

CAUSE NO. CC-17-06253-B

UNITED DEVELOPMENT FUNDING, L.P., et al.,	§	IN THE COUNTY COURT OF
	§	
	§	
<i>Plaintiffs,</i>	§	DALLAS COUNTY, TEXAS
	§	
v.	§	
	§	
J. KYLE BASS <i>et al.</i> ,	§	COUNTY COURT OF LAW NO. 2
	§	

AFFIDAVIT OF J. KYLE BASS

BEFORE ME, the undersigned authority, on this day personally appeared J. Kyle Bass, personally known to me and who, after having been by me duly sworn upon his oath, deposed and said:

1. My name is J. Kyle Bass. I am over 21 years of age, of sound mind, have never been convicted of any felony, and am fully competent to make this affidavit. I have personal knowledge of all facts stated in this affidavit and they are true and correct.

2. I am the Founder and Chief Investment Officer of Hayman Capital Management L.P. ("Hayman"). Hayman is an SEC-registered asset management firm with a global footprint that manages assets of privately-offered pooled investment vehicles. Hayman is an investment advisor to funds and accounts that are in the business of actively buying and selling securities and other financial investments. Hayman primarily manages the assets of institutional investors, as well as ultra-high net worth individual investors.

3. I have over twenty-five years of experience in the financial markets, with particular expertise in global event-driven investing, and hold a Bachelor's Degree in Finance from Texas Christian University. Prior to forming Hayman, I was a Managing Director at Legg Mason and a Senior Managing Director at Bear Stearns. In my career I have managed private funds with strategies focused on sub-prime credit, the pharmaceutical industry, and Asia.

4. I am a member of the Board of Directors of the University of Texas Investment Management Company, which manages approximately \$40 billion, and I serve as chair of the Risk Committee. I am also a member of the Advisory Group for the Center of Asset Management at the Darden School of Business at the University of Virginia. I have testified as an expert witness before the U.S. House of Representatives, U.S. Senate, and the Financial Crisis Inquiry Commission. In 2015, I was recognized as one of the Top 25 Most Influential People in the Global Patent Market as named by Intellectual Asset Management magazine. I have lectured on global economics at various universities, including Columbia, Harvard, Stanford, University of Chicago, University of Texas, and University of Virginia. I serve on the Board of Directors of the Troops First Foundation and the Texas Department of Public Safety Foundation.

5. Hayman is not a real estate investment trust ("REIT"), and Hayman does not originate loans or manage real estate investments. Hayman is not a competitor of Plaintiffs. While Hayman may engage in investments related to real estate and property development, such investments are not a primary focus of Hayman's business, and certainly not its exclusive focus. Any investments that Hayman makes in real estate are passive through public securities, and are not a primary focus of Hayman's business.

6. It is my understanding that Plaintiffs comprise a network of related real estate companies, including publicly-traded, public non-traded, and privately-held companies whose shares have been offered in the public marketplace.

7. Hayman's customer base has virtually no overlap with Plaintiffs. Plaintiffs sell to the securities market at large, while Hayman focuses on institutional investors and ultra-high net worth individuals. An individual who invests with Hayman must be a qualified purchaser with at minimum five million dollars in investible assets. It is my understanding that Plaintiffs do not have such a restriction on their customer base.

8. Hayman generally conducts market research and financial analysis in connection to its asset management services and in connection to special situations in the public marketplace. Because Hayman places an institutional focus on special situations, Hayman conducted financial research and analysis relating to REITs, which included investigation into American Realty Capital Properties ("ARCP") and later Plaintiffs. Hayman's interest in REITs grew in late 2014 when financial problems at ARCP, a multi-billion-dollar REIT, drew extensive news coverage in the national business press.

9. From April 2013 to the present, Parker Lewis (“Lewis”), an analyst with over ten years of experience in corporate financial planning and analysis, has worked as an employee and thereafter as a consultant for Hayman. Lewis was responsible for researching, originating and presenting investment ideas to the Hayman investment committee, which I lead. Lewis is a brilliant analyst and thorough researcher, who over the years has demonstrated great professional judgment and decisionmaking skills. I have developed trust and a great deal of professional respect for Lewis. In connection to Hayman’s market research and analysis, Lewis conducted extensive research and analysis, spanning an approximate two-year period, related to Plaintiffs.

10. Shortly after it came out, I read the 2011 Financial Industry Regulatory Authority (“FINRA”) Investor Alert warning investors of risks associated with publicly registered non-traded REITs such as distributions not guaranteed that may exceed operating cash flow, illiquidity and valuation complexities, high fees, limited diversification, among other risks.

11. I also read the “Investor Bulletin: Non-traded REITs” published by the U.S. Securities and Exchange Commission on August 21, 2015 (the “SEC REIT Alert”), which alerted investors to certain risks associated with non-traded REITs. Those risks included, without limitation, conflicts of interest, high fees, lack of liquidity, and lack of share value transparency, among others. The SEC REIT Alert also reminded that non-traded REITs that are registered with the SEC must regularly file quarterly and annual reports detailing the financial results of the non-traded REIT.

12. I am familiar with SEC Industry Guide 5, which calls for, among others, the disclosure of material risks involved in the purchase of securities in registration statements relating to interests in real estate limited partnerships.

13. In November 2015, the accounting firm Whitley Penn disclosed their withdrawal from representation of all four public Plaintiffs. This occurred only one month before the end of the fiscal year – a notably alarming time for an auditor to resign without any clear explanation.

14. While conducting the UDF related research, Hayman identified a myriad of financial irregularities among the Plaintiffs, including without limitation, repeated loan extensions by UDF, generally without extension fees, which is not a customary practice for traditional lending institutions financing arm’s length borrowers; loan default; incomplete disclosures; SEC filings that Plaintiffs failed to file for up to two years, among many other observed irregularities.

15. Many of the Plaintiffs' financial irregularities that I observed through Hayman's UDF-related research were consistent with the risks associated with public non-traded REITs identified by the FINRA and the SEC, including without limitation, apparent conflicts of interest between the Plaintiffs and other entities such as Centurion American Development Group, illiquidity and valuation complexities, high management fees, and lack of share value transparency.

16. Based on the assessment of non-traded REITS by the SEC, FINRA, and my over twenty-five years of industry experiences, in addition to the documents extensively reviewed and analyzed as part of Hayman's UDF related research, I had reason to doubt the financial security and standing of the Plaintiffs and to question their conduct.

17. Hayman in good faith concluded that the Plaintiffs had engaged in a Ponzi-like real estate scheme, exhibiting characteristics consistent with the SEC's definition of such a scheme. In particular, Plaintiffs that actively raised capital in public markets provided liquidity to affiliated and pre-existing Plaintiff entities seemingly in need of liquidity through what appeared to be Ponzi-like transactions. Certain Plaintiffs which received liquidity from affiliates either had demonstrated an inability, or other failure, to timely pay debts or there existed a reasonable basis to question the ability to timely pay debts, which generally explained the need for liquidity. Further, it was common practice for UDF loans to accrue unpaid interest (for years in many cases). Income associated with such loans represented purported returns; income which UDF had claimed but not realized as a third-party had not actually paid the interest it purported to earn. As UDF funds helped facilitate the payment of liabilities which had accrued higher balances as a result of purported returns, liabilities owed to other UDF funds, affiliated UDF entities appeared to be perpetuating a scheme that involved multiple public, SEC registered companies. The general conclusion that Plaintiffs were involved in a Ponzi-like real estate scheme was based on numerous and striking financial irregularities, including without limitation, patterns identified herein and considerable research that led Hayman to conclude that the Plaintiffs assets were likely materially overstated, partly as a function of claiming purported returns or otherwise unsupported asset values. All facts and patterns were considered relative to all other facts and patterns which Hayman reasonable believed to be accurate, and no one fact or pattern led to any particular conclusions.

18. In March 2015, Chris Kirkpatrick ("Mr. Kirkpatrick"), former General Counsel of Hayman, sent an executive summary of Hayman's UDF related research to the SEC.

19. In April 2015 Hayman gave a presentation to the FBI concerning Hayman's UDF related research.

20. In or about late May or early June 2015, at the request of the FBI, Hayman attended an additional meeting with the FBI related to the UDF research. Forensic accountants attended this meeting.

21. In or about late May or early June 2015, Mr. Kirkpatrick attended a meeting with the SEC head of enforcement of the Fort Worth office to discuss Hayman's UDF-related research. Mr. Kirkpatrick previously worked as an SEC Enforcement attorney.

22. In its entirety, Hayman spent approximately two-years conducting UDF related research, and in the process reviewed thousands of pages of documents believed to be reliable from sources which include, without limitation, SEC filings, county court records, county land and deed recordings, central appraisal district websites, the Secretary of State taxable entity search records, and visits to various physical sites. Guided by this extensive research as well as the institutional knowledge and experience of myself and Mr. Lewis, and Hayman's expansive industry experience in financial reporting, restructuring, accounting, and evaluating financial disclosures, Hayman identified patterns of financial irregularities and solvency concerns among Plaintiffs that Hayman could not in good faith just ignore.

23. Once Hayman learned the financial irregularities of the Plaintiffs and their potentially fraudulent conduct, Hayman believed that it had an obligation to share the conclusions it derived from the UDF related research. Hayman believed that this information presented critical information to stakeholders including investors, financial institutions, lenders, auditors, and investigative authorities related to a matter of public concern, notwithstanding Hayman having a financial interest in the situation.

24. After over a year of extensive research, review and analysis of thousands of pages of publicly available resources, Hayman publicly disseminated communications concerning the UDF-related research, after extensive internal analysis of numerous patterns of striking financial irregularities within Plaintiffs. My understanding is that before Hayman publicly disseminated any information related to Plaintiffs, Hayman notified government agencies that it intended to make public information related to Hayman's UDF related research.

25. Hayman engaged First Amendment counsel at Cahill Gordon, Landis Best ("First Amendment Counsel"), in connection to the dissemination of information

related to the UDF-related research on the website udfexposed.com (the “Website”). Best is a former clerk for the Honorable William H. Rehnquist, Chief Justice of the United States Supreme Court and one of the leading First Amendment lawyers in the country.

26. Hayman also engaged the counsel of marketing and public relations firm Edelman in connection with the Website, to ensure that it conveyed its message with the utmost professionalism.

27. Hayman directed its statements to the public marketplace. As noted above, Hayman is not a competitor with Plaintiffs.

28. Hayman did not recklessly disregard the truth in disseminating statements related to Plaintiffs. The Website features fact-based analysis, and provides detailed documentation of the information evaluated which establishes the basis on which Hayman’s truthful statements and opinions were made.

29. Any visitor to the Website is immediately prompted to read a disclaimer and accept terms before seeing any content, as shown in this screenshot of the Website:

Disclaimer

This disclaimer is issued in connection with the website, www.UDFExposed.com (the "Website"), which is maintained by Hayman Capital Management, L.P. ("Hayman"), an investment adviser to funds and accounts that are in the business of actively buying and selling securities and other financial instruments.

Hayman currently maintains a short position in the common stock of United Development Funding IV ("UDF"). Hayman will profit if the market price for common shares of UDF decline and, conversely, Hayman will lose money if the market price increases for the common shares of UDF.

Hayman may change its views about, or its investment positions in UDF at any time, for any reason or no reason. Hayman may buy, sell, cover or otherwise change the form or substance of any of its investments in UDF at any time without notice. Hayman disclaims any obligation to notify the market or any other party of any such changes.

The information and opinions contained in the Website are based on information about UDF and other companies and persons, all of which Hayman believes to be reliable and the vast majority of which comes from publicly available sources. Hayman recognizes that there may be non-public information in the possession of UDF or others that could lead UDF or others to disagree with Hayman's analyses and conclusions.

The Website may contain forward-looking statements, estimates, projections and opinions prepared with respect to, among other things, certain legal and regulatory issues facing UDF, borrower defaults, and bankruptcy of UDF and/or one or more of its affiliates and the potential impact of these issues on UDF's future business, financial condition and results of operations, as well as, more generally, UDF's anticipated operating performance, access to capital markets, market conditions, assets and liabilities. Such statements, estimates, projections and opinions may prove to be substantially inaccurate and are inherently subject to significant risks and uncertainties beyond Hayman's control.

Although Hayman believes the statements it makes in the Website are substantially accurate in all material respects and do not omit to state material facts necessary to make those statements not misleading, Hayman makes no representation or warranty, express or implied, as to the accuracy or completeness of those statements or any other written or oral communication it makes with respect to UDF or any other companies or persons mentioned, and Hayman expressly disclaims any liability relating to those statements or communications (or any

inaccuracies or omissions therein). Thus, shareholders of UDF and others should conduct their own independent investigation and analysis of those statements and communications and of UDF and any other companies to which those statements or communications may be relevant.

The Website may also contain links to public filings, articles and/or videos. Hayman has not sought or obtained consent from any third party to use any statements or information, which are described in the Website as having been obtained or derived from statements made or published by third parties. Any such statements or information should not be viewed as indicating the support of such third party for the views expressed on the Website. No warranty is made that data or information, whether derived or obtained from filings made with the U.S. Securities and Exchange Commission, any other regulatory agency or from any third party, are accurate.

The statements by Hayman on the Website are not investment advice or a recommendation or solicitation to buy or sell any securities. Except where otherwise indicated, those statements speak as of the date made, and Hayman undertakes no obligation to correct, update or revise those statements or to otherwise provide any additional materials. Hayman also undertakes no commitment to take or refrain from taking any action with respect to UDF or any other company.

All users agree and consent to exclusive jurisdiction and venue of any dispute or proceeding relating to or arising from the Website or any related subject matter in the Courts of the State of Texas in Dallas County or in the Federal courts located in the Northern District of Texas [Dallas Division]. As used herein, except to the extent the context otherwise requires, "Hayman" includes its affiliates and funds and accounts it manages or advises and their respective partners, directors, officers, and employees.

I confirm that I have read, understand and accept the terms of this website.

[ENTER SITE >](#)

30. The Website presents work product that was the result of thousands of hours of research and analysis of seasoned financial analysts, and provides direct access to multiple citations, directing viewers to hundreds of pages of source documents supporting the content of the Website.

31. In February 2016, nearly nine months after Hayman's last meeting with the FBI, it was widely publicized that the FBI obtained a search warrant and raided UDF's corporate headquarters, seizing UDF data and materials in the raid (the "FBI Raid"). It was also widely publicized that various executive officers of the Plaintiffs were served with grand jury subpoenas seeking document production.

32. I observed that William M. Kahane and Eustace W. Mita, two of the five directors on the UDF V Board of Trustees, voluntarily resigned from the company shortly after Whitley Penn declined to stand for reappointment of the public Plaintiffs and shortly after the FBI Raid, respectively.

33. In May 2016, I observed that UDF IV disclosed that it would halt regular distributions to investors as part of a forbearance agreement related to a default. To date, UDF IV has not formally reauthorized regular distributions to investors in any public disclosure.

34. Based on my observations of publicly available financial data related to UDF IV available on reliable sources such as Bloomberg, it appears that if UDF IV had continued paying its regular distributions, from regular distributions it would have paid its investors in excess of \$90 million to date. UDF IV investors reasonably relied on these distributions as income, and it is my understanding that UDF IV failed to pay this money they otherwise would owe.

35. I observed in or around May 2016, that the Nasdaq Stock Exchange initially determined to delist the shares of UDF IV due to non-compliance with listing requirements. After multiple extensions, Nasdaq officially determined to delist UDF IV shares in October 2016 after a trading halt for eight months.

36. Hayman retained the Morgan Lewis law firm to write a letter to Nasdaq in October 2016, in connection to public concerns related to the prolonged UDF IV Nasdaq trading the halt.

37. I observed that multiple Plaintiffs and affiliated individuals received Wells Notices from the SEC Division of Enforcement, a preliminary determination by

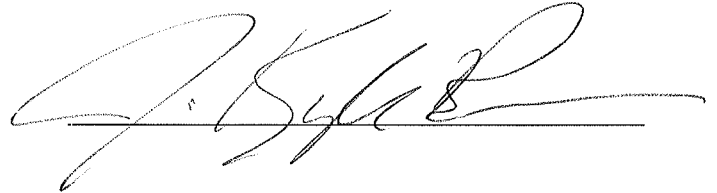
the SEC that it may recommend a formal civil enforcement action or administrative proceeding against recipients.

38. I observed that the SEC revoked the registration of Plaintiff UMT's securities, after an administrative proceeding against UMT for its failure to file SEC required periodic reports.

39. My observations of the foregoing conduct by regulatory agencies and government officials further supported the reasonableness of Hayman's opinion that the Plaintiffs were engaging in seemingly fraudulent conduct that appeared to be a Ponzi-like scheme. To date, Plaintiffs, though required by the SEC and federal regulatory agencies, have not filed certain financial statements.

FURTHER AFFIANT SAYETH NOT

SUBSCRIBED AND SWORN TO BEFORE ME on this the 25th day of January, 2018, to certify which witness my hand and official seal.

A handwritten signature in black ink, appearing to read "J. Kyle Bass", written over a horizontal line.

