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COUNSEL TO PATRICK DAUGHERTY

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Reorganized Debtor.

SCOTT BYRON ELLINGTON,

Plaintiff,

v.

PATRICK DAUGHERTY,

Defendant.

Chapter 11

Case No. 19-34054 (SGJ)

Adv. No. 22-03003-sgj
*Removed from the 101st Judicial District
Court of Dallas County, Texas
Cause No. DC-22-00304*

¹ The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.



**MOTION FOR LEAVE TO FILE UNDER SEAL HIS UNREDACTED BRIEF IN
SUPPORT OF PATRICK DAUGHERTY’S RESPONSE TO SCOTT ELLINGTON’S
EMERGENCY MOTION TO ABSTAIN AND TO REMAND,
AND APPENDIX THERETO**

Defendant Patrick Daugherty (“Daugherty”), for his Motion (“Motion”) for Leave to File Under Seal his Unredacted Brief in Support of his Response to Plaintiff Scott Ellington’s (“Ellington”) Emergency Motion to Abstain and to Remand, and Appendix Thereto, respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

3. On January 25, 2022, Ellington filed his *Emergency Motion to Abstain and to Remand* [Adv. Docket No. 3].

4. Contemporaneously herewith, Daugherty filed a redacted copy of his Brief in Support of his Response to Scott Ellington’s Emergency Motion to Abstain and to Remand (the “Response Brief”) and a redacted copy of the Response Brief’s supporting appendix (the “Appendix”).

5. The Response Brief addresses a document filed under seal in the Delaware Recovery Case², and the Appendix contains that document. It is counsel’s understanding that a redacted copy of that document has been filed publicly in the Delaware Recovery Case and in this bankruptcy proceeding [Docket No. 1388-41]. Counsel for Daugherty contacted counsel for

² As that term is defined in the Response Brief.

Debtor to confer whether the document filed under seal in the Delaware Recovery Case could be filed unredacted in this adversary proceeding. Counsel for Debtor advised that they wished to continue to treat the document as confidential. Hence, Daugherty is filing this Motion.

RELIEF REQUESTED

6. By this Motion, Daugherty seeks entry of an order, substantially in the form attached hereto as **Exhibit A**, permitting Daugherty leave to file unredacted copies of the Response Brief and Appendix under seal, thus allowing any confidential information to remain confidential. Daugherty will provide a full copy of the Response Brief and Appendix to the Court and has filed redacted copies with the Court for viewing by other parties.

BASIS FOR RELIEF REQUESTED

7. Section 107(b) of the Bankruptcy Code, in relevant part, provides courts with the power to issue orders that protect entities from potential harm that may result from the disclosure of certain confidential information:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information. . . .

11 U.S.C. § 107(b)(1). *See also* FED. R. BANK. P. 9018.

8. Although courts recognize a right of access to judicial records and documents, this right is not absolute. *See Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 598 (1978); *Test Masters Educ. Servs., Inc. v. Robin Singh Educ. Servs., Inc.*, 799 F.3d 437, 454 (5th Cir. 2015). “Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.” *Nixon*, 435 U.S. at 598. Unlike its counterpart in Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy

Code does not require an entity seeking such protection to demonstrate “good cause.” *See Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994); *Phar-Mor, Inc. v. Defendants Named Under Seal (In re Phar-Mor, Inc.)*, 191 B.R. 675, 679 (Bankr. N.D. Ohio 1995). Instead, if the material sought to be protected satisfies one of the categories identified in section 107(b), “the court is *required* to protect a requesting interested party and has no discretion to deny the application.” *In re Orion Pictures Corp.*, 21 F.3d at 27 (emphasis in original) (citing 2 COLLIER ON BANKRUPTCY ¶ 107.01, at 107–2 (15th ed. 1993) (“Protection is mandatory when requested by an [interested party]”); *Wyndham Vacation Resorts, Inc. v. Faucett (In re Faucett)*, 438 B.R. 564, 568 (Bankr. W.D. Tex. 2010).

9. Notwithstanding the above, good cause exists to authorize Daugherty to file an unredacted version of his Response Brief and Appendix under seal. The confidential information found in the documents is of the type directly contemplated by section 107(b)(1), and has not been unsealed by the Delaware court. If such information is not kept confidential, Daugherty runs the risk of being accused of publicly filing information that is currently confidential. Further, the portion of the Response Brief that is redacted is minimal, and the information contained in the unredacted version of the document referred to therein is likely known to Ellington because he was still general counsel for Debtor at the time the document was filed in the Delaware Recovery Case. Thus, any interest in public disclosure is clearly outweighed by the harm that would be incurred if Daugherty is not given leave to file unredacted versions of the Response Brief and the Appendix under seal.

WHEREFORE, Daugherty respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, (i) authorizing Daugherty to file an

unredacted copy of his Response Brie and the Appendix thereto under seal, and (ii) granting such other and further relief as may be just and proper.

Respectfully submitted this 23rd day of February, 2022.

GRAY REED

By: /s/ Jason S. Brookner
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COUNSEL TO PATRICK DAUGHERTY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of February, 2022, he caused a true and correct copy of the foregoing pleading to be served via the Court's electronic case filing system (ECF) on all parties to this proceeding who have so-subscribed.

/s/ Jason S. Brookner
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ATTORNEYS FOR PATRICK DAUGHERTY

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ORDER GRANTING PATRICK DAUGHERTY'S MOTION FOR LEAVE TO FILE UNDER SEAL HIS UNREDACTED BRIEF IN SUPPORT OF PATRICK AUGHERTY'S RESPONSE TO SCOTT ELLINGTON'S EMERGENCY MOTION TO ABSTAIN AND TO REMAND, AND APPENDIX THERETO

Before the Court is the *Motion for Leave to File Under Seal his Unredacted Brief in Support of Patrick Daugherty's Response to Scott Ellington's Emergency Motion to Abstain and to Remand, and Appendix Thereto* (the "Motion") filed by Defendant Patrick Daugherty ("Daugherty"). The Court finds Plaintiffs' Motion should be **GRANTED**. Accordingly, it is

ORDERED that Daugherty is to file unredacted versions of his Response Brief and Appendix Thereto under seal.

###End of Order###

Proposed form of order prepared by:

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