PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717)
Robert J. Feinstein (NY Bar No. 1767805)
John A. Morris (NY Bar No. 266326)
Gregory V. Demo (NY Bar No. 5371992)
Judith Elkin (TX Bar No. 06522200)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

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

CHARITABLE DAF FUND, L.P., AND CLO HOLDCO LTD., Plaintiffs, vs. HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND HCF ADVISOR, LTD., AND HIGHLAND CLO FUNDING, LTD., Defendants.	§ § § § § § § § § § § §	Case No. 3:21-cv-00842-B

DEFENDANT HIGHLAND CAPITAL MANAGEMENT, L.P.'S
MOTION TO DISMISS COMPLAINT

Highland Capital Management, L.P., the plaintiff in the above-captioned case (the "Debtor" or "Highland"), by and through its undersigned counsel, files this motion (the "Motion")

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seeking entry of an order dismissing the *Original Complaint* [Docket No. 1] (the "Complaint") filed by Plaintiffs Charitable DAF Fund, L.P. (the "DAF") and CLO Holdco, Ltd. ("CLOH") (together, "Plaintiffs"). In support of its Motion, the Debtor states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to section 1331 and 1367 of title 11 of the United States Code (the "Bankruptcy Code").

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.

3. The predicates for the relief requested in the Motion are 28 U.S.C. § 1391.

RELIEF REQUESTED

4. The Debtor requests that this Court issue the proposed form of order attached as **Exhibit A** (the "Proposed Order") pursuant to Rule 12(b) of the Federal Rules of Civil Procedure.

5. For the reasons set forth more fully in Defendant Highland Capital Management, L.P.'s *Memorandum of Law in Support of Motion to Dismiss Complaint* (the "Memorandum of Law"), filed contemporaneously with this Motion, the Debtor requests that the Court: (a) dismiss the Complaint in its entirety and (b) grant the Debtor such other and further relief as the Court deems just and proper under the circumstances.

6. In accordance with Rule 7.1 of the *Local Civil Rules of the United States District Court for the Northern District of Texas* (the "Local Rules"), contemporaneously herewith and in support of this Motion, the Debtor is filing: (a) its Memorandum of Law, and (b) the *Appendix in Support of Defendant Highland Capital Management L.P.'s Motion to Dismiss the Complaint* (the "Appendix") together with the exhibits annexed thereto.

7. Based on the exhibits annexed to the Appendix, and the arguments contained in the Memorandum of Law, the Debtor is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to all parties. The Debtor submits that no other or further notice need be provided.

WHEREFORE, the Debtor respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant the Debtor such other and further relief as the Court may deem proper.

Dated: May 27, 2021

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Jeffrey N. Pomerantz (CA Bar No. 143717)
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John A. Morris (NY Bar No. 266326)
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Judith Elkin (TX 06522200)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
rfeinstein@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
jelkin@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

EXHIBIT A

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

CHARITABLE DAF FUND, L.P., AND CLO HOLDCO LTD., Plaintiffs, vs. HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND HCF ADVISOR, LTD., AND HIGHLAND CLO FUNDING, LTD., Defendants.	§ § § § § § § § § § § §	Case No. 3:21-cv-00842-B

ORDER GRANTING MOTION TO DISMISS COMPLAINT

Before the Court is *Defendant Highland Capital Management L.P.'s Motion to Dismiss the Complaint* [Docket No. __] (the "Motion").[1] Having considered: (a) the Motion; (b) Defendant Highland Capital Management, L.P.'s *Memorandum of Law in Support of Motion for an Order to Enforce the Order of Reference* [Docket No. __] (the "Memorandum of Law"); and (c) the *Appendix in Support of Highland Capital Management's Motion to Dismiss the Complaint* [Docket No. __] (the "Appendix") and the exhibits annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1331; and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1391; and this Court having found that the Complaint should be dismissed in its entirety because: (a) the Claims asserted therein are barred by the doctrine of *res judicata*; (b) the Claims are barred by the doctrine of judicial estoppel; and (c) the Complaint fails to allege any Claim for relief that is plausible for relief under Rule 12(b)(6) of the Federal Rules of Civil Procedure; and this Court having found that the Debtor's

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Memorandum of Law.

notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. This Complaint is dismissed in its entirety.

It is so ordered this _____ day of _____, 2021.

_____
The Honorable Jane J. Boyle
United States District Judge