

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,

*Reorganized Debtor.*

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§ Case No. 19-bk-34054-sgj11  
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THE CHARITABLE DAF FUND, L.P. and  
CLO HOLDCO, LTD.,

*Plaintiffs,*

v.

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
HIGHLAND HCF ADVISOR, LTD. and  
HIGHLAND CLO FUNDING, LTD.,

*Defendants.*

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§ Case No. 3:21-cv-00842-B  
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CHARITABLE DAF FUND, L.P. AND CLO  
HOLDCO, LTD., DIRECTLY AND  
DERIVATIVELY,

*Plaintiffs,*

v.

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
HIGHLAND HCF ADVISOR, LTD., and  
HIGHLAND CLO FUNDING, LTD.,

*Defendants.*

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§ Case No. 3:22-cv-02802-S  
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JOINT MOTION TO TRANSFER PROCEEDING AND  
CONSOLIDATE BEFORE ORIGINAL COURT (JUDGE BOYLE)

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All remaining parties<sup>1</sup> to the above-referenced actions (*i.e.*, plaintiffs Charitable DAF Fund, L.P., and CLO Holdco, Ltd. (together, the “Plaintiffs”), and defendant Highland Capital Management L.P. (“Defendant”, and together with Plaintiffs, the “Parties”)) respectfully move (the “Motion”) to transfer Case No. 3:22-cv-02802-S (the “Second Action”), including (i) Plaintiffs’ *Objection to the Bankruptcy Court’s Report and Recommendation to the District Court on “Renewed” Motion to Withdraw the Reference [Bankr. Doc. No. 128] [Docket No. 3]* (the “Objection”) and (ii) Defendant’s response to the Objection [Docket No. 7] (the “Response”), and consolidate it with Case No. 3:21-cv-00842-B (the “First Action”) pending before Judge Boyle.

### **JOINT STATEMENT IN SUPPORT OF MOTION**

The Objection and Response concern a Report and Recommendation in which the Bankruptcy Court recommended denying Plaintiff’s “renewed” motion to withdraw the reference. [Second Action Docket Nos. 1 and 2].<sup>2</sup> The Objection and Response were timely filed. For the reasons set forth below, the Parties respectfully request that the Motion be granted.

On April 12, 2021, Plaintiffs filed the First Action in the United States District Court for the Northern District of Texas where it was assigned to Judge Boyle. After Defendant filed its *Motion for an Order to Enforce the Order of Reference* [First Action Docket Nos. 22-24] and Plaintiffs filed their response (which they styled a “cross motion”) [First Action Docket Nos. 36-37], Judge Boyle entered an *Order of Reference* referring the First Action to the “United States Bankruptcy Court for the Northern District of Texas, Dallas Division, to be adjudicated as a related matter to the” Defendant’s pending bankruptcy case. [First Action Docket No. 64]. Judge Boyle has also previously ruled on a related appeal. [Case No. 3:21-cv-03129-B, Docket No. 20].

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<sup>1</sup> Highland CLO Funding, Ltd. was voluntarily dismissed from this proceeding on December 7, 2021. Adv. Proc. No. 21-03067-sgj, Docket. No. 80 (Bankr. N.D. Tex. Dec. 7, 2021).

<sup>2</sup> The Report and Recommendation at issue was also filed in the First Action. [First Action Docket No. 65].

This Court has broad discretion to transfer objections to a report and recommendation under Rule 42 of the Federal Rules of Civil Procedure, which authorizes this Court to consolidate actions, join for hearing or trial any or all matters, or issue any orders for the sake of judicial efficiency, whenever separate proceedings involve a common question of law or fact. *See, e.g., In re Cannonsburg Envtl. Assocs.*, 72 F.3d 1260, 1269 (6th Cir. 1996).

Under the circumstances, the Parties respectfully request that this Court exercise its discretion and transfer the Second Action to, and consolidate it with, the First Action on the ground of judicial efficiency because (i) Judge Boyle is already familiar with the Parties, the claims, and the history of the case; (ii) Judge Boyle has already ruled on related matters; (iii) if the Objection is sustained and Plaintiffs' "renewed" motion to withdraw the reference is granted, Judge Boyle would be the most likely destination for return of the case; and (iv) the questions and any appeals are from rulings concerning the same hearing in the same action involving the same parties.

### **CONCLUSION**

For these reasons, the Parties jointly and respectfully request that the Motion be granted and that the Second Action be transferred to and consolidated with the First Action.

Dated: March 30, 2023

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-and-

**SBAITI & COMPANY PLLC**

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,

*Reorganized Debtor.*

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**ORDER**

Having considered the *Joint Motion to Transfer Proceeding and Consolidate Before Original Court Judge Boyle* (the “Motion”), the Court is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED that the Second Action (as defined in the Motion and bearing Case No. 3:22-cv-2802-S) be transferred to the docket of the Honorable Judge Jane J. Boyle and consolidated with the First Action (as defined in the Motion and bearing Case No. 3:21-cv-00842-B), and that all future pleadings with respect to this matter shall be filed under Case No. 3:21-cv-00842-B.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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Honorable Karen Gren Scholer  
United States District Judge