



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 31, 2021


United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

HUNTER MOUNTAIN INVESTMENT TRUST,

Defendant.

§ Chapter 11
§
§ Case No. 19-34054-sgj11
§
§
§ Adversary Proceeding No.
§
§ 20-03105-sgj
§
§
§

ORDER APPROVING JOINT STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Having considered the *Joint Stipulation of Dismissal Without Prejudice* [Adv. Docket No. 18] (the “Stipulation”), a copy of which is attached hereto as **Exhibit A**, filed by Highland

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.



Capital Management, L.P. (the “Debtor”) and Hunter Mountain Investment Trust (“Hunter Mountain” and together with the Debtor, the “Parties”), **IT IS HEREBY ORDERED THAT:**

1. The Stipulation is **APPROVED**.

###End of Order###

EXHIBIT A

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
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Counsel for the Debtor and Debtor-in-Possession

ROCHELLE MCCULLOUGH, LLP
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Dallas, Texas 75201
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Email: pkeiffer@romclaw.com

Counsel for Hunter Mountain Investment Trust, L. P.

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

In re:	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§	Chapter 11
Debtor.	§	Case No. 19-34054-sgj11
	§	
	§	

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.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

HUNTER MOUNTAIN INVESTMENT TRUST,

Defendant.

§
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§
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§

Adversary Proceeding No.

20-03105-sgj

JOINT STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Highland Capital Management, L.P. (the “**Debtor**”), the debtor and debtor-in-possession, and Hunter Mountain Investment Trust (“**HMIT**”) enter into this *Joint Stipulation of Dismissal Without Prejudice* (the “**Stipulation**”) pursuant to Rule 7041 of the Federal Rules of Bankruptcy Procedure.

Recitals

Whereas, HMIT timely filed Proof of Claim No. 70 on April 2, 2020 and then filed Proof of Claim No. 152 as an amendment, both in the amount of \$60,298,739, to preserve asserted defenses of common law and contractual setoff (the “**HMIT POC**”);

Whereas, the Debtor on August 26, 2020 commenced Adversary Proceeding No. 20-03105-sgj (the “**Adversary Proceeding**”) by filing and serving the *Debtor’s (I) Objection to Claim No. 152 of Hunter Mountain Investment Trust and (II) Complaint to Subordinate Claim of Hunter Mountain Investment Trust and for Declaratory Relief* (the “**Complaint**”);

Whereas, the Debtor and HMIT entered into that *Stipulation and Proposed Scheduling Order* (the “**Stipulation**”) (AP Docket No. 8) in the Adversary Proceeding (later approved by the Court at AP Docket No. 9), which among other things provided that HMIT “(a) waives its rights, if any, to vote for or against the Plan, whether pursuant to Federal Rule of Bankruptcy Procedure 3018(a) or otherwise; and (b) agrees not to object to or otherwise oppose confirmation of the Plan,

including any amendments thereto (provided that any such amendments do not affect the issues which would be litigated in this Adversary Proceeding);”

Whereas, HMIT complied with the Stipulation and the Court confirmed the Debtor’s *Fifth Amended Plan of Reorganization* (Main Case Docket No. 1943) (the “**Plan**”);

Whereas, HMIT wishes to withdraw the HMIT POC, provided that (a) it retains its asserted defenses of common law and contractual setoff with regard to any action the Debtor may take to enforce its rights under the Contribution Note or the Contribution Agreement (as those terms are defined in the Complaint), and (b) the Debtor dismisses the Adversary Proceeding without prejudice, subject to the Debtor’s right to commence a new adversary proceeding to enforce its rights under the Contribution Note or Contribution Agreement or to otherwise pursue any other cause of action against HMIT; and

Whereas, HMIT and the Debtor agree that this Stipulation meets the requirements of Rule 7041 of the Federal Rules of Bankruptcy Procedure and case law construing the requirements for a dismissal without prejudice after HMIT timely filed its answer in the Adversary Proceeding.

NOW, THEREFORE, it is hereby stipulated and agreed, and upon approval of this Stipulation by the Court, it shall be SO ORDERED:

1. The Adversary Proceeding is hereby dismissed without prejudice; and
2. This dismissal shall have no effect on the Debtor’s ability to later commence a new adversary proceeding to enforce its rights under the Contribution Note or the Contribution Agreement (as those terms are defined in the Complaint) or to otherwise pursue any other cause of action against HMIT.

Dated March 31, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
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-and-

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Counsel for the Debtor and Debtor-in-Possession

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Counsel for Hunter Mountain Investment Trust

United States Bankruptcy Court
Northern District of Texas

Highland Capital Management, L.P.,
Plaintiff
Hunter Mountain Investment Trust,
Defendant

Adv. Proc. No. 20-03105-sgj

CERTIFICATE OF NOTICE

District/off: 0539-3

User: mmathews

Page 1 of 2

Date Rcvd: Apr 01, 2021

Form ID: pdf001

Total Noticed: 6

The following symbols are used throughout this certificate:

Symbol	Definition
+	Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Apr 03, 2021:

Recip ID	Recipient Name and Address
ust	+ Cheryl Wilcoxson, US Trustee, 1100 Commerce St., Ste. 976, Dallas, TX 75242-0996
pla	+ Highland Capital Management, L.P., c/o Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067-4003
dft	+ Hunter Mountain Investment Trust, c/o E. P Keiffer, Rochelle McCullough, LLP, 325 North St. Paul St., Suite 4500, Dallas, TX 75201-3827

TOTAL: 3

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI). Electronic transmission is in Eastern Standard Time.

Recip ID	Notice Type: Email Address	Date/Time	Recipient Name and Address
ust	+ Email/Text: ustpregion06.ty.ecf@usdoj.gov	Apr 02 2021 01:29:00	US Trustee, Office of the U.S. Trustee, 110 N. College Ave., Suite 300, Tyler, TX 75702-7231
ust	+ Email/Text: ustpregion07.hu.ecf@usdoj.gov	Apr 02 2021 01:30:00	US Trustee, Office of the US Trustee, 515 Rusk Ave, Ste 3516, Houston, TX 77002-2604
ust	+ Email/Text: ustpregion06.da.ecf@usdoj.gov	Apr 02 2021 01:29:00	United States Trustee, 1100 Commerce Street, Room 976, Dallas, TX 75242-0996

TOTAL: 3

BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, *duplicate of an address listed above, *P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

Recip ID	Bypass Reason	Name and Address
ust		Sandra Nixon, U.S. Trustee
ust		mario zavala
ust	*+	US Trustee, Office of the U.S. Trustee, 110 N. College Ave., Suite 300, Tyler, TX 75702-7231

TOTAL: 2 Undeliverable, 1 Duplicate, 0 Out of date forwarding address

NOTICE CERTIFICATION

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Apr 03, 2021

Signature: /s/Joseph Speetjens

District/off: 0539-3
Date Rcvd: Apr 01, 2021

User: mmathews
Form ID: pdf001

Page 2 of 2
Total Noticed: 6

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on April 1, 2021 at the address(es) listed below:

Name	Email Address
Edwin Paul Keiffer	on behalf of Defendant Hunter Mountain Investment Trust pkeiffer@romclaw.com bwallace@romclaw.com
Zachery Z. Annable	on behalf of Plaintiff Highland Capital Management L.P. zannable@haywardfirm.com

TOTAL: 2