CAUSE NO. DC-22-09833

NexPoint Diversified Real Estate Trust, a Delaware Statutory Trust; and NexPoint Real Estate Opportunities, LLC, a Delaware Limited Liability Company,	§	IN THE DISTRICT COURT
Plaintiffs,	§	192nd
v.	§	_____ JUDICIAL DISTRICT
UMTH General Services, L.P.; UMTH Land Development, L.P.; UMT Holdings, L.P.; Hollis M. Greenlaw; Todd F. Etter; Ben L. Wissink; and Cara D. Obert	§	
Defendants.	§	DALLAS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

Come Now, NexPoint Diversified Real Estate Trust ("NXDT"), a Delaware Statutory Trust that has elected to be taxed as a Real Estate Investment Trust (a "REIT") for federal income tax purposes, and NexPoint Real Estate Opportunities, LLC ("NREO"), a Delaware Limited Liability Company and wholly-owned subsidiary of NXDT (collectively "Plaintiffs" or "NexPoint") and file their Original Petition complaining of Defendants UMTH General Services, L.P., UMTH Land Development L.P., UMT Holdings, L.P., Hollis M. Greenlaw, Todd F. Etter, Ben L. Wissink, and Cara D. Obert (collectively "Defendants"), and would respectfully show the Court as follows:

OVERVIEW

Purpose of this lawsuit. This lawsuit seeks to hold accountable those individuals and entities that have perpetuated the massive multi-year deception and fraud that is the United Development Funding "investment" program ("UDF"). The Defendants ran UDF's consecutive "investment" funds as a Ponzi scheme; sought to cover it up through an endless series of fake loans

and payments; paid themselves millions of dollars in improper fees; lied to investigators about it; got caught by the SEC and were ordered to disgorge profits and pay fines; with approval of "independent" trustees, utilized UDF shareholder funds to pay disgorgement of ill-gotten profits and prejudgment interest; were indicted by a federal grand jury on ten counts of securities, wire and banking fraud that covered an extended period of time; tried to save themselves by spending $65 million or more of shareholder funds on legal fees, costs and payments; never disclosed to shareholders their massive expenditure of shareholder funds on their individual defense; were convicted on ten counts of securities, wire and banking fraud and still expect the shareholders to pay their legal fees while they refuse to return any of their ill-gotten profits.

Why this lawsuit is necessary. If the foregoing conduct isn't bad enough, it gets worse. UDF's "current" management refuses to do anything about the bad acts of UDF's "prior" management. While one would think that *criminal convictions* of UDF's top executives (three of whom are defendants in this case) would force UDF's "remaining" management to re-examine its prior practices and seek repayment from the UDF wrongdoers for the damage they caused and the legal fees they improperly made the shareholders pay, that has not happened.

Why? Because "current" management is simply part of "prior" management, at all times complicit in the years of bad acts by the "prior" management. It is to UDF management's collective interests—including the current trustees of UDF IV (James Kenney; Philip K. Marshall; J. Heath Malone; and Steven J. Finkle)—to protect themselves; eliminate or preclude any scrutiny; keep their steady stream of management fees coming; and continue to spend shareholder money on the convicted felons' legal defense. That legal defense has been spectacularly unsuccessful over an eight-year period despite its astronomical cost for one very good reason: UDF's

management did exactly what the SEC and the United States Department of Justice claimed they did.

Because the wrongdoers and "current" management are one and the same, even criminal convictions of some members of UDF's management change nothing. UDF continues to refuse to provide financial information to shareholders; continues to refuse to hold an annual shareholder meeting in contravention of organizational documents and the laws of UDF IV's jurisdiction of formation, resulting in seven years having passed since UDF IV held an election of trustees (and one of UDF IV's current trustees has never been elected by shareholders); continues to refuse to go after prior management and hold them accountable for their bad conduct and refuses to change any of its practices.

As the lawyer for UDF's CEO Hollis Greenlaw bragged to the jury during his opening statement in the criminal trial in January of this year: "[Y]ou will hear that UDF continues to this day to conduct its financial business in much the same way as they always have[.]"[1] And that very sentiment encapsulates both the problem addressed by the lawsuit and why the relief sought is so necessary. In short, despite being fiduciaries of NexPoint (and thousands of other shareholders), Defendants continue to put their own financial and personal interests ahead of their beneficiaries such as NexPoint.

Some of the wrongful conduct. The UDF web of funds (including UDF IV, of which NexPoint is a shareholder) are controlled by the Advisor (Defendant UMTH General Services, L.P.) and its Affiliates (the other Defendants, some of whom are Affiliates and others of whom

[1] Opening Statement by Paul Pelletier, *USA v. Greenlaw, et al.*, at 12:10-12 (January 12, 2022).

control the Advisor and its Affiliates). Just some of the many outrageous acts by Defendants that this lawsuit addresses include:

- ***Defendants used shareholder money to pay their own personal obligations under a SEC settlement.*** Defendants Hollis M. Greenlaw, Todd F. Etter, Ben L. Wissink, and Cara D. Obert (collectively the "Individual Defendants") were obligated under an SEC settlement and court order to disgorge $7.2 million in profits (including pre-judgment interest) they improperly made by misleading investors. But Defendants paid the "disgorgement" ***with shareholder funds***. In other words, they disgorged nothing themselves and simply used shareholder money to satisfy their own obligations.

- ***They then lied about it and tried to cover it up.*** UDF IV, which was **tightly controlled** by Defendants and which, at the time of the SEC settlement continued to be a public company with a series of securities registered with the SEC and whose common stock traded each and every day in the over-the-counter market, never disclosed publicly that it used shareholder money to satisfy the personal financial obligations of certain of the Defendants under the SEC settlement. Instead, Defendants tried to cover it up by making it look like the funds came from a "payment" from its largest borrower (Mehrdad Moayedi and his stable of companies operating under the name Centurion American). This was untrue. The money came from UDF IV's shareholders.

- ***The ironic injustice of this conduct.*** In effect, Defendants settled the SEC lawsuit by engaging in the very act that they were sued for in the first place. The SEC (correctly) claimed that the Individual Defendants were operating a *Ponzi* scheme by taking funds raised from new investors in UDF IV; disguising them as fake loans to UDF's largest borrower (Moayedi); who then made corresponding "fake" payments to UDF III and UDF IV solely in order to fund "fake" distributions to shareholders. But in order to settle the SEC disgorgement obligation, Defendants *engaged in the very same act for which they were being sued for in the first place* (taking UDF IV shareholder money; pretending it was a loan to Moayedi and having him make a corresponding fake payment that Defendants used to satisfy their own personal obligations under the SEC order). It is as if a bank robber paid his criminal penalty for robbing a bank by robbing the same bank a second time.

- ***Defendants improperly spent millions of dollars in shareholder money to fund their criminal defense.*** Despite knowing they engaged in the very conduct that they were ultimately indicted and convicted for, Defendants used tens of millions of dollars in shareholder funds to pay their legal fees in defending the SEC lawsuit and the resulting criminal prosecution (both of which they, actually or effectively, lost). However, payment of these fees was prohibited under the parties' Advisory Agreement, which specifically barred indemnification of securities law violations. And even if it was allowed, because the Individual Defendants were convicted and entered into a SEC settlement, the legal fees must be repaid. Yet current management (with support by the current Board of Trustees) refuses to seek such repayment and apparently is continuing to pay the convicted felons' legal fees for their appeal.

- ***Defendants paid themselves lucrative management fees on overvalued assets.*** Defendants continued to pay themselves lucrative advisory fees amounting to over $8.5 million per year despite spending very little of their time on their duties as outlined in the Advisory Agreement and most of their time defending against individual legal problems. Defendants have presided over a massive diminution of value through the continuous use of UDF IV money to pay individual legal fees, disgorgement and prejudgment interest, and through their failure to hold their primary borrower, Moayedi, accountable to repay loans that for many years have been non-performing.

- ***Defendants tried to hide their actions by blocking audited financials of UDF.*** Defendants misled investors by claiming that they were working on, and intended to deliver, audited financials when, in fact, they halted all such work for several years. They also knew that they would *never* issue audited financials because it would only confirm their wrongful behavior. The Defendants have refused to issue any meaningful financial information about UDF IV since November 2015.

- ***Covering up for a complicit borrower.*** Despite their largest borrower (Moayedi) owing UDF entities close to $1 billion, the Defendants have continuously refused to undertake any collection actions. NexPoint believes such actions have not been taken because the Defendants have at all times since 2014 needed for Moayedi to be available to help them execute transactions and provide affirmative statements about UDF and its management in order to keep the scheme going (including as recently as 2019 with the payment of the disgorgement and pre-judgment interest in settlement of the SEC lawsuit); to have held Moayedi accountable would have been to blow-up the railroad track that the UDF fraud train has barreled down since at least 2014. The massiveness of this debt, the lack of collection or enforcement action and the ever-presence of Moayedi in the questionable business dealings of the UDF management team begs the question of who was in control of UDF—UDF management or Moayedi?

Much of this wrongdoing first became known to the public during the criminal trial of defendants Greenlaw, Obert, Wissink and Jester. The testimony in the criminal trial included dramatic accounts of how Moayedi-controlled entities acted as conduits in the execution of their fraud on investors. Ultimately, the executives were charged with securities fraud in connection with operating UDF as a *Ponzi*-like scheme. Even as that prosecution unfolded, the Defendants refused to take any actions. Instead, they continued to use shareholder money to pay their legal fees, and the criminal defendants (now felons) continued to stay on as executives.

Even after the four UDF executives were swiftly convicted on all counts, Defendants have banded together and continue to proclaim that no one at UDF has done anything wrong. The

current trustees of UDF IV (James Kenney; Philip K. Marshall; J. Heath Malone; and Steven J. Finkle) have taken no acts to correct or address this wrongful conduct. In light of this pattern of never-ending improper behavior, it is high time that those who operated and participated in the UDF web of corruption be held responsible for their brazen acts of fraud and breach of fiduciary duty. This lawsuit seeks to do just that.

DISCOVERY CONTROL PLAN

1. In accordance with TEX. R. CIV. P. § 190.4, Plaintiffs request that discovery in this case be conducted in accordance with a level 3 discovery control plan.

MONETARY RELIEF DESIGNATION

2. In accordance with TEX. R. CIV. P. § 47, Plaintiffs hereby give notice that they seek monetary relief over $1,000,000.

JURISDICTION AND VENUE

3. Subject matter jurisdiction is properly vested in this Court because the amount in controversy falls within the jurisdictional limits of this Court.

4. The Court has personal jurisdiction over Defendants, including Defendants UMTH General Services, L.P., UMTH Land Development, L.P., and UMT Holdings, L.P. because these entities are Delaware limited partnerships with their principal places of business at 1301 Municipal Way, Suite 200, Grapevine, Texas.

5. Venue is further proper in this Court because all or a substantial part of the events giving rise to the claim occurred in Dallas County, Texas.

6. Venue is proper under Section 6.06 of the Advisory Agreement dated May 29, 2014 (the "Advisory Agreement") between Defendant UMTH General Services, L.P., and United Development Funding IV ("UDF IV"), a company in which NexPoint is a significant shareholder. Section 6.06 of the Advisory Agreement requires that actions arising from the Advisory

Agreement be brought "exclusively" in Dallas County, Texas. Venue is proper in Dallas County, Texas as to all Defendants pursuant to Tex. Civ. Prac. & Rem. Code § 15.005 because venue is proper in Dallas County, Texas as to at least one Defendant and all claims and actions arise out of the same series of transactions and occurrences.

PARTIES

A. NexPoint Plaintiffs

7. Plaintiff NexPoint Diversified Real Estate Trust ("NXDT"), formerly known as NexPoint Strategic Opportunities Fund, is a statutory trust organized and existing under the laws of the State of Delaware that has elected to be taxed as a REIT for U.S. federal income tax purposes and is registered to do business in the State of Texas. NXDT's offices and principal place of business are in Dallas County, Texas.

8. Plaintiff NexPoint Real Estate Opportunities, LLC ("NREO"), is a Delaware Limited Liability Company with its principal offices in Dallas County, Texas. NREO is registered to do business in the State of Texas and NREO's offices and principal place of business are in Dallas County, Texas.

9. Plaintiff NXDT is the beneficial owner of 1,763,581 UDFI Shares by means of its 100% ownership and management control over NREO. The first purchase of UDF IV shares by NXDT was on June 9, 2017. On that day, NXDT purchased 5,000 UDF IV shares. From that date through June 21, 2019, NXDT acquired a total of 1,763,581 UDF IV shares. On December 31, 2021, in order to prepare NXDT for de-registration as a registered investment company and to qualify to elect to be taxed as a REIT, NXDT transferred all 1,763,581 UDF IV shares to NREO. Notwithstanding such transfer, NXDT has at all times since that time continued to have exclusive investment and voting power over all UDF IV shares so transferred; accordingly, NXDT remains

beneficial owner of all such shares. NREO is the current legal owner of the UDF IV shares referenced above. On information and belief, the UDF IV shares owned by NexPoint comprise approximately 5.8% of the outstanding UDF IV shares. On information and belief, the remaining UDF IV shares are owned by an estimated 30,000 shareholders, most of whom are "mom and pop" retail investors.

B. UDF Entity Defendants (UMTH General Services, L.P., UMT Holdings, L.P., UMTH Land Development, L.P.)

10. Defendant UMTH General Services, L.P. ("UMTH General" or the "Advisor") is a Delaware Limited Partnership. UMTH General is the advisor of UDF IV and manages UDF IV's affairs pursuant to an Advisory Agreement dated May 29, 2014. The sole general partner of UMTH General is UMT Services, Inc., a Texas corporation ("UMT Services").

11. Defendant UMT Holdings, L.P. ("Holdings") is a Delaware Limited Partnership that owns and controls UMTH General. UMT Services is the sole general partner of Holdings.

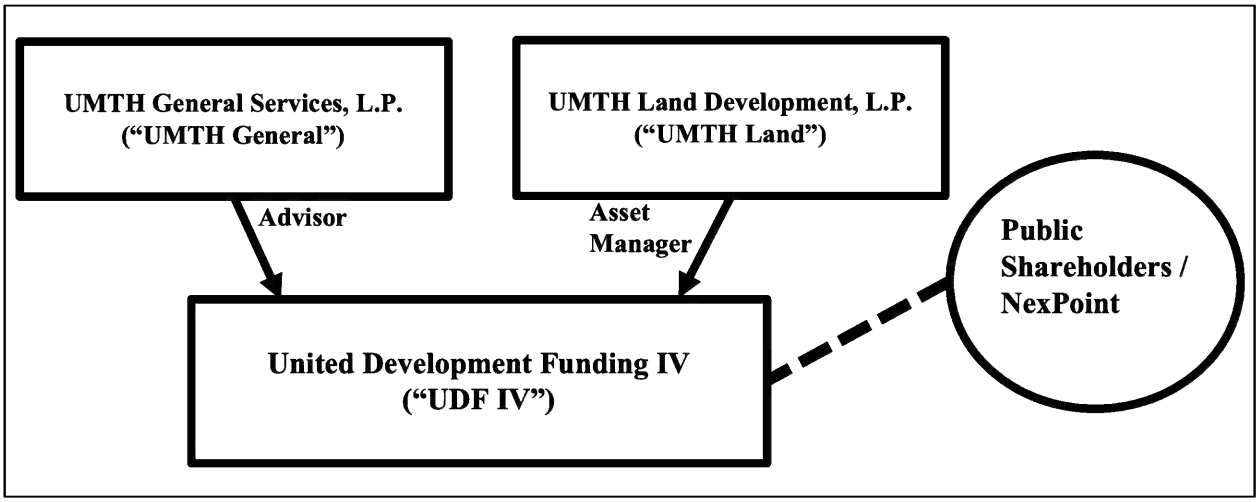
12. Defendant UMTH Land Development, L.P. ("UMTH Land") is a Delaware Limited Partnership and serves as UDF IV's affiliated asset manager. UMT Services is the sole general partner of UMTH Land.

13. On information and belief, UMT Services, which is the general partner of UMTH General, UMTH Land, and Holdings, is owned 50% each by Individual Defendants Greenlaw and Etter. On information and belief, UMT Services owns 0.1% of the partnership interests in Holdings, while Individual Defendants Greenlaw, Etter, Obert and Wissink collectively own 74.91% of the partnership interests in Holdings. On information and belief, UMT Services and Holdings owns 100% of the partnership interests in UMTH General and UMTH Land.

14. Accordingly, Individual Defendants Greenlaw and Etter, through their collective 100% ownership of UMT Services, control UMTH General and UMTH Land, as UMT Services

is the sole general partner of each of those limited partnerships, and the four Individual Defendants beneficially own 74.91% of UMTH General and UMTH Land.

15. UMTH General manages all the assets, investment and collection activities, operations, external reporting, and other affairs of UDF IV pursuant to the Advisory Agreement. Under that agreement, UMTH General "retained" UMTH Land to help manage UDF IV's assets:



C. The UDF Individual Defendants (Greenlaw, Etter, Obert and Wissink)

16. Defendant Hollis M. Greenlaw ("Greenlaw") was, at all relevant times herein, Chief Executive Officer ("CEO") of each of the Entity Defendants. He has owned 50% of the outstanding stock of UMT Services, with Defendant Etter owning the other 50%; therefore, Defendants Greenlaw and Etter collectively owned 100% of UMT Services, the general partner of each of the Entity Defendants. He also was CEO and Chairman of the Board of Trustees for UDF IV. Greenlaw signed multiple registration statements and other SEC filings on behalf of UDF IV. Greenlaw also signed the Advisory Agreement on behalf of UDF IV. Greenlaw also served[2] on

[2] Despite being a convicted felon, it is unclear if Greenlaw has been removed from all of his positions with UDF. Neither UMTH General nor UMTH Land have indicated who, if anyone, is on the UDF IV investment committee and the last public disclosures indicated Greenlaw was a member.

the UDF IV Investment Committee and directed the UDF Entity Defendants. At all relevant times, Greenlaw was a resident of Texas.

17. Greenlaw was convicted on ten federal counts of securities fraud, wire fraud and bank fraud and is currently serving a seven-year sentence at Federal Correctional Institution in El Reno, Oklahoma.

18. Defendant Todd Etter ("Etter") was, at all relevant times, a 50% co-owner with Defendant Greenlaw of UMT Services—the general partner of UMTH General and UMTH Land—the Executive Vice President of UMTH Land, Director and Chairman of UMT Services, and Chairman of Holdings. Through these positions, Etter has at all times actively participated in the management of each Entity Defendant. Etter is a resident of Texas.

19. Etter has not been indicted for any criminal offense but was a defendant in a lawsuit brought by the SEC and entered into a settlement agreement with the SEC in connection with such SEC lawsuit.

20. Etter also serves, or served, on the UDF IV Investment Committee. As 100% owners of UMT Services, the general partner of each Entity Defendant, and as over 60% beneficial owners of all the partnership interests of the Entity Defendants, together, Etter and Greenlaw effectively control the Entity Defendants.

21. Defendant Ben L. Wissink ("Wissink") was the Chief Operating Officer ("COO") of UMTH Land, as well as COO of UMTH General. He served on the UDF IV Investment Committee and, upon information and belief, also directed the Entity Defendants by reason of his position of Chief Operating Officer. Wissink is a resident of Texas.

22. Wissink was convicted on ten federal counts of securities fraud, wire fraud and bank fraud and is currently serving a five-year sentence at Fort Worth Medical Center in Fort Worth, Texas.

23. Defendant Cara D. Obert ("Obert") was, at all relevant times, Chief Financial Officer ("CFO") of UMTH Land, and CFO and Treasurer of UDF IV. Obert signed registration statements and other SEC filings and notices on behalf of UDF IV. Obert is also a limited partner and owner in Defendant Holdings. Obert is a resident of Texas.

24. Obert was convicted on ten federal counts of securities fraud, wire fraud and bank fraud and is currently serving a five-year sentence at Federal Prison Camp in Bryan, Texas.

25. UDF IV's affairs are overseen by its Board of Trustees (the "Board"). During the relevant time period, Defendant Hollis M. Greenlaw was Chairman of the Board of Trustees. Philip K. Marshall, J. Heath Malone and Steven J. Finkle, who have served as trustees of UDF IV since 2009 and who, on information and belief, have extensive personal relationships with Defendant Greenlaw, currently serve on the Board as independent Trustees.

FACTS

A. The UDF "Family of Funds."

26. Since the early 2000s, the Entity Defendants have managed and controlled various "investment fund" entities (the "UDF Funds") operating under the name "United Development Funding." These investment funds raised capital through the issuance of securities. The UDF Funds claimed that they deployed investor capital towards the financing of homebuilders and land developers. The UDF Funds are all managed by the same group of individuals, who are employees and/or affiliates of the Entity Defendants.

27. United Development Funding IV ("UDF IV"), a Maryland REIT, is one of the various UDF Funds. UDF IV was preceded by United Development Funding III, L.P. ("UDF III") and followed by United Development Funding Income Fund V, a Maryland REIT ("UDF V").

28. The stated purpose of each UDF Fund was to make high-interest loans to developers of residential real estate and then pay monthly dividends to investors from the interest supposedly earned from those loans. In reality, a UDF Fund that made such a loan did not begin to receive cash interest on such loan unless and until a property was developed and lot sales began with respect to the development project that was pledged as collateral to secure such loan.

29. In many cases, such payment of cash interest would not begin for several months, or even years, and, on information and belief, some projects that were financed months or years ago have not yet begun to pay cash interest on loans made by UDF Funds to the developers (such as Moayedi) of such projects. All interest not paid on such loans is accrued and compounded (i.e., interest is paid on interest) until payment, resulting in substantial accumulation of unpaid interest on loans until lot sales begin.

30. The portfolios of the UDF Funds were supposed to be diversified as to borrowers and developments. But behind the scenes, there was substantial overlap of borrowers between the various UDF Funds and concentrations of borrowers (i.e., blatant lack of diversification) within individual UDF Funds. For example, transactions with UDF's largest borrower, Mehrdad Moayedi ("Moayedi") constituted 43% of UDF III's, 67% of UDF IV's, and 62% of UDF V's loans, respectively. It is now known that this significant overlap (which Defendants sought to hide by using a complex web of different entities) was the result of UDF operating in a *Ponzi*-like manner as described below.

B. <u>The Advisory Agreement.</u>

31. Because UDF IV had no employees, its activities were controlled, managed, and conducted by UMTH General, as its advisor, and by the Advisor's officers and employees, including the Individual Defendants. The relationship between UDF IV and UMTH General is governed by a contract known as the Advisory Agreement to which UDF IV and UMTH General were parties.

32. UDF IV delegated virtually all day-to-day management and operational responsibilities of UDF IV to the Advisor under the Advisory Agreement. Such duties included, among others, selecting and closing investments, managing and collecting principal and interest on UDF's portfolio of loan investments, ensuring compliance with covenants on such loans and pursuing remedies upon default of such loans, managing UDF IV's cash, ensuring that UDF IV was properly capitalized, including by raising money through the issuance of UDFI Shares to the public, managing the day-to-day business affairs of the REIT, preparing financial statements for UDF IV and working with UDF IV's independent auditor in its annual audit of UDF IV's financial statements, ensuring that all reports are filed with the SEC and handling all investor relations, including issuing news releases, taking investor calls and ensuring that investors are provided all information typically provided to investors in public companies. There are a few additional key facts about the Advisory Agreement that are involved in this lawsuit.

33. First, the Advisory Agreement clearly provides that UMTH General is in a fiduciary relationship with the shareholders of UDF IV, including NexPoint. Section 2.01 of the Advisory Agreement provides as follows:

> "The Advisor shall be deemed to be in a fiduciary relationship to the Trust ***and its Shareholders***."

See Advisory Agreement at § 2.01. This is significant because it means Defendants owe NexPoint and all 30,000 other shareholders of UDF IV fiduciary duties of loyalty and care. As seen

throughout this Petition, Defendants continuously and nakedly breached these duties and consistently put themselves and their own interests ahead of all UDF IV shareholders.

34. Second, as NexPoint's fiduciary, UMTH General was responsible for UDF IV's business functions, including investment underwriting and decision-making, asset management and servicing of loans (which functions include, without limitation, collection of loans and interest, monitoring of compliance with loan covenants by borrowers and pursuit of legal remedies upon loan defaults), treasury management, capital raising, accounting and financial reporting and investor relations, among other functions. *See* Advisor Agreement at § 2.02. In other words, if something improper took place with respect to UDF IV's operations, it was UMTH General and its principals, including the Individual Defendants, who directed it.

35. Third, because the Advisory Agreement defines the "Advisor" to be "any successor advisor" or "any Person to which UMTH General Services, L.P. or any successor advisor subcontracts all or substantially all of its functions," UMTH Land is also a fiduciary to NexPoint. This is because UMTH General contracted out to UMTH Land the investing and financing operations of UDF IV.

36. In reality, however, the same individuals who ran UMTH General also ran UMTH Land. The "Investment Committee" for UDF IV was made up of Defendants Greenlaw, Wissink, and Etter and were employed by UMTH Land in that capacity. These same individuals, along with Defendant Obert, ran UMTH General and owned and controlled Defendant Holdings, which in turn owned both UMTH General and UMTH Land.

37. Fourth, UMTH General and UDV IV entered into the Advisory Agreement with the intent and purpose of conferring a benefit on UDF IV's shareholders. That benefit was the management of UDF IV in the manner described in the offering documents pursuant to which

UDF IV issued UDFI Shares, including carefully adhering to the investment strategy as set forth in such offering documents, providing all the services described in the Advisory Agreement in a professional and careful manner and ultimately protecting the invested capital of, and providing promised investment income to, the UDF IV shareholders through, among other things, skillful underwriting and investment of shareholder capital, proper servicing and active collection of loans and other investments made by the Advisor on UDF IV's behalf. As a result, UDF IV's shareholders, including NexPoint, are third-party beneficiaries of the Advisory Agreement.

38. Fifth, the Advisory Agreement provides for payment of fees, including an annual Base Management Fee equal to 1.5% of UDF IV's equity ("Base Fee"), payable monthly. On information and belief, UDF IV has paid Base Fees to UMTH General every month since May 2014 on approximately $527,000,000 of equity, or approximately $8,500,000 per year (approximately $708,333 per month.)[3] On information and belief, the Advisor has collected approximately $70.6 million of Base Fees since May 2014 despite spending most of that period engaged in activities other than those set forth in the Advisory Agreement, such as transferring money between UDF Funds in a *Ponzi*-type scheme and defending itself and its Affiliates against numerous civil and criminal securities fraud claims when the Defendants were caught in the act.

39. This is important because Defendants knew that UDF IVs assets were overstated but continued to charge lucrative fees based on those excessive valuations. Moreover, since at least 2016, UDF IV had no additional capital to invest, so the Defendants have performed no investment activities for UDF IV, yet they have also failed to provide the most basic services required by the Advisory Agreement, such as collecting loans, enforcing loan documents

[3] On information and belief, since the initial investigation of accounting and reporting improprieties by the SEC, approximately $54.5 million of Base Fees have been paid by UDF IV to UMTH General.

(including those with Moayedi and his web of entities), accounting for investments and income, investor relations, financial reporting and communicating with shareholders. In reality, from at least early 2016 until the present, the primary function of the Defendants has been to obscure the massive fraud they collectively perpetrated and then perpetuated, while collecting $708,333 per month to do so.

40. Sixth, while the Advisory Agreement provides for generally broad indemnification of the Advisor, those indemnification rights are limited. Specifically, Section 5.01 of the Advisory Agreement provides that UDF IV must indemnify the Advisor (and its affiliates) for certain losses or liability but only if "such liability or loss was not the result of **negligence or misconduct** by the Advisor or its Affiliates." *See* Advisory Agreement §5.01(a)(iii) (emphasis added).

41. Significantly, under no circumstances can the Advisor be indemnified for "any losses, liability or expenses arising from or out of an alleged violation of federal or state securities laws" unless certain conditions are satisfied including "successful adjudication on the merits" or a court approves a settlement and finds that "indemnification of the settlement should be made," but only after the Court had "been advised of the position of the Securities and Exchange Commission." *See* Advisory Agreement at § 5.01(a).

42. Even then, any permissible indemnification is "recoverable only out of the Trust's *net* assets and not from Shareholders." *Id.* (emphasis added).

43. As for advancement of legal fees, Section 5.01(b) of the Advisory Agreement provides that it may occur but only if, among conditions, (i) the legal action is initiated by a third-party who is not a shareholder and (ii) the person seeking advancement undertakes to repay the advanced funds to UDF IV, together with applicable legal rate of interest thereof, in cases in which such Advisor or its Affiliates are found not to be entitled to indemnification.

44. Finally, the Advisory Agreement provides for indemnification of UDF IV ***by*** *the Advisor* under the following section:

> "5.02 Indemnification by Advisor. The Advisor shall indemnify and hold harmless the Trust from contract or other liability, claims, damages, taxes or losses and related expenses including attorneys' fees, to the extent that (i) such liability, claims, damages, taxes or losses and related expenses are not fully reimbursed by insurance and (ii) are incurred by reason of the Advisor's bad faith, fraud, misfeasance, misconduct, negligence or reckless disregard of its duties."

45. The limitations in these provisions are important and were totally disregarded by Defendants.[4] Defendants wrongfully ignored these provisions and, in the process, improperly got shareholders in UDF IV to pay, on information and belief, more than $65 million in legal fees and indemnification expenses.

[4] Because virtually all activities of UDF IV were delegated to the Advisor and its Affiliates under the Advisory Agreement, the indemnification and advancement provisions set forth in the Advisory Agreement, which were more restrictive than those in the corporate documents of UDF IV, were intended to supersede and limit the indemnification, advancement and liability limitation provisions set forth in UDF IV's organizational documents as relates to the services and activities of the Advisor and its Affiliates on behalf of UDF IV.

C. Defendants Operate UDF in a *Ponzi*-like manner.

46. The criminal trial of UDF's top four executives (three of whom are defendants in this case) exposed the actual truth of UDF's operations.[5] While UDF told its investors that the UDF funds were profitable and supported paying a monthly dividend as high as 9.75%, the reality was far different. In fact, UDF never generated enough cash interest income in any of its funds, including UDF IV, to pay its promised distributions.

47. As a result, Defendants simply ran UDF in a *Ponzi*-like manner. They raised money from new investors in a new fund (UDF IV; and later UDF V) and then re-cycled some of those newly-raised funds to pay fake "dividends" to investors in older funds (primarily UDF III).

48. Like all *Ponzi* schemes, a fraudulent cyclical operation ensued. Defendants had to continue raising money from new investors in order to pay older investors but accomplished this by touting the "clockwork-like" monthly dividends paid to prior investors as proof to the new investors of the safety of their investment. This in turn only increased the need of UDF IV and then UDF V to continually raise new money from new investors in order to pay the monthly dividend thereby keeping the UDF operation afloat. The returns represented by the Defendants

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[5] The UDF investment program consists primarily of United Development Funding III, L.P. ("UDF III"), a Delaware limited partnership whose limited partnership interests are, upon information and belief, held by several thousand unaffiliated holders, United Development Funding IV ("UDF IV"), a Maryland real estate investment trust whose common shares of beneficial ownership are, upon information and belief, held by several thousand unaffiliated holders and United Development Funding V, a Maryland real estate investment trust whose common shares of beneficial ownership are, upon information and belief, held by several hundred unaffiliated holders.

UDF IV is the largest of the entities by total assets and total capital raised, with, upon information and belief, approximately $629.2 million of gross proceeds raised. UDF III, UDF IV and UDF V have at all times been externally advised by Defendant UMTH General, who is predominantly owned by the Individual Defendants. For purposes of this complaint, we refer to the Individual Defendants and the Advisor (including all persons involved in management of the Advisor) as "UDF's Management."

kept the public capital spigot on, which increased the fees, and so on. At all times the Defendants knew that if the capital raising stopped, the house of cards would collapse.

49. Defendants used this scheme to pay themselves tens of millions of dollars in management and transaction fees. Thus, Defendants wanted to keep the scheme alive at all costs.

50. To hide its actions, UDF devised an elaborate scheme of fake transactions. First, Defendants would raise new money in its UDF IV fund and pay themselves fees (Defendants charged a few for simply "accepting" investor money). Then every month when a dividend was due to be paid to UDF III partners, Defendants would cause UDF **IV** to make a fake "loan" to its largest borrower, Mehrdad Moayedi.

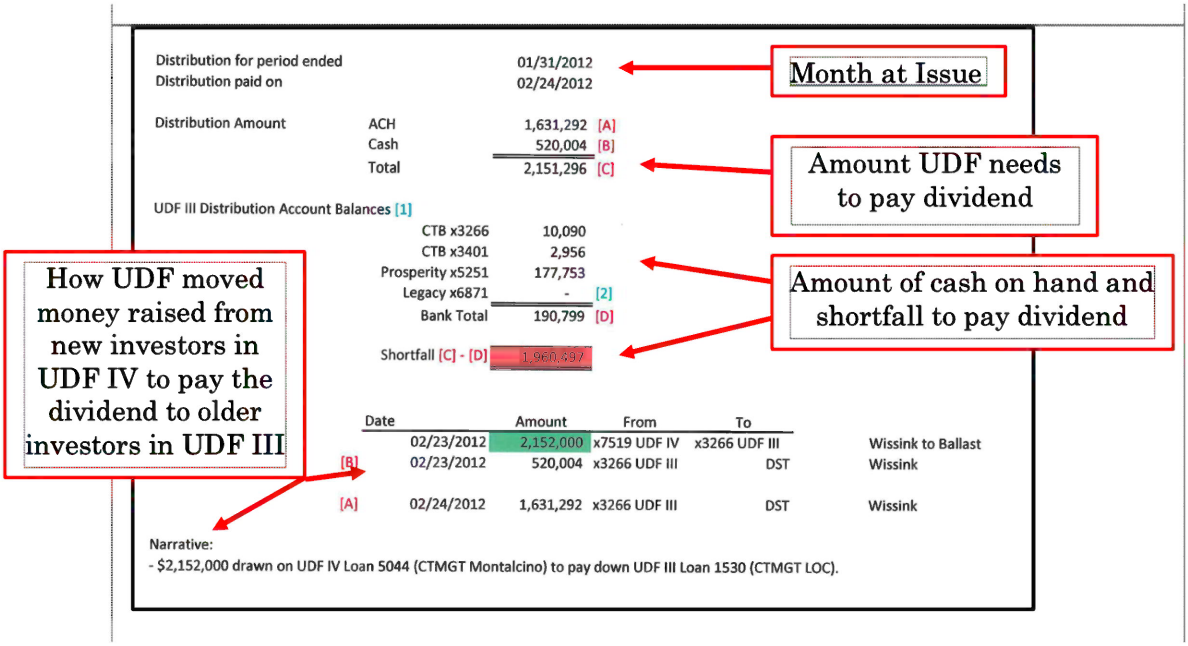
51. Those "loan proceeds" would then be used to make a fake "payment" on a different loan Moayedi had with UDF **III**. Having been infused with money from new investors in UDF IV, UDF III would take those funds and pay a dividend to its prior investors.

52. This fake loan/payment routine would take place the day before a monthly dividend had to be paid. Usually the "loan proceeds" were not even sent to Moayedi. Defendants just book-credited the loan/payment and would get Moayedi to sign documents after the "transactions" occurred.

53. This process was repeated virtually every month from 2010 through at least 2015. And, given that in January 2022, Defendant Greenlaw's lawyer at the criminal trial told the jury that "to this day" UDF continues to operate in the same manner as before, this fraudulent conduct has continued. *See* Opening Statement by Paul Pelletier, *USA v. Greenlaw, et al.*, at 12:10-12 (January 12, 2022).

54. During the criminal trial, Special Agent Scott Martinez from the FBI proved up summary worksheets the FBI had prepared for each month, compiling relevant emails, bank

statements and other items showing the movement of money between the UDF Funds. Here is one such summary document prepared by the FBI for just one month (February 2012) of UDF IV's operations with added explanation showing how the scheme worked:



55. Under this convoluted operation, UDF IV could claim it was making a "loan" to Moayedi development project (even though the loan proceeds were not being used to develop the underlying property for which the loan was supposedly made) and UDF III could claim it received "income" from a borrower (even though that income was re-cycled shareholder funds). This sort of operation is the very essence of a *Ponzi* scheme.

56. The FBI's worksheets showed that, over a five-year period (60 months), UDF moved money raised from new investors (in UDF IV and/or UDF V) to pay "dividends" to older investors in UDF III a total of ***53 of the 60 months*** examined (2011 through 2015).

57. These transactions represented ***$111 million*** in money moved from new investors in UDF IV (and then UDF V) to older investors in UDF III in order to pay dividends and expenses

for UDF III. In other words, 85 cents of every dollar "dividend" received by a UDF III investor came from money raised from a new investor in UDF IV or UDF V.

58. As detailed below, Moayedi's complicity in this process meant he accumulated huge amounts of debt to UDF Funds, including UDF IV. Today, Moayedi owes the UDF Funds close to $1 billion.

59. Defendants' actions in the operation of UDF IV as a *Ponzi* scheme breached their fiduciary duties to NexPoint. Their efforts to hide such conduct also was a breach of their fiduciary duty of candor and full disclosure. Such conduct also constitutes a breach of the Advisory Agreement.

D. <u>The SEC Investigates and then Sues Defendants.</u>

60. In 2013, the SEC received a whistleblower complaint from an employee of UDF's second largest borrower (Buffington). *See* Testimony of Matthew Parker, *USA v. Greenlaw, et al.*, at 118:22-119:3 (January 12, 2022). The SEC commenced a formal investigation in April 2014. Despite being advised by its auditors to disclose the investigation to the public, Defendants adamantly refused to do so until December 2015.

61. During the course of the SEC investigation, Defendants' auditors (Whitley Penn) resigned. Defendants have perpetuated the falsehood that the resignation was routine and that Whitley Penn's last audited financials (Third Quarter 2015) were still valid, but the SEC lawsuit and criminal trial revealed that (i) Whitley Penn likely resigned because it learned during the SEC investigation that Defendants had actively misled them by falsifying cashflow projections for UDF's second largest borrower (Buffington) to make it look like Buffington could repay its UDF loans when, in fact, it could not and (ii) Whitley Penn would have withdrawn its prior opinion on

UDF's financials but felt it did not need to do so because, in light the SEC and criminal investigations, it assumed that no one was relying on them.[6]

62. To this date, since November 2015 Defendants have not issued or otherwise delivered to investors any financial statements for UDF IV (or any other UDF entity) purporting to comply with generally accepted accounting principles, much less audited financial statements. Defendants' refusal to issue or deliver such audited financials led to UDF IV's stock being de-listed and UDF being de-registered.

63. The SEC also determined that Defendants had failed to properly value UDF's assets, including failing to write down loans that were likely not collectible. This led to a massive overstatement in the value of UDF IV's assets but also allowed Defendants to collect millions of dollars of fees based on overvalued assets.

64. On July 3, 2018, the SEC filed suit against the Individual Defendants (and David Hanson, who at the time was Chief Accounting Officer of UDF IV), UDF III and UDF IV, alleging violations of federal securities laws in connection with the above conduct. At the same time, the UDF defendants agreed to a settlement of the SEC lawsuit. The SEC complaint and settlement were filed concurrently with the court.

65. The settlement and subsequent Agreed Judgment required ***Individual Defendants*** in this case to pay disgorgement of profits and pre-judgment interest in the aggregate amount of $7.2 million as follows:

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[6] Whitley Penn's knowledge of the gravity of the impairments in UDF IV's assets is set forth in detail in a release by the Public Company Accounting Oversight Board (the "PCAOB") dated March 24, 2020, sanctioning Whitley Penn and three of its employees. The PCAOB release finds, among other things, that Whitley Penn and three of its employees knew of these asset impairments as early as the audit of the financial statements of UDF IV for the years ended 2013 and 2014.

> It is further **ordered, adjudged,** and **decreed** that:
>
> Defendants Greenlaw, Wissink, Etter, and Obert are jointly and severally liable for disgorgement of $6,809,282, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $390,718.

See Agreed Final Judgment, *SEC v. UDF*, Case No. 3:18-cv-01735-L at 5 (Section VI) (N.D. Tex. July 3, 2018).

66. In fact, the Agreed Judgment specifically detailed how the ***Individual Defendants*** were to pay the disgorgement:

> Defendants shall satisfy these obligations by paying the amounts stated above to the Securities and Exchange Commission within 180 days after entry of this Final Judgment.
>
> Defendants may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendants may also pay by certified check, bank

See id.

67. The settlement also required each Individual Defendant to pay a fine of $250,000 each in addition to the disgorgement amount. Nothing in the Court's final order permitted (or even made mention of) any indemnification by UDF IV, notwithstanding that to receive such indemnification under the Advisory Agreement, the Individual Defendants must have successfully convinced the court to expressly permit such payment after the court had been fully advised of the SEC's position regarding indemnification of securities law liabilities. There is certainly no evidence that the Individual Defendants requested such order, and the final Order of the Court certainly does not permit such indemnification.

E. Defendants Make a Mockery of the SEC Settlement.

68. At the Individual Defendants' post-conviction detention hearing (which determined whether they could remain out on bail pending sentencing), it was publicly revealed for the first time that the Individual Defendants *did not* pay the disgorgement but instead caused UDF IV to use *shareholder money* to satisfy that obligation. As the FBI agent Scott Martinez testified during the detention hearing:

> Q: In looking at the records for this Texas Capital Bank account, did you see any money coming from Defendants Greenlaw individually to pay that disgorgement that been agreed to and ordered by the SEC?
> A: I did not.

See Detention Hearing Trans., *USA v. Greenlaw, et al.*, at 12 (January 24, 2022).

69. The same testimony was given for Defendants Wissink and Obert. *Id.* at 12-13. In other words, Defendants "disgorged" their own ill-gotten profits by keeping those profits and simply causing UDF IV to give shareholders back their own money.

70. Worse, Defendants tried to hide the fact that the payment came from shareholder funds by pretending that the funds used were a payment from a borrower (again, using Moayedi as a conduit for their fraud).

71. As Special Agent Martinez explained at the hearing:

> Q: And there appears to be one deposit, approximately five days prior to that $7.2 million transfer, a $5.8 million and some odd change, where did that $5.8 million wire come from?
> A: It appears to be coming from Centurion Title [a Moayedi entity].

See id. at 11.

72. Those funds, however, can be traced back to a "loan" from UDF. As it had done in the past, Defendants simply used shareholder money to make a "fake" loan to Moayedi who in turn made a "fake" payment to UDF (this time for the Travis Ranch loan). That way, Defendants

could pretend that the funds came from income earned by UDF when in fact it was re-cycled shareholder money.

73. As a result, as Special Agent Martinez confirmed under oath, Defendants secretly used UDF shareholder money to pay their own Court-ordered obligation to disgorge ill-gotten profits:

> Q: So based upon this [payment from Moayedi], does it appear as though money from UDF IV was used by the defendants in this case to pay a portion of at least that disgorgement that was ordered, the $7.2 million?
> A: Yes.

See id. at 12.

74. In other words, in order to settle the SEC lawsuit, the Defendants themselves were ordered to pay $7.2 million in disgorgement, which they failed to do and instead, with approval of the "independent" trustees,[7] engaged in the very same conduct (using shareholder money to pay obligations and then trying to hide it as a fake loan/payment) that led to the SEC lawsuit being filed in the first place.

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[7] The three independent Trustees of UDF IV, namely Phillip K. Marshall, J. Heath Malone and Steven J. Finkle, who on information and belief currently comprise three "independent trustees" of UDF IV, have been trustees of UDF IV since November 12, 2009. In addition to allowing the instant transaction indemnifying the SEC Defendants, they have allowed UDF IV to repeatedly file notices (all the way through August 11, 2020, the day before UDFI Shares were de-registered by the SEC) with the SEC stating that UDF IV was diligently working to complete and file all necessary periodic reports as soon as practicable, when, in reality, UDF IV had told EisnerAmper to quit working on the audit, in direct contradiction to the content of the continuous SEC notice filed as UDF IV continued to fail to file mandatory SEC reports. These individuals also know, or in the exercise of their duties should know, all pertinent provisions of the Advisory Agreement between UDF IV and the Advisor, including the provision expressly prohibiting indemnification of the Advisor and its Affiliates, including the Individual Defendants, for securities law claims except in certain conditions that did not apply to this case. Over the past eight plus years, the lack of oversight by these individual trustees, including their failure to challenge UDF management, consider alternatives under the Advisory Agreement, properly oversee disclosure practices, as well as their permitting the use of UDF IV funds to pay massive legal fees and expenses and disgorgement of profits and pre-judgment interest, all for the benefit of the Individual Defendants and in direct contravention of the Advisory Agreement, collectively constitute an egregious breach of fiduciary responsibilities and statutory duties to UDF IV and its shareholders

75. This is the ultimate deception of the shareholders of UDF IV. It also constituted a breach of Defendants' fiduciary duties to NexPoint. Moreover, apart from whether such conduct violated a court order and the SEC settlement, it clearly violated the Advisory Agreement, which specifically prohibited indemnification of securities law claims absent satisfaction of conditions that were clearly not met.

76. The Advisory Agreement does not permit the Advisor and its employees to be "indemnified" for the disgorgement payment for several reasons:

a. Section 5.01 of the Advisory Agreement precludes indemnification of the Advisor and its Affiliates for the disgorgement payment because such liability or loss was "the result of negligence or misconduct by the Advisor or its Affiliates." *See* Advisory Agreement at §5.01(a)(iii).

b. Further, the Advisor and its Affiliates cannot be indemnified for "any losses, liability or expenses arising from or out of an alleged violation of federal or state securities laws" absent certain conditions that did not occur here. *See* Advisory Agreement at § 5.01(a).

77. If anything, Defendant UMTH General and its Affiliates should be indemnifying UDF IV pursuant to Section 5.02 of the Advisory Agreement, which requires indemnification of *UDF IV* by *the Advisor* given that such "losses and related expenses" were incurred "by reason of the Advisor's bad faith, fraud, misfeasance, misconduct, negligence or reckless disregard of its duties."

F. The Criminal Prosecution.

78. Concurrent with the SEC investigation, the FBI also commenced an investigation of UDF.

79. Based on discussions with the Department of Justice, the Individual Defendants knew for some time that they were likely to be indicted.

80. Despite knowing they had engaged in the very conduct for which they were being investigated, Defendants engaged in a "scorched Earth" litigation strategy against the Government that cost UDF IV shareholders, on information and belief, more than $65 million in legal fees and costs. Similar to how they treated the shareholders, Defendants thought they could mislead and ultimately bully the United States Department of Justice into not prosecuting them. As part of that arrogant, reckless and wildly unsuccessful strategy, the Defendants sued the Department of Justice (the case was dismissed on motion practice); made two separate approaches to the United States Deputy Attorney General attempting to undercut the line prosecutors (both failed miserably) and, by and through Greenlaw's counsel, even threatened the individual prosecutors. These efforts predictably backfired.

81. To be sure, the Defendants were given numerous opportunities to resolve the criminal investigation. But they wanted to stay in control as UDF's Advisor and wanted to continue to earn lucrative fees while UDF IV's shareholders paid all of their legal fees.

82. While the Individual Defendants were free to defend themselves from criminal charges, they were not entitled to do it with UDF IV shareholder money. The Advisory Agreement precludes such advancement and indemnification.

83. On information and belief, the Individual Defendants used their positions as controlling persons of the Advisor and its affiliates and their cozy, long-standing relationship with their independent trustees, who knew or should have known of the illegality of all this behavior, to cause UDF IV to pay most or all of their SEC and criminal legal fees in violation of their

fiduciary duties and the provisions of the Advisory Agreement. The amount incurred is staggering and likely approaches $70 million.

84. Defendants did this knowing (i) such advancement and indemnification was not allowed under the Advisory Agreement; (ii) they had in fact engaged in the very actions for which they were being investigated; and (iii) such conduct, at the very least, violated their fiduciary duties to NexPoint and breached their obligations under the Advisory Agreement.

85. The Individual Defendants' strategy to pressure the Government was a disaster. Greenlaw, Obert and Wissink (along with Brandon Jester, who is not a defendant here) were indicted on ten counts of securities, wire and bank fraud in October 2021.[8] Stunningly, all of the indicted Individual Defendants remained employed by and in control of UMTH General pending the criminal trial in January 2022. Using their positions of control, they continued to cause UDF IV to pay their exorbitant legal fees and continued to earn lucrative management fees while the shareholders got a dividend that was in no respects a distribution of income but instead 100% a return of capital and continued to refuse to provide any information to shareholders, hold an annual meeting or otherwise treat shareholders as the subject of the fiduciary duties they owed.

[8] Defendant Etter was not indicted but it is clear that the Government's investigation and prosecution is not over.

G. Criminal Trial Revelations.

86. The criminal trial revealed aspects of UDF's operations that the Advisor and its Affiliates had hidden from UDF IV's shareholders for many years. Apart from the evidence showing that the Advisor operated UDF IV as a *Ponzi*-scheme, the evidence at trial showed the Advisor had hidden from shareholders its own efforts to stymie its new auditors (EisnerAmper) from issuing audited financials because such financials would show the wrongful conduct of Defendants.

87. EisnerAmper partner Brian Downey testified at the criminal trial that once engaged the Defendants represented that their operations did not include any related party transactions. However, once EisnerAmper began their actual audit work, they discovered scores of "related-party transactions" (*e.g.*, movement of funds from UDF IV to UDF III via fake "loans/payments" by Moayedi) in order to pay dividends to older investors. *See* Testimony of Brian Downey, *USA v. Greenlaw, et al.*, at 643-44 (January 13, 2022) (Downey: "[I]t wasn't part of the preliminary, it was part of our audit and testing, where we got into the detail and began to see this type of activity.").

88. Mr. Downey explained that such transactions have to be reported in SEC filings and would require the restatement of UDF's past financials. *Id.* But despite conveying this information to the Individual Defendants, they refused to allow the audits to be completed because they refused to recognize the transactions as "related party."[9] The Individual Defendants knew

[9] The transactions qualified as "related-party" because of their pass-through nature. In effect, UDF IV was making a payment to UDF III and was not, in substance, loaning money to Moayedi who in turn was making a payment to UDF III. Moayedi has effectively acknowledged that this is correct because (i) UDF has never sought to collect from Moayedi on any of the "loans" and (ii) Moayedi has claimed to others that he is not really obligated to pay back the "loans." This is also just the tip of the iceberg on the related nature of the parties involved. Moayedi and his entities were by far UDF's largest borrower, with a concentration at times in excess of 60% of UDF's entire asset base.

that making the required SEC filings and issuing the proper audited financials would have exposed their wrongdoing.

89. Instead, the Individual Defendants falsely blamed others for their own failure to issue audited financials. Moreover, the Individual Defendants falsely claimed on numerous occasions that they were working on preparing audited financials when in fact they had stopped EisnerAmper from performing work during the SEC investigation.

90. The Individual Defendants knew that the proper completion and issuance of audited financials would reveal their improper conduct and that UDF IV was being operated as a *Ponzi*-scheme. They also knew that many loans were "impaired" and likely not collectible in full, and the completion and issuance of audited financials would have revealed the massive loss of value in UDF IV's loan portfolio. The Individual Defendants knew that UDF would be required to re-state all prior financials and SEC filings (which did not identify the transactions as related-party transactions and did not reflect impairments of loans). Thus, Defendants hid the true financial condition and operations of UDF IV.

91. Defendants' conduct violated their fiduciary duties to UDF IV's shareholders, including NexPoint. It also breached their obligations under the Advisory Agreement because the Advisor and its Affiliates were charged with, among other things, preparing financial statements, cooperating with UDF IV's auditor to ensure audited financial statements were ultimately delivered, causing UDF IV to file such financial statements with the SEC and providing such financial statements to UDF IV shareholders.

Moayedi shared an airplane with Greenlaw, provided gifts to the Individual Defendants and, on information and belief, used his position to exert significant influence over the Defendants. In that regard, Moayedi himself was likely a related party, such that every transaction between any UDF fund and Moayedi should have been disclosed but was not.

92. Even though EisnerAmper's engagement continues to this date, UDF has yet to file or provide to investors a single financial statement for any of its companies That bears repeating: since November 2015, the Advisor has provided no audited financials or other meaningful financial information. Shareholders have no idea of the true financial condition of UDF IV except that its assets have declined substantially.

93. The Advisor did issue one unaudited balance sheet for UDF IV to shareholders in August 2021 as of December 31, 2020. But that unaudited financial is materially misleading. It includes assets that have been (or are required to be) written down. It provides no detail as to the collectability of Moayedi's loans and contains misleading information about income. It has no footnotes as required by generally accepted accounting principles. It reflects no contingent liabilities, notwithstanding the criminal investigation and other litigation against UDF IV. The communication from UDF IV at that time focused primarily on again deceptively pointing investors to the acts of other persons as the reason why information was not being provided when, in reality, the Defendants were entirely motivated to continue concealing the massive fraud they had perpetrated on and perpetuated against investors since as early as 2009.

H. UDF Management Pays Itself Millions in Fees

94. Despite the UDF Funds' abysmal performance, the criminal behavior of the Defendants, the massive litigation burden built up against UDF IV, the SEC allegations of securities law violations and the Defendants failing to do their job since at the latest November 2015, the Entity Defendants, under the direction and control of the Individual Defendants and with the complicity of the UDF IV independent trustees, the Individual Defendants have continued to collect lucrative advisory fees.

95. Since 2011, the Advisor and its Affiliates received millions of dollars in fees pursuant to advisory/management agreements that were never subject to arm's length negotiation and the interpretation of which were always under the control of the Individual Defendants; in other words, the fox effectively lived in the hen house for the duration of the relationship. Because all the UDF Funds shared a common management of about ten insiders, UDF's management was able to direct transfers from fund to fund and charge fees on those fake transactions. By fraudulently raising hundreds of millions of dollars from unsuspecting investors and keeping UDF IV's asset value high, it also earns lucrative base management fees.

96. The sobering truth about UDF's lack of performance is shocking when compared to these fees. For example, in 2012, the UDF III fund paid out close to $30 million in "dividends" to its investors but earned less than $1.5 million in actual interest income during that same time. The difference was covered by shareholder money from UDF IV (which was hidden as a series of fake loans and payments). Yet despite poor performance, UDF consistently paid its management fees and fees to other complicit parties. This allowed UDF to continue raising funds, and continue subsequent programs.

97. During this time period and continuing through today, the Advisor and its Affiliates have breached their fiduciary duties by charging excessive and improper fees. Such fees also breached the Advisory Agreement.

I. The Advisor Refuses To Seek Indemnification for the Shareholders.

98. The Advisory Agreement provides for indemnification of UDF IV by the Advisor under the following section:

> "5.02 Indemnification by Advisor. The Advisor shall indemnify and hold harmless the Trust from contract or other liability, claims, damages, taxes or losses and related expenses including attorneys' fees, to the extent that (i) such liability, claims, damages, taxes or losses and related expenses are not fully reimbursed by insurance and (ii) are

incurred by reason of the Advisor's bad faith, fraud, misfeasance, misconduct, negligence or reckless disregard of its duties."

99. The Advisor and its Affiliates clearly engaged in bad faith, fraud, malfeasance, misconduct, negligence and/or reckless disregard of their duties. Such improper conduct has harmed NexPoint by breaching the Advisor's fiduciary duty and also breaching the Advisory Agreement.

100. At the behest of Greenlaw and UMTH General, the UDF IV board of trustees has taken no action to seek indemnification from UMTH General for the waste of UDF IV assets committed by UMTH General. Similarly, UMTH General, in its role as a fiduciary for UDF IV and UDF IV shareholders, including NexPoint, has made no effort to seek repayment of all legal fees paid on behalf of the Individual Defendants in connection with the SEC investigation and lawsuit, as well as the criminal investigation and prosecution.

101. This too is a breach of the Defendant UMTH General' fiduciary duty as well as a breach of the Advisory Agreement.

J. UDF's Largest Borrower Participates in the Scheme

102. UDF's scheme would not have been possible without Moayedi. Based upon information obtained in connection with the criminal trial, we now know UDF's "loan portfolio" was a disaster and most of the loans were non-performing and under collateralized. The collective portfolio was highly concentrated in a single borrower, Mr. Moayedi, and his web of "Centurion" and "CTMGT" entities. As part of UDF's scheme, it never sought to collect Mr. Moayedi's massive debt because (A) a significant portion of Moayedi's debt were recycled funds, and (B) UDF needed Moayedi, first to continue its fundraising and growth, as Moayedi served as UDF's primary source of loan deals, and second to support the Defendants as they ran into legal troubles.

103. Testimony from the criminal trial established that UDF's loans to developers typically carried interest rates of 13% or more, depending on the UDF Fund that made the loan, and such loans were "interest only" loans. Loans also had an origination fee. Because the loans were made against properties that were not income-producing properties and borrowers were dependent on completion of development activities and lot sales for the repayment of interest and principal, interest at the rate of 13% "accrued" on UDF IV loans to Moayedi, and accrued interest was added to the principal balance of the loan, resulting in substantial compounding of interest. From 2015 to 2020, Moayedi's loan balance increased by around $300 million, much of it due to accrued and rapidly compounding interest payments that could not be made because of lack of sufficient lot sales by Moayedi. As one former employee of Mr. Moayedi's business told the FBI during their investigation, there was no possibility that Mr. Moayedi could repay his ever-increasing loan balance. But UDF management continued to loan to Moayedi as part of their Ponzi operation and scheme to continue paying themselves management fees through the Defendant entities.

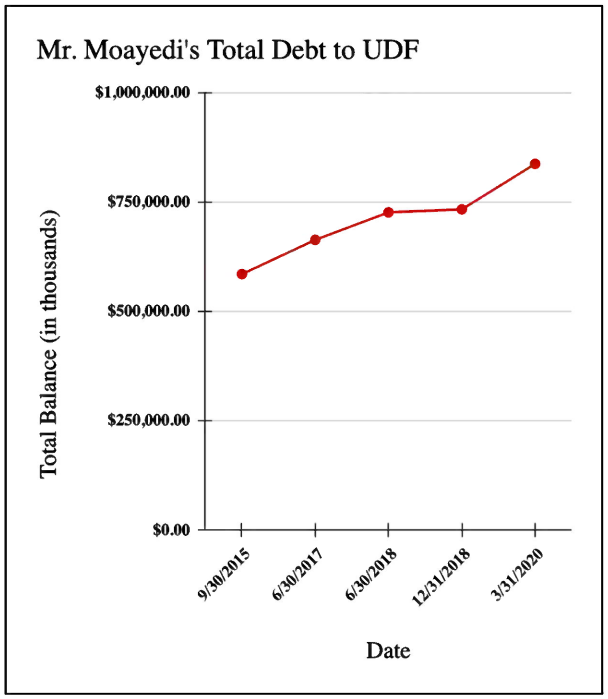
104. Instead of making any efforts to collect on Moayedi's balance, UDF continually *decreased* Moayedi's personal guaranty and eventually eliminated it entirely. Public disclosures made by Moayedi and his entities reflect this practice. For example, the public disclosures show that on or around 2014, Moayedi's guarantee was decreased from $25 million to $10 million, and that on or around 2018, Moayedi's guaranty was *completely* eliminated.

105. The unusually high concentration of loans made to a single borrower, the rapid compounding of interest on the loans, the refusal by UDF to collect the debt, the release of personal liability, and the numerous personal ties between UDF individuals and Moayedi (e.g., Defendant Greenlaw's co-ownership of a private jet with Moayedi, and Moayedi's personal involvement in

securing luxurious homes for UDF's executives) evidence Moayedi's participation in UDF's scheme.

106. In fact, in a private offering memorandum, Centurion admitted that "[a]s of March 31, 2020, the outstanding balance of loans made by UDF to Centurion entities associated with the Centurion UDF Projects is approximately ***$836,900,000***." (emphasis added).

107. The following chart, compiled using public documents filed by Mr. Moayedi, track Mr. Moayedi's ever ballooning debt to UDF:



108. Defendants' failure to cause UDF IV to attempt to collect these loans from Moayedi constitutes a breach of their fiduciary duty and a breach of the Advisory Agreement.

109. Notwithstanding the foregoing and all other breaches of fiduciary duty and breaches of the Advisory Agreement recited herein, Defendants have continued to collect from UDF IV Base Fees under the Advisory Agreement at the rate of approximately $708,333 per month, have continued to cause UDF IV to utilize shareholder funds to pay legal fees and expenses on behalf of the Individual Defendants and, with respect to the Entity Defendants, have failed to attempt to

collect from the Individual Defendants legal fees and expenses and disgorgement payments that constitute impermissible indemnification payments to or on behalf of the Individual Defendants, all in violation of the express terms of the Advisory Agreement.

110. The Entity Defendants' failure to properly oversee the conduct of the Individual Defendants in order to prevent such violation and its aftermath and their failure to seek remedial relief or remuneration for the harm caused to shareholders was a breach of their duties of care and should be compensable to UDF IV and/or its shareholders.

111. The foregoing is an extensive, but not exhaustive, list of abusive behavior, fraud, misconduct and breach of duties on the part of the Defendants, Moayedi and the UDF IV board of trustees. Moreover, the potential claims listed above comprise the most significant claims that are believed to exist; other claims may exist or may be discovered.

112. Plaintiffs specifically plead the discovery rule as to all claims. Defendants have undertaken numerous and extensive actions to hide their wrongful conduct and thus limitations on all claims have been tolled during such period.

CONDITIONS PRECEDENT

113. All conditions precedent for Plaintiffs to bring this action have been performed, have occurred, or have been waived or excused.

CAUSES OF ACTION

FIRST CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY
(as against all Defendants)

114. Plaintiffs incorporate the factual statements set forth above as if set forth fully herein.

115. Each Defendant owed Plaintiffs, as shareholders of UDF IV, fiduciary duties pursuant to the Advisory Agreement with UDF IV. More specifically, the Advisory Agreement explicitly states that "The Advisor shall be deemed to be in a fiduciary relationship to the Trust ***and its Shareholders***" (emphasis added).

116. UMTH General was the Advisor, and all other Defendants acted as Affiliates of Advisor. UMTH General acted by and through the acts of the Individual Defendants, who by legal structure, ownership and position controlled each of the Entity Defendants, including UMTH General.

117. Each Defendant breached their fiduciary duties to Plaintiffs in numerous ways, including but not limited by:

a. Causing UDF IV to divert funds to bail out other underperforming UDF funds and affiliates;

b. Causing UDF IV to divert funds to pay the $7.2 million the SEC ordered the Individual Defendants to pay in disgorgement and prejudgment interest;

c. Causing UDF IV to spend millions of dollars in legal fees for the personal benefit of the Individual Defendants with no benefit to UDF IV shareholders;

d. Intentionally inflating the value of UDF IV's assets and loans to hide the foregoing, all the while earning management fees in excess of $8.5 million per year;

e. Violating securities laws, including blatant failures to disclose payment by UDF IV of the disgorgement and prejudgment interest owed by the Individual Defendants and over $65 million of legal fees paid solely for the benefit of the Individual Defendants;

f. Failing to act with candor towards shareholders by hiding information and interfering with or stopping audits of UDF IV;

g. Failing to be loyal to the shareholders and instead putting Defendants' interests first and above any shareholder, including Plaintiffs; and

h. Intentionally ignoring the contractual and legal requirements for the Individual Defendants to receive advancement/indemnification for their criminal proceeding and not pursuing repayment of those fees now that they have been convicted.

118. These breaches of fiduciary duty caused significant harm to Plaintiffs in an amount to be proven at trial.

SECOND CAUSE OF ACTION: KNOWING PARTICIPATION IN AND/OR AIDING AND ABETTING/ASSISTING AND ENCOURAGING/PARTICIPATING IN BREACH OF FIDUCIARY DUTY
(against all Individual Defendants)

119. Plaintiffs incorporate the factual statements set forth above as if set forth fully herein.

120. Plaintiffs assert this second cause of action for aiding and abetting breach of fiduciary duty against individual defendants Hollis M. Greenlaw; Todd F. Etter; Ben L. Wissink; and Cara D. Obert (the Individual Defendants).

121. To the extent the Individual Defendants are not direct fiduciaries, then they either:

a. Directly and knowingly participated in such breaches of fiduciary duties by the Entity Defendants and/or

b. aided and abetted the breach of fiduciary duty by the Entity Defendants.

122. As asserted in the First Cause of Action above, the Entity Defendants breached their fiduciary duties to the Plaintiffs in numerous ways. The Individual Defendants, who by legal structure, ownership and position controlled all Entity Defendants, knowingly participated in those breaches and/or aided and abetted and assisted and encouraged the Entity Defendants in accomplishing those breaches of fiduciary duty, and the Individual Defendants knew of and were aware of their participation in the Entity Defendants' breaches of fiduciary duty. The Individual Defendants' assistance was a substantial factor in causing the Entity Defendants' breaches and Plaintiffs' damages.

123. Accordingly, Plaintiffs seek to hold the Individual Defendants jointly and severally liable for the damages caused by the Entity Defendants' breaches of fiduciary.

THIRD CAUSE OF ACTION: BREACH OF THE ADVISORY AGREEMENT
(against all Entity Defendants)

124. Plaintiffs incorporate the factual statements set forth above as if set forth fully herein.

125. Plaintiffs assert this third cause of action for breach of contract against the Entity Defendants.

126. The Advisory Agreement is a legal, valid and binding contract between UDF IV and the Entity Defendants.

127. Plaintiffs, as shareholders of UDF IV, is an expressly intended third-party beneficiary of the Advisory Agreement because the contracting parties expressly stated in the Advisory Agreement that UMTH General was a fiduciary for UDF IV and its shareholders, intended to confer the benefit of careful, skillful and loyal management upon Plaintiffs as shareholders and entered into the Advisory Agreement for the ultimate benefit of the UDF IV shareholders, as evidenced by, among other things, the explicit contractual acknowledgment in the Advisory Agreement that the Entity Defendants owed fiduciary duties to UDF IV's shareholders.

128. The Entity Defendants breached the Advisory Agreement in multiple ways that caused harm and damages to Plaintiffs, including but not limited to by:

a. All of the ways listed *supra* that the Entity Defendants violated their fiduciary duties, which also constituted contractual breaches of the Advisory Agreement;

b. Paying and continuing to pay millions of dollars in legal fees to the Individual Defendants in violation of the indemnification/advancement provisions of the Advisory Agreement; and

c. Not demanding or requiring the Individual Defendants to repay all amounts advanced to them in their unsuccessful defense of the criminal charges for which they were convicted, with interest, as required by the indemnification/advancement provisions of the Advisory Agreement.

129. The Entity Defendants' breaches caused Plaintiffs significant damages in an amount to be proven at trial.

FOURTH CAUSE OF ACTION: CONSPIRACY
(against all Defendants)

130. Plaintiffs incorporate the factual statements set forth above as if set forth fully herein.

131. Defendants came together to act in concert, reached a meeting of the minds as to that action and/or course of conduct, and took one or more improper or unlawful steps to accomplish that goal.

132. Simply put, Defendants acted in unison to defraud Plaintiffs and deceive Plaintiffs as to the true nature of UDF IV's operations.

133. Plaintiffs suffered damages as a result of Defendants' actions in an amount to be proven at trial.

134. Accordingly, Defendants are jointly liable for each other's actions because they acted in a common way with a common purpose.

PRAYER

135. Plaintiffs request that Defendants be cited to appear and answer and that upon final trial, Plaintiffs be awarded a judgment against Defendants for the following:

136. General and actual damages in an amount to be proven;

137. Pre- and post-judgment interest;

138. Costs of court;

139. Attorneys' fees;

140. Punitive damages; and

141. Such other relief, both general and special, at law or in equity, to which Plaintiffs may show themselves to be justly entitled, including, without limitation, specific performance by UMTH General of its enumerated services under the Advisory Agreement, which services include,

among others, providing financial and other information to shareholders of UDF IV, acting as a investor relations representative for UDF IV and actively managing the UDF IV loan portfolio, which responsibility includes, without limitation, taking action on behalf of UDF IV, which itself has no employees, to collect all loans receivable held by UDF IV, including those loans to Moayedi and his related entities.

Dated: August 15, 2022

Respectfully submitted,
/s/ Jeffrey M. Tillotson

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