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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

In re:

JAMES D. DONDERO, *et al.*,

Petitioners.

Case No. 3:23-cv-00726-S

STIPULATION TO SUPPLEMENT RECORD

Petitioners James Dondero, Highland Capital Management Fund Advisors, L.P., The Dugaboy Investment Trust, Get Good Trust, and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC (collectively, “**Petitioners**”) and Respondent Highland Capital Management, L.P., (“**Highland**”), the reorganized debtor in the chapter 11 case, Case No. 19-34054-sgj11 (the “**Bankruptcy Case**”) pending before the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”), jointly desire to supplement the record in this mandamus proceeding, which presently consists only of the *Appendix* to the *Petition for Writ of Mandamus*, filed on April 5, 2023 [Docket. No. 1]. Petitioners and Highland agree that additional documents relating to Petitioners’ motions to recuse The Honorable Stacey G.C. Jernigan of the



Bankruptcy Court are needed to provide this Court with complete information to consider the merits of the petition.

BACKGROUND

1. On October 16, 2019, Highland filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**Delaware Court**”), Case No. 19-12239 (CSS). On December 4, 2019, the Delaware Court transferred venue of the Bankruptcy Case to the Bankruptcy Court.

2. On February 22, 2021, the Bankruptcy Court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief*, which confirmed Highland’s *Fifth Amended Plan of Reorganization (as Modified)* (the “**Plan**”), which became effective in August 2021.

3. On March 18, 2021, Petitioners filed their *Motion to Recuse Pursuant to 28 U.S.C. § 455* [Bankr. Docket No. 2060] (the “**First Motion to Recuse**”), asking Judge Jernigan to recuse herself from presiding over further proceedings in the Bankruptcy Case. On March 23, 2021, the Bankruptcy Court entered its *Order Denying Motion to Recuse Pursuant to 28 U.S.C. § 455* [Bankr. Docket No. 2083] (the “**First Recusal Order**”).

4. On April 1, 2021, Petitioners filed their *Notice of Appeal* [Bankr. Docket No. 2149] of the First Recusal Order, commencing an appeal to this Court as Case No. 3:21-cv-00879-K (the “**First Recusal Appeal**”). On February 29, 2022, Judge Kinkeade dismissed the First Recusal Appeal for lack of jurisdiction [First Appeal Docket No. 39] (the “**First Appeal Dismissal Order**”). Petitioners did not appeal the First Appeal Dismissal Order.

5. On April 4, 2023, Petitioners filed a petition for writ of mandamus in the same case number as the First Recusal Appeal, which Judge Kinkeade promptly “unfiled” *sua sponte*

because that petition was not “in any way ... a continuation of the bankruptcy appeal that was before the Court. If they wish to seek this relief as to Judge Jernigan’s March 6, 2023 order, Appellants must initiate a new action.” [First Appeal Docket No. 42].

6. On August 26, 2022, Petitioners filed in the Bankruptcy Court an *Amended Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455* [Bankr. Docket No. 3470] (the “**Second Recusal Motion**”). The Bankruptcy Court denied without prejudice the Second Recusal Motion on August 31, 2022, as “procedurally defective.” [Bankr. Docket Nos. 3478, 3479] (“**Second Recusal Denial**”). Petitioners did not appeal the Second Recusal Denial.

7. On October 17, 2022, Petitioners filed their *Amended Renewed Motion to Recuse Pursuant to 28 U.S.C. § 455* [Bankr. Docket No. 3570] (the “**Third Recusal Motion**”). The parties submitted more than 7,000 pages of materials in connection with the Third Recusal Motion. On March 6, 2023, the Bankruptcy Court issued its *Memorandum Opinion and Order* denying the Third Recusal Motion on the merits [Bankr. Docket No. 3676] (the “**Third Recusal Denial**”), which is the subject of this mandamus proceeding. Petitioners did not appeal the Third Recusal Denial. Instead, Petitioners filed this proceeding.

8. The Appendix presently omits some of the pleadings, court orders, and other documents relevant to the recusal proceedings Petitioners have commenced against Judge Jernigan.

STIPULATION

9. Based on the foregoing, and after conferring in good faith, Petitioners and Highland agree, and jointly request the Court for leave, to supplement the record of this

proceeding with a Supplemental Appendix containing the following (collectively, the “Materials”):

- First Recusal Motion [Bankr. Doc. Nos. 2060]
- First Recusal Order [Bankr. Doc. No 2083]
- First Recusal Appeal:
 - Highland’s *Motion for Leave to Intervene in Appeal of Recusal Order* [First Appeal Doc. No. 2]
 - *Appellants’ Response to Debtor’s Motion for Leave to Intervene* [First Appeal Doc. No. 5]
 - *Debtor’s Reply in Further Support of Motion for Leave to Intervene* [First Appeal Doc. No. 6]
 - *Reply Declaration in Support of Motion for Leave to Intervene* [First Appeal Doc. No. 7]
 - *Order granting Motion for Leave to Intervene* [First Appeal Doc. No. 10]
 - *Appellant’s Brief and Appendix* [First Appeal Doc. Nos. 16, 17]
 - *Answering Brief and Appendix* [First Appeal Doc. Nos. 20, 21]
 - *Reply Brief* [First Appeal Doc. No. 23]
 - *Memorandum Opinion and Order* requiring additional briefing on appellate jurisdiction [First Appeal Doc. No. 28]
 - *Appellants’ Response to the Court’s December 10, 2021 Memorandum Opinion and Order* [First Appeal Doc. No. 29]
 - *Debtor’s Response to Appellants’ Brief Regarding the Court’s December 10, 2021 Memorandum Opinion and Order* [First Appeal Doc. No. 31]
 - First Appeal Dismissal Order [First Appeal Doc. No. 39; Bankr. Doc. No. 3264]
 - First Appeal Doc. No. 42
- Second Recusal Motion [Bankr. Doc. Nos. 3405, 3406, 3470]
 - Briefing re Second Recusal Motion [Bankr. Doc. Nos. 3445, 3446, 3463]
 - Briefing and Stipulation on Motion to Strike [Bankr. Doc. Nos. 3446, 3447, 3449, 3471]
 - Second Recusal Denial [Bankr. Doc. No. 3479]
 - Transcript of hearing on Second Recusal Motion [Bankr. Doc. No. 3480]
- Third Recusal Motion:
 - Highland’s *Appendix in Support of Highland’s Objection to Amended Renewed Motion to Recuse* [Bankr. Doc. No. 3596]
 - Highland’s *Motion to Redact Movant’s Reply* (re Petitioners’ improper disclosure of privileged material) [Bankr. Doc. No. 3629]

10. Petitioners and Highland respectfully and jointly request that the Court approve the above stipulation and afford the Petitioners and Highland 14 days from the date this Court approves the above stipulation to supplement the record with the Materials.

Dated: December 14, 2023

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ORDER APPROVING STIPULATION TO SUPPLEMENT RECORD

On the *Stipulation to Supplement Record* (the “**Stipulation**”) [Docket No. ____] filed by Petitioners James Dondero, Highland Capital Management Fund Advisors, L.P., The Dugaboy Investment Trust, Get Good Trust, and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC (collectively, “**Petitioners**”) and Respondent Highland Capital Management, L.P., (“**Highland**”), in accordance with Federal Rule of Appellate Procedure 21(a)(2)(C), and for good cause appearing,

IT IS ORDERED:

1. The Stipulation is approved and granted.
2. Petitioners and Highland are authorized and instructed to supplement the record of this proceeding by filing a Supplemental Appendix containing the Materials defined and delineated in the Stipulation no later than 14 days from the date of this Order’s entry.

UNITED STATES DISTRICT JUDGE