

**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

PLAINTIFFS' MOTION TO FILE REDACTED COMPLAINT

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I. INTRODUCTION

On April 13, 2020, Plaintiffs filed a *Bivens* complaint alleging that Defendants violated Plaintiffs' Fourth and Fifth Amendment rights during a criminal investigation. *See* Complaint and Jury Demand [Document 1] (the "Complaint"). Plaintiffs' claims involve, among other things, allegations that Defendants unlawfully obtained a search warrant in February 2016 to search United Development Funding's ("UDF") corporate headquarters in Grapevine, Texas. Thus, the contents of the search warrant affidavit are vital to Plaintiffs' claims. Defendants, however, placed the search warrant affidavit under seal over four years ago. To date, the government has not charged anyone in the underlying investigation.

Plaintiffs believed it was prudent to file their Complaint completely under seal initially. Doing so would provide Defendants' counsel an opportunity to review the allegations in Plaintiffs' Complaint related to the under seal search warrant affidavit. The parties could then meet and confer to determine whether Defendants would stipulate to unseal the Complaint. Plaintiffs' counsel has now met and conferred with Defendants' counsel, who oppose unsealing the Complaint. Declaration of Paul E. Pelletier ("Pelletier Decl.") at ¶ 90.

As a result, Plaintiffs seek an order from this Court that allows Plaintiffs to file a redacted version of their Complaint. The redacted Complaint simply redacts the few passages that discuss the contents of the search warrant affidavit.¹ Filing the redacted Complaint publicly advances the public policy goal of making judicial proceedings open and available to the public. *United States v. Holy Land Found. For Relief & Dev.*, 624 F.3d 685, 689-90 (5th Cir. 2010) (noting that public access to judicial records furthers both the interests of the outside public and the integrity of the

¹ For the Court's consideration, Plaintiffs have filed, under seal, a copy of the proposed redacted complaint. Plaintiffs seek to file this redacted complaint publicly.

judicial system itself); *Bradley on behalf of AJW v. Ackal*, 954 F.3d 216, 224-25 (5th Cir. 2020) (quoting *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995)) (“the very openness of the process should provide the public with a more complete understanding of the judicial system and a better perception of its fairness”). In addition, the Fifth Circuit has recognized time and again that there is a common law right of access to judicial records like this Complaint, with a presumption in favor of public disclosure of such documents. *SEC v. Van Waeyenberghe*, 990 F.2d 845, 849 (5th Cir. 1993) (emphasis added); *Ackal*, 954 F.3d at 233. This is particularly true where, as here, the Complaint involves allegations against public officials and matters of legitimate public concern. *Ackal*, 954 F.3d at 232-233.

II. STATEMENT OF FACTS

A. The Illegal Short and Distort Fraud Scheme

UDF is a family of funds that have existed for over seventeen (17) years. UDF was founded in 2003 to provide investors with sound investments in residential real estate developments. UDF enjoyed steady growth and provided consistent returns to investors for over a decade while financing hundreds of millions of dollars in successful construction projects for leading developers in Texas. Buffington Land and Centurion were the two largest borrowers for whom UDF financed real estate development projects. The individual plaintiffs are executives at UDF. Plaintiff UDF IV’s stock is publicly traded.

UDF’s business model was so successful that short seller J. Kyle Bass and his hedge fund, Hayman Capital Management, L.P. (“Bass/Hayman”), secretly schemed to wrest control of UDF’s investment portfolio from UDF. Bass/Hayman worked with Farley Dakan of Mackinac Partners, who was also working with Patrick Starley of Cielo Private Equity, on the larger scheme to obtain UDF’s valuable assets. Pelletier Decl. at ¶¶ 16, 30.

To accomplish this goal, Bass/Hayman executed an illegal “short and distort” fraud scheme against UDF beginning around March 2015. An illegal “short and distort” fraud scheme occurs when a short seller, Bass/Hayman here, takes a short position in a stock, like UDF IV, and then launches a series of actions, including a negative and misleading media campaign, designed to trigger panic among investors so that they sell their shares. *Id.* at ¶¶ 3-6. The sell-off of the target stock collapses the price of the stock, and the short-seller, Bass/Hayman, profits off its unlawful gains.² *Id.* The Department of Justice (“DOJ”) typically prosecutes the perpetrators of these illegal “short and distort” fraud schemes. *Id.* at ¶¶ 7-9; *see also United States v. Royer*, 549 F.3d 886 (2d Cir. 2008) (affirmed criminal RICO and securities fraud conviction of an FBI agent for aiding and abetting a short seller who executed an illegal “short and distort” fraud scheme).

Investing publications also warn their readers about illegal “short and distort” fraud schemes—describing how a short seller runs this unlawful scheme and warning their readers that the scheme is “obviously extremely illegal.” *Id.* at ¶¶ 4-6, Exs. 1-3. During the execution of their illegal “short and distort” fraud scheme against UDF, Bass/Hayman deployed six separate strategies contained in the short seller’s playbook for how to execute an illegal “short and distort” fraud scheme—Bass/Hayman (1) instigated a frivolous government investigation of UDF; (2) sought to drive UDF into bankruptcy/receivership; (3) interfered with UDF’s key business relationships; (4) launched a negative media assault against UDF; (5) encouraged class action lawsuits against UDF; and (6) used “paid bashers” to destroy UDF’s reputation in the market. *Id.* at ¶ 6, Ex. 3 at 8-11.

² An illegal “short and distort” fraud scheme is the opposite of another well-known fraud scheme called a “pump and dump”—where a fraudster buys the target stock at a low price, spreads false and misleading positive news about the target stock to artificially “pump” up the price of stock, and then the fraudster quickly “dumps” the stock by selling at a profit and collecting his/her unlawful profits before the market realizes that the information the fraudster injected into the market is false.

Plaintiffs sued Bass/Hayman in state court for disparagement and other related claims and have obtained some preliminary discovery that describes Bass/Hayman's interactions with Defendants during the execution of this illegal "short and distort" fraud scheme. *Id.* at ¶ 2. The Court of Appeals for the Fifth District Court of Texas reviewed the evidence described below and held that UDF has established a prima facie case that Hayman made false statements about UDF to harm UDF IV's share price so that Hayman could make a huge profit at UDF's expense. *Id.* at ¶ 10. The state appeals court further found ample evidence that Hayman made those false statements about UDF with actual malice. *Id.* The Complaint in this case outlines Defendants' unconstitutional actions, which served to advance Bass/Hayman's illegal "short and distort" fraud scheme.

B. Defendants Aid and Abet Bass/Hayman's Execution of the "Distort"

1. Bass/Hayman Convinces Defendants to Investigate UDF

In 2015, Defendants began taking meetings with Bass/Hayman representatives to discuss the short seller's alleged concerns about UDF and its family of funds. *Id.* at ¶ 11. Bass/Hayman began making presentations to the Defendants in approximately March/April 2015, during which Bass/Hayman made false and misleading statements about UDF, including accusing UDF of operating a "Ponzi like scheme." *Id.* Shortly thereafter, Defendants initiated an investigation into UDF based on the false and misleading information provided by Bass/Hayman. Over the course of the next few months, Bass/Hayman representatives continued to meet with the Defendants to discuss Bass/Hayman's false and misleading allegations against UDF and the progress of the government's investigation into UDF. *Id.* at ¶¶ 15, 18-21, 28-29. Bass/Hayman pressed the government to take some public action against UDF because doing so would foster panic among UDF investors and sink UDF IV's stock. *Id.* at ¶ 6, Ex. 3 at 8-11. Defendants could then use

Bass/Hayman's false and misleading allegations to support probable cause in their search warrant affidavit. *Id.* at ¶ 68.

2. Defendants Interfere with UDF's External Auditor

From August to December 2015, Bass/Hayman representatives continued to communicate with the Defendants regarding Defendants' investigation of UDF. *Id.* at ¶¶ 28-29, 31-32, 35-37, 39-40. Bass/Hayman needed to apply additional pressure on UDF because Bass/Hayman had spent almost \$10 million to build its short position in UDF IV's stock. *Id.* at ¶ 34. As a result, Bass/Hayman turned to Defendants to pressure UDF's external auditor, Whitley Penn, to abandon UDF and try to force a restatement of UDF's financial statements. *Id.* at ¶ 29.

3. Defendants Aid and Abet the Anonymous "Ernest Poole" Attack

In early December 2015, Bass/Hayman prepared to launch a negative media assault on UDF that was riddled with false and misleading information about UDF. *Id.* at ¶ 84, Ex. 78 at ¶¶ 56-116. Bass/Hayman intended to publish *anonymously* under a phony name, "Ernest Poole," so that UDF IV's innocent investors would not know that the false information about UDF had been published by a self-described "evil short selling hedge fund" that possessed a financial self-interest in destroying UDF IV's share price. *Id.* at ¶ 53. Bass/Hayman's internal emails confirm that they understood that publishing anonymously under the phony "Ernest Poole" moniker was improper. *Id.*

Nevertheless, to maximize the damage to UDF, Bass/Hayman rigged the website so that readers of the phony "Ernest Poole" posts could not post warnings to other investors on the website that the phony "Ernest Poole" posts might be part of an illegal "short and distort" fraud scheme. *Id.* at ¶ 41. Bass/Hayman also did not disclose that they held a financial interest in the website that would host the anonymous posts. *Id.* at ¶ 42. In addition, Bass made sure that his team provided "friendly" reporters the phony "Ernest Poole" posts to broaden the dissemination of the false and

misleading information about UDF. *Id.* at ¶ 52. Bass also pressed his team to send the false and misleading information to UDF’s banking and business partners to destroy those critical relationships. *Id.* In addition, Bass/Hayman’s representatives lied to a reporter who attempted to confirm whether “Ernest Poole” was Kyle Bass and also lied to an investor who inquired about the identity of the author. *Id.* at ¶¶ 46-47.

Before Bass/Hayman published the phony “Ernest Poole” posts, Bass/Hayman provided the posts to Defendants Bunch and Klimek so they could review the information before Bass/Hayman published it anonymously. *Id.* at ¶ 39. In other matters, the government has consistently taken the position that it is *per se* illegal to publish information about a stock anonymously because publishing anonymously prevents investors from being able to accurately assess the bias and credibility of an author who is invested in the stock.³ Thus, Defendants should have known that publishing negative information about UDF anonymously constitutes illegal market manipulation of UDF’s IV’s stock, particularly since Defendant Bunch knew Bass/Hayman was short on UDF IV’s stock. *Id.* at ¶ 13. Despite knowing that Bass/Hayman was about to anonymously publish negative information about UDF to unsuspecting investors, Defendants Bunch and Klimek aided and abetted Bass/Hayman’s anonymous publication of the phony “Ernest Poole” posts. *Id.* at ¶ 39.

³ *SEC v. Curshen*, 372 F. App’x 872, 891 (10th Cir. 2010) (court agrees with SEC argument that the defendant’s failure to disclose the fact that he was being compensated for promoting the stock makes all of his statements *per se* misleading because a reasonable investor would consider his compensation as bearing on his objectivity); *SEC v. Contrarian Press, LLC*, No. 16-CV-6964 (VSB), 2019 WL 1172268, at *5 (S.D.N.Y. Mar. 13, 2019) (same); *SEC v. Mandaci*, No. 00-CV-6635, 2004 WL 2153879 at *9 (S.D.N.Y. Sept. 27, 2004) (same); *SEC v. Saltsman*, No. 07CV4370NGRML, 2016 WL 4136829 at *10-11 (E.D.N.Y. Aug. 2, 2016) (same); *SEC v. Blavin*, 557 F. Supp. 1304 (E.D. Mich. 1983), *aff’d sub nom. SEC v. Blavin*, 760 F.2d 706 (6th Cir. 1985) (defendant’s failure to disclose ownership in stock promoted in newsletters constitutes a material omission); *In re Credit Suisse First Bos. Corp. Sec. Litig.*, No. 97 CIV. 4760 (JGK), 1998 WL 734365 at *7 (S.D.N.Y. Oct. 20, 1998) (defendant’s failure to disclose their short position on a stock held to be material to investors due to defendants’ self-interest in the stock).

Moreover, had Defendants performed even a basic investigation to test the veracity of Bass/Hayman's allegations, Defendants would have easily ascertained that the information Bass/Hayman intended to post about UDF was false and misleading. *Id.* at ¶ 84, Ex. 78 at ¶¶ 56-116. Instead, despite previewing the false and misleading posts before Bass/Hayman published them anonymously, Defendants took no actions to protect UDF investors and stop the deceptive posts, nor did Defendants ever insist that Bass/Hayman take down the false and misleading information about UDF and to stop illegally manipulating the market in UDF IV stock.

As a result, unsuspecting investors did not know that the negative information about UDF had been published by a biased short seller who stood to make millions if UDF IV's share price dropped—and therefore had a significant financial incentive to publish false and misleading information about UDF. Not surprisingly, UDF IV's innocent investors lost over \$250,000,000 in shareholder value immediately after Bass/Hayman anonymously published false and misleading information about UDF under the phony "Ernest Poole" moniker. *Id.* at ¶¶ 45, 82. In addition, UDF's banks and business partners responded by ceasing to do business with UDF. *Id.* at ¶¶ 84-87, Ex. 78 at ¶¶ 219-281, Ex. 79 at ¶¶ 4-8, Ex. 80 at ¶¶ 12-14, Ex. 81 at ¶¶ 12-17.

An investor watchdog group, Street Watchdog Research, immediately spotted the obvious fraud behind the phony "Ernest Poole" posts. *Id.* at ¶ 48. Unlike Defendants, Street Watchdog Research took action to try to protect UDF IV's innocent investors by publishing a scathing article asserting that the anonymous author should face jail time for executing an illegal "short and distort" fraud scheme against innocent UDF IV investors. *Id.*

Shortly thereafter, Bass/Hayman retooled their media strategy to "gain control of the narrative" by launching a broader public attack on UDF in February 2016 that required additional assistance from Defendants Bunch and Edson, who Bass/Hayman considered to be their "third

party influencers” due to Defendants’ ability to use their power to influence a steep decline in UDF IV’s share price. *Id.* at ¶ 54. As Bass/Hayman built their new media strategy, Bass/Hayman expressed their criminal intent by affirming that their media strategy must be designed so that it impacts UDF IV’s share price. *Id.* at ¶ 56.

4. Defendants Aid and Abet the *UDFExposed.com* Attack

In January 2016, Bass/Hayman provided Defendant Edson with pre-publication access to a website Bass/Hayman created to publish another false story about UDF that would drive down UDF’s share price even further. Defendants again supported Bass/Hayman’s illegal tactics and took no actions to protect unsuspecting UDF investors. *Id.* at ¶¶ 58-59, 61. On or about February 4, 2016, Bass/Hayman launched their *UDFExposed.com* attack, again falsely claiming that UDF operated like a “Ponzi scheme.” *Id.* at ¶ 61. During this attack, Bass/Hayman used “paid media” to increase the reach of their false and misleading attack on UDF. *Id.* at ¶ 52, 54, 56-57, 60-61. Bass/Hayman also sent the information to plaintiffs’ attorneys to encourage a barrage of lawsuits against UDF. *Id.* at ¶ 63. Bass/Hayman also sent the false and misleading information to FINRA to try to get UDF IV delisted from Nasdaq.⁴ *Id.* at ¶ 64. Immediately after Bass/Hayman published this additional false and misleading information about UDF, innocent UDF investors lost another \$150,000,000 in shareholder value. *Id.* at ¶¶ 61, 82.

5. Defendants Execute an Unnecessary and Unlawful Search Warrant to Generate a Negative Media Event for UDF

The close coordination between Bass/Hayman and Defendants continued with the execution of the search warrant described in the Complaint. On February 12, 2016, at the time that Defendants Bunch and Edson presented the search warrant and supporting affidavit to the

⁴ The Financial Industry Regulatory Authority Inc. (“FINRA”) is a private corporation that acts as a self-regulatory organization for publicly traded companies. FINRA possesses certain enforcement powers, including the power to delist a publicly traded company from a national stock exchange, like Nasdaq.

Court, they also had the Court seal the search warrant affidavit. The Court authorized a search warrant for UDF's corporate offices in Grapevine, Texas. *Id.* at ¶ 68. Defendants Edson and Bunch made critical misrepresentations and material omissions in the search warrant affidavit to obtain probable cause when probable cause was otherwise lacking in this search warrant. *Id.* at ¶ 65-67. In addition, Defendants knew they did not need to execute a search warrant to obtain the documents at issue because a less intrusive subpoena was sufficient given UDF's ongoing cooperation in providing documents that the government requested from UDF. *Id.* at ¶ 67. Defendant Bunch served subpoenas to two other UDF offices, in Austin, Texas and Boulder, Colorado, at the same time Defendants executed the warrant at UDF's office in Grapevine, Texas thereby underscoring that a subpoena should have been used at the Grapevine location pursuant to DOJ policy. *Id.* at ¶¶ 67-68, 72-73 and Ex. 65.

On February 18, 2016, six days after the warrant was issued, the FBI executed the search of UDF's corporate office with more than 100 armed FBI agents and local news cameras rolling to publicize the event. *Id.* at ¶ 72. Immediately after the raid, innocent investors lost an additional \$129,000,000 in shareholder value, bringing the total loss to approximately \$532,000,000. *Id.* at ¶¶ 72, 82. That same trading day, Nasdaq had to implement a trading halt due to the severity of the downward pressure the negative publicity about the FBI raid imposed on UDF IV's stock price. *Id.* at ¶ 75.

Following all of the damage inflicted on UDF by the anonymous "Ernest Poole" posts, the false and misleading *UDFExposed* attack, and the improper search warrant, Bass/Hayman focused on finishing the job. Bass openly admitted to his team that he wanted to "kill off UDF"—which would allow Bass/Hayman to cash in their short position and collect the illegal profits from their illegal "short and distort" fraud scheme. *Id.* at ¶ 77. (emphasis added). On or about October 17,

2016, UDF was not able to file its financial statements due to the damage inflicted by Bass/Hayman's illegal "short and distort" fraud scheme and interference with UDF's auditor. That meant that Nasdaq would delist UDF IV so that it could begin trading on the Over The Counter (OTC) exchange, which would allow Bass/Hayman to cash out their short position. Recognizing his profits for destroying UDF were almost in his pocket, Bass sent an email to his employees boasting "Damn, it feels good to be a gangsta." *Id.* at ¶ 79. (emphasis added). Two days later, Bass/Hayman liquidated their short position and collected approximately \$60,000,000. *Id.* at ¶ 76, 78.

C. UDF Sues Bass/Hayman

In November 2017, UDF filed a lawsuit in state court against Bass/Hayman, alleging business disparagement, tortious interference with contract, tortious interference with business relationships, and conspiracy. *Id.* at ¶ 10, Ex. 7 at 3, 4, 38, and 39. The trial court, after allowing limited discovery, denied Bass/Hayman's motion to dismiss under the Texas Citizens Participation Act (Anti-SLAPP). Bass/Hayman appealed. The appellate court, after reviewing 2,000 pages of affidavits, evidence, and pleadings issued a detailed 47-page ruling favorable to UDF holding that:

- "UDF's pleadings and affidavits explain how and why Hayman's statements about UDF were false and misleading, illustrate why Hayman made the false statements, and chronicle the damages UDF sustained as a direct result of Hayman's false statements;"
- As to the phony "Ernest Poole" posts, UDF established a prima facie case that "Hayman did not want to be identified as the publisher of the posts challenging the legitimacy and legality of UDF's business so that its statements would be more certain to plunge UDF's stock value resulting in huge profit for Hayman, which, in fact, is what happened;" and
- The "prodigious quantity of details and specific fact allegations in UDF's pleadings and affidavits that support a rational inference establishing the challenged elements is much like a restaurant menu with too many offerings—the difficulty lies in choosing which examples, and what level of detail, to include in our opinion."

Id. at ¶ 10, Ex. 7 at 3, 4, 38, and 39.

III. ARGUMENT

A. Public Policy Supports Filing the Redacted Complaint

As an initial matter, allowing Plaintiffs to file the redacted Complaint and litigate this matter publicly advances the public policy goal of making judicial proceedings open and available to the public. *See Holy Land Found. For Relief & Dev.*, 624 F.3d at 690 (the principle of public access to judicial records furthers not only the interests of the outside public, but also the integrity of the judicial system itself); *Ackal*, 954 F.3d at 224 (the public right to inspect judicial records promotes the trustworthiness of the judicial process, curbs judicial abuses, and provides the public with a better understanding of the judicial process, including its fairness, and serves as check on the integrity of the system).

B. The Fifth Circuit Presumes That Judicial Records Should be Unsealed

The public “has a common law right to inspect and copy judicial records.” *Van Waeyenberghe*, 990 F.2d at 849. While the right is not absolute, the Fifth Circuit recently reconfirmed that there is “*a presumption of public access to judicial records.*” *Ackal*, 954 F.3d at 225 (5th Cir. 2020) (quoting *Van Waeyenberghe*, 990 F.2d at 848). (emphasis added). Thus, a “court must balance the public’s common law right of access against the interests favoring nondisclosure” with the presumption weighing on the “[public’s] side of the scales.” *Id.* (citing *Van Waeyenberghe*, 990 F.2d at 848 and *Belo Broad. Corp. v. Clark*, 654 F.2d 423, 434 (5th Cir. Unit A Aug. 1981)).

C. Plaintiffs’ Complaint Qualifies As a Judicial Record

Here, it is well-established that a pleading like Plaintiffs’ Complaint qualifies as “judicial record.” Courts have consistently treated complaints and other pleadings as judicial records for purposes of determining whether the common law right of access applies. *See, IDT Corp. v. eBay*, 709 F.3d 1220, 1222–23 (8th Cir. 2013) (the parties conceded that the antitrust complaint in this

case is a judicial record); *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 140 (2d Cir. 2016) (pleadings are considered judicial records even when the case is pending before judgment or resolved by settlement); *Mann v. Boatright*, 477 F.3d 1140, 1149 (10th Cir. 2007) (treating complaint as judicial record); *United States v. Martin*, 746 F.2d 964, 968 (3d Cir. 1984) (pleadings treated as judicial records).

D. Plaintiffs Have a Legitimate Need to Litigate this Action Publicly

As far as additional factors that favor disclosure, the Fifth Circuit has recently confirmed that judicial records should be disclosed in lawsuits that involve allegations against public officials and matters of legitimate public concern. *Ackal*, 954 F.3d at 229, 232-233. Here, like *Ackal*, Plaintiffs brought claims against public law enforcement officials, a federal prosecutor and two FBI agents. The allegations in Plaintiffs' Complaint also involve issues of legitimate public concern. For example, seeking redress for violations of Plaintiffs' constitutional rights represents a legitimate public concern at issue here. In addition, curbing abuse in the justice system is another matter of public concern that is presented in this case. Deterring prosecutors and federal agents, who take an oath to uphold the Constitution, from violating the constitutional rights of citizens represents another legitimate public concern at issue here. Moreover, Plaintiff UDF IV's innocent investors, who lost over \$530 million as a result of Defendants' actions related to the illegal short and distort fraud scheme, have a legitimate right to see this action litigated publicly.

E. Defendants Cannot Identify Any Legitimate Interest to Oppose Filing the Redacted Complaint Publicly

To overcome the Fifth Circuit's presumption that the Redacted Complaint should be filed publicly, Defendants must show some overriding interest favoring nondisclosure. Here, Defendants have no legitimate basis to oppose the filing of the redacted Complaint.

First, Defendants cannot assert that the redacted Complaint must remain sealed because they are concerned that disclosing that information to the public might potentially expose them to additional litigation or liability. The Fifth Circuit has expressly rejected that argument. *Ackal*, 954 F.3d at 230 (finding that the possible exposure to additional liability or litigation that law enforcement officials might encounter due to the unsealing of judicial records is not recognized as a factor that a court should consider as a basis to keep judicial records under seal). (emphasis added).

Second, Defendants may express concern that the media may print stories about this lawsuit if the public obtains access to the redacted Complaint. The Fifth Circuit, quoting the Supreme Court, has expressly rejected this argument because media scrutiny on law enforcement is a positive, not a negative. *See Ackal*, 954 F.3d at 231 (quoting *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966)) (“the press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.”).

Third, Defendants may assert that the allegations of the redacted Complaint cannot be made public unless and until the government concludes its underlying criminal investigation. That position makes no sense. Under that line of reasoning, the public would never have access to litigation brought by victims who had their constitutional rights violated by law enforcement officials—law enforcement would merely have to assert that they were continuing to investigate the victim. Opposing counsel has not offered any legal support for this position.

IV. CONCLUSION

In sum, Defendants cannot identify any legitimate basis to oppose the public filing of the redacted Complaint. By contrast, the Fifth Circuit’s presumption in favor of the common law right of access, as well as the fact that this litigation involves claims against law enforcement officials

and relates to issues of legitimate public concern, demonstrates that Plaintiffs' motion should be granted. As a result, Plaintiffs' respectfully request that this Court grant Plaintiffs' motion and publicly file the redacted copy of Plaintiffs' Complaint which is being filed contemporaneously with this motion.

Dated: August 4, 2020

Respectfully submitted,

By: /s/ Stewart H. Thomas

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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 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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