

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

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UNITED DEVELOPMENT FUNDING IV,
a Real Estate Investment Trust,

2021L008709

Plaintiff,

CASE NO.: _____

v.

DANIEL J. EDELMAN, INC., and
JEFFREY ZILKA, an individual,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff United Development Funding IV, for its Complaint and Demand for Jury Trial against Defendants Daniel J. Edelman, Inc. and Jeffrey Zilka, states as follows:

1. Using their promotional public relations expertise, Defendants, as agents of and in active participation with a notorious short-seller and his struggling hedge fund, engaged in a continuous, concerted unlawful scheme to decimate Plaintiff's business by falsely portraying it as a Ponzi-scheme. The expressly stated objective was to destroy Plaintiff's existing and prospective business relationships with borrowers, real estate developers, home builders, banks, lenders, investors, title companies and other market participants Plaintiff depended on, as well as auditors, and to prompt regulatory scrutiny. Defendants' strategy employed a steady flow of cumulative and evolving lies, misrepresentations, innuendo, threats, counterattacks against Plaintiff's efforts to defend itself, and gross mischaracterizations about Plaintiff's business. In fact, what Defendants misleadingly claimed was the purported "evidence" of this Ponzi scheme was nothing more

than the circumstances created by the illegal short-and-distort attack Defendants themselves promoted as part of their smear campaign.

2. Had Defendants and their hedge-fund client actually believed that Plaintiff was a Ponzi-scheme, they would have welcomed a certified audit of Plaintiff's books and records. Instead, they did the opposite. Defendants used lies, threats, and intimidation to drive every qualified auditor away and frustrate any engaged auditors, ensuring no certified audit of Plaintiff's business could ever be completed. The truth was Defendants' foe. The truth would have revealed a legitimate business with growing profits. Defendants intended to and effectively did make it impossible for Plaintiff to obtain necessary certified financial reports needed to comply with Nasdaq's deadline to file 10-K and 10-Q reports. That forced Plaintiff to be delisted from Nasdaq and enabled Defendants' hedge-fund client to make a more than \$50 million profit on the unlawful scheme—exactly as Defendants intended.

3. Defendants created, edited, promoted, and publicized scandalous, negative, and false statements about Plaintiff through targeted digital media attacks, dark posts, and other tricks of the trade known to and developed by Edelman, through at least October 12, 2016. The injuries from those statements continue to this day, as Defendants have succeeded in making Plaintiff so radioactive to prospective auditors and its then-engaged auditor, EisnerAmper, through the cumulation of recursive lies and false attacks that Plaintiff has still been unable to provide audited financial reports. Plaintiff has therefore remained delisted and unable to repair the damage done to its relationships with borrowers, real estate developers, home builders, banks, lenders, investors, title

companies, and other market participants. The result has been devastating to Plaintiff and highly profitable for Defendants' clients. This suit follows.

Parties

A. Plaintiff

4. Plaintiff United Development Funding IV ("**Plaintiff**" or "**UDF IV**") is a real estate investment trust ("**REIT**") created in 2008. Plaintiff's business primarily involves making secured loans for the acquisition and the development of real property into single-family residential lots, multi-phase master planned communities, finished lots, and single-family homes.

5. Plaintiff is part of a family of funds founded in 2003 (the "**UDF Family of Funds**") to provide investors the opportunity to invest in the financing of affordable residential real estate. For over a decade, the UDF Family of Funds enjoyed steady growth and provided consistent returns to investors.

6. Before the illegal predatory short-and-distort scheme described herein, the UDF Family of Funds earned a stellar reputation for originating and participating in real estate financing structures for residential land acquisition, development, and homebuilding and delivering value to its clients and its investors. By working with the most reputable developers, using extensive market research and analysis to identify target markets with strong local economies and sustainable growth, and returning significant cash to investors, the UDF Family of Funds' equity capital grew in value to approximately \$1.2 billion.

7. Plaintiff generates income primarily from interest income on its lending and investment portfolio, which is generally secured by residential real estate assets. Plaintiff

grew its lending and investment portfolio as it raised capital from investors and as it added low-cost bank leverage to its balance sheet.

8. By December 2014, Plaintiff had originated or purchased 171 loans totaling over \$1 billion. Forty of those loans had been repaid in full by December 31, 2014. Plaintiff's assets, consisting largely of receivables from loans and interest, consistently grew in value from \$336.5 million in 2012, to \$570.9 million in 2013, and to \$682.2 million in 2014. During that same time, its income grew from \$27.6 million to \$87.9 million. From its inception through September 2015, Plaintiff distributed approximately \$164 million to its investors, and repurchased \$41 million of its shares.

9. On June 4, 2014, to create additional liquidity for its shareholders and to access capital markets necessary to facilitate financing for future growth, Plaintiff listed its common shares on Nasdaq under the ticker symbol "UDF."

10. Until December 10, 2015, Plaintiff had been a consistently performing commercial REIT, with its shares trading in a range of \$16.02 to \$19.95.

11. In June 2015, due to Plaintiff's market capitalization, it was added to the Russell 2000 Index. That is where the well-earned success story of Plaintiff's business ends. The nefarious phase of the story, deeply damaging to Plaintiff and its investors, came next.

B. Defendants

12. Defendant Daniel J. Edelman, Inc. ("**Edelman**") is a citizen of Illinois with its principal place of business located in Chicago, Illinois. Edelman is a global public relations firm.

13. Defendant Jeff Zilka is an individual and was, at all times relevant hereto, a citizen of Illinois and a resident of Cook County, Illinois.

14. Mr. Zilka was, at all times relevant hereto, employed by Edelman as Executive Vice President and General Manager at its Chicago, Illinois office located at 200 E Randolph St., Suite 6300, Chicago, Illinois 60601 (the “**Chicago Office**”). At all relevant times, Mr. Zilka acted within the scope of his duties and responsibilities as an employee of Edelman.

15. The acts committed by Edelman and Mr. Zilka in furtherance of the unlawful scheme originated in, were carried out in, or were substantially directed or managed from, Chicago, Illinois.

16. At all times relevant hereto, Defendants acted as agents of Hayman Capital Management, L.P., a hedge fund primarily in the business of short-selling, and its infamous founder J. Kyle Bass.

Jurisdiction and Venue

17. This is an action for damages in excess of \$30,000, exclusive of interest, costs, attorneys’ fees, and is within the jurisdiction of this Court.

18. Pursuant to 735 ILCS 5/2-209(a)(2), this Court has jurisdiction over Defendants because, as described herein, they committed tortious acts within Illinois. In addition, pursuant to 735 ILCS 5/2-209(b)(2), this Court has jurisdiction over Mr. Zilka because he resided in Illinois when the causes of action arose. Moreover, pursuant to 735 ILCS 5/2-209(b)(4), this Court has jurisdiction over Edelman because its principal place of business is located in Chicago, Illinois, and, therefore, its contacts with Illinois are

so continuous and systematic that Illinois is essentially its home state. Furthermore, this Court has jurisdiction over Defendants under 735 ILCS 5/2-209(c) because Defendants' tortious conduct and connections with Illinois are such that it is and was reasonably foreseeable that they would be haled into court in Illinois.

19. Venue is proper in this Court pursuant to 735 ILCS 5/2-101(2) because Cook County, Illinois is where the causes of action alleged herein arose. In addition, venue is proper in this Court under 735 ILCS 5/2-102(a) because Edelman is authorized to transact business in Illinois and has registered offices or does business in Cook County, Illinois.

General Allegations

A. Edelman's background.

20. Edelman boasts that it and its employees adhere to the highest standards of accuracy and truth, refrain from intentionally disseminating misleading information or omitting critical details, are transparent in identifying client organization(s) and interests, conduct appropriate due diligence prior to releasing client-supplied information to the public, and deal fairly with all parties.¹ But these claims are just Edelman being Edelman, attempting to create a positive public image for a company whose actual business is much more sinister.

¹ See, e.g., <https://www.djeholdings.com/sites/g/files/aatuss516/files/2020-11/Code%20of%20Conduct.pdf>.

21. As has been publicly reported, Edelman is “an organization that has consistently been caught using some of the most deceitful methods known in fighting against actual truth.”²

22. For example, Edelman wrote the tobacco industry’s playbook for countering public health reports and initiatives on the dangers of smoking by, among other things, convincing “the public that there is a real possibility that additional research can produce entirely new insights on health and smoking”³ and associating “our smokers with civility, elegance, style, class, and intellectual responsibility. . . .”⁴

23. Moreover, in representing the tobacco and oil industries, Edelman was “an early proponent and practitioner of ‘astroturfing’: creating fake grassroots groups, with their funding by industry obscured, to counter real environmental and public health activism.”⁵

24. Similarly, when Walmart faced criticism over its employment policies, Edelman created a fake folksy blog called Wal-Marting Across America featuring “a couple known only as Jim and Laura as they drove cross country in an RV, and included regular

² Vedmore, Johnny, *Edelman PR and the Manufacturing of “Trust”*, available at <https://unlimitedhangout.com/2021/06/investigative-reports/edelman-pr-and-the-manufacturing-of-trust-1/>, June 17, 2021.

³ Edelman, Daniel J., *A Proposal for R.J. Reynolds Industries, Inc.*, available at <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=rqfl0104>, August 12, 1977.

⁴ Edelman, Daniel J., *Taking The Initiative On The Smoking Issue – A Total Program*, available at <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=mybm0104>, February 3, 1978.

⁵ Westervelt, Amy, *How Astroturfing Made Its Way From Tobacco To Oil*, available at <https://drillednews.com/how-astroturfing-made-its-way-from-tobacco-to-oil/>, January 28, 2020.

interviews with Walmart workers, who were dependably happy about the company and their working conditions.”⁶ When it was discovered that the couple were being paid by a Walmart backed organization set up to promote a positive portrayal of the company, Richard Edelman, Edelman’s chief executive officer, was forced to apologize, stating: “I want to acknowledge our error in failing to be transparent about the identity of the two bloggers from the outset. This is 100% our responsibility and our error; not the client’s.”⁷

25. In addition, while Edelman has publicly pledged to never work with climate deniers, in 2019 it “accepted more than \$4 million from the American Fuel and Petrochemical Manufacturers, a major US oil trade organization that even Shell and BP had recently dumped for its aggressive opposition to popular climate solutions.”⁸

26. And, immediately prior to its malicious attacks against Plaintiff, Edelman assisted billionaire hedge fund manager Bill Ackman in trying to destroy a company called Herbalife with false claims that Herbalife was an illegal pyramid scheme.⁹

⁶ Gogoi, Pallavi, *Wal-Mart vs. the blogosphere*, available at <https://www.nbcnews.com/id/wbna15319926>, October 18, 2006.

⁷ *Edelman apologizes over Wal-Mart blog*, available at <https://www.theguardian.com/media/2006/oct/17/marketingandpr.newmedia>, October 17, 2006.

⁸ Hirji, Zahra, *A Large PR Firm Pledged to Fight Climate Change. Then It Took Millions From A Notorious Fossil Fuel Trade Group*, available at <https://www.buzzfeednews.com/article/zahrahirji/edelman-fossil-fuel-pr-climate>, March 12, 2021.

⁹ Hazley, Greg, *Big PR Guns in Herbalife ‘War’*, available at <https://www.odwyerpr.com/blog/index.php/?archives/5677-big-pr-guns-herbalife-war.html>, January 16, 2013.

27. Edelman's experience in orchestrating deceptive and immoral public relations campaigns made Defendants the perfect partners for Hayman Capital Management, L.P. ("**Hayman**"), a hedge fund primarily in the business of short-selling.

B. Hayman retains Edelman to promote a meritless short attack against Plaintiff.

28. Short-sellers bet that a company's stock price will decline. In the typical scenario, a short-seller borrows shares of a company, normally from a broker or investor, with the agreement to return the shares by a certain date, and then sells the borrowed shares in the market. If the company's share price falls, the short-seller buys the same number of shares back at a lower price and returns the shares to the lender, making a profit on the difference after carrying costs. If, however, the company's share price increases, the short-seller must buy the shares back at a higher price than what the short-seller sold the shares for, therefore losing money on the investment.

29. Hayman retained Edelman as a "paid promoter" in or about December 2015 to facilitate, together with Hayman and its founder, infamous short-seller J. Kyle Bass, as well as other Hayman-affiliated entities, an illegal predatory "short-and-distort" scheme targeting Plaintiff. In this illegal scheme, the short-sellers, Hayman and Mr. Bass here, take a short position in a stock like UDF, and then launch a fact-free, false, and misleading media campaign intending that investors would 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 its unlawful investment and pockets the unlawful gains.

30. Defendants knew that the majority of Plaintiff's portfolio was capital committed to financing land acquisition and development, and that the abrupt and wholesale reduction in capital by Plaintiff's lenders in reaction to the illegal short-and-distort scheme would create liquidity issues for Plaintiff. This made Plaintiff the perfect target for the illegal short-and-distort scheme because "[w]hen the stock of a financial institution is shorted aggressively, leverage constraints imposed by short-term creditors can force the institution to liquidate long-term investments at fire sale prices."¹⁰

31. Mr. Zilka and the Chicago Office developed, managed, and directed media and social media campaigns to further the illegal scheme by disseminating scandalous, negative, and false information regarding Plaintiff. A list provided by Edelman to Hayman of Edelman employees involved in the scheme identifies Mr. Zilka first and lists both Mr. Zilka and Justin Frakes, an account supervisor at the Chicago Office, as two of five members on the "Core Team."

32. Edelman and Mr. Zilka knew that Hayman and Mr. Bass were in a financially precarious position that largely depended upon the success of the unlawful short and distort campaign for survival. Mr. Zilka instructed his colleagues that Edelman's reputation was inextricably tied to Hayman and Mr. Bass's success and so everyone working on the matter needed to be "all-in."

33. Defendants identified the objectives of the unlawful scheme at the outset in a PowerPoint presentation delivered to Hayman. The "Communications Objective,"

¹⁰ Markus K. Brunnermeier & Martin Ohemke, *Predatory Short Selling* (Nat'l Bureau of Econ. Research, Working Paper No. 19514, 2013).

Defendants stated, was to promote “Kyle Bass’ latest short” and reveal the supposed “business at the heart of a Texas based billion-dollar Ponzi-like real estate scheme.”

34. This “Objective” was intended to lend supposed legitimacy and credibility to a series of anonymous and inflammatory blog posts Mr. Bass had made falsely accusing Plaintiff of being a “Ponzi scheme.” The blog posts appeared under such pernicious titles as, “A Texas-Sized Scheme Exposing the Darkest Corner of the REIT Business, United Development Funding (UDF),” and claimed that Plaintiff’s business practices were “sinister.” The anonymous blog posts claimed Plaintiff’s retail investors were “gullible” “victims,” and accused Plaintiff’s largest group of borrower entities, Centurion American Development Group (“**Centurion**”), of having conflicts with Plaintiff’s executives and officers and of supposedly being in on the Ponzi-scheme, as Plaintiff and Centurion were not actually developing property. Defendants undertook to publicize these false statements, and statements like them, under Mr. Bass’s real name, as if these were facts he had supposedly uncovered.

35. In fact, Defendants knew they were all lies. Indeed, as Defendants presented the “Business Objectives” to Hayman and Mr. Bass, the unlawful scheme had three goals: to “(1) Drive [Plaintiff’s] stock to zero;” “(2) push regulatory bodies (SEC, FBI) to act;” and “(3) prevent UDF from retaining [an] auditor prior to March 1 earnings report.”

36. Defendants’ stated “Strategy” involved “educating the media” through purported “Hayman Capital research”—consisting of the false blog posts, fact-free speculation, and misrepresentations about development projects—to “reveal [the] story

behind [the] short,” thereby “inciting public interest and supporting Federal and regulatory investigation[s].”

37. Defendants planned a multi-pronged publicity campaign around these goals and strategies that included the creation of the website, UDFEXPOSED.COM, a targeted “media blitz,” paid “content promotion via Twitter and Google AdWords and follower acquisition,” and support by “daily content postings” on the website, all designed to tout and reinforce a false story.

38. What followed was an extensive execution of Defendants’ strategy, continuing through to at least October 12, 2016, of multi-pronged, “daily” attacks against Plaintiff to instill a series of lies that Plaintiff was a supposed Ponzi-scheme.

C. Defendants create and design UDFEXPOSED.COM to promote and multiply lies against Plaintiff.

39. On January 8, 2016, Hayman purchased the right to the domain name www.udfexposed.com, for a website Defendants were designing in furtherance of the unlawful scheme. On or about February 4, 2016, the new website “UDFEXPOSED.COM” launched.

40. Consistent with Defendants’ plan to promote Mr. Bass’s previously anonymous false attacks, Defendants designed the professional-looking website to promote that it was published in the name of “Hayman Capital Management LP,” with a picture of Kyle Bass displayed prominently on the home page.

41. Defendants designed the website to appear to contain an in-depth analysis of UDF’s business, accounting and other core matters, and the heart of the website is that UDF is being “exposed” as a worthless business that was fraudulently operated and that

investors face a total loss of their investment. UDF is falsely referred to as a “Billion Dollar House of Cards.” The import of this false assertion is further amplified by the name of the website displayed in huge font just above—“UDF Exposed”—with the word “exposed” in red and italics to emphasize that a house of cards is being exposed. The entire bottom of the front-page states in huge font: “UDF’s controversial practices are being revealed by defaults, bankruptcies, lawsuits and resignations.”

42. The website features as its first tab after the Homepage a “LETTER FROM KYLE BASS,” edited and formatted in whole or in part by Defendants, which purports to highlight Mr. Bass’ “research” that he falsely claims shows Plaintiff is a “Ponzi scheme, the size and scope of which exceeded a billion dollars.” The letter falsely stated that the UDF funds were “using new investor money to pay existing investors” of other UDF funds, stating that this fit with the SEC’s definition of a Ponzi scheme. The letter also falsely claimed Plaintiff was supposedly “preying on Mom and Pop’ investors,” and that Plaintiff faced “significant bankruptcy risk, which would render its shares virtually worthless.” The letter touted the “research on this website,” which purportedly “exposes how a Texas real estate developer built a billion dollar house of cards and why it is now on the verge of collapse.”

43. These statements were all false. Plaintiff’s business was never an investment fraud, never based its distributions to investors on fictitious returns, and was never a house of cards or Ponzi scheme. Nor was it true that Plaintiff faced “significant bankruptcy risk” that threatened to render Plaintiff’s shares “virtually worthless.” Plaintiff’s shares represented a share of its collateralized, income generating loans so that, even in a

hypothetical liquidation of assets, Plaintiff would generate substantial distributions to investors. The shares could not plausibly be considered “virtually worthless.”

44. Other sections Defendants designed for the website, purporting to constitute the “research” promised in the “Letter” from Bass, are labeled “Key Facts,” “Myth vs. Reality,” “News and Research,” and “Take Action,” in which readers are urged to “submit tips to the SEC” and to join in pending class actions against Plaintiff, with a list of the law firms to contact.

45. Each section, designed by Defendants and written or edited by Defendants in concert with Hayman, continued the drumbeat of lies and misrepresentations that Plaintiff was a Ponzi-scheme on the verge of collapse. The sections are in fact research-free.

46. The “Myth v. Reality” section continues to tout the lie that Hayman had supposedly conducted a “thorough examination of SEC filings, county records and various court documents,” and that “[b]ased on Hayman’s research and knowledge” Hayman has concluded that “UDF has been misleading investors for years.”

47. Defendants repackaged Hayman’s previous false attack on Plaintiff’s relationship with Centurion, falsely claiming that Plaintiff’s business dealings with Centurion were not “arm’s length transactions,” falsely contending without any factual basis that “loans owed by Centurion typically do not generate any actual cash income,” and falsely stating that Centurion was in “financial distress.” The facts were exactly the opposite. The loans to Centurion were arm’s length negotiated, and normally generated cash flow to Plaintiff from the repayment of principal and accrued interest upon sale of land pods or the developed properties. And Centurion was not in financial distress.

48. The false attacks also asserted that Centurion was supposedly paying “two times the market rate in this low interest rate environment” when agreeing to pay 13% interest on loans. In truth, Centurion was paying market rate on comparable acquisition and development loans. Defendants also promoted the false suggestion that Centurion was not developing any property, and that the Centurion loans were being misappropriated, stating: “If there is no development, WHERE DID ALL THE MONEY GO?” [all caps in original]. Anyone familiar with the industry, including Hayman and therefore Defendants, knew that loans to Centurion regularly generated cash later in the development cycle when properties sold.

49. Defendants published and promoted Hayman’s false statement that Plaintiff was “misleading investors” and had supposedly lied in an SEC filing in claiming that it “has not invested in loans secured by unimproved real property.”

50. This was the supposed “research,” nothing more than a series of lies and misrepresentations Hayman had concocted, that Defendants expanded on and promoted to achieve the stated goal of wiping out Plaintiff’s stock price and decimating Plaintiff’s current and prospective relationships with borrowers, real estate developers, home builders, banks, lenders, investors, title companies and other market participants, as well as auditors.

51. Defendants designed the section “News and Research” of UDFEXPOSED.COM to promote Mr. Bass’s supposed expertise in identifying Ponzi schemes. Defendants posted a previously anonymous, unsigned letter sent to Plaintiff’s former auditor, Whitley Penn, but which Defendants now attributed to Mr. Bass, as purported evidence of his experience.

Whitley Penn had previously concluded its audit and accounting services for Plaintiff, confirming Plaintiff's statement in a SEC filing that Plaintiff and Whitley Penn had no disagreements over Plaintiff's financial statements. In the letter Defendants published, Hayman attacked Whitley Penn for having supposedly lied to the investing public by concealing supposed undisclosed and unspecified "disagreements," and for having supposedly ignored a series of purported "red flags" that amounted to baseless speculation about the collectability of loans and the solvency of borrowers. The letter questioned "the legitimacy of the UDF structure," the "condition of the Companies," and "Whitley Penn's prior audit work."

52. Following Defendants' strategy of "revealing" Mr. Bass's latest short and promoting Mr. Bass's supposed experience in uncovering supposed Ponzi schemes, Defendants highlighted the unsupported Whitley Penn letter on the website as evidence of Plaintiff being the supposed "house of cards" myth Defendants were attempting to portray.

53. Defendants did the same with other previously anonymous Hayman attacks, backdating "Posted" items to dates that preexisted UDFEXPOSED.COM by months, to cover up the fact that Hayman and Mr. Bass had made their initial attacks anonymously.

54. To bolster Mr. Bass's credibility, in the "News" section, Defendants republished and highlighted statements by financial news media touting Mr. Bass's supposed ability to predict the fall of real estate and summarizing Mr. Bass's false allegations. Defendants wrote or edited the statement that "[c]overage continues to roll in, helping to shed light on UDF's Ponzi-like real estate scheme . . . Writing for FORTUNE, Jen Wieczner provides an overview of the position highlighting Kyle Bass' experience with real

estate investments.” The quoted article then repeats Defendants’ theme that “Bass expects that the firm’s downfall will be bankruptcy, calling UDF ‘a billion dollar house of cards’” that ‘is now on the verge of collapse.’”

55. Defendants also drafted or edited “News and Research” section narratives to accompany several power-point style “research” reports that repeat and expand the previous false claims. One “report,” titled “HOW THE SCHEME WORKS,” repeats and expands on false allegations against Centurion, giving the false impression that Centurion was supposedly not developing any property.

56. Another report, titled “SHAREHOLDERS IN UDF’S PUBLIC COMPANIES ARE BEING VICTIMIZED BY A PONZI-LIKE REAL ESTATE SCHEME TO KEEP THE COMPANIES AFLOAT,” falsely claims that Plaintiff has a “significant bankruptcy risk,” which would render its shares “virtually worthless.”

57. Another report titled “IRREGULAR PATTERNS RELATED TO UDF’S LARGEST BORROWER” repeats the false statements that “UDF management regularly misleads investors,” and that Plaintiff’s loans “do not generate actual cash income.”

58. UDFEXPOSED.COM continues to be hosted to this day in execution of the scheme and was updated as recently as August 2, 2021.

D. Defendants’ planned media blitz compounds the lies, putting Plaintiff on the brink of delisting.

59. Having built a website designed to give the misimpression of purported fact-based “research” supporting false claims of a Ponzi scheme, Defendants moved to the next phase of their strategy to destroy Plaintiff—driving traffic to the site and creating negative publicity with a media blitz.

60. Upon information and belief, as part of their express strategy to drive traffic to the website, Defendants and Hayman reposted the “Letter from Kyle Bass” page from the UDFEXPOSED.COM website as an article titled, “How a Texas Real Estate Developer Built a Billion Dollar House of Cards,” on hvst.com—the website Mr. Bass previously posted on anonymously. The article directs readers to the website for purported “additional research” allegedly supporting the misrepresentations.

61. With Hayman’s approval, Defendants created a Hayman company profile account on LinkedIn, an account on Twitter called “UDF Exposed,” and one or more email accounts, with addresses such as media@udfexposed.com, to disseminate new and varying attacks on Plaintiff. Defendants further carried through on their strategy to purchase Google AdWords to appear on UDF-related search phrases. All of this drove traffic and media attention to the website.

62. Defendants used these accounts to, among other things, purchase and disseminate dark posts¹¹ and other misleading paid advertisements to the target audience.

63. Defendants designed the paid advertisements to be as attractive as possible, *i.e.*, clickbait, for the target audience.

64. Defendants’ strategy to create publicity worked, as news of UDFEXPOSED.COM was widely circulated in the days following its launch.

¹¹ A dark post is an advertisement which allows a company to target specific audiences, particularly audiences that are non-followers of the company, and track the effectiveness of the post in engaging that audience. In addition, dark posts allow companies to send targeted messages that do not post to the company’s public page. Thus, the messages appear subtle and personalized, and conceal the fact that they are being disseminated to a larger target audience.

65. Within days of the website's launch, the financial press was publishing stories with sensationalist headlines such as, "Kyle Bass on UDF: A Billion Dollar House of Cards," "Kyle Bass Short 'Virtually Worthless' UDF," and "United Development Funding Total Ponzi Scheme, Worth Zero: Hayman." These are just a small sampling of the "earned media reporting" Edelman bragged about securing in furtherance of the unlawful scheme while "ensur[ing] UDF's S[earch] E[ngine] O[ptimization] is permanently ruined."

66. Defendants' planned "media blitz" included a Dallas Morning News article quoting Mr. Bass as saying that while he and his investors made big profits shorting Plaintiff, "We have saved the 20,000 or 30,000 mom-and-pops from giving \$10,000 to \$100,000 to these guys and losing it all. One of our civic duties here is to get the next billion to not invest." That same article also reported that Mr. Bass had been sending letters to the media to get them to pick up his UDF "story."

67. As discussed above, one of the stated goals of Defendants' negative publicity campaign was to prompt the FBI to take action against Plaintiff. Within 8 days of the launch of UDFEXPOSED.COM, the FBI obtained a search warrant for Plaintiff's headquarters. Upon information and belief, Defendants alerted the media to the raid in advance, as Defendants had plotted a media blitz from the very beginning, and reports began running within a few hours. Hayman's general counsel, Chris Kirkpatrick, the former SEC Branch Chief that Bass had utilized to approach the FBI, abruptly resigned from Hayman a few months later.

68. On February 18, 2016, Plaintiff's share price traded below \$4 per share, a precipitous drop from only two and a half months before, and Nasdaq halted trading.

69. The trading halt caused Hayman a significant problem, however. With trading of Plaintiff's stock halted, Hayman was unable to close its massive multi-million short position by buying back the shares. Hayman needed Nasdaq to delist or issue a formal trading suspension of Plaintiff's stock to open over-the-counter trading as a "grey market" security. This would provide Hayman a financial lifeline by allowing it the opportunity to close its short position by purchasing deeply discounted shares of Plaintiff's stock from institutional investors mandated to sell shares after Plaintiff's stock price dropped outside of the Russell 2000.

70. Anticipating this, Defendants then turned their attention to the final phase of their cumulative strategy—destroying Plaintiff's relationship with auditors and prospective auditors to force Plaintiff's delisting from Nasdaq and make it impossible for Plaintiff to repair current and prospective relationships with borrowers, real estate developers, home builders, banks, lenders, investors, title companies, and other market participants.

E. Defendants target Plaintiff's prospective and current auditors, bombarding them with new false claims that the liquidity crisis was supposedly evidence of the purported Ponzi scheme.

71. Following the first quarter of 2016, Plaintiff received notice from Nasdaq's listing qualifications staff indicating that Plaintiff's stock was subject to delisting because it had not yet filed its 2015 Form 10-K and its first quarter Form 10-Q in violation of Nasdaq Listing Rule 5250(c)(1).

72. As Plaintiff's delisting was key to Defendants' and Hayman's ultimate goal of driving Plaintiff's stock price to zero, Defendants continued, through about October 12,

2016, to promote and disseminate a series of “studies” and false reports attacking Plaintiff. Following Mr. Zilka’s “all-in” directive, Edelman employees continued to orchestrate this malicious promotional campaign to poison Plaintiff’s relationships with prospective accounting firms and auditors with lies, disseminated through numerous media outlets, all to ensure that Plaintiff would be unable to file the periodic financial reports necessary to comply with the reporting requirements of Nasdaq Listing Rule 5250(c)(1). Plaintiff had had a reasonable expectancy of a valid business relationship with at least six public accounting firms, dating from the beginning of Defendants’ short attack in December 2015 and through the present time. Yet all these public accounting firms declined to represent Plaintiff in response to the unlawful scheme detailed herein.

73. Defendants, Hayman and Mr. Bass worried that if Plaintiff retained qualified auditors to certify financial reports, Nasdaq would allow trading of Plaintiff’s stock to resume and the unlawful short attack would be exposed as lies. Accordingly, every time was on the verge of retaining, qualified auditors, Defendants, acting on behalf of and in concert with Hayman and Mr. Bass, stepped up the targeted false attacks. And when Plaintiff retained an auditor, Defendants used false attacks to delay or prevent the completion of certified financial reports.

74. In June 2016 Plaintiff retained the highly reputable accounting firm EisnerAmper as its new independent auditor, filing an 8-K to announce the relationship, and appealed the delisting notice to Nasdaq’s hearing panel.

75. On July 25, 2016, the Nasdaq hearing panel agreed to continue listing Plaintiff’s stock subject to the condition that, by September 12, 2016, Plaintiff

demonstrated compliance with Nasdaq Listing Rule 5250(c)(1) by filing its 2015 Form 10-K and first and second quarter 2016 Form 10-Qs. The September 12th deadline was subsequently extended to October 17, 2016.

76. The Nasdaq hearing panel's ruling and subsequent extension of the filing deadline was publicly available and known to Defendants. Defendants knew Nasdaq would delist or issue a trading suspension of Plaintiff's stock, exactly as Hayman desired, if Plaintiff could not file the necessary periodic financial reports by October 17, 2016. And Defendants knew Plaintiff could not file Form 10-K and 10-Q reports without financial statements audited or reviewed by an independent certified public accountant, such as Plaintiff's then-auditor EisnerAmper.

77. Defendants, working with Hayman, therefore poured on the false attacks against Plaintiff, expanding and varying the themes and lies they had been spreading through UDFEXPOSED.COM and other media outlets to get more and more people to believe them, this time claiming that the liquidity crisis caused by Defendants' attacks was the evidence of the Ponzi scheme; a classic assertion made as part of an unlawful predatory short-and-distort scheme.

78. Defendants specifically targeted a new audience comprising EisnerAmper and its employees, as well as prospective accounting firms and auditors (collectively, the **"Target Audience"**).

79. Edelman promoted and disseminated a false and misleading blog post and presentation to the Target Audience titled, "Is UDF a Legitimate REIT?" With the purpose and intention of instilling fear, the presentation warns "Severe Tax Consequences Exist"

and bolded “Income derived from ‘prohibited transactions’ is taxed at 100%. . . .” Edelman knew this was false as the statements directly contradicted other false statements that the Plaintiff had “fictitious returns.”

80. Edelman subsequently promoted and disseminated blog posts and presentations to the Target Audience: one titled, “The Precarious Preston Manor;” one regarding Northpointe Crossing, a UDF Family of Funds residential real estate development; one regarding Alpha Ranch, a UDF Family of Funds-financed residential development; and one titled “UDF IV’s Stated Financial Position vs. Reality.”

81. Each blog post and presentation falsely portrayed Plaintiff’s business and the UDF Family of Funds as a worthless Madoff-like Ponzi scheme through which investor funds were being misappropriated.

82. Auditors abhor headline risk. Thus, each blog post and presentation was intentionally designed to provoke unwarranted fear among the Target Audience, namely that any accounting or auditing firm certifying Plaintiff’s financial statements would be perceived as complicit in a Madoff-like Ponzi scheme, and that any audit of Plaintiff’s finances would require a review going back to Plaintiff’s founding in 2008.

83. The presentations are peppered with warning statements, such as the following in the “Is UDF a Legitimate REIT?” presentation concerning one UDF IV loan:

A reasonable auditor would likely question whether the loan to Prosper 236, LLC was appropriately characterized as debt, given the apparent pattern related to the Fort Bend County lawsuit and the common Austin address; this would also likely lead an auditor to question the characterization of all loans given the apparent pattern.

84. In addition, the blog posts and presentations falsely used the liquidity crisis already caused by the illegal short-and-distort scheme as purported evidence that Plaintiff's entire business was a fraudulent, insolvent Ponzi scheme.

85. For example, the August 30, 2016 presentation disseminated by Defendants titled "The Precarious Preston Manor," states that "UDF's Ponzi-like real estate scheme continues to unravel as it tried to create liquidity through the dissipation of collateral to repay various creditors. . . ." Defendants knew that this was a lie as they knew the majority of Plaintiff's portfolio was capital committed to land acquisition and development, and that the abrupt and wholesale reduction in capital by Plaintiff's banks in reaction to the illegal short-and-distort scheme would create liquidity issues for Plaintiff. Thus, characterizing Plaintiff as a "Ponzi-like real estate scheme" was both calculated and false.

86. EisnerAmper and other prospective accountants and auditors were specifically targeted with email alerts and dark posts containing these false statements, *e.g.*:

ALERT: New Research Posted to udfexposed.com

[View this email in your browser](#)

The Precarious Preston Manor

Hayman's [latest research](#) outlines how UDF's Ponzi-like real estate scheme continues to unravel as it tries to create liquidity through the dissipation of collateral to repay various creditors or to satisfy other financial obligations. The presentation outlines the specific questions surrounding Preston Manor, a residential real estate development outside Lubbock, TX, which UDF financed, foreclosed upon and financed again through multiple successive funds, leading up to, and subsequent to, the great financial crisis.

Read more at the link below.

CLICK HERE TO READ HAYMAN'S LATEST RESEARCH

87. It was not until April 26, 2018, that Plaintiff had any inkling of Defendants' secret email and dark post campaign directed at the Target Audience.

88. In another example, an October 12, 2016 presentation titled "UDF IV's Stated Financial Position v. Reality," claimed that there are outstanding "questions about what exactly led [Plaintiff's former accountants] Whitley Penn to resign, questions which UDF IV has not to date answered." Defendants knew that was a lie, as Whitley Penn had previously affirmed that they stood behind their prior audits and reviews and had no disagreements with Plaintiff.

89. The same presentation also misrepresented that Plaintiff defaulted on a \$35 million loan on March 4, 2016 while Plaintiff reported assets of \$684 million in a 10-Q filing six months earlier against only \$171 million in debt. The clear implication was that Plaintiff's financial statements were supposedly fabricated. But this is another example of falsely attributing the fallout from the liquidity crisis Hayman and Defendants purposefully and intentionally caused as evidence that Plaintiff was insolvent all along when, in fact, Plaintiff's financial business stress would not have occurred but for the illegal, predatory short-and-distort scheme.

90. Moreover, by October 12, 2016, the date of the presentation, the technical default had been cured by full payment. Yet the presentation disseminated by Defendants misleadingly implied that the repayment was irrelevant, the default "does not square" with Plaintiff's reporting of assets, and the default was a "red flag" and evidence of Plaintiff misrepresenting its purported economic reality. This deliberately distorted the fact that Plaintiff began struggling in December 2015 solely because of Hayman's unlawful scheme

in which Defendants substantially participated, and not because of any financial or accounting flaw in Plaintiff's business, and not because it was a Ponzi scheme. Thus, Defendants knowingly misrepresented the intended and natural fallout from Hayman's illegal short attack as the purported "evidence" for Defendants' unfounded accusations that Plaintiff was a supposed Ponzi scheme.

91. By purposefully and intentionally saturating the Target Audience with a steady stream of outrageously false and misleading information, Defendants succeeded in distorting reality and branding Plaintiff as too stigmatizing for the Target Audience.

92. Defendants' dissemination of false statements and malicious public relations attack interfered with EisnerAmper's ability to audit and certify Plaintiff's financial statements in time to meet Nasdaq's extended deadline, and every other qualified public auditor has turned their back on Plaintiff.

93. From the beginning of the scheme, Defendants, working with Hayman, knew they could not rely on a single lie. Rather, their deceptions and distortions constantly evolved, expanded, and grew more targeted with each phase of the scheme. What began as anonymous posts on a blog making a broad array of scurrilous and unsupported accusations of a Ponzi scheme and asking open-ended, speculative questions to create misimpressions, evolved into a professional-looking website that openly and falsely promoted Hayman and Mr. Bass as the attackers in an attempt to give the attacks credibility. When Plaintiff faced delisting and was able to retain a qualified auditor, Defendants refocused the attacks, targeting the auditors, and using the liquidity crisis created by the unlawful predatory scheme as supposed evidence of a Ponzi scheme at the

end of the scheme. The cumulation of this organized, calculated attack and constant barrage of lies and negative publicity had a devastating impact on Plaintiff.

94. Plaintiff, of course, was unable to meet the extended filing deadline, and the Nasdaq Panel granted no additional extension. Trading in Plaintiff's shares was suspended effective October 19, 2016, and on that date Plaintiff's shares began trading in the grey market.

95. Between October 19, 2016 and October 20, 2016, Hayman closed out the vast majority of its short positions in Plaintiff's stock, purchasing the shares as low as \$1.50. Given that, upon information and belief, Hayman took out a short position of approximately 3.44 million shares when Plaintiff's stock was trading over \$17, Hayman would have profited by more than \$50 million.

F. The severe harm Defendants caused Plaintiff touched virtually all aspects of Plaintiff's business.

96. Defendants' stated intention was to cause Plaintiff severe injury, and that is exactly what occurred. The illegal predatory short attack scheme caused, *inter alia*, (i) a liquidity crisis for Plaintiff and the UDF Family of Funds, as banks and other lenders began cutting off lines of credit, denying routine extensions, and eliminating credit; (ii) the destruction of Plaintiff's current and prospective relationships with real estate developers, home builders, lenders, title companies, and other market participants, as well as auditors; and (iii) the price of Plaintiff's stock to fall more than seventy-five percent in approximately two months before trading was halted by Nasdaq; and (iv) the delisting of Plaintiff's stock, causing the loss of substantial investors and market capital and relegating trading to the grey market, where Plaintiff's stock price dropped to about \$1 or less.

97. Indeed, Plaintiff's primary source of revenue and therefore profits is the interest earned on loans and its investment portfolio. 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 on these existing loans. Additionally, 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.

98. Defendants' attacks on behalf of or in concert with Hayman and Mr. Bass, harmed Plaintiff's access to capital in multiple ways. In response to the false attacks described herein, Plaintiffs' banks and other lenders reduced or eliminated Plaintiffs' current and future credit, accelerated payments on existing loans and otherwise provided less capital and/or favorable terms to Plaintiff. Plaintiff also lost access to other credit markets.

99. Defendants' actions on behalf of or in concert with Hayman and Mr. Bass, caused Plaintiff reduced access to credit and caused Plaintiff to lose profits on and/or equity in loans that Plaintiff sold, liquidated or that borrowers repaid so that Plaintiff could pay down debts to its banks.

100. Plaintiff's second source of capital to lend is investor equity. Defendants' actions on behalf of or in concert with Hayman and Mr. Bass, caused Plaintiff to lose current and future investors. This was one of the stated intentions of the unlawful scheme.

101. The UDF Family of Funds had previously successfully raised over \$1.2 billion in investor capital between 2003 and December 2015. Prior to the unlawful scheme

perpetrated by Hayman and Mr. Bass with substantial assistance from Defendants, Plaintiff was continuing its growth through investor funding vehicles.

102. Plaintiff sought to raise up to \$175,000,000 through a five-year fixed rate senior secured term loan that Plaintiff was on the verge of marketing prior to the unlawful scheme. Plaintiff planned to use the vast majority of this money to lend to additional projects and earn profits on the interest spread.

103. Per the offering documents, Plaintiff “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 offering documents showed, Plaintiff had consistently grown at a steady rate.

104. Defendants’ actions on behalf of or in concert with Hayman and Mr. Bass, caused Plaintiff to be unable to proceed with this fundraising. They also caused Plaintiff’s existing borrowers, including but not limited to Centurion, to reduce their existing and future business with Plaintiff.

105. Defendants’ actions on behalf of or in concert with Hayman and Mr. Bass, caused Plaintiff to lose new clients (borrowers) that would have become clients of Plaintiff.

106. Plaintiff has retained the law firms Homer Bonner Jacobs Ortiz, P.A., the Law Offices of Paul E. Pelletier, and Dressler Peters, LLC to represent it in this action and is obligated to pay reasonable attorneys’ fees and costs.

107. Any and all conditions precedent to the commencement of this action have occurred, been satisfied, waived, or excused.

Count I – Tortious Interference with Prospective Business Relations

108. Plaintiff incorporates and realleges the allegations in paragraphs 1 through 107, above, as if expressly set forth herein.

109. Plaintiff had a reasonable expectancy of a valid business relationship with current and prospective banks or other sources of capital, lenders, and investors.

110. Plaintiff also had a reasonable expectancy of a valid business relationship with current and prospective borrowers, real estate developers, home builders, title companies, and other market participants.

111. Plaintiff further had reasonable expectancy of a valid business relationship with EisnerAmper and other prospective accounting firms and auditors who were qualified to provide such services.

112. Defendants were aware of the prospective business relationships between Plaintiff and the classes of third parties described in paragraphs 109 through 111, above.

113. Despite their awareness, Defendants purposefully and intentionally interfered with these expectancies and prevented them from ripening into valid business relationships by taking the actions described in paragraphs 28 to 105, above.

114. Defendants had no legitimate right, justification, or excuse to interfere in the prospective business relationships, and their conduct was wholly calculated to damage Plaintiff.

115. Plaintiff has suffered and is continuing to suffer damages directly and proximately caused by Defendants' misconduct.

WHEREFORE, Plaintiff respectfully requests that the Court enter a judgment for

Plaintiff for damages in an amount to be proven at trial, award pre-judgment interest, post-judgment interest and costs, and grant such other and further relief as may be proper.

Jury Trial Demand

Plaintiff demands a trial by jury on all issues so triable.

Dated: August 30, 2021

Respectfully submitted:



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