it was not possible for Kirkpatrick to disclose to Chris Kyle and Taya Kyle all of the risks that were attendant to his lack of independent legal advice. Indeed, the way the events have played out were foreseeable consequences of the manner in which Kirkpatrick rendered legal services. It is evident that Kirkpatrick could not jointly represent Chris Kyle, Taya Kyle, Craft, CIRM, Hayman Capital, and the individual co-founders of Craft and CIRM, and Kirkpatrick himself in the various transactions that Kirkpatrick handled, including Craft's and Chris Kyle's intellectual property matters, in a manner consistent with Disciplinary Rule 1.06 and the pertinent common law standard of care.

**Kirkpatrick's and Bass' Deception Has Stolen Invaluable Time From a Grieving Widow and Her Young Children**

35. Toward the end of Chris Kyle's life, he became aware the legal representation and alleged friendship between he and Kirkpatrick were not as they appeared. Weeks before Chris Kyle's death, he began to demand changes.

36. While grieving the loss of her husband, and grieving with her young fatherless children, Taya Kyle has been forced to spend countless days, nights, and waking moments having to deal with (and further uncover) the deception caused by Kirkpatrick, Craft executives and Bass. Taya Kyle lost her husband, her best friend, and her children's father, and yet, Bass and Kirkpatrick built a foundation of deception during Chris Kyle's lifetime. They continue to



lie, cheat, and steal from Chris Kyle and his family, simultaneously threatening to destroy the legacy of a legend if they are not successful in stealing it. Chris Kyle's image, likeness, honorable service record and intellectual property are not something a grieving family should have to fight for. This widow and her young fatherless children have lost a priceless future with Chris Kyle. The further loss of time with each other due to the hours Taya Kyle now has to spend fending off greed and theft of her husband's legacy is inexcusable and has caused irreparable harm.

## **V. CAUSES OF ACTION**

### **A. LEGAL MALPRACTICE**

37. Plaintiffs re-allege the above factual allegations, and incorporate them herein as if set forth in full.

38. Kirkpatrick, a lawyer, owed Chris Kyle and Taya Kyle, his clients, a duty of loyalty. By Kirkpatrick's negligent acts and omissions described above, he breached that duty. This breach proximately caused Chris Kyle and Taya Kyle injury, and the Estate of Chris Kyle as well as Taya Kyle suffered damages as a result. Accordingly, Plaintiffs request judgment against Kirkpatrick for all damages suffered. Further, the damages suffered by Plaintiffs resulted from gross negligence on the part of Kirkpatrick. Accordingly, Plaintiffs further request exemplary damages pursuant to TEXAS CIVIL PRACTICE AND REMEDIES CODE, CHAPTER 41.

### **B. BREACH OF CONTRACT**

39. Plaintiffs re-allege the above factual allegations, and incorporate them herein as if set forth in full.

40. Plaintiffs and Kirkpatrick had a valid, enforceable contract for the rendition of legal services, to which Plaintiffs were a party and have standing to sue for breach of contract.

Plaintiffs either performed, tendered performance, or were excused from performing their contractual obligations under the contract.

41. Kirkpatrick breached the contract, and as a result of Kirkpatrick's breach of contract, Kirkpatrick has proximately caused actual and consequential damages to Plaintiffs in an amount within the jurisdictional limits of this Court, plus interest, costs, and post-judgment interest as allowed by law.

C. BREACH OF FIDUCIARY DUTIES

42. Plaintiffs re-allege the above factual allegations, and incorporate them herein as if set forth in full.

43. Plaintiffs would show that at all times relevant, an attorney/client relationship existed between them and Kirkpatrick, as that relationship is understood under Texas law. Plaintiffs would show that by virtue of this attorney-client relationship, Kirkpatrick owed Plaintiffs fiduciary duties, including duties of individual loyalty, confidentiality, candor, integrity, complete disclosure, honest, utmost fairness and good faith, and to refrain from self-dealing. By entering into the attorney-client relationship with Plaintiffs, Kirkpatrick assumed fiduciary duties and obligations to the Plaintiffs. Kirkpatrick owed Plaintiffs his utmost and undivided loyalty, free from any conflicts of interest.

44. Defendant should not have represented Plaintiffs because his representation was adversely limited by his responsibilities to other parties, and by his own self-interests, and thus, he was not able to consider, recommend, or carry out an appropriate course of action for Plaintiffs because of Kirkpatrick's own self-interests and his responsibilities to others.

45. The Plaintiffs were entitled to, and did, place their trust and confidence in Kirkpatrick, and did expect that he would represent them completely and zealously within the

bounds of the law, and in accordance with the Canons of Ethics and Disciplinary Rules applicable to attorneys licensed to practice in Texas.

46. Kirkpatrick breached his fiduciary duties to the Plaintiffs by violating the provisions of the Texas Disciplinary Rules of Professional Conduct, and by engaging in conduct, as more particularly described above, which constitutes multiple breaches of the fiduciary owed to Plaintiffs.

47. Plaintiffs would show that Kirkpatrick intentionally and knowingly breached his fiduciary duties to Plaintiffs, and that as a direct and proximate cause, damaged Plaintiffs in an amount well in excess of \$1,000,000.00.

48. The conduct of Kirkpatrick was intentional as that term is defined in law, and justifies an award of exemplary damages to punish and deter such conduct in the future.

**D. NEGLIGENT MISREPRESENTATION**

49. Plaintiffs re-allege the above factual allegations, and incorporate them herein as if set forth in full.

50. By reason of Plaintiffs' reliance on the representations *and* fraudulent concealment of material facts by Defendant, Plaintiffs have been damaged in an amount within the jurisdictional limits of this Honorable Court. The misrepresentations and concealment of facts by Defendant were material. Defendant knew the misrepresentations and concealment of facts set forth herein were false. Alternatively, Defendant acted with reckless disregard whether the representations made by him were true. Plaintiffs relied upon the misrepresentations and the facts concealed by Defendant. Plaintiffs' reliance on these representations and concealment of facts was reasonable and justifiable. Plaintiffs have suffered and continues to suffer economic and non-economic losses because of the wrongful conduct of the Defendant.

51. The conduct of Kirkpatrick was intentional as that term is defined in law, and justifies an award of exemplary damages to punish and deter such conduct in the future.

**VI. ATTORNEY'S FEES, EXPENSES, COSTS, AND INTEREST**

52. Request is made for all costs and reasonable and necessary attorneys' fees incurred by or on behalf of Plaintiffs herein, including all fees due for Kirkpatrick's breach of contract, and all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just.

**VII. EXEMPLARY DAMAGES**

53. The acts and omissions of Defendant Kirkpatrick complained of herein were committed knowingly, willfully, intentionally, with actual awareness, and with the specific and predetermined intention of enriching Defendant at the expense of Plaintiffs. In order to punish Defendant for such unconscionable overreaching and to deter such actions and/or omissions in the future, Plaintiffs also seek recovery from Defendant for exemplary damages as provided by the Texas Civil Practice and Remedies Code and the Texas Business and Commerce Code.

**VIII. JURY DEMAND**

54. Plaintiffs demand a trial by jury on all issues so triable.

**IX. PRAYER**

WHEREFORE, PREMISES CONSIDERED, the Estate of Chris Kyle and Taya Kyle request that that upon final trial, they have judgment against Christopher Kirkpatrick, Esq., for their actual damages as set forth herein, in addition to exemplary damages, costs of court, prejudgment and post-judgment interest as allowed by law, and for such other and further relief to which they may be justly entitled.

**DATED:** September 26, 2014

Respectfully submitted,

/s/ Shauna A. Izadi

Lawrence J. Friedman

State Bar No. 07469300

Shauna A. Izadi

State Bar No. 24041170

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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document has been served in accordance with the Texas Rules of Civil Procedure on September 26, 2014.

/s/ Shauna A. Izadi

Shauna A. Izadi

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