

IN THE UNITED STATES DISTRICT COURT
FOR THE 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.

No. _____

DAVID KLIMEK,
JAMES NICHOLAS BUNCH,

JURY DEMANDED

CHRISTINE L. EDSON,
a/k/a Christy Edson, and
DOES 1-10,

Defendants.

COMPLAINT AND JURY DEMAND

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Plaintiffs Hollis M. Greenlaw, Todd F. Etter, Cara D. Obert, Ben 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”) allege as follows:

SUMMARY

1. This case is about Defendants’ participation in an illegal “short and distort” scheme spearheaded by a powerful short seller that sought to destroy a legitimate business, ruin the reputations of its executive team, and cause the business’ good faith investors to lose over \$500,000,000 in shareholder value.

2. Defendants launched a criminal investigation of Plaintiffs at the request of infamous short seller, J. Kyle Bass and his hedge fund, Hayman Capital Management, L.P. and its associated funds (“Bass/Hayman”). Shortly thereafter, Defendants began providing material nonpublic information about their investigation to Bass/Hayman knowing that Bass/Hayman were aggressively shorting the stock of Plaintiff United Development Funding IV (UDF IV) and planned to execute an enormously profitable exit on their short position at the conclusion of the scheme. Plaintiff UDF IV is a publicly traded company that is part of a family of real estate development financing companies (“UDF”).

3. Defendants continued to unlawfully feed Bass/Hayman material nonpublic information about their investigation of Plaintiffs which Bass/Hayman used to short more and more UDF IV stock, all in violation of Title 18 USC § 1962 (Criminal RICO), Title 18 USC § 1348 (Securities Fraud), 18 USC § 1343 (Wire Fraud), 18 USC § 1349 (Conspiracy to Commit Wire Fraud), 18 USC § 371 (Conspiracy), 18 USC § 1905 (Disclosure of Confidential Information), 18 USC § 641 (Conversion), 18 USC § 2 (Aiding and Abetting); 18 USC § 3 (Accessory After the Fact), and the Fourth and Fifth Amendments of the United States

Constitution.

4. Bass/Hayman and Defendants participated in this mutually dependent relationship whereby Bass/Hayman would provide the government false and misleading information about UDF's business to facilitate the government's investigation. Defendants, in turn, would rely on that false information in pursuing their investigation and, in exchange, would aid and abet a false and misleading media assault that Bass/Hayman launched against Plaintiffs, including repeated internet postings aimed at an unsuspecting investing community and UDF's business partners that falsely stated that UDF operated as an illegal Ponzi scheme. Through this unlawful "short and distort" scheme, Defendants aided and abetted Bass/Hayman in their unlawful scheme to (a) crush Plaintiff UDF IV's share price thereby allowing Bass/Hayman to unlawfully profit by tens of millions of dollars on their short position based, in part, on the use of inside information illegally supplied to Bass/Hayman by Defendants, (b) drive UDF into receivership/bankruptcy so that Bass/Hayman could acquire UDF's valuable assets at fire sale prices, and (c) prevent Plaintiffs from uncovering Defendants' illegal participation in the scheme.

5. Defendants also made false statements and material omissions in a search warrant affidavit seeking to unlawfully raid UDF's corporate headquarters. Defendants knew or should have known that they lacked probable cause to obtain a search warrant to search UDF's headquarters. Nevertheless, Defendants Edson and Bunch presented the Court with an affidavit loaded with false and misleading statements. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Defendants

Edson and Bunch deceived the Court and obtained a search warrant that they otherwise could not obtain, all in violation of Title 18 USC § 1001 (False Statements), Title 18 USC § 1621 (Perjury),

Title 18 USC § 1622 (Subornation of Perjury), Title 18 USC § 1623 (False Declaration Before Court), Title 18 USC § 2 (Aiding and Abetting), and the Fourth and Fifth Amendments of the United States Constitution.

6. Defendants also knew that the collection of information through the execution of a public search warrant was unnecessary in this case. Defendants already had access to the information sought in the warrant as Plaintiffs had previously produced more than 800,000 documents to the government without incident. In addition, there was no reliable information to suggest that Plaintiffs would destroy any documents. On the contrary, Plaintiffs had informed the government that Plaintiffs would voluntarily comply with any additional request for documents and even invited Defendant Bunch to come to UDF's office to request and collect additional documents.

7. Defendants sought the search warrant, instead of using a less intrusive subpoena, to generate a huge media splash and trigger widespread panic among Plaintiff UDF IV investors thereby weakening UDF, crushing UDF IV's share price, and allowing Bass/Hayman to begin the process of collecting approximately \$60,000,000 on their short position and thereby cause maximum harm to Plaintiffs.

8. To aid and abet the Bass/Hayman scheme, Defendants also improperly interfered with UDF's independent auditors by providing the independent auditors with false and misleading information about UDF that Bass/Hayman had provided to Defendants. Defendants also prohibited UDF's independent auditors from communicating material information to Plaintiffs during a quarterly review, and attempted to intimidate UDF's independent auditors into either withdrawing their audit opinions or withdrawing from their audit engagement. Defendants' improper actions facilitated Bass/Hayman's ability to close and profit from their short position in Plaintiff UDF IV stock. Defendants' improper actions also caused UDF's independent auditors to decline to stand for appointment and prevented UDF's prompt retention of a subsequent auditor.

9. Throughout their “investigation,” Defendants failed to properly confirm basic facts about UDF’s operations, most of which were either readily available to them in the public domain or in the possession of the government as the SEC was conducting a parallel investigation in conjunction with Defendants. If Defendants had simply performed basic fact checking of Bass/Hayman’s false and misleading information, they would have determined that the information Bass/Hayman provided to Defendants was false and misleading, the product of evident bias, and designed to unfairly destroy Defendants to support Bass/Hayman’s financial motive.

10. By contrast, other parties who took the time to properly evaluate the merits of Bass/Hayman’s self-serving factual assertions promptly concluded that UDF’s financial statements were indeed accurate and Plaintiffs had not violated any law.

11. Prior to seeking the search warrant, Defendants also knew that Plaintiffs had retained a highly regarded national law firm, Thompson & Knight, and a Big Four international accounting firm, Price Waterhouse Coopers (“PwC”), to conduct a comprehensive independent investigation of UDF’s financial statements and operations to assess whether UDF had violated any law. Upon completing the extensive independent review of UDF’s operations, both Thompson & Knight and PwC concluded that UDF had not violated any law and there was no evidence to substantiate Bass/Hayman’s allegation that UDF operated fraudulent schemes. Thompson & Knight and PwC also met with Defendants to discuss their findings and Defendants did not challenge or question their conclusions during that meeting.

12. Plaintiffs first discovered some of Defendants’ illegal and unconstitutional actions on or about April 12, 2018, when they received discovery in a civil action entitled *United Development Funding, LP, et. al. v. J. Kyle Bass et. al.*, Cause No. CC-17-06253-C filed in Dallas County Court.

13. Examination of the civil discovery revealed that:

- Defendants unlawfully communicated confidential, material law enforcement information regarding UDF to Bass/Hayman knowing that Bass/Hayman was shorting UDF IV stock;
- Defendants monitored Plaintiff UDF IV's stock price during the illegal "short and distort" scheme;
- Bass/Hayman, the tippee, illegally traded on the inside information provided by Defendants, the tipper, and made tens of millions doing so;
- Defendants manipulated the market in UDF IV stock by aiding and abetting Bass/Hayman's publication of false and misleading information about Plaintiffs to the investing public, including articles that falsely accused UDF of operating a "Ponzi scheme," knowing that doing so would crash Plaintiff UDF IV's stock price, injure its business and harm Plaintiffs;
- Bass/Hayman also informed Defendants that Bass/Hayman would publish the false and misleading information about Plaintiffs either anonymously or under fake names so that the investing public would not know that the negative information about Plaintiffs had been published by a biased, short seller who stood to make millions if UDF IV's stock price crashed;
- Defendants purposefully concealed their active role in the illegal "short and distort" scheme by demanding that Bass/Hayman seek removal of public postings that disclosed Defendants' involvement with Bass/Hayman and their coordinated attack on UDF;
- Defendants mounted a coordinated attack with Bass/Hayman on UDF's external auditor seeking to intimidate the auditor into abandoning UDF, force a restatement of UDF's historical financial statements, and prevent UDF from being able to release audited financial statements moving forward; and
- Defendants' attempt to intimidate UDF's external auditors resulted in the auditors declining to stand for reappointment, followed by an "anonymous" letter to the auditor from Bass/Hayman falsely accusing UDF of operating like a Ponzi scheme which Bass/Hayman then widely publicized to further harm UDF and intimidate future auditors from accepting an engagement as UDF's auditors.

14. Defendant Bunch, aware of Defendants' misconduct, repeatedly denied Plaintiffs access to the sealed search warrant affidavit, which would have revealed Defendants' misconduct. Over the course of three years, counsel for Plaintiffs made numerous requests to Defendant Bunch to review the search warrant affidavit. [REDACTED]

[REDACTED]

15. In February 2019, Plaintiffs ultimately obtained limited access to the sealed search warrant affidavit, but only after Plaintiffs filed a Motion for the Return of Property in federal court pursuant to Rule 41(g) of the Federal Rule of Criminal Procedure. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. On February 12, 2016, as a result of the false and misleading information Defendant Bunch authorized Defendant Edson to insert into the search warrant affidavit, the Court signed an expansive search warrant granting the FBI permission to seize virtually unlimited physical files, documents, and electronic records from UDF's headquarters.

17. On February 18, 2016, the FBI, at the direction of Defendant Edson and Defendant Bunch, deployed more than 100 armed FBI agents wearing FBI raid jackets to conduct an extensive public raid on UDF's headquarters. Defendants seized virtually all of Plaintiffs' business, personal, and electronic records on site. Local news crews were in position at UDF's headquarters at the time Defendants' raid began. Immediately upon the FBI's arrival, more local news film crews descended on UDF to broadcast the FBI raid, including aerial coverage from a helicopter. Defendants knew that the extensive media coverage triggered by their raid would cripple UDF and aid the unlawful "short and distort" scheme by causing the share price of UDF IV to again sink; which is exactly what happened.

18. On February 11, 2016, one day before Defendant Edson swore out the Affidavit

supporting the Search Warrant, Defendant Bunch executed grand jury subpoenas to obtain substantial amounts of documents from other UDF offices in Austin, Texas and Boulder, Colorado. Defendant Bunch's decision to proceed by subpoena, not by search warrant, in both Austin and Boulder underscores that the true purpose of Defendants' public raid of UDF's headquarters was to unnecessarily publicize Defendants' investigation and thereby harm Plaintiffs. The resulting media storm ensured maximum harm to UDF and Plaintiff UDF IV's stock price, Plaintiffs and their businesses, and was set in motion to unlawfully benefit Defendants and Bass/Hayman.

19. For nine (9) days, until February 26, 2016, the FBI maintained exclusive control and possession of UDF's electronic devices and servers causing extensive further harm to UDF. Due to Defendants' failure to return the electronic devices and servers, UDF had no access to its emails, its servers, or any other records necessary to conduct its business. As a result, UDF was unable to provide required borrowing base certificates to one of Plaintiff UDF IV's lenders on or about February 25, 2016. The UDF IV lender responded by declaring Plaintiff UDF IV in default of such lines of credit. UDF IV could no longer access these lines of credit to fund the continued operation of its business and was required to repay the outstanding balances. Defendants' actions also: (a) heightened panic in the market that UDF would have to declare bankruptcy (first triggered by Bass/Hayman on or about December 10, 2015 via false and misleading internet postings about UDF); (b) exacerbated an extreme liquidity crisis for UDF (initially caused by Bass/Hayman); (c) further disrupted UDF's operations; (d) further injured Plaintiffs' personal reputations and business relationships and, (e) acting in concert with Bass/Hayman, caused the loss of hundreds of millions of dollars of shareholder value in UDF IV stock, asset value, and goodwill in the UDF entities.

20. Defendants' unlawful raid of UDF on February 18, 2016 represented an intentional "kill shot" to destroy UDF, planned by Defendants in coordination with Bass/Hayman to eliminate Plaintiffs' ability to contest Defendants' criminal investigation, and to aid and abet Bass/Hayman's

illegal “short and distort” scheme. As a direct and proximate cause of Defendants’ unconstitutional raid on UDF, UDF lost \$129,000,000 in shareholder value, Plaintiffs were denied access to approximately \$200,000,000 of credit facilities necessary to operate a successful real estate finance business, and Plaintiffs’ reputations were wantonly and permanently destroyed. Defendants’ actions also forced Plaintiffs to terminate distributions to shareholders and prematurely repay approximately \$200,000,000 to outstanding credit facilities, resulting in a significant liquidity crisis that prevented Plaintiffs from continuing to effectively conduct and grow their businesses. Defendants’ actions destroyed UDF asset values as banks ceased to advance capital under loan facilities with Plaintiffs, curtailed or terminated UDF borrower bank relationships, and eliminated Plaintiffs’ access to capital markets. UDF financed assets lost tremendous value as the marketplace anticipated that UDF would be forced to declare bankruptcy. Defendants’ actions also ruined Plaintiffs’ current and prospective business relationships, opportunities, and investments, including those with Centurion Acquisitions (“Centurion”), Buffington Land Development (“Buffington”), Straub Development Partners, David Weekley Homes, True Homes, and Scott Felder Homes. These damages compounded the injuries already incurred by UDF as a result of the actions of Bass/Hayman and Defendants prior to the execution of the search warrant.

21. Significantly, on February 18, 2016, during WFAA ABC Channel 8 concluded its reporting on the FBI raid of UDF offices by reporting that Kyle Bass had predicted that “the final outcome of this Company will be bankruptcy” -- exactly what Defendant Bunch and Defendant Edson intended in executing the unlawful, unconstitutional, and unnecessary raid of UDF.

22. After the raid, Defendants continued to aid and abet the illegal “short and distort” scheme to inflict unnecessary harm on UDF and its innocent shareholders by taking actions like refusing to immediately return copies of documents that UDF needed to run its operations and facilitating Bass/Hayman’s ability to close out their short position.

SUBJECT MATTER JURISDICTION

23. In this complaint, Plaintiffs assert claims against current members of the FBI and the U.S. Attorney's Office for the Northern District of Texas for violating Plaintiffs' constitutional rights. This action is brought pursuant to *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

24. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331.

VENUE

25. Venue is proper in the Eastern District of Texas, Sherman Division, because all Defendants are residents of the state of Texas, and at least one Defendant resides within this judicial district. *See* 28 U.S.C. §1391(b)(1).

26. In particular, Defendant David Klimek resides in Denton County, Texas, within the Eastern District of Texas and the Sherman Division. Defendant Bunch resides in Dallas County, Texas. Christine Edson also resides in Dallas County, Texas. *See* 28 U.S.C. § 1391(b)(1), (c)(1).

PLAINTIFFS

27. The UDF Plaintiffs are part of a family of funds that have existed for over seventeen (17) years. UDF was founded in 2003 to provide investors an opportunity to diversify their portfolios with unique and sound investments in affordable residential real estate. UDF enjoyed steady growth and provided consistent returns to investors for over a decade while financing hundreds of millions of dollars in successful housing, construction and development projects for leading developers in the State of Texas and elsewhere. The UDF Plaintiffs have their principal place of business in Tarrant County, Texas at 1301 Municipal Way, Suite 200, Grapevine, Texas 76051.

28. The UDF funds were created by Plaintiffs Hollis Greenlaw and Todd Etter. Prior to founding UDF, Plaintiff Greenlaw attended Columbia University School of Law, and practiced business and taxation law at Williams & Connolly in Washington, D.C. Plaintiff Etter had over

29 years of experience in both the Texas and the United States real estate industry, including residential land development, home construction, and real estate finance.

29. Since its inception, UDF had steadily earned a reputation for originating and participating in real estate financing structures for residential land acquisition, development and homebuilding as well as delivering value to its clients and its investors. By strategically working with the most reputable borrowers, using extensive market research and analysis to identify target markets with strong local economies and sustainable growth (primarily Texas, avoiding the mortgage-induced real estate bubbles in California, Nevada, Florida and Arizona) and returning significant cash to investors, UDF grew over the course of a decade to approximately \$1.2 billion in equity capital. UDF was poised for even greater growth until the occurrence of Defendants' tortious actions alleged herein.

30. Plaintiff United Development Funding, L.P., was the first UDF fund.

31. Plaintiff United Developing Funding III, L.P. ("UDF III"), a Delaware limited partnership, was created in 2005 to make land acquisition and development loans to single-family lot developers. By December 2014, Plaintiff UDF III had originated approximately 62 loans totaling over \$600 million, with approximately two-thirds of the loans having been repaid in full. As of December 2014, Plaintiff UDF III had assets of approximately \$384 million and an annual income of over \$50 million. From inception through September 2015, Plaintiff UDF III distributed approximately \$264 million to its investors and repurchased approximately \$12 million of its limited partnership interests.

32. Plaintiff United Development Funding IV ("UDF IV") was formed in 2008 to make loans primarily for the acquisition and the development of real property into single-family residential lots or mixed-use master planned communities, acquisition of finished lots, and construction of single-family homes. By December 2014, Plaintiff UDF IV had originated or purchased approximately 171 loans totaling over \$1 billion, approximately 40 of which have been

paid in full. UDF IV's assets grew from approximately \$336.5 million in 2012 to approximately \$570.9 million in 2013, and approximately \$682.2 million in 2014. During that same time period its income grew from about \$27.6 million to \$87.9 million. From inception through September 2015, Plaintiff UDF IV distributed approximately \$164 million to its investors, and repurchased approximately \$41 million of its shares.

33. On June 4, 2014, to create liquidity for its shareholders and to access capital markets to facilitate future growth, Plaintiff UDF IV listed its common shares on Nasdaq under the ticker symbol "UDF." From its listing on Nasdaq until December 10, 2015, Plaintiff UDF IV had been a consistently performing commercial REIT, with its shares trading in a range of approximately \$16.02 to \$19.95. In June 2015, Plaintiff UDF IV's market capitalization qualified it for addition to the Russell 2000 Index.

34. In 2015, Plaintiff UDF IV had expanded its lending activities outside of Texas, following the housing recovery into the states of North Carolina, South Carolina and Florida. Plaintiff UDF IV acquired new clients, including a public homebuilder, the largest private homebuilder in the country, and the developer associated with the largest private homebuilder in the Charlotte, North Carolina market. As part of its growth strategy, Plaintiff UDF IV was also establishing a \$100 million plus finished lot securitization. UDF IV was in the rating process with Standard and Poor's for this finished lot securitization and was preparing to place a \$125,000,000 to \$175,000,000 general obligation credit facility, just before Defendants' tortious actions against UDF as described below.

35. Plaintiff United Development Funding Income Fund V ("UDF V") began offering shares for sale on July 25, 2014. Like its sister funds, the purpose of UDF V was to generate income from real estate development and preserve investor capital. Prior to Defendants' unlawful actions, Plaintiff UDF V had been steadily and successfully selling shares in the fund. Plaintiff UDF V's assets grew from approximately \$23 million in 2014 to approximately \$66 million in

2015. During that same time its annual income grew from approximately \$152,000 to \$4.8 million. From inception through September 30, 2015, Plaintiff UDF V made distributions of approximately \$2 million to its investors.

36. Plaintiff United Mortgage Trust (“UMT”) invests in lines of credit and first lien mortgage investments secured by land under development, single-family residential lots and single-family houses under construction. From inception through September 30, 2015, Plaintiff UMT has distributed approximately \$107.5 million to investors, and repurchased \$37 million worth of its shares.

37. Plaintiff United Development Funding Land Opportunity Fund, L.P. (“UDF LOF”) is an additional UDF fund created in 2008 for land acquisition and development.

38. Plaintiff UMT Holdings L.P (“UMTH”) is a Delaware limited partnership doing business in Grapevine, Texas.

39. Plaintiff UDF Holdings L.P (“UDFH”) is a Delaware limited partnership doing business in Grapevine, Texas.

40. Plaintiff Hollis M. Greenlaw (“Greenlaw”) is a resident of Colleyville, Texas. He is a partner of Plaintiffs UMT Holdings and UDF Holdings, and is the CEO of Plaintiffs UMT Holdings, UDF Holdings, UDF IV and UDF V and CEO of the general partners of Plaintiffs UDF, UDF III, and UDF LOF.

41. Plaintiff Todd F. Etter (“Etter”) is a resident of Dallas, Texas. He is a Partner of Plaintiffs UMT Holdings and UDF Holdings, and is Chairman, Director and Executive Vice President of the general partners of Plaintiffs UDF, UDF III and UDF LOF.

42. Plaintiff Cara D. Obert (“Obert”) is a resident of Dallas, Texas. She is a partner of Plaintiffs UMT Holdings and UDF Holdings, the CFO of Plaintiffs UDF IV and UDF V, and CFO of the general partners of Plaintiffs UDF, UDF III and UDF LOF.

43. Plaintiff Ben L. Wissink (“Wissink”) is a resident of Dallas, Texas. He is a partner

of Plaintiffs UMT Holdings and UDF Holdings and the President of the general partner of Plaintiff UDF III. He is also Vice-President of the general partners of Plaintiffs UDF and UDF LOF.

DEFENDANTS

44. Defendant David Klimek ("Klimek") was at all relevant times an FBI Special Agent assigned to the White Collar squad and the Surveillance Operations Group at the FBI Dallas Field Office. At all relevant times, Defendant Klimek was acting under color of federal law and as an employee of the United States government. Defendant Klimek is named in his individual capacity.

45. Defendant James Nicholas Bunch ("Bunch") was at all relevant times an Assistant United States Attorney for the Northern District of Texas and Deputy Chief in the Economic Crimes Unit. At all relevant times, Defendant Bunch was acting under color of federal law and as an employee of the United States government. Defendant Bunch is named in his individual capacity.

46. Defendant Christine Edson, a/k/a Christy Edson ("Edson"), was at all relevant times an FBI Special Agent assigned to the White Collar squad at the FBI Dallas Field Office. At all relevant times, Defendant Edson was acting under color of federal law and as an employee of the United States government. Defendant Edson is named in her individual capacity.

47. The true names and roles of Doe Defendants 1-10 ("Unknown FBI Agents, Assistant United States Attorneys, and/or Other Unknown Government Attorneys") are presently unknown to Plaintiffs, who sues them under these fictitious names. Plaintiffs allege that these Unknown FBI Agents and Assistant United States Attorneys are responsible in some manner for the acts and occurrences alleged within this Complaint. The acts and omissions of these Unknown FBI Agents and Assistant United States Attorneys were a substantial factor in causing Plaintiffs' damages and each Defendant acted in concert with the others. The names and roles of the Unknown FBI Agents and Assistant United States Attorneys will be added to this Complaint as their identities and roles become known.

RELEVANT PERSONS AND ENTITIES

48. J. Kyle Bass ("Bass") is a notorious short seller who is also the founder and Chief Investment Officer of hedge fund Hayman Capital Management, L.P., and General Partner, Manager and/or Director of Hayman Capital Master Fund, L.P., Hayman Capital Partners, L.P. and Hayman Capital Offshore Partners, LP. Bass/Hayman executed, with the assistance of Defendants, an illegal "short and distort" scheme manipulating the market in UDF IV stock for the financial benefit of Bass/Hayman and the investigatory benefit of Defendants.

49. Hayman Capital Master Fund, L.P., Hayman Capital Partners, L.P. and Hayman Capital Offshore Partners, L.P. (collectively, "Hayman") are three of several hedge funds operated by Bass. Public records revealed that, for the period from 2013 through June 2015, these Hayman funds lost over 24% of their market value. Public records further revealed that in the fall of 2015, several feeder funds of Hayman had sought to redeem their entire investments in Hayman, requiring Hayman to distribute approximately \$100 million within the first 10 business days of January 2016. Hayman was clearly in desperate financial condition. Media criticisms of Bass were also piling up, with some reporters referring to Bass as a "desperate gambler" who "can't seem to get anything right."

50. Farley Dakan ("Dakan") was a Principal of Mackinac Partners, LLC, a real estate "restructuring and advisory" firm that partnered with Bass/Hayman to acquire UDF's "valuable" assets after Defendants forced UDF into receivership/bankruptcy. At the time that Bass/Hayman introduced Dakan to Defendants in May 2015, Dakan had previously been accused of being a real estate swindler. Dakan had been sued in Florida in 2006 for allegedly stealing millions from real estate investors in a scheme where Dakan fraudulently guaranteed exorbitant rates of return in failed real estate projects.

BACKGROUND

UDF's Business Model

51. UDF has operated a series of private, public-reporting and/or publicly traded investment funds since 2003. The investment funds primarily at issue here are Plaintiffs UDF III and UDF IV.

52. Plaintiff UDF III specializes in real estate finance structures for residential land acquisition and development and funds land acquisition and development loans to single-family lot developers who sell their lots to national and regional home builders.

53. Plaintiff UDF IV funds and invests in loans primarily for: (1) the acquisition and development of real property into single-family residential lots or mixed-use master-planned residential communities; (2) the acquisition of finished lots; and (3) the construction of single-family homes and completed model homes.

54. Plaintiff UDF IV derives a significant portion of income by originating and purchasing secured loans to persons and entities for the acquisition and development of parcels of real property as single-family residential lots and the construction of model and new single-family homes, including development of mixed-use master planned residential communities.

55. The development life cycle for single family home development projects has four stages: (1) acquisition of land for development of single-family lots, (2) entitlement and engineering of the subject property, (3) construction of land into finished lots, and ultimately (4) the construction and sale of single-family homes. The vital first two stages of development are not visible to the naked eye and do not generate significant cash flows.

56. UDF primarily loans to developers for the acquisition of “improved” real property and does not invest in unimproved real property.

57. “Unimproved” real property is defined in UDF’s public disclosures as real property which includes *each* of the following three characteristics: (1) an equity interest in real property

which was not acquired for the purpose of producing rental or other income, (2) has no development or construction in process on such land, and (3) no development or construction on such land is planned in good faith to commence within one year.

58. Developers pay off individual development loans with cash flows generated by their development portfolios. Because cash flows in residential real estate development are not generated with regularity until the final two development phases (the development of land into finished lots and the construction of single-family homes) UDF, consistent with industry practice, would routinely advance development fees (the actual costs of overhead incurred by the developer in managing a development project) to borrowers.

59. UDF's primary borrowers were Centurion and Buffington and their principals, Mehrdad Moayed and Tom Buffington respectively, enjoyed stellar reputations for long-term success and each had a history of loan repayment in the industry.

60. Loans and participations to Centurion and its affiliates comprised approximately 67% of Plaintiff UDF IV's outstanding loan portfolio; and loans to Buffington and its affiliates comprised approximately 11% of Plaintiff UDF IV's outstanding portfolio.

61. From 2013 through September 30, 2015, Centurion's \$418 million in loans from Plaintiff UDF IV generated cash receipts of \$158 million, while Buffington's \$68 million in loans from Plaintiff UDF IV generated cash receipts of \$36 million.

62. UDF properly used funds it received to refinance existing UDF loans, to finance continued development, to monetize improved land and finished lot value, and to reduce borrowers' costs of capital.

63. Through 2015, the UDF companies had enjoyed a continued high level of profitability for its investors. From inception through September 30, 2015, UDF IV paid \$164 million in total distributions (\$127 million in cash and \$37 million in Dividend Reinvestment Plans) and returned \$41 million of investor capital through share repurchases (treasury stock).

64. In accordance with Generally Accepted Accounting Principles (“GAAP”), when disclosing the quality of its loan portfolio, UDF analyzed the probability of collection of each of its outstanding loans in a similar manner, governed by specific accounting standards rooted in subjective and practical determinations by management which were ultimately reviewed by UDF’s independent auditors.

65. UDF utilized GAAP compliant loan repayment projection methodology by subjectively classifying its views as to the probability of the collection of its outstanding loans in three separate buckets: Level 1, whether management has determined that the full collectability of the loan is considered probable; Level 2, whether management has determined that the collectability of the loan is more likely than not, but not probable; and Level 3, whether management believed that it was probable that UDF would not be able to collect all amounts due under the loan.

66. Prior to disclosure, UDF management’s loan collectability determinations were reviewed (Forms 10-Q) or audited (Forms 10-K) by Whitley Penn, UDF’s external auditor, and determined to be reasonable and in accordance with GAAP.

67. Because the process of quantifying the potential collectability of outstanding loans is a projection of future events, UDF “reserves” certain amounts for known (specific reserves) and potential (general reserve) loan losses in the portfolio.

68. GAAP required that UDF management use its business judgment to create practical methodologies to measure the potential for future loan repayment, a process that sometimes involved modeling a *pro forma* to map out future land acquisition and development cash flows.

69. By September 30, 2015, Plaintiff UDF IV had generated over \$550 million in cash repayments on its loans and had paid over \$127 million in cash distributions to its investors. Because of the financial performance and success of Plaintiff UDF IV’s portfolio,

which included financing for land acquisition, development, finished lots, and house construction, Plaintiffs were in the process of raising capital with Plaintiff UDF V, which would complement the current UDF offerings by primarily financing land acquisition and development for master-planned communities.

70. Unbeknownst to Plaintiffs, however, Bass/Hayman had been scheming to unlawfully destroy their business and had recruited Defendants into that scheme.

Defendants' Misconduct First Comes to Light

71. On November 28, 2017, the UDF Funds filed a civil action against J. Kyle Bass and his affiliated Hayman Capital fund in Dallas County Court, Case No. CC-17-06253-C alleging business disparagement, tortious interference with contract, tortious interference with business relationships, and conspiracy. On March 19, 2018, the Dallas County Court ordered limited discovery.

72. On or about April 12, 2018, UDF received discovery which revealed Defendants' misconduct and corresponding violation of Plaintiffs' constitutional rights, as described in detail below. Prior to receiving discovery on or about April 12, 2018 from Bass/Hayman in the civil litigation, Plaintiffs were unaware of Defendants' knowing and intentional participation in Bass/Hayman's "short and distort" scheme and did not have access to the Hayman/Bass emails from 2015-16, which are described below, that establish Defendants' participation in the "short and distort" scheme.

73. [REDACTED]

74. On February 19, 2019, after Plaintiffs' counsel sought relief from the Court, Defendant Bunch finally consented to permit UDF and individual Plaintiffs' counsel qualified access to review the sealed search warrant affidavit.

75. Plaintiffs' review of the search warrant affidavit after February 19, 2019, revealed for the first time to Plaintiffs that Defendants, by unlawfully obtaining and executing the search warrant, had purposefully violated Plaintiffs' Fourth Amendment right to be secure against unreasonable searches and seizures as well as Plaintiffs' Fifth Amendment right to not be deprived of life, liberty, or property, without due process of law.

76. After the review of the search warrant affidavit on February 19, 2019, counsel for Plaintiffs made numerous presentations to Defendants in an attempt to mitigate the persistent and increasing losses to Plaintiffs caused by Defendants' unconstitutional actions. Plaintiffs have provided Defendants the evidence of Defendants' misconduct and have demonstrated the absence of any evidence that Plaintiffs had committed any crime. In short, Plaintiffs demonstrated to Defendants that Plaintiffs were factually innocent, that there was no legitimate basis to continue a criminal investigation, and, that Plaintiffs' constitutional rights had been and were continuing to be violated. In response, Defendants continued to refuse to take any action to stop the investigation and/or mitigate Plaintiffs' damages.

Short Selling and Unlawful "Short and Distort Schemes"

77. A short sale is a bet against a company where the short seller only makes money when the company's stock price drops. Short selling has two major risks. Unlike a traditional stock purchase—where the risk is limited to the amount invested—shorting a stock leaves the short seller open to the possibility of unlimited losses, since a stock theoretically can keep rising indefinitely. If the stock price goes up or does not drop enough in price or quickly enough to cover the carry costs, the short seller can lose significant money, find it impossible to maintain his short position, and even go bust.

78. An investor may choose to "short" a stock when the investor believes that the price of the stock is going to drop, not rise. At a high level, short selling involves a three-step process: (a) the short-seller borrows shares of the security, typically through a broker like JP Morgan, (b)

the short seller sells the shares immediately at the market price, and (c) the short seller repurchases the shares (hopefully at a lower price to be successful) and returns the repurchased shares to whoever the short seller borrowed them from—generally through a broker, who executed the short sale. After completing these three steps, the short seller will pocket the difference if the share price has fallen a sufficient amount to cover his carry cost, but will have lost money if the share price went up or has not fallen a sufficient amount to cover his carry cost. The borrowing fees and any dividends or distribution paid with respect to the borrowed stock is known as the “carry cost.”

79. A short seller must pay the owner of the stock to borrow the stock he is shorting and borrowing fees can be upwards of 50% of the value of the trade per year. In addition, as the short seller has sold the stock that he has borrowed from the owner, the short seller must also pay the owner the dividend or distribution paid on the shorted stock.

80. An illegal “short and distort” scheme occurs where a short seller, Bass/Hayman here, takes a short position in a stock, like UDF IV, and then launches a false and misleading media campaign intending that investors will react to the “distort” by panicking and selling their shares. The panic in the market triggered by the “distort” typically collapses the price of the stock that the short seller has shorted and the short seller cashes out on his unlawful investment and pockets his unlawful gains.

81. The Department of Justice considers “short and distort” schemes to be illegal securities fraud and has prosecuted criminals who perpetrate these illegal schemes. For example, the Department of Justice recently convicted a short-seller named Barry Minkow for violating Title 18 USC § 371 by conducting a similar “short and distort” scheme involving a similar land development business conducted by Lennar Corporation. The Court sentenced Minkow to five (5) years in prison and imposed restitution in the amount of \$583,573,600.00, an amount equal to the harm caused to Lennar Corporation shareholders measured by the drop in Lennar’s stock price as a result of the “short and distort” scheme.

82. The fact that a “short and distort” scheme is illegal and commonly used by short sellers like Bass Hayman is well known in both the law enforcement and investing communities. This scheme should have been immediately identifiable as illegal to Defendants or any other FBI agent or federal prosecutor who has any responsibility for investigating and prosecuting white collar crime. A simple Google search of “short and distort” returns dozens of articles describing how the scheme typically operates and why it is illegal.

83. For example, Investopedia, a website devoted to explaining investing in basic terms to educate investors, 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.” See, Chen, James, *Short and Distort*, Investopedia, <https://www.investopedia.com/terms/s/shortanddistort.asp> (last accessed April 5, 2020).

84. Davemanuel.com, another website that defines basic investing terms for its readers, 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.” Davemanuel.com also emphasizes “[N]ote: This is obviously illegal.” See, Manuel, Dave, *Definition of Short and Distort*, <https://www.davemanuel.com/investor-dictionary/short-and-distort/> (last accessed April 5, 2020).

85. Counterfeitingstock.com, a website that describes fraudulent schemes used in the financial markets by fraudsters, published an article that includes a detailed description on short selling generally as well as a specific discussion of the steps short sellers typically take in an illegal “short and distort” scheme. *Counterfeiting Stock*, <http://www.counterfeitingstock.com/CounterfeitingStock.html> (last accessed April 5, 2020). In its description of “The Anatomy of a Short Attack,” counterfeitingstock.com describes the classic

tactics short sellers use to execute illegal “short and distort” schemes. *Id.* Those classic tactics include many that Bass/Hayman used against UDF, including launching a negative media assault, instigating a frivolous criminal investigation, seeking to put UDF in bankruptcy/receivership, encouraging class action lawsuits, interfering with the target company’s customers and financiers, and using “paid bashers” to destroy the target company’s reputation in the market. *Id.*

**Defendants Aid and Abet Bass/Hayman’s Illegal
“Short and Distort” Scheme**

86. Throughout 2015 and early 2016, Bass/Hayman had carefully crafted a scheme to financially profit via an illegal “short and distort” scheme with respect to Plaintiff UDF IV’s stock. Essentially Bass/Hayman planned to short UDF IV’s stock and crush UDF IV’s stock price and UDF’s business by co-opting Defendants into forcing UDF into receivership/bankruptcy by inducing Defendants to investigate Plaintiffs with false and misleading information about the efficacy of Plaintiffs’ business model and activities. The success of Bass/Hayman’s scheme hinged on Defendants’ willingness to join the scheme because Bass/Hayman sought inside information from Defendants concerning investigations into UDF while, in the long term, planning for Defendants to take legal actions against UDF that would assure the ultimate success of their “short and distort” scheme. Bass/Hayman’s internet postings would trigger panic among UDF’s investors, banks and business associates and then Defendants would take drastic legal action against UDF in response to the panic and thereby seek to force UDF into receivership/bankruptcy.

87. Bass/Hayman struck it rich when Defendants opted to aid and abet the execution of the illegal “short and distort” scheme. Emails recently obtained from Bass/Hayman establish that Bass/Hayman contemporaneously shorted UDF IV stock based on material, nonpublic information Defendants provided them about the status of the government’s investigation of UDF. Bass was so confident that Defendants would continue to take actions to help him achieve the goals of the illegal “short and distort” scheme that he directed his Hayman team to short as much UDF IV stock

that they could locate just before Bass/Hayman initiated its attack in December 2015—even though the borrow rate on their borrow reached a stunning 99%, they had already lost \$10 million in carrying costs, and they were holding an unsustainable short position.

88. The December 2015 attack was the culmination of a long chain of events. Beginning on or about March 2015, Kyle Bass, Hayman GC Kirkpatrick, Hayman Analyst Lewis, and other Bass/Hayman emissaries began delivering PowerPoint presentations to Kirkpatrick's former colleagues at the Fort Worth Regional Office of the Securities and Exchange Commission ("SEC") and at DOJ/FBI. Hayman GC Kirkpatrick had previously served as Branch Chief of the SEC's Fort Worth Enforcement Division. These presentations contained multiple false and misleading statements about UDF's business, including Bass/Hayman's core assertion that UDF's business operated as a Ponzi scheme. Defendant Bunch received the initial presentation on behalf of DOJ.

89. During the time that Bass/Hayman delivered these presentations to the government, Hayman was covertly building up a short position of approximately 1.2 million shares of Plaintiff UDF IV stock, which at the time was trading at around \$17 per share.

90. Soon after he received a copy of the Bass/Hayman March 2015 presentation, Defendant Bunch recruited Defendant Klimek and the FBI to conduct an unwarranted investigation of UDF.

91. On April 17, 2015, representatives of the SEC, FBI, and DOJ attended a "formal introductory" meeting scheduled by Bass at Hayman's office where Bass/Hayman provided an 80 page PowerPoint presentation outlining their misleading suppositions and false and misleading narrative about Plaintiffs' business. For the next several months, Bass/Hayman continued to feed false and misleading information to Defendant Bunch, Defendant Klimek and/or Defendant Edson and provided identical copies of the Bass/Hayman presentations to the SEC.

92. Bass/Hayman's presentations contained false and misleading information and lacked verified objective information from first-hand fact witnesses. Instead, the presentations reflected Bass/Hayman's biased assumptions and premeditated intent to attack UDF, and, to that end, contained false and misleading statements concerning UDF's relationship with its primary borrower (Centurion), false and misleading information that Bass/Hayman cherry-picked from UDF's public disclosures, unsupported assertions that UDF's business model was a Ponzi scheme, and demonstrably false characterizations of UDF's cash flows and accounting. The presentations also intentionally omitted publicly available material information that contradicted Bass/Hayman's false statements about Plaintiffs.

93. As of approximately May 2015, Defendant Bunch knew that Bass/Hayman was actively shorting UDF IV's stock.

Bass/Hayman Builds Their Short Position Based on Material Nonpublic Information Provided by Defendants

94. On May 6, 2015, Bass directed Hayman Analyst Lewis to "prepare a synopsis for the SEC and the *other relevant people*," an apparent coded reference to Defendant Bunch, Defendant Klimek, and others at the FBI.

95. On May 11, 2015, Bass/Hayman increased their short position in UDF IV stock by 25,000 shares for \$435,000 based, upon information and belief, upon material nonpublic information provided by Defendants.

96. On May 19, 2015, Hayman GC Kirkpatrick sent Bass' "synopsis" to Defendant Klimek and the SEC. In his email to Defendant Klimek, Kirkpatrick confirmed "off the record" discussions with Defendant Klimek and stated, "attached is Parker's update *that we discussed last week*." The synopsis contained no first-hand information and was replete with false statements about UDF that would have easily been exposed as baseless if Defendants had conducted basic fact checking of the presentation.

97. On May 26, 2015, Bass/Hayman presented a revised 61-page PowerPoint presentation during a long five-hour meeting at Bass/Hayman's office with Defendant Klimek to induce the FBI to accelerate the pace of its investigation of UDF. Hayman GC Kirkpatrick had emailed the "revised presentation" to Defendant Klimek and the SEC with the attachment labeled "UDF Q1_2015 Update (SEC 5.26.15).pdf," which included information seeking to establish the *bona fides* of accused real estate swindler Dakan as a "restructuring" expert. At this very same meeting, Hayman Analyst Lewis introduced Defendant Klimek to Dakan as a person who would help "preserve" UDF's valuable assets in the event that an expected Government intervention would propel UDF into receivership/bankruptcy.

98. During the May 26 meeting, Bass, who did not personally attend the meeting, sought to communicate with Hayman Analyst Lewis via a text messaging encryption app called "Signal" which would create untraceable records about what Lewis reported to Bass that he had learned from Defendant Klimek.

99. On May 26, 2015, as Bass/Hayman representatives were meeting with Defendant Klimek, Bass/Hayman shorted 25,000 shares of UDF IV, or approximately \$430,000. Hayman's head trader informed Bass: "I will continue to monitor daily. We are short 1,767,471 or 2.4% AUM [assets under management]." As a result, as of May 26, 2016, Bass/Hayman had increased its short position in UDF IV to approximately \$30.6 million.

100. On June 15, 2015, Bass/Hayman emailed Defendant Klimek another presentation that again was based on false and misleading statements regarding UDF's financials and falsely described the development status of Centurion's "Shahan Prairie" residential real estate development.

101. Like Bass/Hayman, Defendants also monitored Plaintiff UDF IV's share price during the execution of the illegal "short and distort" scheme. On June 16, 2015, for example,

Defendant Klimek emailed Bass/Hayman about tracking UDF IV's share price stating: "Looks like UDF opened at \$18.65/share, up about \$1.50 or so."

102. On June 23, 2015, Defendant Klimek again met with Bass/Hayman at Hayman's business office to discuss yet another Bass/Hayman presentation that included more false and misleading information regarding UDF's finances.

103. On June 24, 2015, Defendant Klimek emailed Bass/Hayman and requested that a FBI accountant and two additional FBI contractors on Defendant Klimek's accounting team meet with Bass/Hayman to discuss UDF.

104. On June 25, 2015, Defendants Klimek and the FBI contractors met at the FBI offices in Dallas with representatives of Bass/Hayman to receive yet another presentation regarding Bass/Hayman's false and misleading information about UDF's finances and business operations.

105. On June 26, 2015, based upon the material nonpublic information Defendants shared with Bass/Hayman in their recent meetings, Bass/Hayman increased their short position in UDF by another 75,000 shares, or approximately \$1.3 million. On that same day, and in response to the news that a Hayman trader was able to locate 75,000 shares of UDF to short, Bass informed his head trader, "That is great news. Thanks ... I wish the securities firms could approximate how much they could borrow and go ahead and lend some to us now."

106. By June 30, 2015, Bass/Hayman had extensively and expensively grown its short position to 2,067,513 shares of Plaintiff UDF IV stock.

107. On July 5, 2015, a member of Hayman's Investment Committee emailed Bass a summary of the Hayman Investment Team Meeting from July 2, 2015, which provided an update on UDF from Hayman Analyst Lewis reflecting that the government's investigative "pace seems to be accelerating." Lewis also reported that borrowing was "tight" but recommended that Hayman should add more short shares of Plaintiff UDF IV stock "when we can get borrow."

108. On July 6, 2015, Hayman's head trader emailed Bass as he was aggressively searching for more of Plaintiff UDF IV shares to short stating; "UDF...nothing yet...still searching" and Bass replied, "Have you/they checked BONY?" On information and belief, "BONY" is the Bank of New York, one of the largest stock custodians in the world.

109. On July 9, 2015, Bass/Hayman shorted an additional 50,000 of Plaintiff UDF IV shares (approximately \$900,000) paying an exorbitant borrowing interest rate to borrow those shares. Bass/Hayman was borrowing UDF IV shares at an interest rate that could reach as high as 99% while Plaintiff UDF IV continued to pay a monthly distribution of approximately 13.6 cents per share.

110. On July 14, 2015, Bass/Hayman was working so aggressively to short UDF shares that they were actually raising their borrowing interest rate higher on themselves. Hayman's head trader emailed Bass stating "JPM's average borrow is 40.3%...we are being charged 27%. The 150k we have borrowed over the past week have cost them ~99%. If he can find more he will be forced to move us higher to his average so he doesn't lose any more money until the pressure subsides. Basically, we are moving the rate higher on ourselves."

111. On July 28, 2015, Hayman Analyst Lewis, recognizing they had a lock on an upcoming "negative" UDF event, recommended to Bass that Hayman also borrow a basket of additional stocks "to add exposure around a negative UDF/RCAP event, with a heavy weight toward the broker dealers; we believe there will be more volatility in the broker-dealer names immediately following an event."

112. On July 30, 2015, Hayman Analyst Lewis emailed Bass and copied the Hayman head trader regarding the planned execution of short trades and concluding "[B]ased on everything that I know, there will not be a [government enforcement] event in the next week related to UDF."

113. By the end of July 2015, Bass/Hayman had increased their short position in Plaintiff UDF IV stock by another 174,487 shares – another \$3 million – to in excess of 2,242,000 UDF IV shares.

114. No prudent fiduciary would expose itself to such an extensive short position – over 2,242,000 shares – valued at over \$40 million, which equated to over 25 trading days of trading volume in Plaintiff UDF IV stock – with respect to a stock that paid a monthly distribution that equals a 9% annual return. This is especially true when the borrowing interest rates exceeded 50% and ultimately reached approximately 99%. Bass was willing to take that risk only because he was certain that Defendants would act in concert with Bass/Hayman by taking actions that would crash UDF's stock price to levels where Bass/Hayman could profit from their illegal “short and distort” scheme. The fix was in.

115. On August 18, 2015, Hayman Analyst Lewis emailed Bass informing him that he had prepared an additional 55-page presentation on the Second Quarter update on UDF “to send to the relevant authorities,” referring to the SEC and Defendants. Hayman Analyst Lewis confirmed, “[W]e plan to send today and follow up with a call. I will send you guys the presentation and update on what we learn [from the government].”

Defendants Intimidate UDF's Auditors

116. On August 31, 2015, to effectuate Bass/Hayman's scheme, Defendant Klimek and an FBI accountant, along with attorneys from the SEC, met with UDF's independent auditors, Whitley Penn. Defendant Klimek provided Whitley Penn directly with much of the false narrative about UDF that Bass/Hayman had provided to him, *i.e.*, false assertions that UDF allegedly had misrepresented to Whitley Penn its cash flows, its loan loss reserves, and the nature of collectability of UDF's loans, among other things.

117. Defendant Klimek also improperly instructed the Whitley Penn representatives to not disclose to UDF any information about the meeting, including the statements Defendants made

about the propriety of UDF's accounting during the meeting. Defendant Klimek's directive compromised Whitley Penn's independence because Defendants prohibited Whitley Penn from speaking openly with UDF about issues relayed to them by the government that were relevant to Whitley Penn's quarterly review of UDF IV's financial statements. Not surprisingly, Whitley Penn subsequently declined to stand for reappointment as UDF's auditor, but not before publicly reaffirming the appropriateness and accuracy of UDF's accounting treatment of its loans.

118. Bass/Hayman expected that Defendants' efforts to intimidate UDF's auditors would cause Whitley Penn to withdraw its prior audit opinions which would trigger a restatement and a potential receivership/bankruptcy. As a result, in September and October 2015, Bass/Hayman, along with accused real estate swindler Dakan, clandestinely began marketing presentations to Goldman Sachs and other potential partners regarding a "Hayman Capital Distressed Debt Opportunity Fund." Through this fund, Bass/Hayman sought investors to acquire UDF's real estate assets, which Bass/Hayman now described to potential investors as "well positioned" and "valuable," at bargain prices via a bankruptcy. Having secured Defendants' cooperation in their "short and distort" scheme, Bass/Hayman confidently predicted in their Distressed Debt Opportunity PowerPoint Presentation that it was not going to be a pretty ending for UDF.

119. On November 9, 2015, Plaintiff UDF IV filed its third quarter 2015 Form 10-Q. Prior to filing the Form 10-Q, Whitley Penn enacted detailed procedures to conduct an enhanced review that focused on testing Bass/Hayman allegations about UDF that Defendant Klimek had brought to Whitley Penn in August 2015. After a thorough review, Whitley Penn rejected all the allegations that Bass/Hayman was making about UDF. Instead of finding any irregularities with UDF's financial accounting, such as UDF operating like a "Ponzi scheme," Whitley Penn reached the opposite conclusion. After examining the veracity of the Bass/Hayman suppositions as presented by Defendant Klimek at the August 31, 2015 meeting, Whitley Penn determined that

there were no issues with the accounting related to Plaintiff UDF IV's financial statements. Whitley Penn agreed with UDF on all matters related to UDF's accounting practices and financial disclosures.

120. On November 12, 2015, fearing that Defendants' improper threats to Whitley Penn were not having their intended effect, Bass/Hayman sent the SEC a copy of an "anonymous" letter it intended to send to Whitley Penn, UDF's trustees, and UDF management later that day. Bass/Hayman's "anonymous" letter included numerous false and misleading assertions of alleged accounting fraud already reviewed and rejected by Whitley Penn. For example, Bass/Hayman alleged: (1) "the primary assets of the [UDF] Companies are loans, and the book value of the assets appear to be materially overstated, *either because the loans have insufficient reserves or have inadequate collateral supporting them;*" (2) "Loans appear to accrue larger and larger balances for years (more than doubling in some cases) *without ever generating any cash receipts,* which lead to questions about the accounting for these loans, including how income is recognized and later capitalized to long-term asset accounts;" and (3) "UDF IV *is not accruing any provision* for loan losses despite a material outstanding balance of past due loans." [REDACTED]

[REDACTED] All of these assertions would have been exposed as false and misleading had Defendants simply performed some basic, objective fact-checking.

121. On November 12, 2015, approximately twenty (20) minutes after the SEC received the email containing the proposed Bass/Hayman "anonymous" letter to Whitley Penn, Defendant Bunch emailed Hayman GC Kirkpatrick requesting "a few minutes to discuss UDF." Based on information and belief, because of Defendant Bunch's conversation with Hayman GC Kirkpatrick, Bass/Hayman cancelled their plans to deliver the anonymous letter to Whitley Penn on November 12, 2015. Based on information and belief, Defendant Bunch also informed Hayman GC

Kirkpatrick that Defendants would attempt to execute a search warrant on UDF's headquarters within 60 days.

122. On November 16, 2015, Plaintiff UDF III filed its third quarter 2015 Form 10-Q, again reviewed by Whitley Penn. As with Whitley Penn's review regarding Plaintiff UDF IV's 10-Q filed on November 9, 2015, Whitley Penn concluded that there were no issues with the accounting related to UDF III's financial statements.

123. On November 24, 2015, months after Defendants began interfering with Whitley Penn's independence, Plaintiffs filed Forms 8-K notifying the public that Whitley Penn had reaffirmed the accuracy of its prior accounting positions even though Whitley Penn had declined to stand for reappointment as UDF's independent auditor. The Forms 8-K noted that "Whitley Penn concluded that audit reports on the Company's consolidated financial statements for the fiscal years ended December 31, 2013 and December 31, 2014 *did not contain an adverse opinion or disclaimer of opinion*, nor were they qualified or modified as to uncertainty, audit scope or accounting principles [and 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*, which disagreements, if not resolved to the satisfaction of Whitley Penn, would have caused Whitley Penn to make reference to the subject matter of the disagreement in its report on the Company's consolidated financial statements." (emphasis added). The Form 8-K also attached a letter, dated that November 24, 2015, from Whitley Penn to the SEC confirming that Whitley Penn had reviewed UDF's Form 8-K and agreed with the statements that UDF had made about Whitley Penn.

124. After Plaintiff UDF IV filed its Form 8-K on November 24, 2015, Hayman GC Kirkpatrick, immediately sent an email of "High Importance" to Defendant Klimek and the SEC Enforcement Attorney notifying them that "UDF's auditor just resigned."

125. On that same day, the SEC Enforcement Attorney again interfered with the independence of UDF's auditor by contacting Whitley Penn's attorney directly and excoriating him because, in the view of the SEC Enforcement Attorney, Whitley Penn should have made a "noisy withdrawal" as opposed to backing the accuracy of UDF's financial statements.

**Defendants Aid and Abet Bass/Hayman's Media Assault
on UDF – the Phony Ernest Poole Article**

126. Whitley Penn's reconfirmation that UDF's historical financial statements were accurate placed Bass/Hayman in grave financial peril. Several internal Bass/Hayman emails on November 24, 2015 described Bass/Hayman's dire financial condition due to their short position. For example, in one email, Hayman Analyst Lewis reported to Bass that Hayman was short 3,127,250 shares of UDF IV, \$56 million, and not so coincidentally, forecasted 50 days forward with a projected carrying cost per day of \$84,063, or a total of another \$4,203,162 in carrying costs.

127. In his November 24, 2015 email to Bass, Hayman Analyst Lewis expressed his strong belief that Bass/Hayman must "not wait past Monday, December 14," stressing his grave concern "with the uncertainty of timing and [my] concern that we will be left in the exact same situation 60 days out [middle of January] that we found ourselves in "following the end of October." On information and belief, the position that Bass/Hayman found themselves in "following the end of October" was that they were holding an unsustainable short position in UDF IV shares with an exorbitant carry cost which had been accumulated based on the Defendants sharing material nonpublic information about the timing of expected government action against UDF. However, the government action against UDF and the resulting adverse impact to Plaintiff UDF IV's stock price had not occurred as indicated by the end of October 2015.

128. The November 24, 2015 email from Hayman Analyst Lewis also emphasized that Bass himself would now have to take overt action by December 14, 2015, as Hayman would not

have sufficient cash reserves to carry the short including a scheduled December 15 dividend due to Plaintiff UDF IV's investors. Kyle Bass responded to Lewis by declaring: "***This will happen in December one way or the other.***"

129. To further execute their illegal scheme in December, Bass/Hayman escalated their interactions with Defendants Bunch and Klimek to accelerate UDF's destruction. Bass/Hayman renewed their request to send the anonymous false and misleading letter to Whitley Penn, which Bass/Hayman had previously delayed following Defendant Bunch's discussion with Hayman GC Kirkpatrick on November 12, 2015.

130. On December 4, 2015, at 1:01 p.m., Hayman GC Kirkpatrick emailed Defendant Bunch requesting "a minute" to "discuss UDF." On information and belief, Hayman GC Kirkpatrick requested Defendant Bunch's approval to send the "anonymous" false and misleading letter to Whitley Penn.

131. On December 4, 2015 at 1:05 p.m., exactly four (4) minutes after Hayman GC Kirkpatrick sent that email to Defendant Bunch, Kirkpatrick emailed Defendant Klimek a final copy of the false and misleading "anonymous" letter Bass/Hayman now intended to covertly deliver to Whitley Penn and noted that he, Kirkpatrick, would discuss the matter directly with Defendant Klimek.

132. On December 4, 2015, at approximately 3:30 p.m., after speaking with Defendant Bunch and Defendant Klimek about sending the "anonymous" letter to Whitley Penn, Bass/Hayman notified the SEC Enforcement Attorney that Bass/Hayman hand delivered a copy of Bass/Hayman's "anonymous" letter to Whitley Penn.

133. Buoyed by Defendants' continuing support for this new phase of the illegal "short and distort" scheme, on December 4, 2015, Bass/Hayman decided to bet the farm by increasing their short position in Plaintiff UDF IV stock and "*short as much UDF everyday as we can get a locate on.*"

134. [REDACTED]

135. On December 9, 2015, at approximately 3:30 p.m., Hayman GC Kirkpatrick forwarded a copy of an “anonymous” false and misleading post regarding UDF to Defendant Bunch, Defendant Klimek, and the SEC Enforcement Attorney. Bass/Hayman intended to publish the post under an assumed name to a hedge fund website community that Bass/Hayman had created to conceal their identity as the true source of the false information about Plaintiffs. Kirkpatrick informed Defendants Bunch and Klimek that Bass/Hayman intended to publish the post under the fake name “Ernest Poole.” Kirkpatrick’s email stated: “Just an FYI. The attached is being provided to Harvest . . . today.” The SEC Enforcement Attorney soon replied: “Thank you for the heads up.” Neither Defendant Bunch nor Defendant Klimek inquired as to what “Harvest” was – presumably because they already knew what Harvest was and how it was being used to conceal Bass/Hayman’s identity as the source of the phony article to advance their “short and distort” scheme.

136. By December 10, 2015, Bass/Hayman had shorted more than 3.4 million shares of Plaintiff UDF IV stock, valued at approximately \$60 million, and had marketed to Wall Street a clandestine plan to acquire UDF assets as soon as the “short and distort” scheme pushed UDF into bankruptcy.

137. On December 10, 2015, and prior to Bass/Hayman publishing the false information about UDF under a fake name on Harvest, UDF counsel again informed the government that Bass/Hayman was involved in an illegal “short and distort” scheme against UDF and pointed out that the DOJ had prosecuted individuals who manipulated the stock market as Bass/Hayman was doing to UDF. In his email, UDF counsel provided the SEC a copy of the anonymous letter to Whitley Penn, pointed out the “unusual short activity in UDF IV’s stock” and stated that “I have

suspected a third party is creating a short position to unlawfully profit from artificially manipulating and depressing UDF IV's stock price (short and distort)." UDF counsel further pointed out that "[t]he attached letter further corroborates my suspicion" and stated that "[c]oincidentally, the subjects addressed in this anonymous letter are similar to the ones addressed by the Staff during its investigation of UDF III and IV." The email presented facts regarding the shorting of UDF shares stating "UDF's short interest has increased significantly during the course of the SEC's investigation." UDF counsel stated that the "short-seller behavior here is similar to that of Barry Minkow. Mr. Minkow 'abused his relationship with federal law enforcement agencies to report false allegations of criminal conduct purportedly committed by Lennar and its management' and once he 'confirmed that his allegations had successfully induced law enforcement to open a criminal investigation, Minkow used that knowledge and information to trade Lennar securities for his own benefit.' Mr. Minkow was charged with and pled guilty to conspiring to manipulate Lennar's stock." UDF Counsel referenced his prior email to the SEC Staff attorneys and stated "[P]er my November 20, 2015 email, I believe Hayman Capital may be involved in leaking negative information regarding UDF. Hayman has been accused of this type of behavior repeatedly by reputable companies for the past 8 years."

138. Bass/Hayman, after providing Defendants Bunch and Klimek advance notice about the manner and means of their scheme, pushed ahead and published under the phony name "Ernest Poole" on the Harvest website community both (a) the anonymous false and misleading article maintaining, among other things, that UDF exhibited the "characteristics of a Ponzi scheme," and (b) the anonymous false and misleading letter Bass/Hayman had previously delivered to Whitley Penn.

139. Bass/Hayman, aided and abetted by Defendants, concealed their actions from the investing public during this phase of the scheme because they knew that the investing public would be less likely to challenge the negative information regarding UDF if investors were not informed

that the information about UDF came from a biased infamous short seller who stood to profit when the false “Ponzi scheme” narrative caused UDF IV’s stock price to drop. Bass/Hayman also had the Harvest website programmed to ensure that all comments to the posting would be suppressed so Bass/Hayman could “control the narrative” and avoid a situation where someone did some objective fact finding and exposed their illegal “short and distort” scheme on the Harvest website.

140. Immediately after Bass/Hayman posted this false and misleading information, UDF’s stock was savaged. Innocent investors lost more than a quarter of a billion dollars in shareholder value in one day. Defendants said nothing and further took active measures to conceal their prior knowledge and participation in the illegal “short and distort” scheme.

141. Early in the morning of December 10, 2015, before Bass/Hayman anonymously posted false and misleading information about UDF on the Harvest website, UDF counsel notified the SEC about UDF’s concern that Hayman was shorting the stock. UDF counsel informed the Government that the short position against UDF IV had increased dramatically from approximately 58,204 at the end of 2014 to 4,118,814 shares as of about November 15, 2015, *an astounding 6,975% increase in shorted UDF IV shares.*

142. Later that day, on December 10, 2015, counsel for UDF also notified the SEC that “Bass was making a run on UDF stock” and included screen shots from the hedge fund website “*ValueWalk.*” *ValueWalk* had posted on Twitter that “Kyle Bass has built up a short position in UDF” and that Bass had labeled UDF as a “Ponzi Scheme” and was “*trying to get FBI/SEC/DOJ etc to shut it down.*”

143. Upon information and belief, within minutes, the SEC Enforcement Attorney notified Defendant Bunch that the DOJ and FBI had been publicly identified as participants in Bass/Hayman’s attempt to profit from shorting UDF stock. In response, Defendant Bunch contacted Defendant Klimek who then contacted Hayman GC Kirkpatrick with instructions to

contact *ValueWalk* to have *ValueWalk* delete the references in the public Twitter post that revealed the DOJ and FBI's involvement in Bass/Hayman's "short and distort" scheme.

144. Bass/Hayman, per instructions from Defendant Klimek, immediately contacted *ValueWalk* and demanded they remove the offending language in the Tweet. In response to the pressure from Defendant Klimek and Bass/Hayman, *ValueWalk* promptly complied and removed the language identifying Bass/Hayman's involvement with Defendants. *ValueWalk* subsequently confirmed that it had "retracted details at the request of Hayman after it went up mainly that Hayman is trying to get the DOJ, FBI, SEC etc to shut the company down."

145. Within minutes of *ValueWalk* cleansing the public record of Defendants' association with J. Kyle Bass, Bass/Hayman emailed Defendant Klimek notifying him that *ValueWalk* had capitulated to the demand and attached a link to the now purged *ValueWalk* post as confirmation. At this time in December 2015, Plaintiffs did not know that Defendants were actively participating in the "short and distort" scheme. Plaintiffs did not discover these facts until Plaintiffs received the relevant emails from Bass/Hayman on or about April 12, 2018 in discovery in their civil litigation against Bass/Hayman and on February 19, 2019 when counsel was finally able to review the search warrant affidavit.

**The Street Watchdog Research Report Identifies the Obvious
About the Phony Ernest Poole Post**

146. On December 11, 2015, Hayman GC Kirkpatrick sent Defendant Klimek an email with an online posting by Street Watchdog Research titled "*Is Prison Time in the Cards for United Development Funding IV's Short Sellers?*" The Street Watchdog Research report revealed that Bass/Hayman likely violated criminal federal securities laws by engaging in an illegal "short and distort" crime by anonymously posting false information about UDF. The report also concluded that the anonymous short seller would likely be prosecuted for its conduct.

147. The *Street Watchdog Research* article made a detailed point by point rebuttal of Bass/Hayman's false allegations and concluded that a "band of short sellers" was engaging in an illegal "short and distort" scheme against UDF by posting anonymous reports "rife with conjecture and innuendo, most of which we were able to debunk with our research." Their research included an interview with Whitley Penn's Managing Partner, Larry Autrey, who categorically affirmed that the auditor's decision not to stand for reappointment "***was not a reflection of any improprieties whatsoever in UDF's financial statements.***" The *Street Watchdog Research* article concluded:

During the course of our review, we noticed that appropriate disclosures were made public and were timely filed with the SEC, [UDF] made every effort to comply with SEC guidelines, financial statements for prior years were restated as necessary, and the CPA firm stands by the company's most 2 recent fiscal years audits as well as the year to date financial situation of United Development. ***We therefore conclude that this consortium of anonymous short sellers in this particular case have taken a molehill and turned it into a mountain for the sole specific purpose of driving the company's stock down to collect a tidy profit. Should their real identities come to light, they may be the ones on the opposite end of the law's wrath.*** (emphasis added).

148. Immediately after Hayman GC Kirkpatrick sent the worrisome email to Defendant Klimek, Kirkpatrick, without an appointment, traveled to UDF's counsel's law offices and called UDF's counsel from the lobby and requested that they meet urgently. At the meeting, Hayman GC Kirkpatrick offered a series of "explanations" seeking to falsely justify, in the face of the article, why Bass/Hayman had acted against UDF.

149. On December 12 and 13, 2015, Bass/Hayman employees circulated multiple internal emails presumably expressing concern over the *Prison Time in the Cards for UDF Short Sellers* article posted by *Street Watchdog Research*.

150. On December 14, 2015, UDF filed Forms 8-K where it directly rebutted in detail the false "anonymous" postings. The Forms 8-K explained the legitimacy of both UDF's business and the identified transactions, the transparency of its financial reporting, and Whitley Penn's

conclusions about the accounting of the pertinent transactions - i.e., that Whitley Penn had no disagreements with UDF's accounting treatment of those financial statements.

151. On December 15, 2015, understanding that Defendants remained fully on board with the Bass/Hayman scheme, Bass/Hayman emailed copies of its anonymous false and misleading posts they had posted on the anonymous website to Defendant Klimek.

152. Around this time, and after the Street Watchdog Report had suggested that those involved in the "short and distort" could face jail time, the FBI removed Defendant Klimek from his role as lead case agent on the UDF investigation. On information and belief, the FBI banished Defendant Klimek to its Surveillance Operations Group (SOG), a known penalty box for FBI agents who may have fallen out of favor with the FBI's leadership.

153. By December 30, 2015, Hayman President Andy Jent suddenly resigned from Hayman Capital.

**Bass/Hayman and Defendants Renew the Negative Media Assault
on UDF – the Bogus *UDFExposed.com* Campaign**

154. Plaintiff UDF IV's share price, due to market confidence in the reliability of UDF's counter-assertions, continued to rebound over the next several weeks, climbing from approximately \$7 per share on December 11, 2015 to \$14.80 per share by December 22, 2015. Due to this unanticipated rebound, Bass/Hayman could not close out its short position and continued to pay exorbitant carrying costs. As a result, Bass/Hayman engineered yet another false and misleading attack on UDF, again with Defendants' approval and participation. This time with a new lead case agent for the FBI—Defendant Edson.

155. Bass/Hayman understood that they were "at a pivotal moment" regarding whether Bass/Hayman would be able to achieve "financial success" with the illegal "short and distort" scheme. Bass/Hayman determined that they had to take "control [of] the narrative" regarding UDF to keep Plaintiff UDF IV's stock price depressed so that Bass/Hayman could cash out their

enormous short position. As a result, in late December 2015, Bass/Hayman hired Edelman, a national public relations firm to create a national media assault that would prevent UDF from being able to use the truth to overcome the panic in the market triggered by Bass/Hayman's false assertions.

156. Over the next several weeks, Defendants Bunch, Edson and Klimek never attempted to interview UDF's employees to fact check any of Bass/Hayman's false assertions. For example, Defendants did not seek to speak with Plaintiffs about the detailed rebuttal that UDF published in an 8-K filed on December 14, 2015. Instead, Defendants opted to remain in direct, personal contact with Bass/Hayman and continued to blindly accept as true all of the false and misleading information Bass/Hayman supplied them.

157. To gain "control of the narrative" and stave off the high costs of carrying its short position in UDF, Bass/Hayman decided to create a Hayman public website called "*UDFExposed.com*" and abandon their covert status. Bass/Hayman designed "*UDFExposed.com*" to publicly renew the attack on UDF with even more sinister false and misleading postings. While Defendants and Bass/Hayman's tactics had evolved, the goal of the scheme remained the same: drive down the price of UDF IV's stock, destroy UDF, and gain an immense illegal financial windfall from its concealed short position at the expense of Plaintiffs, their employees, and tens of thousands of innocent UDF investors. This unlawful scheme, however, would again require Defendants' active participation to succeed.

158. On January 29, 2016, one week prior to publicly unveiling the "*UDFExposed.com*" website and its false and misleading postings, Bass/Hayman sent coded access to the embargoed website to Defendant Edson so she could review and utilize the hidden contents in advance of Bass/Hayman publishing the false and misleading material to the investing public. In the email transmitting the embargoed website, Bass/Hayman provided Defendant Edson with Hayman's username and secret password credential ("letmein") to clandestinely access the website.

Defendant Edson also telephonically contacted Bass, who replied by email to Defendant Edson stating “[J]ust returned your call. My cell is 917-207-XXXX when you are free.”

159. It was during this period of direct contact between Bass and Defendant Edson that Bass again confirmed to Defendants that Bass/Hayman’s express goal was to financially profit from UDF’s demise. When Defendant Edson accessed the embargoed “*UDFExposed.com*” website using the password Bass/Hayman gave her, the following disclaimer appeared on the login page:

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 . . .*** (emphasis added).

160. Bass also sought to introduce Defendant Edson to a Wall Street Journal (WSJ) reporter, who Bass was attempting to convince to publish Bass/Hayman’s false narrative. Bass/Hayman earlier had prodded the WSJ reporter to publish a negative article about UDF, but the WSJ had refused. In addition to being comfortable enough with his relationship with Defendant Edson to suggest that she contact the WSJ reporter for him, Bass also confided in her: “I have known [him] for over a decade and if you were to reach out to him, he will keep you in confidence. He is a senior reporter there.”

161. The WSJ, however, fact checked the information and then again refused to publish a story that would rely on Bass/Hayman’s false suggestions about UDF. This made the WSJ the third independent party known to Defendants—following Whitley Penn and Street Watchdog Research—who rejected Bass’ allegations regarding UDF after simply performing basic fact checking. By contrast, Defendants continued to fail to conduct basic due diligence on the false information, the source of which they knew to be a biased, financially motivated short seller. Instead, Defendants, interested only in information which supported Bass/Hayman’s misleading attacks, chose to continue to aid and abet Bass/Hayman to accomplish the goals of the illegal “short and distort” scheme in an effort to complete the destruction of UDF as an operating business.

162. On February 2, 2016, in an internal Bass/Hayman email, Hayman Analyst Parker confirmed to the Hayman Investment Committee, including Bass, that posting of the “*UDFExposed.com*” website was a “go” and that “*no one will be caught off guard as we have also communicated our plans to the SEC and the FBI.*”

163. On February 4, 2016, having received no objection from either Defendant Edson or Defendant Bunch, Bass/Hayman launched the “*UDFExposed.com*” website with more false postings about UDF’s financial condition. In a letter posted to the website, Bass/Hayman again falsely claimed that: “UDF exhibited characteristics consistent with a Ponzi scheme,” that “UDF faces significant bankruptcy risk, which would leave its shares virtually worthless;” and that “this website exposes how a Texas real estate developer built a billion dollar house of cards and why it is now on the verge of collapse.” Immediately after the “*UDFExposed.com*” website went public, Plaintiff UDF IV shares dropped from \$10.31 to a low of \$5.21, destroying another \$150 million in shareholder value from innocent investors. Rather than attempting to stop a crime in progress, Defendants elected to commit a host of criminal violations through their active participation in the “short and distort” scheme.

164. On February 12, 2016, Edelman sent a detailed email to J. Kyle Bass and Hayman Analyst Parker Lewis to prepare them for a press interview they were scheduling as part of the bogus *UDFExposed.com* media assault on UDF. In the email, Edelman had to remind Bass/Hayman to “avoid bringing up anything you’ve heard through the rumour (sic) mill on indictments or subpoenas.” The only individuals who would have information about indictments, subpoenas or even search warrants who had been communicating with Bass/Hayman about UDF were Defendants Bunch, Edson, and Klimek. The DOJ and SEC consider information about confidential grand jury investigations to be material nonpublic information that should not be disclosed to short sellers who are actively trading the target company’s stock. But Bass/Hayman had clearly learned detailed information about potential indictments and subpoenas.

The Closing Phase: Defendants Raid UDF's Headquarters

165. Seeking to maximize their illicit financial gain but unable to close their short position in Plaintiff UDF IV shares, Bass/Hayman again sought Defendants' assistance to drive the final nail in Plaintiffs' coffins. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

166. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

167. When Defendants Edson and Bunch drafted the search warrant affidavit, both knew that the affidavit lacked probable cause given that they failed to reveal to the Court the following critical information:

(a) [REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

[REDACTED]

(c) [REDACTED]

[REDACTED]

[REDACTED]

(d) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(e) [REDACTED]

[REDACTED]

(f) [REDACTED]

[REDACTED]

[REDACTED]

(g) [REDACTED]

[REDACTED]

(h) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(i) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(k) [REDACTED]

[REDACTED]

(l) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(m) [REDACTED]

[REDACTED]

[REDACTED]

(n) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(o) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(p) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(q) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(r) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(s) [REDACTED]

[REDACTED]

(t) [REDACTED]

[REDACTED]

(u) [REDACTED]

[REDACTED]

168. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

169. On the morning of February 12, 2016, as Defendant Edson was swearing out the UDF search warrant affidavit before the Court, J. Kyle Bass predicted that an FBI action was in UDF's immediate future as he explained his risky bet against UDF to the *Dallas Morning News*: "Either we are going to be right or we are going to be wrong. ***The good news is that a bright line is going to be drawn at a certain time in the future.***" Upon information and belief, Bass' statement was not a premonition but based upon confidential information he had obtained from Defendants.

170. On February 18, 2016, a mere six days after J. Kyle Bass said that he knew that "good news" was coming and a "bright line" was going to be drawn, the FBI raided UDF's headquarters and removed virtually every piece of paper, computer, and cell phone in Plaintiffs' possession. Defendants seized Plaintiffs' personal documents and effects, including personal tax documents, personal financial and investment records, personal bank statements, personal photographs, drawings by Plaintiffs' children, and toys belonging to some of Plaintiffs' young children. Defendants also seized voluminous documents from companies not referenced in the search warrant or for which no probable cause had been established. Defendants also seized documents containing confidential and privileged communications with UDF's in-house and outside counsel and auditing consultants.

171. After the February 18, 2016 raid on UDF headquarters by Defendants, Plaintiff UDF IV's shares lost another \$129 million in shareholder value from innocent investors. On information and belief, J. Kyle Bass was having lunch in a restaurant in Dallas when the news of

the FBI raid broke. After Bass abruptly left the restaurant, a person at Bass' table referred to the news being broadcast about the raid at UDF and stated: "He (Bass) just made \$60 Million dollars."

172. Defendants' raid was part of a coordinated scheme so that Bass/Hayman could illegally profit from UDF's demise. On February 19, 2016, the day following Defendants' raid, an internal Bass/Hayman email circulated by Peter Hans, cofounder of the *Harvest* website which Bass/Hayman used to launch the anonymous false posts, recognized that Defendants' raid of UDF's headquarters propelled the success of the illegal "short and distort" scheme: "[T]his was an incredibly well executed strategy from research and PR and marketing and I am happy that our [Harvest] platform was able to help a bit."

173. Defendants' raid of UDF's headquarters was prominently covered by both national and local print media, including by the Wall Street Journal, the New York Post, Reuters, Forbes, the Dallas Business Journal, the Housing Wire, the Fort Worth Star Telegram, and the Dallas Morning News. This coverage featured these headlines:

- Wall Street Journal: "FBI Raids Headquarters of United Development Funding;"
- New York Post: "FBI raid Texas REIT slammed by Kyle Bass as Ponzi scheme;"
- Forbes: "United Development Funding Rocked After FBI Raid, Shares Down 54%;"
- Reuters: "FBI says it raids United Development Funding office near Dallas;"
- Dallas Business Journal: "FBI raids UDF office in Grapevine on heels of 'Ponzi scheme' allegations;"
- Housing Wire: "FBI agents raid North Texas-based real estate investment trust Kyle Bass-led hedge fund had previously accused REIT of operating like Ponzi scheme;"
- Fortune: "The FBI Just Raided the Company that Kyle Bass Is Shorting;"
- Fort Worth Star Telegram: "FBI raids Grapevine offices of United Development Funding;" and
- Dallas Morning News: "FBI raids Grapevine financial firm amid Ponzi scheme allegations."

174. Defendants' raid of UDF's headquarters was also prominently covered by both national and local news media broadcasts including CNBC, NBC, ABC, Fox4News, and youtube.com.

- ABC DFW published "FBI raids Grapevine real estate investment firm" and opened its evening newscast with aerial images from its news helicopter showing FBI agents on UDF property with the pronounced banner "FBI RAIDS REAL ESTATE INVESTMENT FIRM" and concluded the story stating "*the final outcome for this Company will be bankruptcy.*" (emphasis added);
- CNBC scrolled news of the FBI raid on UDF;
- NBC DFW published "FBI Raids Housing Financial Firm in Grapevine" and opened the local evening news with images of FBI agents raiding UDF offices and heralding that NBC DFW broke the story on the internet earlier in the day;
- Fox4News published and broadcast "Grapevine finance company raided by FBI" showing prominent images of FBI agents seizing UDF documents and placing them in rented Penske trucks; and
- Youtube.com published "FBI Agents Raid A Texas Housing Financial Firm Accused of Fraud," displaying images of FBI agents raiding UDF.

175. On February 18, 2016, during the raid of UDF by Defendants, Nasdaq suspended trading of Plaintiff UDF IV stock.

176. [REDACTED]

[REDACTED] multiple news reports easily connected Bass/Hayman with Defendants' raid of UDF and the intended consequence of the "short and distort" scheme – UDF's bankruptcy.

Defendants' Search of UDF's Headquarters Was Unnecessary

177. Defendants should have issued Plaintiffs a grand jury subpoena for the information sought in the search warrant. But news crews in helicopters do not cover subpoenas; they do, however, cover FBI raids where armed FBI agents in raid jackets storm a company's headquarters. Grand jury subpoenas, which prosecutors cannot release publicly, do not provide the type of "event" that Bass/Hayman needed – an event that results in the loss of \$100 million in innocent

shareholder value. But a search warrant executed by 100 armed FBI agents in raid jackets certainly does. Defendants' goal here was simple – a bogus search warrant to trigger the type of media event that would crush UDF IV's stock price, and destroy UDF, so that Bass/Hayman could cash out their short position to the tune of \$60 million.

178. Defendants' improper motive in seeking the search warrant is demonstrated by the following: Defendants knew that, between April 2014 and January 2016, UDF produced 803,240 pages of documents to the SEC in connection with its investigation of UDF. UDF had produced 152,784 pages of documents voluntarily in response to an informal request from the SEC; 223,200 pages of documents pursuant to a SEC subpoena issued in January 2015; and 294,518 pages of documents pursuant to a second SEC subpoena issued on June 30, 2015. UDF also produced another 132,738 pages of documents between November 16, 2015 and January 8, 2016 in response to a few follow-up requests from the SEC in November and December 2015.

179. In addition, Defendants' search warrant duplicated the SEC's prior requests in that the search warrant sought the same categories of documents that the SEC had previously requested and UDF had provided. For example, both Defendants and the SEC focused on obtaining documents relating to the collectability of loans that UDF had made to its borrowers, including Centurion and Buffington. Both also focused on accounting documents that related to UDF's financial statements. In short, Defendants requested a search warrant to seize documents that contained much of the same information Defendants already possessed in the 800,000 pages of material that UDF had already turned over.

180. Defendants also knew that Plaintiffs had cooperated with both the SEC and Defendants regarding the provision of documents relevant to their investigations.

181. In addition, in August 2015, on multiple occasions UDF counsel informed Defendant Bunch that UDF would provide the government access to any documents in UDF's Grapevine, Texas office.

182. Defendants also knew that, on December 11, 2015, the SEC Staff had instructed the independent members of Plaintiff UDF IV's Board of Trustees to conduct an independent investigation of the "anonymous" allegations made by Bass/Hayman, the SEC understood and approved the scope of the independent investigation and that the independent investigation was underway at UDF at the time of the search. Defendants Bunch and Edson, knew and understood that the raid at UDF headquarters would have severely disrupted the ability of Thompson & Knight to conduct its independent investigation.

183. [REDACTED]

184. [REDACTED]

185. In February 2019, three years after the execution of the search and after repeated refusals by Defendant Bunch to permit Plaintiffs to review the search warrant affidavit, certain attorneys for certain Plaintiffs were finally permitted by the government to review the search warrant affidavit at the FBI's offices.

186. In sum, at the time of the search on February 18, 2016, Defendants:

- had access to 800,000 pages of UDF documents via the SEC;
- knew that Plaintiffs had been aware of the criminal investigation for months;
- had received multiple offers from Plaintiffs to consensually produce any UDF documents Defendants might request;
- had access to documents from UDF's outside auditor, Whitley Penn, due to Plaintiffs' cooperation;

- felt comfortable using subpoenas, not search warrants, to obtain documents from other UDF's offices in Austin, Texas and Boulder, Colorado; and

- [REDACTED]
[REDACTED]

187. Thus, Defendants did not require a search warrant to obtain the documents in question. Defendants and Bass/Hayman did, however, need the media coverage that Defendants could obtain from a public raid on UDF's headquarters to generate the level of panic among investors to cause Plaintiff UDF IV's share price to tank. Bass/Hayman would then, in turn, maximize their return on the short and distort scheme and place Plaintiffs in a weakened financial position.

Defendants Help Bass/Hayman Close Their Short Position

188. Due to Defendants' very public raid, Nasdaq halted trading of UDF shares on the day of the raid thereby preventing Bass/Hayman from closing out their short position in UDF. As a result, Bass/Hayman had to continue to pay the borrowing costs associated with their short position and remained at risk for a price recovery of the share price of Plaintiff UDF IV's stock. During this period, Defendants continued to aid and abet Bass/Hayman's relentless unlawful scheme to depress Plaintiff UDF IV's stock price and destroy UDF's business so Bass/Hayman would profit.

189. On March 14, 2016, Hayman GC Kirkpatrick emailed Defendant Edson to falsely inform her that, with respect to Plaintiff Greenlaw's house, there "*appears* to be a traditional mortgage against this home from National City Bank of Indiana," which was demonstrably inaccurate. Defendant Edson replied within the hour, stating "Received. Thank you."

190. On May 11, 2016, Thompson & Knight and Price Waterhouse Coopers (PwC) presented the findings of their independent investigation of UDF commissioned by the UDF IV

Independent Trustees to Defendant Bunch, Defendant Edson, an FBI supervisor and an FBI accountant. Thompson & Knight and PwC presented Defendants with extensive evidence supporting the conclusions of the Independent Investigation namely:

- No evidence of fraud or misconduct by Plaintiffs;
- No evidence to substantiate Bass/Hayman's allegations that UDF operated a Ponzi scheme. The business model was reviewed in great detail. The classic Ponzi scheme elements, as described by the SEC and relevant case law, are not present;
- No evidence of deception, no evidence that Plaintiffs misled auditors, and no evidence Plaintiffs attempted to defraud investors; and
- Nothing that indicated any deficiency in Plaintiffs' integrity.

191. The sole question Defendant Edson asked at the May 11 meeting was an expression of her concern over whether Thompson & Knight had used "Kyle Bass" in its search terms. Defendant Bunch was singularly interested in whether UDF had made any progress retaining new auditors. Thompson & Knight responded that UDF needed the FBI to return its documents before UDF could proceed with its audit process. Defendant Bunch again refused to return any of the documents contained in over 700 boxes seized from UDF headquarters during the raid.

192. In another example of illicit coordination, later that very same day, Hayman Analyst Lewis emailed J. Kyle Bass that a colleague had informed him that "*a friend of his*" had mentioned that "PwC is engaged by the audit committee, but not necessarily to perform an audit – could just be to review financial controls or to do an internal review that is separate from an audit – we are trying to get more details." Bass replied, "[T]he fact that they have no auditor is a great sign and a deletion [from Nasdaq] will be a great thing for us."

193. On May 16, 2016, UDF counsel informed Defendant Bunch that UDF would issue a press release the next day announcing the findings of the Thompson & Knight and PwC independent investigation that were presented to the Defendants five days earlier. While

Defendant Bunch responded that he could not stop UDF from issuing the press release, he stated it was a “bad idea” and he threatened that the issuance of the UDF press release could result in Defendant Bunch adding “additional charges” to an indictment based on the press release. In other words, while Defendant Bunch authorized Bass/Hayman to publish anonymous statements about UDF that basic fact checking would prove were false—as demonstrated by the vetting done by Whitley Penn, Thompson & Knight, the *Wall Street Journal*, and *Street Watchdog Research*—Defendant Bunch actually threatened to charge Plaintiffs for simply releasing the results of an independent investigation that had been conducted by highly respected national firms that possessed significant subject matter expertise on the relevant accounting issues.

194. On August 10, 2016, J. Kyle Bass updated Defendant Edson in an email that he was traveling and confirmed that he had left her “a message on your office line earlier today. This call is a courtesy call to you in order to notify you of an upcoming release of our research on UDF.” Bass further bragged to Defendant Edson that UDF was “likely to face significant tax problems” due to Bass’ actions. Bass’ post was again riddled with false and misleading statements about Plaintiffs. Defendant Edson thanked Bass for the information and updated him on her investigative developments, confirming that she “was in Lubbock today.” She further related that she was “back now and will take a look at what you sent. Have a safe trip.” The next day, Defendant Edson emailed Bass, whom she now knew had profited by tens of millions by virtue of the FBI raid on UDF, stating “*Mr. Bass*, I just called your cell phone and then realized that it is still early in San Francisco. Sorry about that. You can reach me at 972-559-XXXX.” Upon information and belief, Defendant Edson was seeking to speak with Bass with respect to Preston Manor.

195. Defendant Edson’s presence in Lubbock, Texas, the location of a UDF financed project called “Preston Manor,” confirmed she was again “riding shotgun” with Bass, continuing to improperly aid and abet the Bass/Hayman “short and distort” scheme. Preston Manor became

the subject of Bass/Hayman's next false and misleading post about UDF, which Bass/Hayman posted later that month.

196. On August 12, 2016, Bass emailed *Seeking Alpha* contributor Brad Thomas attempting to get him to post and publish more false and misleading information about UDF. Bass informed Thomas, with apparent authority: "[I]t is our view that a number of people will be jailed before this is closed out." Bass, highlighting the close partnership that Bass/Hayman shared with Defendants throughout the scheme, then asked Thomas to contact "*Special Agent*" Parker Lewis who Bass claimed was "in charge of the [UDF] research." *Seeking Alpha* describes itself as "the world's largest investment community" where "millions of passionate investors connect daily to discover and share new investing ideas, discuss the latest news, debate the latest news and make informed investment decisions."

197. On August 30, 2016, J. Kyle Bass emailed Defendant Edson attaching another proposed false and misleading post for his "*UDFExposed.com*" website entitled "[T]he Precarious Preston Manor," the UDF financed project in Lubbock that Defendant Edson visited earlier that month. Bass informed Defendant Edson: "[W]e will be posting this additional piece sometime later this morning/afternoon. Parker [Hayman Analyst Lewis] began unfolding the events surrounding the recent sale of this property in Lubbock, Texas as soon as it was recorded." Minutes later, Defendant Edson responded to Bass, "Received." Bass then forwarded his email exchange with Defendant Edson to Hayman Analyst Lewis who asked Bass, "Green light to post?" Bass, having shared the demonstrably false and misleading post with Defendant Edson, responded, "Yes." Lewis then responded to Bass, "10-4, gave Edelman the go" and "We are live on website, will send link in a sec and email alert is about to [go] out."

198. On October 7, 2016, J. Kyle Bass emailed Defendant Edson another proposed false and misleading post on another UDF financed project "Alpha Ranch," and also informed Defendant Edson that he intended "to file an IRS Whistleblower suit on UDF next week where we

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intend to reference our assistance in educating both the SEC and the FBI on the issues in the case. Bass confided to Defendant Edson that the “filing will be kept secret (nonpublic) but I want to make sure there aren’t any objections *from your side* in including these references.” Subsequently, the IRS notified UDF that it was auditing UDF IV’s tax returns for 2015 and 2016.

199. On October 19, 2016, Plaintiff UDF IV shares commenced trading on the OTC grey market allowing Bass/Hayman to close out their short position realizing tens of millions in profits. Over the next two days, 8,222,687 shares traded between a high of \$2.50 and a low of \$1 destroying an additional \$67 million in shareholder value from innocent UDF investors. In total, Plaintiff UDF investors were harmed over *one-half billion dollars* by Defendants participation in the illegal “short and distort” scheme that ultimately netted Bass \$60 million.

**UDF Successfully Sues Bass/Hayman
But Defendants Ignore the Court’s Findings**

200. On November 28, 2017, UDF filed a lawsuit in the Dallas County Court against the Bass/Hayman alleging business disparagement, tortious interference with contract, tortious interference with business relationships and conspiracy.

201. On June 12, 2018, the Court, after allowing limited discovery, ruled that the UDF Plaintiffs had set forth a prima facie case and denied Bass/Hayman’s motion to dismiss the lawsuit under the Texas Citizens Participation Act.

202. On June 29, 2018, Bass/Hayman filed a notice of accelerated appeal.

203. On November 15, 2018, UDF filed its Appellate brief opposing the Defendants’ appeal and presented its oral argument to the Appeals Court on May 2, 2019.

204. On August 22, 2019, the Dallas Fifth District Court of Appeals, after reviewing over 2,000 pages of pleadings, affidavits and evidence, issued a 47-page decision favorable to UDF in the ongoing litigation against Bass/Hayman affirming the ruling of the Dallas County Court and held:

- “UDF’s pleadings and affidavits explain how and why Hayman’s statements were false” and “Illustrate and describe how and why Hayman made the false statements knowingly or recklessly, and chronicle the economic and business damages and losses UDF sustained as a direct result of Hayman’s false statements.”
- “This is not a case in which the plaintiff merely provided the “minimum quantum of evidence” necessary to satisfy its burden to state a prima facie case for its claims. *See In re Lipsky*, 460 S.W.3d 579, 590 (Tex. 2015). Rather, 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.”
- “Hayman’s initial anonymous posts on a website it created using a false name further indicate its state of mind. UDF offered sufficient evidence to support a fact finding 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 a huge profit to Hayman, which, in fact, is what happened.”
- “UDF adduced clear and specific evidence...that supports a rational inference 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; and Hayman deliberately distorted facts, omitted facts contrary to its ‘story’ and purposefully avoided discovering facts that might show the falsity of its accusations.”
- “We conclude that UDF met its burden under the TCPA to provide clear and specific evidence establishing that Hayman acted with actual malice and proximately caused UDF’s alleged damages and losses.”
- “Likewise, because we conclude UDF stated a prima facie case for its claims for business disparagement, tortious interference with contract, and tortious interference with business relationships, we conclude UDF satisfied its burden under the TCPA to provide clear and specific evidence establishing a prima facie case for its conspiracy claims.”

- “UDF backed up its damages claims with affidavits and documentary evidence.”

205. The Texas Supreme Court denied Bass/Hayman’s petition to review the ruling from the Texas Court of Appeals.

206. As well-trained and experienced Special Agents and Assistant U.S. Attorneys, Defendants understood at this point that there was insufficient evidence to rationally believe that the Plaintiffs had committed a crime and thus no basis to continue a criminal investigation of Plaintiffs other than to cover up their own unlawful behavior.

207. As well-trained and experienced Special Agents and Assistant U.S. Attorneys, Defendants understood, and had for some time known that there was sufficient evidence that Bass/Hayman had committed a crime. It is apparent that the sole and exclusive reason that Defendants have continued a criminal investigation of Plaintiffs and refuse to undertake a criminal investigation of Bass/Hayman was to conceal Defendants’ very active role in aiding and abetting the unlawful “short and distort” scheme.

Ongoing Unlawful Behavior By Defendants

208. On March 22, 2019, Plaintiffs’ counsel met at the U.S. Attorney’s Office with Defendant Bunch, Defendant Edson and other representatives of both the U.S. Attorney’s Office and FBI. Plaintiffs’ counsel presented an extensive 48-page slide presentation setting forth evidence demonstrating conclusively that Plaintiff UDF III had accurately disclosed the security for its loans, Plaintiff UDF III had properly disclosed management’s estimate of the collectability of its loan portfolio, Plaintiff UDF III had adequately disclosed management’s estimate of the collectability of the Buffington loan and that Plaintiff UDF III’s disclosures regarding refinancing transactions complied with federal securities laws, and that no fact supported criminal charges against Plaintiffs. Defendants did not ask a single question during or after the presentation.

209. At that meeting, Plaintiffs' counsel also presented an exhaustive 42-page slide presentation setting forth numerous acts of misconduct by Defendant Bunch, Defendant Klimek, and Defendant Edson. The presentation detailed Defendants' participation in the illegal "short and distort" scheme, including how: (a) Bass/Hayman's actions alone caused UDF investor losses, (b) Bass/Hayman traded on inside information provided by Defendants, (c) Bass/Hayman simultaneously promoted acquisition of distressed UDF assets based on their expectation of a government initiated UDF receivership/bankruptcy, (d) Bass/Hayman "set the hook" with the Government to get Defendants to join the scheme, (e) UDF notified the government that it was being used by Bass/Hayman to criminally harm UDF, (f) Defendant Klimek and Defendant Bunch each coordinated with Bass/Hayman on the posting of false and misleading anonymous letters to UDF auditors, and after, Bass directed his head trader to "Short as much UDF everyday as we can get a locate," (g) Defendant Klimek and Defendant Bunch each previewed and conferred with Bass/Hayman regarding the anonymous publication of false and misleading posts on the Harvest website on the evening *before* Bass/Hayman published the posts, (h) Plaintiff UDF IV investors lost \$237 million after the initial anonymous post, (i) Bass provided Defendant Edson with a secret access code to the embargoed Hayman website *UDFexposed.com* on January 29, 2016, *prior to its publication*, which contained false and misleading information regarding UDF, (j) Bass and Defendant Edson extensively communicated throughout January 2016, (k) Hayman launched the *UDFexposed.com* website in early February 2016 and executed a massive promotional push on February 5, 2016, containing the false and misleading information previewed and aided and abetted by Defendant Edson, (l) UDF IV investors lost another \$151 million after the Hayman publication of the *UDFexposed.com* website, (m) Defendant Bunch and Defendant Edson failed to inform and intentionally misled Judge Tolliver as the Defendants knew that [REDACTED]

[REDACTED]

[REDACTED] and (n) Bass/Hayman's

interactions with the Government simply cannot be divorced from the harm caused to Plaintiffs' and their investors.

210. As well-trained and experienced law enforcement personnel, Defendants understood that there was insufficient evidence that the Plaintiffs had committed a crime and thus insufficient basis to continue a criminal investigation of Plaintiffs.

211. Despite definitively knowing that there was insufficient basis to continue a criminal investigation of Plaintiffs, none of the Defendants took any action to terminate the criminal investigation or to correct these violations or mitigate the resulting harms.

212. Defendants knew that the Department of Justice expressly prohibits the DOJ and the FBI from initiating or instigating a plan or strategy to commit a federal or state offense, including aiding and abetting such offenses.

213. Defendants knew that federal law and regulations prohibit an employee of the United States from publishing, divulging, disclosing, or making known in any matter not authorized by law any information the employee gained in the course of his employment or official duties concerning or relating to processes, operations, or style of work.

214. Defendants also knew that the U.S. Office of Government Ethics (OGE) Standards for Ethical Conduct for Employees of the Executive Branch states, in relevant part: "An employee shall not. . . allow the improper use of nonpublic information to further his own private interest or *that of another*, whether through advice or recommendation, or by knowing unauthorized disclosure."

215. Defendants also have an obligation to self-report any violations of law or Department of Justice policy to the Office of Professional Responsibility.

216. On September 13, 2019, UDF counsel provided Defendant Bunch and his supervisors with a 38 page White Paper detailing that Plaintiffs had "exercised sound business judgment in making accounting and disclosure decisions." The White Paper exhaustively detailed

that Plaintiffs' judgments and processes were validated at the time by Plaintiffs' external auditor, and subsequently during a forensic analysis conducted by Ernst & Young ("EY"), an international Big-Four accounting firm. EY found that the processes used by the Plaintiffs to reach decisions were reasonable and reasonable under generally accepted accounting principles (GAAP). The White Paper also detailed that PricewaterhouseCoopers (PWC), another international Big-Four accounting firm, working with Thompson & Knight LLP, conducted a comprehensive independent investigation, finding no misconduct by Plaintiffs. Defendant Bunch offered no comments with respect to the White Paper.

217. Despite knowing that there was insufficient basis to continue a criminal investigation and continue the violations of Plaintiffs' due process rights, Defendant Bunch failed to take any action to terminate the criminal investigation or to correct these violations or mitigate the resulting harms, and in fact insisted on proceeding with the criminal investigation.

218. On October 22, 2019, Plaintiffs' counsel and Plaintiffs' accounting expert from EY, Jeff Ferguson, who is the Principal Partner in Forensic Investigations and Disputes, met at the U.S. Attorney's Office with Defendant Bunch, Defendant Edson, and their respective supervisors. Defendant Bunch had requested such a presentation. Plaintiffs' counsel addressed three issues that Defendant Bunch claimed were not addressed in the White Paper. Ferguson explained that EY had reached the conclusion that Plaintiffs' determinations with respect to its loan portfolio were correct and reasonable, and that UDF's auditors agreed with management's decision. Ferguson also informed the Defendants that he has been doing fraud investigations over the past 20 years for both federal prosecutors and for defense counsel. He stated that he has been working on the UDF matter over the past three years and one thing that has struck him has been that Plaintiffs' transparency has been "astounding." Ferguson stated that when he looked at how UDF was run, including the transparency, the support, and the third-party review, UDF certainly is not a fraud. UDF counsel also explained the work of the independent investigation of UDF conducted by the

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law firm of Thompson & Knight and PwC who were provided unfettered access to UDF records and employees and no limitations were placed on the scope or depth of their inquiry. UDF counsel explained that the investigation did not identify any fraud or misdeeds by Plaintiffs. During the presentation, Defendant Bunch did not take a single note, and when asked by UDF counsel if the issues identified by Defendant Bunch were adequately addressed, Defendant Bunch replied that counsel “had attempted to” but asked no questions and provided no further comments.

219. As well-trained and experienced law enforcement personnel, Defendant Bunch and Defendant Edson understood again that there was insufficient evidence that the Plaintiffs had committed any crime and thus had no basis to continue a criminal investigation and continue the violations of Plaintiffs’ constitutional rights. Despite knowing that there was no basis to continue a criminal investigation of Plaintiffs, the Defendants took no action to terminate the criminal investigation or to correct these violations or mitigate the resulting harms.

DAMAGES

220. As a direct and proximate result of Defendants unlawful actions, including their participation in the Bass/Hayman scheme and their unlawful procurement of a search warrant and subsequent raid, Plaintiffs suffered and continue to suffer substantial injuries and damages, including but not limited to:

- a. loss of business;
- b. loss of income, including individual Plaintiffs being terminated and refused as clients of brokers denying them access to hold publicly traded securities in their retirement and personal accounts because of their “client risk profile” having been raided by the FBI;
- c. loss of asset value and future income associated with lost assets as a result from the Defendants’ actions, including, without limitation, the sale of homes, and office buildings
- d. loss of future income and opportunities;
- e. loss of personal and business reputation and associated opportunities;

- f. loss of access to current and future capital, including both equity and credit;
- g. loss of portfolio value;
- h. the cost of increased insurance premiums and loss of insurance coverage;
- i. costs associated with hiring third parties to respond to the fallout from Defendants' actions, including among other costs, public relations firms and attorneys to assist in responding to the media; attorneys to issue cease-and-desist letters to title companies repeating false accusations; law firms to defend Plaintiffs in class actions and derivative lawsuits filed based on the Bass/Hayman false and misleading postings and the unlawful and widely publicized, public FBI raid of UDF on February 18, 2016; law firms to defend Plaintiffs in government investigations conducted by the SEC and DOJ; laws firms to defend Plaintiffs in connection with the Nasdaq delisting and the SEC 12(j) proceeding; the law firm to conduct the independent investigation and the global accounting firm to assist with the independent investigation; another global accounting firm to conduct a forensic analysis of Plaintiffs accounting; a national accounting consultant to review asset valuations; legal fees submitted by banks for the research done to confirm their collateral in response to the Bass/Hayman false and misleading postings and the unlawful and widely publicized public FBI raid of UDF on February 18, 2016;
- j. disgorgement and fines; and
- k. severe emotional distress intentionally inflicted upon the individual Plaintiffs and their families, many with young children dwelling in a community viewing internet stories and pictures of approximately 100 FBI agents dressed in raid gear storming UDF's headquarters and loading documents into rented Penske trucks backed up to the doors of UDF's office building.

221. UDF's primary source of revenue and therefore profits is the interest earned on loans to its borrowers. UDF has two primary sources of capital to make these loans: bank credit facilities and investor equity. UDF uses this capital to issue loans to real estate developers in various stages of development. If UDF's current sources of capital are withdrawn, it loses the

ability to earn money and preserve asset value on these existing loans. In addition, if UDF cannot raise new capital, it loses its ability to continue to expand its business (and therefore increase its profits) through new loans to developers.

222. Defendants' actions including their participation in, aiding and abetting, and facilitation of the Bass/Hayman scheme, harmed UDF's access to capital in multiple ways. The Defendants' participation in the Bass/Hayman "short and distort" scheme directly contributed to the success of such scheme, which scheme caused significant harm to UDF. Plaintiffs terminated a planned debt offering of \$125 million and a finished lot securitization of \$100 million. Plaintiffs additionally lost all costs and fees expended on those transactions. Plaintiffs banks and other lenders reduced or eliminated Plaintiffs' current and future credit, accelerated payments on existing loans and otherwise provide less capital and/or favorable terms to Plaintiffs. The Defendants' actions also caused Plaintiffs to lose access to other credit markets. In addition, Plaintiffs' investors lost over \$530 million.

223. UDF's second source of capital to lend is investor equity. Defendants' actions also caused Plaintiffs to lose current and future investors. This was one of the stated intentions of the Bass/Hayman unlawful scheme participated in and facilitated by the Defendants. Bass admits that he intended to stop investors from investing a billion dollars in UDF and claimed to have accomplished that. The "next billion" in investor funds that Bass credits himself with stopping came from two separate capital-raising vehicles.

224. The UDF family of funds had previously successfully raised over \$1.2 billion in investor capital between 2003 and December 2015. At the time of the Defendants' actions that aided and abetted the Bass/Hayman scheme, UDF was continuing its growth through two investor funding vehicles. These two capital raises, described below, would have brought over \$1 billion in new capital to UDF. UDF planned to use this new capital to lend additional money to its

borrowers on projects that were far along in UDF's pipeline and lend on new projects with new borrowers in markets outside of Texas.

225. UDF V sought to sell 37,500,000 shares of beneficial interest for \$20.00 per share and 13,157,895 shares of beneficial interest for \$19 per share for total offering proceeds of \$1,000,000,000. Because of the Bass/Hayman scheme, including Defendants' actions against UDF in aiding and abetting the Bass/Hayman scheme, UDF V could only sell 2,952,526 shares, for total proceeds of \$58,758,097. Sales halted almost immediately after the Bass/Hayman attack and the FBI raid. UDF V terminated the offering on March 4, 2016 as the FBI raid was the final nail in the UDF coffin. Plaintiffs additionally lost unreimbursed costs and fees associated with this offering.

226. UDF IV sought to raise up to \$125,000,000 through a five-year fixed rate senior secured term loan that UDF IV was on the verge of marketing in late 2015. UDF IV planned to use the vast majority of this money to lend to additional projects and earn profits on the interest spread.

227. Per the draft/proposed offering documents, "UDF IV ha[d] a robust, high-quality backlog of potential loans in Texas, Florida and the Carolinas, and has proven its ability to deploy capital quickly and effectively." As the draft/proposed offering documents showed, UDF IV had consistently grown at a steady rate.

228. Had UDF IV raised and deployed these funds at the anticipated pricing, it would have made a profit on the interest spread. This would have increased its profits by at least \$17.5M per year. The proposed loan term was five years.

229. The Bass/Hayman scheme, including Defendants' actions in aiding and abetting the scheme and their unlawful raid of UDF, caused UDF IV to be unable to proceed with this fundraising.

230. The Bass/Hayman scheme, including Defendants' actions in aiding and abetting the scheme, also caused UDF's existing borrowers, including but not limited to Centurion, Buffington, Straub Development Partners, David Weekley, and True Homes, to reduce their existing and future business with Plaintiffs.

231. Defendants' actions in aiding and abetting the Bass/Hayman scheme caused Plaintiffs to forego its warrant to purchase a share of homebuilding company Scott Felder.

232. Defendants' actions in aiding and abetting the Bass/Hayman scheme and their unlawful raid of UDF also were a substantial factor in causing banks to cease lending to homebuilding company Scott Felder, in which Plaintiffs' owned an equity interest, which resulted in a forced sale of Scott Felder and the loss of asset value, loss of income, and loss of future asset value and income. Plaintiffs' were also forced to sell the Dallas Scott Felder Homes and abandon identified future homebuilding market expansion and growth.

233. The Bass/Hayman scheme and Defendants' actions in aiding and abetting that scheme caused Plaintiffs to lose new clients (borrowers) that would have become clients of UDF if Defendants had not done the illegal actions alleged herein.

234. These injuries and damages were a directly foreseeable result of the intentional, bad faith, willful, wanton, reckless, and deliberately indifferent acts and omissions of Defendants.

PUNITIVE DAMAGES

235. Defendants' misconduct, as alleged above, demonstrates their actions to be motivated by evil intent and undertaken with reckless and callous indifference toward Plaintiffs' constitutional rights. Among other things alleged above, Defendants' knowing participation in the Bass/Hayman scheme, deliberate procurement of an unlawful search warrant, and execution of the subsequent raid evidence Defendants' malice, intent, and subjective consciousness of a risk of injury and illegality to Plaintiffs, and a criminal indifference to Defendants' civil obligations. As a result, Plaintiffs are entitled to recover punitive damages from Defendants.

PLAINTIFFS' CLAIMS

FIRST CLAIM FOR RELIEF

**Fifth Amendment Claim for Violation of Plaintiffs' Fifth Amendment Rights
Against Defendants Bunch, Klimek, and Edson**

236. Plaintiffs hereby incorporate by reference all of the foregoing paragraphs and further allege as follows:

237. Defendants Bunch, Klimek, and Edson, acting individually and in concert, through gross misconduct, deliberately aided and abetted Bass/Hayman's unlawful scheme to profit from UDF's and Plaintiffs' foreseeable financial demise by: (1) while knowing that Bass/Hayman was shorting UDF IV stock, continuing to enlist the assistance of Bass/Hayman in the investigation of UDF thereby providing opportunities for Bass/Hayman to further damage Plaintiffs; (2) providing Bass/Hayman material nonpublic information about UDF knowing that Bass/Hayman was shorting UDF IV stock; (3) aiding and abetting Bass/Hayman's false and misleading "distort" campaign against UDF; (4) providing false and misleading information in a search warrant affidavit; (5) withholding material exculpatory information from a search warrant affidavit; (6) seeking a search warrant for UDF's corporate headquarters where no exigent circumstances existed simply to generate negative media against UDF to destroy UDF IV's share price, (5) improperly intimidating and interfering with UDF's independent auditor, Whitley Penn, by preventing Whitley Penn from communicating material information to Plaintiffs, causing Whitley Penn to not stand for reappointment, or delay the conduct of their audits, and to try to cause them to withdraw their audit opinions to facilitate the achievement of Bass/Hayman's goal of benefitting by damaging Plaintiffs' economic interests, and (6) actively concealing their role in the unlawful short and distort scheme to prevent Plaintiffs from discovering the damage that Defendants' unlawful, tortious conduct had inflicted on Plaintiffs.

238. The misconduct of Defendants Bunch, Klimek, and Edson deprived the Plaintiffs of their clearly established constitutional rights under the Fifth Amendment of the United States Constitution not to be deprived of liberty or property as the result of improper and unlawful acts of government officials acting under color of federal law.

239. Defendants Edson and Bunch performed the improper and illegal acts described above in their investigative capacities as FBI agents. Defendant Bunch performed the improper and illegal acts described above as part of his investigative functions as an Assistant United States Attorney, not as an advocate in any judicial proceeding. At all relevant times, no reasonable investigator or prosecutor would have believed the conduct described above was lawful and any FBI agent and federal prosecutor working on white collar crime units, like the Defendants, should know that short sellers use illegal “short and distort” schemes like the scheme executed by Bass/Hayman here.

240. At the time of the above-described improper and unlawful conduct, these Defendants fully understood the detrimental impact their actions would have on Plaintiffs’ current and future business opportunities in the financial services industry.

241. At the time of the above-described improper and unlawful conduct, Defendants fully understood that their conduct would subject Plaintiffs to substantial harm to their business reputations as well as their present and future ability to seek and obtain financial services business and gainful employment in the industry. This harm was known to be particularly significant for financial service businesses and professionals as this industry is predicated upon maintaining a good reputation.

242. At the time of the above-described improper and unlawful conduct, Defendants fully understood that their conduct and the stigma it provoked would continue to subject Plaintiffs to a false stigma which would close access to capital markets and credit facilities necessary for the success of Plaintiffs’ business enterprise and economic future.

243. At the time of the above-described improper and unlawful conduct, Defendants fully understood that their shocking behavior would cause Plaintiffs, whom Defendants knew by reputation to be honorable law-abiding citizens of Texas and the United States, to suffer and continue to suffer severe emotional distress.

SECOND CLAIM FOR RELIEF

Fourth Amendment Claim: Violating Plaintiffs' Right to be Free From Unreasonable Searches and Seizures Against Defendants Bunch, Klimek, and Edson

244. Plaintiffs hereby incorporate by reference all of the foregoing paragraphs and further allege as follows:

245. Defendants Bunch, Klimek, and Edson, acting individually and in concert, through gross misconduct and with reckless disregard to the truth, caused an illegal and unconstitutional search of Plaintiffs' business offices, files, records, personal effects, personal and business electronic devices and records without probable cause, thereby violating Plaintiffs' clearly established rights under the Fourth Amendment of the United States Constitution to be free from unreasonable searches and seizures conducted by government officials acting under color of federal law.

246. Although the search of Plaintiffs' business and personal records and effects was conducted pursuant to a warrant issued by a U.S. Magistrate Judge sitting in the Northern District of Texas, as Defendants knew, the affidavit supporting the warrant wantonly and falsely, through purposeful omissions, fabrications and direct misrepresentations by Defendants, misled the U.S. Magistrate Judge to create a false illusion of the purported existence of probable cause that a crime had been committed and Plaintiffs' business offices would be a likely repository of evidence of such crime. Without the false and misleading information and the omission of material exculpatory facts, there was no basis for Defendants to obtain probable cause to search UDF's corporate headquarters in Grapevine, Texas.

247. Defendants' false statements and material omissions include: (1) actively concealing [REDACTED] (2) [REDACTED] (3) [REDACTED] (4) [REDACTED] (5) [REDACTED] (6) [REDACTED] (7) [REDACTED] (8) [REDACTED] (9) [REDACTED]

248. On information and belief Defendants Bunch, Klimek, and Edson conducted the unlawful and unconstitutional search on February 18, 2016, rather than issuing a subpoena, not due to any expressed or known urgency or exigency due to the potential spoliation of evidence, but principally in coordination with Bass/Hayman's unlawful scheme to financially paralyze and ruin Plaintiffs and others through a public search that would be widely covered by local and national news media outlets .

249. Defendants Bunch, Klimek, and Edson specifically crafted the unlawful search to be overly broad to prevent Plaintiffs from continuing their business and inflict maximum financial damage and injury to Plaintiffs and others. That damage would include a catastrophic bankruptcy

event where Bass/Hayman would benefit financially from their illegal “short and distort” and insider trading scheme and then subsequently poach the valuable real estate development assets that had secured UDF’s loans.

250. By securing judicial approval of the search warrant based on false statements, misrepresentations, fabrications and omissions; conducting a search without probable cause; and publicly conducting an unlawful, unwarranted and unconstitutional and overly broad search devoid of probable cause, Defendants Bunch, Klimek, and Edson, directly and proximately caused the Plaintiffs’ injuries, including the loss of current and future business and the value and income associated with such business.

251. Defendants Edson and Bunch performed the improper and illegal acts described above in their investigative capacities as FBI agents. Defendant Bunch performed the improper and illegal acts described above as part of his investigative functions as an Assistant United States Attorney, not as an advocate in any judicial proceeding. At all relevant times, no reasonable investigator or prosecutor would have believed the conduct described above was lawful.

252. At the time of the above-described improper and unlawful conduct, Defendants fully understood the detrimental impact their actions would have on Plaintiffs’ current and future business opportunities in the financial services industry.

253. At the time of the above-described improper and unlawful conduct, Defendants fully understood that their conduct would subject Plaintiffs to substantial harm to their business reputations as well as their present and future ability to seek and obtain financial services business and gainful employment in the industry. This harm was known to be particularly significant for financial service businesses and professionals as this industry is predicated upon maintaining a good reputation.

254. At the time of the above-described improper and unlawful conduct, these Defendants fully understood that their conduct and the stigma it provoked would continue to

subject Plaintiffs to a false stigma which would close access to capital markets and credit facilities necessary for the success of Plaintiffs business enterprise and economic future.

255. At the time of the above-described improper and unlawful conduct, Defendants fully understood that their shocking behavior would cause Plaintiffs, whom Defendants knew by reputation to be honorable law-abiding citizens of Texas and the United States, to suffer and continue to suffer severe emotional distress.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial of all issues triable by jury in this action.

WHEREFORE, Plaintiffs pray as follows:

- a. For a trial by jury on all issues and claims in this Complaint;
- b. That the Court award compensatory damages to Plaintiffs and against the Defendants;
- c. That the Court award punitive damages to Plaintiffs and against the Defendants, jointly and severally, in an amount to be determined at trial;
- d. For pre-judgment and post-judgment interest and recovery of costs; and
- e. For any and all other relief to which Plaintiffs may be entitled.

DATED this 13th day of April, 2020.

Respectfully submitted,

/s/ Paul E. Pelletier

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CERTIFICATE THAT MOTION TO SEAL HAS BEEN FILED

Pursuant to LR 5(a)(7)(B), counsel for Plaintiffs hereby certifies that a motion to seal this document has been filed.

/s/ Stewart H. Thomas
Stewart H. Thomas