IN THE
United States District Court
For The
Northern District of Texas
Dallas Division
No. 3:22-cv-00335-L

In re: Highland Capital Management, L.P.,

Reorganized Debtor,

NexPoint Advisors, L.P.,

Appellant,

vs.

Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust,

Appellee.

On Appeal from the
United States Bankruptcy Court for the Northern District of Texas
No. 19-34054-sgj11

BRIEF OF APPELLEE MARC S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE LITIGATION SUB-TRUST

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JURISDICTIONAL STATEMENT

This Court has jurisdiction to hear appeals "from final judgments, orders, and decrees . . . of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judge under section 157 of this title." 28 U.S.C. § 158(a)(1). The *Order Sustaining the Litigation Trustee's Objection to Proof of Claim Filed by Hunter Covitz (Claim No. 186)* [BK Docket No. 3180] (the "Order") issued by the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") disallowing proof of claim number 186 (the "Claim"), and appealed by NexPoint Advisors, L.P. ("NPA") here, is a final judgment. *Wells Fargo Bank, N.A. v. Guevara*, 2010 WL 5824040, at *1 (N.D. Tex. Aug. 18, 2010). However, NPA lacks standing to bring this appeal because NPA was not an authorized transferee of the Claim at the time of the Bankruptcy Court's Order. As a result, the Court lacks jurisdiction to hear this appeal and it should be dismissed. *Furlough v. Cage (Matter of Technicool Syst., Inc.)*, 896 F.3d 382, 385-86 (5th Cir. 2018).

STATEMENT OF THE ISSUES[1]

1. Does NPA lack standing to bring the appeal given that the Claim was nontransferable pursuant to the *Fifth Amended Plan of Reorganization of Highland Capital Management L.P. (as Modified)* [BK Docket No. 1808] (the "Plan")?

[1] As set forth in further detail *infra,* at Sections III-VII, NPA waived the vast majority of the issues it purports to raise to this Court in its Appellant's Brief (Docket No. 6) ("NPA Brief" or "Brief"). Even if the Court determines NPA has standing, there is only one potential issue remaining.

2. Did the Bankruptcy Court abuse its discretion in sustaining the *Objection to Proof of Claim Filed by Hunter Covitz (Claim No. 186)* [BK Docket No. 3002][2] (the "Objection") filed by Marc S. Kirschner, Litigation Trustee of the Litigation Sub-Trust (the "Litigation Trustee"), by finding the Litigation Trustee substantially complied with the negative notice procedures of the Local Rules of the Bankruptcy Court (the "Local Rules") after NPA filed an untimely response?

For this Court to have subject matter jurisdiction, NPA must establish its standing to bring this appeal. Bankruptcy standing is narrow, requiring that NPA show it was "directly and adversely affected pecuniarily" by the Order. *Matter of Technicool*, 896 F.3d at 385. Decisions that are within the Bankruptcy Court's discretion, like Issue Two above, are reviewed for abuse of discretion. *See Browning Mfg. v. Mims (In re Coastal Plains)*, 179 F.3d 197, 205 (5th Cir. 1999).

STATEMENT OF THE CASE

I. Relevant Factual Background

On October 16, 2019, Highland Capital Management, L.P. ("HCMLP") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court of the District of Delaware. On December 4, 2019, the matter was transferred to the Bankruptcy Court [BK Docket No. 186].

On May 26, 2020, Hunter Covitz—a then-employee of HCMLP—filed the

[2] "BK Docket No." refers to docket entries in the case pending before the Bankruptcy Court at *In re Highland Capital Management, L.P.*, No. 19-34054-sgj11 (the "Bankruptcy Case").

Claim against HCMLP. R. Vol. 2 at 000731.[3] The Claim sought "not less than [$]250,000" for three broad categories of unquantified claims: (1) "compensation for his services"—including salaries, wages, benefits, bonuses, vacation, paid time off, retirement contributions, pensions, and deferred compensation; (2) reimbursement for "travel and other business-related expenses incurred in connection with performing any services to which the Claimant is entitled"; and (3) indemnification "for all acts performed or omitted to be performed on behalf of or in connection with the Debtor's business." *Id.* 000738-739. The Claim did not attach any supporting documentation. *See id.* at 000740.

On February 22, 2021, the Bankruptcy Court entered an order confirming the Plan [BK Docket No. 1943] (the "Confirmation Order"). *Id.* at 000499. Pursuant to the Confirmation Order, the Litigation Sub-Trust was established for the purpose of "investigating, prosecuting, settling, or otherwise resolving the Estate Claims." *Id.* at 000529, 000603. The Plan and Litigation Sub-Trust Agreement provide that "Estate Claims" include all recovery and/or offset involving former employees such as Covitz.[4] *Id.* at 000603 (citing BK Docket 354-1). Covitz was terminated by

[3] Citations to "R. Vol. __" refer to the record on appeal at Docket No. 5. Relevant portions of the record not included in NPA's Appendix (Docket No. 7) are included in the Litigation Trustee's Appendix filed contemporaneously with this brief.

[4] *See Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* [BK Docket No. 1811-4] Ex. T at Article II, Section 2.2 ("the Litigation Sub-Trust shall have the sole responsibility for the pursuit and settlement of the Estate Claims, and, subject to the terms of the Claimant Trust Agreement, the sole power and authority to allow or settle and compromise any Claims related to

HCMLP in March 2021. *Id.* at 000660.

The effective date of the Plan was August 11, 2021. [BK Docket No. 2700]. Under the clear terms of the Plan, the transfer ledgers closed on the effective date, and no Claims could be transferred thereafter.[5] R. Vol. 2 at 000634.

II. Relevant Procedural History

On November 9, 2021, the Litigation Trustee filed the Objection. *See id.* The Objection contained negative notice language, explicitly permitted by the Local Rules, which provided that responses to the Objection were due no later than December 9, 2021 and that if Covitz failed to file and serve a timely response by the deadline, the Litigation Trustee could request an order from the Court disallowing the Claim without further notice. *Id.* at 000667-668. The Objection also set forth numerous arguments in support of disallowance of the Claim. *Id.* at 000663-667. For example, the Litigation Trustee argued that the Claim was vague and did not provide sufficient information to determine its amount or validity. *Id.* at 000664-665. He also argued that, to the extent Covitz sought payment of "bonuses," those claims should be disallowed because any bonuses were either already paid or did not vest as required for payment. *Id.* at 000665; *see also id.* at 000665-666 (additional arguments for disallowance related to severance and indemnification claims). As of

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the Estate Claims, including, without limitation, Employee Claims.") [hereinafter "Plan Supplement"].

[5] "Claim" is defined in section 101(5) of the Bankruptcy Code. R. Vol. 2 at 000599.

December 9, 2021—the response deadline provided in the Objection—no answer, objection, or other responsive pleading to the Objection was received or filed by Covitz or any other party (including NPA). *See id.* at 000444-445.

On January 3, 2022, almost a month after responses to the Objection were due, NPA filed a *Transfer of Claim Other Than for Security* [BK Docket No. 3146], purportedly transferring the Claim from Covitz to NPA. *Id.* at 000719. On that same day, NPA filed its untimely *Response to Litigation Trustee's Objection to Proof of Claim Filed by Hunter Covitz (Claim No. 186)* [BK Docket No. 3147] (the "Response"). *Id.* at 000720. NPA did not rebut any of the arguments in the Objection for disallowance of the Claim, argue that it did not receive adequate notice of the Objection, or provide any explanation or excuse for its untimely Response. *See id.* at 000720-721. Instead, NPA filed the Response "out of an abundance of caution" and gave "notice of its intent to conduct discovery pursuant to Fed. R. Bankr. P. 9014(c)." *Id.* at 000721. On January 5, 2022, NPA served the Litigation Trustee with overbroad, burdensome discovery requests, including 12 interrogatories and 19 categories of requests for production. *Id.* at 000747-756.

On January 7, 2022, the Litigation Trustee filed a *Reply to NexPoint Advisor L.P.'s Response to Litigation Trustee's Objection to Proof of Claim Filed by Hunter Covitz (Claim No. 186)* [BK Docket No. 3167] (the "Reply"), informing the Bankruptcy Court that the alleged Response to the Objection was untimely and

requesting entry of an order disallowing the Claim without a hearing. *Id.* at 000723-725. Pursuant to local practice, counsel for the Litigation Trustee emailed the Bankruptcy Court clerk (with NPA's counsel copied), notifying the clerk of the Reply, and inquiring whether the Bankruptcy Court would require a hearing on the Objection. *Id.* at 000743. The clerk informed the parties that the Bankruptcy Court would enter the Litigation Trustee's proposed order disallowing the Claim without a hearing, as the Bankruptcy Court found the Objection "substantially complied with the negative notice procedure, as set forth in [Local Rule] 9007-1(c). . . . [and] also complied with [Local Rule] 3007-1." *Id.* at 000745.

III. Ruling Presented for Review

On January 13, 2022, the Bankruptcy Court entered the Order. R. Vol. 1 at 000006. NPA's appeal to this Court followed. *Id.* at 000001.

SUMMARY OF ARGUMENT

NPA's appeal of the Order is its latest attempt to obtain a foothold from which it can challenge issues that have been repeatedly resolved by the Bankruptcy Court.[6]

[6] While the Court is likely not as familiar with the contentious and litigious nature of the Bankruptcy Case orchestrated by former owner and creator of HCMLP, James Dondero, this appeal is unsurprising to the Litigation Trustee. Dondero controls a number of entities related to HCMLP, including NPA, and has used these entities to bring expensive and frivolous litigation against HCMLP and its estate throughout the Bankruptcy Case. This appeal is no different. As set forth in the Reply, NPA requires the Claim to maintain standing to object to the Bankruptcy Court's orders and matters that may be brought before the Bankruptcy Court in the future, as it has no prepetition claims against HCMLP's estate. R. Vol. 2 at 000724-725. In fact, Judge Kinkeade recently rejected another attempt by NPA to appeal five Bankruptcy Court orders approving final applications for compensation of fees and reimbursement of expenses of various estate professions because NPA lacked standing to appeal the orders under the person aggrieved standard. *See*

To further this goal, NPA brings myriad arguments to this Court. While it is difficult to determine exactly what "issues" NPA purports to submit to this Court, a review of NPA's "Statement of the Issues Presented" in its Brief provides a roadmap for why this appeal should be denied. *See* NPA Br. 3.

As an initial matter, even assuming NPA is correct (and it is not) that the Bankruptcy Court abused its discretion (and it did not), the error would be harmless because NPA does not have standing to bring this appeal. Under Article VI.A of the Plan, the transfer ledger for claims against HCMLP closed on the effective date (August 11, 2021) and no further transfers of claims were allowed therafter. R. Vol. 2 at 000634. Yet Covitz purported to transfer the Claim to NPA on January 3, 2022, almost five months after the transfer ledger closed. *Id.* at 000719. As such, any alleged transfer of the Claim to NPA was invalid pursuant to the Plan, and any denial of such transfer by the Bankruptcy Court could not have harmed NPA's interest in the Claim. NPA had no interest in the Claim in the first place.

In any event, when reviewing NPA's "issues" on appeal, it becomes clear that only one issue could possible stand before the Court in this appeal (Issue 1(c)): whether the Bankruptcy Court abused its discretion by entering the Order after finding the Litigation Trustee substantially complied with the negative notice

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NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones LLP (In re Highland Capital Mgmt. L.P.), No. 3:21-CV-03086-K, 2022 WL 1457971, at *2-3 (N.D. Tex. May 9, 2022).

procedures set forth in the Local Rules. NPA Br. 3. The answer to that question is no. The Litigation Trustee complied with the plain language of the procedure set forth in the Local Rules by using language that informed the claimant that a response was due by a date certain and that, if the claimant did not file a timely response, the Bankruptcy Court could enter an Order disallowing the claim without further notice. And this is exactly what the Bankruptcy Court did. After the Litigation Trustee informed the Bankruptcy Court that no timely response to the Objection was filed, the Bankruptcy Court entered the Order disallowing the Claim.

NPA's Brief fails to establish that this result was an abuse of discretion. This is unsurprising, as courts regularly enter orders pursuant to negative notice procedures, which are explicitly permitted by the Rules and Bankruptcy Code. *See, e.g., Freewood Grp., LLC v. Park Place Motorcars, Ltd.*, No. 3:17-CV-2435-L, 2018 WL 4002475, at *10-11 (N.D. Tex. Aug. 22, 2018) (Lindsay, J.). The purpose of this procedure is to provide the claimant with notice of the Objection and a date by which the claimant must respond or have the Objection sustained and the Claim disallowed. Notably, NPA does not assert anywhere in its Brief that it did not receive adequate notice describing this procedure, the date by which the claimant must respond, and the consequences of a non-response. *See generally* NPA Br.

The remaining seven "issues" presented in NPA's "Statement of the Issues Presented" have been waived for various reasons, and should be rejected on that

basis, in addition to their separate lack of substantive merit addressed herein:

Issues Not Included on the Rule 8009 Statement of Issues or Presented to the Bankruptcy Court: Issue 5 is waived because NPA failed to include it in NPA's *Statement of Issues on Appeal Pursuant to Fed. R. Bankr. P. 8009* [BK Docket No. 3226] (the "Rule 8009 Statement of Issues"). *See Maxwell v. Orwig (In re FirstPlus Fin. Grp., Inc.)*, No. 3:10-CV-0433-K, 2010 WL 2927325, at *2 (N.D. Tex. July 23, 2010) (failure to include issue on Rule 8009 statement results in waiver).

***Issues Too Vague to Be Preserved*:** Issue 4 is a prime example of an impermissible attempt to include a "catchall" category in an appeal *See Galaz v. Katona (In Matter of Galaz)*, 841 F.3d 316, 324 (5th Cir. 2016) (rejecting overly broad issue because it "flouts th[e] purpose" of Rule 8009).

***Issues that Were Not Addressed in NPA's Briefing*:** Issues 1(a) and 3 are waived because NPA failed to brief them in its Brief before this Court. *See Hard-Mire Rest. Holdings, LLC. v. JH Zidell PC (In re Hard-Mire Rest. Holdings, LLC),* 619 B.R. 165, 172-73 (N.D. Tex. 2020) (appellant waives issue if fails to adequately brief it). Indeed, these issues are not addressed at all in NPA's argument.

***Issues Not Raised to Bankruptcy Court*:** Issues 1(b), 1(d), and 2 are waived because NPA failed to raise them to the Bankruptcy Court. *See Freewood Grp.,* 2018 WL 4002475, at *10 (waiver of issue by failing to raise to bankruptcy court).

Moreover, even if the issues in this category had been properly preserved

(they were not), they do not support reversal of the Order. For Issues 1(b) and 1(d), NPA classifies the Order as a default judgment in order to argue that the procedural requirements of FRCP 55 apply and that the Litigation Trustee's and Bankruptcy Court's purported failure to comply with those procedures warrants reversal. However, *none* of the authorities cited by NPA support this result. *See generally* NPA Br. 15-19 (citing no cases where a court reversed entry of an order entered pursuant to negative notice procedures under FRCP 55). This is expected, as courts within (and outside of) this Circuit regularly grant relief requested by negative notice procedures without following the procedural steps set forth in FRCP 55. *See, e.g., Freewood Grp.*, 2018 WL 4002475, at *10-11. NPA also attempts to argue in Issue 2 that the Litigation Trustee did not overcome the Claim's purported *prima facie* validity. But the Claim was not entitled *prima facie* validity because it was extremely vague and did not include supporting documentation. *In re Armstrong,* 320 B.R. 97, 104-05 (N.D. Tex. 2005) (lack of supporting documentation "strips [the claim] of any *prima facie* validity"). And even if the Claim were *prima facie* valid, the Litigation Trustee rebutted any such presumption by raising many arguments in the Objection for disallowance, and NPA failed to respond. *See United States of Am. v. Canada (In re Canada)*, 574 B.R. 620, 627 (N.D. Tex. 2017).

***Issues Not Included on the Rule 8009 Statement of Issues or the Statement of the Issues Presented in NPA's Brief*:** Any issue related to Rule 3007 has been

waived because it is not included in (1) the "Statement of the Issues Presented" in NPA's Brief (NPA Br. 3), (2) the Rule 8009 Statement of Issues, or (3) any briefing submitted to the Bankruptcy Court. *In re FirstPlus,* 2010 WL 2927325, at *2.

For these reasons and those contained herein, the Order should be affirmed.

ARGUMENT

I. The Plan Prohibits the Transfer of the Claim to NPA, Causing NPA to Lack Standing

Even if the Bankruptcy Court abused its discretion in entering the Order (it did not), Covitz could not have transferred his claim to NPA. Under the clear terms of the Plan, the transfer ledger for claims against HCMLP closed on the effective date of the Plan, *i.e.*, August 11, 2021. R. Vol. 2 at 000634, 000663. After that date, HCMLP and the Litigation Trustee had "no obligation to recognize the transfer of any Claims against" HCMLP. *Id.* at 000634. Covitz purported to transfer the Claim to NPA on January 3, 2020—almost *five months* after the transfer ledger closed. *Id.* at 000719. As such, the Litigation Trustee and HCMLP have "no obligation to recognize" NPA as the transferee of the Claim. NPA therefore was not "directly and adversely affected pecuniarily" by the Order and lacks standing to bring this appeal.[7] *Matter of Technicool*, 896 F.3d 382 at 385-86.

[7] Even if the Claim were transferrable, the Claim was dismissed before the purported transfer could have become effective pursuant to Rule 3001(e). *See* Fed. R. Bankr. P. 3001(e).

II. Issue 1(c)—The Only Issue Potentially Preserved for Appeal—Should be Rejected For Numerous Reasons

Even assuming NPA has standing (and it does not), the Court and the Litigation Trustee are presented with a single issue potentially raised on appeal: whether the Bankruptcy Court abused its discretion by finding that the Litigation Trustee substantially complied with Local Rule 9007-1. NPA Br. 3. Because the Litigation Trustee substantially complied, the Bankruptcy Court did not abuse its discretion and the Order should be affirmed.

A. *The Litigation Trustee Substantially Complied with the Local Rules' Negative Notice Procedures*

Local Rule 9007-1(a) allows the Litigation Trustee to serve the Objection using "negative notice" procedures. L. Bankr. R. 9007-1(a); *see also id.* at 9007-1(c).[8] The negative notice language in the Objection is substantially similar to the form provided in the Local Rules, as required. *Id.* at 9007-1(c) (requiring "a statement in *substantially* the following form") (emphasis added). The Objection adequately notified the claimant that (1) any response to the Objection must be filed with the Clerk and served on counsel for the Litigation Trustee before December 9, 2021 and (2) if the claimant failed to file a timely response, the Bankruptcy Court

[8] Bankruptcy courts around the country have similar negative notice procedures. *See, e.g.,* Rule 9013-1(b) of the Local Rules of the United States Bankruptcy Court for the Southern District of Texas ("S.D. Tex. Local Rules") (setting forth negative notice procedure); S.D. Tex. Local Rule 3007-1 (setting forth negative notice procedure for claims objections); Rule 2002-4 of the Local Rules of the United States Bankruptcy Court for the Middle District of Florida (setting forth negative notice procedure).

could enter an order disallowing the Claim without further notice. *Compare* R. Vol. 2 at 000667-668 (heading "Responses to Objection") *with* L. Bankr. R. 9007-1(c).

Each of NPA's unsupported arguments that the Litigation Trustee did not substantially comply with the Local Rules are unavailing and rebutted by the plain text of the Local Rules. *See* NPA Br. 21-22.[9] The Local Rules do not require that the negative notice language be in all caps or placed at the beginning of the Objection; the Local Rules merely require that the language be included, as it was here. *Id.*; *compare* L. Bankr. R. 9007-1(a), (c) *with* S.D. Tex. L. Bankr. R. 3007-1(b) (explicitly requiring negative notice language be bolded and immediately below title of objection) *and* M.D. Fla. L. Bankr. R. 2002-4 (explicitly requiring negative notice language be "prominently displayed on the face of the first page of the paper" and in the form provided).

Moreover, the Litigation Trustee was not required to include a certificate of conference pursuant to Local Rule 9007-1(f), as that rule applies only to motions. *See* L. Bankr. R. 9007-1(f) ("A certificate of conference indicating whether or not a

[9] Because NPA failed to cite any authority in support of its arguments against substantial compliance with the Local Rule, those arguments have been waived. "[A] brief must contain the appellant's contentions and reasons for them, with citations to the authorities and parts of the record on which the appellant relies." *In re Hard-Mire*, 619 B.R. at 172-73 (quoting *In re Campbell*, 398 F. App'x 1 (5th Cir. 2010) (finding appellant waived issue where it "cite[d] no caselaw, federal rule, or statute in support of its conclusory allegations that Appellee was required to" take certain actions). NPA does not provide any authority supporting its arguments that the Litigation Trustee failed to "substantially comply" with the Local Rules. *See* NPA Br. 21-22.

conference was held prior to filing the *motion* is required.") (emphasis added).[10] And while the Litigation Trustee did not file a document entitled "certificate of no objection," he informed the Court in his Reply that no timely response to the Objection was filed. R. Vol. 2 at 000724; L. Bankr. R. 9007-1(g) (certificate of no objection should inform the court "that no objections have been timely served upon the moving party"). NPA does not provide the Court with any authority supporting its contention that failure to file a document entitled "certificate of no objection" supports reversal here. *See* NPA Br. 22. Because NPA has not (and cannot) show that the Bankruptcy Court abused its discretion by finding the Litigation Trustee substantially complied with the Local Rules, the Order should be affirmed.

B. *The Litigation Trustee's Substantial Compliance with the Local Rules Justified Entry of the Order*

Given its inability to show that the Litigation Trustee failed to substantially comply with the Local Rules' negative notice procedures, NPA also argues that substantial compliance should not be enough to permit disallowance of the Claim.[11]

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[10] In any event, failure to include a certificate of conference would not support overruling the Objection, particularly where the attempts to confer resulted in a notification that counsel of record had withdrawn and could not identify any alternative counsel with whom to confer. R. Vol. 3 at 000847-848. *See In re Subpoena Served on Affiliated Foods, Inc.*, 2:21-MC-3-Z, 2021 WL 4439796, at *2 (N.D. Tex. Sept. 28, 2021) ("the failure to file a certificate of conference presents no basis to deny the motion where, as here, it is clear that the motion is opposed and that a conference would neither have eliminated or narrowed the parties' disputes") [hereinafter "*In re Affiliated Foods*"].

[11] NPA's argument that it "substantially complied" with the Local Rules by filing a Response 25 days after the response deadline provided in Objection and that "if substantial compliance was good enough for the Litigation Trustee, then it should have been sufficient for [NPA] as well", is disingenuous at best. *See* NPA Br. 20. The Litigation Trustee included negative notice language

Id. at 19-20. This argument fails. Rule 9007 "allows the Court to regulate the form and manner in which notice shall be given." *In re Ozcelebi*, 631 B.R. 629, 647 (Bankr. S.D. Tex. 2021). That is exactly what the Bankruptcy Court did here when it found the Litigation Trustee substantially complied with the Local Rules.

The only authority NPA cites in support of its argument actually reinforces the Litigation Trustee's position. NPA Br. 19-20. In *In re Affiliated Foods*, plaintiffs served a non-party with a subpoena and the non-party moved to quash, arguing the subpoena was unduly burdensome. 2021 WL 4439796, at *1. Plaintiffs argued that the motion to quash was invalid because the certificate of conference did not "strictly adhere" to the Local Rules. *Id.* at *2. The court rejected this argument, finding that while the certificate of conference did not include all of the information required by the Local Rules, that information was included in other documents that demonstrated to the court that the motion was opposed. *Id.* Here, too, the Litigation Trustee "complied with the spirit of the law" with the negative notice language included in the Objection. *See id.* Indeed, NPA makes *no argument* that it did not receive adequate notice of the Objection. *See generally* NPA Br.

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that was "substantially" in the form provided by the Local Rules, which is all that is required. L. Bankr. R. 9007-1(c). The Local Rules do not permit NPA to file a response "substantially" a month after the deadline. *See id.* And as shown *infra*, p. 16, courts regularly enter orders granting relief pursuant to negative notice procedures even when an untimely response is filed.

The fact that NPA filed an *untimely* Response does not change the outcome. Courts with similar negative notice procedures regularly order the relief requested even when the opposed party files an untimely response. *Compare* R. Vol. 2 at 000720 (Response filed *25 days* after deadline) *with, e.g., In re Lumsden*, 242 B.R. 71, 73-75 (Bankr. M.D. Fla. Sept. 23, 1999) (denying motion to reconsider order disallowing proof of claim, finding response filed *four days* after deadline provided in objection with negative notice language was untimely); *Haffey v. Deutsche Bank Co. Am. (In re Haffey)*, No. 5:21-cv-323-MMH, 2022 WL 950645, at *2-3, 7 (M.D. Fla. Mar. 30, 2022) (bankruptcy court did not err in granting a motion after it was served with negative notice when response requesting an evidentiary hearing was filed *11 days* after deadline provided in motion); *In re Cuprill*, No. 6:16-bk-00196-KSJ, 2017 WL 655748, at *2 (Bankr. M.D. Fla. Feb. 17, 2017) (noting response to motion with negative notice filed *one day* late was untimely).

The touchstone of these rules is to provide adequate notice. *See Lorenzo v. Lorenzo*, No. PR 15-011, 2015 WL 4537792, at *5 (1st Cir. BAP July 24, 2015), *aff'd,* 637 F. App'x 623 (1st Cir. 2016). NPA does not argue that it (or that Covitz) did not receive notice of the Objection. *See generally* NPA Br. Instead, NPA was provided with an opportunity to respond to the Objection and failed to timely do so. As such, the Order should be affirmed.

III. Issue 5 is Waived Because NPA Failed to Include it in NPA's Rule 8009 Statement of Issues or Raise it to the Bankruptcy Court

NPA has waived Issue 5—which asserts that the Litigation Trustee did not have standing to bring the Objection—by failing to raise it in its Rule 8009 Statement of Issues. NPA Br. 3. Pursuant to Rule 8009, NPA was required to file "a statement of the issues to be presented" on appeal, the purpose of which "is to narrow the record on appeal" and to provide notice to the Litigation Trustee of the arguments NPA intends to assert on appeal. *In Matter of Galaz*, 841 F.3d at 324; *see also Tex. Mortg. Servs. Corp. v. Guadalupe Sav. & Loan Assoc. (Matter of Tex. Mortg. Servs. Corp.)*, 761 F.2d 1068, 1074 (5th Cir. 1985).

"It is clear under the law of this circuit that an issue that is not designated in the statement of issues in the district court is waived on appeal when the district court rules on the merits." *Amicus Curiae Holders of Fractional Interest v. Position Holder Tr.,* No. 4:18-CV-209, 2019 WL 1294538, at *2 (N.D. Tex. Mar. 21, 2019) (quoting *In re McCombs*, 659 F.3d 503, 510 (5th Cir. 2011)); *see also In re FirstPlus*, 2010 WL 2927325, at *2 ("The Fifth Circuit explicitly held that [Rule 8009] prevents this Court from considering any issues not listed in the appellant's statement of issues on appeal.").[12]

[12] In *Position Holder Trust* and *In re FirstPlus*, the courts refer to Rule 8006 instead of Rule 8009 because the requirement was previously set forth in Rule 8006. *See Position Holder Tr.*, 2019 WL 1294538, at *2; *In re FirstPlus*, 2010 WL 2927325, at *2; *see also* Committee Notes on Rules for Fed. R. Bankr. P. 8009 (2014).

NPA failed to raise *any* issues related to standing in its Rule 8009 Statement of Issues. As such, Issue 5 is waived. *See In re FirstPlus*, 2010 WL 2927325, at *2 (overruling appellants' issues as waived for failure to include on Rule 8009 statement of issues on appeal); *In re Hard-Mire* 619 B.R. at 171 (issue not included on statement of issues of appeal was waived).

Moreover, NPA's failure to raise any issue related to standing before including it in its Brief to this Court has prejudiced the Litigation Trustee. Not only does the Rule 8009 Statement of Issues give the Litigation Trustee notice of what issues it will have to defend on appeal, but the rule also guides the process of designating a sufficient record for the appeal. *See In re CPDC, Inc.,* 221 F.3d 693, 698 (5th Cir. 2000) ("the purpose of the record designation requirement is to provide the reviewing court with an adequate basis for evaluating the appellant's claims on appeal . . . [and t]he burden of creating an adequate record rests with the appellant"). Because NPA's Rule 8009 Statement of Issues did not include any standing arguments, the Litigation Trustee did not include documents it may have otherwise included in the record related to standing.[13]

NPA also failed to raise this argument to the Bankruptcy Court. "In this circuit, it is well established that, in a bankruptcy appeal, a district court cannot

[13] To the extent the Court finds any standing-related documents necessary to rule on this appeal, the Litigation Trustee respectfully requests that the Court allow the parties to supplement the record pursuant to Rule 8009(e)(2).

consider issues and arguments that were not initially presented to the bankruptcy court." *Freewood Grp.,* 2018 WL 4002475, at *10 (collecting cases). "Failure to properly raise an argument with the bankruptcy court 'to such a degree that the trial court may rule on it' results in waiver of the argument." *In re Hard-Mire,* 619 B.R. at 172 *(quoting In re ValuePart, Inc.,* 802 F. App'x 143, 149 (5th Cir. 2020)).

Even assuming NPA did adequately preserve the standing argument, it lacks merit. The Litigation Trustee established in the Objection that it had standing to object to the Claim pursuant to the Plan, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Assignment Agreement. R. Vol. 2 at 000663. Pursuant to these documents, the Litigation Sub-Trust was granted "the sole responsibility for the pursuit and settlement of the Estate Claims, and, subject to the terms of the Claimant Trust Agreement, the *sole power and authority to allow or settle and compromise any Claims* related to the Estate Claims, including, without limitation, Employee Claims." *See* Plan Supplement, Ex. T at Article II, Section 2.2 (emphasis added); *see also* R. Vol. 2 at 000499 (Confirmation Order). "Employee Claims" mean "any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations." Plan Supplement, Ex. T at Article I, Section 1.1(k). This clearly encompasses the Claim. *See MC Asset Recovery, LLC v. Castex Energy, Inc.*, No. 4:07-CV-076-Y, 2008 WL 2940602, at *4 (N.D. Tex. July 31, 2008) (Bankruptcy Code permits a plan of reorganization to

transfer authority to prosecute claims to a representative of the estate). For these reasons, Issue 5 should be overruled.

IV. Issue 4 Should be Disregarded As Vague and Overbroad

NPA's Issue 4 should be disregarded because it is vague and overbroad. *See* NPA Br. 3. The purpose of Rule 8009's statement of issues requirement "is to *narrow* the record on appeal." *In Matter of Galaz,* 841 F.3d at 324 (emphasis added). "Drafting a sweeping statement of issues flouts that purpose." *Id.* at 324-25. This issue, which asks if "the Bankruptcy Court otherwise err[ed] by sustaining the Objection and entering the Default Order," is extremely broad and does not provide the Litigation Trustee (or the Court) with any notice as to NPA's arguments but instead is a "catchall" for anything NPA may have forgotten. That is not an appropriate way to present an issue for appeal. NPA Br. 3. Moreover, NPA does not present any arguments in its Brief that fall within this catch-all category that are not already waived. As such, this issue should be ignored. *In Matter of Galaz,* 841 F.3d at 324-25 (rejecting similar argument raised by appellant, finding assertion that an issue "naturally encompasse[d] the argument that he later briefed before the district court . . . construes his statement of the issues too broadly"); *In re Hard-Mire,* 619 B.R. at 172-73 (failure to adequately brief issue results in waiver).

V. Issues 1(a) and 3 Are Waived Because NPA Failed to Address the Issues in its Brief

"Generally speaking, a[n] [appellant] waives an issue if he fails to adequately brief it." *In re Hard-Mire,* 619 B.R. at 172-73 (quoting *In re Campbell,* 398 F. App'x at 1) (alterations in original) (collecting cases); *see also In re Firstplus*, 2010 WL 2927325, at *2. NPA has therefore waived the following two issues by failing to address them in its Brief:

- **Issue 1(a)**: "Did the Bankruptcy Court err by entering the [] Order without a hearing because . . . [NPA] had requested a hearing in writing[?]" *Compare* NPA Br. 3 *with id.* at 10-25 (presenting no argument on this issue).[14]
- **Issue 3**: "Assuming the Local Rules permitted the Bankruptcy Court to sustain the Objection and enter the [] Order without a hearing under the specific facts of this case, do such rules violate any right guaranteed by the United States Constitution or other applicable law?" *Compare id.* at 3 *with id.* at 10-25 (presenting no argument on this issue).

[14] Even if the Court were to consider these claims, they lack merit. NPA is not guaranteed a hearing under the Bankruptcy Code. The Bankruptcy Code provides that if an "objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim." 11 U.S.C. § 502(b). Section 102 defines the phrase "after notice and a hearing" as "after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances" and "authorizes an act *without an actual hearing* if such notice is given properly and if . . . such a hearing is not requested *timely* by a party in interest." 11 U.S.C. § 102(1)(A)-(B) (emphases added). Therefore, the Bankruptcy Code "makes it clear that a hearing is *not statutorily required*." *Lorenzo,* 2015 WL 4537792, at *5 (emphasis added). NPA concedes it did not file a timely response seeking a hearing. NPA Br. 20. Accordingly, no hearing on the Objection was required. *Lorenzo*, 2015 WL 4537792, at *5; *Five Star Credit Union v. Henry (In re Henry)*, No. 4-11427-WRS-13, 2006 WL 1997710, at *1 (Bankr. M.D. Ala. June 16, 2006) (no hearing required after the debtor served objection via negative notice procedures and claimant did not file a response).

VI. Issues 1(b), 1(d), and 2 Are Waived Because NPA Failed to Raise Them to the Bankruptcy Court and, Regardless, They Lack Merit

A. *These Issues Have Been Waived*

As explained *supra*, Argument at Section III, NPA was required to first raise any argument on appeal to the Bankruptcy Court for its consideration. *See Freewood Grp.,* 2018 WL 4002475, at *10. NPA's failure to raise the following issues to the Bankruptcy Court, therefore, results in waiver:

- **Issue 1(b)**: "Did the Bankruptcy Court err by entering the [] Order without a hearing because . . . [NPA] had pled in response to or otherwise defended against the [Objection] within the meaning of Fed. R. C. P. 55[?]" NPA Br. 3.
- **Issue 1(d)**: "Did the Bankruptcy Court err by entering the [] Order without a hearing because . . . [t]he Bankruptcy Court and the Litigation Trustee did not comply with Fed. R. Civ. P. 55 and L.B.R. 7055-1[?]" *Id.*
- **Issue 2**: "Did the Bankruptcy Court err by sustaining the Objection and entering the [] Order without a hearing given the *prima facie* validity of a proof of claim[?]" *Id.*

Even if these issues had been properly preserved for appeal (they were not), each argument lacks merit and does not justify reversal of the Order.

B. *Issues 1(b) and 1(d) Fail Because the Procedural Requirements Set Forth in FRCP 55 Do Not Apply*

Issues 1(b) and 1(d) center around FRCP 55, which governs default judgments, and the Litigation Trustee's and Bankruptcy Court's purported non-compliance with that rule.[15] *See* NPA Br. 3, 15-19. Specifically, NPA incorrectly

[15] NPA asserts that when the FRCP and the Rules conflict with the Local Rules, the former rules govern. NPA Br. 10-11. But NPA fails to articulate how the rules applicable here are in conflict. *See id.* This is not surprising because there is no conflict, as "[n]egative notices are [] authorized

argues that the Order should be reversed under FRCP 55 because (1) the Litigation Trustee did not seek entry of default; (2) NPA filed an untimely Response; and (3) the Bankruptcy Court failed to evaluate NPA's default under various factors considered by courts in this District when determining whether to enter a default judgment. *Id.*

As an initial matter, FRCP 55 does not govern here. While entry of an order disallowing a proof of claim may be similar to a default judgment, it is not a default judgment *per se*. Neither the Local Rules nor the Rules require either the Litigation Trustee or the Bankruptcy Court to follow the procedures set by FRCP 55 to enter the Order in this instance. Instead, the Litigation Trustee and the Bankruptcy Court appropriately utilized and followed the negative notice procedures set forth in the Local Rules. *See In re Davis*, 173 B.R. 124, 126 (Bankr. N.D. Ohio 1994) (rejecting claimant's argument that entry of order disallowing claim after no response to objection was filed was a default judgment, finding FRCP 55 did not apply, "[r]ather, this situation constitutes the Court's procedural response when an objection to a Proof of Claim goes unanswered").

Indeed, courts within this Circuit routinely grant relief requested with negative notice without following the procedural requirements of FRCP 55. *See, e.g.,*

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by the [Bankruptcy] Code" and Rule 9007. *Roberts v. Pierce (In re Pierce)*, 435 F.3d 891, 892 (8th Cir. 2006) (interpreting 11 U.S.C. § 502(b) and 11 U.S.C. § 102)); *In re Ozcelebi*, 631 B.R. at 647.

Freewood Grp., 2018 WL 4002475, at *10-11 (affirming order granting motion pursuant to negative notice language without applying FRCP 55); *In re St. Louis,* No. 10-11933-TMD, 2013 WL 4498986, at *2-3 (Bankr. W.D. Tex. Aug. 21, 2013) (noting bankruptcy court granted claims objection served with negative notice after no timely response filed); Order, *Blumberg v. NSSI Liquidating Trust,* No. 3:08-cv-01371 (Docket No. 21) (N.D. Tex.) (affirming order granting claims objection pursuant to negative notice language); *In re Wilkinson*, 457 B.R. 530, 535-36 (Bankr. W.D. Tex. 2011) (similar); *In re Gonzales*, No. 07-53386-C, 2008 WL 2008621, at *1 (Bankr. W.D. Tex. May 7, 2008) (similar).[16]

With the exception of one case discussed *infra,* the authorities NPA relies on in support of each of its FRCP 55-related arguments are outside of this Circuit and apply to motions for default judgment expressly brought under FRCP 55—none analyze proofs of claim or negative notice provisions. *See* NPA Br. 15-19. For example, NPA relies on *Williams v. Smithson*, No. 95-7019, 1995 U.S. App. LEXIS 15168 (10th Cir. 1995) for the proposition that the Order should be reversed because the Litigation Trustee did not request entry of default. NPA Br. 16. But the *Williams* court was not faced with a proof of claim, let alone an objection brought pursuant to

[16] Courts outside this Circuit with similar negative notice procedures are in accord. *See, e.g., In re Pierce,* 435 F.3d at 892; *In re Lumsden*, 242 B.R. at 73-75; *In re Amcer Asset Mgmt., P.A.*, No. 03-00957-8W7, 2004 WL 903892, at *1 (M.D. Fla. Mar. 11, 2004); *Till v. Citicapital Com. Corp. (In re Till)*, No. 03-33157-DHW, 2007 WL 2410545, at *2 (Bankr. M.D. Ala. Aug. 23, 2007); *In re Henry*, 2006 WL 1997710, at *1.

negative notice procedures; instead, the plaintiff appealed an order granting a motion to dismiss that was filed after the applicable deadline, arguing the motion should not have been granted because the plaintiff was instead entitled to an automatic default judgment. *Id.* at *2-3. *Williams* is wholly inapposite because it addressed an entirely different situation (procedurally and factually) than that presented here.

The cases NPA relies on to support its argument that its untimely Response bars entry of a default judgment under FRCP 55 are unpersuasive for the same reasons. *See* NPA Br. 16-17 (*citing, e.g., Owens v. US Bank NA*, 1:11-cv-1364-TCB, 2012 U.S. Dist. LEXIS 202753, at *3 (N.D. Ga. Feb. 16, 2012) (answer to complaint filed 15 days late precluded default under FRCP 55); *Gayle v. Thompson*, 11-5202, 2011 Bankr. LEXIS 2734, at *2 (Bankr. N.D. Ga. June 29, 2011) (answer to complaint filed 21 days late precluded default under FRCP 55)).[17]

NPA misplaces reliance on *In re Brunson*, 486 B.R. 759 (Bankr. N.D. Tex. 2013) for the proposition that the Order should be reversed for failure to comply with FRCP 55. NPA Br. 18. The *Brunson* court, while noting in dicta the application of the Federal Rules of Procedure to the claims objections at issue in that case, held that it was "not obligated to enter a default judgment disallowing the claim simply

[17] In any event, as NPA admits, courts have also held the opposite and found an untimely response to a complaint does not save the defendant from a default judgment. NPA Br. 17; *see, e.g., Gassaway v. TMGN 121, LLC*, No. 5:19-CV-082-H, 2020 WL 789199, at *1-3 (N.D. Tex. Feb. 18, 2020); *United States v. $30,000.00 US Currency & $5,000.00 US Currency*, No. H-12-0471, 2012 WL 12905788, at *2 (S.D. Tex. July 24, 2012).

because there has been no response filed by the creditor." *Id.* at 768-69. The court based its ruling to not enter a default order on the fact that the objector did not state "a legally sufficient ground for claim disallowance" and overruled the objections "without prejudice to the filing of legally sufficient claim objections." *Id.* at 768-69. This is not the case here, where the Objection provided numerous bases sufficient to grant the claim objection and NPA failed to provide any substantive response. Because the Litigation Trustee and Bankruptcy Court were not required to follow the procedural requirements of FRCP 55, the Order should be affirmed.

C. *Issue 2 Fails Because NPA Did Not Meet its Burden to Establish Validity of the Claim*

Even if properly preserved, NPA's *prima facie* validity argument does not justify reversal of the Order. NPA Br. 3. The reasons are simple: the Claim did not enjoy *prima facie* validity in the first instance but, even if it did, the Objection set forth numerous arguments for disallowance, all of which were unrebutted by Covitz, the only party with standing, or by NPA.

As an initial matter, the Claim is only entitled to *prima facie* validity if it complies with Rule 3001 and provides "enough information to fully determine whether or not a valid claim in the proper amount has been filed." *In re Armstrong,* 320 B.R. at 104-05. Indeed, "[i]t is elemental that a proof of claim must assert facts or allegations . . . which would entitle the claimant to a recovery." *In re Heritage Org., L.L.C.,* 04-35574 (BJH), 2006 WL 6508477, at *8 (Bankr. N.D. Tex. Jan. 27,

2006), *aff'd sub nom. Wilferth v. Faulkner,* 3:06 CV 510 K, 2006 WL 2913456 (N.D. Tex. Oct. 11, 2006). "[L]ack of proper supporting documentation . . . strips [the Claim] of any *prima facie* validity, requiring the creditor to offer the supporting documentation to carry its burden of proof in the face of an objection." *In re Armstrong*, 320 B.R. at 105.

The Claim not only lacked supporting documentation, but was also vague and failed to provide the Litigation Trustee with enough information to determine the amount or validity of the Claim.[18] The Litigation Trustee objected to the Claim on these and additional substantive grounds. R. Vol. 2 at 000664. The burden then shifted to Covitz to provide such documentation and prove the validity of the Claim. *In re 804 Congress L.L.C.,* 529 B.R. 213, 219 (W.D. Tex. 2015); *In re Tran*, 369 B.R. 312, 318 (S.D. Tex. 2007) (under Fifth Circuit law, where claim "had no presumption of validity, [objector] had no evidentiary burden to overcome in objecting to [the] claim," instead "the burden shifted to the creditor to prove the underlying validity of its claim"). Covitz failed to timely respond to the Objection, so he failed to carry his burden of proof to establish the claim. *Armstrong*, 320 B.R. at 105, 109. Even if NPA were an allowed transferee of the Claim, NPA would step

[18] Prior to filing the Objection, counsel for the Litigation Trustee reached out to David Neier, identified on the Claim as Covitz's counsel, requesting documentation supporting the Claim. R. Vol. 3 at 000847-848. Mr. Neier responded that he no longer represented Covitz and that he did not know whether Covitz had obtained new counsel. *Id.* 000847.

into Covitz's shoes on January 3, 2020 without any further or additional rights than Covitz had at that time. His failures also bind NPA.

Even if the Court were to consider the Claim as *prima facie* valid notwithstanding its numerous deficiencies, the Litigation Trustee overcame any such a presumption with the unrebutted arguments set forth in the Objection. An objection meets its burden to overcome a *prima facie* claim "by producing specific and detailed allegations that place the claim into dispute [or] by presenting legal arguments based on the contents of the claims and its supporting documents[.]" *In re Canada*, 574 B.R. at 627. The evidence need only be "at least equal in probative force" to the evidence set forth in the Claim. *See In re 804 Congress,* 529 B.R. at 220. Notwithstanding the vagueness of the Claim and the absence of any supporting documentation, the Litigation Trustee set forth a number of arguments in the Objection—with supporting documentation—for disallowance of the Claim.

For example, the Litigation Trustee argued that, pursuant to HCMLP's bonus plans, Covitz's claims for bonuses should be disallowed because either (1) the bonuses were already paid; (2) the applicable bonus agreement was terminated; or (3) the bonuses had not vested prior to Covitz's termination. R. Vol. 2 at 000664-665. The Litigation Trustee also argued that any claim for severance should be disallowed pursuant to Covitz's employment agreement and that his indemnification-related claims should be disallowed as (1) Covitz had not incurred

any indemnifiable costs to date and (2) Covitz was not entitled to indemnification under the terms of HCMLP's limited partnership agreement.[19] *Id.* at 000665-666.

These arguments, "if believed, would refute at least one of the allegations that is essential to the [Claim's] legal sufficiency." *In re 804 Congress,* 529 B.R. at 219-20 (burden shifted to claimant, who asserted it was "owed fees and provided no evidence to support the amounts owed" in its claim, when objector argued the amounts claimed were too high, because such assertions were "'at least equal in probative force' to the evidence in the claims"); *see also In re Till*, 2007 WL 2410545, at *2 (objector "alleged sufficient evidence to rebut the presumption of validity as to the amount of th[e] claim" and the burden then shifted to the claimant to prove the amount of the claim). The burden to prove the validity of the Claim then shifted to Covitz, but neither Covitz nor NPA rebutted any of the Litigation Trustee's arguments in either a timely response or in NPA's untimely Response.[20]

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[19] To the extent NPA attempts to argue that the evidence attached to the Objection was somehow inauthentic or not reliable, NPA has waived those arguments by failing to raise them to the Bankruptcy Court or in the Rule 8009 Statement of Issues. NPA Br. 14; *Gilchrist v. Westcott (Matter of Gilchrist)*, 891 F.2d 559, 561 (5th Cir. 1990) ("It is well established that we do not consider arguments or claims not presented to the bankruptcy court"). *Compare In re Roberts*, 210 B.R. 325, 327-29 (Bankr. N.D. Iowa 1997) (excluded documents supporting an objection after claimant objected on hearsay grounds).

[20] The Fifth Circuit case relied on by NPA supports the Litigation Trustee's position. In *Louisiana First Financial Group v. Al Copeland Enterprises (In re Al Copeland Enterprises)*, the objector successfully rebutted the *prima facie* validity of a proof of claim by arguing that the claimant would not have been able to procure any mortgage financing. 97-50189, 1998 U.S. App. LEXIS 40043, *4-5 (5th Cir. June 9, 1998). The burden then shifted to the claimant to prove the validity of its claim and it failed to do so, just as NPA failed to do so here. *Id.* NPA's remaining cited authorities from outside this Circuit are inapposite because the facts are inconsistent with those in this case. *See, e.g., In re Camp*, 170 B.R. 610, 612-13 (Bankr. N.D. Ohio 1994) (overruled

In re 804 Congress, 529 B.R. at 220; *In re Armstrong,* 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006) ("The ultimate burden of proof always lies with the claimant."). Indeed, the Bankruptcy Court—after considering the Claim and the Objection—found that "there [wa]s good and sufficient cause" to sustain the Objection and disallow the Claim. R. Vol. 1 at 000004-005. Thus, the Order should be affirmed.

VII. The Rule 3007 "Issue" is Waived for Numerous Reasons

NPA purports to raise as an issue in its Brief whether the Litigation Trustee complied with Rule 3007, but this "issue" has been waived because the issue (1) was not included on NPA's Rule 8009 Statement of Issues, (2) was not raised in the Bankruptcy Court, and (3) was not even identified as an issue on NPA's "Statement of the Issues Presented" in its Brief. *See* NPA Br. 3, 11-12; *see also In re FirstPlus*, 2010 WL 2927325, at *2; *English v. Energy Future Holdings Corp. (In re Energy Future Holdings Corp.)*, 2018 WL 1479028, at *2 (D. Del. Mar. 23, 2018) (declining to consider issue of whether objection complied with Rule 3007 because appellant failed to raise the argument with the bankruptcy court), *aff'd*, 785 F. App'x 945 (3rd Cir. 2019). NPA's failure to provide adequate notice of this issue to the Litigation Trustee or to the Court justifies dismissal.

CONCLUSION

For these reasons, the Order should be affirmed.

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objection because claim was previously litigated, noting that even if this was not the case, the objector failed to provide sufficient admissible evidence to rebut a *prima facie* valid claim).

Dated: May 16, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail via the Court's ECF system to parties authorized to receive electronic notice in this case on May 16, 2022.

/s/ *Paige Holden Montgomery*
Paige Holden Montgomery