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Counsel for the Former Employee Defendants

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.	Chapter 11 Case No. 19-34054-sgj11
MARC S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE LITIGATION SUB-TRUST, Plaintiff, v. JAMES D. DONDERO; MARK A. OKADA; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; FRANK WATERHOUSE; STRAND ADVISORS, INC.; NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS	Adv. Pro. No. 21-03076-sgj

MOTION TO WITHDRAW THE REFERENCE

TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; SAS ASSET RECOVERY, LTD.; AND CPCM, LLC,

Defendants.

MOTION TO WITHDRAW THE REFERENCE FOR THE CAUSES OF ACTION IN THE COMPLAINT ASSERTED AGAINST THE FORMER EMPLOYEE DEFENDANTS

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Scott Ellington, Isaac Leventon, Frank Waterhouse, and CPCM, LLC (collectively, the "***Former Employee Defendants***") hereby file this *Motion to Withdraw the Reference for the Causes of Action in the Complaint Asserted Against the Former Employee Defendants* (the "***Motion***") to have the United States District Court for the Northern District of Texas, Dallas Division (the "***District Court***"), withdraw the reference to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "***Bankruptcy Court***"), for the causes of action asserted against the Former Employee Defendants (the "***Causes of Action***") in the *Complaint and Objection to Claims*, Adv. Pro. No. 21-03076-sgj, [Dkt. No. 1] (the "***Complaint***")[1] filed in the

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

above-captioned adversary proceeding (the "***Adversary Proceeding***").[2] The Causes of Action are listed in ***Exhibit A***, which is attached hereto.[3]

Pursuant to 28 U.S.C. § 157(d), and for the reasons stated in the accompanying *Brief in Support of Motion to Withdraw the Reference for the Causes of Action in the Complaint Asserted Against the Former Employee Defendants*, filed contemporaneously herewith and which is incorporated herein by reference, the Former Employee Defendants request that the District Court withdraw from the Bankruptcy Court the reference of the Adversary Proceeding with respect to the Causes of Action, in which case the Adversary Proceeding will continue against the Former Employee Defendants as a civil action in the District Court.

[2] In accordance with Rule 5011(a) of the Federal Rules of Bankruptcy Procedure, "[a] motion for withdrawal of a case or proceeding shall be heard by a district judge." Under Rule 5011-1(a) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Northern District of Texas, "[a] motion to withdraw the reference of a case or a proceeding in a case shall be directed to the district court, but shall be filed with the Bankruptcy Clerk." Accordingly, this Motion is addressed to the District Court, but filed in the Bankruptcy Court.

[3] A proposed order granting the Motion is attached and marked as ***Exhibit B*** hereto.

WHEREFORE, the Former Employee Defendants respectfully request that the District Court grant the Motion, immediately withdraw the reference of the Adversary Proceeding to the District Court, and grant the Former Employee Defendants such other and further relief as is just.

Dated: January 18, 2022

By: */s/ Michelle Hartmann*

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Counsel for the Former Employee Defendants

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that on January 10, 2022, she discussed the relief requested herein with Quinn Emanuel Urquhart & Sullivan, LLP, counsel of record for the above-named plaintiff in the Adversary Proceeding. On January 17, 2022, Deborah Newman of Quinn Emanuel Urquhart & Sullivan, LLP informed the undersigned that the plaintiff opposes said relief.

/s/ *Debra A. Dandeneau*
Debra A. Dandeneau

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on January 18, 2022, a true and correct copy of this document was served via the Court's CM/ECF system on counsel for the Plaintiff.

/s/ *Michelle Hartmann*
Michelle Hartmann

EXHIBIT A

EXHIBIT A

Causes of Action

The causes of action against the Former Employee Defendants are as follows: breach of fiduciary duty arising out of conduct that resulted in HCMLP liabilities (Count V against Ellington and Leventon); breach of fiduciary duty in connection with fraudulent transfers and schemes (Count XIV against Ellington); civil conspiracy to breach fiduciary duties under Texas law (Count XVI against Ellington and Leventon); avoidance and recovery of certain Massand transfers as constructive fraudulent transfers under 11 U.S.C. §§ 544, and 550, 26 U.S.C. § 6502, and applicable state law (Count XXII against Ellington); avoidance and recovery of Massand transfers as intentional fraudulent transfers under 11 U.S.C. §§ 544, and 550, 26 U.S.C. § 6502, and applicable state law (Count XXIII against Ellington); conversion (Count XXV against Ellington); unjust enrichment (Count XXVII against Ellington and Leventon); avoidance and recovery of the one-year transfers as preferential transfers under 11 U.S.C. §§ 547 and 550 (Count XXXI against Ellington); avoidance and recovery of the alleged expense transfers as constructive fraudulent transfers under 11 U.S.C. §§ 544, 548, and 550, and other applicable law (Count XXXII against Ellington); avoidance and recovery of the alleged expense transfers as intentional fraudulent transfers under 11 U.S.C. §§ 544, 548, and 550, and other applicable law (Count XXXIII against Ellington); and disallowance of claims under Sections 502(b), 502(d), and 502(e) of the Bankruptcy Code (Count XXXIV against Ellington, Leventon, Waterhouse and CPCM).[1]

[1] Capitalized terms used herein shall have the meanings ascribed to them in the Motion.

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.	Chapter 11 Case No. 19-34054-sgj11
MARC S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE LITIGATION SUB-TRUST, Plaintiff, v. JAMES D. DONDERO; MARK A. OKADA; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; FRANK WATERHOUSE; STRAND ADVISORS, INC.; NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; SAS ASSET RECOVERY, LTD.; AND CPCM, LLC, Defendants.	Adv. Pro. No. 21-03076-sgj Civil Action No. _____

ORDER GRANTING MOTION TO WITHDRAW THE REFERENCE FOR THE CAUSES OF ACTION ASSERTED AGAINST THE FORMER EMPLOYEE DEFENDANTS

Upon consideration of the *Motion to Withdraw the Reference for the Causes of Action in the Complaint Asserted Against the Former Employee Defendants* [Adv. Docket No. __] (the "***Motion***") and the brief filed in support thereof [Adv. Docket No. __] (the "***Brief***"),[1] any response thereto, the pleadings, the record of the above-captioned adversary proceeding, and the arguments presented by the parties before this Court, the Court hereby orders that the Motion is GRANTED. The Court finds that withdrawal of the reference under 28 U.S.C. § 157(d) is mandatory as to Counts XXII and XXIII of the Plaintiff's Complaint. Further, the Court finds that cause exists under 28 U.S.C. § 157(d) for withdrawal of the reference of all the Causes of Action. Because "the interest of courts in trying together all claims arising from the same transaction is adequate cause to exercise discretionary power" to withdraw the reference of the Plaintiff's Complaint in its entirety, *see, e.g., In re Contemporary Lithographers, Inc.*, 127 B.R. 122, 128 (M.D.N.C. 1991), the reference of the above-captioned adversary proceeding is withdrawn.

In addition, the Court finds that legitimate issues exist regarding whether the Bankruptcy Court has jurisdiction over the Non-Core Causes of Action such that the Bankruptcy Court should not preside over pre-trial matters, and, therefore, the reference of all the Causes of Action should be withdrawn immediately so that the Court, or a magistrate appointed by the Court, can preside over all pre-trial matters.

SO ORDERED.

Dated _____ , 2022,

_____

UNITED STATES DISTRICT JUDGE

 # # # End of Order # # #

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

Proposed form of order prepared by:

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