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VIA ECF

Lyle W. Cayce, Clerk
United Stated Court of Appeals
for the Fifth Circuit
Office of the Clerk
F. Edward Herbert Building
600 S. Maestri Place
New Orleans, Louisiana 70130

Re: 23-10911, *Highland Capital Management, L.P. v. NexPoint Asset Management, L.P.* (heard August 6, 2024, before Circuit Judges Weiner, Elrod, and Wilson)

Dear Mr. Cayce:

I write on behalf of Appellee Highland to ask the Court to take judicial notice of the *Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 138 and 188 Filed by James Dondero*, entered in the Bankruptcy Court on December 20, 2020 at Docket No. 1510 (the "Withdrawal Order"), pursuant to which the Bankruptcy Court approved a stipulation whereby Mr. Dondero withdrew Proof of Claim 188 (ROA. 9665-9669) (the "POC") with prejudice.

During rebuttal, in response to the Court's query as to why Mr. Dondero stood "mute" during the February 2021 confirmation hearing with respect to his defenses to the Notes Actions, Appellants' counsel argued that "he had already filed a proof of claim saying that those loans might be forgiven . . . ." Counsel's argument (made for the first time during rebuttal) that Mr. Dondero remained "mute" at the confirmation hearing in reliance on the POC is inaccurate because (a) Mr. Dondero had withdrawn the POC with prejudice prior to the confirmation hearing in accordance with the Withdrawal Order, and

(b) even Appellants do not contend that the POC concerned the Mutual Mistake, Prepayment, and Shared Services defenses. Moreover, the POC does not assert that "those loans might be forgiven" because—as discussed in Highland's brief (at 18-21) and during argument—that defense was not disclosed until long after the commencement of the Notes Actions and the confirmation hearing.

Respectfully submitted,

/s/ John A. Morris

John A. Morris

cc: Counsel of Record (via ECF)

JAM:is