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**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:)	Chapter 11
)	
HIGHLAND CAPITAL MANAGEMENT,)	
L.P., ¹)	Case No. 19-34054-sgj11
Debtor.)	
)	
OFFICIAL COMMITTEE OF)	
UNSECURED CREDITORS,)	
)	
Plaintiff,)	
)	
v.)	Adversary Proceeding No. 20-03195
CLO HOLDCO, LTD., CHARITABLE)	
DAF HOLDCO, LTD., CHARITABLE)	
DAF FUND, LP, HIGHLAND DALLAS)	
FOUNDATION, INC., THE DUGABOY)	
INVESTMENT TRUST, GRANT JAMES)	
SCOTT III IN HIS INDIVIDUAL)	
CAPACITY, AS TRUSTEE OF THE)	

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



DUGABOY INVESTMENT TRUST, AND)
AS TRUSTEE OF THE GET GOOD)
NONEXEMPT TRUST, AND JAMES D.)
DONDERO,

Defendants.

ADVERSARY COMPLAINT

The official committee of unsecured creditors (the “Committee”) of Highland Capital Management, L.P. (the “Debtor”), pursuant to the Final Term Sheet as agreed among the Committee and the Debtor and entered by this Court on January 14, 2020 [Docket No. 354-1], by and through its undersigned counsel, files this adversary complaint (the “Complaint”) on behalf of the Debtor’s Estate (the “Estate”) against defendants CLO Holdco, Ltd. (“CLO Holdco”),² Charitable DAF Holdco, Ltd. (“DAF Holdco”), Charitable DAF Fund, LP (“DAF”), Highland Dallas Foundation, Inc. (“Highland Dallas Foundation”), The Dugaboy Investment Trust (“Dugaboy”), Grant James Scott III (“Scott”), individually, in his capacity as the trustee of Dugaboy, and in his capacity as trustee of The Get Good Nonexempt Trust formed by agreement dated June 29, 2001 (“Get Good”), and James D. Dondero (“Dondero”) (collectively, the “Defendants”), seeking monetary damages for actual and constructive fraudulent transfer, alter ego liability, money had and received, and conspiracy.

I. NATURE OF CASE

1. This action arises out of a convoluted series of transactions involving the Debtor and the Defendants that occurred on or around December 28, 2016, in which Dondero and Scott

² In connection with this Complaint, the Committee contemporaneously files a motion for injunctive relief to keep certain proceeds in the Court Registry from being disbursed to CLO Holdco, pursuant to this Court’s *Order Granting Extension of Time to File an Adversary Proceeding Against CLO Holdco, Ltd.* [Docket No. 1168]. The motion for preliminary injunction is expressly incorporated herein in its entirety.

caused assets of the Debtor's estate to be transferred to CLO Holdco for less than reasonably equivalent value and with an intent to defraud the Debtors' creditors.

2. These transfers followed shortly after a state court action and arbitration were commenced against the Debtor by a current member of the Committee, and shortly before large monetary judgments were entered against the Debtor. As this Court knows from prior litigation and the history of the bankruptcy proceedings, Dondero created a byzantine empire with thousands of entities under his control, many of which were foreign companies. Dondero stood at the top of the empire, moving assets and funds from one entity to another to meet various needs. Seeing the walls closing in on his kingdom as a result of several lawsuits, including those involving the members of the Committee, he concocted an exit strategy involving several different methods to remove assets from the Estate and place them into more remote entities, ultimately resulting in the financial issues that brought this case before the Court. The transfers giving rise to this suit are one such scheme.

3. These assets were transferred from the Debtor, through a series of intermediary entities, and into a Cayman entity that is wholly owned and controlled by a purported charitable foundation effectively controlled by Dondero and his long-time friend, Scott. Indeed, at the time of the transactions, and upon information and belief, as of the date of the filing of this Complaint, Dondero, directly or through Scott, effectively controlled each of the entities involved in the transaction.

4. Even at the conclusion of the series of transactions giving rise to this proceeding, the Debtor maintains a shared services agreement with CLO Holdco through which it effectively manages CLO Holdco's assets, and is responsible for the cash management of CLO Holdco's ultimate parent, the Highland Dallas Foundation. All of the corporate Defendants can be

considered a part of what has been referred to as the Debtor's "byzantine" empire. The net result of this particular set of convoluted transfers was to intentionally place valuable assets outside of the reach of creditors without the Debtor receiving reasonably equivalent value in return. All the while, Dondero maintained, directly or indirectly, control over and the benefit of, the valuable assets that were fraudulently removed from the Debtor's estate.

5. The assets were transferred away from the Debtor's creditors without a reasonably equivalent value being received in return at a time when the Debtor was insolvent or rendered insolvent and/or with the intent to defraud the Debtor's creditors. The Committee, therefore, has commenced this adversary proceeding on behalf of the Estate against the various entities involved in this complex fraudulent transaction to recover the value of these assets for the benefit of the Estate and the Debtor's creditors and seeking such further relief as is set forth in this Complaint and to which the Committee, on behalf of the Estate, is justly entitled.

II. THE PARTIES

6. The Committee is the duly appointed committee of unsecured creditors for the Debtor. On October 19, 2020, the Debtor filed for a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Proceeding"). The Committee was appointed by the United States Trustee on October 29, 2019 [Del. Docket No. 65]. On January 14, 2020, the Committee and the Debtor entered into a Final Term Sheet [Docket No. 354-1, the "Final Term Sheet"], which explicitly granted the Committee standing to pursue Estate Claims, defined as "any and all estate claims and causes of actions against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and each of the Related Entities, including promissory notes held by any of the foregoing." Final Term Sheet at 4.

7. Upon information and belief, CLO Holdco is an exempted company incorporated in the Cayman Islands. CLO Holdco has filed two proofs of claim in this Bankruptcy Proceeding. Both proofs of claim were submitted by Scott in his capacity as Director of CLO Holdco.

8. Upon information and belief, DAF Holdco is an exempted company incorporated in the Cayman Islands. Scott serves as its managing member.

9. Upon information and belief, the DAF is an exempted company incorporated in the Cayman Islands. Scott serves as its managing member.

10. Upon information and belief, Highland Dallas Foundation is a Delaware nonprofit, nonstock corporation. As of the time of the events described in this proceeding, Dondero, Scott, and Mary Jalonick (“Jalonick”) were the three sole directors.

11. Upon information and belief, Get Good is a trust established under the laws of the State of Texas. Get Good has filed a proof of claim in this Bankruptcy Proceeding. The proof of claim was submitted by Scott in his capacity as Trustee of Get Good.

12. Upon information and belief, Dugaboy is a trust established under the laws of the State of Delaware. Dugaboy has filed several proofs of claim in this Bankruptcy Proceeding. All were submitted by Scott in his capacity as Trustee of Dugaboy.

13. Dondero is an individual who, upon information and belief, at all times relevant to the Complaint was residing in Dallas, Texas. Dondero is the co-founder of the Debtor. Dondero also holds 100% of the shares of Strand Advisors, Inc. (“Strand”) which is the Debtor’s General Partner. Prior to his resignation on January 9, 2020, Dondero was Chief Executive Officer and President of the Debtor. Dondero is also the beneficiary of Dugaboy, the settlor of Get Good, and a director of the Highland Dallas Foundation.

14. Upon information and belief, Scott is an individual, who at all times relevant to the Complaint was residing in Colorado. Scott is the trustee of Get Good, a director of Highland Dallas Foundation, the managing member of DAF Holdco, the managing member of the DAF, and the director of CLO Holdco. Upon information and belief, Scott is also a long-time close friend of Dondero.

III. JURISDICTION AND VENUE

15. This adversary proceeding arises in and relates to the Bankruptcy Proceeding before the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Court”).

16. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (H), and (O).

17. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.

IV. FACTUAL BACKGROUND

18. As an initial matter, each of the Defendants in this matter are not distant third parties of the Debtor. Instead, at all relevant times, these entities were directly or indirectly controlled by Dondero and used as pawns to further his fraudulent activities.

A. Formation of CLO Holdco by Dondero and Scott.

19. A number of the Defendants are currently subsidiaries of the Highland Dallas Foundation.

20. CLO Holdco was formed on December 13, 2010. At its formation, CLO Holdco was wholly owned by Highland Capital Management Partners Charitable Trust #2 (the “HCMP”).

Trust”). The HCMP Trust was created by the Debtor for allegedly charitable purposes in 2006. Notably, the settlor of the HCMP Trust was Dondero.

21. On November 7, 2011, the HCMP Trust contributed all of the equity interests in CLO Holdco to DAF Holdco in exchange for 300 participating shares in DAF Holdco. That same day, DAF Holdco transferred the CLO Holdco equity interest to the DAF, which is itself controlled by Charitable DAF GP, LLC (the “DAF GP”). Dondero was the initial managing member of DAF GP, but Dondero transferred all of the membership interest in DAF GP to Scott in January 2012.

22. Shortly after the transfer by DAF Holdco of the equity interests in CLO Holdco, on November 30, 2011, the HCMP Trust was terminated. At that time, HCMP distributed its 300 participating shares in DAF Holdco to three different Debtor-related foundations in equal parts: 100 shares to Highland Dallas Foundation, 100 shares to the Highland Santa Barbara Foundation, Inc., and 100 shares to the Highland Kansas City Foundation, Inc. (collectively, the “Highland Foundations”). At all relevant time periods, Dondero was the President and one of three directors of each of these Foundations. Similarly, at all relevant times, Scott was the Treasurer and director of each Foundation. Thus, at all relevant times, Dondero and Scott constituted a majority of the directors at each of the Foundations.

23. The DAF was also seeded with assets “donated” by the Debtor in 2011 through the Debtor’s transfer of approximately \$27.7 million to each of the three Highland Foundations. As of September 30, 2019, the DAF had fee-earning assets under management of \$225 million. Upon information and belief, the tax benefits of these “donations” of Debtor’s assets was passed through to Dondero personally.

24. Since the inception of the DAF, the Debtor has acted, and continues to act, as the investment manager for the DAF. In that capacity, the Debtor, including when controlled by Dondero, recommended investments to Scott as Trustee.

25. Additionally, since 2012, the Debtor has provided advisory and back office services to the DAF and its subsidiaries, including CLO Holdco. Moreover, upon information and belief, Dondero indirectly controls CLO Holdco, DAF Holdco, and the DAF.

B. The Other Entities Involved in the CLO Holdco Transaction Are Controlled by Dondero and Scott.

26. Until recently, Dondero controlled the Debtor as its chief executive officer and president, and the sole shareholder and president of Strand, the Debtor's general partner. As such, Dondero was a fiduciary of the Debtor.

27. Scott, who exercises control over many of the entities involved in the convoluted series of transactions that are the subject of this Complaint, is a patent attorney and close associate (and college roommate) of Dondero. Upon information and belief, at all times relevant to this matter, Scott did not independently assess the investments and transfers "recommended" by Debtor personnel. Instead, he routinely approved, without inquiry or requests for additional information, all investments and transfers presented to him by the Debtor and on behalf of all of the various purportedly "independent" or "non-affiliated" entities he controls.

28. Dondero is the settlor of Get Good, and, upon information and belief, his two children are the beneficiaries. Scott is the trustee.

29. Dugaboy is Dondero's family trust, of which Dondero is the primary beneficiary. As the primary beneficiary of the trust, Dondero has the power to remove and/or appoint successor trustees. Upon Dugaboy's creation, Dondero acted as the initial trustee and family trustee of the trust and Scott served as the independent trustee. Upon information and belief, Dondero later

appointed Scott as the family trustee of Dugaboy. Scott held both roles until October 12, 2015 (shortly before the events giving rise to this complaint), when he resigned as family trustee and Dondero appointed his sister, Nancy Marie Dondero, as Scott's replacement. However, Scott remains the "independent" trustee of Dugaboy. As the independent trustee of Dugaboy, Scott has the sole and absolute discretion to distribute to Dondero as much of the income and principal of the trust as Scott deems appropriate or advisable.

C. The Debtor Enters into a "Swap" of "Assets" with Get Good.

30. On December 28, 2016, the Debtor and Get Good entered into a "swap" transaction, in which the Debtor received a 97.6835% interest in an overvalued promissory note held by Get Good. In exchange for the interest in the promissory note, the Debtor transferred three separate assets to Get Good. The assets transferred to Get Good were immediately and contemporaneously funneled down to CLO Holdco through a series of transfers. While all of these transfers occurred roughly contemporaneously, the transaction in fact involved a series of steps. The transaction (collectively referred to as the "CLO Holdco Transaction") occurred as follows:

31. Step 1: The Debtor transferred to Get Good the following assets: (1) \$2,032,183.24 (based on a November 30, 2016 NAV) in Series A Interests in Highland Capital Loan Fund, L.P. (the "Series A Interests"); (2) \$8,710,000.00 (based on a December 27, 2016 MV) participation interest in call options of American Airlines Group, Inc. (the "AA Interests"); and (3) a participation interest in certain Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd. shares, as well as a tracking interest in certain participation shares of Highland Crusader Fund II, Ltd., collectively valued at \$12,625,395.44 (based on a November 30, 2016 NAV) (the "Crusader Interests") (collectively, with the Series A Interests and the AA Interests, the "Transferred

Assets”). This transaction was effectuated by a Purchase and Sale Agreement executed by Dondero, on behalf of the Debtor, and Scott, on behalf of Get Good.

32. In “exchange,” Get Good transferred a 97.6835% interest in a promissory note from Dugaboy, of which Get Good was the payee, to the Debtor (the “Dugaboy Note”).

33. Step 2: Scott immediately caused Get Good to donate the Transferred Assets to Highland Dallas Foundation by exercise of discretion, executed by Scott in his capacity as trustee of Get Good.

34. Step 3: Dondero and Scott caused the Highland Dallas Foundation to immediately contribute the Transferred Assets to DAF Holdco by unanimous written consent, executed by Dondero, Scott, and Jalonick, each in their capacity as the sole directors of Highland Dallas Foundation.

35. Step 4: Through an omnibus assignment agreement, Scott caused DAF Holdco to transfer the Transferred Assets to the DAF, which itself immediately transferred the Transferred Assets to CLO Holdco. As “consideration” for these transfers, the Highland Dallas Foundation, DAF Holdco, the DAF, and CLO Holdco all agreed to be fully bound by the apparently unrelated “Multi Strat Governing Documents.” Scott signed on behalf of each entity, as director of DAF Holdco, managing member of the DAF, and director of CLO Holdco. Moreover, the DAF GP issued a written resolution, as general partner of the DAF and as 100% owner of CLO Holdco, contributing the Transferred Assets to CLO Holdco. Scott again executed this document as managing member of the DAF GP.

36. While the purported value of the Dugaboy Note was equal to the reported value of the assets transferred to Get Good by the Debtor, in actuality the Debtor did not receive reasonably equivalent value for the Transferred Assets. Instead, the transaction was structured to move assets

out of the Debtor and into an entity that would be out of the reach of the Debtor's creditors, yet ultimately still under the control of Dondero and managed by the Debtor. In addition to making the assets difficult to access by creditors, the transfers provided Dondero with a personal tax benefit by nature of the "donation" made from one Dondero-managed entity to another entity effectively controlled by Dondero.

D. The Debtor Did Not Receive Reasonably Equivalent Value for the Transferred Assets.

(i) *The Dugaboy Note Was Restructured and Overvalued One Month Before the CLO Holdco Transaction.*

37. As the first step of the CLO Holdco Transaction, Get Good transferred a large portion of a Dugaboy Note to the Debtor. What is not evident from the transaction documents, however, is that the terms of that note were modified shortly before the CLO Holdco Transaction.

38. An original promissory note was issued on December 7, 2012, whereby Dugaboy promised to pay Get Good the principal sum of \$23,595,920, with interest (the "Original Dugaboy Note"). The Original Dugaboy Note had a ten-year term and interest accruing at the then-short-term Applicable Federal Rate of 0.45%. Dondero signed the Original Dugaboy Note as Dugaboy's acting Family Trustee.

39. The Original Dugaboy Note, including accrued interest, was restructured immediately prior to the CLO Holdco Transaction. The restructured Dugaboy Note, dated October 31, 2016, originally had a new principal sum of \$31,296,204.65. However, this amount was eventually split into two different notes, one with a principal amount of \$23,817,639.58 (the Dugaboy Note ultimately transferred to the Debtor) and one with a principal amount of \$7,478,465.07. While both notes were originally intended to be transferred to the Debtor in exchange for the Transferred Assets, the smaller note was removed from the transaction the night

before it was signed, on December 28, 2016. The new terms of the of \$23,817,639.58 Dugaboy Note were (1) annual interest at a fair market rate as determined by a purported independent professional appraiser and (2) principal due on the new maturity date, October 30, 2036.

40. Upon information and belief, on October 28, 2016, a purported independent professional appraiser preliminarily valued the restructured Dugaboy Note, opining that the interest rate, to ensure that the fair market value of the restructured Dugaboy Note was equal to the fair market value of the Original Dugaboy Note, using a discount rate based on the yield for high quality corporate bonds.

41. Upon information and belief, the employees of the Debtor, acting at the direction of Dondero, disagreed with the allegedly independent appraiser regarding the discount rate used to value the Dugaboy Note, on the basis that a lower discount rate should be applied because there was very little risk that the Dugaboy Note would not be repaid since Dondero ultimately controlled the re-payment due to his role as life beneficiary and his ability to replace Scott as trustee. A lower interest rate would result in a higher valuation of the Dugaboy Note.

42. In the end, an inappropriately low discount rate was used to calculate the value of the Dugaboy Note. As a result, even facially, the Dugaboy Note was overvalued. Upon information and belief, the discount rate used did not reflect the level of risk or the cost of borrowing money, as required for a proper analysis. Accordingly, upon information and belief, the Dugaboy Note was overvalued and should have had a fair market value of at least \$15.9 million less than the Transferred Assets.

43. To date, no final valuation report on the Dugaboy Note has been identified by the Committee or by the Debtor. Upon information and belief, no final valuation report of the proper discount and interest rates for the Dugaboy Note exists.

44. Moreover, upon information and belief, the proper interest rate for the restructured Dugaboy Note was not determined as of the morning of the CLO Holdco Transaction, and it is unclear what interest rate was ultimately used, if any.

(ii) *Dondero Controlled the Interest and Principal Payments on the Dugaboy Note.*

45. Dondero not only caused the Debtor to transfer assets out of its Estate in exchange for a facially overvalued Dugaboy Note, but also caused the Debtor to exchange valuable assets for a promissory note for which he exercised sole control over the repayment.

46. Pursuant to Dugaboy's trust agreement, Dondero has the power to remove any trustee of Dugaboy without cause and the power to appoint successive trustees. This includes Scott in his capacity as independent trustee of Dugaboy. As such, Dondero effectively controls Dugaboy and could cause Dugaboy to pay, or not to pay, any principal or interest payments due on the Dugaboy Note. This control over Dugaboy and the repayment of the Dugaboy Note effectively rendered the Dugaboy Note valueless to the Debtor.

47. Scott, Dondero's long-time friend, and Dondero's sister, as the trustees of Dugaboy, facially controlled (and still control) whether any payments of the principal and interest on the Dugaboy Note are made. Even without the power to remove these trustees, neither is sufficiently independent of Dondero as to go against his wishes with regard to issues like repayment of the Dugaboy Note. Moreover, upon information and belief, there was no independent analysis conducted to assess Dugaboy's ability to repay the Dugaboy Note at the time that the interest in the note was transferred. In fact, upon information and belief, no principal or interest payments were made on the Original Dugaboy Note by Dugaboy to Get Good between its creation in 2012 and its restructuring in 2016.

(iii) *The Debtor Rewrites the Transaction the Night Before the Transferred Assets are Exchanged.*

48. In exchange for the Dugaboy Note, the Debtor ultimately transferred to Get Good the Series A Interests, the AA Interests, and the Crusader Interests pursuant to a Purchase and Sale Agreement executed by the Debtor and Get Good.

49. However, the original transaction between the Debtor and Get Good contemplated the transfer of an entirely different set of assets. Upon information and belief, the transaction was originally contemplated to involve the full Dugaboy Note (in the principal amount of \$23,817,639.58) and the smaller promissory note in the principal amount of \$7,478,465.07, also issued by Dugaboy to Get Good, and the Debtor was to transfer the Crusader Interests and other miscellaneous interests that were not part of the final agreement. On December 27, 2016 Scott signed documents effectuating the transfer of these other assets on behalf of Get Good, Highland Dallas Foundation, CLO Holdco, the DAF, and DAF Holdco.

50. For reasons unknown to the Committee, the night before the CLO Holdco Transaction, these miscellaneous assets were swapped for the Series A Interests and the AA Interests. The smaller Dugaboy promissory note was removed completely from the transfer. The only portion of the contemplated transaction to survive the 24-hours before its execution were the Crusader Interests. This last-minute switch also undermines the likelihood that the swap was of items of equivalent value, or that sufficient research and consideration was given to the transaction from the Debtor's perspective. Indeed, such a last minute wholesale change only further underscores the control that Dondero had over all parties to the CLO Holdco Transaction.

51. Notwithstanding a wholesale change in the nature of the transaction, upon information and belief, Scott approved the transfer with little or no inquiry into the cause of the change or determination that equivalent value was being exchanged.

(iv) *Scott Approved Changes to the Nature of the Transaction Even After it Was Executed.*

52. In the original Purchase and Sale Agreement, the Debtor was to transfer its rights in American Airlines call options. Upon information and belief, Scott executed the original Purchase and Sale Agreement on behalf of Get Good in his capacity of trustee on the morning of December 28, 2016. Upon information and belief, Scott executed that document without raising any questions or requesting any explanations of the transaction.

53. The same day as the transfer, the transaction was modified to be a participation interest in the American Airlines call options, rather than a transfer of the call options themselves, because there were limitations on the Debtor's and the Defendants' ability to timely receive and transfer the call options. The revision was not made before the agreements had been executed, so the next day the Debtor and Get Good rescinded and nullified the transfer and assignment of the American Airlines call options, and the Debtor instead irrevocably transferred only a participation interest in the American Airline call options. At the same time, the Debtor informed Scott of the settlement issue with the American Airlines call options, and presented Scott with an amended Purchase and Sale Agreement to execute on behalf of Get Good. Upon information and belief, Scott executed the document shortly thereafter, again without raising any questions or requesting additional explanation.

E. The Transferred Assets Were Ultimately Funneled to CLO Holdco in an Attempt to Move the Transferred Assets Out of the Reach of the Debtor's Creditors, but Are Still Under the Control of Dondero.

54. After the Debtor and Get Good exchanged the Dugaboy Note for the Transferred Assets, the Transferred Assets were ultimately funneled down to CLO Holdco through Highland Dallas Foundation, DAF Holdco, and the DAF. While Dondero has claimed this convoluted

transaction was a “donation,” it can be more properly characterized as a fraudulent transfer intended to hide Debtor assets from creditors.

55. Upon information and belief, the Debtor presented Scott with the paperwork for these transactions, without any detailed explanation of the purpose of the transactions, on December 27, 2016, and Scott unilaterally approved of the transactions on behalf of DAF Holdco, the DAF, and CLO Holdco that evening. Upon information and belief, on December 29, 2016, the day after the effective date of the CLO Holdco Transaction, the Debtor presented Scott with amending documents related to the AA Interests, and Scott again signed these documents on behalf of DAF Holdco, the DAF, and CLO Holdco with no questions.

56. As a result of this CLO Holdco Transaction, Dondero caused the Debtor to move the Transferred Assets out of the Debtor and away from the reach of its creditors for less than reasonably equivalent value to an entity that Dondero and the Debtor do not exercise direct control over. However, it is clear that Dondero and the Debtor exercise significant control over the various entities involved in the CLO Holdco Transaction, including CLO Holdco, as evidenced by the improper valuation of the Dugaboy Note, Dondero’s ability to control the principal and interest payments made on the Dugaboy Note as the primary beneficiary of the trust, the last minute swap of assets included in the transfer, and the Debtor’s ability to execute transactions with no resistance from Scott, Dondero’s personal friend and controlling member of DAF Holdco, the DAF, and CLO Holdco.

F. The Debtor Was Insolvent and the Transferred Assets Were Moved to Defraud Creditors.

57. Upon information and belief, at or around the time of the CLO Holdco Transaction, the Debtor was insolvent. Upon information and belief, the Debtor was inadequately capitalized to continue in its ongoing business, as the Debtor had not recorded its contingent liabilities,

primarily multiple legal claims that had been filed against it. As of the date of the CLO Holdco Transaction, the Debtor knew or should have known that the probable amounts the Debtor would owe on these claims would exceed tens of millions of dollars.

58. Moreover, Dondero transferred the Transferred Assets out of the Debtor in an attempt to defraud creditors. Shortly before and after the CLO Holdco Transaction, the Debtor was facing various arbitrations and litigations, which ultimately resulted in judgments against the Debtor, stemming in large part from fraudulent transactions and breaches of fiduciary duties.

59. For example, in April 2016, the Redeemer Committee of the Highland Crusader Fund (“Redeemer Committee”), a member of the Committee in this Bankruptcy Proceeding, discovered that the Debtor, acting as investment manager for various funds, had covertly and improperly taken \$32.2 million in cash out of the funds. On July 5, 2016, the Redeemer Committee filed a complaint in Delaware Chancery Court against the Debtor, seeking a limited status quo order, a declaration that the Redeemer Committee had “cause” to terminate the Debtor as manager, and a declaration that the Debtor was not entitled to indemnification.. Also on July 5, 2016, the Redeemer Committee filed a demand for arbitration against the Debtor before the International Centre for Dispute Resolution for the American Arbitration Association, captioned: *Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P.*, Case No. 01-16-0002-6927, ultimately bringing claims of violations of fiduciary and contractual duties. The CLO Holdco Transaction occurred less than six months later. On May 9, 2019, the arbitration panel issued a final award in favor of the Redeemer Committee in the total amount of \$190.8 million.

60. Nor was the Redeemer Committee the only claimant. As evidenced by the many litigation-related claims filed in the proceeding, many by members of the Committee, it is clear

that Dondero saw that he would soon be unable to avoid payment of these obligations by the Debtor. Because he knew that the Debtor could, and likely would, become liable for the various judgment and awards rendered against the Debtor, he began moving assets out of the Debtor to ensure they were out of the reach of the Debtor's creditors. The transfer of assets out of the Debtor's estate as a part of the CLO Holdco transaction, for less than reasonably equivalent value, is one such transaction.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Actual Fraudulent Transfer under TUFTA Against Dondero, Scott, CLO Holdco, DAF Holdco, DAF Fund, Get Good, Highland Dallas Foundation)

61. The Committee incorporates by reference the allegations contained in each of the preceding paragraphs, and each and every part thereof with the same force and effect as though fully set forth herein.

62. The December 28, 2016 CLO Holdco Transaction constituted a transfer and exchange of approximately \$24 million of the Debtor's assets (i.e., the Transferred Assets), to Get Good, then to the Highland Dallas Foundation, to Charitable DAF Holdco, to the DAF, and finally to CLO Holdco. Dondero and Scott would retain control over the Transferred Assets after the transfer.

63. The CLO Holdco Transaction was concealed, not the least of which by a convoluted, multi-step contemporaneous series of transfers and agreements that would remove the Debtor's assets to the Cayman Islands, beyond the reach of the Debtor's creditors at a time when the Debtor was embroiled in ongoing, material litigation with the Redeemer Committee and other Committee members.

64. The Debtor, under the direction of Dondero, knew that it was financially vulnerable and, prior to the transfer, faced material litigation liabilities (among other liabilities). Dondero believed and/or reasonably should have believed that the Debtor would incur debts and liabilities beyond the Debtor's ability to pay as they became due. Thus, the Debtor, at Dondero's direction, participated in the CLO Holdco Transaction with the intent to hinder, delay, or defraud the Debtor's creditors.

65. Both Dondero and Scott sat on both sides of the scheme to effect transfer of the Debtor's assets in exchange for the Dugaboy Note. Scott served as sole officer and director of CLO Holdco as well as trustee of the trusts for which Dondero is beneficiary, Dugaboy and Get Good. For his part, Dondero had the power to remove/appoint trustees of Dugaboy, and is the control person for Get Good and the Debtor. Both men served as directors on multiple boards together, including but not limited to the controlling foundations of CLO Holdco (i.e., the Highland Dallas Foundation, Inc., Highland Santa Barbara Foundation, Inc., and Highland Kansas City Foundation, Inc.). Dondero also served as President of these foundations.

66. The value of the Dugaboy Note received by the Debtor was not of reasonably equivalent value to the Transferred Assets. Less than three years after the CLO Holdco transaction, the Debtor would file for bankruptcy. Upon information and belief, no payments of principal or interest were made on the Original Dugaboy Note prior to 2016. And, upon information and belief, approximately \$18.3 million remains outstanding on the Dugaboy Note as of the time of this filing.

67. Therefore, the Committee seeks a monetary judgment for the value of the Transferred Assets against Get Good, Highland Dallas Foundation, DAF Holdco, the DAF, CLO Holdco, Dondero, and Scott, who are jointly and severally liable for the value of the Transferred

Assets. The value of the Transferred Assets should be returned to the Committee for the benefit of the Debtor's Estate and the Debtor's creditors.

SECOND CAUSE OF ACTION

(Constructive Fraudulent Transfer under TUFTA Against Dondero, Scott, CLO Holdco, DAF Holdco, DAF Fund, Get Good, Highland Dallas Foundation)

68. The Committee incorporates by reference the allegations contained in each of the preceding paragraphs, and each and every part thereof with the same force and effect as though fully set forth herein.

69. As alleged above, the CLO Holdco Transaction constituted a transfer of the Debtor's assets to Get Good, then to the Highland Dallas Foundation, to Charitable DAF Holdco, to the DAF, and finally to CLO Holdco. Dondero and Scott would retain control over the Transferred Assets even after the transfer.

70. The CLO Holdco Transaction occurred when the Debtor was financially vulnerable, such that the Debtor either intended to incur or believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due. The Debtor was under the control of Dondero, who certainly was privy to the mounting material litigation risks and related liabilities facing the Debtor.

71. Dondero reasonably should have believed that the Debtor would incur debts (both litigation and commercial debts arising in the ordinary course) beyond its ability to pay as they became due. And less than three years after the CLO Holdco transaction, the Debtor would file for bankruptcy.

72. Therefore, the Committee seeks a monetary judgment for the value of the Transferred Assets against Get Good, Highland Dallas Foundation, DAF Holdco, the DAF, CLO Holdco, Dondero, and Scott, who are jointly and severally liable for the value of the Transferred

Assets, to be returned to the Committee for the benefit of the Debtor's Estate and the Debtor's creditors.

THIRD CAUSE OF ACTION
(Declaratory Judgment for Alter Ego Liability Against
Dondero, DAF Holdco, DAF, and CLO Holdco)

73. The Committee incorporates by reference the allegations contained in each of the preceding paragraphs, and each and every part thereof with the same force and effect as though fully set forth herein.

74. CLO Holdco was formed as a Cayman Islands entity, and at formation was wholly-owned by the HCMP Trust, a trust created by the Debtor in 2006. The settlor of the trust was Dondero.

75. Dondero and Scott either control and/or sit on the boards of a multitude of organizations with overlapping, interrelated interests that often place them in a position of potential conflicts of interest. Such entities include but are not limited to the Defendants in this action, including Get Good, Dugaboy, CLO Holdco, DAF Holdco, the DAF, and the Highland Dallas Foundation. These entities, among others, comprise a complex web of interrelated entities subject to the control of Dondero, who coordinate often for their own personal benefit. For example, Charitable DAF, the parent of CLO Holdco, was seeded with contributions from Highland, is managed/advised by Highland; and Scott, the independent trustee is a long-time friend of Dondero.

76. Dondero and Scott sat on both sides of the scheme to effect transfer of the Debtor's assets in exchange for the Dugaboy Note. Scott served as sole officer and director of CLO Holdco and as trustee of the Dondero family trust (i.e., Dugaboy), as well as Get Good, DAF Holdco, the DAF, and the Highland Foundation among others. For his part, Dondero had the power to remove/appoint trustees of Dugaboy, including Scott, and likewise, Dondero was the control

person for the Debtor and Get Good, among other entities involved. Moreover, Dondero was able to direct the various entities controlled by Scott to effectuate the CLO Holdco Transaction without inquiry or requests for additional information from Scott.

77. The CLO Holdco Transaction involved use of corporate fiction by Dondero and Scott to perpetrate fraud on, and siphon funds away from, the Debtor and its creditors. As evident by the CLO Holdco Transaction, DAF Holdco, the DAF, and CLO Holdco operated as an alter ego of Dondero and the Debtor (controlled by Dondero). Dondero, through his control over Scott, effected use of DAF Holdco, the DAF, and CLO Holdco as a business conduit of the Debtor. This conduit was often turned to by Dondero to funnel assets away from creditors and beyond the jurisdiction of U.S. courts, as reflected in the CLO Holdco Transaction.

78. Dondero and the Debtor used CLO Holdco to execute Dondero's wrongful and fraudulent transfer scheme in the CLO Holdco Transaction to strategically remove the Debtor's Assets out of the United States and beyond the jurisdiction of American courts and the Debtor's creditors, in misuse of the corporate form.

79. CLO Holdco is a corporate fiction relied upon as a protection from liability for the fraudulent transfers effected by CLO Holdco, by Scott and the Debtor under the direction of Dondero.

80. Therefore, the Committee seeks a judgment that DAF Holdco, the DAF, and CLO Holdco are corporate fictions of Dondero and the Debtor (controlled by Dondero) and used to perpetrate a fraud directed by Dondero, and thus, Dondero, DAF Holdco, the DAF, and CLO Holdco are liable for damages pursuant to an alter ego theory.

FOURTH CAUSE OF ACTION
(Money Had and Received Against CLO Holdco)

81. The Committee incorporates by reference the allegations contained in each of the preceding paragraphs, and each and every part thereof with the same force and effect as though fully set forth herein.

82. The monies held in the Court's registry in equity and good conscience belong to the Debtor due to the actual and/or constructive fraudulent transfer(s) effected by Dondero and Scott and routed ultimately to CLO Holdco. But for this fraudulent conveyance, the near \$24 million in Transferred Assets never would have left the Debtor's estate pursuant to the CLO Holdco Transaction.

83. CLO Holdco has received money that rightfully belongs to the Debtor's estate.

84. Therefore, the Committee seeks a monetary judgment for the value of the Transferred Assets and a judgment declaring that the Transferred Assets, including the proceeds held in the Court's Registry, belong to the Debtor's Estate.

FIFTH CAUSE OF ACTION
(Conspiracy Against All Defendants)

85. The Committee incorporates by reference the allegations contained in each of the preceding paragraphs, and each and every part thereof with the same force and effect as though fully set forth herein.

86. DAF Holdco, the DAF and CLO Holdco, under the direction of Scott, acted in combination with the Debtor, under the direction of Dondero, and further, in combination with Dugaboy and Get Good, under the direction of both Dondero and Scott, to effect the CLO Holdco Transaction and to remove the Debtor's Assets beyond the reach of the Debtor's creditors, during a time when the Debtor was financially vulnerable.

87. The CLO Holdco Transaction would effect a transfer of the Debtor's Assets in exchange for the Dugaboy Note worth substantially less in value than the Transferred Assets.

88. The Defendants intended to effect, in whole or in part, and took overt steps to realize and benefit from the CLO Holdco Transaction. The fraudulent transfers inherent in the CLO Holdco Transaction proximately caused damage to the Debtor's estate in removing near \$24 million in assets beyond the reach of the Debtor's creditors.

89. Dondero and CLO Holdco, were unjustly enriched as a result of the CLO Holdco Transaction such that restitution is proper and a constructive trust should be imposed on the monies now held in the Court's registry for the benefit of the Debtor's creditors.

90. Therefore, the Committee seeks a judgment against all Defendants, declaring that each Defendant conspired to fraudulently transfer assets out of the Debtor's Estate for less than reasonably equivalent value, and that each of the Defendants is therefore jointly and severely liable for the value of the Transferred Assets and any damages caused by the fraudulent transfer.

VI. REQUEST FOR RELIEF

WHEREFORE, the Committee requests the following relief on behalf of the Debtor's Estate:

- a. A judgment declaring that the CLO Holdco Transaction and related disposition of the Transferred Assets constituted an actual and/or constructive fraudulent transfer;
- b. The imposition of a constructive trust over the Defendants' assets and/or awarding the Committee, on behalf of the Debtor's Estate, damages, in an amount to be determined at trial, but no less than the value of the Transferred Assets and any appreciation of the value of the Transferred Assets, or alternatively, directing that these Defendants return to the Debtor any assets or consideration received from the Debtor, directly or indirectly, as distributions, dividends, consideration,

compensations, fees, interest, principal or otherwise, in connection with the CLO Holdco Transaction, from December 28, 2016 to the present.

- c. A judgment declaring that all Defendants conspired to perpetrate a fraudulent transfer and are, as a result, jointly and severally liable for the value of the fraudulent transfer and any other damages resulting from the fraudulent transfer.
- d. A judgment that the CLO Holdco Transaction involved the use of corporate fiction by Dondero to perpetrate fraud against the Debtor's Estate, and that, as a result, Defendants are responsible for the Debtor's liability and obligations arising out of this action and any other damages caused by the conspiracy.
- e. Injunctive relief as sought in the Committee's Motion for Preliminary Injunction, to keep the proceeds held in the Court's Registry from being distributed to CLO Holdco.
- f. Punitive damages in an amount to be determined at trial.
- g. The Committee's costs and disbursements, including reasonable attorneys' fees and expenses in this action.
- h. Pre-judgment and post-judgment interest on any damages, fees, or costs awarded.
- i. Any such other and further relief to which the Debtor's Estate may be justly entitled.

[signature page to follow]

Dated: December 17, 2020
Dallas, Texas

Respectfully submitted,

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