

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

HOLLIS M. GREENLAW,
TODD F. ETTER,
CARA D. OBERT,
BENJAMIN L. WISSINK,
UMT HOLDINGS, L.P.,
UDF HOLDINGS, L.P.,
UNITED DEVELOPMENT FUNDING, L.P.,
UNITED DEVELOPMENT FUNDING III, L.P.,
UNITED DEVELOPMENT FUNDING IV,
UNITED DEVELOPMENT FUNDING
INCOME FUND V,
UNITED MORTGAGE TRUST,
and
UNITED DEVELOPMENT FUNDING LAND
OPPORTUNITY FUND, L.P.

Plaintiffs,

v.

DAVID KLIMEK
JAMES NICHOLAS BUNCH,
CHRISTINE L. EDSON, a/k/a Christy Edson,
and
DOES 1-10,

Defendants.

Case No. 4:20-cv-00311-SDJ

**DECLARATION OF PAUL E. PELLETIER IN SUPPORT OF PLAINTIFFS' MOTION
TO FILE REDACTED COMPLAINT**

I, Paul E. Pelletier, hereby declare as follows:

1. I serve as a counsel of record for Plaintiffs. I am a member of the Bar of the State of Massachusetts and the District of Columbia and have submitted an application to this Court to be admitted on a *pro hac vice* basis for this matter. Prior to entering private practice in 2011, I served as a prosecutor in the Department of Justice for more than 26 years. In that capacity I served as Chief of the Economic Crimes Unit at the United States Attorney's Office for the Southern District of Florida for more than 5 years and as Chief and Principal Deputy Chief of the Criminal Division's Fraud Section for almost 9 years. For more than 15 years I served as an adjunct instructor for classes on White Collar Crime such as Securities Fraud and Accounting Fraud as well as Money Laundering Crimes at DOJ's National Advocacy Center in Columbia, S.C. I submit this declaration in support of Plaintiffs' Motion to File Redacted Complaint. I have personal knowledge of the matters stated in this declaration and would testify truthfully to them if called upon to do so.

2. This declaration includes evidence, all now in the public domain, that demonstrates that J. Kyle Bass and his fund, Hayman Capital ("Bass/Hayman"), executed an illegal "short and distort" fraud scheme against UDF and that the Defendants facilitated that unlawful effort. UDF obtained most of the supporting evidence attached to this declaration in publicly available discovery from Bass/Hayman related to a civil lawsuit UDF filed against Bass/Hayman in Dallas County Court (Texas state litigation). That evidence includes internal Bass/Hayman emails which establish that Bass/Hayman communicated directly with Defendants Bunch, Edson, and Klimek regarding certain critical events essential to advance and secure the success of Bass/Hayman's illegal "short and distort" fraud scheme.

3. In an illegal “short and distort” fraud scheme, the short seller takes a short position on a stock and then takes affirmative actions, like publishing false and misleading information about the company’s stock, to cast the target company in a negative light to drive the price of the stock down so the short seller can profit from the trade. I ran a basic Google search using the term “short and distort.” That search yielded numerous articles explaining the core features of a notorious illegal fraud scheme commonly used by short sellers. These articles expressly describe this practice as illegal. I have attached three examples to demonstrate that this illegal fraud scheme is well-known in the investment community. Any federal agent or prosecutor who enforces the securities laws, including Defendants Bunch, Edson, and Klimek, should be familiar with this illegal fraud scheme.

4. Attached as Exhibit 1 is an article about illegal “short and distort” fraud schemes from Investopedia, a website devoted to explaining investing in basic terms to educate investors. The article is available at <https://www.investopedia.com/terms/s/shortanddistort.asp>. Investopedia defines a “short and distort” as an “unethical and illegal practice that involves investors shorting a stock and then spreading rumors in an attempt to drive down its price.” Investopedia warns its readers that “[t]he act of shorting and distorting constitutes securities fraud and can result in significant fines and penalties.”

5. Attached as Exhibit 2 is an article about illegal “short and distort” fraud schemes found on davemanuel.com, another website that defines basic investing terms for its readers. The article is available at <https://www.davemanuel.com/investor-dictionary/short-and-distort/>. This website describes a “short and distort scheme” by stating “you have people who first short a stock and then spread false rumors about a company. If the stock drops based on this bogus

information, then the short sellers will cover at a lower price and realize a profit.” This description also emphasizes: “Note: This is obviously extremely illegal.”

6. Attached as Exhibit 3 is an article from counterfeitingstock.com, a website that describes fraudulent schemes used in the financial markets by fraudsters. The article is available at <http://counterfeitingstock.com/CS2.0/CounterfeitingStock.html>. This article includes a detailed description on short selling generally as well as a specific discussion of the illegal tactics short sellers typically use when they execute an illegal “short and distort” fraud scheme. Those tactics include the six steps Bass/Hayman actually used in its attempt to destroy UDF and harm UDF’s innocent investors as outlined in the Complaint: (1) instigating a frivolous government investigation of UDF, (2) seeking to put UDF in bankruptcy or receivership, (3) interfering with UDF’s customers and financiers, (4) launching a negative media assault against UDF, (5) encouraging class action lawsuits against UDF, and (6) using paid “bashers” to destroy UDF’s reputation in the market. These six illegal tactics will be highlighted below, as will other evidence further outlined in the Complaint demonstrating that Bass/Hayman illegally traded in UDF stock based on inside information Bass/Hayman appears to have obtained from the Defendants regarding the Government’s investigation of UDF.

7. Attached as Exhibit 4 is a press release from the Department of Justice dated March 24, 2011 announcing criminal charges that DOJ filed against Barry Minkow for executing an illegal short and distort scheme against Lennar Corporation, a publicly traded home building and real estate development company. The press release demonstrates that both the DOJ and FBI recognize the damage that illegal “short and distort” fraud schemes inflict on our capital markets by committing to hunt down and prosecute anyone who participates in these illegal “short and distort” fraud schemes. The U.S. Attorney stated “[t]his type of deceit and abuse of

trust will not be tolerated. Together with the FBI and the cooperative efforts of the SEC, we will investigate and prosecute stock manipulation cases to help protect the integrity of our capital markets.” The FBI Special Agent in Charge stated “[w]hen false statements are disseminated to deceive the investing public, whether they’re designed to prop up a company or tear it down, the FBI will dedicate all available resources to bring disseminators of such falsehoods to justice.”

8. Attached as Exhibit 5 is a press release from the Department of Justice dated July 21, 2011 announcing that Minkow was sentenced to five years in prison and ordered to pay \$583,573,600 in restitution for executing an illegal “short and distort” fraud scheme against Lennar, a residential development and home building company, in violation of Title 18 U.S.C. § 371.

9. Attached as Exhibit 6 is a press release related to the conviction of an FBI agent who aided and abetted the illegal “short and distort” fraud scheme in *United States v. Royer*, 549 F.3d 886 (2d Cir. 2008). The U.S. Attorney for the Eastern District of New York stated “[t]oday’s guilty plea demonstrates the commitment of this Office and the FBI to pursue and prosecute anyone who abuses a position of trust as a law enforcement officer to aid or protect those involved in criminal activity.” According to the U.S. Attorney, the FBI agent who had pled guilty “breached the public trust—she was sworn to use the FBI’s resources to expose criminal activity, not conceal it.”

10. Attached as Exhibit 7 is the opinion of the Court of Appeals of the Fifth District of Texas dated August 23, 2019 arising out of the tort lawsuit entitled *United Development Funding, LP, et. al. v. J. Kyle Bass, et. al.*, Cause No. CC-17-06253-C that UDF filed against Bass/Hayman for executing an illegal “short and distort” scheme against UDF. The Court of Appeals found in UDF’s favor, denying Bass/Hayman’s Anti-SLAPP motion to dismiss, and

issued an opinion that chronicled a plethora of highly questionable conduct by Bass/Hayman related to their execution of this illegal “short and distort” fraud scheme against UDF and UDF’s innocent investors. The Court emphasized the following points about the strength of the evidence that UDF presented in its pleadings and affidavits:

- “UDF’s pleadings and affidavits explain how and why Hayman’s statements [about UDF] were false,” (pg. 4);
- UDF illustrated and described “how and why Hayman made the false statements knowingly or recklessly,” (pg. 4);
- UDF chronicled the economic and business damages and losses UDF sustained as a direct result of Hayman’s false statements, (pg. 4);
- UDF provided such a “prodigious quantity of details” about Bass/Hayman’s misconduct that the Court compared the overwhelming evidence UDF submitted to “a restaurant menu with too many offerings—the difficulty lies in choosing which examples, and what level of detail, to include in our opinion,” (pgs. 3-4);
- UDF established a prima facie case that Bass/Hayman intentionally concealed its identity as the publisher of the negative “Ernest Poole” public postings challenging the legality of UDF’s business “so that those statements would be more certain to plunge UDF’s stock value, resulting in a huge profit to Hayman, which, in fact, is what happened,” (pgs. 38-39);
- UDF established a prima facie case that Hayman intended to interfere with UDF’s economic interests by publishing and disseminating unconfirmed, false and derogatory statements about UDF’s business that were almost certain to have a severe negative impact on UDF’s current and prospective business and on UDF’s stock value (pg. 39);
- UDF established a prima facie case that Hayman deliberately distorted facts, omitted facts contrary to its ‘story’ and purposefully avoided discovering facts that might show the falsity of its accusations about UDF (pg. 39); and
- UDF established a prima facie case that Hayman made false statements with actual malice that proximately caused UDF’s alleged damages and losses (pgs. 42-43).

11. Attached as Exhibit 8 is a copy of an initial 17 page summary slide presentation Chris Kirkpatrick, Hayman’s General Counsel (“Hayman GC”) submitted to the Securities and Exchange Commission (“SEC”) on March 19, 2015. On April 17, 2015, Bass/Hayman subsequently presented to Defendants Bunch and Klimek as well as representatives from the SEC an expansive 80 page PowerPoint presentation regarding UDF in order to influence the government to initiate an investigation into UDF. That 80 slide presentation is attached as Exhibit 9. The original draft of the presentation curiously was watermarked “Farley Dakan – Mackinac Partners” on each slide. This 80 slide draft is attached as Exhibit 10. In Bass/Hayman’s words, this 80 slide presentation was designed to “set the hook” with the Government and entice them to investigate UDF. In the presentation, Bass/Hayman repeatedly falsely suggested that UDF was operating a “Ponzi-like scheme.” Ex. 9 at 2-4.

12. Attached as Exhibit 11 is a copy of an email dated April 1, 2015 between Hayman Analyst Parker Lewis and Hayman President Andy Jent where Lewis updated Jent about the PowerPoint presentation Kirkpatrick had delivered to the Government about UDF. Lewis confirmed that he and Kirkpatrick would “set the hook” with the Government in their initial discussions so that the Government would ask for a follow-up and “do the deep dive” necessary to launch an investigation of UDF. As noted in the article on counterfeitingstock.com, short sellers executing illegal “short and distort” fraud schemes routinely seek to instigate frivolous government investigations of the target company so that the government will take public actions that will harm the target company driving down its stock price. See ¶ 6, Ex. 3 at 10. Bass/Hayman’s actions to instigate a government investigation of UDF represents Step 1 of 6 in Bass’ illegal “short and distort” fraud scheme.

13. Defendant Bunch confirmed to counsel for UDF that he (Defendant Bunch) knew and understood from at least May 2015 that Bass/Hayman was shorting UDF IV stock.

14. Attached as Exhibit 12 is an email chain dated May 26, 2015 between J. Kyle Bass, Hayman Analyst Lewis, and Hayman Trader Henry Becker. Bass instructs Lewis, who would be meeting that day with Defendant Klimek to discuss UDF, to download the “Signal” App from the App Store so they could communicate during the meeting. The Signal App is popular due to its Disappearing Messaging feature, which allows users to automatically erase any trace of the messages they send to prevent leaving any paper trail of their conversations. If Lewis and Bass communicated using the Signal App during the meeting, those messages would disappear, and Bass could trade on that information without leaving a paper trail of the material nonpublic information that Lewis obtained from the Government during the meeting. Lewis confirmed that he met with Defendant Klimek for five (5) hours that day. Becker reports that he was able to locate 25,000 UDF shares to short but that the market is “getting really tight.” Based on Becker’s email, it appears that Bass/Hayman may have shorted shares of UDF IV stock while Lewis was meeting with Defendant Klimek. In addition, the emails produced to date suggest that Bass/Hayman employees typically reported the information they learned from the Government about the status of the Government’s investigation of UDF through to the executives at Hayman Capital who controlled trading decisions at Bass/Hayman—Kyle Bass and/or Henry Becker.

15. Bass/Hayman brought Farley Dakan and James Weissenborn of Mackinac Partners, who Bass/Hayman presented to the Government as “restructuring experts,” to the five-hour meeting with the FBI at Hayman’s office on May 26, 2015. *See* Ex. 12. The presentation Bass/Hayman made to the FBI is attached as Exhibit 13. Bass/Hayman’s presentation

demonstrated that Bass/Hayman was seeking to damage UDF to a point where UDF would be forced into receivership/bankruptcy. Short sellers executing illegal “short and distort” fraud schemes often seek to put the target company (UDF here) into bankruptcy because “[b]ankrupting the company is a short homerun because they (short sellers) never have to buy real shares to cover and they don’t pay taxes on the ill-gotten gain.” *See* ¶ 6, Ex. 3 at 8. Trying to bankrupt UDF is Step 2 of 6 in Bass’ illegal “short and distort” fraud scheme.

16. A forced bankruptcy would also allow Bass/Hayman to acquire UDF’s valuable assets at a significant discount. Of particular note, the May 26, 2015 presentation to the FBI did *not* reveal that Bass/Hayman and Dakan/Mackinac (along with Starley/Cielo) were, at the same time, covertly plotting to acquire and profit from UDF’s “well positioned” assets through various “distressed debt” vehicles. Attached as Composite Exhibit 14 are emails provided in discovery in the Texas state litigation which demonstrate that Bass and Dakan had been secretly scheming since 2014, and that Dakan and Patrick Starley had been scheming since 2013, to acquire the majority of the “valuable” real estate assets that secured UDF loans.

17. Attached as Exhibit 15 is an email dated June 12, 2015, under the subject line “UDF on initial list to be added to the Russell 2000 and Russell 3000,” which action would potentially increase the share price, increase trading volume and free up shares available for Bass/Hayman to borrow. Bass celebrated with Hayman Trader Becker: “Christmas in June! Yeah baby.”

18. Attached as Exhibit 16 is an email dated June 16, 2015 between Defendant Klimek and Hayman GC Chris Kirkpatrick where Defendant Klimek thanked Kirkpatrick for the “intel” and confirms that the FBI was monitoring and understood the importance to

Bass/Hayman of fluctuations in UDF IV's stock price as Bass/Hayman's illegal "short and distort" scheme was in progress.

19. On June 23, 2015, Bass/Hayman met with Defendant Klimek and made another presentation regarding UDF. The presentation is attached as Exhibit 17.

20. Attached as Exhibit 18 is an email dated June 24, 2015 from Defendant Klimek to Hayman GC Chris Kirkpatrick asking for a meeting to present to Defendant Klimek and other FBI accountants whom he would bring to speak with Hayman Analyst Lewis about UDF.

21. Attached as Exhibit 19 is a document the SEC produced to UDF documenting meetings between Bass/Hayman and the Government, including confirming that Hayman Analyst Lewis had an in-person meeting with Defendant Klimek on June 23, 2015 and an in-person meeting with Defendant Klimek and others from the FBI on June 25, 2015.

22. Attached as Exhibit 20 is an email dated June 26, 2015 from Hayman Trader Becker to Bass confirming that he was able to locate another 75,000 shares of UDF IV to short, immediately after Bass/Hayman had two apparently positive meetings with the FBI on June 23 and 25, 2015. The timing of this shorting activity indicates that Bass/Hayman learned something helpful to their short position from the FBI during the meetings on June 23 and June 25 that led Bass/Hayman to increase its short position. On June 22, 2015, Hayman was short 1,932,513 shares of UDF—almost a 100% increase from its position on March 31, 2015. *See Ex. 75.*

23. Attached as Exhibit 21 is an email dated July 2, 2015, the Thursday following multiple meetings with the FBI, with the subject line "Just got 25k UDF ...in motion." Bass apparently had decided to dramatically increase Hayman's short position and informed Hayman Trader Becker: "We should be able to find 1mm [million] shares. Maybe tomorrow morning it will loosen up."

24. Attached as Exhibit 22 is an email dated July 5, 2015 from Jeff Cate of Bass/Hayman to Bass and others where Cate updates Bass about UDF and Bass/Hayman's meetings with the Government. Cate tells Bass that the "pace seems to be accelerating"—an apparent reference to the Government's investigation of UDF. As a result, Cate recommends that Bass "add when we can get more borrow," a reference to shorting more shares of UDF IV. This passage again indicates that Bass/Hayman was actively trading based on nonpublic material information the Government was providing Bass/Hayman regarding the status Government's investigation of UDF.

25. Attached as Exhibit 23 is an email dated July 14, 2015 from Hayman Trader Becker to Bass and others at Bass/Hayman confirming that the 150,000 shares they obtained from JP Morgan to short that week came at a 99% borrow interest rate. The intensity Bass/Hayman exhibited in their effort to obtain as many UDF IV shares to short as they could locate in the market actually drove up the borrow interest rate on themselves. As of July 14, 2015, Bass/Hayman had grown its short position to 2,242,513 shares of UDF stock, an increase of 310,000 shares (16%) since the June 23 and 25 FBI meetings. *See* Ex. 75. Moreover, Hayman traders were instructed that there were "no limits on any order." *See* Ex. 24.

26. A reasonable investor would not drive up the interest rate on themselves and be willing to borrow at such an extreme interest rate (here 99%) unless they knew with a high degree of certainty that the Government was going to support or initiate a move against UDF in a way that would crash UDF IV's stock price, which is exactly what happened in the latter half of 2015/early 2016. Attached as Exhibit 25 is a true and correct copy of an article titled "Short Selling and Stock Borrowing Costs," which is available at <https://financetrain.com/short-selling-and-stock-borrowing-costs/>. According to Finance Train, the typical fee for a stock loan is only

0.30% per annum. In cases of limited supply, when many investors are going short on a stock, the fee may go up to 20-30% per annum. Those fees are far less than the 99% borrow rate that Bass/Hayman appeared willing to pay to obtain UDF IV shares to short.

27. Attached as Exhibit 26 is an email dated July 30, 2015 from Hayman Analyst Lewis to Bass and Hayman Trader Becker where Lewis stated that, based on “everything I know there will not be an *event* in the next week related to UDF.” The word “event” as used in this email and others appears to be coded language used to describe a predicted government public action against UDF. As other emails from 2015 also demonstrate, Lewis was communicating directly with the Government during this period and relaying information to Bass that Lewis had learned from the Government about the timing of actions that the Government was considering taking against UDF.

28. Attached as Exhibit 27 is an email dated August 18, 2015 from Hayman Analyst Lewis to Bass and Hayman President Jent where Lewis informed Bass that he had prepared another 55-page presentation on UDF that he was forwarding to the Government. Lewis promises to update Bass on “what we learn” from the Government after speaking with them on a call. This email again suggests that the Government was providing Bass/Hayman confidential nonpublic information about the status of their investigation of UDF. Plainly, the Government was not simply receiving information from Bass/Hayman regarding UDF, but federal investigators apparently were also conveying to Bass/Hayman valuable information about the status of the Government’s investigation.

29. Based on UDF’s investigation of the facts of this case, it is my understanding that Defendant Klimek and representatives from the SEC’s Fort Worth Enforcement Division approached Whitley Penn, UDF’s external auditor, on or about August 31, 2015. Further, based

almost exclusively on the false and misleading information that Bass/Hayman/Dakan had been providing to the FBI, Defendant Klimek and/or others informed Whitley Penn that UDF had misrepresented to Whitley Penn the likelihood that UDF would be repaid on a portfolio loan that UDF had provided to Buffington, a real estate developer in Austin, Texas. Defendant Klimek and/or others further instructed Whitley Penn not to share with UDF the FBI's contact and communications with Whitley Penn.

30. Attached as Exhibit 28 is a copy of a Bass/Hayman Bloomberg chat session on September 2, 2015 where, on news that UDF's share price had gone up \$1, Bass assures Hayman Trader Becker that "I am not worried about UDF" and "UDF is giving us the last gasp of air before it croaks." Attached as Composite Exhibit 29 are several emails that establish that Bass and Dakan were intensely involved in negotiations with Goldman Sachs, Blackstone and other investment firms to secretly acquire and profit from UDF's asset portfolio after it was forced into bankruptcy. Of particular note is the email dated September 24, 2015 from Lewis to Bass regarding "Distressed Debt Presentation." The presentation describes how Bass/Hayman and Dakan/Mackinac clandestinely intended to profit by acquiring UDF's "valuable" assets after driving UDF into bankruptcy and/or receivership, a common tactic used by short sellers executing illegal "short and distort" fraud schemes. See ¶ 6, Ex. 3 at 8.

31. Attached as Exhibit 30 is an email dated November 12, 2015 between Hayman GC Kirkpatrick and a Staff Attorney at the SEC indicating that Bass/Hayman intended to send an "anonymous" letter, which Bass/Hayman had authored and which contained false and misleading information, to Whitley Penn and UDF. Bass/Hayman did not intend to disclose to Whitley Penn that the negative information in the letter about UDF was authored by a short seller who

had a significant financial interest in driving a wedge between UDF and its external auditor.

Kirkpatrick attached a draft of the “anonymous” letter to his email.

32. Attached as Exhibit 31 is an email also dated November 12, 2015 from Defendant Bunch requesting to speak directly to Hayman GC Kirkpatrick about UDF. Defendant Bunch sent this email to Kirkpatrick approximately twenty (20) minutes after Kirkpatrick sent a draft of the false and misleading “anonymous” Bass/Hayman letter to the SEC Staff Attorney for review. The timing suggests that the SEC notified Defendant Bunch about Bass/Hayman’s intentions, and Defendant Bunch then sought a conversation directly with Hayman GC Kirkpatrick about Bass/Hayman’s desire to send an anonymous letter to UDF’s external auditor. After the conversation with Defendant Bunch, Bass/Hayman apparently decided against sending the letter at that time. In the Texas state litigation discovery, UDF has been provided no notes of the substance of any discussion with Defendant Bunch.

33. Attached as Exhibit 32 is an SEC Form 8-K dated November 19, 2015 filed by UDF that confirmed, based on UDF’s discussions with Whitley Penn, that “there were no disagreements between the Company and Whitley Penn on any matters of accounting principles or practices, financial statement disclosure or auditing scope or procedure.” UDF provided Whitley Penn a copy of the Form 8-K for comment and Whitley Penn had no disagreement with the representations UDF made in the Form 8-K. UDF IV had filed its 10-Q on November 9, 2015. UDF III had filed its 10-Q on November 16, 2015. As a result, Bass/Hayman’s interference with Whitley Penn, via the Government’s actions, had limited success. Whitley Penn allowed UDF III and IV to file their financial statements, and stood behind them, but did not stand for reappointment. So, while Bass/Hayman, via the government, was not able to get Whitley Penn to force a restatement of UDF’s historical financial statements, Bass/Hayman was

able to interfere with the UDF/Whitley Penn relationship such that Whitley Penn would not stand for reappointment.

34. Because the late August meeting between Defendant Klimek, the SEC and Whitley Penn did not result, as Bass/Hayman had hoped, in Whitley Penn withdrawing its accounting opinions (which would have negatively impacted UDF's share price), Bass/Hayman found itself in a financial or liquidity crisis generating considerable panic within Hayman. Attached as Exhibit 33 is an email chain dated November 24, 2015 between Bass and Hayman Analyst Lewis. In the email, Lewis attaches his estimate of Bass/Hayman's carrying cost on its short position in UDF IV stock. Due to the extraordinary cost Bass/Hayman was carrying as a result of its enormous UDF short position, Lewis warned Bass "to not wait past Monday, December 14" to launch a public attack on UDF to drive down UDF IV's share price to abate Bass/Hayman's financially ruinous carry cost. Lewis estimated that Bass/Hayman had spent \$7,792,189 year to date in 2015 in borrowing costs alone (not including shareholder distributions, which brought the carrying costs to almost \$10 million). *See* Ex. 33, 37. If Bass/Hayman held its current position for another 50 days at the current borrowing rate plus distributions, it would add another incremental cost of \$4,203,162, which equated to a carry cost of \$84,063 per day. After reviewing those figures, Bass responded by emphatically declaring, "[t]his will happen in December one way or the other." *See* Ex. 33.

35. Attached as Exhibit 34 is an email dated December 4, 2015 from Hayman GC Kirkpatrick to Defendant Bunch where Kirkpatrick asks Defendant Bunch to call him to discuss UDF. In civil discovery in the Texas state litigation, UDF has been provided no notes of the substance of that conversation.

36. Attached as Exhibit 35 is an email dated December 4, 2015 from Hayman GC Kirkpatrick to Defendant Klimek. Kirkpatrick sent this email to Defendant Klimek approximately five (5) minutes after asking Defendant Bunch, by email, to call him regarding “UDF.” At this time, Defendant Klimek was the lead agent on the UDF investigation and was working directly with Defendant Bunch on the investigation. Kirkpatrick attached to the email a copy of the phony “anonymous” letter that Bass/Hayman had written and but had not yet sent to Whitley Penn to intimidate Whitley Penn into disavowing the accuracy of UDF’s historical financial statements. In his email, Kirkpatrick cryptically informed Defendant Klimek to call him (Kirkpatrick) “to discuss.” Defendant Bunch, Defendant Klimek, and Kirkpatrick avoided putting any substantive information in their emails about sending the anonymous letter to Whitley Penn, which would be discoverable in litigation. This clandestine behavior, under these circumstances and for which UDF has been provided no record, is evidence of awareness of personal culpability. Instead, Defendants Bunch and Klimek preferred to speak privately on the phone about the details of sending an anonymous letter, that contained false and misleading information about UDF to UDF’s external auditor. Interfering with the target company’s key business relationships is a classic move by a short seller executing an illegal “short and distort” fraud scheme. Ex. 3 at 8-11. Bass’ actions to interfere with UDF’s working relationship with a key business partner, Whitley Penn, represents Step 3 of 6 in Bass’ illegal “short and distort” fraud scheme.

37. Attached as Exhibit 36 is an email dated December 4, 2015 between Hayman GC Kirkpatrick and an SEC Staff Attorney after Kirkpatrick communicated with Defendant Bunch and Defendant Klimek. Kirkpatrick stated that Bass/Hayman had couriered the false and misleading “anonymous” letter to Whitley Penn. Kirkpatrick sent his email to the SEC about

two (2) hours after communicating Bass/Hayman's intention to deliver such letter to Defendant Bunch and Defendant Klimek regarding UDF.

38. Attached as Exhibit 37 is an email dated December 4, 2015 between Hayman Trader Becker, Bass and others where Bass confirms that his instructions for Becker are to "short as much UDF everyday as we can get a locate on." So, after the conversations with Defendants Bunch and Klimek, Bass/Hayman is now confidently instructing Becker to short every share of UDF IV that he could find.

39. Attached as Exhibit 38 is an email dated December 9, 2015 from Hayman GC Kirkpatrick to Defendant Bunch and Defendant Klimek. As he did with his prior non-privileged emails to Defendants Bunch and Klimek, Kirkpatrick includes little text. Kirkpatrick confidently affirms to Defendants Bunch and Klimek that the article he attached was being provided to the Harvest Exchange, an anonymous hosting platform, for publication. The email attached an "anonymous" article entitled "A Texas Sized Scheme—Exposing the darkest corner of the REIT Business—United Development Funding." This "anonymous" article, which Bass/Hayman authored, falsely accused UDF of exhibiting "characteristics emblematic of a Ponzi scheme."

40. The Government, including Defendant Bunch and Defendant Klimek, knew that Bass/Hayman was intentionally deceiving innocent investors by not disclosing that Bass/Hayman authored and distributed this "anonymous" article. At the time, Defendant Bunch knew that Bass/Hayman was short UDF IV stock and therefore had a concealed bias and would financially benefit from harming UDF IV's share price. Knowing that, Defendants Bunch and Klimek, aided and abetted and did nothing to stop Bass/Hayman from deceiving and defrauding both UDF and UDF's innocent investors. As stated in *counterfeitingstock.com*'s description of the *Anatomy of a Short Attack*, launching a negative media assault is a classic move by a short seller

in an illegal “short and distort” scheme. *See* Ex. 3 at 10. Distributing this anonymous, negative post about UDF to unsuspecting investors represents Step 4 of 6 in Bass’ illegal “short and distort” fraud scheme.

41. Attached as Exhibit 39 is a copy of an email string beginning on December 9, 2015 involving Kyle Bass, Peter Hans of the Harvest Exchange, and Hayman Analyst Lewis regarding the “anonymous” negative “Ernest Poole” post about UDF. In this thread, Hans confirms to Lewis that he (Hans) has rigged the Harvest website so that investors who read the phony “Ernest Poole” post could not see any comment posted by any other investor, thereby preventing investors from warning each other that this anonymous post appears to be from a fraudster who is executing an illegal “short and distort” fraud scheme.

42. Bass/Hayman chose to publish on the Harvest Exchange because he was a concealed part-owner of Harvest, a fact he did not disclose to the unsuspecting UDF investors. Attached as Exhibit 40 is a true and correct copy of a December 2, 2015 Hedge Fund Alert newsletter available at www.HFAlert.com. On page 12, the newsletter stated that “Hayman is an original investor in Harvest, which formed in 2012 as a free venue for professional money managers and investors to exchange research and ideas.” Further evidence of Bass’ ownership of the Harvest Exchange is attached as Exhibit 41, an email from Hans to Bass dated October 31, 2014 where Hans confirms that “Hayman is an investor in Harvest.”

43. Attached as Exhibit 42 is a copy of screen shots of the December 10, 2015 blog post that Bass/Hayman posted on the Harvest.com website using the phony name “Ernest Poole” as the sole “creator,” of the alleged “Investors for Truth” group which was formed only on December 9, 2015. Bass also nefariously used the backdrop photo of the Department of Justice on the bogus post seeking to add credibility to “Ernest Poole.” The “A Recap of Recent Posts on

UDF” page lists various posts by “Ernest Poole” including “A Texas Sized Scheme – Introduction to UDF (Posted 12/10/15)” and “Letter Sent to UDF Auditor (Posted 12/10/15).” The “A Texas Sized Scheme – Introduction to UDF” article is the article that Hayman GC Kirkpatrick sent to Defendant Bunch and Defendant Klimek on December 9, 2015 before Bass/Hayman went ahead and published it anonymously.

44. Attached as Exhibit 43 is an email thread dated December 9, 2015 from David Whipple, a Staff Attorney at the SEC, to Hayman GC Kirkpatrick. In the thread, Kirkpatrick provides the anonymous “Ernest Poole” post to Whipple and lets Whipple know that Hayman is providing it to Harvest.com. Whipple encouragingly responded: “Thank you for the heads up.”

45. By the end of the trading day on December 10, 2015, UDF had lost approximately \$250,000,000 in innocent shareholder value. As noted in paragraph 10 above, the Texas Fifth District Court of Appeals held that UDF has established a prima facie case that Bass/Hayman published false and misleading statements about UDF in the phony “Ernest Poole” posts to drive down UDF IV’s share price so that Bass/Hayman could profit at UDF’s expense, which, in fact, is what happened.

46. Attached as Exhibit 44 is an email dated December 10, 2015 between Peter Hans of Harvest Exchange and a UDF investor, Pete Sulik, who wrote to Hans after reading the post. Mr. Sulik asked Hans whether Hans could tell him the name of the author and confirm whether Harvest stands behind the author and the content of the posting. Hans knew that Bass/Hayman, an investor in Harvest Exchange, was shorting UDF stock, and had authored the anonymous post that Bass/Hayman falsely attributed to the mythical “Ernest Poole” from the phony “Investors for Truth.” But instead of telling Mr. Sulik the truth, Hans lied to Mr. Sulik. Hans told Mr. Sulik that the post came from an “unverified user.” Hans also told Mr. Sulik that he was “certainly

free to share your own thoughts on Harvest Exchange” even though Hans had previously rigged the website so that no other readers could see anything that Mr. Sulik might post.

47. Attached as Exhibit 45 is a copy of an email chain dated December 11, 2015 involving Bass, Hayman GC Kirkpatrick, Hayman Analyst Lewis and Hans regarding the response to the phony “Ernest Poole” post. Bass/Hayman confirms that Hans will post the information about UDF anonymously. Hans also confirms back to Bass that he (Hans) covered for Bass by lying to a reporter after the post was published when the reporter asked Hans if Bass was behind the anonymous post.

48. Attached as Exhibit 46 is a Street Watchdog Research report dated December 11, 2015 entitled *Is Prison Time in the Cards for United Development Funding IV's Short Sellers?* Street Watchdog Research is an independent analytical firm that publishes information that seeks to see through the hype in the markets and explain the truth to their readers. Street Watchdog Research severely criticized the negative “Ernest Poole” posts about UDF that Bass/Hayman had published “anonymously.” First, Street Watchdog Research criticized the “Ernest Poole” posts for being published anonymously and suggested that the author wanted to remain anonymous because executing a “short and distort” scheme is illegal and could expose the author to jail time, like it had for Barry Minkow when he ran a similar scheme against Lennar Corp. Second, Street Watchdog Research concluded that Bass/Hayman’s post was “rife with conjecture and innuendo, most of which we were able to debunk with our research.” Third, in response to Bass/Hayman’s false implication that Whitley Penn had declined to stand for reappointment in November 2015 due to concerns about UDF’s business operations and accounting, Street Watchdog Research simply called Larry Autrey, Whitley Penn’s Managing Partner, to ask him about UDF. Bass/Hayman could have called Larry Autrey of Whitley Penn if Bass/Hayman wanted to

publish the truth, but Bass/Hayman preferred to work in the shadows and operate unchallenged and anonymously because its goal was to crash UDF IV's stock price, not report the truth about UDF. As reported by Street Watchdog Research, Mr. Autrey confirmed that Whitley Penn's decision to not stand for reappointment "was not a reflection of any improprieties whatsoever in UDF's financial statements." Street Watchdog Research went on to describe the Form 8-K that UDF filed on November 19, 2015, that confirmed that Whitley Penn and UDF "had no disagreements on any matters of accounting principles or practices, financial statement disclosure or auditing scope or procedure." *See Ex. 32.* Attached to UDF's Form 8-K was a letter from Whitley Penn confirming that Whitley Penn had reviewed UDF's Form 8-K and agreed with it. *See Ex. 32.* Bass/Hayman purposefully failed to cite UDF's Form 8-K and the confirming letter from Whitley Penn in its anonymous "Ernest Poole" posts because that information directly contradicted the false narrative that Bass/Hayman was promoting to unsuspecting UDF investors.

49. The information that Street Watchdog Research obtained during its investigation that led it to quickly conclude that the "Ernest Poole" posts had been published by a short seller who was executing an illegal "short and distort" fraud scheme—which Street Watchdog Research was able to obtain within 24 hours—had also been available to Defendants. Moreover, the Government and Defendants, unlike Street Watchdog Research, actually (a) knew the identity of the anonymous author before Bass/Hayman published the posts, (b) had an opportunity to review the anonymous "Ernest Poole" posts before Bass/Hayman published them, (c) had more time, resources and investigative powers to research the veracity of the statements in Bass/Hayman's anonymous posts before Bass/Hayman published them, and (d) had the ability

and opportunity to stop the publication of the anonymous false and misleading information before it triggered \$250 million in innocent investor losses.

50. Attached as Exhibit 47 is a copy of an email dated December 11, 2015, from Hayman GC Kirkpatrick to Defendant Klimek regarding UDF. Kirkpatrick attached a copy of the Street Watchdog Research article entitled “Is Prison Time in the Cards for United Development Funding IV’s Short Sellers?” Soon after the receipt of this email establishing the criminality of Bass/Hayman’s anonymous actions, Defendant Klimek was removed as the lead case agent in the UDF investigation and reassigned from the FBI’s White Collar Group to their Surveillance Operations Group (“SOG”).

51. As confirmation of Bass/Hayman’s impending liquidity crisis identified on November 24, 2015 by Hayman Analyst Lewis in an email to Bass (*see* Ex. 33), on December 15 and 16, 2015, Bass/Hayman closed 349,120 shares of shorted UDF IV stock which provided sufficient liquidity to pay the monthly carry cost and shareholder distribution on the outstanding UDF IV short position. Exhibit 48.

52. Attached as Exhibit 49 is a copy of an email dated December 15, 2015 from Bass to Lewis and Jent, copying Katheryn Mueller, Steele Schottenheimer, and Brandon Osmon regarding “Local Media.” Bass stated “Please make sure you also get this to D Magazine, Dallas Morning News, and even the TV channels...please make sure you have discussions with the local banks and business owners.” Interfering with a target company’s relationships with its banks and other business partners is a standard play by a short seller executing an illegal short and distort scheme. *See* Ex. 3 at 11. This is another example of Step 3 of 6 in Bass’ illegal “short and distort” fraud scheme.

53. Attached as Exhibit 50 is a copy of an email dated December 28, 2015 from Lewis to Bass, Jent, Kirkpatrick, Juneau Lee, Katheryn Mueller, and Steele Schottenheimer regarding a “Draft of Potential Press Release.” Lewis stated that it should confirm “that we released information anonymously on Harvest (without specifically addressing that we are short UDF ... downplaying our status as an evil short-selling hedge fund and focusing on confirming rumors about anonymous posts and press inquiries).” The draft press release stated: “The documents posted on Harvest Exchange (“Harvest”) were posted anonymously to allow for information to disseminate and to be judged based on the content of the research, rather than the messenger.” Those statements are an explicit acknowledgement that Bass/Hayman intentionally manipulated the market in UDF IV stock by deceiving innocent investors who needed to know that the information Bass/Hayman published anonymously had in fact been posted by Bass/Hayman, who was short on UDF and therefore was biased and self-interested in harming UDF’s share price.

54. Attached as Exhibit 51 is a copy of an email dated January 3, 2016 from Jeff Zilka of Edelman to Lewis, copying several Edelman employees regarding “Key Messages/Talking Points and Summary Communications Plan.” Edelman is a national media consultant that Bass/Hayman retained to run a closely coordinated negative media attack against UDF that would include national and local broadcast and print media (like CNBC, CNN, Bloomberg, the Wall Street Journal, the New York Times, the Dallas Morning News and many others). The last two pages of this document outline Bass/Hayman’s media campaign against UDF. The document confirms that Bass/Hayman viewed Defendants (Bunch, Edson and Klimek) as “Third Party Influencers”—individuals who could use their influence and power to help Bass/Hayman achieve its objective of negatively impacting UDF IV’s share price. *See Ex.*

46. The campaign also includes several references to Bass/Hayman actually purchasing media to spread their false and misleading information about UDF, including “paid support for media coverage, paid search to drive microsite traffic, paid Twitter to micro target followers of reporters covering the story” and “paid amplification.” Ex. 46. The short seller playbook for executing illegal “short and distort” fraud schemes includes the use of paid media “bashers.” *See* Ex. 3 at 11. Bass/Hayman’s use of paid media to bash UDF represents Step 6 of 6 in Bass’ illegal “short and distort” fraud scheme. Bass’ use of paid media appears throughout the evidence related to the *UDFExposed.com* attack.

55. Attached as Exhibit 52 is a true and correct transcription of an interview given by Bass to Wall Street Week that originally aired on January 3, 2016. In the interview, Bass confirmed that 2015 had been one of Hayman’s worst years in a decade. The video of the interview is available at https://www.youtube.com/watch?v=XzuAktBCP_8. This further evidences that Bass’ urgent statement in his November 24, 2015 to Hayman Analyst Lewis that “this will happen in December one way or another” relates to the increasing financial squeeze Bass was experiencing—which then triggered Bass’ push to, with the sanction of Defendants Bunch and Klimek, (a) further interfere with UDF’s relationship with Whitley Penn via the anonymous letter and (b) destroy UDF IV’s share price via the phony, anonymous “Ernest Poole” post, both of which happened in early December 2015.

56. Attached as Exhibit 53 is a copy of an email dated January 3, 2016 from Lewis to Zilka (Edelman) regarding Key Messages/Talking Points and Summary Communications Plan. In describing the contours of Edelman’s proposed Communications Plan, Hayman Analyst Lewis emphasized that Edelman needed to sharpen its negative focus by calling UDF a Ponzi scheme that would result in likely bankruptcy so that Edelman’s negative message “translates to the

pending impact to UDF's share price." This quote is another example where Bass/Hayman confirms it possessed criminal intent because Bass/Hayman admits that their goal was to negatively impact UDF's share price so Bass/Hayman could profit off their short position.

57. Attached as Exhibit 54 is an email dated January 22, 2016 between Bass, Hayman Analyst Lewis and various representatives of Edelman. Bass/Hayman and Edelman also mapped out a digital attack strategy using Google, Twitter and YahooFinance! As stated in counterfeitingstock.com's description of the Anatomy of a Short Attack, launching a negative media assault is a classic move by a short seller in an illegal "short and distort" scheme. See Ex. 3 at 10. Bass/Hayman and Edelman planned to launch this attack on a website called *UDFExposed*. The *UDFExposed.com* attack is another example of Step 4 of 6 that Bass used in his illegal "short and distort" fraud scheme.

58. Attached as Exhibit 55 is an email dated January 29, 2016 from Bass to Defendant Christine Edson, who had recently taken over as the lead case agent for the FBI following Defendant Klimek's reassignment to SOG. In his email, Bass informs Defendant Edson that Bass/Hayman was going live with the *UDFExposed* website in four days. Bass provided Defendant Edson with clandestine early access to the website so she could review the false and misleading content that Bass/Hayman intended to publish about UDF. Bass provided Defendant Edson a user ID and password so she could covertly review his website before the false postings went live. At this point in time, Defendant Edson was reporting directly to Defendant Bunch on the UDF investigation.

59. Attached as Exhibit 56 is a copy of the disclosure statement Bass/Hayman included on the *UDFExposed.com* website stating that Bass/Hayman was shorting UDF IV stock and would profit if UDF IV's stock price declined. Defendant Edson would have seen this

disclosure when she secretly accessed the false and misleading website using the untraceable login and password that Bass provided to her.

60. Attached as Exhibit 57 is a copy of an email dated February 2, 2016 from Allie Holmes (Edelman) to Kirkpatrick and Lewis, copying Rob Campbell (Edelman), regarding “Revised ATB.” The attachment is titled “Edelman Authorization to Buy Form” and concerns “paid amplification” with the purchase of “Google AdWords and Twitter amplification not to exceed \$8,000 per month.”

61. On February 4, 2016, Bass/Hayman launched a wide-ranging and false public media attack against UDF on *UDFExposed.com* that was publicly disclosed in earnest on February 5, 2016. With the tacit approval of Defendant Edson, who had secretly previewed the website and its content, Bass/Hayman repeated many of the same false and misleading allegations they made in their anonymous “Ernest Poole” posts, including accusing UDF of operating like a Ponzi scheme. By the end of the trading day on February 5, 2016, UDF had lost another \$150,000,000 in innocent shareholder value. As noted in paragraph 10 above, the Texas Fifth District Court of Appeals held that UDF has established a prima facie case that Bass/Hayman published false and misleading statements about UDF to drive down UDF IV’s share price so that Bass/Hayman could profit at UDF’s expense.

62. Attached as Exhibit 58 is a copy of a “Letter from Kyle Bass” that was posted on the *UDFExposed.com* the day the website launched on February 4, 2016. The letter identifies that Bass/Hayman took a short position in UDF and falsely declares that “UDF exhibited characteristics consistent with a Ponzi scheme.”

63. Attached as Exhibit 59 is a copy of an email string dated February 4, 2016 involving Bass and Hayman Analyst Lewis regarding the media attack related to the release of

the *UDFExposed.com* website. Included in this email string is Bass' instruction to Lewis to do a "massive push" where Lewis would "make sure each and every plaintiffs' attorney gets the [UDFExposed.com] website." Following Bass/Hayman's launch of the UDFExposed.com website, Plaintiffs were sued in over a dozen lawsuits related to Bass/Hayman's false and misleading allegations, including derivative lawsuits, class action lawsuits, and a civil RICO lawsuit. Encouraging investor lawsuits against the target company is another standard play for a short seller executing an illegal "short and distort" fraud scheme. *See* Ex. 3 at 11. Bass' recruitment of plaintiffs' lawyers to file lawsuits against UDF represents Step 5 of 6 in Bass' illegal "short and distort" fraud scheme.

64. Attached as Exhibit 60 is a copy of an email dated February 5, 2016 from Bass to Lewis, Kirkpatrick, and Juneau Lee where Bass cavalierly states "***Bombs away***," as he reports to the others within Bass/Hayman that he has reached out to someone he knew at FINRA to persuade FINRA to open an investigation on UDF. This email constitutes proof of Bass' intent to damage UDF so he could profit on his short position. Encouraging regulatory investigations against the target company is, of course, a standard play for a short seller executing an illegal "short and distort" fraud scheme. *See* Ex. 3 at 10. This is yet another example of Step 1 of 6 in Bass' illegal "short and distort" fraud scheme.

65. Between April 2014 and January 2016, UDF produced approximately 800,000 pages of material in response to a voluntary request and subpoenas from the SEC Enforcement Division in Fort Worth. The SEC was conducting a parallel investigation of UDF following presentations that Bass/Hayman had provided to both the SEC and FBI/DOJ. As a result, the documents that UDF provided to the SEC were readily available to Defendant Bunch and also related to the same topics that he was investigating. In addition, during 2015, UDF's corporate

counsel had multiple conversations with Defendant Bunch where they invited Defendant Bunch to come to UDF's corporate headquarters to obtain any additional non-privileged documents he might want from UDF.

66. In December 2015, UDF retained Thompson and Knight to conduct an independent internal investigation and forensic review of UDF's auditing procedures and financial statements. UDF informed the Government about this work when Thompson & Knight was retained. Defendant Bunch could have reached out to Thompson & Knight to obtain documents related to his investigation, a common practice by federal prosecutors when investigating a company that has outside counsel conducting an internal review of the same issues. UDF had been aware of the DOJ investigation since the middle of 2015 so there was no reason to believe in February of 2016 that UDF was going to destroy documents at its Grapevine, Texas location.

67. Attached as Exhibits 61 and 62 are USAO letters and subpoenas to UDF's offices in Austin, Texas and Boulder, Colorado that Defendant Bunch dated February 11, 2016, the day before the Government approached the Court to obtain a search warrant for UDF's office in Grapevine, Texas. The Government did not execute search warrants at UDF's Austin, Texas or Boulder, Colorado locations. Given that Buffington Homes is located in Austin, UDF's Austin location contained many of the Buffington related documents that appear to have been singularly pertinent to the Government's investigation. The simultaneous use of these subpoenas to UDF at the same time as the execution of the search warrant at UDF's Grapevine location demonstrates that there was, in fact, no basis to execute a search warrant at UDF's office in Grapevine, Texas, unless the goal of executing the FBI raid was to generate negative publicity regarding UDF. Surely, if the Government had a genuine concern that UDF might be destroying documents, the

Government would have executed search warrants at other UDF locations, particularly UDF's office in Austin, Texas.

68. On February 12, 2016, the Government presented a search warrant affidavit to a Magistrate Judge in Dallas seeking a warrant to search UDF's headquarters in Grapevine, Texas. I believe in good faith that Defendant Edson and Defendant Bunch misrepresented certain critical facts and withheld material information from the search warrant affidavit and that the affidavit was devoid of probable cause sufficient to support a broad search of UDF as alleged more specifically in paragraphs 167 to 168 of the Complaint.

69. Attached as Exhibit 63 is an email dated February 12, 2016 from Bass/Hayman's media consultant, Edelman, to Bass and Hayman Analyst Lewis. Bass and Lewis were meeting with Edelman to prepare for interviews with journalists at Bloomberg and other media outlets regarding UDF as part of the *UDFExposed.com* media assault that Edelman helped coordinate for Bass/Hayman. Edelman had to warn Bass/Hayman to **“avoid bringing up anything you've heard through the rumour (sic) mill on indictments or subpoenas”** during these interviews. (emphasis added). The existence and timing of subpoenas and potential indictments would be known only to the U.S. Attorney's Office and the FBI since that information related to a pending criminal grand jury investigation and Rule 6(e) of the Federal Rules of Criminal Procedure and federal statute prohibits disclosure of confidential law enforcement information and any matter occurring before the grand jury. But Bass/Hayman apparently knew material, nonpublic information about the status of the Government's criminal grand jury investigation or there would have been no need for Edelman to warn Bass/Hayman to avoid the topic of such “rumors” in their discussions with the media. Defendant Bunch indeed had drafted the subpoenas for UDF's offices in Austin, Texas and Boulder, Colorado, on February 11, 2016—the day before

Edelman felt compelled to warn Bass/Hayman to not say anything to a reporter about anything Bass/Hayman had heard about “subpoenas.”

70. Attached as Exhibit 64 is a copy of a Dallas Morning News article also dated February 12, 2016. The article was written by Steve Brown, a reporter identified in Edelman’s public relations strategy as friendly reporter who might publish an article that would advance Bass/Hayman’s unlawful goals. *See* Ex. 54 at 5. The article summarized an interview of Bass regarding UDF and quoted Bass extensively. Bass predicted that “[e]ither we are going to be right or we are going to be wrong. The good news is that bright line is going to be drawn at a certain time in the future.” Later that day, Defendant Bunch and Defendant Edson obtained a signed search warrant and the FBI raided UDF six days later—thereby confirming Bass’ apparently well-informed prediction.

71. I believe, based upon the events set forth above, it is not a coincidence that after Bass/Hayman’s website went public on February 4, 2016, Bass chose not to speak on the record to the media for attribution until February 12, 2016, when the subpoenas and search warrant had been secured.

72. On February 18, 2016, with Defendants Bunch and Edson aware that it would directly benefit Bass/Hayman’s short position, the FBI sent over 100 armed agents in raid jackets into UDF’s corporate headquarters to execute an unwarranted search of UDF’s headquarters that was immediately broadcast on local television and covered by the national broadcast and print media. Immediately following the raid, UDF lost another \$129,000,000 in innocent shareholder value. *See* Ex. 76.

73. Based on my experience as a former federal prosecutor, a prosecutor would not wait almost a week to execute a search warrant if the prosecutor had any concerns that the

subject of the search might be destroying evidence. Here, because there was no reasonable concern that UDF was destroying documents and the location search was expected to contain privileged documents, which UDF's offices clearly do, Justice Department policy requires Defendant Bunch to proceed by subpoena, not by search warrant, pursuant to Justice Manual 9-13.420(A), which is attached as Exhibit 65. The Government served the subpoenas on UDF's Austin, Texas and Boulder, Colorado offices at about the same time the FBI raided UDF's headquarters in Grapevine, Texas on February 18, 2020. If Defendant Bunch would have followed DOJ procedures and proceeded by secret grand jury subpoena, there would have been no media coverage and UDF IV's innocent investors would not have lost an additional \$129,000,000 in shareholder value.

74. Attached as Exhibit 66 is a sample of the print media coverage of the FBI executing the raid on UDF on February 18, 2016. The article from Bloomberg ties to the Edelman email, Exhibit 54 above. In this Bloomberg article, it includes a quote from Bass from their interview on *February 12* and Bass' false allegation that UDF operates like a Ponzi scheme. Notably, after the FBI executed the raid on February 18, Bass followed Edelman's advice and refused to comment to Bloomberg about the service of subpoenas and the execution of the search warrant. The Bloomberg article also shows that UDF IV's stock price fell 55% on February 18 and was down 71% just from January 1 to February 18, 2016.

75. Attached as Exhibit 67 is a copy of an article entitled "Nasdaq Updates Halt Status in United Development Funding IV" which is available at <https://www.nasdaq.com/about/press-center/nasdaq-updates-halt-status-united-development-funding-iv>. The article is dated February 18, 2016 and states that trading in UDF IV stock was halted the same day at 13:33:52 EST.

76. Attached as Exhibit 68 is a copy of an email dated February 19, 2016, from Bass to Lewis, Schottenheimer, Mueller, Kirkpatrick and Manzini (Edelman) with the subject line: "This is interesting." The email forwarded an email from Peter Hans of Harvest.com, which by virtue of its timing, noted that the search executed on UDF was the culmination of Bass/Hayman's illegal "short and distort" fraud scheme and congratulated Hayman on the "incredibly well executed strategy from research and execution to PR and Marketing." Hans was complimenting Bass for how well Bass had executed his illegal "short and distort" fraud scheme thereby confirming that the search warrant obtained by Defendants Bunch and Edson, as "third party influencers," was a critical part of Bass' strategy. This again demonstrates how Defendants actions in execution of the search warrant aided and abetted Bass/Hayman during the execution of this illegal "short and distort" fraud scheme.

77. Another expression of Bass/Hayman's criminal intent in executing its illegal "short and distort" fraud scheme against UDF is included in Exhibit 69, an email dated July 26, 2016 from Bass to Hayman Analyst Lewis and others at Bass/Hayman. In the email, Bass admits that his goal is to "**kill off UDF.**" (emphasis added).

78. On October 17, 2016, due to the relentless attack on UDF by Defendants and Bass/Hayman, UDF could not meet its deadline for filing its financial statements. J. Kyle Bass understood that he was now free to cash out the remainder \$60 million short position in UDF as Nasdaq delisted UDF IV that same day. Exhibit 70.

79. Because trading in UDF IV stock would resume on the OTC stock exchange on or about October 19, 2016, Bass celebrated the culmination of his illegal short and distort fraud scheme by announcing in an internal email to his employees: "**Damn it feels good to be a gangsta.**" Exhibit 71. (emphasis added). Bass then liquidated his short position. Exhibit 72

and Ex. 48. UDF IV, which was trading at approximately \$17 in January 2015, traded for approximately \$1.75 on October 19, 2016. Exhibit 73.

80. Attached as Exhibit 74 is a copy of Bass's affidavit filed on January 26, 2018 with defendants' motion to dismiss in the Dallas County case entitled *United Development Funding, LP, et. al. v. J. Kyle Bass et. al.*, Cause No. CC-17-06253-B. In paragraph 24, Bass states in his sworn affidavit that Bass/Hayman did not publicize any of its "research" about UDF without first notifying the Government that it intended to do so, which would include Defendants Bunch and Klimek on the anonymous "Ernest Poole" posts in December 2015 and Defendant Edson on the *UDFExposed.com* attack that Bass/Hayman launched in early February 2016.

81. Attached as Exhibit 75 is a chart that demonstrates both the overall short position in UDF shares from December 30, 2014 to February 4, 2016 and Bass/Hayman's short position in UDF IV shares from December 30, 2014 to February 4, 2016. From the end of 2014 to November 15, 2015, the overall short position against UDF IV increased from 58,204 shares to 4,118,814 shares—an astounding 6,975% increase in shorted UDF shares. From the end of 2014 through December 2015, Bass/Hayman increased its short position from 0 to 3,437,250. Because Defendants, experienced white collar prosecutors and agents, knew that Bass/Hayman was shorting UDF stock, they must have understood that their actions related to the phony "Ernest Poole" posts, the false and misleading *UDFExposed.com* media assault on UDF, obtaining and executing the public search warrant in February 2016 and the interference with UDF's relationship with Whitley Penn would have facilitated Bass/Hayman's illegal "short and distort" fraud attack on UDF's innocent investors.

82. Attached as Exhibit 76 is a chart showing the amount of share value that innocent investors lost following the critical attacks launched during the execution of the "short and

distort” scheme. First, on December 10, 2015, immediately following Bass/Hayman’s release of the bogus “Ernest Poole” post on the Harvest website, UDF IV lost over \$250,000,000 in shareholder value in one day. Second, on February 4, 2016, Bass/Hayman launched a wide-ranging public media attack against UDF on *UDFExposed.com* that was publicly disclosed in earnest on February 5, 2016. By the end of the following trading day, February 5, 2016, UDF had lost another \$150,000,000 in innocent shareholder value. Third, on February 18, 2016, the FBI sent over 100 armed agents in raid jackets into UDF’s corporate headquarters to execute a search that was immediately broadcast on local television and covered by the national broadcast and print media. Immediately following the raid, UDF IV lost another \$129,000,000 in innocent shareholder value. The total loss caused by the illegal “short and distort” scheme—over \$532,000,000 in innocent shareholder value.

83. Attached as Exhibit 77 is a true and correct copy of a webpage titled “Take Action” from the website UDFExposed.com. The webpage was accessed on May 18, 2020 and is available at <http://udfexposed.com/act>. On this webpage, Bass/Hayman lists the names of all of the plaintiffs law firms who have sued UDF as a means to encourage even more litigation against UDF. Encouraging investor lawsuits against the target company is another standard play for a short seller executing an illegal “short and distort” fraud scheme. *See* Ex. 3 at 11. This is Step 5 of 6 in Bass’ illegal “short and distort” fraud scheme.

84. Attached as Exhibit 78 is a true and correct copy of an affidavit of UDF CEO Hollis Greenlaw dated May 8, 2018 that was filed in the Texas State Court case. Mr. Greenlaw’s declaration explains the legitimacy of UDF’s business model and provides significant fact-based details demonstrating the false and misleading nature of Bass/Hayman’s allegations regarding UDF.

85. Attached as Exhibit 79 is a true and correct copy of an excerpt of an affidavit of Alice Anne Brown dated May 8, 2018 that was filed in the Texas State Court case. Ms. Brown's declaration demonstrates how one of UDF's key banking relationships, with Legacy Texas Bank, was terminated due to Bass/Hayman's phony, anonymous "Ernest Poole" posts.

86. Attached as Exhibit 80 is a true and correct copy of an excerpt of an affidavit of Mehrdad Moayedi dated May 8, 2018 that was filed in the Texas State Court case. Mr. Moayedi's declaration also demonstrates the false and misleading nature of Bass/Hayman's allegations about real estate developer Centurion, one of UDF's key borrowers.

87. Attached as Exhibit 81 is a true and correct copy of an excerpt of an affidavit of Joseph W. Straub dated May 8, 2018 that was filed in the Texas State Court case. Mr. Straub's declaration demonstrates the falsity of Bass/Hayman's allegations about the collectability of the Buffington Loan Portfolio.

88. On Thursday, June 18, 2020, I spoke with FBI Counsel Elissa Okoniewski regarding unsealing the Complaint and search warrant affidavit in this matter. Neal Stephens of Jones Day joined me on the call. Ms. Okoniewski, who represented Defendant Edson and Klimek at the time, asked us to refrain from filing the motion until Defendants had an opportunity to obtain counsel through DOJ who could meet and confer with us regarding our request. As a result, Plaintiffs waited until Defendants obtained counsel in order to try to resolve the issue of unsealing the Complaint.

89. On July 15, 2020, Andrea Friedman, a Trial Attorney with the Civil Division of the Department of Justice in Washington, D.C. contacted Plaintiffs' counsel to inform us that she would be representing Defendants Edson, Klimek and Bunch. She also indicated that AUSA James Gillingham would be representing the United States.

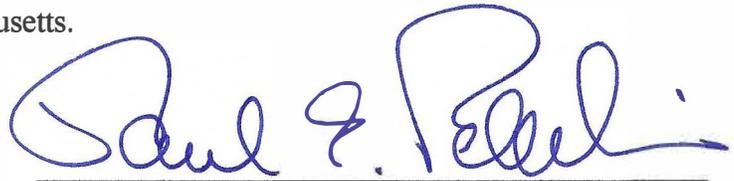
90. On July 22, 2020, the parties conducted a telephonic meet and confer regarding Plaintiffs' proposed motion to unseal the Complaint and search warrant affidavit. Mr. Stephens of Jones Day and Elizabeth Fitch of Hallett Perrin joined me on the call. Ms. Friedman was joined by AUSA Gillingham and AUSA Adrian Garcia of the United States Attorney's Office of the Eastern District of Texas. As to the Complaint, AUSA Gillingham wanted some additional time to review the allegations of the Complaint. Plaintiffs' counsel agreed that he could have additional time and he agreed to reach back out to Mr. Stephens the following day with his position on our request. Defense counsel also opposed Plaintiffs' request to unseal the search warrant affidavit.

91. On July 23, 2020, Mr. Stephens and I returned a voicemail message that AUSA Gillingham had left for Mr. Stephens. AUSA Gillingham indicated that he had spoken with his client and confirmed its opposition to unsealing the Complaint at this time because the criminal investigation was still pending. Aside from his opposition to revealing the contents of a sealed search warrant affidavit (which we do not seek here) AUSA Gillingham also opposed our motion due to a concern that Plaintiffs' Complaint would "taint the jury pool" and that the Complaint "mischaracterized" certain unidentified facts. AUSA Gillingham did not identify any case law supporting this position. AUSA Gillingham did confirm that Defendants opposed any motion to unseal the Complaint at this time. Counsel agreed that Plaintiffs would note Defendants' opposition to our motion.

92. Plaintiffs are only seeking limited relief at this point—simply filing a redacted form of the Complaint that does not include any references to the contents of the search warrant affidavit. We will continue to meet and confer with opposing counsel on the broader

issue of obtaining a copy of the search warrant affidavit and will return to the Court with a subsequent motion if we cannot resolve that issue.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of July 2020, in Edgartown, Massachusetts.



Paul E. Pelletier

CERTIFICATE OF SERVICE

I hereby certify that on August __, 2020, I filed this document with the Clerk’s Office. I further provided an electronic copy of this document on counsel, as listed below, via electronic mail:

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