York County Prothonotary Civil E-Filed - 6 Oct 2020 03:17:09 PM
Case Number: 2020-SU-002006

Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet

York County

For Prothonotary Use Only:	TIME STAMP
Docket No:	

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:
☒ Complaint ☐ Writ of Summons ☐ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:	Lead Defendant's Name:
United Fiber & Data LLC	William Hynes
Are money damages requested? ☒ **Yes** ☐ **No**	Dollar Amount Requested: (check one) ☐ within arbitration limits ☒ outside arbitration limits
Is this a *Class Action Suit*? ☐ **Yes** ☒ **No**	**Is this an *MDJ Appeal*?** ☐ **Yes** ☒ **No**

Name of Plaintiff/Appellant's Attorney: Steven B. Feirson, Esq. (Dechert LLP)

☐ **Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)**

SECTION B

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your ***PRIMARY CASE.*** If you are making more than one type of claim, check the one that you consider most important.

TORT (*do not include Mass Tort*)
- ☒ Intentional
- ☐ Malicious Prosecution
- ☐ Motor Vehicle
- ☐ Nuisance
- ☐ Premises Liability
- ☐ Product Liability (*does not include mass tort*)
- ☐ Slander/Libel/ Defamation
- ☐ Other:

MASS TORT
- ☐ Asbestos
- ☐ Tobacco
- ☐ Toxic Tort - DES
- ☐ Toxic Tort - Implant
- ☐ Toxic Waste
- ☐ Other:

PROFESSIONAL LIABLITY
- ☐ Dental
- ☐ Legal
- ☐ Medical
- ☐ Other Professional:

CONTRACT (*do not include Judgments*)
- ☐ Buyer Plaintiff
- ☐ Debt Collection: Credit Card
- ☐ Debt Collection: Other
- ☐ Employment Dispute: Discrimination
- ☐ Employment Dispute: Other
- ☐ Other:

REAL PROPERTY
- ☐ Ejectment
- ☐ Eminent Domain/Condemnation
- ☐ Ground Rent
- ☐ Landlord/Tenant Dispute
- ☐ Mortgage Foreclosure: Residential
- ☐ Mortgage Foreclosure: Commercial
- ☐ Partition
- ☐ Quiet Title
- ☐ Other:

CIVIL APPEALS
Administrative Agencies
- ☐ Board of Assessment
- ☐ Board of Elections
- ☐ Dept. of Transportation
- ☐ Statutory Appeal: Other
- ☐ Zoning Board
- ☐ Other:

MISCELLANEOUS
- ☐ Common Law/Statutory Arbitration
- ☐ Declaratory Judgment
- ☐ Mandamus
- ☐ Non-Domestic Relations Restraining Order
- ☐ Quo Warranto
- ☐ Replevin
- ☐ Other:

Updated 1/1/2011

York County Prothonotary Civil E-Filed - 6 Oct 2020
Case Number: 2020-SU-002006

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA
CIVIL DIVISION

UNITED FIBER & DATA, LLC; THE POWDER MILL FOUNDATION; and LOUIS J. APPELL, III,
Plaintiffs,

versus

WILLIAM HYNES; CHAD TAYLOR; THINK LOUD INVESTMENTS, LLC; 120 YORK, LLC; BKS CAPITAL, LLC; THINK LOUD DEVELOPMENT, LLC; and YRK, LLC,
Defendants.

: Case No.

NOTICE TO DEFEND
Pursuant to PA RCP No. 1018.1

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL SERVICE OF THE
YORK COUNTY BAR ASSOCIATION
YORK COUNTY BAR CENTER
137 EAST MARTKET STREET
YORK, PENNSYLVANIA 17401
TELEPHONE: (717) 854-8755

Effective September 1, 2003 Complaint

EN LA CORTE DE ALEGATOS COMÚN DEL CONDADO DE YORK, PENNSYLVANIA
DIVISIÓN CIVIL

AVISO PARA DEFENDER
Conforme a PA RCP Núm. 1018.1

USTED HA SIDO DEMANDADO/A EN LA CORTE. Si usted desea defender conta la demanda puestas en las siguientes páginas, usted tienen que tomar acción dentro veinte (20) días después que esta Demanda y Aviso es servido, con entrando por escrito una aparencia personalmente o por un abogado y archivando por escrito con la Corte sus defensas o objeciones a las demandas puestas en esta contra usted. Usted es advertido que si falla de hacerlo el caso puede proceder sin usted y un jazgamiento puede ser entrado contra usted por la Corte sin más aviso por cualquier dinero reclamado en la Demanda o por cualquier otro reclamo o alivio solicitado por Demandante. Usted puede perder dinero o propiedad o otros derechos importante para usted.

USTED DEBE LLEVAR ÉSTE PAPEL A SU ABOGADO ENSEGUIDA. SI USTED NO TIENE UN ABOGADO, VAYA O LLAME POR TELÉFONO LA OFICINA FIJADA AQUÍ ABAJO. ESTA OFICINA PUEDE PROVEERÉ CON INFORMACIÓN DE CÓMO CONSEGUIR UN ABOGADO.

SI USTED NO PUEDE PAGARLE A UN ABOGADO, ÉSTA OFICINA PUEDE PROVEERÉ INFORMACIÓN ACERCA AGENCIAS QUE PUEDAN OFRECER SERVICIOS LEGAL A PERSONAS ELIGIBLE AQ UN HONORARIO REDUCIDO O GRATIS.

SERVICIO DE REFERIDO A ABOGADO
COLEGIO DE ABOGADOS DEL CONDADO DE YORK
ABOGACÍA DEL CONDADO DE YORK
CALLE MARKET #137 ESTE
YORK, PENNSYLVANIA 17401
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Efectivo 1 de septiembre, 2003 Queja

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UNITED FIBER & DATA, LLC; THE POWDER MILL FOUNDATION; and LOUIS J. APPELL, III, Plaintiffs, vs. WILLIAM HYNES; CHAD TAYLOR; THINK LOUD INVESTMENTS, LLC; 120 YORK, LLC; BKS CAPITAL, LLC; THINK LOUD DEVELOPMENT, LLC; and YRK, LLC Defendant.	IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA CIVIL ACTION No.: JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs United Fiber & Data, LLC ("UFD" or the "Company"); The Powder Mill Foundation ("Powder Mill"); and Louis J. Appell, III ("Appell") (collectively, "Plaintiffs"), by and through their undersigned counsel, file this Complaint against Defendants William Hynes ("Hynes"); Chad Taylor ("Taylor"); BKS Capital, LLC ("BKS"); Think Loud Holdings, LLC ("TL Holdings"); Think Loud Investments, LLC ("TL Investments"); Think Loud Development, LLC ("TL Development"); 120 York, LLC ("120 York"); and YRK, LLC ("YRK") (collectively, "Defendants"), alleging as follows:

NATURE OF THE CASE

1. Hynes is a convicted felon, having been found guilty of theft by deception in 2010. Hynes is currently facing additional felony charges in York County for burglary, criminal trespass, forgery, and related offenses.

2. Through an entity that he possesses and/or controls, Hynes owns units in UFD. UFD is a Pennsylvania Limited Liability Company ("LLC") engaged in the business of constructing and operating a fiber network in the eastern United States. For many years, Hynes served on the Board of UFD and as its Chief Executive Officer.

3. As detailed below, Hynes, in concert with the Defendants and others, engaged over a period of years in a pattern of unlawful conduct intended to siphon off assets belonging to UFD and Plaintiffs. He did this to enrich himself in order to fund a lifestyle that he otherwise could not afford. This unlawful pattern of misconduct included the outright theft of Company funds, fraud, and persistent self-dealing. As but one example, Hynes unlawfully transferred to one of his personal entities millions of dollars that had come into the Company from the Commonwealth. That money belonged to the

Company, and the Company was legally obligated to immediately turn these funds over to Appell to repay him for a loan that he had made to Company. To cover up his theft of these funds, Hynes has repeatedly lied, including as recently as August 2019, when he falsely claimed that the Company had not received the Funds. To this day, Hynes has not admitted that the funds were received by the Company over a year ago and then immediately transferred to his own personal account.

4. Hynes' unlawful pattern of misconduct also involved his causing the Company to enter into various transactions that had absolutely no legitimate business purpose, especially given that the Company was a startup with very little cash. All of these illegitimate actions were intended to result in a material benefit to Hynes or his co-conspirators. For instance, Hynes and Taylor caused the Company to rent office space in a newly renovated building in York, Pennsylvania, from an entity that they directly or indirectly own. The rental rate under the lease was far in excess of market rates and the amount of space they caused the Company to rent was far in excess of its needs. This blatant self-dealing represented a substantial transfer of funds which improperly benefited Hynes, Taylor, and their cronies to the detriment of the Company. Hynes' efforts to enforce this unfair lease continues to this day.

5. This unlawful pattern of misconduct also included multiple instances of Hynes using UFD funds to advance his career as a Stadium Super Truck racing driver and to pay for branding and promotional services to advance his status as a purported celebrity. Hynes also authorized the misuse of Company funds for several multi-million dollar sponsorships of his close personal friend, Michael Andretti, of the famous Andretti racing family, all at a time when the Company was a cash-challenged start-up. He did

this in order to, among other things, provide a mechanism for charging lavish personal expenses to UFD.

6. This unlawful pattern of conduct also involved Hynes making deliberate, fraudulent misrepresentations to Appell to induce him to loan money to and make equity investments to the Company. Specifically, Hynes repeatedly promised that all money would be used to benefit the Company and that all loans would be repaid. In reliance on these promises, Appell funded the Company through various and differing forms of infusions of funds. Appell obviously would not have done so had he known that Hynes was using the Company as his personal piggy bank and that Hynes had no intent of ever paying back the money.

7. By virtue of this unlawful pattern of theft, fraud, self-dealing, and breaches of duty, as set forth in greater detail below, Defendants have caused substantial harm to the Company, its investors, and its creditors. While the full extent of damages is not yet known, it is clear that Defendants have damaged Plaintiffs in an amount in the tens of millions of dollars. Indeed, Defendants owe in excess of $20 million pursuant to various promissory notes held by Plaintiffs which Defendants have failed to pay.

8. Despite the fact that Hynes is currently facing multiple felony charges involving a former Company employee and has engaged in the aforementioned pattern of illegal activity such that any continuing connection to Hynes will continue to cause harm to the Company, Hynes' controlled entity, BKS, recently purported to name Hynes to one of three seats on the Company board. While BKS generally has the right to designate someone to fill a UFD Board seat, it cannot designate an individual – like Hynes – whose appointment would permit Hynes to continue to pursue his scheme of draining Company

assets and whose presence as a high profile member of the Board in and of itself would harm the Company. Accordingly, in addition to awarding Plaintiffs compensatory damages, punitive damages, costs, and attorneys' fees, the Court should declare that Hynes may not serve as a member of the UFD board.

THE PARTIES

Plaintiffs

9. UFD is a Pennsylvania limited liability company. Its principal place of business is located at 210 York Street, Suite 200, York, Pennsylvania.

10. Appell is an individual who resides in San Diego, California.

11. Powder Mill is a non-profit organization whose mission is, in part, to support local non-profits in York, Pennsylvania with funding for capital improvements and expenditures, creation of new programs, collaborative efforts and community development initiatives for the benefit of the citizens of the City of York. Powder Mill's principal place of business is located at 140 East Market Street, York, Pennsylvania.

Defendants

12. Hynes is an individual who resides at 210 York Street in York, Pennsylvania and in Nazareth, Pennsylvania.

13. Taylor is an individual who resides at 210 York Street in York, Pennsylvania and in Lancaster, Pennsylvania.

14. BKS is, upon information and belief, a Pennsylvania limited liability company directly and or indirectly owned and/or controlled by Hynes, which, upon information and belief, is located at 210 York Street, Suite 100, in York, Pennsylvania.

15. TL Holdings is, upon information and belief, a Pennsylvania limited liability company directly or indirectly owned and/or controlled by Taylor, Chad Gracey

("Gracey"), and Patrick Dahlheimer ("Dahlheimer"), which, upon information and belief, is located at 210 York Street, Suite 100, in York, Pennsylvania.

16. TL Investments is, upon information and belief, a Pennsylvania limited liability company directly or indirectly owned and/or controlled by Hynes, Taylor, Gracey, and Dahlheimer, which, upon information and belief, is located at 210 York Street, Suite 100, in York, Pennsylvania.

17. TL Development is, upon information and belief, a Pennsylvania limited liability company directly or indirectly owned and/or controlled by Hynes, Taylor, Gracey, and Dahlheimer, which, upon information and belief, is located at 210 York Street, Suite 100, in York, Pennsylvania.

18. 120 York is, upon information and belief, a Pennsylvania limited liability company directly or indirectly owned and/or controlled by Hynes, Taylor, Gracey, and Dahlheimer, which, upon information and belief, is located at 210 York Street, Suite 100, in York, Pennsylvania.

19. YRK is, upon information and belief, a Pennsylvania limited liability company directly or indirectly owned and/or controlled by Hynes, Taylor, Gracey, and Dahlheimer, which, upon information and belief, is located at 210 York Street, Suite 100, in York, Pennsylvania.

FACTUAL BACKGROUND

Background Of UFD

20. UFD was founded by musicians from York, Pennsylvania. In the 1990s, Taylor and two of his bandmates, Gracey and Dahlheimer, enjoyed a successful career as

rock musicians, toured the world, and sold millions of records as members of the band Live.

21. As part of a second act, they, along with their manager and business associate, Hynes, started a family office of sorts through TL Investments and TL Development, as well as other Think Loud entities. Through TL Development, Hynes and the members of the band allegedly invest and solicit capital, and attempt to start and grow business ventures. Upon information and belief, Hynes, Taylor, Gracey, and Dahlheimer later founded, among other entities, TL Development, TL Investments, 120 York, and YRK.

22. About a decade ago, Hynes and/or Taylor and perhaps others saw that there might be an opportunity to build a new fiber optic pathway connecting New York City to Washington, D.C. In 2012, the members of TL Holdings created UFD, headquartered in York, Pennsylvania, to build that network.

The Appell Family Provided Substantial Financial Support to UFD

23. To fund their venture, TL Investments' and Think Loud Development's members approached Louis Appell, Jr., a successful businessman, prominent philanthropist, and a well-known supporter of the York, Pennsylvania community. They targeted Louis Appell, Jr. because they knew that the Appell family cared deeply about the York community and would be inherently drawn to a tenet of UFD's mission: to create jobs and growth in York.

24. Louis Appell, Jr. provided initial funding for Defendants to start UFD through a $7,000,000 loan to TL Investments. That loan is memorialized in a promissory note dated July 11, 2012, between LJA Residuary Trust (an Appell entity), as lender, and TL Investments, as borrower. The loan was personally guaranteed by Hynes, Taylor,

Dahlheimer, and Gracey, as well as by UFD (then known as United Federal Data) (the "July 2012 Note"). A true and correct copy of the July 2012 Note, together with the guarantees, is attached hereto as Exhibit 1. By operation of trust law, the July 2012 Note is currently owned by Appell and his sister.

25. Over time, Louis Appell, Jr. and other members of the Appell family made millions of dollars of additional debt and equity investments in UFD or in Defendants' other entities.

26. Among other loans, Louis Appell, Jr. provided another loan to TL Investments for $1,000,000. That loan is memorialized in a promissory note dated October 11, 2013, between LJA Jr. Revocable Trust, as lender, and TL Investment, as borrower, and was personally guaranteed by Hynes, Taylor, Dahlheimer, and Gracey, as well as UFD (the "October 2013 Note"). A true and correct copy of the October 2013 Note, together with the guarantees, is attached hereto as Exhibit 2. The note was later assigned to Powder Mill. A true and correct copy of the assignment is attached hereto as Exhibit 3.

27. Louis Appell, Jr. provided another loan, this time directly to UFD, for $5,000,000, in April 2014. That loan is memorialized in a promissory note dated April 1, 2014, as amended May 25, 2016, between LJA Jr. Revocable Trust, as lender, and UFD, as borrower, and was personally guaranteed by Hynes, Taylor, Dahlheimer, and Gracey (the "April 2014 Note"). A true and correct copy of the April 2014 Note, as amended on May 25, 2016, together with the guarantees, is attached hereto as Exhibit 4. The note also was later assigned to Powder Mill. A true and correct copy of the assignment is attached hereto as Exhibit 5.

28. Several years later, Louis Appell, Jr. provided a $13,250,000 million loan to UFD. That loan is memorialized in a promissory note dated February 27, 2016, as corrected May 25, 2016, between LJA Jr. Revocable Trust, as lender, and UFD, as borrower, and was personally guaranteed by Hynes (the "February 2016 Note"). A true and correct copy of the February 2016 Note, together with the guarantees, is attached hereto as Exhibit 6. This note, too, was later assigned to Powder Mill. A true and correct copy of the assignment is attached hereto as Exhibit 7.

29. Hynes, on behalf of himself and the other Defendants, has repeatedly acknowledged these and the other debts owed to Powder Mill, Appell, and other Appell family members. He has also repeatedly committed to repaying the debts. For instance, he repeatedly acknowledged the debts in conversations with Appell and UFD representatives and repeatedly assured Appell and UFD that all money would be paid back. Among other things, Hynes repeatedly referred to the outstanding debts, stated that the loans would be repaid, and stated that no one would "get screwed" when working with him. As recently as August 2019, Hynes stated that "[o]ur goal is to get all of the debt from you [Appell] & [Appell's sister] paid back as soon as possible."

30. Similarly, in a December 17, 2018 letter signed by Hynes to UFD investors, Hynes acknowledged the existence of "older loans which were originally made by Louis Appell Jr. but are now owing to Powder Mill Foundation" and committed to re-paying those loans.

31. Moreover, Hynes acknowledged the loans by expressly consenting in writing to the assignment of notes to Powder Mill in March 2019.

32. Finally, Hynes repeatedly acknowledged these debts were still due and owing during Company meetings, including board meetings where the refinancing of the debts was discussed.

Management And Governance Of UFD

33. Until December 2017, UFD was solely controlled by Hynes, Taylor, Dahlheimer, and Gracey.

34. Taylor served as the Chief Executive Officer ("CEO") of UFD until on or about October 15, 2015. At the time, the Board was comprised of Hynes, Taylor, Gracey, and Dahlheimer.

35. In or about November 2015, Taylor, Gracey, and Dahlheimer resigned from the Board, and Hynes took over as the Company's CEO and sole Board Member.

36. By late 2017, the Appell family had infused millions of dollars into UFD. Nonetheless, the Company was still operating at a deficit and the Appells' continuing support was the only thing that allowed the Company to remain operational and to continue its efforts to complete construction of the line. As a result of the family's significant interest in the Company, Appell requested that UFD undertake a review of its governance process, including its operative agreements. As part of that process, UFD, BKS, Appell, and others entered into the Third Amended and Restated Limited Liability Company Agreement as of October 31, 2017 (the "Operating Agreement"). A true and correct copy of the Operating Agreement is attached hereto as Exhibit 8.

37. Although dated October 31, 2017, the Operating Agreement was not fully executed, and did not become effective, until some point in December 2017, when Hynes finally signed the Operating Agreement after a long period of delay.

38. The Operating Agreement called for a Board of three. One member was to appointed by the Appell interests. Appell was the Appell-appointed Board member under the Operating Agreement and continues on the Board to this day. One member of the Board was to be appointed by BKS. Hynes was the original BKS-appointed Board member. Hynes resigned from the Board as a result of his arrest in the Fall of 2019.

39. The signing of the Operating Agreement in December 2017 marked the first time that anyone besides Hynes, Taylor, Dahlheimer, or Gracey had any role in the management or control of UFD. Despite Appell's designation as a Board member, his ability to access information about UFD was extremely limited. He was not an officer of UFD and consequently had to rely on others to provide him with critical information. As has now become apparent, information was consistently hidden from him by Defendants and those assisting them. Hence, Appell was actively kept in the dark regarding the pattern of unlawful conduct described below.

Fiduciary Duties Under The Law and Operating Agreement

40. The Operating Agreement states that the PA Uniform Limited Liability Company Act of 2016 ("LLC Act") governs. *See* Operating Agreement § 201; Definition of "Pennsylvania Act." The Pennsylvania Act itself provides that, as of April 1, 2017, it governs all Pennsylvania LLCs. *See* 15 Pa. Cons. Stat. Ann. § 8811.

41. The LLC Act provides, among other things, that members of Boards like UFD's owe fiduciary duties to the company, including the duty of care and duty of loyalty. 15 Pa. Con. Stat. Ann. § 8849.2.

42. Officers in LLCs owe similar fiduciary duties.

43. The LLC Act also explicitly requires Board members, as well as officers, to "discharge the duties and obligations under this title or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing." 15 Pa. Con. Stat. Ann. § 8849.2(d).

44. Section 11.03 of the Operating Agreement provides generally that entities like BKS which own units in UFD may engage in other businesses ("Other Businesses") and that those Other Businesses may engage in transactions with the Company. However, the Operating Agreement expressly provides that any such transactions must be "***on terms no less favorable to the Company . . . than would be obtainable in an arm's length transaction***." Operating Agreement § 11.03.

45. Prior to the execution of the current Operating Agreement, UFD was governed by earlier versions of an Operating Agreement. Earlier versions of the Operating Agreement similarly contained provisions providing protection to UFD from self-dealing by its officials.

Hynes' Long Term Pattern Of Self-Dealing

46. Before each of the debt or equity investments made by Appell, Hynes assured Appell that the funds would be used solely for legitimate purposes. He also assured Appell that all debts would be repaid and that construction on the fiber optic line would soon be completed. Additionally, he repeatedly stated that contracts with customers were lined up, and would be executed, as soon as the line was completed. These representations were made on numerous occasions to induce Appell to continue investing in UFD.

47. These representations by Hynes were knowingly false. Contrary to Hynes' representations, the money was not used solely to benefit the Company. Instead, significant sums were diverted by Hynes, Taylor, Dahlheimer, and Gracey or their affiliated entities to finance lifestyles that they could not otherwise afford or to invest in other personal projects outside of UFD, thereby, among other things, increasing the debt and equity burden on UFD without any direct benefit to UFD or its equity holders. This conduct caused significant harm to UFD, including delays in completing the fiber optic line and damage to UFD's reputation and its potential customer relationships.

48. Moreover, construction was not nearly complete and contracts were not lined up to be signed upon completion of the line.

49. Hynes and those acting with him not only hid his theft, fraud, and misuse of Company funds, but covered up his unlawful conduct by consistently claiming that he was devoted solely to keeping UFD afloat and making it a success. For example, as recently as June 11, 2020, Hynes wrote in a text message to Appell that "[t]here isn't another person alive that wants to see UFD become a successful company more than I, and to make sure that first and foremost the Appell family is repaid for their support."

50. Representations like this were made throughout the years. Only very recently were Plaintiffs able to learn that they were a lie.

Defendants' Theft Of RACP Grant Money

51. In 2017, the Redevelopment Authority of the County of York ("RACY"), was awarded a $5,000,000 Redevelopment Assistance Capital Program ("RACP") grant from the Commonwealth of Pennsylvania to renovate the building at 210 York Street (the

"Renovation Project"). 210 York Street is owned by 120 York, an entity owned and controlled by Hynes, Taylor, Dahlheimer, and Gracey.

52. Under the terms of the grant agreement, the RACP would provide a 50% reimbursement for development costs at the 210 York Street site. RACP funds are disbursed by the Pennsylvania Office of Budget to a local government redevelopment authority once project funding is approved. At the local level, RACY received the funds for the 210 York Street project and managed reimbursement.

53. Hynes, using his CEO position, represented to Appell that the RACP grant money would not be available to UFD unless and until UFD first invested in the Redevelopment Project. Hynes then induced Appell to provide a $5 million line of credit to constitute the investment necessary to qualify for the RACP grant.

54. Before Appell made the loan, Appell insisted and Hynes promised that he would insure the amounts paid out pursuant to the loan would be repaid to Appell immediately upon UFD's receipt of the RACP grant money.

55. This promise was critical to Appell's decision to provide the $5 million loan to UFD and to sign the promissory note. Appell would not have provided the funding had Hynes not induced him to do so by virtue of the immediate reimbursement promise.

56. Hynes and Appell discussed that it would take about one and a half years to complete the renovation project, submit expenses for reimbursement by the Commonwealth, and obtain reimbursement. Appell therefore expected to be paid back under the promissory note at some point in 2018.

57. The line of credit is evidenced by a promissory note dated January 1, 2017 (the "RACP Note"). The RACP Note was signed by Hynes on behalf of UFD. The Note identified 120 York but also stated that the Company, i.e., UFD, "shall pay Holder (Appell) an amount equal to any RACP reimbursement received within fifteen (15) days of receiving such reimbursement." A true and correct copy of the RACP Note is attached hereto as Exhibit 9.

58. Hynes' promise to repay Appell as soon as UFD received any RACP reimbursement was memorialized on the face of the RACP Note itself. The Note makes clear that the loan is related to the renovation project: "Advances shall be used to pay for the construction costs related to the build-out and fit-out of the building owned by the Company located at 210 York Street . . . (the "Project")." Exhibit 9 at § 2. The Note also stated that the "Company has received a Redevelopment Assistance Capital Program (RACP) grant from the Commonwealth of Pennsylvania," and that "[t]he funds advance from Holder [Appell] to Company are intended to bridge the funding for the Project" until the Company received the RACP grant money. Exhibit 9 at § 3. Most importantly, Section 3 of the note states that the "Company shall pay Holder [Appell] an amount equal to any RACP reimbursement received within fifteen (15) days of receiving such reimbursement."

59. Between January and August 2017, Appell advanced $4,030,286 for the Renovation Project pursuant to draw requests under the promissory note.

60. On October 25, 2017, Appell sent a letter to the Pennsylvania Office of Budget. In that letter, Appell stated: "I write to confirm that I am the bridge lender to 120 York, LLC (the "LLC") for their redevelopment project located at 210 York Street,

York, PA 17403 ("Project"). I provided a line of credit in the amount of $5,000,000.00 to the LLC pursuant to a Promissory Note ("Note"). To date, I have advanced $4,030,285.64 to the LLC pursuant to their draw requests."

61. In late 2018, knowing that Phase 1 of the 210 York Street renovations had been completed and the Company had submitted to RACY its Phase 1 expenses for reimbursement, Appell began asking Hynes when he expected the Company to receive the RACP reimbursement which was to be transferred to him. Appell asked Hynes about the status of the RACP grant on many occasions over the course of more than a year. On each occasion, Hynes told Appell that the RACP reimbursement had not been received.

62. Most recently, on August 27, 2019, Appell's wife asked Hynes about the status of the RACP grant via text message. Hynes replied by text that no funds had been received ("I don't have an update.") and that additional grant conditions needed to be met to receive the RACP funding, which was being withheld pending the completion of those remaining conditions ("Still have to meet some more special conditions that they have and they still have 3.5mm to release to us. We need to start the infrastructure part and start the demo / cleanup of prison so unfortunately we need to spend a little more for them to release the 3.5 mm but everything was put on hold to save money because funds are tight.").

63. Hynes statements were conscious lies calculated to cover up the fact that the RACP funds had been received by the Company ***fourteen months earlier***, and immediately diverted from UFD to Hynes. The truth, which Hynes deliberately concealed, was that over a year earlier, on June 11, 2018, UFD had received a

reimbursement check under the RACP grant in the amount of $3,388,027, which was deposited into a Wells Fargo business checking account belonging to UFD.

64. This money belonged to the Company – not to Hynes or any of his entities – and it was to be used solely to repay UFD's obligation to Appell under the terms of the RACP Note.

65. Although the terms of the RACP Note required that these funds be turned over to Appell within 15 days, Hynes did not tell Appell that the grant had been received.

66. Instead, on June 12, 2018, the day after UFD received the RACP grant money, Hynes immediately and unilaterally transferred the entire $3,388,027 out of the UFD Wells Fargo checking account to an account belonging to 120 York, an entity owned and controlled by Hynes and his colleagues. This was accomplished by breaking the RACP money into four smaller pieces and then transferring them via three transfers for $1,000,000 each and a fourth transfer for the remaining $ 388,027.00. By transferring no more than $1,000,000 in any one transfer, Hynes was able to avoid additional approvals by the bank that would be required for transfers larger than $1,000,000.

67. This was a straightforward and blatant act of theft by Hynes. The transfer was never disclosed to the Board, let alone approved by it, and Hynes misrepresented the transaction to UFD employees to further his fraudulent acts. But for these deliberate and premeditated unlawful acts, the RACP money would have been immediately paid by UFD to Appell.

68. Appell did not discover that the grant money had in fact been received by UFD and that Hynes had immediately transferred the money to himself until early 2020,

after Hynes resigned as CEO, left the Board, and the Company began investigating transactions Hynes carried out between UFD and Hynes-controlled entities.

69. Due to Hynes' theft of the RACP funds, Appell never received the payment to which he was entitled under the RACP Note and the Company was placed in a position of default under the Note. Appell has not been repaid a single dollar under the RACP Note. As a result of the above described theft of Company funds, UFD has been deprived of millions of dollars which rightfully belongs to it and Appell has been the victim of a multimillion dollar illegal scam.

70. Paragraphs 51 through 69 are hereinafter referred to as "Theft of RACP Grant Money."

Using UFD Funds to Promote Hynes' Personal Racing Career

71. Hynes also dipped into UFD funds to promote his personal racing career and in an effort to advance his purported celebrity status.

72. From approximately 2017 to 2019, a company named IMS Productions ("IMS") produced a number of commercials and other television materials for Hynes related to his personal Stadium Super Trucks racing activities. These productions had nothing to do with UFD.

73. Nevertheless, Hynes used UFD funds to pay for the production of the commercials about Hynes' racing activities. Specifically, Hynes, in yet another act of theft, had the invoices forwarded directly to UFD for payment.

74. Hynes knew that he would be questioned if he submitted invoices to the Company for payment that suggested the commercials were related to his purely personal racing activities. In fact, others at the Company had asked Hynes on multiple occasions

whether he used Company funding in an effort to advance his racing career. Hynes always denied doing so.

75. Therefore, before he submitted the invoices for payment, Hynes used a PDF program on his computer to modify IMS's invoices to redact all references to Stadium Super Trucks racing. It should be apparent that Hynes made these fraudulent redactions with the conscious intent to conceal the true nature of these expenses and make it appear that IMS was providing production services for UFD.

76. Hynes submitted multiple IMS invoices or claims to UFD for payment and UFD paid those invoices, including the following:

a. An invoice (Invoice No. 24000I0009783) dated March 23, 2017 for $25,000, containing a notation stating "Stadium Super Trucks, St. Pete TV Production." Hynes never provided the invoice to UFD but received $25,000 for reimbursement. Upon information and belief, Hynes told UFD's bookkeeper to pay the deposit but never provided a copy of the invoice, even when asked to do so.

b. An invoice (Invoice No. 24000I0009814) dated April 6, 2017, containing a notation stating "Stadium Super Trucks, Long Beach TV Production." Hynes submitted a request for payment from UFD, and received $25,000 in reimbursement, but never provided the supported invoice, even when asked to do so.

c. An invoice (Invoice No. 2400I009996) dated June 5, 2017 for $25,000, containing a notation stating "Stadium Super Trucks IndyCar Detroit TV Production." Hynes modified this notation to say only "TV Production," and submitted a request for payment from UFD.

d. An invoice (Invoice No. 2400I009997) dated June 5, 2017 for $25,000 and containing a notation stating "Stadium Super Trucks IndyCar Texas TV Production." Hynes modified this notation to say only "TV Production," and submitted a request for payment from UFD.

e. An invoice (Invoice No. 2400I0010224) dated September 30, 2017, for $25,000. Hynes removed all references to

Stadium Super Trucks racing from the invoice, such that the modified invoice only noted "TV Production," before submitting it to UFD for payment.

f. An invoice (Invoice No. 24000I0010409) dated April 11, 2018 for $50,000. The original invoice as received from IMS stated "Stadium Super Trucks, Long Beach TV Production." Hynes modified the invoice to remove the references to "Stadium Super Trucks, Long Beach TV Production." The invoice in UFD's possession states "Bloomberg, MSNBC, CNBC tv/web commercials."

g. An invoice (Invoice No. 24000I0010566) dated June 25, 2018 for $50,000. The original invoice as received from IMS contained a notation stating "Texas & Detroit Stadium Super Trucks TV Production." Hynes modified the invoice to remove the references to Stadium Super Trucks, such that the notation only said "TV Production" and then submitted the invoice to UFD for payment.

h. An invoice (Invoice No. 24000I0010699) dated August 31, 2018 for $25,000. The original invoice from IMS Productions contains a notation that the services provided were related to "Stadium Super Trucks Road America TV Production," which made clear that the services performed by IMS was related to Hynes' racing activities. Hynes removed all references to Stadium Super Trucks racing from the invoice and left only the word "Production," before submitting it to UFD for payment.

i. Another invoice (Invoice No. 2400I0010848) was dated January 17, 2019, also for $25,000. The original invoice from IMS Productions contains a notation that the services provided were related to "Stadium Super Trucks Broadcast Production on CBSSN" in Sydney, Australia in December 2018, which made clear that the services performed by IMS was related to Hynes' racing activities while he was in Sydney. Yet again, Hynes modified the invoice to remove the references to Stadium Super Trucks, such that the invoice description said only "Post Production Flat Rate: Edit, Graphics, Audio," and then submitted the invoice to UFD for payment, claiming that the invoice was related to work that IMS had done to promote UFD.

77. In total, Hynes, in his continuing pattern of unlawful actions, grabbed at least $275,000 of UFD funds for his personal use, *i.e.*, to pay for commercials and other

promotional materials related to his personal Stadium Super Truck racing activities. In addition, he repeatedly, deliberately, and with conscious intent to defraud UFD either altered or failed to provide the invoices at issue, as set forth above, in order to conceal the true beneficiary of the services provided and to facilitate his theft of UFD funds.

78. These particular unlawful acts are just further examples of Hynes' long-running standard operating procedure of engaging in fraud to divert funds from the Plaintiffs for the personal benefit of Hynes and those acting in concert with him. Each individual act in the pattern of misconduct set out above is an egregious breach of law and duty. Together, they are a shocking display of avarice and violations of the legal obligations owed to the Company.

79. Paragraphs 71 through 78 are hereinafter referred to as the "Stadium Super Trucks Racing Thefts."

Hynes Commits A Half Million Dollar Fraud In Connection With Unrecorded Promissory Note from Third-Party Investor David F. Bolger Trust

80. In December 2018, UFD, under Hynes leadership, represented that approximately $10 million was needed to complete construction of the fiber optic line. Appell had become increasingly frustrated with the delays in construction and Hynes' repeated requests for additional funding. As a result, Appell agreed to provide one-half of the $10,000,000 if the Company would raise the other half. Only $1,000,000 was raised from other investors. To avoid a liquidity crisis, Appell agreed to provide the needed funding if Hynes would demonstrate his personal commitment to the Company by loaning a portion of the needed funds. Appell felt this was a fair ask of Hynes because Hynes always held himself out as an extremely successful businessperson and real estate developer, he was the CEO of UFD, and BKS, his controlled entity, had a large financial

interest in the Company. Pursuant to this demand from Appell, Hynes committed to loaning $500,000 to the Company.

81. Specifically, Hynes represented that he had loaned UFD $500,000 from his wholly-owned company, BKS. Hynes caused UFD to execute a promissory note to BKS memorializing this loan. That Note, dated July 1, 2019, is between BKS, as lender, and UFD, as borrower (the "BKS Note"). A true and correct copy of the BKS Note is attached hereto as Exhibit 10. Hynes directed UFD's Chief Financial Officer, Douglas Schultz, to sign the BKS Note on behalf of the Company and had the note recorded on the Company's books as a liability to BKS.

82. Hynes then wired $500,000 to UFD, purportedly from BKS and using his personal funds.

83. In reality, Hynes did not use his own money or BKS's money to make the $500,000 loan. Instead, that money came from a third-party investor the David F. Bolger Trust (the "Bolger Trust"), through its trustee, Tom Wells.

84. Hynes obtained the $500,000 he lent to the Company through a complex scheme that went as follows:

a. Hynes approached Mr. Wells and asked the Bolger Trust to lend $500,000 to UFD. Mr. Wells agreed to do so.

b. Hynes prepared a promissory note dated July 1, 2019, showing the Bolger Trust, as lender, and UFD, as borrower (the "Bolger Trust Note"). Hynes signed the Bolger Trust Note on behalf of UFD on July 1, 2019, and Mr. Wells signed the Note on behalf of the Bolger Trust on July 2, 2019. Hynes then returned a fully-executed copy of the Bolger Trust Note to Mr. Wells. Mr. Wells was therefore led to believe that he was the holder of a valid promissory note from UFD.

c. Next, Hynes sent Mr. Wells instructions to wire the $500,000 to a particular UFD sub bank account with Wells

Fargo. Hynes was calculated and intentional in selecting the particular sub account to receive the transfer from Mr. Wells. Although a UFD account, Hynes had previously instructed the bank to remove UFD's CFO and accountant as persons with access to the sub account and records related to the account. Hynes also had asked the bank to stop sending UFD paper statements for the sub account. Therefore, UFD's CFO and accountant were unable to see activity in the account, and would not have known about Mr. Well's transfer.

d. As instructed by Hynes, Mr. Wells wired the $500,000 to the particular UFD sub account on July 2, 2019. Hynes did not tell anyone from UFD that Mr. Wells had wired this money. Instead, that same day, July 2, 2019, Hynes transferred the $500,000 provided by the Bolger Trust out of the UFD sub account to one of Hynes' personal bank accounts.

e. Hynes thereafter transferred $500,000 from his personal bank account to a UFD bank account, and told others at UFD that the wire transfer was made by Hynes to satisfy his obligations under the BKS Note—i.e., to satisfy Hynes' personal commitment to Appell and others at UFD to invest at least $500,000 in the Company.

85. Even though UFD only received $500,000 in total (the $500,000 that Hynes transferred to UFD from his personal bank account after transferring to himself the money from Mr. Wells), there are now two notes, the BKS Note and the Wells Note, which together make UFD liable for $1,000,000. Moreover, Hynes holds a note from UFD obligating the Company to repay him $500,000 for funds he never advanced to the Company in the first place.

86. Paragraphs 80 through 85 are hereinafter referred to as "Fraud In Connection With Promissory Note from the Bolger Trust."

The York Lease

87. One of Defendants' methods for using Company funds as their piggy bank was by causing the Company to enter into unfair, above-market transactions with entities affiliated with Defendants.

88. On November 1, 2013, when UFD had just nine employees and had not even started significant construction of the fiber optic line, let alone generated material revenue, Hynes, Taylor, Dahlheimer, and Gracey caused UFD to sign a purportedly long-term lease for 14,877 square feet of Class A office space on the first and second floor in a building located at 210 York Street in the City of York. The rent under the lease was far above the then market rent, and the space taken far exceeded that necessary. The building was and is owned by 120 York, an entity owned and controlled by Hynes, Taylor, Dahlheimer, and Gracey. A true and correct copy of the lease (the "Lease") is attached hereto as Exhibit 11.

89. Taylor signed the Lease on behalf of UFD, as lessee, while Gracey signed the Lease on behalf of 120 York, as lessor. The purpose of having UFD execute a long-term lease for more space than it needed at an exorbitant, above-market rent was to fund Defendants' construction of the recording studio and residential quarters on the back of UFD.

90. The terms of the Lease were determined solely and exclusively by Hynes Taylor, Dahlheimer, and Gracey, while they were acting as both lessor and lessee. It was an obvious example of blatant self-dealing at the expense of UFD.

91. As noted above, the terms of the Lease are unfair to UFD in multiple respects.

92. The first way that the terms of the Lease were unfair to UFD is that rent and Common Area Maintenance ("CAM") payments due under the Lease were and are substantially in excess of the market rate for Class A office space in York. The excess charges under the Lease have resulted in an overcharge of hundreds of thousands of dollars per year to UFD. Such money has been diverted to 120 York and, in turn, its owners, *i.e.*, Hynes, Taylor, Dahlheimer and Gracey.

93. The second way that the term of the Lease were unfair to UFD is that the amount of space leased to UFD was, and is still, far in excess of its needs. The size of the office space leased by UFD—18,655 square feet—was determined exclusively by Hynes, Taylor, Dahlheimer, and Gracey solely to maximize 120 York's opportunities for various financial benefits.

94. UFD has no business need for this large office space. In 2013, at the time the Lease was signed, UFD had only nine employees. Today, UFD only has fifteen employees, of which ten reside in York. At no time from 2013 until today did UFD ever have more than twenty-five employees.

95. Moreover, leasing 210 York Street made no sense for UFD because the building has lavish features that are not utilized by UFD and that are completely unnecessary for a small start-up company, including: (a) a recording studio owned and operated by another entity controlled by Hynes, Taylor, Dahlheimer, and Gracey; and (2) two entire floors (out of a total of four floors in the building) containing residential space for use by Hynes, Taylor, Dahlheimer, and Gracey.

96. Finally, the purported term of the Lease—through 2028—was unreasonable and excessive in light of UFD's needs and market conditions. Without the

Company locked in as a long-term tenant under the excessive terms of the Lease, however, Hynes and Taylor would have been unable to obtain the funding they needed to construct their recording studio, their residential space, and their office space for their affiliated entities.

97. As a result of this self-dealing, non-arm's length Lease, UFD has been and is grossly overpaying 120 York and its owners: Hynes, Taylor, Dahlheimer, and Gracey. These rental payments subsidize, among other things, Defendants' lavish residential properties, as well as their recording studio. The cost for the space is excessive for any company, let alone a startup company, and it drains needed capital from UFD for Defendants' personal benefit. The entry into the Lease constituted egregious self-dealing by Defendants and the continuing demand for payment attributable to the Lease constitutes continuing self-dealing and breaches of fiduciary duty. Because the Lease resulted from breaches of duty and self-dealing, it is void *ab initio*.

98. But even if the Lease were not void because of the breaches of duty, it terminated under its own terms. Hynes Taylor, Dahlheimer, and Gracey unilaterally elected to start the term of the Lease years before 120 York could deliver the lease premises to UFD, as construction of the 210 York building was still ongoing. Although the Lease began in 2013, the entire office space was not ready for delivery to UFD until almost four years later—in the Spring of 2017. From 2013 to the Spring of 2017, UFD used some co-working space in the 210 York building but it was not for the sole and exclusive use of UFD, nor was it the full office space provided under the Lease. Even though 120 York did not deliver the full premises to UFD until 2017, from November 2013 to the Spring of 2017, UFD paid to 120 York, at Taylor's and Hynes' direction, a

portion of the rent and CAM payments due under the lease. These amounts vastly exceeded the fair market value of the co-working space that UFD used at 210 York during this time period. Further, at this time, UFD still had no revenue and was making all lease payments with funds provided by investors to build the Company.

99. Under Section 3.3 of the Lease, if the premises are not delivered within 120 days after the Lease's commencement date (i.e., November 1, 2013), then the Lease terminated unless other agreements were reached by Lessor and Lessee in writing. *See* Exhibit 11 at § 3.3. There are no agreements in writing between 120 York and UFD to extend the period of time or make accommodations for delivery of the leased premises, and the defined Premises were not delivered on or before March 1, 2014 (i.e., within 120 days after the Commencement Date). As such, even if it were not void *ab initio* (and it is), the Lease terminated years ago.

100. Despite the fact that the Lease was void from the start and, in any event, terminated by its own terms in March 2014, Hynes and Taylor, in an abuse of their dual roles as both landlord and tenant and in breach of their duties to UFD, unilaterally made monetary transfers from UFD to 120 York at their own whims and then directed UFD's accountant to book those transfers as "rent" or "pre-paid" rent on the 210 York lease. Those payments amounted to several million dollars.

101. Now, in a Notice of Default issued by 120 York to UFD on October 2, 2020, 120 York is claiming for the first time that UFD has never paid ***any*** rent to 120 York, and owes 120 York millions of dollars in rent and CAM payments. If this were in fact true, then it is even clearer that the millions of dollars taken from UFD for "pre-paid rent" or "rent" were made without any business purpose whatsoever and instead

constitute multiple instances of pure theft/embezzlement of Company funds (the "Theft of Lease Payments").

102. The Defendants' claim in the October 2, 2020 Notice of Default that UFD has not paid any rent to 120 York is completely fabricated. If, however, 120 York continues to claim that no rent was ever paid, then Defendants are liable for millions of additional dollars' worth of Theft of Lease Payments.

103. In light of these ongoing breaches, the Lease is void ab initio, and UFD should be reimbursed for all overpayments it made.

104. Paragraphs 87 through 103 are hereinafter referred to as the "The York Lease Related Breaches."

Andretti Autosport

105. In 2013, before UFD even started significant construction on the fiber optic line, Hynes and Taylor caused UFD to enter into two multimillion dollar sponsorship agreements with affiliates of Andretti Autosport, an auto racing team that participates in the IndyCar Series, among other races. These wasteful and unnecessary sponsorship agreements obligated UFD – a startup with no customers at the time and little cash – to pay $11 million per year.

106. As with the Lease for 210 York Street, the Andretti sponsorships were deliberately designed to benefit Defendants. Michael Andretti was a personal friend of Hynes. Moreover, Hynes is an avid racing fan, and he started as a driver of Stadium Super Trucks in 2013. Thus, the Andretti sponsorship was a way for Hynes to use UFD funds to benefit his friend and to advance his personal interest and hobby.

107. The first Sponsorship Agreement was dated July 7, 2013. The initial term of the sponsorship was through December 31, 2016, but Hynes and Taylor later authorized an amendment extending the contract through December 31, 2021. For a sponsorship fee of $3 million per year, UFD – a startup– was designated as a "Major Associate Sponsor." As such, it received the right to use the Andretti name in advertising, publicity, and promotions; UFD's logo was included on two affiliated Race Team cars; and UFD received 110 Pit and Garage credentials and 110 VIP Hospitality Passes to race events each year, five Series hard cards for use throughout the season, five personal appearances by Andretti drivers and two by Michael Andretti each year, recognition on the Andretti Autosport website, and the ability to purchase additional promotional assets exclusive to Andretti Autosport—all items which were essentially worthless to UFD.

108. Just a few months later, Hynes and Taylor inexplicably caused UFD to enter a ***second*** Sponsorship Agreement with Andretti Autosport. Although there was no legitimate business rationale for entering into even one sponsorship agreement with Andretti Autosport, there certainly was no legitimate reason to enter a ***second*** sponsorship agreement to sponsor an additional race car. This second Sponsorship Agreement was dated October 18, 2013. The initial term of the sponsorship ended in December 31, 2015 but, as with the first Sponsorship Agreement, Hynes and Taylor authorized an amendment extending the sponsorship through December 31, 2021. The sponsorship fee under this second agreement was an additional $8 million per year.

109. Upon information and belief, the sponsorship fee paid by UFD was substantially in excess of the customary rate for IndyCar sponsorships paid by other sponsors.

110. Ultimately, over $15.6 million of UFD capital was paid out in Andretti-related expenses, including advertising and sponsorships, "UFD Girls" (essentially, racing cheerleaders sponsored by UFD), private plane travel, dining and entertainment, and charitable contributions.

111. Hynes and Taylor personally benefitted from the Andretti Autosport sponsorship in at least four separate ways: (1) Hynes diverted millions of dollars of UFD funds to his personal friend Michael Andretti, including by paying what appears to be many times the market rate for a sponsorship; (2) Hynes and Taylor personally gained access to the racing world and celebrity lifestyle; (3) Hynes and Taylor personally attended the races, spent time with the UFD Girls, and enjoyed associated travel, entertainment, and dining; and (4) Hynes and Taylor impermissibly charged personal expenses to UFD.

112. For instance, upon information and belief, Hynes incurred personal expenses in connection with the Company's sponsorship of Andretti, including costs relating to travel, lodging, dining, and entertainment. However, these expenses were apparently ultimately paid by the Company through transfers to Hynes or his affiliated entities that were never accurately disclosed to, or approved by, the Company.

113. Aware that the Andretti sponsorship made zero business sense for a small start-up company (and, in fact, deprived UFD of substantial capital needed to build the fiber optic line), Hynes and Taylor attempted to keep, and successfully kept, the true

scope of the Andretti sponsorship hidden from the Appell family and other unitholders for many years.

114. First, Hynes and Taylor authorized both sponsorship agreements without involving anyone else at the Company.

115. Hynes and Taylor then hid the scope of these agreements. For instance, when the Appells provided capital in UFD through either debt or equity, they were told by Hynes and Taylor that the capital infusions would be put toward completion of the fiber optic line. They were not told that, in reality, millions of dollars of capital was being paid toward the Andretti Sponsorship.

116. Further, in or around January 2015 when questioned about the Andretti sponsorship, Hynes initially claimed that it was a "handshake deal" for one car at a discounted rate with no written contract.

117. When Defendants could no longer deny that there was a written contract, Hynes claimed the contract was with TL Investments, not UFD, which was a lie. Hynes also claimed that Michael Andretti had been extremely helpful in introducing UFD to potential customers, including but not limited to GoDaddy, Vonage, Verizon, and DHL. Whatever the truth of that assertion, if any, the fact is that to this day, no customers have signed up with UFD through the Andretti relationship. To this day, Andretti gets a commission for any customers he sends to UFD, but none have materialized.

118. In 2015, when the Company had difficulty paying the exorbitant sponsorship fees, the Andretti Sponsorship Agreements were terminated, and a settlement with Andretti was reached. Hynes told Appell and others that UFD had gotten out of the

Andretti Sponsorship Agreements for only a small fee. As it turns out, this was not true. Under the terms of the settlement, UFD was required to pay $9 million to Andretti.

119. Even after the settlement, however, UFD continued to sponsor Andretti Autosport, which sponsorships were again unilaterally authorized by Hynes, for his personal benefit. As a press release by Andretti Autosport noted in 2017, "[t]he 2017 venture [between Andretti Autosport and UFD] will mark a fifth year in the relationship between Andretti Autosport and United Fiber & Data, who served as a major associate sponsor with the Indianapolis-based team in 2013 and 2014, and as a full primary sponsor for the No. 27 in 2014. Most recently, United Fiber & Data returned as a season long associate of the team, and co-primary sponsor in 2016 with both Andretti and Carlos Munoz."[1] Hynes specifically stated that UFD was pleased to continue its "longstanding partnership with Andretti Autosport . . . by serving as a primary sponsor for select IndyCar races this season."[2]

120. The overall amount spent on the Andretti Autosport sponsorships represented a significant portion of the *entire* estimated cost to UFD to construct the long haul dark fiber line and substantially exceeded the cumulative revenues the Company realized during the entire time period from 2013 to 2018. These expenses ultimately brought no appreciable customer revenue to the Company and none of the Company

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[1] Andretti Autosport, Press Release, *United Fiber & Data to Take Over Livery of No. 27 Andretti Autosport IndyCar Entry*, Mar. 30, 2017, https://www.andrettiautosport.com/news/united-fiber-and-data-to-take-over-livery-of-no-27-andretti-autosport-indycar-entry.

[2] *Id.*

funds expended on Andretti advertising and racing related expenses were recouped in any way.

121. These amounts do not even include the personal expenses that Hynes, upon information and belief, apparently incurred and charged to the Company in connection with the Company's sponsorship of Andretti, including costs relating to travel, lodging, dining, and entertainment, which were ultimately paid by the Company through transfers to Hynes or his affiliated entities that were never accurately disclosed to, or approved by, the Company. For years, Hynes fraudulently denied that these expenses were being paid by UFD, although since Hynes' resignation in late 2019, the Company has uncovered evidence to the contrary. The Company's investigation is ongoing.

122. The excessive Andretti and racing related expenses, incurred while the Company was annually realizing multiple-million-dollar operating losses, deprived the Company of its investor-provided cash, delayed the Company's construction of the line, and substantially increased the capital the Company needed to raise and borrow to achieve its business objectives. The misuse of Company property was illegal and caused significant harm to the Company.

123. Paragraphs 105 through 122 are hereinafter referred to as "Andretti Autosport Sponsorships and Related Misuse of Company Funds."

EPC-Allentown Loan To Think Loud Investments

124. Defendant TL Development entered into a Development Agreement with EPC-Allentown, LLC ("EPC") dated May 31, 2013 to develop projects in the Neighborhood Improvement Zone ("NIZ") located in Allentown, PA. The primary

project identified in the Development Agreement was the development of a building at the rear of 832 West Hamilton St in Allentown, where UFD's Allentown office is located today.

125. In connection with the project, TL Investments borrowed $5,000,000 from EPC pursuant to a promissory note dated May 14, 2013 (the "Allentown Note"). Upon information and belief, Hynes, Taylor, Dahlheimer and Gracey immediately took $800,000 of the borrowed money as a purported fee.

126. Hynes, Taylor, Dahlheimer, and Gracey, as the beneficial recipients of the $5,000,000 loan, personally guaranteed the note. However, Hynes also caused UFD, which received no portion of the loan proceeds, to guarantee the $5,000,000 loan extended by EPC to TL Investments. A true and correct copy of the Allentown Note is attached hereto as Exhibit 12.

127. Upon information and belief, EPC-Allentown would not have made the loan to TL Investments if not for the guaranty by UFD.

128. Making UFD a guarantor was not consistent with the duties Hynes owed to UFD.

129. TL Investments quickly went into default under the Allentown Note. As of the end of 2019, TL Investment owed EPC $4,041,573, plus accrued interest of $648,908, under the Allentown Note, *i.e.*, virtually the full amount borrowed.

130. In 2016, following pressure from EPC for payment by TL Investments, Hynes caused UFD to execute a Forbearance Agreement with EPC. A true and correct copy of the Forbearance Agreement dated October 12, 2016 is attached hereto as Exhibit 13.

131. The Forbearance Agreement made UFD's situation materially worse. It remained a guarantor of millions of dollars of debt which Defendants had not repaid and, in addition, UFD was forced by Defendants to issue EPC 11,724.7 of its membership interest units with a then-stated value of $1,000,000. Although UFD received some units from Think Loud Holdings in connection with this transaction, UFD was still deprived of much needed cash.

132. Thus, UFD has been making monthly payments on the Allentown Note as a consequence of Defendants' improperly placing them in the position of a guarantor.

133. The bottom line on the Defendants' EPC deal is that once again the Defendants essentially stole from UFD. They pocketed $5,000,000 in loan proceeds, including $800,000 up front; forced UFD to pay out over a million dollars in ownership units to EPC; and left UFD holding the bag as effectively the sole obligor for millions of dollars of outstanding debt.

134. Paragraphs 124 through 133 are hereinafter referred to as "The EPC-Allentown Related Theft."

Hynes' Fraud In Connection With UFD's Charitable Contributions

135. Hynes also used UFD funds to advance his personal reputation and purported "celebrity" status in the local York community and beyond.

136. As one example, in or around 2015, Hynes made an appearance on the television show *Celebrity Apprentice* on behalf of celebrity contestant Kate Gosselin, who Hynes apparently knows from the local York community.

137. As part of that appearance on national television, Hynes made a donation to support Geraldo Rivera's charity, Life's WORC, in the amount of $30,000.

138. Both on the show and elsewhere, Hynes claimed that he "personally" made the donation. Hynes never mentioned UFD either during his appearance on the show or in related statements about his donation.

139. For instance, a website provides that a statement on Think Loud Development LLC's Facebook page, https://www.facebook.com/thinkloudPA, said the following:

> Did you happen to catch Think Loud Development founder and CEO Bill Hynes on last nights [sic] Celebrity Apprentice? Bill graciously made a personal donation to support the Life's WORC charity on behalf of friend and contestant Kate Gosselin. . . . "Geraldo Rivera's charity, Life's WORC is a dedicated force in helping the developmentally disabled. Making a donation is the easy work, it's the least I can do to support a good friend and a great cause," said Hynes.

140. Recently, on his podcast, Thrillcast, Hynes also claimed that he made this donation in his personal capacity and from his personal funds.[3]

141. In fact, the donation was not made from Hynes' personal funds, but rather from a UFD bank account. Thus, Hynes repeatedly lied about his diversion of money from UFD for his personal benefit.

142. As another example, in or around November 2018, Hynes directed UFD to make a donation of $5,000 to the Parent Teacher Student Association ("PTSA") for Nazareth Area Middle School, which one of his daughters attends.

143. Although Hynes should have listed UFD as the corporate sponsor of the donation since he made the donation using UFD funds, Hynes did not use the UFD logo

[3] https://www.youtube.com/watch?v=dfwqpVOj5s4 (discussion of Hynes' donation for Celebrity Apprentice begins at 1:51:33).

for the sponsorship. Instead, he provided his personal racing logo to the PTSA for use in promotional materials, thus yet again diverting value from UFD to his personal benefit.

144. Paragraphs 135 through 143 are hereinafter referred to as "Charity-Related Breaches."

Theft of Company Funds In Connection With Non-Existent Software Application

145. In July 2019, Hynes unilaterally transferred $108,000 from UFD to his personal account purportedly as reimbursement for expenses attributable to UFD which were paid on his personal American Express credit card.

146. When asked to justify the expenses, Hynes claimed that the payment was for a software application that a third party was developing for UFD through YRK, an entity owned and controlled by Hynes, Taylor, Dahlheimer, and Gracey. Confused, UFD's bookkeeper asked Hynes for supporting documentation.

147. Months later, in December 2019, Hynes finally provided an invoice in December 2019 in the amount of $179,000. The invoice, dated July 10, 2019, which likely had been backdated, was from the Hynes controlled entity, YRK. Hynes claimed that another of his companies, BKS, paid approximately $72,000 toward that invoice.

148. Hynes provided no explanation for the $36,000 discrepancy between the $72,000 that BKS allegedly paid and the $108,000 for which he sought and received reimbursement. Nor did he explain why any payment to YRK for a UFD software application would have shown up as a charge on his personal American Express card.

149. Other than Hynes' own statements that he was working on a software application, no one at UFD had any additional information about the software application that a third party supposedly was developing for the Company. Hynes had not discussed

this application with anyone. To this date, no one even knows the purpose of the application, or has seen any kind of work product associated with the application. For instance, there is no contract in place with an application developer or YRK for the development of an app.

150. Upon information and belief, the software application never existed.

151. Upon information and belief, the invoice for the application was phony and was created by Hynes after the fact in an attempt to justify his wrongful conversion of $108,000 worth of Company funds.

152. This was a blatant act of theft and self-dealing by Hynes. The transfer was not approved or disclosed to the Board and is not comparable to any arms' length transaction. It is simply another example of Hynes using UFD as his personal piggy bank.

153. Paragraphs 145 through 152 are referred to as "Billing for Non-Existent Software Application."

Self-Dealing of Company Funds In Connection With Cashing Out American Express Certificate of Deposit

154. In and around the fall of 2019, UFD tried to cash out a $50,000 certificate of deposit (CD) that it held with American Express

155. For a period of several months, Hynes represented to others at UFD that American Express was refusing to cash out the CD and that he was continuing to engage in a dialogue with American Express in an effort to get it to cash out the CD.

156. As it turns out, American Express had in fact cashed out the CD. On October 9, 2019, American Express wired $50,208.17 to the same UFD sub bank account discussed above in connection with the Fraud In Connection With Promissory Note from

the Bolger Trust. Upon information and belief, the amount that American Express wired, $50,208.17, represents the value of the CD, plus the membership reward points balance associated with one of the Company's American Express credit cards that was closed out around that time.

157. Upon information and belief, the money was wired by American Express to this particular UFD sub bank account at Hynes' direction. As with the Fraud In Connection With Promissory Note from the Bolger Trust, Hynes purposefully selected this account to ensure that the transfer would go undetected by others at UFD.

158. On October 10, 2019, the day after the American Express wire, Hynes wired $50,000 from the UFD sub bank account to his personal checking account.

159. On December 19, 2019, Hynes made a deposit to a UFD bank account, presumably to repay the $50,000 that he took after American Express wired the money in October 2019.

160. During the entire time that Hynes held the $50,000 (October to December 2019), he continued to tell others at UFD that American Express was refusing to cash out the CD.

161. In December 2019, approximately two months after Hynes had already taken for his personal use the money received from American Express in connection with cashing out the CD, Hynes advised others at UFD that American Express had finally agreed to cash out the CD. However, Hynes reported that rather than issuing a check to UFD—the rightful holder of the CD—American Express had issued the check to the order of William Hynes or Douglas Schultz (UFD's CFO) and mailed the check to Hynes' personal PO Box in Nazareth. This was untrue, since American Express had

wired the $50,000 value of the CD to UFD—specifically to the UFD sub banking account at Wells Fargo—months earlier.

162. As a result of this scheme, Hynes obtained a short-term, personal loan of $50,000 using funds that belonged to UFD without obtaining any kind of authorization for the loan from anyone else at UFD. Nor did Hynes ever pay interest on that loan. Hynes then made up a series of lies to try to explain to others at UFD the reason why UFD had not yet received any funds from American Express.

163. Paragraphs 154 through 162 are referred to as "Self-Dealing in Connection with American Express CD."

Other Instances Of Self-Dealing

164. The Company's investigation of other misuses of Company funds by Hynes or his entities is ongoing. As noted above, Hynes was the CEO and the sole member of UFD's Board from approximately late 2015 to late 2017, when the Operating Agreement was signed and Appell went on the Board.

165. Before 2015, Taylor was UFD's CEO, and the Board was composed of Hynes, Taylor, Gracey, and Dahlheimer.

166. Thus, the Defendants, together with their long-time bandmates and business associates from their other companies, exercised exclusive control over UFD through late 2017.

167. Even after Appell joined the Board in late 2017, Hynes remained the CEO and controlled access to information. Among other things, he concealed information and failed to tell the truth about Defendants' various misdeeds. Thus, it was impossible for Appell and other officers and employees of the Company to appreciate the pattern or

fully understand the impropriety of Hynes conduct. This state of affairs did not end until Hynes' resignation in November of 2019.

168. After Hynes' resignation in November 2019, Felipe J. Alvarez, took the position of CEO in January 2020. Alvarez was the first independent person to be appointed to serve as CEO of UFD. In light of the nature of the felony charges being brought against Hynes, and based upon things he was seeing in Company records, Alvarez began questioning Hynes' actions as CEO and Board member. At Alvarez's direction, the Company began investigating Hynes' prior actions by, among other things, reviewing historical transactions between the Company and Hynes and each of the various entities that he owned and/or controlled.

169. This was the first time that Plaintiffs had unobstructed access to records of transactions involving Hynes.

170. Unfortunately, Alvarez died suddenly in April 2020, just several months after taking the position of CEO and while the investigation into Hynes' past conduct was ongoing.

171. Thereafter, the Company continued the investigation. That investigation remains ongoing today.

172. Upon information and belief, Hynes orchestrated the misuse of Company funds in various additional ways, including but not limited to the following:

- In April 2014, a cash withdrawal of $50,000 was made from a Company account at Wells Fargo, without explanation.
- In September 2014, a payment was made to BKS, Hynes' company, for $50,000, again with no explanation.
- In November 2014, a withdrawal of $15,000 was made by Hynes from a Company account at Wells Fargo, once again without any business justification.

- In October 8, 2019, Michael Andretti transferred $250,000 into the same UFD sub bank account discussed above. The next day, October 9, 2019, Hynes transferred $250,000 out of that UFD sub bank account to a BKS Investments LLC account, without any business justification. UFD has no record as to why Mr. Andretti would have transferred $250,000 to the Company.

173. In light of the lack of proper documentation supporting these and other transfers to Hynes or his affiliated entities, the Company has no way of knowing at this moment, without the discovery afforded in litigation, the full extent of Hynes' unlawful conduct.

174. Paragraphs 164 through 173 are hereinafter referred to as "Other Instances of Self-Dealing."

Hynes' Latest Criminal Charges & the Repercussions For UFD

175. In 2010, Hynes was convicted of theft by deception based upon his passing bad checks. As a result, Hynes was sentenced to jail time.

176. According to the York Daily Record, in July 2019, Hynes was served with a temporary protection from abuse order that had been obtained by a former Company employee. The former employee – a 25-year-old woman – reported several instances of abuse dating back almost five years, including that Hynes had threatened to kill her. In granting the order, Judge Amber Anstine Kraft of the York County Court of Common Pleas directed Hynes to surrender any weapons he owns.

177. On Friday, November 1, 2019, according to the York Daily Record, Hynes was arrested in connection with two separate criminal cases involving the woman. Specifically, Hynes was charged with burglary, criminal trespass, theft, and related offenses. Hynes allegedly grabbed the back of the woman's neck and pushed her face first into a wall multiple times. He also allegedly placed a GPS tracker on her vehicle

without her knowledge and took out a second mortgage on her home by forging her signature.[4]

178. Hynes voluntarily resigned from his positions as CEO and a member of the Board the next business day, Monday, November 4, 2019, effective immediately.

179. Hynes' voluntary and immediate resignation was an admission that any further connection between Hynes and the Company could cause significant harm to the Company. Indeed, Hynes told others at the Company that resigning was "the right thing to do" under the circumstances.

180. Despite his resignation, Hynes' criminal charges have caused immediate, irreparable harm to the Company, including:

a. Reputational harm, because Hynes' criminal case – involving a former Company employee – has been widely covered in the press. Many, if not all of the articles, mention the Company by name.

b. Upon information and belief, the criminal charges against Hynes caused UFD's Directors and Officers insurance carrier to elect not to renew the Company's Directors and Officers policy, and UFD was forced to enter a new and much more expensive policy.

c. The Company has faced substantially increased difficulty since Hynes' arrest in finding customers and investors willing to do business with UFD. As a start-up, UFD's reputation is particularly important to obtaining customers and investors.

181. These harms to the Company are likely to be exacerbated in the fall of 2020, when Hynes' criminal case is expected to go to trial. Given Hynes' notoriety in the community and the fact that the criminal allegations involve a former Company employee, it is anticipated that the trial will receive significant media attention and that

[4] https://www.ydr.com/story/news/crime/2019/11/01/york-ceo-bill-hynes-united-fiber-data-arrested-multiple-charges-pfa-violation/4127421002/

the Company's name will, once again, be used in press reports concerning the trial, causing further reputational harm to UFD.

Theft And Self-Dealing In Connection With Social Czars' Reputation-Management Services

182. Hynes' recent criminal troubles led to additional theft of Company funds orchestrated by Hynes.

183. In or around 2019, Hynes hired an agency called Social Czars, which, according to its website, specializes in removing or suppressing negative content in Google search results for executive, celebrity, professional athlete, and high-net-worth clients.

184. Upon information and belief, Hynes hired Social Czars to help manage his reputation after the protection from abuse order was entered against him and after his November 2019 arrest.

185. The work performed by Social Czars solely benefitted Hynes. Specifically, Hynes asked Social Czars to "promote" search results referencing Hynes' Stadium Super Truck racing wins and "suppress" search results concerning Hynes' criminal conduct.

186. Social Czars provided services to Hynes exclusively in his personal capacity. The Board never approved of the retention of Social Czars and there is no contract between UFD and Social Czars.

187. None of the search results or media coverage that Hynes asked Social Czars to manage had anything to do with UFD specifically, or even Hynes' role as CEO of the Company.

188. Because Social Czars was providing services to Hynes personally, it originally issued its invoices directly to Hynes. Hynes, however, did not want to pay the invoices with his own funds and instead wanted to expense the fees to UFD. To that end, Hynes had a UFD employee contact Social Czars and ask it to revise the invoices to bill UFD as opposed to Hynes.

189. Hynes then paid the Social Czar invoices on his personal American Express card, but submitted the invoices to UFD for reimbursement. Hynes submitted and obtained reimbursement from UFD for at least $50,000 in connection with invoices from Social Czars. These reimbursements constitute a further example of conversion and breach of duty by Hynes.

190. Paragraphs 182 through 189 are hereinafter referred to as "Social Czars Related Theft."

Hynes Attempts to Reappoint Himself To The Board

191. Despite his earlier resignation in apparent recognition that his affiliation with UFD could, and in fact, has caused significant harm to the Company, and despite the fact that he has an upcoming criminal trial, and despite the track record of unlawful actions set forth above, on June 29, 2020, Hynes purported to re-appoint himself to UFD's Board as the BKS-appointed designee.

192. As outlined above, Hynes has engaged in a longstanding pattern of illegal conduct, including conversion, fraud, breach of duty, and self-dealing, with UFD as one his primary targets.

193. Moreover, the Company has already suffered financial and reputational harm based on its association with Hynes and his pending criminal problems, including

being forced to accept a more expensive D&O policy and negative press coverage. In addition, the Company's associations with Hynes may result in potential difficulty in securing and attracting customers.

194. In addition, the Company's current investigation into Hynes' longstanding pattern of illegal conduct at the Company's expense could be obstructed if Hynes is allowed to use his position on the Board to obstruct or try to call off the investigation.

195. Hynes presence at the Company in any role, let alone as one of just three members of the Board, imbues him with the power to represent UFD in the outside world, and continue with his unlawful schemes.

196. These harms, and others, will continue if Hynes is permitted to take a seat on the Board of the Company.

197. On September 4, 2020, apparently recognizing that his service on the Board would harm UFD, Hynes caused BKS to appoint a new BKS designee to the Board. Given Hynes' apparent belief that he is free at any time to re-appoint himself, the Court should declare that Hynes may not personally sit on the Board.

CLAIMS FOR RELIEF

COUNT I

Conversion
(UFD v. Hynes; 120 York; YRK, LLC; TL Investments; BKS; TL Holdings; and TL Development)

198. Plaintiffs repeat and incorporate Paragraphs 1 through 197.

199. The above named Defendants committed conversion through, among other things, the:

- Theft of the RACP Grant Money;

- Stadium Super Trucks Racing Thefts;
- Self-Dealing in Connection with American Express CD;
- Billing for Non-Existent Software Application;
- Social Czars Related Theft;
- Charity-Related Breaches;
- Andretti Autosport Sponsorship and Related Misuse of Company Funds; and
- Other Instances of Self-Dealing; and
- Theft of Lease Payments.

200. The money that the Defendants took in connection with each of these conversions belonged to the Company. Defendants took the money without the consent of the Company, including its Board, and without disclosing all material facts regarding the transaction.

201. There is no justification for Defendants' unlawful conversion of Company assets for their personal use.

202. The Company learned of the pattern of unlawful conversions identified above – including the theft of Company funds in connection with the Andretti sponsorships – only after Hynes resigned as CEO in late 2019. Indeed, as a result of Hynes' fraudulent misconduct and control of Company information while CEO, Plaintiffs could not learn about the conversion of these funds until after Hynes' resignation in late 2019.

203. These conversions of Company funds harmed the Company. Accordingly, the Company should be awarded compensatory damages, interest, punitive damages, and costs.

204. The Company's investigation of other misuses of Company funds by Hynes or his entities is ongoing. Upon information and belief, Hynes orchestrated the misuse of Company funds in various additional ways.

205. In light of Defendants' deliberate scheme to cause a lack of proper documentation supporting transfers to Hynes or his affiliated entities, the Company has no way of knowing whether the acts of conversion identified above are the only instances whereby Hynes converted Company money. Accordingly, the Court should also order an accounting of all money received by Hynes or any entity with which he is affiliated, including 120 York; YRK; TL Investments; BKS; TL Holdings and TL Development.

COUNT II

Breach of Fiduciary Duties of Loyalty and Care (UFD against Hynes)

206. Plaintiffs repeat and incorporate Paragraphs 1 through 197.

207. As alleged above, as both the CEO and a member of the UFD Board, Hynes owed fiduciary duties of care and loyalty to UFD. Pursuant to those duties, Hynes was obligated, among other things, to act in the best interests of the Company.

208. Hynes breached his fiduciary duties of care and loyalty in multiple ways, including in connection with each of the following acts of conversion:

- Theft of the RACP Grant Money;
- Stadium Super Trucks Racing Thefts;
- Billing for Non-Existent Software Application;
- Self-Dealing in Connection with American Express CD;
- Social Czars Related Theft;
- Charity-Related Breaches;

- Andretti Autosport Sponsorship and Related Misuse of Company Funds;
- Other Instances of Self-Dealing; and
- Theft of Lease Payments.

209. Hynes also breached the duty of loyalty through the Fraud in Connection With Promissory Note from the Bolger Trust.

210. Hynes' breaches of duty harmed the Company. Accordingly, the Company should be awarded compensatory damages, interest, punitive damages, and costs.

COUNT III

Breach of Fiduciary Duties of Loyalty and Care (UFD against Hynes and Taylor)

211. Plaintiffs repeat and incorporate Paragraphs 1 through 197.

212. When they served as either the CEO or as a member of the UFD Board, Hynes and Taylor owed fiduciary duties of care and loyalty to the Company.

213. Hynes and Taylor breached the duties of loyalty and care in connection with the Andretti Autosport Sponsorship and Related Misuse of Company Funds;

214. They also breached these duties through the York Lease Related Breaches.

215. The terms of the Lease are far beyond normal market terms. Indeed, the rental rate and length of the Lease are wholly one-sided in favor of 120 York and far in excess of what would be obtained through an arms' length transaction. Moreover, the amount of space leased by the Company under the Lease is far in excess of the Company's needs.

216. Rather than representing a fair, arms' length transaction, the Lease was designed to, and did, enrich Hynes and the other owners of 120 York.

217. Hynes and Taylor had a clear conflict of interest with respect to the Lease in that they stood on both sides of the transactions. By causing the Company to enter into a lengthy Lease that drastically departed from the market rate and inured to their personal benefit, Hynes and Taylor violated their duties of loyalty by failing to act in the best interests of the Company.

218. Hynes' and Taylor's decisions to cause the Company to enter into the Lease and to make rental payments pursuant to that Lease violated their fiduciary duties because they lacked reasonable diligence or any business justification and, instead, were designed to unfairly benefit Hynes, Taylor, and the other owners of 120 York.

219. By continuing to enforce the Lease and causing the Company to make payments that Lease, Hynes' and Taylor's breaches of duty of care and loyalty continue to this date. Indeed, 120 York has not terminated the Lease and continued through the end of 2019 to recover all rent due under them.

220. Moreover, despite previously agreeing that rent in 2020 would be at a reduced rate, 120 York recently went back on its word and demanded payment in full for all of 2020, and going back to the lease inception.

221. Hynes' and Taylors' past and ongoing breaches of duty harmed the Company. Accordingly, the Company should be awarded compensatory damages, interest, punitive damages, and costs.

222. Moreover, the Court should declare that the Lease should be terminated because it constitutes a breach of fiduciary duty and, as such, is void. In the event that the Court concludes that the Lease is not void, then it should declare that the Lease terminated by its own terms in 2014 pursuant to Section 3.3.

223. Hynes and Taylor also breached the duties of loyalty and care through the EPC-Allentown Related Theft.

224. The guarantees set forth in the Allentown Note and the terms of the 2016 Forbearance Agreement provided no benefit to the Company. These guarantees and the 2016 Forbearance Agreement did not represent a transaction that would have been negotiated at arms' length.

225. Hynes and Taylor had clear conflicts of interest in that their company, TL Investments, benefited from the guarantees that they caused UFD to sign.

226. Hynes and Taylor violated their duties of loyalty by using UFD to benefit TL Investments and by failing to act in the best interests of UFD.

227. The Company did not consent to these transactions and Defendants did not disclose all material facts related to them.

228. As a result of Hynes' and Taylor's breaches, the Company has suffered harm. Accordingly, the Company should be awarded compensatory damages, interest, punitive damages, and costs.

COUNT IV

Breach of Operating Agreement
(UFD and Appell v. BKS)

229. Plaintiffs repeat and incorporate Paragraphs 1 through 197.

230. UFD, BKS, Appell, and others entered into the Operating Agreement, a written contract.

231. Section 11.03 of the Operating Agreement provides generally that Members (such as BKS) may engage in other businesses ("Other Businesses") and that those Other Business businesses may engage in transactions with the Company.

However, the Operating Agreement expressly provides that any such transactions must be "***on terms no less favorable to the Company . . . than would be obtainable in an arm's length transaction***." Operating Agreement § 11.03. Older versions of the Operating agreement had similar provisions.

232. The LLC Act also contains an implied contractual obligation requiring members to exercise any rights consistently with the contractual obligation of good faith and fair dealing.

233. As discussed above, various transactions between the Company and Other Businesses affiliated with Hynes/BKS are not on terms that are "no less favorable to the Company . . . than would be obtainable in a comparable arms' length transaction," including:

- The Lease between the Company and 120 York.
- The guarantees set forth in the Allentown Note and the Forbearance Agreement.

234. BKS's breaches of the Operating Agreement have harmed the Company and Appell. Accordingly, BKS is liable to UFD and Appell for compensatory damages and interest.

235. Moreover, Section 15.15 of the Operating Agreement provides that the prevailing party in any suit arising out of or relating to the Operating Agreement "shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action or proceeding, including reasonable attorneys' fees and expenses and court costs." Accordingly, UFD and Appell are entitled to recover the fees, expenses, and costs they incur in connection with bringing this lawsuit.

COUNT V

Breach of Fiduciary Duty of Loyalty:
Hynes' Attempted Re-Appointment to the Board
(UFD v. Hynes)

236. Plaintiffs repeat and incorporate Paragraphs 1 through 197.

237. Section 8.02 of the Operating Agreement provides that, so long as BKS and its affiliates continue to hold 10% of then-outstanding Voting Units of the Company, then BKS can designate one individual to serve as a member of the Company's Board. Nothing in the Operating Agreement, however, provides BKS and Hynes with a completely unlimited and unfettered right in their sole discretion to make such a designation without limit, nor does it provide that they can make an appointment which by its very nature harms the Company. Hence, BKS has no right under the Operating Agreement in these circumstances to designate Hynes, rather than another individual who is unencumbered by Hynes' handicaps, to the Board.

238. As set forth above, Hynes' affiliation with the Company has harmed the Company and any continued association with the Company will likely cause future harm. He has stolen Company funds, breached duties owed to the Company, told lies, and caused the Company to enter into transactions with affiliates that benefited Hynes and his cronies and harmed the Company. His prior resignation from the Board at the time of his arrest constitutes an admission that his presence on the Board causes the Company harm. His ongoing criminal troubles have caused reputational harm to the Company and may have caused third parties to stop doing business with it or to charge more to the Company.

239. In light of Hynes' misconduct as set out in this Complaint and the harm that his affiliation with the Company has caused and will continue to cause, Hynes'

service on the Board would constitute a breach of Hynes' fiduciary duty of loyalty because Hynes would be putting his own interests above the best interests of the Company. Accordingly, the Court should declare that, while BKS has the right to appoint a Board member pursuant to the terms of the Operating Agreement, Hynes may not serve on the Board.

COUNT VI

Aiding and Abetting Breach of Fiduciary Duty of Loyalty (UFD v. BKS)

240. Plaintiffs repeat and incorporate Paragraphs 1 through 197.

241. In light of Hynes' misconduct and the harm that his affiliation with the Company has caused and will continue to cause, the Court should declare that, while BKS has the right to appoint a Board member pursuant to the terms of the Operating Agreement, BKS may not appoint Hynes because any such appointment aids and abets the breach of duty of loyalty Hynes would commit by serving on the Board.

COUNT VII

Aiding and Abetting Breach of Duty of Loyalty - Related to Software Application (UFD v. YRK)

242. Plaintiffs repeat and incorporate Paragraphs 1 through 197.

243. As alleged above, in July 2019, Hynes committed conversion and breached fiduciary duties by engaging in the Billing For Non-Existent Software Application.

244. Hynes submitted a fraudulent invoice regarding the software application on YRK letterhead, suggesting that YRK had played a role in the creation of this application. As reflected on the invoice, Hynes claimed that another one of his

companies, BKS, paid approximately $72,000 towards the invoice, reducing the amount owed to YRK to the $108,000 Hynes transferred from the Company.

245. YRK aided and abetted Hynes' breach of the duty of loyalty he owed to UFD by allowing Hynes to create an invoice suggesting that YRK had played a role in the creation of this non-existent software application.

COUNT VIII

Aiding and Abetting Breach of Duty of Loyalty Related to RACP Grant and York Lease (UFD v. 120 York)

246. Plaintiffs repeat and incorporate Paragraphs 1 through 197.

247. As alleged above, in June 2018, Hynes committed conversion and breached fiduciary duties in the connection with the Theft of RACP Grant Money.

248. By transferring UFD funds to 120 York without authorization, Hynes violated his duty of loyalty to the Company.

249. By assisting Hynes in transferring the RACP Grant money away from UFD, 120 York aided and abetted Hynes in breaching the fiduciary duties he owed to UFD.

250. As alleged above, Hynes and Taylor breached their fiduciary duties in connection with the York Lease Related Breaches.

251. By assisting Hynes and Taylor in connection with the breaches relating to the Lease, 120 York aided and abetted Hynes and Taylor in breaching the fiduciary duties they owed to UFD.

COUNT IX

Fraud in Connection with Promissory Notes
(Appell against Hynes)

252. Plaintiffs repeat and incorporate Paragraphs 1 through 197.

253. Hynes made deliberate, fraudulent misrepresentations to Appell to induce him to loan money to, or invest money in, the Company.

254. Hynes repeatedly promised that all money would be used to benefit the Company for legitimate corporate purposes (including for construction of the line) and that all loans would be repaid. He intentionally omitted that he was using the borrowed money improperly to benefit himself and the other Defendants. Hynes also repeatedly represented that construction on the fiber optic line would soon be completed. Additionally, he repeatedly stated that contracts with customers were lined up, and would be executed, as soon as the line was completed. There representations were made on numerous occasions to induce Appell to continue investing in UFD.

255. Appell reasonably relied on these material misrepresentations, all of which were false. Indeed, Hynes made the statements knowing that he was misusing Company funds and would continue to do so; construction on the line was not near completion; and contracts were not lined up to be signed as soon as the line was completed.

256. In reliance on these false representations, Appell funded the Company through loans and equity infusions.

257. Appell would not have done so, had he known that Hynes was using the Company as his personal piggy bank, that Hynes had no intent of ever paying back the money, that the line was not nearly completed, and that contracts were not lined up.

258. Hynes' fraudulent misrepresentations harmed Appell. Accordingly, Hynes is liable to Appell for compensatory damages, punitive damages, costs, and interest.

COUNT X

Fraud Related to RACP Grant
(Appell against Hynes)

259. Plaintiffs repeat and incorporate Paragraphs 1 through 197.

260. Appell agreed to advance up to $5 million to fund the renovation of 210 York Street, an entity owned by 120 York. In connection with that loan, Hynes promised that Appell would be repaid as soon as the Company received the RACP reimbursement funds.

261. Hynes' representation was false – Hynes had no intent to have the Company repay Appell once the RACP reimbursement was received.

262. Hynes' representation was material to Appell's making of the advance. Indeed, Appell would not have made the loan absent this representation.

263. Hynes knew that his false representation to Appell was the core inducement to Appell providing the advance.

264. Appell justifiably relied on Hynes' representation that any RACP grant monies received by UFD would be transferred to Appell to reimburse him for the advance.

265. On June 11, 2018, UFD received a reimbursement from the RACP grant program in the amount of $3,388,027. On the very next day, June 12, 2018, Hynes transferred the $3,388,027 to 120 York.

266. Hynes never disclosed and, in fact, actively concealed the receipt of the RACP funds from Appell, other owners, and the Board of the Company.

267. As a result of Hynes' fraud, Appell has been injured. Appell is entitled to compensatory damages, punitive damages, interest, costs and fees.

COUNT XI

Fraud Related To Promissory Note with Third-Party Investor the Bolger Trust (UFD against Hynes)

268. Plaintiffs repeat and incorporate Paragraphs 1 through 197.

269. Hynes committed fraud by engaging in Fraud In Connection With Promissory Note from the Bolger Trust. Indeed, by claiming that he had provided the $500,000 in funds and by signing the BKS Note, Hynes represented to the Company that he had loaned money to the Company and that the Company owed only $500,000 in connection with Hynes' loan.

270. Unknown to the Company, Hynes did not provide the money for the $500,000 loan. Moreover, it did not know that two notes for the same $500,000 had been signed – one with Wells and a second, fraudulent note, representing a purported loan from Hynes.

271. As a result of Hynes' fraud, the Company has been injured. The Company is entitled to compensatory damages, punitive damages, interest, costs and fees.

COUNT XII

Breach of Contract/Promissory Note: February 2016 Note
(Powder Mill v. Hynes)

272. Plaintiffs repeat and incorporate Paragraphs 1 through 197.

273. On February 17, 2016, UFD borrowed $13,250,000 from the Louis J. Appell, Jr. Revocable Trust. The February 2016 Note was subsequently corrected on May 25, 2016. A copy of the February 2016 Note is attached as Exhibit 6.

274. Hynes signed an absolute and unconditional personal guaranty for the February 2016 Note. The Guaranty covers all debts owed under the Note and any costs or fees – including attorneys' fees – incurred in enforcing the Guaranty. Exhibit 6.

275. The Guaranty states that "Holder shall be under no obligation to pursue its rights against the Company or any other guarantor or any of the Company's real or personal property or any other guarantor's real or personal property before pursuing Holder's rights against the Guarantor." The Holder need not "provide written notice of default to Borrower before pursuing its rights against the Guarantor."

276. The Guaranty also states that the liability of the Guarantor is "absolute and unconditional and shall not be affected in any way by reason of (a) any failure to retain or preserve, or the lack of prior enforcement of, any rights against person or persons or in any property, (b) the invalidity of any such rights which may be attempted to be obtained, (c) any delay in enforcing or failure to enforce any such rights even if such rights are thereby lost, or (d) any delay in making demand on the Guarantor for performance or payment of the Guarantor's obligations hereunder."

277. On January 9, 2019, the Louis J. Appell Jr. Revocable Trust assigned the February 2016 Note to Powder Mill as a substitute holder. The Assignment Agreement confirms Hynes as a Guarantor of the Note.

278. On March 11, 2019, Hynes signed an acknowledgment of and consent to the assignment, which provides that "United Fiber & Data, LLC hereby acknowledges, recognizes and consents to the foregoing assignment and approves admission of the Powder Mill Foundation as substitute holder of the note and guaranty identified above."

279. Additionally, the Guaranty defines the "Holder" – and thus the person to whom Hynes' obligation runs – as the Louis J. Appell Jr. Revocable Trust "or its assigns."

280. The February 2016 Note is due and owing.

281. The Company has not repaid the Note and, thus, Hynes owes $13,250,000 plus applicable interest, fees and costs to Powder Mill.

282. In addition to consenting to the assignment, Hynes has acknowledged this debt – and the other debts owed by him or his entities to Appell or Powder Mill – on multiple occasions, including by making the statements described in Paragraphs 29 through 32. He also acknowledged the debt during board meetings held on November 21, 2018, and July 10, 2019, during which the refinancing of these debts was discussed.

COUNT XIII

Breach of Contract/Promissory Notes: July 2012 Note (Appell v. TL Investments, Hynes and Taylor)

283. Plaintiffs repeat and incorporate Paragraphs 1 through 197.

284. On July 11, 2012, TL Investments borrowed $7,000,000 from the Louis J. Appell Residuary Trust pursuant to the July 2012 Note.

285. Hynes and Taylor signed identical absolute and unconditional personal guaranties for the July 2012 Note. In those documents they agreed to not only repay the debts with interest, but to pay any costs or fees – including attorneys' fees – incurred in enforcing the Guaranty. Exhibit 1.

286. The Guaranties state: "The Guarantor irrevocably, absolutely and unconditionally agrees to guarantee the repayment of the Note to the Holder. This Guaranty is an absolute, present and continuing guaranty of payment and performance and not of collection."

287. The Guaranties further state: "Holder shall be under no obligation to pursue its rights against the Company or any other guarantor or any of the Company's real or personal property or any other guarantors [sic] real or personal property before pursuing Holder's rights against the Guarantor." The Holder need not "provide written notice of default to Borrower before pursuing its rights against the Guarantor."

288. The Guaranties further state that the liability of the Guarantor is "absolute and unconditional and shall not be affected in any way by reason of (a) any failure to retain or preserve, or the lack of prior enforcement of, any rights against person or persons or in any property, (b) the invalidity of any such rights which may be attempted to be obtained, (c) any delay in enforcing or failure to enforce any such rights even if such rights are thereby lost, or (d) any delay in making demand on the Guarantor for performance or payment of the Guarantor's obligations hereunder."

289. The $7,000,000 Note became due on July 11, 2014, pursuant to the maturity dates set out in the Note. By operation of trust law, upon Louis Appell Jr.'s death, Appell and his sister became the rightful holders of the note.

290. TL Investments has not repaid the Note, which is due and owing, and thus TL Investments, Hynes, and Taylor owe Appell $7,000,000 plus applicable interest and enforcement fees.

291. Hynes has acknowledged this debt – and the other debts owed by him or his entities to Appell or Powder Mill – on multiple occasions, including by making the statements described in Paragraphs 30 through 33. He also acknowledged the debt during board meetings held on November 21, 2018, and July 10, 2019, during which the refinancing of these debts was discussed.

COUNT XIV

Breach of Contract/Promissory Notes: October 2013 Note
(Powder Mill v. TL Investments, Hynes and Taylor)

292. Plaintiffs repeat and incorporate Paragraphs 1 through 197.

293. On October 11, 2013, TL Investments borrowed $1,000,000 from the Louis J. Appell, Jr. Revocable Trust pursuant to the October 2013 Note.

294. Hynes and Taylor signed identical absolute and unconditional personal guaranties for the October 2013 Note. In those documents they agreed to not only repay the debts with interest, but to pay any costs or fees – including attorneys' fees – incurred in enforcing the Guaranty. Exhibit 2.

295. The Guaranties state: "The Guarantor irrevocably, absolutely and unconditionally agrees to guarantee the repayment of the Note to the Holder. This

Guaranty is an absolute, present and continuing guaranty of payment and performance and not of collection."

296. The Guaranties further state: "Holder shall be under no obligation to pursue its rights against the Company or any other guarantor or any of the Company's real or personal property or any other guarantors [sic] real or personal property before pursuing Holder's rights against the Guarantor." The Holder need not "provide written notice of default to Borrower before pursuing its rights against the Guarantor."

297. The Guaranties further state that the liability of the Guarantor is "absolute and unconditional and shall not be affected in any way by reason of (a) any failure to retain or preserve, or the lack of prior enforcement of, any rights against person or persons or in any property, (b) the invalidity of any such rights which may be attempted to be obtained, (c) any delay in enforcing or failure to enforce any such rights even if such rights are thereby lost, or (d) any delay in making demand on the Guarantor for performance or payment of the Guarantor's obligations hereunder."

298. The $1,000,000 Note became due on October 11, 2014 pursuant to the maturity dates set out in the Note.

299. On February, 2019, the Louis J. Appell Jr. Revocable Trust assigned the October 2013 Note to Powder Mill as a substitute holder. The Assignment Agreement confirms Hynes as a Guarantor of the Note.

300. On March 11, 2019, Hynes signed an acknowledgment of and consent to the assignment, which provides that "United Fiber & Data, LLC hereby acknowledges, recognizes and consents to the foregoing assignment and approves admission of the Powder Mill Foundation as substitute holder of the note and guarantees identified above."

301. TL Investments has not repaid the Note, which is due and owing, and thus TL Investments, Hynes, and Taylor owe Powder Mill $1,000,000 plus applicable interest and enforcement fees.

302. In addition to consenting to the assignment, Hynes has acknowledged this debt – and the other debts owed by him or his entities to Appell or Powder Mill – on multiple occasions, including by making the statements described in Paragraphs 30 through 33. He also acknowledged the debt during board meetings held on November 21, 2018, and July 10, 2019, during which the refinancing of these debts was discussed.

COUNT XV

Breach of Contract/Promissory Notes: April 2014 Note
(Powder Mill v. Hynes and Taylor)

303. Plaintiffs repeat and incorporate Paragraphs 1 through 197.

304. On April 4, 2014, UFD borrowed $5,000,000 from the Louis J. Appell, Jr. Revocable Trust pursuant to the April 2014 Note. That Note was later amended on May 25, 2016.

305. Hynes and Taylor signed identical absolute and unconditional personal guaranties for the April 2014 Note. In those documents they agreed to not only repay the debts with interest, but to pay any costs or fees – including attorneys' fees – incurred in enforcing the Guaranty. Exhibit 4.

306. The Guaranties state: "The Guarantor irrevocably, absolutely and unconditionally agrees to guarantee the repayment of the Note to the Holder. This Guaranty is an absolute, present and continuing guaranty of payment and performance and not of collection."

307. The Guaranties further state: "Holder shall be under no obligation to pursue its rights against the Company or any other guarantor or any of the Company's real or personal property or any other guarantors [sic] real or personal property before pursuing Holder's rights against the Guarantor." The Holder need not "provide written notice of default to Borrower before pursuing its rights against the Guarantor."

308. The Guaranties further state that the liability of the Guarantor is "absolute and unconditional and shall not be affected in any way by reason of (a) any failure to retain or preserve, or the lack of prior enforcement of, any rights against person or persons or in any property, (b) the invalidity of any such rights which may be attempted to be obtained, (c) any delay in enforcing or failure to enforce any such rights even if such rights are thereby lost, or (d) any delay in making demand on the Guarantor for performance or payment of the Guarantor's obligations hereunder."

309. The $5,000,000 Note became due and unpaid on November 1, 2014, pursuant to the maturity dates set out in the Note.

310. On February 1, 2019, the Louis J. Appell Jr. Revocable Trust assigned the November 2014 Note to Powder Mill as a substitute holder. The Assignment Agreement confirms Hynes as a Guarantor of the Note.

311. On March 11, 2019, Hynes signed an acknowledgment of and consent to the assignment, which provides that "United Fiber & Data, LLC hereby acknowledges, recognizes and consents to the foregoing assignment and approves admission of the Powder Mill Foundation as substitute holder of the note and guarantees identified above."

312. UFD has not repaid the Note, which is due and owing, and thus Hynes and Taylor owe Powder Mill $5,000,000 plus applicable interest and enforcement fees.

313. In addition to consenting to the assignment, Hynes has acknowledged this debt – and the other debts owed by him or his entities to Appell or Powder Mill – on multiple occasions, including by making the statements described in Paragraphs 30 through 33. He also acknowledged the debt during board meetings held on November 21, 2018, and July 10, 2019, during which the refinancing of these debts was discussed.

COUNT XVI

Civil Conspiracy
(UFD and Appell vs. All Defendants)

314. Plaintiffs repeat and incorporate Paragraphs 1 through 197.

315. Defendants acted together in combination to deliberately and maliciously carry out the scheme and acts set forth above with a common purpose of siphoning off assets belonging to UFD or Plaintiffs in order to enrich themselves, or their affiliated entities, for the purpose of, among other things, funding lifestyles that they otherwise could not afford. .

316. Overt acts done in furtherance of Defendants' conspiracy and in pursuit of their common purpose include the pattern of outright theft of Company funds, fraud, and self-dealing laid out in this Complaint, including but not limited to:

- Repeatedly misrepresenting that loans to and other investments in UFD would be used toward completing the fiber optic line and core Company operations and repeatedly promising that all amounts due and owing would be repaid, when in fact Defendants planned to use these and other Company funds as their own personal piggy bank and had no real intent of repaying loans;
- Theft of RACP Grant Money;
- The York Lease Related Breaches;
- The EPC-Allentown Related Theft;
- Andretti Autosport Sponsorship; and

- Fraud In Connection With Promissory Note from the Bolger Trust.

317. By virtue of their unlawful combination, Defendants have caused substantial harm to Plaintiffs and each Defendant is jointly and severally liable to Plaintiffs for compensatory damages, punitive damages, interest, costs and fees.

RELIEF REQUESTED

WHEREFORE, Plaintiffs prays for relief and judgment against Defendants on all Counts as follows:

(a) compensatory damages, plus prejudgment and post-judgment interest at the highest rate permitted by law;

(b) punitive damages;

(c) all costs and attorneys' fees incurred in connection with this action;

(d) an accounting of all moneys received by Defendants or their affiliated entities from UFD;

(e) a declaration that the Lease constitutes a continuing breach of fiduciary duty and, as such, is void *ab initio* and/or that the Lease was terminated in 2014 when the 120-day occupancy provision was violated and that UFD since then has occupied the space on a month-to-month basis;

(f) a declaration that Hynes may not serve on the Board of UFD; and

(g) for such other and further relief as this Court deems just and proper.

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ARBITRATION DOES NOT APPLY

The amount in controversy in this action, exclusive of interest and costs, exceeds $50,000, and therefore the arbitration program does not have jurisdiction in this case. 42 Pa. Con. Stat. § 7361; York County L. R. Civ. P. 1301.

DEMAND FOR JURY TRIAL

Pursuant to Pennsylvania Rule of Civil Procedure 1007.1, Plaintiffs hereby demand a trial by jury.

Dated: October 6, 2020

Respectfully submitted,

/s/ Steven B. Feirson
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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Dechert LLP

Signature: */s/ Steven B. Feirson*

Name: Steven B. Feirson, Esq.

Attorney No. (if applicable): PA 21357

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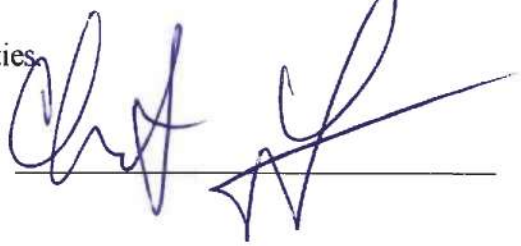
VERIFICATION

I, Christopher Lodge, Chief Operating Officer & Interim Chief Executive Officer of United Fiber & Data, LLC, verify that the facts set forth in the foregoing Complaint are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904. Relating to unsworn falsification to authorities.

Dated: October 5, 2020



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Case Number: 2020-SU-002006

VERIFICATION

I, Michael H. Hady, III, President and CEO of the Powder Mill Foundation, verify that the facts set forth in the foregoing Complaint are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904. Relating to unsworn falsification to authorities.

Dated: October 5, 2020

Michael H. Hady III

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VERIFICATION

I, Louis J. Appell, III, verify that the facts set forth in the foregoing Complaint are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904. Relating to unsworn falsification to authorities.

Dated: October 5, 2020