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

In re:

Case No. 19-34054

HIGHLAND CAPITAL MANAGEMENT, L.P.

Chapter 11

Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

Adv. Proc. No. 21-03003-sgj

vs.

**JAMES DONDERO, NANCY DONDERO,
AND THE DUGABOY INVESTMENT TRUST,**

Defendants.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

Adv. Proc. No. 21-03004-sgj

vs.

**HIGHLAND CAPITAL MANAGEMENT
FUND ADVISORS, L.P.,**

Defendant.



HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

Adv. Proc. No. 21-03005-sgj

NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,

Defendants.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

Adv. Proc. No. 21-03006-sgj

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,

Defendants.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

Adv. Proc. No. 21-03007-sgj

HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,

Defendants.

DEFENDANTS’ OPPOSITION TO HIGHLAND CAPITAL MANAGEMENT, L.P.’S MOTION FOR LEAVE TO SUPPLEMENT BACKUP DOCUMENTATION IN SUPPORT OF PROPOSED JUDGMENT

COMES NOW, Defendant James Dondero, NexPoint Advisors, L.P., Highland Capital Management Services, Inc., Highland Capital Management Fund Advisors, L.P., and HCRE

Partners, LLC, the Defendants in the above-captioned and related adversary proceedings, and hereby submit this *Opposition to Highland Capital Management, L.P.’s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* (Defendants’ “Opposition” and Plaintiff’s “Motion for Leave”). Defendants would show the Court as follows:

I. BACKGROUND

1. Defendants generally agree with the Opposition’s first four paragraphs reciting the relevant background of this dispute.¹ However, Plaintiff’s characterization of its almost \$400,000.00 attorney’s fees discrepancy as an “Alleged Math Error”² is inaccurate because Plaintiff admits to not providing Defendants with complete figures by which to accurately calculate the total attorney’s fees Plaintiff claims it is owed.³ Plaintiff’s claim to defense counsel that “[t]here was no math error[,]” yet immediately “accounting” for the \$400,000.00 difference by admitting that Plaintiff mistakenly did not include billing statements for January and February of 2022 makes Plaintiff’s error an actual – not “alleged” – math error that prejudiced Defendants.

2. There is sparse authority regarding the usage of Northern District of Texas Local Rule 56.7 to supplement a prevailing party’s attorney’s fees after prevailing at summary judgment. However, the Northern District of Texas has analogously addressed parties supplementing legal authorities under Local Rule 56.7:

Local Civil Rule 56.7 provides: “Except for the motions, responses, replies, briefs, and appendixes required by these rules, a party may not, without the permission of the presiding judge, file supplemental pleadings, briefs, authorities, or evidence.” The court generally discourages attempts to file supplemental authorities if the

¹ See Motion for Leave, ¶¶ 1-4.

² See *Id.*, ¶ 5.

³ See Declaration of John A. Morris in Support of Highland Capital Management, L.P.’s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment, Ex. A. (“...we inadvertently omitted the invoices for January and February 2022 from HCMLP’s initial submission”).

authorities were previously available when a party submitted its motion, response, or reply brief.⁴

While the additional billing records here are not legal authorities, they were certainly previously available to Plaintiff when Plaintiff submitted its Notice of Attorney's Fees. Plaintiff gives no explanation or other showing of good cause regarding why it did not include the additional bills other than simply claiming "we inadvertently omitted the invoices for January and February 2022[.]"⁵ Thus, Plaintiff's Motion for Leave should be denied because it now seeks a second bite at the apple by including billing statements it had access to – and could have included – in its Notice of Attorney's fees.

3. Further, the same court noted that a non-supplementing party must not suffer prejudice before a court may grant supplementation under Local Rule 56.7.⁶ Plaintiff does not once address the prejudice that Defendants will inevitably suffer if Plaintiff is allowed to supplement \$400,000.00 in attorney's fees. Plaintiff's failure to include two entire months of its attorneys' billing statements has prejudiced Defendants by not allowing Defendants to timely examine the statements for accuracy, duplicity of work, redactions, and other factors relating to a reasonableness and necessity-of-attorney's-fees analysis.⁷ To allow Plaintiff to supplement its billing invoices only *after* this Court has found in favor of Plaintiff effectually gives Plaintiff two

⁴ *Highland Capital Mgmt. L.P. v. Bank of Am., Nat. Ass'n*, No. 3:10-CV-1632-L, 2013 WL 4502789, at *28 (N.D. Tex. Aug. 23, 2013), *aff'd sub nom. Highland Capital Mgmt., L.P. v. Bank of Am., N.A.*, 574 Fed. Appx. 486 (5th Cir. 2014).

⁵ See Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment, Ex. A.

⁶ *Highland Capital Mgmt. L.P. v. Bank of Am., Nat. Ass'n*, 2013 WL 4502789, at *28 (holding that, because the plaintiff did not suffer any "legal prejudice" by the court's consideration of supplemental authority, such authority would be admitted).

⁷ See *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469 (Tex. 2019) (affirming the Lodestar Method as the preferred method of determining what evidence is recommended to support the reasonableness and necessity of claimed attorney's fees).

bites at the apple to recover an additional \$400,000.00 it never presented to Defendants for examination in the first place. If Plaintiff is allowed to supplement the record with \$400,000.00 in previously unaccounted for attorney's fees, Defendant will be prejudiced and suffer undue surprise because it was not afforded an opportunity to examine those statements while it was briefing on Plaintiff's originally-provided billing statements.

II. REQUEST FOR RELIEF

4. Defendants respectfully request this Court deny Plaintiff's Motion for Leave as Defendants will suffer prejudice. In the event this Court decides to grant Plaintiff's Motion for Leave, Defendants respectfully request an opportunity for additional briefing to address Plaintiff's new billing invoices.

Dated: October 18, 2022

Respectfully Submitted,

/s/ Michael P. Aigen

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Highland Capital Management Fund
Advisors, L.P.*

CERTIFICATE OF SERVICE

I certify that on October 18, 2022, a true and correct copy of the foregoing document was served via the Court's Electronic Case Filing system to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding.

/s/ Michael P. Aigen _____

Michael P. Aigen

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

In re:

Case No. 19-34054

HIGHLAND CAPITAL MANAGEMENT, L.P.

Chapter 11

Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

Adv. Proc. No. 21-03003-sgj

vs.

**JAMES DONDERO, NANCY DONDERO,
AND THE DUGABOY INVESTMENT TRUST,**

Defendants.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

Adv. Proc. No. 21-03004-sgj

vs.

**HIGHLAND CAPITAL MANAGEMENT
FUND ADVISORS, L.P.,**

Defendant.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

**NEXPOINT ADVISORS, L.P., JAMES
DONDERO, NANCY DONDERO, AND THE
DUGABOY INVESTMENT TRUST,**

Defendants.

Adv. Proc. No. 21-03005-sgj

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

**HIGHLAND CAPITAL MANAGEMENT
SERVICES, INC., JAMES DONDERO, NANCY
DONDERO, AND THE DUGABOY
INVESTMENT TRUST,**

Defendants.

Adv. Proc. No. 21-03006-sgj

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

**HCRE PARTNERS, LLC (n/k/a NexPoint Real
Estate Partners, LLC), JAMES DONDERO,
NANCY DONDERO, AND THE DUGABOY
INVESTMENT TRUST,**

Defendants.

Adv. Proc. No. 21-03007-sgj

**ORDER DENYING HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR
LEAVE TO SUPPLEMENT BACKUP DOCUMENTATION IN SUPPORT OF
PROPOSED JUDGMENT**

Upon consideration of *Defendants' Opposition to Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* (Defendants' "Opposition" and Plaintiff's "Motion for Leave"), and the arguments presented by the parties before this Court, the Court hereby finds that the Plaintiff's Motion for Leave should be DENIED as set forth below. Accordingly,

IT IS HEREBY ORDERED that:

1. The Motion for Leave is **DENIED** as set forth herein.

END OF ORDER