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

THE DUGABOY INVESTMENT TRUST, Appellant, v. HIGHLAND CAPITAL MANAGEMENT, L.P., et al., Appellees.	Case No. 3:26-cv-02315-X (Judge Starr)

THE DUGABOY INVESTMENT TRUST, Appellant, v. HIGHLAND CAPITAL MANAGEMENT, L.P., et al., Appellees.	Case No. 3:25-cv-01876-K (Judge Kinkeade) Case No. 3:25-cv-02072-S (Judge Scholer) Case No. 3:26-cv-02496-D (Judge Fitzwater)

THE DUGABOY INVESTMENT TRUST'S OPPOSED MOTION TO HOLD CONSOLIDATION MOTION IN ABEYANCE PENDING THIS COURT'S RESOLUTION OF THE FIFTH CIRCUIT CERTIFICATION REQUEST

Appellant The Dugaboy Investment Trust respectfully requests, pursuant to Federal Rule of Bankruptcy Procedure 8013, that the Court hold in abeyance Dugaboy's motion for consolidation of No. 3:26-cv-02315-X and No. 3:26-cv-02496-D (No. 3:26-cv-02315-X, Dkt. 33 at 1–2, 6–8), pending resolution of Dugaboy's request for certification for direct review in the Fifth Circuit.

In June 2025, the Bankruptcy Court approved a settlement between the bankruptcy professionals put in place to run the Debtor Highland Capital Management, L.P., and a trustee who was supposed to be stewarding the equity stake in the Debtor for the benefit of a more-than-century-old established charity. This structure was created after the founders of Highland Capital Management ("Highland")—James Dondero and Mark Okada—generously transferred much of their ownership in Highland to a trust structure for the benefit of the charity. The trust was called the Hunter Mountain Investment Trust, and the person who was supposed to be shepherding it for the benefit of the established charity was Mark Patrick.

After the Bankruptcy Court approved the settlement, a trove of evidence came to light that Mark Patrick had stolen the equity stake in Highland and hundreds of millions of dollars in other charitable assets, placed them under a sham "charitable foundation" run from his basement, and used them to pay himself an eight-figure sum. That evidence showed that Mark Patrick was acting not as a protector of the charity to which the equity stake in Highland was given, but instead for himself.

In the meantime, the Fifth Circuit Judicial Council concluded a corrective action resolution of complaints that the prior Bankruptcy Judge had been writing books about the founder of Highland, James Dondero. That corrective action resolution resulted in the recusal of the Bankruptcy Judge from the Highland case.

Based on the misconduct of Mr. Patrick leading to the settlement, Dugaboy on Mr. Dondero's behalf asked the replacement Bankruptcy Judge to vacate the approval of the settlement agreement. Dugaboy and Mr. Dondero viewed Mr. Patrick's absconding with the assets they intended for charity as a tragedy and the approved bankruptcy settlement as advancing Mr. Patrick's misconduct. Dugaboy argued that the misconduct was the type of fraud and misbehavior that made approving a settlement through Mr. Patrick untenable, that Mr. Patrick was essentially dealing away stolen assets through the settlement, and that the governing documents had stripped Mr. Patrick of authority to act on Hunter Mountain's behalf after such grave misconduct.

The replacement Bankruptcy Judge declined to vacate the settlement. Pending before this Court is a motion to certify the appeal arising from that declination directly to the Fifth Circuit for its review.

Contemporaneously with the filing of this motion, Dugaboy is filing a motion before Judge Kinkeade to hold in abeyance his consideration of Highland's motion to consolidate the instant appeal and others into an appeal that was initiated more than a year ago. That appeal regards the predecessor Bankruptcy Judge's June 2025 approval of the settlement in question. The Highland motion was always without merit, as Highland had opposed consolidation at the June 2025 appeals' conception, contending all should proceed separately. The June 2025 appeal is also much further

along, having been fully briefed, and the instant appeal arises from an entirely separate evidentiary record.

In the related motion before Judge Kinkeade, Dugaboy argues that Highland's consolidation motion should either be denied or, if there is any inclination to grant it, that court should hold it in abeyance pending this Court's decision on whether to certify the instant appeal to the Fifth Circuit. Whether direct circuit court review is warranted is logically prior to and should be resolved before determining how the instant appeal should proceed in the district court.

The consolidation motion pending before this Court is differently situated, as it concerns bringing together two appeals—from Judge Odell's June 2026 declination to vacate the settlement agreement and then his decision (a few weeks later) not to reconsider that decision—arising from the same evidentiary record. The Rule 59 motion to reconsider was based on arguments that the Bankruptcy Court misapprehended legal and factual issues in declining to vacate the settlement weeks earlier. It was not based on intervening events. That the appeals from Judge Odell's June and July 2026 orders are distinct is simply a matter of procedural timing. In an abundance of caution, Dugaboy filed a notice of appeal hours after its motion to reconsider, with the Bankruptcy procedural rules making it automatically effective the moment the motion to reconsider was denied. Fed. R. Bankr. P. 8002(b)(2). Dugaboy filed a notice of appeal of the denial of the reconsideration motion days

later. If Dugaboy had waited until the reconsideration motion was denied, only one notice of appeal would have been filed and there would have been only one appeal. The sequence of events was undertaken only to ensure there would be no argument whatsoever about whether the notice of appeal of the main June 2026 order on the motion to vacate was timely filed. That is a protective option the bankruptcy appellate rules provide. *Id.*

With respect to Dugaboy's motion to consolidate the Rule 60(b) and Rule 59(e) appeals into this proceeding, the Court should hold Dugaboy's consolidation motion in abeyance—tracking the relief requested with respect to the other consolidation motion pending before Judge Kinkeade—until after it decides the certification question.

With respect to the abeyance option, "the District Court has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (internal citation omitted). In exercising that authority, the Court must "weigh competing interests and maintain an even balance." *Landis v. North American Co.*, 299 U.S. 248, 254–55 (1936). The duration of the stay must remain within reasonable limits. *Id.* at 257.

Here, the balance of interests favors the requested limited abeyance of the pending consolidation motion. This Court should decide whether the Rule 60(b) Appeal should proceed directly to the circuit court, and that decision may obviate

the need to decide how that appeal proceeds in the district court. The certification briefing is complete, and the proposed abeyance is therefore for a discrete period of time.

Dated: September 23, 2026

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that on September 17, 2026, he was copied on emails in which Michael J. Edney, counsel for The Dugaboy Investment Trust, contacted John A. Morris, counsel for Highland Capital Management, L.P., regarding the substance of the foregoing Motion for Abeyance, and that on the same date, Mr. Morris responded and confirmed that Highland Capital Management, L.P. is opposed to the relief sought herein.

/s/ *John Michael Gaddis*
John Michael Gaddis

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 23, 2026, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ *John Michael Gaddis*
John Michael Gaddis

CERTIFICATE OF COMPLIANCE

1. This document complies with the word limit of Fed. R. Bankr. P. 8013(f)(3)(A) because, excluding the portions excluded by Fed. R. Bankr. P. 8015(g), this document contains **1,033** words.

2. This document complies with the typeface requirements of Fed. R. Bankr. P. 8015(a)(5) and the type-style requirements of Fed. R. Bankr. P. 8015(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word, typeface Times New Roman, 14-point type (12-point type of footnotes).

/s/ *John Michael Gaddis*
John Michael Gaddis

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[PROPOSED] ORDER

Dugaboy's motion for limited abeyance is GRANTED. The Court holds Dugaboy's consolidation motion (Dkt. 33) in abeyance on the following terms:

Unless modified or terminated by further order, the abeyance expires on the third business day after this Court resolves Dugaboy's pending certification request (Dkt. 14).

Any party may move to modify or terminate the abeyance for good cause.

SO ORDERED.

Dated: _____

_____
THE HONORABLE BRANTLEY STARR
UNITED STATES DISTRICT JUDGE