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 (SGJ)
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.;	Adv. Pro. No. 21-03076-sgj **MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO DISMISS OF DEFENDANTS JAMES DONDERO, DUGABOY INVESTMENT TRUST, GET GOOD TRUST, AND STRAND ADVISORS, INC.**

EXHIBIT

DD



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SAS ASSET RECOVERY, LTD.; AND CPCM, LLC,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO DISMISS OF DEFENDANTS JAMES D. DONDERO, DUGABOY INVESTMENT TRUST, GET GOOD TRUST, AND STRAND ADVISORS, INC.

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I. INTRODUCTION

Defendants James D. Dondero, Strand Advisors, Inc., Dugaboy Investment Trust, and Get Good Trust (collectively, the "Dondero Defendants") move to dismiss the Complaint and Objection to Claims ("Complaint") filed by Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust ("Litigation Trustee") because those claims are deficient under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).[1]

The Complaint, which asserts 36 sweeping causes of action against 23 defendants, attempts to saddle Mr. Dondero, his employees, and his affiliates (however tenuously connected) with liability for contractually sanctioned management activities undertaken for the benefit of Highland Capital Management, L.P. ("HCMLP"). Hoping to paint everyone and everything with the same bad brush, the Complaint vastly overreaches and falls well short of alleging viable claims against the Dondero Defendants. As explained below, the Complaint should be dismissed under Rule 12(b)(1) because the Court lacks subject matter jurisdiction to hear or decide any of the non-core state-law claims asserted against the Dondero Defendants. In addition, the Complaint should be dismissed under Rule 12(b)(6) because the Litigation Trustee lacks standing to assert the claims, they are barred by the applicable statutes of limitations, and/or the allegations of the Complaint fail to sufficiently plead the claims asserted.

II. FACTUAL BACKGROUND

A. HCMLP's History

HCMLP is an SEC-registered investment advisory business founded in 1993 by defendants Mr. Dondero and defendant Mark A. Okada. *See* Compl., ¶¶ 1, 12-13. Although the Complaint

[1] Rules 12(b)(1) and 12(b)(6) are made applicable in bankruptcy through Federal Rules of Bankruptcy Procedure 7012(b). With all due respect, the Dondero Defendants do not consent to the entry of final orders or judgment by the Bankruptcy Court.

describes HCMLP and its affiliates as a complex "web" of entities operated at the whim and for the sole benefit of Mr. Dondero, for 26 years prior to filing a chapter 11 petition, HCMLP operated as a legitimate (and heavily regulated) Registered Investment Advisor ("RIA") for the benefit of its managed funds and investors. As the Complaint acknowledges, under Mr. Dondero's leadership, by the mid-2000s, HCMLP grew to over 100 employees, including "executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel." *Id.*, ¶ 40. Thus, while the Litigation Trustee alleges that Mr. Dondero was "HCMLP's solitary decision-maker on all matters concerning the company's operation and management," *id.*, ¶ 40, that allegation makes no sense. Over the years, with the assistance of an expanded workforce and skilled executive team, Mr. Dondero shifted HCMLP's original focus on the leveraged loan market to "other asset classes, such as high-yield credit, public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific industries." *Id.*, ¶ 38. At its high-water mark, HCMLP had assets under management "exceed[ing] $40 billion." *Id.*, ¶ 41 n.8.

Following the financial crisis in 2008, HCMLP and some of its managed funds and affiliates, like many other financial institutions and financial advisors across the globe, faced several lawsuits. Compl., ¶ 4. The Complaint characterizes those lawsuits as a "looming threat," *id.*, ¶ 5, but between 2008 and HCMLP's bankruptcy filing in 2019, virtually none of those lawsuits resulted in any sizeable liability against HCMLP, and certainly none that would render HCMLP insolvent. Indeed, the only significant award issued against HCMLP at any time between 2008 and 2019 (and the only one identified in the Complaint) is a $190 million arbitration award in favor of the Redeemer Committee. *See* Compl., ¶¶ 8, 84.

B. The Dondero Defendants

James D. Dondero and Strand. For most of its operating history, Mr. Dondero served as

the Chief Executive Officer of HCMLP by virtue of his ownership (and role as sole director) of its general partner, Strand Advisors, Inc. ("Strand"). Compl., ¶¶ 12, 14. Notably, contrary to the allegations of the Kirschner Complaint, when HCMLP filed for bankruptcy, Mr. Dondero did not own any direct economic interest in the Debtor, as this Court has acknowledged.[2]

Moreover, as the Litigation Trustee acknowledges, the management of HCMLP prior to Plan confirmation was governed by the Fourth Amended and Restated Agreement of the Limited Partnership of Highland Capital Management, L.P. ("LPA"). *See* Compl., ¶ 387.[3] That LPA contains several salient provisions that bear upon the allegations at issue. In particular, the Agreement permitted Strand, as general partner:

- To "make such pro rata or non-pro rata distributions as it may determine in its sole and unfettered discretion" (LPA, §3.9(a));

  To "have business interests and engage in business activities in addition to those relating to the Partnership, including, without limitation, business interests and activities in direct competition with the Partnership" (*id.*, § 4(f)).[4]

- To exercise "full control over all activities of the Partnership," including by, among other things, (1) "purchasing and selling any asset, any debt instruments, any equity interests, any commercial paper, any note receivables, and any other obligation" of HCMLP, (2) "exchang[ing] . . . any or all of the assets of the Partnership," (3) executing on behalf of HCMLP "notes . . . and any and all other contracts," (4) "us[ing] the assets of the Partnership (including, without limitation, cash on hand) for any Partnership purpose on any terms [Strand] s[aw] fit," (5) "distributing . . . Partnership cash or other assets," (6) forming other limited or general partnerships, joint ventures, or other relationships and to contributing to "such partnerships, ventures, or relationships . . . assets and properties of the Partnership," and (7) controlling "the conduct of any

[2] *See* Order (I) Confirming the Fifth Amended Plan Reorganization of Highland Capital Management, L.P (as Modified) and (II) Granting Related Relief ("Confirmation Order"), Dkt. 1943, at ¶ 5; *see also id.*, ¶ 18 ("Mr. Dondero owns no equity in the Debtor directly.").

[3] The LPA is attached as Exhibit A to the Declaration of Amy L. Ruhland ("Ruhland Decl.") filed contemporaneously herewith. *See* Ruhland Decl., ¶ 2. The Court may consider the LPA because it is incorporated into the complaint by reference. *See* Compl., ¶ 387; *Randall D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011).

[4] This right extended to Strand's directors, officers, agents, and representatives. Ruhland Decl., Ex. A, § 4.1(f).

litigation, the incurring of legal expenses, and the settlement of claims and suits" (*id.*, § 4.1(a)); and

Mr. Dondero, in turn, was authorized to act on behalf of Strand by virtue of his role as Strand's sole director, as set forth in Strand's organizational documents.[5] This makes sense: an entity like Strand could not act without an individual at the helm.

Dugaboy. Prior to Plan confirmation, Defendant Dugaboy Investment Trust ("Dugaboy") held a minority (0.1866%) economic interest and a 74.4426% voting interest in HCMLP's Class A partnership interests. *See* Compl., ¶ 16; Plan Confirmation Order, ¶ 18. Despite these interests, there is no allegation that Dugaboy exercised any control of HCMLP or orchestrated or directed any of the transactions at issue. Upon Plan confirmation, Dugaboy's minority equity interest and majority voting interests were extinguished.

Get Good. Defendant Get Good Trust ("Get Good") is a Delaware trust established by Mr. Dondero for the benefit of his living descendants. *See* Compl., ¶ 28. Get Good is neither a residual equity holder in the Debtor's estate nor a creditor. Nor does the Complaint allege that Get Good exercised any control of HCMLP or orchestrated or directed any of the transactions at issue.

C. The Bankruptcy Proceedings

On October 16, 2019 (the "Petition Date"), in response to an adverse arbitration award of $190 million, HCMLP filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Dkt. 1. Just three months after HCMLP's bankruptcy filing, on January 9, 2020, Mr. Dondero agreed to resign from his positions at HCMLP and Strand. Compl., ¶ 12.

[5] *See* Ruhland Decl., Exs. B & C. The Court may take judicial notice of a company's publicly filed organizational documents. *See Rittgers v. United States*, 131 F. Supp. 3d 644, 649-50 (S.D. Tex. 2015) (on a motion to dismiss, court may consider "documents that are subject to judicial notice as public record"); *see also In re Wheelabrator Techs., Inc. S'holders Litig.*, 1992 WL 212595, at *11-12 (Del. Ch. Sept. 1, 1992) (taking judicial notice of certificate of incorporation).

On November 24, 2020, HCMP filed its Fifth Amended Plan of Reorganization (the "Plan"), *see* Dkt. 1808, which the Bankruptcy confirmed on February 22, 2021 ("Confirmation Date"). *See* Dkt. 1943. The Plan became effective on August 11, 2021, *see* Dkt. 2700, and HCMLP has since represented that the Plan has been substantially consummated. *See* Adv. Proc. No. 3:21-cv-01895-D, Dkt. 14, at 17-20. The Litigation Trustee did not commence this Adversary Proceeding until eight months after the Confirmation Date, well after the Plan had gone effective..

III. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 12(b)(6) and Federal Rule of Bankruptcy Procedure 7012(b), to survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, 'to state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "[A] complaint must allege 'more than labels and conclusions,' as 'a formulaic recitation of the elements of a cause of action will not do." *Heinze v. Tesco Corp.*, 971 F.3d 475, 479 (5th Cir. 2020) (quoting *Twombly*, 550 U.S. at 555); *see also In re Soporex, Inc.*, 463 B.R. 344, 367 (Bankr. N.D. Tex. 2011) ("[A] court is not to strain to find inferences favorable to the plaintiff and is not to accept conclusory allegations, unwarranted deductions, or legal conclusions.") (internal quotation omitted). Further, where (as here), a complaint alleges multiple claims against multiple defendants, the pleading standards must be applied "separately to each claim and each defendant." *Winslow v. Paxton*, 2017 WL 283281, at *2 (N.D. Tex. Jan. 20, 2017).

IV. THE COMPLAINT AGAINST THE DONDERO DEFENDANTS SHOULD BE DISMISSED[6]

A. The Court Does Not Have Subject Matter Jurisdiction Over The Non-Core, State-Law Claims Asserted Against The Dondero Defendants

The Complaint should be dismissed because the majority of the 24 claims asserted against the Dondero Defendants are non-core, state-law claims over which the Bankruptcy Court lacks subject matter jurisdiction under 28 U.S.C. § 1334.[7] "Federal courts are courts of limited jurisdiction . . . and possess only the power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "The source of the bankruptcy court's jurisdiction is 28 U.S.C. §§ 1334 and 157." *In re U.S. Brass Corp.*, 301 F.3d 296, 303 (5th Cir. 2002) (citation omitted). In relevant part, Section 1334 provides federal "district courts" with "original but not exclusive jurisdiction of all civil proceedings . . . related to cases under title 11." 28 U.S.C. § 1334(b).[8] The district court may refer (and has referred here) "proceedings . . . related to a case under title 11 . . . to the bankruptcy judges for the district." *Id.* § 157(a); Misc. Order No.

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[6] The Complaint alleges many similar allegations against defendants Mark A. Okada (and his family trusts), Scott Ellington, Isaac Leventon, Frank Waterhouse, NexPoint Advisors, L.P., and Highland Capital Management Fund Advisors, L.P. The Dondero Defendants hereby incorporate by reference as if fully set forth herein the Motions to Dismiss filed by these defendants. *See* Dkt. Nos. 125, 126, 128, 129, 130, 133, 136, and 137.

[7] In particular, Counts I-VIII, X, XIV-XVII, and XXV-XXVI are non-core claims. *See In re Morrison*, 409 B.R. 384, 390 (Bankr. S.D. Tex. 2009) (breach of fiduciary duty, conspiracy, and conversion proceedings are non-core); *Mirant Corp. v. The Southern Co.*, 337 B.R. 107, 117–18 (N.D. Tex. 2006) (alter-ego, unlawful dividend, and aiding and abetting breach of fiduciary duty claims are non-core); *In re Royce Homes L.P.*, 2011 WL 13340482, at *2 (Bankr. S.D. Tex. Oct. 13, 2011) (fiduciary duty, conversion, conspiracy, and unjust enrichment are non-core). Notably, even the fraudulent transfer claims arise in part under state law—namely, the Texas Uniform Fraudulent Transfer Act ("TUFTA"). *See* Tex. Bus. & Com. Code § 24.005(a)(1)-(2). The Fifth Circuit has not decided whether fraudulent transfer claims are core or non-core when the pleading asserts those claims under both the TUFTA and the Bankruptcy Code. At least one Texas bankruptcy court has held that they are non-core. *See In re Brown Med. Ctr., Inc.*, 578 B.R. 590, 597 (Bankr. S.D. Tex. 2016).

[8] Because these claims are "non-core," the only relevant proceedings described in 28 U.S.C. § 1334(b) are those "related to cases under title 11." *See In re Wood*, 825 F.2d 90, 97 (5th Cir. 1987); *U.S. Brass Corp.*, 301 F.3d at 304.

33 (N.D. Tex. Aug. 3, 1984). But the "related to" jurisdiction of the district courts under Section 1334(b), and by reference, the bankruptcy courts, is much narrower after confirmation of the relevant plan of reorganization. *In re Craig's Stores of Texas, Inc.*, 266 F.3d 388, 390 (5th Cir. 2001). For the most part, it "*ceases to exist*." *Id.* (emphasis added); *accord In re Galaz*, 841 F.3d 316, 322 (5th Cir. 2016) (same). Post-confirmation, the debtor no longer needs the "protection" of the bankruptcy court to "facilitate 'administration' of the . . . estate." *Id.* Accordingly, in ascertaining its post-confirmation subject matter jurisdiction, the Bankruptcy Court must conform to an "*exacting*," "*narrow[]*" theory of jurisdiction. *Id.* The Court continues to have jurisdiction only over "matters pertaining to the implementation or execution of the plan." *Id.*

The exacting standard adopted and applied by the Fifth Circuit makes clear that this Court lacks post-confirmation jurisdiction over the non-core, state law claims asserted in the Complaint against the Dondero Defendants. None of those claims bears upon the "implementation or execution of the plan."[9] Accordingly, this Court should dismiss Counts III–VIII, X, XIV–XVII, and XXV–XXVI against the Dondero Defendants for lack of subject matter jurisdiction.

B. The Litigation Trustee Lacks Standing To Pursue Non-Retained State-Law Claims

The state-law claims asserted against the Dondero Defendants also should be dismissed because the Litigation Trustee lacks standing to pursue them. Specifically, the Litigation Trustee lacks standing to pursue Counts III–VIII, X, XIV–XVII, and XXV–XXVI because the Plan did not specifically and unequivocally reserve those claims. It is axiomatic that, after confirmation of

[9] Some courts have wrongly considered whether a plan reserved particular claims in determining their post-confirmation "related to" jurisdiction. *See, e.g.*, *In re Coho Energy*, 309 B.R. 217, 221 (Bankr. N.D. Tex. 2004). That is error. The terms of the plan *cannot* confer subject matter upon a bankruptcy court. *U.S. Brass*, 301 F.3d at 303; *accord Pelican Refining Co. LLC v. Adams & Reese, LLP*, 2007 WL 1306808, at *3 (S.D. Tex. May 3, 2007); *Kokkonen*, 511 U.S. at 377 (federal jurisdiction "is not to be expanded by judicial decree").

a plan of reorganization, the bankruptcy estate "ceases to exist, and the debtor loses its status as debtor-in-possession along with its authority to pursue claims as though it were a trustee." *Rossco Holdings, Inc. v. McConnell*, 613 F. App'x 302, 306 (5th Cir. 2015) (quoting *In re SI Restructuring*, 714 F.3d 860, 864 (5th Cir. 2013)). "[B]y losing authority to pursue a claim, the debtor loses *standing* with respect to that claim." *Id.* (emphasis added). A plan of reorganization may vest a post-confirmation debtor or trustee with authority to pursue one or more claims held by the estate, 11 U.S.C. § 1123(b)(3), but "the ability of the debtor to enforce a claim once held by the estate is limited to that which has been retained in the plan." *In re United Operating, LLC*, 540 F.3d 351, 355 (5th Cir. 2008). "Without an effective reservation, the debtor has no standing to pursue a claim that the estate owned before it was dissolved." *In re SI Restructuring*, 714 F.3d at 864 (internal quotations omitted); *In re United Operating*, 540 F.3d at 355.

The Fifth Circuit has held that a plan's claim retention language must be "specific and unequivocal." *In re United Operating*, 540 F.3d at 355; *accord Rossco*, 613 F. App'x at 308. This requirement ensures that creditors have adequate notice of which claims the debtor intends to pursue after confirmation so that they can "determine whether a proposed plan resolves matters satisfactorily before they vote to approve it." *In re United Operating*, 540 F.3d at 355. A blanket reservation of "any and all" claims, or a laundry list of generic claims, is insufficiently specific to meet this requirement. *Id.* at 356; *Rossco*, 613 F. App'x at 306–07. Likewise, a reservation of claims "arising under the Bankruptcy Code"—even if specific and unequivocal—is insufficient to preserve state common-law claims. *In re United Operating*, 540 F.3d at 356; *accord In re SI Restructuring Inc.*, 714 F.3d at 862-63; *Rossco*, 613 F. App'x at 306–07; *see also Tepper v. Keefe Bruyette & Woods, Inc.*, 2012 WL 4119490, at *5 (N.D. Tex. Sept. 19, 2012) (no "standing to pursue a fraudulent transfer claim under Texas and New York statutory law" where the plan "only

provide[d] for avoidance claims under . . . sections 544, 548, and 550 of the Bankruptcy Code").

Pursuant to these standards, the Plan and Plan Supplement fail to specifically and unequivocally retain the state-law claims asserted against the Dondero Defendants. The Plan contains sweeping language purporting to "retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action," defined to include "any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims." *See* Plan, Dkt. No. 1943, at 101, 146–47. That is exactly the kind of generalized, nonspecific language that the Fifth Circuit has repeatedly found insufficient to preserve standing. *See In re United Operating*, 540 F.3d at 356 (neither "blanket reservation of 'any and all claims' arising under the Code," nor "specific reservation of other types of claims under various Code provisions" sufficient to preserve the common-law claims); *In re SI Restructuring, Inc.*, 714 F.3d at 860 (same).

The Plan Supplement fares no better. In what can only be described as a kitchen-sink approach, the Supplement contains a laundry list of purportedly retained claims—including "claims brought under state law, claims brought under federal law, [and] claims under any common-law theory of tort or law or equity"—that is the equivalent of a blanket reservation of claims. *See* Dkt. No. 1875-3. What is more, the Supplement broadly purports to retain that laundry list of claims against a multi-page list of potential defendants. That overbroad list of potential claims and defendants did not apprise the Dondero Defendants of which, if any, claims might actually be filed against them post-confirmation. In the absence of a more "specific and unequivocal" retention of the state-law claims asserted against the Dondero Defendants, the Plan and Supplement fail to confer the requisite standing on the Litigation Trustee.

In any event and at the very least, the Litigation Trustee's claims against the Dondero Defendants for illegal distributions under the DRULPA (Count III), declaratory judgment (Counts

VI-VIII & X), aiding and abetting or knowing participation in breach of fiduciary duty (Count XV), and conspiracy (Count XVI) should be dismissed because neither the Plan nor the Supplement mentions those claims at all. As a result, those claims were not retained, and the Litigation Trustee lacks standing to pursue them.

C. The Fraudulent Transfer Claims Should Be Dismissed

In Counts I-II, XVIII-XIX, XXII-XXIII, and XXXI-XXXIII, the Litigation Trustee seeks avoidance of transfers allegedly made to the Dondero Defendants dating back to 2010. Compl., ¶¶ 168-180, 310-320. These claims should be dismissed for several reasons.

Constructive & Fraudulent Transfers (Counts I-II, XVIII-XIX, & XXII-XXIII). These Counts seek avoidance of transfers that occurred many years into the past. But the Litigation Trustee's avoidance powers are limited in time. Section 548(a)(1) allows the Litigation Trustee to avoid transfers only to the extent they were "made or incurred on or within 2 years before the date of the filing of the petition." 11 U.S.C. § 548(a)(1). Because HCMLP's chapter 11 bankruptcy petition was filed on October 16, 2019, the Litigation Trustee generally cannot avoid transfers made before October 16, 2017. *Curtis v. Cerner Corp.*, 621 B.R. 141, 179-80 (S.D. Tex. 2020). To justify a longer lookback period, the Litigation Trustee relies on two statutory provisions: Bankruptcy Code § 544 and 26 U.S.C. § 6502. As explained below, the Trustee's reliance on these statutory provisions is unavailing, and the Court should dismiss the fraudulent transfer claims to the extent that the transfers occurred prior to October 16, 2017.

First, the Litigation Trustee cannot rely on Bankruptcy Code § 544 to extend the limitations period because the Trustee has not pleaded allegations to support its application. To utilize Section 544(b)(1) and acquire the benefit of the longer, four-year statute of limitations for avoidance

actions prescribed under state law (the TUFTA),[10] the Litigation Trustee must plead "the existence of an actual unsecured creditor holding an allowable secured claim as of the date of the petition that could avoid the challenged transfer." *In re Essential Fin. Educ., Inc.*, 629 B.R. 401, 419-20 (Bankr. N.D. Tex. 2021) (Larson, J.).[11] Moreover, the Litigation Trustee must plead the existence of a triggering unsecured creditor for each of the alleged fraudulent transfers at issue. *In re Giant Gray, Inc.*, 629 B.R. 814, 828 (Bankr. S.D. Tex. 2020). The Litigation Trustee fails to do so with respect to *any* of the alleged fraudulent transfers at issue, which is preclusive.[12]

Second, the Litigation Trustee's effort to invoke the so-called "golden creditor" rule by making passing reference to 26 U.S.C. § 6502 is also unavailing. *See* Compl., ¶¶ 174, 180, 249, 254, 316, 320 (citing 26 U.S.C. § 6502). Section 6502 affords the IRS ten years to bring a collection action from the date of a timely tax assessment. While a minority of courts have allowed a trustee to stand in the shoes of the IRS and benefit from this ten-year lookback period, the Fifth Circuit has not sanctioned this practice. And for several reasons, the Court should reject the Litigation Trustee's effort to invoke the IRS lookback period.

First, the Trustee's allegations are insufficient to establish that 26 U.S.C. § 6502 even applies. There is no allegation that the IRS is the triggering creditor. Nor does the Complaint

[10] Under the TUFTA, a fraudulent transfer claim must be filed "within four years after the transfer was made or the obligation was incurred." Tex. Bus. & Com. Code § 24.010.

[11] The need to identify a triggering creditor is particularly acute with respect to constructive fraudulent transfer claims. *In re Northstar Offshore Group, LLC*, 616 B.R. 695, 724 (Bankr. S.D. Tex. 2020); *see also In re Dual D Health Care Operations, Inc.*, 2021 WL 3083344, at *15-16 (Bankr. N.D. Tex. July 21, 2021) (complaint's failure to identify a "triggering creditor" warranted dismissal for failure to state plausible claim under section 544(b)); *In re Specialty Select Care Ctr. of San Antonio, LLC*, 2021 WL 3083522, at *16-17 (Bankr. N.D. Tex. July 21, 2021) (same); *In re Giant Gray, Inc.*, 629 B.R. 814, 828 (Bankr. S.D. Tex. 2020) (same).

[12] Even if the Litigation Trustee could allege the existence of a triggering creditor on the dates of each transfer at issue, that would only allow the Trustee to avoid transfers dating back four years before the Petition Date—to October 16, 2015. To the extent the Complaint seeks to avoid transfers before that date (as it does in Counts I-II, XVIII-XIX, & XXII-XXIII), the Complaint should be dismissed.

identify an "assessment of any tax" the IRS could have or did make, the date of such assessment, the type of assessment, or any other facts that would enable this Court to ascertain the basis for the Litigation Trustee's invocation of 26 U.S.C. § 6502. There also is no allegation that would permit the Court to infer that the IRS could even invoke this statute to collect taxes dating back ten years. *See In re Taylor, Bean & Whitaker Mortgage Corp.*, 2018 WL 6721987, at *6 (Bankr. M.D. Fla. Sept. 28, 2018) ("The Court is unaware of case law permitting the IRS to avoid transfers made prior to the original taxpayer assessment (or, alternatively, prior to accrual of the tax liability).").[13] Under these circumstances, the Complaint fails to plead any facts that would entitle the Litigation Trustee to invoke the golden creditor rule.

In addition, as a matter of statutory interpretation and policy, the Court should reject the Litigation Trustee's invitation to apply the golden creditor rule. Notably, only in a "'few and far' between" adversary proceedings have courts permitted bankruptcy trustees to wield federal tax law as a "weapon" to extend the relevant statute of limitations. *In re Kipnis*, 555 B.R. 877, 883 (S.D. Fla. 2016). There are several problems with these courts' analysis.

Most notably, the operative language of Section 544(b)(1) states that certain transfers are "*voidable* under applicable law." By its plain terms, Section 6502(a)(1) does not grant the IRS the power to "void" any transfer (nor does it provide the IRS with any state-law remedy); it merely gives the IRS the right to levy taxes. It makes no sense to read 26 U.S.C. § 6502 to permit the avoidance of transfers—something not even the IRS cannot do. Moreover, it is inappropriate to treat a trustee in bankruptcy as if it is on par with a sovereign. *In re Vaughan Co.*, 498 B.R. 297,

[13] Notably, as several of the defendants previously have argued in connection with their motions to withdraw the reference, whether the IRS itself could invoke the ten-year lookback period requires "substantial and material" consideration of federal tax laws which must be resolved by the District Court. *See, e.g.*, *In re Nat'l Gypsum Co.*, 145 B.R. 539, 541 (N.D. Tex. 1992).

304-05 (D. N.M. 2013). Unlike the IRS, a trustee is not vindicating public rights—it is vindicating the rights of private creditors. *See id*. at 305. Where the U.S. government seeks to vindicate private rather than public rights in bankruptcy, the state statute of limitations generally applies. *Id.* at 304 (citing *Marshall v. Intermountain Elec. Co., Inc.*, 614 F.2d 260, 263 n.3 (10th Cir. 1980); *S.E.C. v. Calvo*, 378 F.3d 1211, 1218 (11th Cir. 2004)).

Further, interpreting the law to permit a bankruptcy trustee to invoke the tax statute's ten-year lookback period has the potential to "eviscerate" the bankruptcy courts' long-standing practice of looking to state law for the relevant limitations period. *In re Kipnis*, 555 B.R. at 883. Because "[t]he IRS is a creditor in a significant percentage of bankruptcy cases," such an interpretation would undoubtedly encourage "widespread use of § 544(b) to avoid state statute of limitations." *Id*. at 883. The Fifth Circuit has prevented similar efforts to extend Section 544(b)(1) before. *See, e.g.*, *In re Mirant Corp.*, 675 F.3d 530, 535 (5th Cir. 2012) (Federal Debt Collection Procedures Act does not constitute "applicable law" under § 544(b)). The law should not be interpreted in this manner, and the few courts that have done so are wrong.

Preferential Transfers (Count XXXI). Pursuant to 11 U.S.C. § 547(c)(9), a trustee may not avoid preferential transfers of less than $6,825. The Complaint alleges at least two transfers to Mr. Dondero during the year before the Petition Date below this threshold amount. Compl., ¶ 362. The Complaint must be dismissed to the extent it seeks avoidance of these transfers.

Expense Transfers (Counts XXXII-XXXIII). The Complaint also seeks to avoid alleged expense transfers made to Mr. Dondero in the year before the Petition Date, invoking 11 U.S.C. § 548. Compl., ¶¶ 368-377. Section 548 allows a trustee to avoid intentional fraudulent transfers if the transfers occurred "with actual intent to hinder, delay, or defraud." The statute also allows the avoidance of constructive fraudulent transfers if the debtor received "less than a reasonably

equivalent value in exchange for such transfer" and was insolvent at the time of the transfer, or if other conditions existed at the time of the transfer warranting its avoidance. The Complaint fails to adequately plead facts supporting the avoidance of any of the alleged expense transfers.

As to the allegedly constructively fraudulent expense transfers, the Complaint only seeks avoidance of the transfers "[t]o the extent [they] do not constitute reimbursement for valid expenses." Compl., ¶ 369. In other words, the Complaint does not allege the transfers were not valid reimbursements, nor does it make any plausible allegations about why they should be considered invalid (other than allegations made on speculative "information and belief"). Nor does the Complaint allege that the transfers were made for less than reasonably equivalent value, as is required.

As for the allegedly intentionally fraudulent expense transfers, the Complaint is similarly deficient. Again, the Complaint only seeks to avoid these transfers "[t]o the extent [they] do not constitute reimbursement for valid expenses," Compl., ¶ 374, but offers no reason why the transfers should be considered anything other than valid reimbursements. *See* Compl., ¶ 376. Further, beyond rehashing allegations relating to Mr. Dondero's other unrelated bad acts, the Complaint makes no particular allegations demonstrating that Mr. Dondero made the transfers with specific intent to "hinder, delay, or defraud" creditors, which is preclusive. *See VeroBlue Farms USA, Inc. v. Wulf*, 465 F. Supp. 3d 633, 647 (N.D. Tex. 2020) (Rule 9(b) applies to intentional fraudulent transfer claims).

Counts XXXII and XXXIII are deficiently pleaded, and they should be dismissed.

D. The Complaint Should Be Dismissed For Multiple Additional Reasons

1. The Complaint's Breach Of Fiduciary Duty Claims Fail

In Counts IV, V, XIV, XV, and XVI, the Litigation Trustee alleges that Mr. Dondero and Strand breached their fiduciary duties to HCMLP by, among other things, (1) creating certain

"lifeboats," including NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"), (2) engaging in actions leading to pre-petition litigation, and (3) facilitating or directing certain transfers. *See* Compl., ¶¶ 187-208, 259-265. The Complaint further alleges that Get Good aided and abetted a breach of fiduciary duty by Mr. Dondero and Strand with respect to the CLO Holdco Transaction. *Id.*, ¶ 269.[14] And finally, the Complaint alleges that Get Good "conspired with Dondero to breach his fiduciary duties to HCMLP by intentionally siphoning assets away from HCMLP to evade HCMLP's creditors." *Id.*, ¶ 271. These claims each fail for several independent reasons.

a. Counts IV, XIV, and XVI are time-barred.

The Complaint does not allege which state's law applies to the claims for breach of fiduciary duty, but in this case it makes no difference, because Counts IV, XIV, and XVI are time-barred under both Delaware and Texas law. Delaware applies a three-year statute of limitations to breach of fiduciary duty claims, while Texas applies a four-year statute of limitations to such claims. *In re Brown Sch.*, 368 B.R. 394, 402-03 (Bankr. D. Del. 2007); Tex. Civ. Prac. & Rem. Code Ann. § 16.004(a)(4). Texas also applies a four-year statute of limitations to claims for "knowing participation" in breach of fiduciary duty,[15] as well as to claims for civil conspiracy to breach fiduciary duty. *Senger Creek Dev., LLC v. Fuqua*, 2017 WL2376529, at *11 (Tex. Ct. App.—Houston [1st Dist.] June 1, 2017, no pet.); *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*,

[14] The Complaint describes the CLO Holdco Transaction as one in which Dugaboy issued a note to Get Good. Compl., ¶ 126. Get Good then gave the note to HCMLP in exchange for certain assets. *Id.*, ¶¶ 126-127. The Litigation Trustee alleges that this transaction was problematic because liquid assets were exchanged for an illiquid note worth less than the assets. *Id.*, ¶ 126. Ultimately the assets were contributed to defendant CLO Holdco Ltd. *Id.*

[15] Because the Texas Supreme Court has not recognized a tort for "aiding and abetting" breach of fiduciary duty, the federal courts may not do so. *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753, 782, 781 (5th Cir. 2018). To the extent the Complaint seeks to hold the defendants liable for aiding and abetting breach of fiduciary duty under Delaware law, a three-year statute of limitation applies. *See In re Brown Sch.*, 368 B.R. at 402-03.

580 S.W.3d 136, 142 (Tex. 2019) (claim for civil conspiracy is governed by the same limitations period as the underlying tort).

Lifeboat Scheme (Count IV). Count IV seeks to hold Mr. Dondero and Strand liable for engaging in the so-called "lifeboat scheme." According to the Complaint, that scheme began "in or about 2011," when Mr. Dondero and Strand conceived of creating new entities for the purpose of siphoning money away from HCMLP. Compl., ¶ 49. Allegedly in furtherance of that scheme, Mr. Dondero and Strand allegedly created NexPoint "in March 2012," after which NexPoint, "[b]etween 2012 and 2015," allegedly received fees for business activities undertaken by HCMLP and its employees. *Id.*, ¶¶ 50-52. Further, according to the Complaint, "[b]etween 2012 and [May] 2017," HCMLP loaned NexPoint "approximately $30 million" but paid no principal or interest to NexPoint during that period. *Id.*, ¶¶ 53-54.

As to HCMFA, the Complaint alleges that Mr. Dondero caused HCMLP to transfer its obligations for certain investment advisory services to HCMFA "[o]n December 15, 2011" for "no consideration." *Id.*, ¶ 59. The Complaint also alleges that "[f]ollowing the transfer, it was HCMFA rather than HCMLP that received" investment advisory fees. *Id.* Further, the Complaint alleges that, starting in 2011, HCMLP loaned HCMFA millions of dollars but that Mr. Dondero caused HCMFA to enter into "multiple forbearances" preventing the loans' repayment. *Id.*, ¶ 61.

These allegations make clear that the conduct giving rise to the breach of fiduciary duty claim relating to the "lifeboat scheme" began in 2011 or 2012, more than nine years before the Complaint was filed and well outside of the applicable four-year statute of limitations. As a result, Count IV is time-barred.

Fraudulent Transfers (Counts XIV, XXII, & XXIII). The Complaint also alleges that Mr. Dondero and Strand breached their fiduciary duties to HCMLP by, among other things (1) causing

the company to make "payments of at least $519,000 per year to Massand Capital from November 2014 through 2019" (Compl., ¶¶ 157, 260) and (2) causing HCMLP to make equity distributions "between 2010 and 2012 and 2015 and 2019" that were "for Dondero's and Okada's ultimate benefit" (*id.*, ¶¶ 131-132, 262, 311, 318). To the extent that this breach of fiduciary duty claim is based on payments and transfers that occurred more than four years before the Petition Date—prior to October 16, 2015—they are time-barred and should be dismissed.

Civil Conspiracy (Count XVI). For similar reasons, the Complaint's vague civil conspiracy allegation against Get Good—that it "conspired with Dondero to breach his fiduciary duties to HCMLP by intentionally siphoning assets away from HCMLP to evade HCMLP's creditors" (*see id*., ¶ 271)—is time-barred because it relates to the supposed "lifeboat scheme," which began well outside the applicable four-year statute of limitations period. *Id.*, ¶ 271.[16]

b. The LPA precludes the breach of fiduciary claims.

Counts IV, V, and XIV also fail because the LPA precludes those claims. Notably, the DRULPA permits a limited partnership to restrict or even eliminate all fiduciary duties by contract. 6 Del. C. §17-1101(d); *see also Brickell Partners v. Wise*, 794 A.2d 1, 3–4 (Del. Ch. 2001) ("principles of contract preempt fiduciary principles" where a limited partnership agreement governs fiduciary duties). Where, as here, "the limited partnership agreement unambiguously provides for fiduciary duties, any claim of a breach of fiduciary duty must be analyzed generally in terms of the partnership agreement." *Gotham Partners, L.P. v. Hallwood Realty Partners, L.P.*, 817 A.2d 160, 170-71 (Del. 2002). Applying these principles to the fiduciary duty claims asserted

[16] Nor may the Court apply any tolling doctrine to any of the fiduciary duty-related claims because there is no allegation in the Complaint that a tolling doctrine should apply. *See Sivertson v. Citibank, N.A. as Trustee for Registered Holders of WAMU Asset-Backed Certificates WAMU Series No. 2007-HE2*, 390 F. Supp. 3d 769, 785 (E.D. Tex. 2019) ("A plaintiff seeking to avail itself of the discovery rule must plead the rule's application . . . ."); *Le Mieux Bros. Corp. v. Armstrong*, 91 F.2d 445, 446 (5th Cir. 1937) (same).

in the Complaint makes clear that those claims are unsustainable.

The Litigation Trustee alleges that Mr. Dondero and Strand breached their fiduciary duties to HCMLP by (1) "transferr[ing] HCMLP's valuable business to the lifeboat entities, including NexPoint and HCMFA"; (2) incurring liability to UBS, Acis, Terry, HarbourVest, the Crusader Funds, and the Redeemer Committee by managing HCMLP's business in a manner that resulted in potential or actual litigation liabilities; and (3) approving transfers of money and assets to Massand Capital and CLO Holdco and approving partnership distributions to various individuals and entities. *See* Compl., ¶¶ 187-213, 259-65. Notably, the Litigation Trustee does not allege that Mr. Dondero or Strand breached HCMLP's LPA by taking (or directing) any of these actions, nor could it. As set forth above, the HCMLP LPA granted Strand (by and through its officers, directors, representatives, and agents) the authority to:

- Form other entities and to contribute to those entities "assets and properties of the Partnership," as well as to engage in "business interests and activities in direct competition with the Partnership" (LPA, §§ 4.1(a)(xi), 4.1(f))—as Strand allegedly did in the "lifeboat scheme";
- Perform "any and all acts necessary or appropriate to the operation of any business of the Partnership," including taking out loans, incurring indebtedness, using the assets of the Partnership, determining whether to negotiate, execute, or perform contracts, and controlling "the conduct of any litigation" (*id.*, § 4.1(a)(ii), (v), (vi), (vii), (viii), & (xii)—as Strand allegedly did in relation to UBS, Acis, Terry, HarbourVest, the Crusader Funds, and the Redeemer Committee; and
- Distribute "Partnership cash or other assets" in its "sole and unfettered discretion" (*id.*, § 4.1(ix); *id.*, § 3.9(a))—as Strand did in approving transfers and distributions to Massand, CLO Holdco, and others.

In short, the LPA granted Strand, and Mr. Dondero as Strand's director, the broad authority to undertake each and every action that allegedly constituted a breach of their fiduciary duties.

Further, Section 4.1(i) of the LPA expressly limits the liability of the General Partner and those acting on its behalf. Specifically, that section states that "[n]either the General Partner nor its directors, officers, employees, agents, or representatives shall be liable to the Partnership or any

Limited Partner for errors in judgment or for any acts or omissions that do not constitute gross negligence or willful or wanton misconduct." LPA, § 4.1(i)(i). The section also reiterates that the General Partner may "exercise any of the powers granted to it" under the LPA "either directly or by or through its directors, officers, employees, agents, or representatives" and states that "the General Partner ***shall not be responsible for any misconduct or negligence on the part of any agent or representative appointed by the General Partner***." *Id.*, § 4.1(i)(ii). Again, the Litigation Trustee has not even attempted to plead that Mr. Dondero or Strand took actions that were beyond their powers under the LPA, nor has the Trustee alleged that Mr. Dondero's actions amounted to "gross negligence or willful or wanton misconduct," as is required. Under these circumstances, the breach of fiduciary duty claims must be dismissed.

c. Counts XV and XVI should be dismissed.

Aiding and Abetting. In Count XV, the Litigation Trustee alleges that "Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas aided and abetted Dondero's breach of fiduciary duties relating to the CLO Holdco Transaction." Compl., ¶ 269. This single-sentence allegation against Get Good is insufficient to state a claim against it for several reasons. First, the allegation is conclusory and lumps several defendants together, which is impermissible. *See Johnson v. E. Baton Rouge Fed'n of Teachers*, 706 F. App'x 169, 170 (5th Cir. 2017) (citing *Iqbal*, 556 U.S. at 687) ("conclusory" allegations "will not be afforded the presumption of truth"); *Winslow*, 2017 WL 283281, at *2 (allegations must be made separately for "each defendant").

Second, the allegation is insufficient to state a claim against Get Good for aiding and abetting liability under Delaware law, which requires the Litigation Trustee to plead, at a minimum: (1) the existence of a fiduciary relationship, (2) a breach of the fiduciary's duty, (3) knowing participation by a non-fiduciary in the fiduciary's breach, and (4) damages proximately

caused by the breach. *Malpiede v. Townson*, 780 A.2d 1075, 1096 (Del. 2001).[17] For the reasons set forth above, *see* Section IV.D.1.b, the Litigation Trustee has not adequately pleaded that Mr. Dondero breached any fiduciary duty to HCMLP in view of the language of the LPA, nor does the Litigation Trustee even attempt to plead Get Good's "knowing participation" in any breach of fiduciary duty in relation to the CLO Holdco Transaction. These failures are fatal to the claim against Get Good.

Civil Conspiracy. In Count XVI, the Litigation Trustee alleges that "Ellington, Leventon, NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas conspired with Dondero to breach his fiduciary duties to HCMLP by intentionally siphoning assets away from HCMLP to evade HCMLP's creditors." Compl., ¶ 271. The Complaint fails to adequately plead civil conspiracy for two core reasons.

First, as with the aiding and abetting claim, a civil conspiracy claim cannot survive if there is no viable underlying tort claim. Because the breach of fiduciary duty claims against Mr. Dondero fail, there can be no civil conspiracy liability for participating in a non-existent and deficiently pleaded tort.

Second, the Complaint fails to allege the requisite "meeting of the minds" by the supposed co-conspirators, which is required. *MVS Int'l Corp. v. Int'l Advertising Solutions, LLC*, 545 S.W.3d 180, 196 (Tex. App. 2017) (citing *Tri v. J.T.T.*, 162 S.W.3d 552, 556 (Tex. 2005)). In this regard, conclusory allegations are insufficient. Instead, there must be specific allegations demonstrating that the conspiring parties were "aware of the intended harm or proposed wrongful conduct at the outset of the combination or agreement" and specifically intended and agreed "to

[17] As noted above, Texas law does not recognize a claim for aiding and abetting breach of fiduciary duty. *See* Section IV.D.1.a, *supra* at n.15. The Litigation Trustee does not plead any allegations that would support a claim against Get Good for "knowing participation" in breach of fiduciary duty under Texas law.

accomplish something unlawful." *Id*. Agreeing to engage in any particular conduct or transaction is not enough; conspiracy "requires a specific intent to cause the intended injury." *In re Artho*, 587 B.R. 866, 885 (Bankr. N.D. Tex. 2018); *see also Chu v. Hong*, 249 S.W.3d 441, 447 (Tex. 2008) (same). The Kirschner Complaint makes no allegations of intent against Get Good and makes only conclusory allegations against Mr. Dondero. In the absence of specific allegations of the requisite intent, the conspiracy claim fails.

2. The Complaint's Declaratory Judgment Claims Are Insufficient

Counts VI-VIII and X seek declaratory judgment that Mr. Dondero, Strand, and Dugaboy are liable for HCMLP's debts in various capacities. In Count VI, the Litigation Trustee seeks declaratory judgment that Strand is liable to HCMLP in its capacity as general partner. Compl., ¶¶ 209-213. Count VII seeks declaratory judgment that Mr. Dondero is liable for Strand's debts as Strand's "alter ego." *Id.*, ¶¶ 214-219. Count VIII seeks declaratory judgment that Mr. Dondero is liable for HCMLP's debts as HCMLP's "alter ego." *Id*., ¶¶220-223. And Count X seeks declaratory judgment that Dugaboy is liable for the debts of Mr. Dondero as his alter ego. *Id.*, ¶¶ 239-243. Each of these claims is deficient and should be dismissed.

Count VI (Strand Liable as GP). As an initial matter, as the Delaware statute cited in the Complaint explains, the liabilities of a general partner to the partnership may be altered by the relevant partnership agreement, which is precisely what occurred here. *See* DRULPA, § 17-403(b) (cited in Compl., ¶ 210). Count VI makes no reference to HCMLP's LPA, Strand's liabilities pursuant to the LPA, or whether and to what extent the LPA supports a judgment that Strand should be liable for HCMLP's "liabilities" (none of which are specifically identified). Under these circumstances, the Complaint falls well short of alleging a plausible claim for relief against Strand.

Count VII (Dondero Liable as Strand's Alter Ego). Count VII suffers from similar problems. Again, Mr. Dondero's liabilities as an acting officer and director of Strand are governed

by HCMLP's LPA—a document that Count VII simply ignores. But in addition, the allegations of Count VII fall short in several other respects.

Most notably, the claim fails to sufficiently allege facts that would support declaratory judgment that Mr. Dondero is Strand's alter ego. Under Delaware law, "to state a claim for piercing the corporate veil under an alter ego theory, [the plaintiff] must show (1) that the corporation and its shareholders operated as a single economic entity, and (2) that an overall element of injustice or unfairness is present." *Trevino v. Merscorp, Inc.*, 583 F. Supp. 2d 521, 528 (D. Del. 2008) (dismissing alter ego claim where plaintiff failed to plead facts showing that corporation and shareholders operated as a single economic entity). The Litigation Trustee fails to adequately plead either element here.

There is no allegation that Mr. Dondero and Strand "operated as a single economic entity." Although the Complaint alleges in conclusory fashion that Strand was a "sham entity" that "did not observe corporate formalities," the most the Litigation Trustee can point to in this regard is that "Strand never held a board meeting" and that Strand rarely documented corporate action. *See* Compl., ¶¶ 216, 218. Neither of these facts, even if accepted as true, establish that Strand was a "sham" entity or a mere instrumentality for Mr. Dondero. Notably, the Litigation Trustee does not allege that Strand was required to document Board meetings, stockholder meetings, or even corporate actions, such that its failure to do so was improper. Nor does the Partnership Agreement appointing Strand as General Partner require such actions. Further, as the Complaint acknowledges, Mr. Dondero was Strand's sole director and sole owner, which would make any documentation of meetings with himself quite surprising, to say the least. In the absence of any allegation that Strand and Mr. Dondero operated as a single economic unit in a way that was somehow "unfair" or "unjust," Count VII is deficient and should be dismissed.

Count VIII (Dondero & Strand Liable as HCMLP's Alter Ego). Count VIII likewise fails to set forth allegations sufficient to demonstrate that Mr. Dondero or Strand acted as HCMLP's alter ego. Again, the Complaint simply ignores that the relationships between Mr. Dondero, Strand, and HCMLP were governed by the LPA (as well as Strand's organizational documents filed with the Delaware Secretary of State), which more than suffice to establish that all three defendants observed corporate formalities. Nor does the Complaint point to any provisions of the LPA that were violated by Strand or Mr. Dondero in the conduct of HCMLP's affairs.

Further, the Complaint does not sufficiently allege that Mr. Dondero, Strand, and HCMLP acted as a "single economic entity." The most that the Complaint says is that Mr. Dondero "through Strand and as an officer of HCMLP, dominated and exercised total control over HCMLP," "failed to observe corporate formalities," and "did not distinguish between HCMLP and his personal interests and businesses." Compl., ¶ 221, 223. But these conclusory allegations are insufficient in the absence of specific examples or the allegation of other facts that make the conclusory statements plausible. The Complaint does not, for example, allege that Mr. Dondero or Strand commingled HCMLP's money with their own, shared bank accounts with HCMLP, used the partnership as their personal piggybanks, or did anything else to make them economically indistinguishable from HCMLP.[18]

Count X (Dugaboy as Dondero's Alter Ego). The Kirschner Complaint's allegation against Dugaboy is even more specious. Not only does the Complaint fail to allege any of the elements of alter ego liability that would justify the declaratory judgment sought, it is unclear how

[18] The most the Complaint says about Strand is that it "listed HCMLP's headquarters as its business address." Compl., ¶ 223. Putting aside that this makes sense—Strand was the GP operating HCMLP's business—it falls well short of establishing that the two entities "operated as a single economic entity."

any entity could ever be an individual's alter ego. That legal theory makes no sense, finds no support in any case law, and should be rejected.

3. The Complaint Fails To Plead A Viable Conversion Claim

In Count XXV, the Litigation Trustee alleges that Mr. Dondero is liable for conversion. To state a claim for conversion, a plaintiff must plead (1) the plaintiff "owned or had possession of the property or entitlement to possession;" (2) the defendant "unlawfully and without authorization assumed and exercised control over the property to the exclusion of, or inconsistent with, the plaintiff's rights as an owner;" and (3) resulting damages. *Gibson v. Wells Fargo Bank, N.A.*, 2016 WL 11755377, at *3 (N.D. Tex. June 9, 2016). The Complaint fails to plead these requisite elements.

Most notably, the Complaint fails to plead that Mr. Dondero "unlawfully and without authorization assumed and exercised control over the property." *See id.* at *3. At most, the Complaint surmises "on information and belief" that Mr. Dondero "directed Wick Phillips to withhold the . . . proceeds" rightfully due to HCMLP. Compl., ¶ 333. But the Complaint does not allege that Mr. Dondero's instruction was unlawful or unauthorized, or that Mr. Dondero ever assumed or exercised actual control of or ownership of the proceeds. To the contrary, the Complaint alleges that Wick Phillips, and subsequently two Cayman Islands entities, exercised that control. *Id.*, ¶¶ 329, 333.[19] The Complaint also fails to plead that HCMLP was actually entitled to payment of the proceeds at issue. In the absence of allegations supporting each element of the conversion claim, it should be dismissed.

[19] Although the Complaint alleges that Grey Royale Ltd., was "owned and controlled by Dondero and Ellington," *see* Compl., ¶ 333, that allegation, standing alone, does not permit a factfinder to ignore the corporate form and hold the owners of Grey Royale Ltd. liable for conversion.

4. The Litigation Trustee's Unjust Enrichment Claim Fails As A Matter Of Law

Count XXVI also should be dismissed because unjust enrichment is not an independent cause of action. *Redwood Resort Properties, LLC v. Holmes Co. Ltd.*, 2006 WL 3531422, at *8 (N.D. Tex. Nov. 27, 2006) ("Unjust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits . . . Accordingly, the court holds that Redwood has failed to state an unjust enrichment claim on which relief can be granted, and it dismisses this action."); *accord Midwestern Cattle Mktg., L.L.C. v. Legend Bank, N.A.*, 999 F.3d 970, 972 (5th Cir. 2021) (affirming dismissal of unjust enrichment claim because it is "not a distinct cause of action itself"). Because unjust enrichment is not an independent cause of action, the Court should dismiss XXVI of the Complaint.

5. The Claims Seeking Disallowance Of Claims Are Moot

Count XXXIV seeks disallowance of the certain proofs of claim filed by Mr. Dondero, Dugaboy, and Get Good. *See* Compl., ¶¶ 379, 393. But each of the Proofs of Claim referenced in Counts XXXIV and XXXV have been disallowed or withdrawn by consent. *See* Dkt. Nos. 1510, 2965, 2966, 3007, 3008, 3009, 3010, 3190. Thus, the plaintiff's claim is moot. *See Lee By & Through MacMillan v. Biloxi Sch. Dist.*, 963 F.2d 837, 839 (5th Cir. 1992).

V. CONCLUSION

The Court should dismiss all counts against the Dondero Defendants, either in whole or in part, because (1) the Court lacks subject matter under 28 U.S.C. § 1334 to adjudicate any of the non-core state-law claims, (2) the Litigation Trustee lacks standing to pursue many of the claims; (3) applicable statutes of limitations bar the claims either in whole or in part; and (4) the Complaint fails to sufficiently plead the requisite elements of the claims asserted.

Dated: March 23, 2022

DLA PIPER LLP (US)

/s/ Amy L. Ruhland

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Attorneys for Defendants James Dondero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 23, 2022, 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/ Amy L. Ruhland

Amy L. Ruhland (Rudd)

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 (SGJ)
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.;	Adv. Pro. No. 21-03076-sgj **DECLARATION AMY L. RUHLAND IN SUPPORT OF MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO DISMISS OF DEFENDANTS JAMES DONDERO, DUGABOY INVESTMENT TRUST, GET GOOD TRUST, AND STRAND ADVISORS, INC.**

SAS ASSET RECOVERY, LTD.; AND CPCM, LLC,

Defendants.

DECLARATION AMY L. RUHLAND IN SUPPORT OF MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO DISMISS OF DEFENDANTS JAMES D. DONDERO, DUGABOY INVESTMENT TRUST, GET GOOD TRUST, AND STRAND ADVISORS, INC.

I, Amy L. Ruhland, hereby declare as follows:

1. I am a Partner with the law firm DLA Piper LLP (US), counsel of record for Defendants James D. Donero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc. ("Dondero Defendants") in this action. I am familiar with the facts set forth herein and submit this declaration to attest to the accuracy of certain documents identified in the Dondero Defendants' Motion to Dismiss.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Fourth Amended and Restated Agreement of the Limited Partnership of Highland Capital Management, L.P.

3. Attached hereto as **Exhibit B** is a true and correct copy of the certificate of incorporation of Strand Advisors, Inc.

4. Attached hereto as **Exhibit C** is a true and correct copy of the bylaws of Strand Advisors, Inc.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: March 23, 2022

Amy L. Ruhland

EXHIBIT A

FOURTH AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

HIGHLAND CAPITAL MANAGEMENT, L.P.

THE PARTNERSHIP INTERESTS REPRESENTED BY THIS LIMITED PARTNERSHIP AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OP 1933 OR UNDER ANY STATE SECURITIES ACTS IN RELIANCE UPON EXEMPTIONS UNDER THOSE ACTS. THE SALE OR OTHER DISPOSITION OF THE PARTNERSHIP INTERESTS IS PROHIBITED UNLESS THAT SALE OR DISPOSITION IS MADE IN COMPLIANCE WITH ALL SUCH APPLICABLE ACTS. ADDITIONAL RESTRICTIONS ON TRANSFER OF THE PARTNERSHIP INTERESTS ARE SET FORTH IN THIS AGREEMENT.

FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF HIGHLAND CAPITAL MANAGEMENT, L.P.

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FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF HIGHLAND CAPITAL MANAGEMENT, L.P.

THIS FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP is entered into on this 24th day of December, 2015, to be effective as of December 24, 2015, by and among Strand Advisors, Inc., a Delaware corporation ("***Strand***"), as General Partner, the Limited Partners party hereto, and any Person hereinafter admitted as a Limited Partner.

Certain terms used in this Agreement are defined in Article 2.

ARTICLE 1

GENERAL

1.1. Continuation. Subject to the provisions of this Agreement, the Partners hereby continue the Partnership as a limited partnership pursuant to the provisions of the Delaware Act. Except as expressly provided herein, the rights and obligations of the Partners and the administration and termination of the Partnership shall be governed by the Delaware Act.

1.2. Name. The name of the Partnership shall be, and the business of the Partnership shall be conducted under the name of Highland Capital Management, L.P. The General Partner, in its sole and unfettered discretion, may change the name of the Partnership at any time and from time to time and shall provide Limited Partners with written notice of such name change within twenty (20) days after such name change.

1.3. Purpose. The purpose and business of the Partnership shall be the conduct of any business or activity that may lawfully be conducted by a limited partnership organized pursuant to the Delaware Act. Any or all of the foregoing activities may be conducted directly by the Partnership or indirectly through another partnership, joint venture, or other arrangement.

1.4. Term. The Partnership was formed as a limited partnership on July 7, 1997, and shall continue until terminated pursuant to this Agreement.

1.5. Partnership Offices; Addresses of Partners.

(a) Partnership Offices. The registered office of the Partnership in the State of Delaware shall be 1013 Centre Road, Wilmington, Delaware 19805-1297, and its registered agent for service of process on the Partnership at that registered office shall be Corporation Service Company, or such other registered office or registered agent as the General Partner may from time to time designate. The principal office of the Partnership shall be 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other place as the General Partner may from time to time designate. The Partnership may maintain offices at such other place or places as the General Partner deems advisable.

(b) Addresses of Partners. The address of the General Partner is 300 Crescent Court, Suite 700, Dallas, Texas 75201. The address of each Limited Partner shall be the address of that Limited Partner appearing on the books and records of the Partnership. Each Limited Partner agrees to provide the General Partner with prompt written notice of any change in his/her/its address.

ARTICLE 2

DEFINITIONS

2.1. Definitions. The following definitions shall apply to the terms used in this Agreement, unless otherwise clearly indicated to the contrary in this Agreement:

"***Additional Capital Contribution***" has the meaning set forth in Section 3.1(b) of this Agreement.

"***Adjusted Capital Account Deficit***" means, with respect *to* any Partner, the deficit balance, if any, in the Capital Account of that Partner as of the end of the relevant Fiscal Year, or other relevant period, giving effect to all adjustments previously made thereto pursuant to Section 3.7 and further adjusted as follows: (i) credit to that Capital Account, any amounts which that Partner is obligated or deemed obligated to restore pursuant to any provision of this Agreement or pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(c); (ii) debit to that Capital Account, the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6); and (iii) to the extent required under the Treasury Regulations, credit to that Capital Account (A) that Partner's share of "minimum gain" and (B) that Partner's share of "partner nonrecourse debt minimum gain." (Each Partner's share of the minimum gain and partner nonrecourse debt minimum gain shall be determined under Treasury Regulations Sections 1.704-2(g) and 1.704-2(i)(5), respectively.)

"***Affiliate***" means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question. As used in this definition, the term "***control***" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting Securities, by contract or otherwise.

"***Agreement***" means this Fourth Amended and Restated Agreement of Limited Partnership, as it may be amended, supplemented, or restated from time to time.

"***Business Day***" means Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States or the State of Texas shall not be regarded as a Business Day.

"***Capital Account***" means the capital account maintained for a Partner pursuant to Section 3.7(a).

"***Capital Contribution***" means, with respect to any Partner, the amount of money or property contributed to the Partnership with respect to the interest in the Partnership held by that Person.

"***Certificate of Limited Partnership***" means the Certificate of Limited Partnership filed with the Secretary of State of Delaware by the General Partner, as that Certificate may be amended, supplemented or restated from time to time.

"***Class A Limited Partners***" means those Partners holding a Class A Limited Partnership Interest, as shown on Exhibit A.

"***Class A Limited Partnership Interest***" means a Partnership Interest held by a Partner in its capacity as a Class A Limited Partner."

"Class B Limited Partner" means those Partners holding a Class B Limited Partnership Interest, as shown on Exhibit A.

"Class B Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class B Limited Partner."

"Class B NAV Ratio Trigger Period" means any period during which the Class B Limited Partner's aggregate capital contributions, including the original principal balance of the Contribution Note, and reduced by the aggregate amount of distributions to the Class B Limited Partner, exceed 75 percent of the product of the Class B Limited Partner's Percentage Interest multiplied by the total book value of the Partnership; provided, however, that the General Partner shall only be required to test for a Class B NAV Ratio Trigger Period annually, as of the last day of each calendar year; provided further the General Partner must complete the testing within 180 days of the end of each calendar year; provided further that if the test results in a Class B NAV Ratio Trigger Period, the General Partner may, at its own election, retest at any time to determine the end date of the Class B NAV Ratio Trigger Period.

"Class C Limited Partner" means those Partners holding a Class C Limited Partnership Interest, as shown on Exhibit A.

"Class C Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class C Limited Partner."

"Class C NAV Ratio Trigger Period" means any period during which an amount equal to $93,000,000.00 reduced by the aggregate amount of distributions to the Class C Limited Partner after the Effective Date exceeds 75 percent of the product of the Class C Limited Partner's Percentage Interest multiplied by the total book value of the Partnership; provided, however, that the General Partner shall only be required to test for a Class C NAV Ratio Trigger Period annually, as of the last day of each calendar year; provided further the General Partner must complete the testing within 180 days of the end of each calendar year; provided further that if the test results in a Class C NAV Ratio Trigger Period, the General Partner may, at its own election, retest at any time to determine the end date of the Class C NAV Ratio Trigger Period.

"***Code***" means the Internal Revenue Code of 1986, as amended and in effect from time to time.

"Contribution Note" means that certain Secured Promissory Note dated December 21, 2015 by and among Hunter Mountain Investment Trust, as maker, and the Partnership as Payee.

"***Default Loan***" has the meaning set forth in Section 3.1(c)(i).

"***Defaulting Partner***" has the meaning set forth in Section 3.1(c).

"***Delaware Act***" means the Delaware Revised Uniform Limited Partnership Act, Part IV, Title C, Chapter 17 of the Delaware Corporation Law Annotated, as it may be amended, supplemented or restated from time to time, and any successor to that Act.

"***Effective Date***" means the date first recited above.

"***Fiscal Year***" has the meaning set forth in Section 3.11(b).

"***Founding Partner Group***" means, all partners holding partnership interests in the Partnership immediately before the Effective Date.

"***General Partner***" means any Person who (i) is referred to as such in the first paragraph of this Agreement, or has become a General Partner pursuant to the terms of this Agreement; and (ii) has not ceased to be a General Partner pursuant to the terms of this Agreement.

"***Limited Partner***" means any Person who (i) is referred to as such in the first paragraph of this Agreement, or has become a Limited Partner pursuant to the terms of this Agreement, and (ii) has not ceased to be a Limited Partner pursuant to the terms of this Agreement.

"***Liquidator***" has the meaning set forth in Section 5.3.

"***Losses***" means, for each Fiscal Year, the losses and deductions of the Partnership determined in accordance with accounting principles consistently applied from year to year employed under the Partnership's method of accounting and as reported, separately or in the aggregate, as appropriate, on the Partnership's information tax return filed for federal income tax purposes, plus any expenditures described in Code Section 705(a)(2)(B).

"***Majority Interest***" means the owners of more than fifty percent (50%) of the Percentage Interests of Class A Limited Partners.

"NAV Ratio Trigger Period" means a Class B NAV Ratio Trigger Period or a Class C NAV Ratio Trigger Period.

"Net Increase in Working Capital Accounts" means the excess of (i) Restricted Cash plus Management and Incentive Fees Receivable plus Other Assets plus Deferred Incentive Fees Receivable less Accounts Payable less Accrued and Other Liabilities as of the end of the period being measured over (ii) Restricted Cash plus Management and Incentive Fees Receivable plus Other Assets plus Deferred Incentive Fees Receivable less Accounts Payable less Accrued and Other Liabilities as of the beginning of the period being measured; provided, however, that amounts within each of the aforementioned categories shall be excluded from the calculation to the extent they are specifically identified as being derived from investing or financing activities. Each of the capitalized terms in this definition shall have the meaning given them in the books and records of the Partnership and appropriate adjustments may be made to the extent the Partnership adds new ledger accounts to its books and records that are current assets or current liabilities.

"***New Issues***" means Securities that are considered to be "new issues," as defined in the Conduct Rules of the National Association of Securities Dealers, Inc.

"***Nonrecourse Deduction***" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(1), as computed under Treasury Regulations Section 1.704-2(c).

"***Nonrecourse* Liability**"has the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

"Operating Cash Flow" means Total Revenue less Total Operating Expenses plus Depreciation & Amortization less Net Increase in Working Capital Accounts year over year. Each of the capitalized terms in this definition shall have the meaning given them in the books and records of the Partnership.

"***Partner***" means a General Partner or a Limited Partner.

"***Partner Nonrecourse Debt***" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(4).

"***Partner Nonrecourse Deductions***" has the meaning set forth in Treasury Regulations Section 1.704-2(i)(2).

"***Partner Nonrecourse Debt Minimum Gain***" has the meaning set forth in Treasury Regulations Section 1.704-2(i)(5).

"***Partnership***" means Highland Capital Management, L.P., the Delaware limited partnership established pursuant to this Agreement.

"***Partnership Capital***" means, as of any relevant date, the net book value of the Partnership's assets.

"***Partnership Interest***" means the interest acquired by a Partner in the Partnership including, without limitation, that Partner's right: (a) to an allocable share of the Profits, Losses, deductions, and credits of the Partnership; (b) to a distributive share of the assets of the Partnership; (c) if a Limited Partner, to vote on those matters described in this Agreement; and (d) if the General Partner, to manage and operate the Partnership.

"***Partnership Minimum Gain***" has the meaning set forth in Treasury Regulations Section 1.704-2(d).

"***Percentage Interest***" means the percentage set forth opposite each Partner's name on Exhibit A as such Exhibit may be amended from time to time in accordance with this Agreement.

"***Person***" means an individual or a corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

"*Priority Distributions*" has the meaning set forth in Section 3.9(b).

"***Profits***" means, for each Fiscal Year, the income and gains of the Partnership determined in accordance with accounting principles consistently applied from year to year employed under the Partnership's method of accounting and as reported, separately or in the aggregate, as appropriate, on the Partnership's information tax return filed for federal income tax purposes, plus any income described in Code Section 705(a)(1)(B).

"***Profits Interest Partner***" means any Person who is issued a Partnership Interest that is treated as a "profits interest" for federal income tax purposes.

"*Purchase Notes*" means those certain Secured Promissory Notes of even date herewith by and among Hunter Mountain Investment Trust, as maker, and The Dugaboy Investment Trust, The Mark K. Okada, The Mark and Pamela Okada Family Trust –Exempt Trust#1, and The Mark K. Okada, The Mark and Pamela Okada Family Trust – Exempt Trust #2, each as Payees of the respective Secured Promissory Notes.

"***Record Date***" means the date established by the General Partner for determining the identity of Limited Partners entitled to vote or give consent to Partnership action or entitled to exercise rights in respect of any other lawful action of Limited Partners.

"***Second Amended Buy-Sell and Redemption Agreement***" means that certain Second Amended and Restated Buy-Sell and Redemption Agreement, dated December 21, 2015, to be effective as of December 21, 2015 by and between the Partnership and its Partners, as may be amended, supplemented, or restated from time to time.

"***Securities***" means the following: (i) securities of any kind (including, without limitation, "securities" as that term is defined in Section 2(a)(1) of the Securities Act; (ii) commodities of any kind (as that term is defined by the U.S. Securities Laws and the rules and regulations promulgated thereunder); (iii) any contracts for future or forward delivery of any security, commodity or currency; (iv) any contracts based on any securities or group of securities, commodities or currencies; (v) any options on any contracts referred to in clauses (iii) or (iv); or (vi) any evidences of indebtedness (including participations in or assignments of bank loans or trade credit claims). The items set forth in clauses (i) through (vi) herein include, but are not limited to, capital stock, common stock, preferred stock, convertible securities, reorganization certificates, subscriptions, warrants, rights, options, puts, calls, bonds, mutual fund interests, debentures, notes, certificates of deposit, letters of credit, bankers acceptances, trust receipts and other securities of any corporation or other entity, whether readily marketable or not, rights and options, whether granted or written by the Partnership or by others, treasury bills, bonds and notes, any securities or obligations issued or guaranteed by the United States or any foreign country or any state or possession of the United States or any foreign country or any political subdivision or agency or instrumentality of any of the foregoing, and derivatives of any of the foregoing.

"***Securities Act***" means the Securities Act of 1933, as amended, and any successor to such statute.

"***Substitute Limited Partner***" has the meaning set forth in Section 4.6(a).

"***Transfer***" or derivations thereof, of a Partnership Interest means, as a noun, the transfer, sale, assignment, exchange, pledge, hypothecation or other disposition of a Partnership Interest, or any part thereof, directly or indirectly, and as a verb, voluntarily or involuntarily to transfer, sell, assign, exchange, pledge, hypothecate or otherwise dispose of.

"***Treasury Regulations***" means the Department of Treasury Regulations promulgated under the Code, as amended and in effect (including corresponding provisions of succeeding regulations).

2.2. Other Definitions. All terms used in this Agreement that are not defined in this Article 2 have the meanings contained elsewhere in this Agreement.

ARTICLE3

FINANCIAL MATTERS

3.1. Capital Contributions.

(a) Initial Capital Contributions. The initial Capital Contribution of each Partner shall be set forth in the books and records of the Partnership.

(b) Additional Capital Contributions.

(i) The General Partner, in its reasonable discretion and for a *bona fide* business purpose, may request in writing that the Founding Partner Group make additional Capital Contributions in proportion to their Percentage Interests (each, an "***Additional Capital Contribution***").

(ii) Any failure by a Partner to make an Additional Capital Contribution requested under Section 3.1(b)(i) on or before the date on which that Additional Capital Contribution was due shall result in the Partner being in default.

(c) Consequences to Defaulting Partners. In the event a Partner is in default under Section 3.1(b) (a "***Defaulting Partner***"), the Defaulting Partner, in its sole and unfettered discretion, may elect to take either one of the option set forth below.

(i) Default Loans. If the Defaulting Partner so elects, the General Partner shall make a loan to the Defaulting Partner in an amount equal to that Defaulting Partner's additional capital contribution (a "***Default Loan***"). A Default Loan shall be deemed advanced on the date actually advanced. Default Loans shall earn interest on the outstanding principal amount thereof at a rate equal to the Applicable Federal Mid-Term Rate (determined by the Internal Revenue Service for the month in which the loan is deemed made) from the date actually advanced until the same is repaid in full. The term of any Default Loan shall be six (6) months, unless otherwise extended by the General Partner in its sole and unfettered discretion. If the General Partner makes a Default Loan, the Defaulting Partner shall not receive any distributions pursuant to Section 3.9(a) or Section 5.3 or any proceeds from the Transfer of all or any part of its Partnership Interest while the Default Loan remains unpaid. Instead, the Defaulting Partner's share of distributions or such other proceeds shall (until all Default Loans and interest thereon shall have been repaid in full) first be paid to the General Partner. Such payments shall be applied first to the payment of interest on such Default Loans and then to the repayment of the principal amounts thereof, but shall be considered, for all other purposes of this Agreement, to have been distributed to the Defaulting Partner. The Defaulting Partner shall be liable for the reasonable fees and expenses incurred by the General Partner (including, without limitation, reasonable attorneys' fees and disbursements) in connection with any enforcement or foreclosure upon any Default Loan and such costs shall, to the extent enforceable under applicable law, be added to the principal amount of the applicable Default Loan. In addition, at any time during the term of such Default Loan, the Defaulting Partner shall have the right to repay, in full, the Default Loan (including interest and any other charges). If the General Partner makes a Default Loan, the Defaulting Partner shall be deemed to have pledged to the General Partner and granted to the General Partner a continuing first priority security interest in, all of the Defaulting Partner's Partnership Interest to secure the payment of the principal of, and interest on, such Default Loan in accordance with the provisions hereof, and for such purpose this Agreement shall constitute a security agreement. The Defaulting Partner shall promptly execute, acknowledge and deliver such financing statements, continuation statements or other documents and take such other actions as the General Partner shall request in writing in order to perfect or continue the perfection of such security interest; and, if the Defaulting Partner shall fail to do so within seven (7) days after the Defaulting Partner's receipt of a notice making demand therefor, the General Partner is hereby appointed the attorney-in-fact of, and is hereby authorized on behalf of, the Defaulting Partner, to execute, acknowledge and deliver all such documents and take all such other actions as may be required to perfect such security interest. Such appointment and authorization are coupled with an interest and shall be irrevocable. The General Partner shall, prior to exercising any right or remedy (whether at law, in equity or pursuant to the terms hereof) available to it in connection with such security interest, provide to the Defaulting Partner a notice, in reasonable detail, of the right or remedy to be exercised and the intended timing of such exercise which shall not be less than five (5) days following the date of such notice.

(ii) Reduction of Percentage Interest. If the Defaulting Partner does not elect to obtain a Default Loan pursuant to Section 3.1(c)(i), the General Partner shall reduce the Defaulting Partner's Percentage Interest in accordance with the following formula:

> The Defaulting Partner's new Percentage Interest shall equal the product of (1) the Defaulting Partner's current Percentage Interest, multiplied by (2) the quotient of (a) the current Capital Account of the Defaulting Partner (with such Capital Account determined after taking into account a revaluation of the Capital Accounts immediately prior to such determination), divided by (b) the sum of (i) the current Capital Account of the Defaulting Partner (with such Capital Account determined after taking into account a revaluation of the Capital Accounts immediately prior to such determination), plus (ii) the amount of the additional capital contribution that such Defaulting Partner failed to make when due.

To the extent any downward adjustment is made to the Percentage Interest of a Partner pursuant to this Section 3.1(c)(ii), any resulting benefit shall accrue to the Partners (other than the Defaulting Partner) in proportion to their respective Percentage Interests.

3.2. Allocations of Profits and Losses.

(a) Allocations of Profits. Except as provided in Sections 3.4, 3.5, and 3.6, Profits for any Fiscal Year will be allocated to the Partners as follows:

(i) First, to the Partners until cumulative Profits allocated under this Section 3.2(a)(i) for all prior periods equal the cumulative Losses allocated to the Partners under Section 3.2(b)(iii) for all prior periods in the inverse order in which such Losses were allocated; and

(ii) Next, to the Partners until cumulative Profits allocated under this Section 3.2(a)(ii) for all prior periods equal the cumulative Losses allocated to the Partners under Section 3.2(b)(ii) for all prior periods in the inverse order in which such Losses were allocated; and

(iii) Then, to all Partners in proportion to their respective Percentage Interests.

(b) Allocations of Losses. Except as provided in Sections 3.4, 3.5, and 3.6, Losses for any Fiscal Year will be will be allocated as follows:

(i) First, to the Partners until cumulative Losses allocated under this Section 3.2(b)(i) for all prior periods equal the cumulative Profits allocated to the Partners under Section 3.2(a)(iii) for all prior periods in the inverse order in which such Profits were allocated; and

(ii) Next, to the Partners in proportion to their respective positive Capital Account balances until the aggregate Capital Account balances of the Partners (excluding any negative Capital Account balances) equal zero; *provided, however,* losses shall first be allocated to reduce amounts that were last allocated to the Capital Accounts of the Partners; and

(iii) Then, to all Partners in proportion to their respective Percentage Interests.

(c) Limitation on Loss Allocations. If any allocation of Losses would cause a Limited Partner to have an Adjusted Capital Account Deficit, those Losses instead shall be allocated to the General Partner.

3.3. Allocations on Transfers. Taxable items of the Partnership attributable to a Partnership Interest that has been Transferred (including the simultaneous decrease in the Partnership Interest of existing Partners resulting from the admission of a new Partner) shall be allocated in accordance with Section 4.3(d).

3.4. Special Allocations. If the requisite stated conditions or facts are present, the following special allocations shall be made in the following order:

(a) Partnership Minimum Gain Chargeback. Notwithstanding any other provision of this Article 3, if there is a net decrease in Partnership Minimum Gain during any taxable year or other period for which allocations are made, prior to any other allocation under this Agreement, each Partner shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods) in proportion to, and to the extent of, an amount equal to that Partner's share of the net decrease in Partnership Minimum Gain during that year determined in accordance with Treasury Regulations Section 1.704-2(g)(2). The items to be allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(g). This Section 3.4(a) is intended to comply with the partnership minimum gain chargeback requirements of the Treasury Regulations and shall be subject to all exceptions provided therein.

(b) Partner Nonrecourse Debt Minimum Gain Chargeback. Notwithstanding any other provision of this Article 3 (other than Section 3.4(a)), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain with respect to a Partner Nonrecourse Debt during any taxable year or other period for which allocations are made, any Partner with a share of such Partner Nonrecourse Debt Minimum Gain as of the beginning of the year shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods in an amount equal to that Partner's share of the net decrease in the Partner Nonrecourse Debt Minimum Gain during that year determined in accordance with Treasury Regulations Section 1.704-2(g)(2). The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(g). This Section 3.4(b) is intended to comply with the partner nonrecourse debt minimum gain chargeback requirements of the Treasury Regulations, shall be interpreted consistently with the Treasury Regulations and shall be subject to all exceptions provided therein.

(c) Qualified Income Offset. If a Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (d)(5) or (d)(6), then items of Partnership income and gain shall be specially allocated to each such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the Partner as quickly as possible; *provided, however,* an allocation pursuant to this Section 3.4(c) shall be made if and only to the extent that the Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 3 have been tentatively made without considering this Section 3.4(c).

(d) Gross Income Allocation. If a Partner has a deficit Capital Account at the end of any Fiscal Year of the Partnership that exceeds the sum of (i) the amount the Partner is obligated to restore, and (ii) the amount the Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(I) and 1.704-2(i)(5), then each such Partner shall be specially allocated items of income and gain of the Partnership in the amount of the excess as quickly as possible; *provided, however,* an allocation pursuant to this Section 3.4(d) shall be made if and only to

the extent that the Partner would have a deficit Capital Account in excess of that sum after all other allocations provided for in this Article 3 have been tentatively made without considering Section 3.4(c) or 3.4(d).

(e) Nonrecourse Deductions. Nonrecourse Deductions for any taxable year or other period for which allocations are made shall he allocated among the Partners in accordance with their Percentage interests.

(f) Partner Nonrecourse Deductions. Notwithstanding anything to the contrary in this Agreement, any Partner Nonrecourse Deductions for any taxable year or other period for which allocations are made will be allocated to the Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which the Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

(g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any asset of the Partnership under Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) and that gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Treasury Regulations.

(h) Section 481 Adjustments. Any allocable items of income, gain, expense, deduction or credit required to be made by Section 481 of the Code as the result of the sale, transfer, exchange or issuance of a Partnership Interest will be specially allocated to the Partner receiving said Partnership Interest whether such items are positive or negative in amount.

3.5. Curative Allocations. The "***Basic Regulatory Allocations***" consist of (i) the allocations pursuant to Section 3.2(c), and (ii) the allocations pursuant to Sections 3.4. Notwithstanding any other provision of this Agreement, the Basic Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction among the Partners so that, to the extent possible, the net amount of the allocations of other items and the Basic Regulatory Allocations to each Partner shall be equal to the net amount that would have been allocated to each such Partner if the Basic Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence, allocations pursuant to this Section 3.5 shall be made with respect to allocations pursuant to Section 3.4 (g) and (h) only to the extent that it is reasonably determined that those allocations will otherwise be inconsistent with the economic agreement among the Partners. To the extent that a special allocation under Section 3.4 is determined not to comply with applicable Treasury Regulations, then the Partners intend that the items shall be allocated in accordance with the Partners' varying Percentage Interests throughout each tax year during which such items are recognized for tax purposes.

3.6. Code Section 704(c) Allocations. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners so as to take account of any variation at the time of the contribution between the tax basis of the property to the Partnership and the fair market value of that property. Except as otherwise provided herein, any elections or other decisions relating to those allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intent of this Agreement. Allocations of income, gain, loss and deduction pursuant to this Section 3.6 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, the Capital Account of any Partner or the share

of Profits, Losses, other tax items or distributions of any Partner pursuant to any provision of this Agreement.

3.7. Capital Accounts.

(a) Maintenance of Capital Accounts. The Partnership shall establish and maintain a separate capital account (*"Capital Account"*) for each Partner in accordance with the rules of Treasury Regulations Section 1.704-1(b)(2)(iv), subject to and in accordance with the provisions set forth in this Section 3.7.

(i) The Capital Account balance of each Partner shall be credited (increased) by (A) the amount of cash contributed by that Partner to the capital of the Partnership, (B) the fair market value of property contributed by that Partner to the capital of the Partnership (net of liabilities secured by that contributed property that the Partnership assumes or takes subject to under Code Section 752), and (C) that Partner's allocable share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Sections 3.4 and 3.5; and

(ii) The Capital Account balance of each Partner shall be debited (decreased) by (A) the amount of cash distributed to that Partner by the Partnership, (B) the fair market value of property distributed to that Partner by the Partnership (net of liabilities secured by that distributed property that such Partner assumes or takes subject to under Code Section 752), (C) that Partner's allocable share of expenditures of the Partnership described in Code Section 705(a)(2)(B), and (D) that Partner's allocable share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Sections 3.2, 3.4 and 3.5.

The provisions of this Section 3.7 and the other provisions of this Agreement relating to the maintenance of Capital Accounts have been included in this Agreement to comply with Code Section 704(b) and the Treasury Regulations promulgated thereunder and will be interpreted and applied in a manner consistent with those provisions. The General Partner may modify the manner in which the Capital Accounts are maintained under this Section 3.7 in order to comply with those provisions, as well as upon the occurrence of events that might otherwise cause this Agreement not to comply with those provisions.

(b) Negative Capital Accounts. If any Partner has a deficit balance in its Capital Account, that Partner shall have no obligation to restore that negative balance or to make any Capital Contribution by reason thereof, and that negative balance shall not be considered an asset of the Partnership or of any Partner.

(c) Interest. No interest shall be paid by the Partnership on Capital Contributions or on balances in Capital Accounts.

(d) No Withdrawal. No Partner shall be entitled to withdraw any part of his/her/its Capital Contribution or his/her/its Capital Account or to receive any distribution from the Partnership, except as provided in Section 3.9 and Article 5.

(e) Loans From Partners. Loans by a Partner to the Partnership shall not be considered Capital Contributions.

(f) Revaluations. The Capital Accounts of the Partners shall not be "booked-up" or "booked-down" to their fair market values under Treasury Regulations Section 1.704(c)-1(b)(2)(iv)(f) or otherwise.

3.8. Distributive Share for Tax Purpose. All items of income, deduction, gain, loss or credit that are recognized for federal income tax purposes will be allocated among the Partners in accordance with the allocations of Profits and Losses hereunder as determined by the General Partner in its sole and unfettered discretion. Notwithstanding the foregoing, the General Partner may (i) as to each New Issue, specially allocate to the Partners who were allocated New Issue Profit from that New Issue any short-term capital gains realized during the Fiscal Year upon the disposition of such New Issue during that Fiscal Year, and (ii) specially allocate items of gain (or loss) to Partners who withdraw capital during any Fiscal Year in a manner designed to ensure that each withdrawing Partner is allocated gain (or loss) in an amount equal to the difference between that Partner's Capital Account balance (or portion thereof being withdrawn) at the time of the withdrawal and the tax basis for his/her/ its Partnership Interest at that time (or proportionate amount thereof); *provided, however,* that the General Partner may, without the consent of any other Partner, (a) alter the allocation of any item of taxable income, gain, loss, deduction or credit in any specific instance where the General Partner, in its sole and unfettered discretion, determines such alteration to be necessary or appropriate to avoid a materially inequitable result *(e.g.,* where the allocation would create an inappropriate tax liability); and/or (b) adopt whatever other method of allocating tax items as the General Partner determines is necessary or appropriate in order to be consistent with the spirit and intent of the Treasury Regulations under Code Sections 704(b) and 704(c).

3.9. Distributions.

(a) General. The General Partner may make such pro rata or non-pro rata distributions as it may determine in its sole and unfettered discretion, without being limited to current or accumulated income or gains, but no such distribution shall be made out of funds required to make current payments on Partnership indebtedness; provided, however, that the General Partner may not make non-pro rata distributions under this Section 3.9(a) during an NAV Ratio Trigger Period without the consent of the Class B Limited Partner (in the case of a Class B NAV Ratio Trigger Period) and/or the Class C Limited Partner (in the case of a Class C NAV Ratio Trigger Period); provided, further this provision should not be interpreted to limit in any way the General Partner's ability to make non-pro rata tax distributions under Section 3.9(c) and Section 3.9(f). The Partnership has entered into one or more credit facilities with financial institutions that may limit the amount and timing of distributions to the Partners. Thus, the Partners acknowledge that distributions from the Partnership may be limited. Any distributions made to the Class B Limited Partner or the Class C Limited Partner pursuant to Section 3.9(b) shall reduce distributions otherwise allocable to such Partners under this Section 3.9(a) until such aggregate reductions are equal to the aggregate distributions made to the Class B Partners and the Class C Partners under Section 3.9(b).

(b) Priority Distributions. Prior to the distribution of any amounts to Partners pursuant to Section 3.9(a), and notwithstanding any other provision in this Agreement to the contrary, the Partnership shall make the following distributions ("***Priority Distributions***") pro-rata among the Class B Limited Partner and the Class C Limited Partner in accordance with their relative Percentage Interests:

(i) No later than March 31st of each calendar year, commencing March 31, 2017, an amount equal to $1,600,000.00;

(ii) No later than March 31st of each year, commencing March 31, 2017, an amount equal to three percent (3%) of the Partnership's investment gain for the prior year, as reflected in the Partnership's books and records within ledger account number 90100 plus three percent (3%) of the gross realized investment gains for the prior year of Highland Select Equity Fund, as reflected in its books and records;

(iii) No later than March 31st of each year, commencing March 31, 2017, an amount equal to ten percent (10%) of the Partnership's Operating Cash Flow for the prior year; and

(iv) No later than December 24th of each year, commencing December 24, 2016, an amount equal to the aggregate annual principal and interest payments on the Purchase Notes for the then current year.

(c) Tax Distributions. The General Partner may, in its sole discretion, declare and make cash distributions pursuant hereto to the Partners to allow the federal and state income tax attributable to the Partnership's taxable income that is passed through the Partnership to the Partners to be paid by such Partners (a "***Tax Distribution***"). The General Partner may, in its discretion, make Tax Distributions to the Founding Partner Group without also making Tax Distributions to other Partners; provided, however, that if the General Partner makes Tax Distributions to the Founding Partner Group, Tax Distributions must also be made the Class B Limited Partner to the extent the Class B Limited Partner provides the Partnership with documentation showing it is subject to an entity-level federal income tax obligation. Notwithstanding anything else in this Agreement, the General Partner may declare and pay Tax Distributions even if such Tax Distributions cause the Partnership to be unable to make Priority Distributions under Section 3.9(b).

(d) Payments Not Deemed Distributions. Any amounts paid pursuant to Sections 4.1(e) or 4.1(h) shall not be deemed to be distributions for purposes of this Agreement.

(e) Withheld Amounts. Notwithstanding any other provision of this Section 3.9 to the contrary, each Partner hereby authorizes the Partnership to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Partnership with respect to that Partner as a result of that Partner's participation in the Partnership. If and to the extent that the Partnership shall be required to withhold or pay any such taxes, that Partner shall be deemed for all purposes of this Agreement to have received a payment from the Partnership as of the time that withholding or tax is paid, which payment shall be deemed to be a distribution with respect to that Partner's Partnership Interest to the extent that the Partner (or any successor to that Partner's Partnership Interest) is then entitled to receive a distribution. To the extent that the aggregate of such payments to a Partner for any period exceeds the distributions to which that Partner is entitled for that period, the amount of such excess shall be considered a loan from the Partnership to that Partner. Such loan shall bear interest (which interest shall be treated as an item of income to the Partnership) at the "Applicable Federal Rate" (as defined in the Code), as determined hereunder from time to time, until discharged by that Partner by repayment, which may be made in the sole and unfettered discretion of the General Partner out of distributions to which that Partner would otherwise be subsequently entitled. Any withholdings authorized by this Section 3.9(d) shall be made at the maximum applicable statutory rate under the applicable tax law unless the General Partner shall have received an opinion of counsel or other evidence satisfactory to the General Partner to the effect that a lower rate is applicable, or that no withholding is applicable.

(f) Special Tax Distributions. The Partnership shall, upon request of such Founding Partner, make distributions to the Founding Partners (or loans, at the election of the General Partner) in an amount necessary for each of them to pay their respective federal income tax obligations incurred through the effective date of the Third Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., the predecessor to this Agreement.

(g) Tolling of Priority Distributions. In the event of a "Honis Trigger Event," as defined in the Second Amended Buy-Sell and Redemption Agreement, the Partnership shall not make any distributions, including priority distributions under Section 3.9(b), to the Class B Limited Partner or the Class C Limited Partner until such time as a replacement trust administrator, manager and general partner,

as applicable, acceptable to the Partnership in its sole discretion, as indicated by an affirmative vote of consent by a Majority Interest, shall be appointed to the Class B Limited Partner/Class C Limited Partner and any of its direct or indirect owners that have governing documents directly affected by a Honis Trigger Event.

3.10. Compensation and Reimbursement of General Partner.

(a) Compensation. The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest; provided, however, that no compensation above five million dollars per year may be approved, even by a Majority Interest, during a NAV Ratio Trigger Period.

(b) Reimbursement for Expenses. In addition to amounts paid under other Sections of this Agreement, the General Partner and its Affiliates shall be reimbursed for all expenses, disbursements, and advances incurred or made, and all fees, deposits, and other sums paid in connection with the organization and operation of the Partnership, the qualification of the Partnership to do business, and all related matters.

3.11. Books, Records, Accounting, and Reports.

(a) Records and Accounting. The General Partner shall keep or cause to be kept appropriate books and records with respect to the Partnership's business, which shall at all times be kept at the principal office of the Partnership or such other office as the General Partner may designate for such purpose. The books of the Partnership shall be maintained for financial reporting purposes on the accrual basis or on a cash basis, as the General Partner shall determine in its sole and unfettered discretion, in accordance with generally accepted accounting principles and applicable law. Upon reasonable request, the Class B Limited Partner or the Class C Limited Partner may inspect the books and records of the Partnership.

(b) Fiscal Year. The fiscal year of the Partnership shall be the calendar year unless otherwise determined by the General Partner in its sole and unfettered discretion.

(c) Other Information. The General Partner may release information concerning the operations of the Partnership to any financial institution or other Person that has loaned or may loan funds to the Partnership or the General Partner or any of its Affiliates, and may release such information to any other Person for reasons reasonably related to the business and operations of the Partnership or as required by law or regulation of any regulatory body.

(d) Distribution Reporting to Class B Limited Partner and Class C Limited Partner. Upon request, the Partnership shall provide the Class B Limited Partner and/or the Class C Limited Partner information on any non-pro rata distributions made under Section 3.9 to Partners other than the Partner requesting the information.

3.12. Tax Matters.

(a) Tax Returns. The General Partner shall arrange for the preparation and timely filing of all returns of Partnership income, gain, loss, deduction, credit and other items necessary for federal, state and local income tax purposes. The General Partner shall deliver to each Partner as copy of his/her/its IRS Form K-1 as soon as practicable after the end of the Fiscal Year, but in no event later than October 1. The classification, realization, and recognition of income, gain, loss, deduction, credit and

other items shall be on the cash or accrual method of accounting for federal income tax purposes, as the General Partner shall determine in its sole and unfettered discretion. The General Partner in its sole and unfettered discretion may pay state and local income taxes attributable to operations of the Partnership and treat such taxes as an expense of the Partnership.

(b) Tax Elections. Except as otherwise provided herein, the General Partner shall, in its sole and unfettered discretion, determine whether to make any available tax election.

(c) Tax Controversies. Subject to the provisions hereof, the General Partner is designated the Tax Matters Partner (as defined in Code Section 6231), and is authorized and required to represent the Partnership, at the Partnership's expense, in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the General Partner in connection with such proceedings.

(d) Taxation as a Partnership. No election shall be made by the Partnership or any Partner for the Partnership to be excluded from the application of any of the provisions of Subchapter K, Chapter 1 of Subtitle A of the Code or from any similar provisions of any state tax laws.

ARTICLE 4

RIGHTS AND OBLIGATIONS OF PARTNERS

4.1. Rights and Obligations of the General Partner. In addition to the rights and obligations set forth elsewhere in this Agreement, the General Partner shall have the following rights and obligations:

(a) Management. The General Partner shall conduct, direct, and exercise full control of over all activities of the Partnership. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and Limited Partners shall have no right of control over the business and affairs of the Partnership. In addition to the powers now or hereafter granted to a general partner of a limited partnership under applicable law or that are granted to the General Partner under any provision of this Agreement, the General Partner shall have full power and authority to do all things deemed necessary or desirable by it to conduct the business of the Partnership, including, without limitation: (i) the determination of the activities in which the Partnership will participate; (ii) the performance of any and all acts necessary or appropriate to the operation of any business of the Partnership (including, without limitation, purchasing and selling any asset, any debt instruments, any equity interests, any commercial paper, any note receivables and any other obligations); (iii) the procuring and maintaining of such insurance as may be available in such amounts and covering such risks as are deemed appropriate by the General Partner; (iv) the acquisition, disposition, sale, mortgage, pledge, encumbrance, hyphothecation, of exchange of any or all of the assets of the Partnership; (v) the execution and delivery on behalf of, and in the name of the Partnership, deeds, deeds of trust, notes, leases, subleases, mortgages, bills of sale and any and all other contracts or instruments necessary or incidental to the conduct of the Partnership's business; (vi) the making of any expenditures, the borrowing of money, the guaranteeing of indebtedness and other liabilities, the issuance of evidences of indebtedness, and the incurrence of any obligations it deems necessary or advisable for the conduct of the activities of the Partnership, including, without limitation, the payment of compensation and reimbursement to the General Partner and its Affiliates pursuant to Section 3.10; (vii) the use of the assets of the Partnership (including, without limitation, cash on hand) for any Partnership purpose on any terms it sees fit, including, without limitation, the financing of operations of the Partnership, the lending of funds to other Persons, and the repayment of obligations

of the Partnership; (viii) the negotiation, execution, and performance of any contracts that it considers desirable, useful, or necessary to the conduct of the business or operations of the Partnership or the implementation of the General Partner's powers under this Agreement; (ix) the distribution of Partnership cash or other assets; (x) the selection, hiring and dismissal of employees, attorneys, accountants, consultants, contractors, agents and representatives and the determination of their compensation and other teens of employment or hiring; (xi) the formation of any further limited or general partnerships, joint ventures, or other relationships that it deems desirable and the contribution to such partnerships, ventures, or relationships of assets and properties of the Partnership; and (xii) the control of any matters affecting the rights and obligations of the Partnership, including, without limitation, the conduct of any litigation, the incurring of legal expenses, and the settlement of claims and suits.

(b) Certificate of Limited Partnership. The General Partner caused the Certificate of Limited Partnership of the Partnership to be filed with the Secretary of State of Delaware as required by the Delaware Act and shall cause to be filed such other certificates or documents (including, without limitation, copies, amendments, or restatements of this Agreement) as may be determined by the General Partner to be reasonable and necessary or appropriate for the formation, qualification, or registration and operation of a limited partnership (or a partnership in which Limited Partners have limited liability) in the State of Delaware and in any other state where the Partnership may elect to do business.

(c) Reliance by Third Parties. Notwithstanding any other provision of this Agreement to the contrary, no lender or purchaser or other Person, including any purchaser of property from the Partnership or any other Person dealing with the Partnership, shall be required to verify any representation by the General Partner as to its authority to encumber, sell, or otherwise use any assess or properties of the Partnership, and any such lender, purchaser, or other Person shall be entitled to rely exclusively on such representations and shall be entitled to deal with the General Partner as if it were the sole party in interest therein, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against any such lender, purchaser, or other Person to contest, negate, or disaffirm any action of the General Partner in connection with any such sale or financing. In no event shall any Person dealing with the General Partner or the General Partner's representative with respect to any business or property of the Partnership be obligated to ascertain that the terms of this Agreement have been complied with, and each such Person shall be entitled to rely on the assumptions that the Partnership has been duly formed and is validly in existence. In no event shall any such Person be obligated to inquire into the necessity or expedience of any act or action of the General Partner or the General Partner's representative, and every contract, agreement, deed, mortgage, security agreement, promissory note, or other instrument or document executed by the General Partner or the General Partner's representative with respect to any business or property of the Partnership shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (i), at the time of the execution and delivery thereof, this Agreement was in full force and effect; (ii) such instrument or document was duly executed in accordance with the terms and provisions of this Agreement and is binding upon the Partnership; and (iii) the General Partner or the General Partner's representative was duly authorized and empowered to execute and deliver any and every such instrument or document for and on behalf of the Partnership.

(d) Partnership Funds. The funds of the Partnership shall be deposited in such account or accounts as are designated by the General Partner. The General Partner may, in its sole and unfettered discretion, deposit funds of the Partnership in a central disbursing account maintained by or in the name of the General Partner, the Partnership, or any other Person into which funds of the General Partner, the Partnership, on other Persons are also deposited; *provided, however,* at all times books of account are maintained that show the amount of funds of the Partnership on deposit in such account and interest accrued with respect to such funds as credited to the Partnership. The General Partner may use the funds of the Partnership as compensating balances for its benefit; *provided, however,* such funds do

not directly or indirectly secure, and are not otherwise at risk on account of, any indebtedness or other obligation of the General Partner or any director, officer, employee, agent, representative, or Affiliate thereof. Nothing in this Section 4.1(d) shall be deemed to prohibit or limit in any manner the right of the Partnership to lend funds to the General Partner or any Affiliate thereof pursuant to Section 4.1(e)(i). All withdrawals from or charges against such accounts shall be made by the General Partner or by its representatives. Funds of the Partnership may be invested as determined by the General Partner in accordance with the terms and provisions of this Agreement.

(e) Loans to or from General Partner; Contracts with Affiliates; Joint Ventures.

(i) The General Partner or any Affiliate of the General Partner may lend to the Partnership funds needed by the Partnership for such periods of time as the General Partner may determine; *provided, however,* the General Partner or its Affiliate may not charge the Partnership interest at a rate greater than the rate (including points or other financing charges or fees) that would be charged the Partnership (without reference to the General Partner's financial abilities or guaranties) by unrelated lenders on comparable loans. The Partnership shall reimburse the General Partner or its Affiliate, as the case may be, for any costs incurred by the General Partner or that Affiliate in connection with the borrowing of funds obtained by the General Partner or that Affiliate and loaned to the Partnership. The Partnership may loan funds to the General Partner and any member of the Founding Partner Group at the General Partner's sole and exclusive discretion.

(ii) The General Partner or any of its Affiliates may enter into an agreement with the Partnership to render services, including management services, for the Partnership. Any service rendered for the Partnership by the General Partner or any Affiliate thereof shall be on terms that are fair and reasonable to the Partnership.

(iii) The Partnership may Transfer any assets to joint ventures or other partnerships in which it is or thereby becomes a participant upon terms and subject to such conditions consistent with applicable law as the General Partner deems appropriate; provided, however, that the Partnership may not transfer any asset to the General Partner or one of its Affiliates during any NAV Ratio Trigger Period for consideration less than such asset's fair market value.

(f) Outside Activities' Conflicts of Interest. The General Partner or any Affiliate thereof and any director, officer, employee, agent, or representative of the General Partner or any Affiliate thereof shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including, without limitation, business interests and activities in direct competition with the Partnership. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement or the partnership relationship created hereby in any business ventures of the General Partner, any Affiliate thereof, or any director, officer, employee, agent, or representative of either the General Partner or any Affiliate thereof.

(g) Resolution of Conflicts of Interest. Unless otherwise expressly provided in this Agreement or any other agreement contemplated herein, whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership or any Limited Partner, on the other hand, any action taken by the General Partner, in the absence of bad faith by the General Partner, shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or under the Delaware Act or any other applicable law, rule, or regulation.

(h) Indemnification. The Partnership shall indemnify and hold harmless the General Partner and any director, officer, employee, agent, or representative of the General Partner (collectively,

the "*GP Party*"), against all liabilities, losses, and damages incurred by any of them by reason of any act performed or omitted to be performed in the name of or on behalf of the Partnership, or in connection with the Partnership's business, including, without limitation, attorneys' fees and any amounts expended in the settlement of any claims or liabilities, losses, or damages, to the fullest extent permitted by the Delaware Act; *provided, however,* the Partnership shall have no obligation to indemnify and hold harmless a GP Party for any action or inaction that constitutes gross negligence or willful or wanton misconduct. The Partnership, in the sole and unfettered discretion of the General Partner, may indemnify and hold harmless any Limited Partner, employee, agent, or representative of the Partnership, any Person who is or was serving at the request of the Partnership acting through the General Partner as a director, officer, partner, trustee, employee, agent, or representative of another corporation, partnership, joint venture, trust, or other enterprise, and any other Person to the extent determined by the General Partner in its sole and unfettered discretion, but in no event shall such indemnification exceed the indemnification permitted by the Delaware Act. Notwithstanding anything to the contrary in this Section 4.1(h) or elsewhere in this Agreement, no amendment to the Delaware Act after the date of this Agreement shall reduce or limit in any manner the indemnification provided for or permitted by this Section 4.1(h) unless such reduction or limitation is mandated by such amendment for limited partnerships formed prior to the enactment of such amendment. In no event shall Limited Partners be subject to personal liability by reason of the indemnification provisions of this Agreement.

(i) Liability of General Partner.

(i) Neither the General Partner nor its directors, officers, employees, agents, or representatives shall be liable to the Partnership or any Limited Partner for errors in judgment or for any acts or omissions that do not constitute gross negligence or willful or wanton misconduct.

(ii) The General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its directors, officers, employees, agents, or representatives, and the General Partner shall not be responsible for any misconduct or negligence on the part of any agent or representative appointed by the General Partner.

(j) Reliance by General Partner.

(i) The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(ii) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, and other consultants and advisers selected by it, and any opinion of any such Person as to matters which the General Partner believes to be within such Person's professional or expert competence shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by the General Partner hereunder in good faith and in accordance with such opinion.

(k) The General Partner may, from time to time, designate one or more Persons to be officers of the Partnership. No officer need be a Partner. Any officers so designated shall have such authority and perform such duties as the General Partner may, from time to time, delegate to them. The General Partner may assign titles to particular officers, including, without limitation, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer. Each officer shall hold office until such Person's successor shall be duly designated and shall qualify or until such Person's death or

until such Person shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same Person. The salaries or other compensation, if any, of the officers and agents of the Partnership shall be fixed from time to time by the General Partner. Any officer may be removed as such, either with or without cause, by the General Partner whenever in the General Partner's judgment the best interests of the Partnership will be served thereby. Any vacancy occurring in any office of the Partnership may be filled by the General Partner.

4.2. Rights and Obligations of Limited Partners. In addition to the rights and obligations of Limited Partners set forth elsewhere in this Agreement, Limited Partners shall have the following rights and obligations:

(a) Limitation of Liability. Limited Partners shall have no liability under this Agreement except as provided herein or under the Delaware Act.

(b) Management of Business. No Limited Partner shall take part in the control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically set forth in this Agreement.

(c) Return of Capital. No Limited Partner shall be entitled to the withdrawal or return of its Capital Contribution except to the extent, if any, that distributions made pursuant to this Agreement or upon termination of the Partnership may be considered as such by law and then only to the extent provided for in this Agreement.

(d) Second Amended Buy-Sell and Redemption Agreement. Each Limited Partner shall comply with the terms and conditions of the Second Amended Buy-Sell and Redemption Agreement.

(e) Default on Priority Distributions. If the Partnership fails to timely pay Priority Distributions pursuant to Section 3.9(b), and the Partnership does not subsequently make such Priority Distribution within ninety days of its due date, the Class B Limited Partner or the Class C Limited Partner may require the Partnership to liquidate publicly traded securities held by the Partnership or Highland Select Equity Master Fund, L.P., a Delaware limited partnership controlled by the Partnership; provided, however, that the General Partner may in its sole discretion elect instead to liquidate other non-publicly traded securities owned by the Partnership in order to satisfy the Partnership's obligations under Section 3.9(b) and this Section 4.2(e). In either case, Affiliates of the General Partner shall have the right of first offer to purchase any securities liquidated under this Section 4.2(e).

4.3. Transfer of Partnership Interests.

(a) Transfer. No Partnership Interest shall be Transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Section 4.3 and the Second Amended Buy-Sell and Redemption Agreement. Any Transfer or purported Transfer of any Partnership Interest not made in accordance with this Section 4.3 and the Second Amended Buy-Sell and Redemption Agreement shall be null and void. An alleged transferee shall have no right to require any information or account of the Partnership's transactions or to inspect the Partnership's books. The Partnership shall be entitled to treat the alleged transferor of a Partnership Interest as the absolute owner thereof in all respects, and shall incur no liability to any alleged transferee for distributions to the Partner owning that Partnership Interest of record or for allocations of Profits, Losses, deductions or credits or for transmittal of reports and notices required to be given to holders of Partnership Interests.

(b) Transfers by General Partner. The General Partner may Transfer all, but not less than all, of its Partnership Interest to any Person only with the approval of a Majority Interest; provided, however, that the General Partner may not Transfer its Partnership Interest during any NAV Ratio Trigger Period except to the extent such Transfers are for estate planning purposes or resulting from the death of the individual owner of the General Partner. Any Transfer by the General Partner of its Partnership Interest under this Section 4.3(b) to an Affiliate of the General Partner or any other Person shall not constitute a withdrawal of the General Partner under Section 4.5(a), Section 5.1(b), or any other provision of this Agreement. If any such Transfer is deemed to constitute a withdrawal under such provisions or otherwise and results in the dissolution of the Partnership under this Agreement or the laws of any jurisdiction to which the Partnership of this Agreement is subject, the Partners hereby unanimously consent to the reconstitution and continuation of the Partnership immediately following such dissolution, pursuant to Section 5.2.

(c) Transfers by Limited Partners. The Partnership Interest of a Limited Partner may not be Transferred without the consent of the General Partner (which consent may be withheld in the sole and unfettered discretion of the General Partner), and in accordance with the Second Amended Buy-Sell and Redemption Agreement.

(d) Distributions and Allocations in Respect of Transferred Partnership Interests. If any Partnership Interest is Transferred during any Fiscal Year in compliance with the provisions of Article 4 and the Second Amended Buy-Sell and Redemption Agreement, Profits, Losses, and all other items attributable to the transferred interest for that period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the period in accordance with Code Section 706(d), using any conventions permitted by law and selected by the General Partner; provided that no allocations shall be made under this Section 4.3(d) that would affect any special allocations made under Section 3.4. All distributions declared on or before the date of that Transfer shall be made to the transferor. Solely for purposes of making such allocations and distributions, the Partnership shall recognize that Transfer not later than the end of the calendar month during which it is given notice of that Transfer; ***provided, however,*** if the Partnership does not receive a notice stating the date that Partnership Interest was Transferred and such other information as the General Partner may reasonably require within thirty (30) days after the end of the Fiscal Year during which the Transfer occurs, then all of such items shall be allocated, and all distributions shall be made, to the person who, according to the books and records of the Partnership, on the last day of the Fiscal Year during which the Transfer occurs, was the owner of the Partnership Interest. Neither the Partnership nor any Partner shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 4.3(d), whether or not any Partner or the Partnership has knowledge of any Transfer of ownership of any Partnership Interest.

(e) Forfeiture of Partnership Interests Pursuant to the Contribution Note. In the event any Class B Limited Partnership Interests are forfeited in favor of the Partnership as a result of any default on the Contribution Note, the Capital Accounts and Percentage Interests associated with such Class B Limited Partnership Interests shall be allocated pro rata among the Class A Partners. The Priority Distributions in Section 3.9(b) made after the date of such forfeiture shall each be reduced by an amount equal to the ratio of the Percentage Interest associated with the Class B Limited Partnership Interest transferred pursuant to this Section 4.3(e) over the aggregate Percentage Interests of all Class B Limited Partnership Interests and Class C Limited Partnership Interests, calculated immediately prior to any forfeiture of such Class B Limited Partnership Interest.

(f) Transfers of Partnership Interests Pursuant to the Purchase Notes. Notwithstanding any other provision in this Agreement, the Partnership shall respect, and the General Partner hereby provides automatic consent for, any transfers (in whole or transfers of partial interests) of

the Class C Limited Partnership Interests, or a portion thereof, if such transfer occurs as a result of a default on the Purchase Notes. Upon the transfer of any Class C Limited Partnership Interest to any member of the Founding Partner Group (or their assigns), such Class C Limited Partnership Interest shall automatically convert to a Class A Partnership Interest. The Priority Distributions in Section 3.9(b) shall each be reduced by an amount equal to the ratio of the Percentage Interest associated with the transferred Class C Limited Partnership Interest over the aggregate Percentage Interests of all Class B Limited Partnership Interests and Class C Limited Partnership Interests, calculated immediately prior to any transfer of such Class C Limited Partnership Interest.

4.4. Issuances of Partnership Interests to New and Existing Partners.

(a) Issuance of Partnership Interests to New Limited Partners. The General Partner may admit one or more additional Persons as Limited Partners ("Additional Limited Partners") to the Partnership at such times and upon such terms as it deems appropriate in its sole and unfettered discretion; provided, however, that the General Partner may only admit additional Persons as Limited Partners in relation to the issuance of equity incentives to key employees of the Partnership; provided, further that the General Partner may not issue such equity incentives to the extent they entitle the holders, in the aggregate, to a Percentage Interest in excess of twenty percent without the consent of the Class B Limited Partner and the Class C Limited Partner. All Class A Limited Partners, the Class B Limited Partner and the Class C Limited Partner shall be diluted proportionately by the issuance of such limited partnership interests. No Person may be admitted to the Partnership as a Limited Partner until he/she/it executes an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Second Amended Buy-Sell and Redemption Agreement.

(b) Issuance of an Additional Partnership Interest to an Existing Partner. The General Partner may issue an additional Partnership Interest to any existing Partner at such times and upon such terms as it deems appropriate in its sole and unfettered discretion. Upon the issuance of an additional Partnership Interest to an existing Partner, the Percentage Interests of the members of the Founding Partner Group shall be diluted proportionately. Any additional Partnership Interest shall be subject to all the terms and conditions of this Agreement and the Second Amended Buy-Sell and Redemption Agreement.

4.5. Withdrawal of General Partner

(a) Option. In the event of the withdrawal of the General Partner from the Partnership, the departing General Partner (the "***Departing Partner***") shall, at the option of its successor (if any) exercisable prior to the effective date of the departure of that Departing Partner, promptly receive from its successor in exchange for its Partnership Interest as the General Partner, an amount in cash equal to its Capital Account balance, determined as of the effective date of its departure.

(b) Conversion. If the successor to a Departing Partner does not exercise the option described in Section 4.5(a), the Partnership Interest of the Departing Partner as the General Partner of the Partnership shall be converted into a Partnership Interest as a Limited Partner.

4.6. Admission of Substitute Limited Partners and Successor General Partner.

(a) Admission of Substitute Limited Partners. A transferee (which may be the heir or legatee of a Limited Partner) or assignee of a Limited Partner's Partnership Interest shall be entitled to receive only the distributive share of the Partnership's Profits, Losses, deductions, and credits attributable to that Partnership Interest. To become a substitute Limited Partner (a "***Substitute Limited Partner"),***

that transferee or assignee shall (1) obtain the consent of the General Partner (which consent may be withheld in the sole and unfettered discretion of the General Partner), (ii) comply with all the requirements of this Agreement and the Second Amended Buy-Sell and Redemption Agreement with respect to the Transfer of the Partnership Interest at issue, and (iii) execute an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Second Amended Buy-Sell and Redemption Agreement. Upon admission of a Substitute Limited Partner, that Limited Partner shall be subject to all of the restrictions applicable to, shall assume all of the obligations of, and shall attain the status of a Limited Partner under and pursuant to this Agreement with respect to the Partnership Interest held by that Limited Partner.

(b) Admission of Successor General Partner. A successor General Partner selected pursuant to Section 5.2 or the transferee of or successor to all of the Partnership Interest of the General Partner pursuant to Section 4.3(b) shall be admitted to the Partnership as the General Partner, effective as of the date of the withdrawal or removal of the predecessor General Partner or the date of Transfer of that predecessor's Partnership Interest.

(c) Action by General Partner. In connection with the admission of any substitute limited Partner or successor General Partner or any additional Limited Partner, the General Partner shall have the authority to take all such actions as it deems necessary or advisable in connection therewith, including the amendment of Exhibit A and the execution and filing with appropriate authorities of any necessary documentation.

ARTICLE 5

DISSOLUTION AND WINDING UP

5.1. Dissolution. The Partnership shall be dissolved upon:

(a) The withdrawal, bankruptcy, or dissolution of the General Partner, or any other event that results in its ceasing to be the General Partner (other than by reason of a Transfer pursuant to Section 4.3(b));

(b) An election to dissolve the Partnership by the General Partner that is approved by the affirmative vote of a Majority Interest; *provided, however,* the General Partner may dissolve the Partnership without the approval of the Limited Partners in order to comply with Section 14 of the Second Amended Buy-Sell and Redemption Agreement; or

(c) Any other event that, under the Delaware Act, would cause its dissolution.

For purposes of this Section 5.1, the bankruptcy of the General Partner shall be deemed to have occurred when the General Partner: (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding; (iv) files a petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in a proceeding of the type described in clauses (i) through (iv) of this paragraph; (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of the General Partner's properties; or (vii) one hundred twenty (120) days expire after the date of the commencement of a proceeding against the General Partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or

similar relief under any law if the proceeding has not been previously dismissed, or ninety (90) days expire after the date of the appointment, without the General Partner's consent or acquiescence, of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of the General Partner's properties if the appointment has not previously been vacated or stayed, or ninety (90) days expire after the date of expiration of a stay, if the appointment has not previously been vacated.

5.2. Continuation of the Partnership. Upon the occurrence of an event described in Section 5.1(a), the Partnership shall be deemed to be dissolved and reconstituted if a Majority Interest elect to continue the Partnership within ninety (90) days of that event. If no election to continue the Partnership is made within ninety (90) days of that event, the Partnership shall conduct only activities necessary to wind up its affairs. If an election to continue the Partnership is made upon the occurrence of an event described in Section 5.1(a), then:

(a) Within that ninety (90)-day period a successor General Partner shall be selected by a Majority Interest;

(b) The Partnership shall be deemed to be reconstituted and shall continue until the end of the term for which it is formed unless earlier dissolved in accordance with this Article 5;

(c) The interest of the former General Partner shall be converted to an interest as a Limited Partner; and

(d) All necessary steps shall be taken to amend or restate this Agreement and the Certificate of Limited Partnership, and the successor General Partner may for this purpose amend this Agreement and the Certificate of Limited Partnership, as appropriate, without the consent of any Partner.

5.3. Liquidation. Upon dissolution of the Partnership, unless the Partnership is continued under Section 5.2, the General Partner or, in the event the General Partner has been dissolved, becomes bankrupt (as defined in Section 5.1), or withdraws from the Partnership, a liquidator or liquidating committee selected by a Majority Interest, shall be the Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by a Majority Interest. The Liquidator shall agree not to resign at any time without fifteen (15) days' prior written notice and (if other than the General Partner) may be removed at any time, with or without cause, by notice of removal approved by a Majority Interest. Upon dissolution, removal, or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers, and duties of the original Liquidator) shall within thirty (30) days thereafter be selected by a Majority Interest. The right to appoint a successor or substitute Liquidator in the manner provided herein shall be recurring and continuing for so long as the functions and services of the Liquidator are authorized to continue under the provisions hereof, and every reference herein to the Liquidator shall be deemed to refer also to any such successor or substitute Liquidator appointed in the manner provided herein. Except as expressly provided in this Article 5, the Liquidator appointed in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Partnership as provided herein. The Liquidator shall liquidate the assets of the Partnership and apply and distribute the proceeds of such liquidation in the following order of priority, unless otherwise required by mandatory provisions of applicable law:

(a) To the payment of the expenses of the terminating transactions including, without limitation, brokerage commission, legal fees, accounting fees and closing costs;

(b) To the payment of creditors of the Partnership, including Partners, in order of priority provided by law;

(c) To the Partners and assignees to the extent of, and in proportion to, the positive balances in their respective Capital Accounts as provided in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(2); *provided, however,* the Liquidator may place in escrow a reserve of cash or other assets of the Partnership for contingent liabilities in an amount determined by the Liquidator to be appropriate for such purposes; and

(d) To the Partners in proportion to their respective Percentage Interests.

5.4. Distribution in Kind. Notwithstanding the provisions of Section 5.3 that require the liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if on dissolution of the Partnership the Liquidator determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners and assignees, the Liquidator may defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Partnership (other than those to Partners) and/or may distribute to the Partners and assignees, in lieu of cash, as tenants in common and in accordance with the provisions of Section 5.3, undivided interests in such Partnership assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any joint operating agreements or other agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

5.5. Cancellation of Certificate of Limited Partnership. Upon the completion of the distribution of Partnership property as provided in Sections 5.3 and 5.4, the Partnership shall be terminated, and the Liquidator (or the General Partner and Limited Partners if necessary) shall cause the cancellation of the Certificate of Limited Partnership in the State of Delaware and of all qualifications and registrations of the Partnership as a foreign limited partnership in jurisdictions other **than** the State of Delaware and shall take such other actions as may be necessary to terminate the Partnership.

5.6. Return of Capital. The General Partner shall not be personally liable for the return of the Capital Contributions of Limited Partners, or any portion thereof, it being expressly understood that any such return shall be **made** solely from Partnership assets.

5.7. Waiver of Partition. Each Partner hereby waives any rights to partition of the Partnership property.

ARTICLE 6

GENERAL PROVISIONS

6.1. Amendments to Agreement. The General Partner may amend this Agreement without the consent of any Partner if the General Partner reasonably determines that such amendment is necessary and appropriate; *provided, however, any* action taken by the General Partner shall be subject to its fiduciary duties to the Limited Partners under the Delaware Act; provided further that any amendments

that adversely affect the Class B Limited Partner or the Class C Limited Partner may only be made with the consent of such Partner adversely affected.

6.2. Addresses and Notices. Any notice, demand, request, or report required or permitted to be given or made to a Partner under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by United States registered or certified mail to the Partner at his/her/its address as shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in any Partnership Interest by reason of an assignment or otherwise.

6.3. Titles and Captions. All article and section titles and captions in the Agreement are for convenience only, shall not be deemed part of this Agreement, and in no way shall define, limit, extend, or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to "Articles," "Sections" and "Exhibits" are to "Articles," "Sections" and "Exhibits" of this Agreement. All Exhibits hereto are incorporated herein by reference.

6.4. Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns, pronouns, and verbs shall include the plural and vice versa.

6.5. Further Action. The parties shall execute all documents, provide all information, and take or refrain from taking all actions as may be necessary or appropriate to achieve the purposes of this Agreement.

6.6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns.

6.7. Integration. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

6.8. Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Partnership.

6.9. Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement, or condition.

6.10. Counterparts. This agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

6.11. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

6.12. Invalidity of Provisions. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, then the parties shall be relieved of all obligations arising under that provision, but only to the extent that it is illegal, unenforceable, or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying that provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is

not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

6.13. General Partner Discretion. Whenever the General Partner may use its sole discretion, the General Partner may consider any items it deems relevant, including its own interest and that of its affiliates.

6.14. Mandatory Arbitration. In the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and /or preliminary injunctive relief in connection with any confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and thereafter, require arbitration of all issues of final relief. The arbitration will be conducted by the American Arbitration Association, or another mutually agreeable arbitration service. A panel of three arbitrators will preside over the arbitration and will together deliberate, decide and issue the final award. The arbitrators shall be duly licensed to practice law in the state of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each, each deposition to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admissions; (v) ten request for production (in response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents, including electronic documents); and (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrators shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. The arbitrators will not have the authority to render a decision that contains an outcome based on error of state or federal law or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrators have failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable arbitration services rules. All proceedings shall be conducted in Dallas, Texas or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and /or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

Remainder of Page intentionally Left Blank.
Signature Page Follows.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above.

GENERAL PARTNER:

STRAND AD VISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

LIMITED PARTNERS:

THE DUGABOY INVESTMENT TRUST

By: Nancy M. Dondero
Name: Nancy M. Dondero
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Name: Lawrence Tonomura
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Name: Lawrence Tonomura
Its: Trustee

MARK K. OKADA

_____
Mark K. Okada

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

LIMITED PARTNERS:

THE DUGABOY INVESTMENT TRUST

By: _____
Name: Nancy M. Dondero
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Name: Lawrence Tonomura
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Name: Lawrence Tonomura
Its: Trustee

MARK K. OKADA

_____
Mark K. Okada

HUNTER MOUNTAIN INVESTMENT TRUST
By: Beacon Mountain LLC, Administrator

By: _____
Name: John Honis
Its: President

Signature Page to Fourth Amended and Restated Agreement of Limited Partnership

EXHIBIT A

	Percentage Interest	
CLASS A PARTNERS	**By Class**	**Effective %**
GENERAL PARTNER:		
Strand Advisors	0.5573%	0.2508%
LIMITED PARTNERS:		
The Dugaboy Investment Trust	74.4426%	0.1866%
Mark K. Okada	19.4268%	0.0487%
The Mark and Pamela Okada Family Trust- Exempt Trust #1	3.9013%	0.0098%
The Mark and Pamela Okada Family Trust - Exempt Trust#2	1.6720%	0.0042%
Total Class A Percentage Interest	100.0000%	0.500%
CLASS B LIMITED PARTNERS		
Hunter Mountain Investment Trust	100.0000%	55.0000%
CLASS C LIMITED PARTNERS		
Hunter Mountain Investment Trust	100.0000%	44.500%
PROFIT AND LOSS AMONG CLASSES		
Class A Partners	0.5000%	
Class B Partners	55.0000%	
Class C Partners	44.5000%	

EXHIBIT B

ADDENDUM
TO THE
FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

THIS ADDENDUM (this "**Addendum**") to that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, to be effective as of December 24, 2015, as amended from time to time (the "Agreement"), is made and entered into as of the ___ day of _____, 20_, by and between Strand Advisors, Inc., as the sole General Partner (the "**General Partner**") of Highland Capital Management, L.P. (the "**Partnership**") and _____ ("_') (e x' c e p t as otherwise provided herein, all capitalized terms used herein shall have the meanings set forth in the Agreement).

RECITALS:

WHEREAS, the General Partner, in its sole and unfettered discretion, and without the consent of any Limited Partner, has the authority under (i) Section 4.4 of the Agreement to admit Additional Limited Partners, (ii) Section 4.6 of the Agreement to admit Substitute Limited Partners and (iii) Section 6.1 of the Agreement to amend the Agreement;

WHEREAS, the General Partner desires to admit _____ as a Class __ Limited Partner holding a __% Percentage Interest in the Partnership as of the date hereof;

WHEREAS, _____desires to become a Class __Limited Partner and be bound by the terms and conditions of the Agreement; and

WHEREAS, the General Partner desires to amend the Agreement to add _____ as a party thereto.

AGREEMENT:

RESOLVED, as a condition to receiving a Partnership Interest in the Partnership, _____ acknowledges and agrees that he/she/it (i) has received and read a copy of the Agreement, (ii) shall be bound by the terms and conditions of the Agreement; and (iii) shall promptly execute an addendum to the Second Amended Buy-Sell and Redemption Agreement; and be it

FURTHER RESOLVED, the General Partner hereby amends the Agreement to add _____ as a Limited Partner, and the General Partner shall attach this Addendum to the Agreement and make it a part thereof; and be it

FURTHER RESOLVED, this Addendum may be executed in any number of counterparts, all of which together shall constitute one Addendum binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the day and year above written.

GENERAL PARTNER:

STRAND ADVISORS, INC.

By: _____
Name: _____
Title: _____

NEW LIMITED PARTNER:

[_____]

AGREED AND ACCEPTED:

In consideration of the terms of this Addendum and the Agreement, in consideration of the Partnership's allowing the above signed Person to become a Limited Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms and conditions of the Agreement as though a party thereto.

SPOUSE OF NEW LIMITED PARTNER:

[_____]

EXHIBIT B

Appendix in Support of Motion to Dismiss Page 41 of 160

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 05/21/1996
960146949 - 2625806

CERTIFICATE OF INCORPORATION
OF
STRAND ADVISORS, INC.

ARTICLE I

The name of the Corporation is Strand Advisors, Inc.

ARTICLE II

The name of the Corporation's registered agent and the address of its registered office in the State of Delaware is Corporation Service Company, 1013 Centre Road, Wilmington, New Castle County, Delaware 19805-1297.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE IV

The total number of shares of capital stock which the Corporation shall have the authority to issue is One Thousand (1,000) shares of Common Stock, $.01 par value.

ARTICLE V

In furtherance and not limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to alter, amend or repeal the bylaws of the Corporation or to adopt new bylaws.

ARTICLE VI

The incorporator is Albert R. Fox, Jr., whose mailing address is 1717 Main Street, Suite 2800, Dallas, Texas 75201.

ARTICLE VII

The number of directors constituting the initial Board of Directors is one (1), and the name and address of the person who is to serve as director until the first annual meeting of the stockholders or until his successor is elected and qualified are:

Name	Address
James Dondero	1150 Two Galleria 13455 Noel Road LB 45 Dallas, Texas 75240

ARTICLE VIII

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended after the filing of this Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE IX

A. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director or officer or in any other capacity while serving as a director or officer, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, excise taxes or penalties and amounts paid or to be paid in settlement) incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue with respect to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as provided in paragraph (B) hereof with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding initiated by such

indemnitee only if such proceeding was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Article IX shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Article or otherwise.

B. Right of Indemnitee to Bring Suit. If a claim under paragraph (A) of this Article is not paid in full by the Corporation within sixty days after a written claim has been received by the Corporation (except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty days), the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, the indemnitee shall also be entitled to be paid the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met the applicable standard of conduct set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled under this Article or otherwise to be indemnified, or to such advancement of expenses, shall be on the Corporation.

C. Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article IX shall not be exclusive of any other right which any person may have or hereafter acquire under this Certificate of Incorporation or any bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

D. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any indemnitee against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

E. Indemnity of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article IX or as otherwise permitted under the Delaware General Corporation Law with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

ARTICLE X

No stockholder of the Corporation shall by reason of his holding shares of any class of its capital stock have any preemptive or preferential right to purchase or subscribe for any shares of any class of the Corporation, now or hereafter to be authorized, or any notes, debentures, bonds or other securities convertible into or carrying warrants, rights or options to purchase shares of any class or any other security, now or hereafter to be authorized, whether or not the issuance of any such shares or such notes, debentures, bonds or other securities would adversely affect the dividend, voting or any other rights of such stockholder; and the Board of Directors may issue shares of any class of the Corporation, or any notes, debentures, bonds or other securities convertible into or carrying warrants, rights or options to purchase shares of any class, without offering any such shares of any class, either in whole or in part, to the existing holders of any class of stock of the Corporation.

ARTICLE XI

Cumulative voting for the election of Directors shall not be permitted.

IN WITNESS WHEREOF, the undersigned incorporator of the Corporation hereby certifies that the facts herein stated are true, and accordingly has signed this instrument this 21st day of May, 1996.

Albert R. Fox, Jr.
Incorporator

EXHIBIT C

BYLAWS

OF

STRAND ADVISORS, INC.

ARTICLE I

Offices

Section 1. Registered Office. The registered office of the corporation shall be in the City of Wilmington, County of New Castle, State of Delaware.

Section 2. Other Offices. The corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or as the business of the corporation may require.

ARTICLE II

Meetings of Stockholders

Section 1. Place of Meetings. Meetings of stockholders may be held at such time and place, within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2. Annual Meetings. An annual meeting of stockholders shall be held on such day in each fiscal year of the corporation and at such time and place as may be fixed by the Board of Directors, at which meeting the stockholders shall elect a Board of Directors and transact such other business as may properly be brought before the meeting.

Section 3. Notice of Annual Meeting. Written or printed notice of the annual meeting, stating the place, day and hour thereof, shall be given to each stockholder entitled to vote thereat at such address as appears on the books of the corporation, not less than ten days nor more than sixty days before the date of the meeting.

Section 4. Special Meetings. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or the certificate of incorporation, may be called by the President, and shall be called by the President or the Secretary at the request in writing of a majority of the Board of Directors, or at the request in writing of stockholders of record owning at least one-tenth (1/10) of all shares issued and outstanding and entitled to vote at such meeting. Such request shall state the purpose or purposes of the proposed meeting.

Section 5. Notice of Special Meetings. Written or printed notice of a special meeting of stockholders, stating the place, day and hour and purpose or purposes thereof, shall be given to each stockholder entitled to vote thereat at such address as appears on the books of the corporation, not less than ten days nor more than sixty days before the date of the meeting.

Section 6. Business at Special Meetings. Business transacted at all special meetings of stockholders shall be confined to the purpose or purposes stated in the notice thereof.

Section 7. Stockholder List. At least ten days before each meeting of stockholders, a complete list of the stockholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of voting shares held by each, shall be prepared by the Secretary. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for such ten day period, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any stockholder during the meeting.

Section 8. Quorum. The holders of a majority of the votes attributed to the shares of capital stock issued and outstanding and entitled to vote thereat, represented in person or by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute, the certificate of incorporation or these bylaws. The stockholders present may adjourn the meeting despite the absence of a quorum. When a meeting is adjourned for less than thirty days in any one adjournment and a new record date is not fixed for the adjourned meeting, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. When a meeting is adjourned for thirty days or more, or when after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given as in the case of an original meeting.

Section 9. Majority Vote. When a quorum is present at any meeting, the vote of the holders of a majority of the shares having voting power represented in person or by proxy shall decide any question brought before such meeting, unless the question is one upon which, by express provision of statute, the certificate of incorporation or these bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 10. Proxies. (a) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

(b) Without limiting the manner in which a stockholder may authorize another person or persons to act for him as proxy pursuant to subsection (a) of this Section, the following shall constitute a valid means by which a stockholder may grant such authority:

(i) A stockholder may execute a writing authorizing another person or persons to act for him as proxy. Execution may be accomplished by the stockholder or his authorized officer, director, employee or agent signing such writing or causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for him as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

(c) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (b) of this Section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(d) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (b) of this Section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 11. Voting. Unless otherwise provided by statute or the certificate of incorporation, each stockholder shall have one vote for each share of stock having voting power, registered in his name on the books of the corporation.

Section 12. Consent of Stockholders in Lieu of Meeting. Any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled

to vote thereon were present and voted and such consent or consents are delivered to the corporation. Every written consent shall bear the date of signatures of each stockholder and no written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest dated consent, written consents signed by a sufficient number of holders to take action are delivered to the corporation. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 13. Inspectors. (a) The corporation may, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his ability.

(b) The inspectors shall (i) ascertain the number of shares outstanding and the voting power of each, (ii) determine the shares represented at a meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

(c) The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Delaware Court of Chancery, upon application by a stockholder, shall determine otherwise.

(d) In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with Article II, Section 10(b)(ii), ballots and the regular books and records of the corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons that represent more votes than the holder of a proxy is authorized by the record owner to cast, or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification pursuant to subsection (b)(v) of this Section shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspector's belief that such information is accurate and reliable.

ARTICLE III

Board of Directors

Section 1. Powers. The business and affairs of the corporation shall be managed by a Board of Directors. The Board may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute, by the certificate of incorporation or these bylaws directed or required to be exercised or done by the stockholders.

Section 2. Number of Directors. The number of directors which shall constitute the whole Board shall be fixed from time to time by resolution of the Board of Directors, provided that such number shall not be less than one (1) nor more than five (5).

Section 3. Election and Term. Except as provided in Section 4 of this Article III, directors shall be elected at the annual meeting of the stockholders, and each director shall be elected to serve until the next annual meeting and until his successor shall have been elected and shall qualify, or until his death, resignation or removal from office. Directors need not be stockholders of the corporation.

Section 4. Vacancies and Newly Created Directorships. If the office of any director or directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, or the number of directors constituting the whole Board shall be increased, a majority of the remaining or existing directors, though less than a quorum, may choose a successor or successors, or the director or directors to fill the new directorship or directorships, who shall hold office for the unexpired term in respect to which such vacancy occurred or, in the case of a new directorship or directorships, until the next annual meeting of the stockholders.

Section 5. Removal. The stockholders may remove a director either for or without cause at any meeting of stockholders, provided notice of the intention to act upon such matter shall have been given in the notice calling such meeting.

ARTICLE IV

Meetings of the Board

Section 1. First Meeting. The first meeting of each newly elected Board of Directors shall be held at the location of and immediately following the annual meeting of stockholders, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present; or the Board may meet at such place and time as shall be fixed by the consent in writing of all the directors. All meetings of the Board of Directors may be held at such place, either within or without the State of Delaware, as from time to time shall be determined by the Board of Directors.

Section 2. Regular Meetings. Regular meetings of the Board may be held at such time and place and on such notice, if any, as shall be determined from time to time by the Board.

Section 3. Special Meetings. Special meetings of the Board may be called by the President or the Chairman of the Board on twenty-four hours' notice to each director, delivered either personally or by mail or by telegram or telecopier. Special meetings shall be called by the President or the Secretary in like manner and on like notice on the written request of one director.

Section 4. Quorum and Voting. At all meetings of the Board, a majority of the directors at the time in office shall be necessary and sufficient to constitute a quorum for the transaction of business; and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws. If a quorum shall not be present at any meeting of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 5. Telephone Meetings. Directors may attend any meeting of the Board or any committee thereof by conference telephone, radio, television or similar means of communication by means of which all persons participating in the meeting can hear each other, and all members so attending shall be deemed present at the meeting for all purposes including the determination of whether a quorum is present.

Section 6. Action by Written Consent. Any action required or permitted to be taken by the Board or any committee thereof, under the applicable provisions of any statute, the certificate of incorporation, or these bylaws, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the Board or committee, as the case may be.

ARTICLE V

Committees

Section 1. Executive Committee. The Board of Directors, by resolution adopted by a majority of the whole Board, may designate one or more directors to constitute an Executive Committee, which Committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board of Directors in the business and affairs of the corporation except where action by the Board of Directors is expressly required by statute. The Executive Committee shall keep regular minutes of its proceedings and report the same to the Board when required.

Section 2. Other Committees. The Board of Directors may similarly create other committees for such terms and with such powers and duties as the Board deems appropriate.

Section 3. Committee Rules; Quorum. Each committee may adopt rules governing the method of calling and time and place of holding its meetings. Unless otherwise provided by the Board of Directors, a majority of any committee shall constitute a quorum for the transaction of business, and the act of a majority of the members of such committee present at a meeting at which a quorum is present shall be the act of such committee.

ARTICLE VI

Compensation of Directors

The Board of Directors shall have authority to determine, from time to time, the amount of compensation, if any, which shall be paid to its members for their services as directors and as members of committees. The Board shall also have power in its discretion to provide for and to pay to directors rendering services to the corporation not ordinarily rendered by directors as such, special compensation appropriate to the value of such services as determined by the Board from time to time. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

ARTICLE VII

Notices

Section 1. Methods of Notice. Whenever any notice is required to be given to any stockholder, director or committee member under the provisions of any statute, the certificate of incorporation or these bylaws, such notice shall be delivered personally or shall be given in writing by mail addressed to such stockholder, director or committee member at such address as appears on the books of the corporation, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail with postage thereon prepaid. Notice to directors and committee members may also be given by telegram, which notice shall be deemed to be given at the time it is delivered to the telegraph office, or by telecopy, which notice shall be deemed to be given at the time it is transmitted or in person, which notice shall be deemed to be given when received.

Section 2. Waiver of Notice. Whenever any notice is required to be given to any stockholder, director or committee member under the provisions of any statute, the certificate of incorporation or these bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at any meeting shall constitute a waiver of notice thereof except as otherwise provided by statute.

ARTICLE VIII

Officers

Section 1. Executive Officers. The executive officers of the corporation shall consist of at least a President and a Secretary, each of whom shall be elected by the Board of Directors. The Board of Directors may also elect as officers of the corporation a Chairman of the Board, one or more Vice Presidents, one or more of whom may be designated Executive or Senior Vice Presidents and may also have such descriptive titles as the Board shall deem appropriate, and a Treasurer. Any two or more offices may be held by the same person.

Section 2. Election and Qualification. The Board of Directors at its first meeting after each annual meeting of stockholders shall elect the officers of the corporation.

Section 3. Other Officers and Agents. The Board may elect or appoint Assistant Vice Presidents, Assistant Secretaries and Assistant Treasurers, and such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

Section 4. Salaries. The salaries of all officers of the corporation shall be fixed by the Board of Directors except as otherwise directed by the Board.

Section 5. Term, Removal and Vacancies. The officers of the corporation shall hold office until their successors are chosen and qualify. Any officer or agent of the corporation may be removed at any time by the affirmative vote of a majority of the Board of Directors, or by the President. Any vacancy occurring in any office of the corporation may be filled by the Board of Directors or otherwise as provided in this Article.

Section 6. Execution of Instruments. The Chairman of the Board and the President (and such other officers as are authorized thereunto by resolution of the Board of Directors) may execute in the name of the corporation bonds, notes, debentures and other evidences of indebtedness, stock certificates, deeds, mortgages, deeds of trust, indentures, contracts, leases, agreements and other instruments, requiring a seal under the seal of the corporation, and may execute such documents where not requiring a seal, except where such documents are required by law to be otherwise signed and executed, and except where the signing and execution thereof shall be exclusively delegated to some other officer or agent of the corporation.

Section 7. Duties of Officers. The duties and powers of the officers of the corporation shall be as provided in these bylaws, or as provided for pursuant to these bylaws, or (except to the extent inconsistent with these bylaws or with any provision made pursuant hereto) shall be those customarily exercised by corporate officers holding such offices.

Section 8. Chairman of the Board. The Chairman of the Board shall preside when present at all meetings of the Board of Directors. He shall advise and counsel the other officers of the corporation and shall exercise such powers and perform such duties as shall be assigned to

or required of him from time to time by the Board of Directors. The Chairman of the Board may, if so designated by the Board of Directors, be the Chief Executive Officer of the corporation; in such event he shall have all of the powers granted by the bylaws to the President and from time to time may delegate all, or any, of his powers and duties to the President.

Section 9. President. The President shall preside at all meetings of the stockholders and shall be ex-officio a member of all standing committees, have general powers of oversight, supervision and management of the business and affairs of the corporation, and see that all orders and resolutions of the Board of Directors are carried into effect.

In the event another executive officer has been designated Chief Executive Officer of the corporation by the Board of Directors, then (i) such other executive officer shall have all of the powers granted by the bylaws to the President; and (ii) the President shall, subject to the powers of supervision and control thereby conferred upon the Chief Executive Officer, be the chief operating officer of the corporation and shall have all necessary powers to discharge such responsibility including general supervision of the affairs of the corporation and general and active control of all of its business.

The President shall perform all the duties and have all the powers of the Chairman of the Board in the absence of the Chairman of the Board.

Section 10. Vice Presidents. The Vice Presidents in the order determined by the Board of Directors shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board of Directors, the Chairman of the Board and the President may prescribe.

Section 11. Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the committees of the Board of Directors when required. Except as may be otherwise provided in these bylaws, he shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors and the President. He shall keep in safe custody the seal of the corporation, if any, and shall have authority to affix the same to any instrument requiring it, and when so affixed it may be attested by his signature. The Board of Directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his signature. In the absence of the Treasurer and all Assistant Treasurers, the Secretary shall perform all the duties and have all the powers of the Treasurer.

Section 12. Assistant Secretaries. The Assistant Secretaries in the order determined by the Board of Directors shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties as the Board of Directors, the Chairman of the Board and President may prescribe. Assistant secretaries may be appointed by the president without prior approval of the board of directors.

Section 13. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all monies and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the Board of Directors, the Chairman of the Board and the President, whenever they may require it, an account of all of his transactions as Treasurer and of the financial condition of the corporation.

Section 14. Assistant Treasurers. The Assistant Treasurers in the order determined by the Board of Directors shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties as the Board of Directors, the Chairman of the Board and the President may prescribe.

ARTICLE IX

Shares and Stockholders

Section 1. Certificates Representing Shares. Every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by, the Chairman or Vice Chairman of the Board of Directors, or the President or a Vice President and the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the corporation, certifying the number of shares owned by him in the corporation. The signature of any such officer may be facsimile. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issuance. If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the General Corporation Law of the State of Delaware, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests the designations, preferences and relative, participating, optional or other special rights of each class or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 2. Transfer of Shares. Subject to valid transfer restrictions and to stop-transfer orders directed in good faith by the corporation to any transfer agent to prevent possible violations of federal or state securities laws, rules or regulations, or for any other lawful purpose, upon surrender to the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the

corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 3. Fixing Record Date.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty nor less than ten days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the date on which notice is given, or, if notice is waived, at the close of business on the date next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by this Section, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to receive any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 4. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of any share or shares to receive dividends, and to vote as such owner, and for all other purposes as such owner; and the corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

Section 5. Lost Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

ARTICLE X

Indemnification

(a) The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and

reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(c) To the extent that a director, officer, employee or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under subsections (a) and (b) (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) and (b). Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

(e) Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in this Article X. Such expenses incurred by other employees or agents may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this Article X shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, any agreement or vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

(g) The corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as

such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Article X.

(h) For purposes of this Article X, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article X with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(i) For purposes of this Article X, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Article X.

(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this Article X shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE XI

General

Section 1. Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the certificate of incorporation, if any, or of the resolutions, if any, providing for any series of stock, may be declared by the Board of Directors at any meeting thereof, or by the Executive Committee at any meeting thereof. Dividends may be paid in cash, in property or in shares of the capital stock of the corporation, subject to the provisions of the certificate of incorporation or of the resolutions, if any, providing for any series of stock.

Section 2. Reserves. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, deem proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose or purposes as the directors shall think conducive to the interests of the

corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 3. Shares of Other Corporations. The Chairman of the Board, the President and any Vice President is authorized to vote, represent and exercise on behalf of the corporation all rights incident to any and all shares of any other corporation or other entity standing in the name of the corporation. The authority herein granted to said officer may be exercised either by said officer in person or by any person authorized so to do by proxy or power of attorney duly executed by said officer. Notwithstanding the above, however, the Board of Directors, in its discretion, may designate by resolution any additional person to vote or represent said shares of other corporations and other entities.

Section 4. Checks. All checks, drafts, bills of exchange or demands for money of the corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 5. Corporate Records. The corporation shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its stockholders giving the names and addresses of all stockholders and the number and class and series, if any, of shares held by each. All other books and records of the corporation may be kept at such place or places within or without the State of Delaware as the Board of Directors may from time to time determine.

Section 6. Fiscal Year. The fiscal year of the corporation shall be fixed by the Board of Directors; if not so fixed, it shall be the calendar year.

ARTICLE XII

Amendments

These bylaws may be altered, amended or repealed or new bylaws may be adopted at any annual meeting of the stockholders or at any special meeting of the stockholders at which a quorum is present or represented, by the affirmative vote of the holders of a majority of the shares entitled to vote at such meeting and present or represented thereat, or by the affirmative vote of a majority of the whole Board of Directors at any regular meeting of the Board or at any special meeting of the Board, provided notice of the proposed alteration, amendment or repeal or the adoption of new bylaws is set forth in the notice of such meeting.

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed April 6, 2022

United States Bankruptcy Judge

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

IN RE:	§	
	§	**CASE NO. 19-34054-SGJ-11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**(CHAPTER 11)**
	§	
REORGANIZED DEBTOR.	§	
	§	
MARC S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE LITIGATION SUB-TRUST,	§	
	§	**CIVIL ACTION NO. 3:22-CV-203-S**
PLAINTIFF,	§	
	§	
v.	§	**ADVERSARY NO. 21-03076**
	§	
JAMES D. DONDERO; MARK A. OKADA; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; FRANK WATERHOUSE; STRAND ADVISORS, INC.; NEXPOINT ADVISORS,	§	

EXHIBIT

EE

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.	§
	§

REPORT AND RECOMMENDATION TO THE DISTRICT COURT PROPOSING THAT IT: (A) GRANT DEFENDANTS' MOTIONS TO WITHDRAW THE REFERENCE AT SUCH TIME AS THE BANKRUPTCY COURT CERTIFIES THAT ACTION IS TRIAL READY; BUT (B) DEFER PRE-TRIAL MATTERS TO THE BANKRUPTCY COURT

I. INTRODUCTION

As further explained herein, there are 23 Defendants in the above-referenced adversary proceeding (the "Adversary Proceeding")—almost all of whom have jury trial rights and desire to have the reference withdrawn from the bankruptcy court, so that a jury trial may ultimately occur in the District Court. All parties agree (even the Plaintiff) that the reference ***must*** ultimately be withdrawn for final adjudication to occur in the District Court, since: (a) jury trial rights exist, and (b) the Defendants do not consent to a jury trial occurring in the bankruptcy court. However, there is a question of ***timing*** here.

Specifically, the Plaintiff believes that the bankruptcy court should, for the time being—that is, ***until the action is trial-ready***—essentially serve as a magistrate and preside over all pre-trial motions and other matters, with the District Court considering reports and recommendations with regard to any dispositive motions.

The Defendants, on the other hand, believe that the District Court should ***immediately*** withdraw the reference, taking the position that there is not even "related to" bankruptcy subject matter jurisdiction with regard to the 36 causes of action asserted in the Adversary Proceeding (*see* 28 U.S.C. § 1334(b))—since the Adversary Proceeding was brought ***after*** confirmation of a Chapter 11 debtor's plan, and the claims in the Adversary Proceeding do not require interpretation or implementation of the plan. Additionally, the Defendants argue that, even if there is "related to" bankruptcy subject matter jurisdiction, mandatory abstention applies with regard to certain of the causes of action in the Adversary Proceeding, since certain ***other*** federal laws—namely tax law and securities law—are implicated (*see* 28 U.S.C. § 157(d)).

The bankruptcy court disagrees with the Defendants. This Adversary Proceeding is a typical post-confirmation lawsuit being waged be a liquidating trustee, who was appointed

pursuant to a Chapter 11 bankruptcy plan to pursue pre-confirmation causes of action that were owned by the bankruptcy estate, for the benefit of creditors. Despite the "post-confirmation" timing of the ***filing*** of the lawsuit, there ***is*** still "related to" bankruptcy subject matter jurisdiction. Additionally, there will be no substantial or material consideration of "other laws of the United States regulating organizations or activities affecting interstate commerce." *Id.*

Accordingly, the bankruptcy court recommends that the District Court only withdraw the reference of this Adversary Proceeding ***at such time as the bankruptcy court certifies that the action is trial-ready and defer to the bankruptcy court the handling of all pre-trial matters (as is most often the custom in this District)***. A more detailed explanation follows.

II. PROCEDURAL CONTEXT

This Adversary Proceeding is related to the bankruptcy case (the "Bankruptcy Case")[1] of Highland Capital Management, L.P. (the "Debtor," "Highland," or sometimes the "Reorganized Debtor").

Highland filed a voluntary Chapter 11 petition on October 16, 2019, in the United States Bankruptcy Court of Delaware. That court subsequently entered an order transferring venue to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court"), on December 4, 2019.

On February 22, 2021, the Bankruptcy Court entered an *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* (the "Confirmation Order") [Bankr. Docket No. 1943], which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* (as amended, the "Plan" or "Highland Plan") [Bankr. Docket No. 1808].

[1] Bankruptcy Case No. 19-34054.

The Highland Plan went effective on August 11, 2021 (the "Effective Date"). Thus, the Bankruptcy Case is now in what is referred to as a "post-confirmation" phase.

Like many Chapter 11 plans, the Highland Plan provided for the creation of a "Claimant Trust" for the benefit of holders of Highland's creditors. The Claimant Trust was vested with certain assets of Highland, including "all Causes of Action" and "any proceeds realized or received from such Assets." Plan §§ I.B.24, I.B.26, I.B.27. The Plan also provided for the creation of a "Litigation Sub-Trust," as a "sub-trust established within the Claimant Trust or as a wholly-owned subsidiary of the Claimant Trust," for the purpose of "investigating, prosecuting, settling, or otherwise resolving the Estate Claims" transferred to it by the Claimant Trust pursuant to the Plan. Plan §§ I.B.81, IV.B.1 ("[T]he Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims."), Plan § IV.B.4. The Litigation Trustee of the Litigation Sub-Trust is "responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust[.]" Plan § I.B.83. Under the Plan, proceeds from the Litigation Trust's pursuit of claims "shall be distributed . . . to the Claimant Trust for distribution to the Claimant Trust Beneficiaries[.]" Plan § IV.B.4.

On October 15, 2021, the Litigation Trustee ("Plaintiff") commenced the Adversary Proceeding for the benefit of Highland's creditors. [Adv. Proc. Docket. No. 1 (the "Complaint")].

The Complaint asserts ***36 causes of action*** against ***23 Defendants***. The causes of action all arise from ***pre-confirmation conduct*** allegedly perpetrated by Highland's founder James Dondero and individuals and entities affiliated with him, which purportedly resulted in hundreds of millions of dollars in damages to Highland. It appears that all of the Defendants are owned, controlled, or related to Mr. Dondero, although some of the Defendants dispute this characterization.

The 36 causes of action seek: the avoidance and recovery of intentional and constructive fraudulent transfers and obligations under Sections 544, 548, and 550 of the Bankruptcy Code; illegal distributions under Delaware partnership law; breach of fiduciary duty; declaratory judgment that certain entities are liable for the debts of others under alter ego theories, successor liability, aiding and abetting, or knowing participation in breach of fiduciary duty; civil conspiracy; tortious interference with prospective business relations; breach of contract; conversion; unjust enrichment; and the disallowance or subordination of claims under Sections 502 and 510 of the Bankruptcy Code.

As further addressed below, the Bankruptcy Court has concluded that the 36 causes of action include some statutory ***core*** (*i.e.,* "arising under" or "arising in") claims, some ***non-core*** (*i.e.,* "related to") claims, and some causes of action that are a ***mixture*** of both core and non-core claims. The following three tables summarize the Bankruptcy Court's determination as to which counts are core, which are non-core, and which are a mixture:

Count No.	Core ("Arising Under") Claims	Defendants Named
31	Avoidance and Recovery of One-Year Transfers as Preferential Under 11 U.S.C. §§ 547 and 550	James Dondero and Scott Ellington
34	Disallowance of Claims Under Sections 502(b), 502(d), and 502(e) of the Bankruptcy Code	James Dondero, Scott Ellington, Isaac Leventon, Frank Waterhouse, and CPCM, LLC
35-36	Disallowance or Subordination of Claims Under Sections 502 and 510 of the Bankruptcy Code	James Dondero, Dugaboy Trust, Get Good Trust, Mark Okada, MAP #1, MAP #2, Hunter Mountain, and CLO Holdco

Count No.	Non-Core ("Related to") Claims	Defendants Named
3	Illegal Distributions Under Delaware Revised Uniform Limited Partnership Act	James Dondero, Strand Advisors, Dugaboy Trust, Hunter Mountain

4	Breach of Fiduciary Duty Arising Out of Dondero's Lifeboat Scheme	James Dondero, Strand Advisors
5	Breach of Fiduciary Duty Arising Out of Conduct that Resulted in HCMLP Liabilities	James Dondero, Scott Ellington, Isaac Leventon, Strand Advisors
6	Declaratory Judgment that Strand is Liable for HCMLP's Debts in its Capacity as HCMLP's General Partner	Strand Advisors
7	Declaratory Judgment that Dondero is Liable for Strand's Debts as Strand's Alter Ego	James Dondero
8	Declaratory Judgment that Dondero and Strand are Liable for HCMLP's Debts in Their Capacities as HCMLP's Alter Ego	James Dondero, Strand Advisors
9	Declaratory Judgment that NexPoint and HCMFA are Liable for the Debts of HCMLP, Strand, and Dondero as Their Alter Egos	NexPoint Advisors, HCMFA
10	Declaratory Judgment that Dugaboy is Liable for the Debts of Dondero in Their Capacities as Dondero's Alter Ego	Dugaboy Trust
13	Successor Liability	NexPoint Advisors, HCMFA
14	Breach of Fiduciary Duty in Connection with Fraudulent Transfers and Schemes	James Dondero, Mark Okada, Scott Ellington, Strand Advisors
15	Aiding and Abetting Breach of Fiduciary Duty Under Delaware Law or Knowing Participation in Breach of Fiduciary Duty Under Texas Law	Grant Scott, Strand Advisors, NexPoint Advisors, HCMFA, Get Good Trust, CLO Holdco, DAF Holdco, DAF Highland Dallas Foundation, and SAS
16	Civil Conspiracy to Breach Fiduciary Duties Under Texas Law	James Dondero, Scott Ellington, Isaac Leventon, Grant Scott, NexPoint Advisors, HCMFA, Get Good Trust, CLO Holdco, DAF Holdco, DAF, Highland Dallas Foundation, and SAS
17	Tortious Interference with Prospective Business Relations	James Dondero, NexPoint Advisors, HCMFA
24	Breach of Contract Arising Out of Hunter Mountain Note	Hunter Mountain and Rand
25	Conversion	James Dondero, Scott Ellington
26-30	Unjust Enrichment	James Dondero, Scott Ellington, Isaac Leventon, NexPoint Advisors, HCMFA, CLO Holdco, Massand Capital, and SAS

Count No.	Mixture of Core and Non-Core Claims	Defendants Named
1	Avoidance and Recovery of HCMLP Distributions as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, 26 U.S.C. § 6502, and Other Applicable Law	James Dondero, Mark Okada, Strand Advisors, Dugaboy Trust, Hunter Mountain, MAP #1, and MAP #2
2	Avoidance and Recovery of HCMLP Distributions as Intentional Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, 26 U.S.C. § 6502, and Other Applicable Law	James Dondero, Mark Okada, Strand Advisors, Dugaboy Trust, Hunter Mountain, MAP #1, and MAP #2
11	Avoidance of Transfer of Management Agreements as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Other Applicable Law	NexPoint Advisors and HCMFA
12	Avoidance of Transfer of Management Agreements as Intentionally Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Other Applicable Law	NexPoint Advisors and HCMFA
18	Avoidance of CLO Holdco Transfer and Recovery of Transferred CLO Holdco Assets as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, and Applicable State Law	James Dondero, Grant Scott, Get Good Trust, CLO Holdco, DAF Holdco, DAF, and Highland Dallas Foundation
19	Avoidance of CLO Holdco Transfer and Recovery of Transferred CLO Holdco Assets as Intentionally Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, and Applicable State Law	James Dondero, Grant Scott, Get Good Trust, CLO Holdco, DAF Holdco, DAF, and Highland Dallas Foundation
20	Avoidance of Obligations Under Massand Consulting Agreement as Constructively Fraudulent Under 11 U.S.C. § 544, 26 U.S.C. § 6502, and Applicable State Law	Massand LLC
21	Avoidance of Obligations Under Massand Consulting Agreement as Intentionally Fraudulent Under 11 U.S.C. § 544, 26 U.S.C. § 6502, and Applicable State Law	Massand Capital
22	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	James Dondero, Scott Ellington, Massand Capital, and SAS
23	Avoidance and Recovery of Certain Massand Transfers as Intentional Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Applicable State Law	James Dondero, Scott Ellington, Massand Capital, and SAS
32	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	James Dondero and Scott Ellington
33	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	James Dondero and Scott Ellington

Of the 23 Defendants, ***only one*** has a pending, unresolved proof of claim on file in the Bankruptcy Case: CLO Holdco.[2] The rest of the Defendants have either never filed proofs of claim, have withdrawn their proofs of claim, or have had them disallowed during the pendency of the Bankruptcy Case.[3] Thus, 22 of the 23 Defendants have jury trial rights.[4] Further, none of the Defendants have consented to the Bankruptcy Court presiding over a jury trial or issuing final orders for that matter.[5]

Six motions to withdraw the reference (collectively, the "Motions to Withdraw") were subsequently filed by the following Defendants on the following dates:

> • On January 18, 2022, Defendants Scott Ellington, Isaac Leventon, Frank Waterhouse, and CPCM, LLC (collectively, the "Former Employee Defendants") filed the Motion to Withdraw the Reference for Causes of Action in the Complaint Asserted Against the Former Employee Defendants [Adv. Docket No. 27] and their Brief in Support [Adv. Docket No. 28].
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> • On January 21, 2022, Defendants Mark A. Okada, The Mark & Pamela Okada Family Trust – Exempt Trust #1, Lawrence Tonomura in his Capacity as Trustee, The Mark & Pamela Okada Family Trust – Exempt Trust #2, and Lawrence Tonomura in his Capacity as Trustee (the "Okada Defendants") filed the Motion of the Okada Parties to Withdraw the Reference [Adv. Docket No. 36] and their Memorandum of Law in Support [Adv. Docket No. 37].
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> • On January 21, 2022, Defendants NexPoint Advisors L.P ("NexPoint") and Highland Capital Management Fund Advisors L.P. ("HCMFA") filed the Motion to Withdraw the Reference for the Causes of Action in the Complaint Asserted Against Defendants [Adv. Docket No. 39] and their Memorandum of Law in Support [Adv. Docket No. 40].

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[2] CLO Holdco's claim (Claim No. 198) was objected to by the Litigation Trustee in an omnibus claims objection. CLO Holdco's has moved to ratify a second amended proof of claim. These matters are currently set for hearing on May 2, 2022.

[3] Actually, there are two withdrawals of proofs of claim that are not quite final. Specifically, those of Frank Waterhouse and CPCM. On March 24, 2022, the Reorganized Debtor filed a Bankruptcy Rule 9019 motion for the court to approve a settlement among the Litigation Trustee, Frank Waterhouse, and CPCM. Through the settlement motion, among other terms, Frank Waterhouse and CPCM have agreed to withdraw proofs of claim with prejudice. In return, the Litigation Trustee has agreed to withdraw Count 34 (the only claim asserted against Mr. Waterhouse), as to Mr. Waterhouse, with prejudice from the Complaint. The motion is currently set for hearing on May 2, 2022.

[4] *See, e.g., Grandfinanciera, S.A. v. Nordberg,* 109 S. Ct. 2782 (1989); *Lagenkamp v. Culp*, 111 S. Ct. 330 (1990).

[5] *See, e.g., Stern v. Marshall*, 564 U.S. 462 (2011).

> • On January 25, 2022, Defendants James Dondero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc. (the "Dondero Defendants") filed Defendants James D. Dondero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc.'s Motion to Withdraw the Reference [Adv. Docket No. 45] and their Memorandum of Law in Support [Adv. Docket No. 46].
>
> • On January 26, 2022, Defendant Grant James Scott III filed his Motion to Withdraw the Reference [Adv. Docket No. 50] and his Memorandum of Law in Support [Adv. Docket No. 41].
>
> • On January 26, 2022, CLO Holdco, Ltd., Highland Dallas Foundation, Inc., Charitable DAF Fund, LP, and Charitable DAF Holdco, Ltd. (the "CLO Holdco-Related Defendants") filed their Motion to Withdraw the Reference [Adv. Docket No. 59] and their Brief in Support [Adv. Docket No. 59].
>
> • On February 1, 2022, Defendants Hunter Mountain Investment Trust ("Hunter Mountain") and Rand PE Fund I, LP, Series 1 ("Rand" and together with Hunter Mountain, the "Hunter Mountain Defendants") filed a nominal joinder.

The six different Motions to Withdraw initially created six different civil actions before six different District Judges. These six actions were administratively consolidated, by an order signed and entered on March 22, 2022, in Civil Action No. 3:22-CV-203-S [Docket No. 13], and are now pending before District Judge Karen Scholer.

After holding a status conference on the Motions to Withdraw on March 17, 2022, as required by Local Bankruptcy Rule 5011, the Bankruptcy Court now submits the following report and recommendation to the District Court. Based on the reasoning set forth below, the Bankruptcy Court recommends that the Motions to Withdraw be granted, ***but only at such time as the Bankruptcy Court certifies to the District Court that the lawsuit is trial-ready***. The Bankruptcy Court further recommends that the District Court ***defer to the Bankruptcy Court the handling of all pre-trial matters***.

III. LEGAL STANDARDS

A. Some General Principles Regarding Discretionary Withdrawal of the Reference

First, some basic discussion is in order regarding discretionary or permissive withdrawal of the reference. The concept is described in 28 U.S.C. § 157(d) as follows: "The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown."

The statute does not define "cause shown," but the United States Court of Appeal for the Fifth Circuit, interpreting the United States Supreme Court case of *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), has identified a number of factors for courts to consider in determining whether permissive withdrawal of the reference is appropriate: (1) whether the matter is core or noncore; (2) whether the matter involves a jury demand; (3) whether withdrawal would further uniformity in bankruptcy administration; (4) whether withdrawal would reduce forum-shopping and confusion; (5) whether withdrawal would foster economical use of debtors' and creditors' resources; and (6) whether withdrawal would expedite the bankruptcy process. *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 998-99 (5th Cir. 1985). Courts in this District have placed an emphasis on the first two factors. *See Mirant Corp. v. The Southern Co.*, 337 B.R. 107, 115-23 (N.D. Tex. 2006).

As explained by the Supreme Court in *Stern v. Marshall*, Congress has divided bankruptcy proceedings (*i.e.,* adversary proceedings or contested matters within a bankruptcy case)—over which there is bankruptcy subject matter jurisdiction—into three different categories: (a) those that "aris[e] under" Title 11; (b) those that "aris[e] in" a Title 11 case; and (c) those that are "related to" a case under Title 11. 28 U.S.C. § 1334(b). *Stern v. Marshall*, 564 U.S. 462, 473-474 (2011). Further, those that arise under Title 11 or arise in a Title 11 case are defined as "core" matters and those that are merely "related to" a Title 11 case are defined as "non-core" matters. The significance of the "core"/"non-core" distinction is that bankruptcy courts may statutorily enter

final judgments in "core" proceedings in a bankruptcy case, while in "non-core" proceedings, the bankruptcy courts instead may only (absent consent from all of the parties) submit proposed findings of fact and conclusions of law to the district court, for that court's review and issuance of final judgment. This is the statutory framework collectively set forth in 28 U.S.C. § 1334 and 28 U.S.C. § 157. But while a proceeding may be "core" in nature, under 28 U.S.C. § 157(b)(2), and the bankruptcy court, therefore, has the ***statutory*** power to enter a final judgment on the claim under 28 U.S.C. § 157(b)(1), *Stern* instructs that any district court, in evaluating whether a bankruptcy court has the ability to issue final orders and judgments, must resolve not only: (a) whether the bankruptcy court has the statutory authority under 28 U.S.C. § 157(b) to issue a final judgment on a particular claim; but also (b) whether the conferring of that authority on an Article I bankruptcy court is ***constitutional*** (and this turns on whether "the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process"). *Stern*, 564 U.S. at 499.

Pursuant to 28 U.S.C. § 157(e), if a litigant has the right to a jury trial under applicable non-bankruptcy law, a bankruptcy court may only conduct the jury trial if: (a) the matters to be finally adjudicated fall within the scope of bankruptcy subject matter jurisdiction; (b) the district court of which the bankruptcy court is a unit authorizes the bankruptcy court to do so; and (c) all of the parties consent.[6]

Starting first with whether a right to a jury trial even exists, the Seventh Amendment, of course, provides a jury trial right in cases in which the value in controversy exceeds twenty dollars and the cause of action is to enforce statutory rights that are at least analogous to rights that were

[6] "If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties." 28 U.S.C. § 157(e) (West 2019).

tried at law in the late 18th century English courts. *See City of Monterey v. Del Monte Dunes*, 526 U.S. 687, 708 (1999). Suits "at law" refers to "suits in which legal rights were to be ascertained and determined" as opposed to "those where equitable rights alone were recognized and equitable remedies were administered." *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41 (1989). This analysis requires two steps: (1) a comparison of the "statutory action to 18th century actions brought in the courts of England prior to the merger of the courts of law and equity"; and (2) whether the remedy sought is "legal or equitable in nature . . . [t]he second stage of this analysis" being "more important than the first." *See Levine v. M & A Custom Home Builder & Developer, LLC*, 400 B.R. 200, 205 (S.D. Tex. 2008) (quoting *Granfinanciera*, 492 U.S. at 42).

It is well established that the act of filing a proof of claim can operate to deprive a creditor of a jury trial right, by subjecting a claim, that would otherwise sound only in law, to the equitable claims allowance process. *See Langenkamp v. Culp*, 498 U.S. 42, 44-45 (1990). Withdrawing a claim from the claims allowance process of the bankruptcy courts prior to the commencement of an adversary proceeding can serve to preserve a right to a jury trial. *Smith v. Dowden*, 47 F.3d 940, 943 (8th Cir. 1995) ("[T]he successful withdrawal of a claim pursuant to Fed. R. Bankr. P. 3006 prior to the trustee's initiation of an adversarial proceeding renders the withdrawn claim a legal nullity and leaves parties as if the claim had never been brought."); *In re Goldblatt's Bargain Stores, Inc.*, No. 05 C 03840, 2005 WL 8179250, at *5 (N.D. Ill. Dec. 6, 2005) (claims withdrawn before adversary proceeding are as if never filed); *see generally, In re Manchester, Inc.*, No. 08-30703-11-BJH, 2008 WL 5273289, at *3-6 (Bankr. N.D. Tex. Dec. 19, 2008) (permissible to withdraw a claim to preserve jury trial right).

B. Post-Confirmation Bankruptcy Subject Matter Jurisdiction

Defendants argue here that this is all more than simply a matter of "permissive withdrawal of the reference" being applicable. Specifically, the Defendants argue that bankruptcy subject matter jurisdiction is lacking with regard to the Plaintiff's various causes of action (*i.e.,* all 36 causes of action) pursuant to the Fifth Circuit's rulings in *Craig's Stores of Texas, Inc. v. Bank of Louisiana (In re Craig's Stores of Texas, Inc.)*, 266 F.3d 388 (5th Cir. 2001) and *Newby v. Enron Corp. (In re Enron Corp. Securities)*, 535 F.3d 325 (5th Cir. 2008).

In *Craig's Stores*, the Fifth Circuit held that a bankruptcy court could not exercise subject matter jurisdiction over a post-confirmation breach of contract claim asserted by a reorganized debtor against its bank in connection with an alleged post-confirmation breach. The Fifth Circuit stated that, following confirmation of a plan, "expansive bankruptcy court jurisdiction" is no longer "required to facilitate 'administration' of the debtor's estate," and further noted: "After a debtor's reorganization plan has been confirmed, the debtor's estate, and thus bankruptcy jurisdiction, ceases to exist, other than for matters pertaining to the implementation or execution of the plan." *Craig's Store's*, 266 F.3d at 390. *Craig's Stores* has often been cited for the notion that bankruptcy subject matter jurisdiction significantly narrows post-confirmation of a Chapter 11 plan.

The Fifth Circuit elaborated on its *Craig's Store's* holding in *Enron*, in holding that confirmation of a plan does not divest a court of bankruptcy subject matter jurisdiction with regard to an action commenced prior to confirmation. *Enron*, 535 F.3d at 335. Noting that "Section 1334 does not expressly limit bankruptcy jurisdiction upon plan confirmation," the Fifth Circuit explained that "three factors were critical to its decision" in *Craig's Stores*:

> [F]irst, the claims at issue "principally dealt with post-confirmation relations between the parties;" second, "[t]here was no antagonism or claim pending between the parties as of the date of the reorganization;" and third, "no facts or law deriving from the reorganization or the plan [were] necessary to the

> claim." *Craig's Stores*, 266 F.3d at 391. Notwithstanding its statement that bankruptcy jurisdiction exists after plan confirmation only "for matters pertaining to the implementation or execution of the plan," the facts in *Craig's Stores* were narrow; they involved post-confirmation claims based on post-confirmation activities.

Id. (citing *Craig's Stores*, 266 F.3d at 389–91).

Thereafter, numerous courts within the Fifth Circuit have held that the exception to jurisdiction at issue in *Craig's Store's* does not arise where, as here, a trustee of a litigation trust created under a confirmed plan of reorganization for the benefit of creditors pursues post-confirmation causes of action, predicated on pre-confirmation conduct, for the creditors' benefit. *See Faulkner v. Lane Gorman Trubitt, LLC (In re Reagor-Dykes Motors, LP)*, 2021 WL 4823525, at *2–4 (Bankr. N.D. Tex. Oct. 14, 2021) (bankruptcy court had post-confirmation subject matter jurisdiction over a litigation trustee's state law claims "based on pre-petition conduct," the recoveries of which would "affect distributions to creditors under the confirmed plan"); *Dune Operating Co. v. Watt (In re Dune Energy, Inc.),* 575 B.R. 716, 725–26 (Bankr. W.D. Tex. 2017) (bankruptcy court had post-confirmation subject matter jurisdiction over lawsuit asserting state law claims brought by liquidating trustee established under Chapter 11 plan); *Brickley for Cryptometrics, Inc. Creditors' Tr. v. ScanTech Identification Beams Sys., LLC*, 566 B.R. 815, 830–32 (W.D. Tex. 2017) (holding that post-confirmation "related to" subject matter jurisdiction existed over creditors' trust's post-confirmation suit asserting pre-confirmation Chapter 5 claims and non-core state law claims where the plan vested the claims in the trust); *Schmidt v. Nordlicht*, 2017 WL 526017, at *2–3 (S.D. Tex. Feb. 9, 2017) (holding that post-confirmation "related to" subject matter jurisdiction existed over state law claims aimed at pre-confirmation conduct brought by a litigation trustee established by a confirmed plan); *Ogle v. Comcast Corp. (In re Houston Reg'l*, 547 B.R. 717, 736 (Bankr. S.D. Tex. 2016) (bankruptcy court had post-confirmation subject

matter jurisdiction over lawsuit brought by litigation trustee established under confirmed Chapter 11 plan that asserted state law claims); *Kaye v. Dupree (In re Avado Brands, Inc.)*, 358 B.R. 868, 878–79 (Bankr. N.D. Tex. 2006) (bankruptcy court had post-confirmation jurisdiction over litigation trustee's pre-confirmation core and non-core claims that were transferred to the trustee for prosecution under the plan, where proceeds were to be distributed to creditors); *Coho Oil & Gas, Inc. v. Finley Res., Inc. (In re Coho Energy, Inc.)*, 309 B.R. 217, 221 (Bankr. N.D. Tex. 2004) (bankruptcy court had post-confirmation jurisdiction over claims preserved under Chapter 11 plan and assigned to the creditor's trust for prosecution with recovery to be distributed to creditors).

The Bankruptcy Court agrees with these numerous holdings and believes that they are consistent with *Craig's Stores*. First, unlike the post-confirmation contract dispute at issue in *Craig's Stores*, the claims here all arise from ***pre-confirmation*** conduct. Second, "antagonism" plainly existed between the parties at the date of the reorganization. Contrary to Defendants' assertion that an action must be filed prior to confirmation, courts in the Fifth Circuit consistently hold that "where the claims are based on pre-petition conduct and the cause of action appears to have accrued before the bankruptcy, the antagonism factor is satisfied." *Faulkner*, 2021 WL 4823525, at *3; *see also Schmidt v. Nordlicht*, 2017 WL 526017, at *3 (while "no claim was pending before the bankruptcy," "antagonism existed in the relevant sense; the defendant's alleged wrongdoing harmed the company prior to the bankruptcy, and the company's cause of action appears to have accrued before the bankruptcy"); *Brickley*, 566 B.R. at 831 (confirming that "actual litigation is not necessary to find the existence of antagonism"); *Coho Oil*, 309 B.R. at 221 (finding this factor satisfied where "claims were preserved under the Plan and assigned to the creditor's trust for prosecution"). Moreover, the order confirming the Highland Plan expressly stated that "Implementation of the Plan" shall include the "establishment of" and "transfer of Estate

Causes of Action" to "the Litigation Sub-Trust," the Trustee of which is charged with "investigating, pursuing, and otherwise resolving any Estate Claims." *See* Confirmation Order at ¶ 42(b); *see also* Plan § IV. A ("the Plan will be implemented through . . . the Litigation Sub-Trust"); *id.* at § I.B.4 ("The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims," the proceeds of which "shall be distributed . . . to the Claimant Trust for distribution to the Claimant Trust Beneficiaries . . . ."). Courts within the Fifth Circuit have held that, where a plan "contemplates the prosecution of the claims and the distribution of . . . recovery to creditors under the Plan, and the prosecution of the claims will thus impact compliance with, or completion of, the Plan, the *Craig's Stores* test for post-confirmation jurisdiction is satisfied." *Ernst & Young LLP v. Pritchard (In re Daisytek, Inc.)*, 323 B.R. 180, 185–86 (N.D. Tex. 2005) (bankruptcy court had post-confirmation subject matter jurisdiction over a Rule 2004 motion brought by the trustee of a creditors' trust, established under a confirmed plan, relating to potential accounting malpractice investigation); *see also First Am. Title Ins. Co. v. First Trust Nat'l Ass'n (In Re Biloxi Casino Belle Inc.)*, 368 F.3d 491, 496 (5th Cir. 2004) (a suit pertained to the implementation and execution of the plan where recovery had been assigned to a "liquidating trust . . . for the benefit of unsecured creditors").

Accordingly, the Bankruptcy Court concludes that the 36 counts in the Adversary Proceeding "[w]ithout doubt . . . 'pertain[] to implementation and execution'" of the plan and the Defendants arguments to the contrary have no merit. *See Dune Energy*, 575 B.R. at 725–26 (quoting Craig's Stores).[7]

[7] The court in *Schmidt* also noted that "*Craig's* turned on the idea that a reorganized debtor's confirmed plan marked the end of the bankruptcy and the emergence of a new reorganized business entity not dependent on the bankruptcy court's protection," commenting that while "that rule makes a good deal of sense in the reorganization context . . . in a liquidation case like this one there is no entity that emerges from the bankruptcy to continue

C. Mandatory Withdrawal of the Reference

Withdrawal of the reference pursuant to 28 U.S.C. § 157(d) provides for the possibility of mandatory withdrawal of the reference from the bankruptcy court: "The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." Under the precedent of this District, in *Nat'l Gypsum Co.* and *Pilgrim's Pride*, mandatory withdrawal of the reference must be granted when: (1) the motion was timely filed; (2) a non-Bankruptcy Code federal law at issue has more than a *de minimis* effect on interstate commerce; and (3) the proceeding involves a substantial and material question of non-Bankruptcy Code federal law. *See U.S. Gypsum Co. v. Nat'l Gypsum Co. (In re Nat'l Gypsum Co.),* 145 B.R. 539, 541 (N.D. Tex. 1992) (stating "withdrawal must be granted if it can be established (1) that the proceeding involves a substantial and material question of both Title 11 and non-Bankruptcy Code federal law; (2) that the non-Code federal law has more than a de minimis effect on interstate commerce; and (3) that the motion for withdrawal was timely."); *see also City of Clinton, Ark. v. Pilgrim's Pride Corp*., No. 4:09-CV-386-Y, 2009 WL 10684933, at *1 (N.D. Tex. Aug. 18, 2009).

It has been well established that "mandatory withdrawal is to be applied narrowly" and to "prevent 157(d) from becoming an 'escape hatch.'" *Manila Indus., Inc. v. Ondova Ltd. (In re Ondova Ltd.)*, 2009 U.S. Dist LEXIS 102134, at *6 (N.D. Tex. Oct. 1, 2009), *adopted in its entirety*, 2009 U.S. Dist. LEXIS 102071 (N.D. Tex. Nov. 3, 2009). Unsubstantiated assertions that

operations." *Schmidt,* 2017 WL 526017, at *3. Here, although the Plan is one of reorganization, it is "an 'asset monetization plan' providing for the orderly wind-down of the Debtor's estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds." Confirmation Order at ¶ 2. Thus, as in *Schmidt*, the role of the Litigation Trust "is nothing more or less than maximizing the pot of money for distribution to creditors." *Schmidt*, 2017 WL 526017, at *3.

non-bankruptcy federal law issues are substantial and material to an adversary proceeding are insufficient to warrant mandatory withdrawal. *Keach v. World Fuel Servs. Corp, (In re Montreal Me. & Atl. Ry.)*, 2015 U.S. Dist. LEXIS 74006, at *21-*23 (D. Me. June 8, 2015) (insufficient basis for mandatory withdrawal where party failed to demonstrate specifically why a court would have to "engage in anything beyond routine application of current law" and the party "tries to kick up some dust to make the relevant analysis seem complicated").

Why is the issue of mandatory withdrawal of the reference even being raised here—when the Bankruptcy Court and all the parties agree that permissive withdrawal of the reference should be exercised here, since mere non-core "related to" claims are pervasive and jury trial rights exist? In other words, everyone agrees the reference should be withdrawn—it's just a matter of ***when***. Should withdrawal happen immediately or when the action is trial-ready?

The Defendants advocate for immediate withdrawal on the grounds that the Bankruptcy Court does not have authority to preside over the "other federal law" issues present with regard to certain causes of action—so this should preclude the Bankruptcy Court from even presiding over pre-trial matters.

The court does not agree with the Defendants. The "other federal law" issues that may be involved in this Adversary Proceeding are not pervasive or particularly complicated. There are, admittedly, one or more Tax Code provisions at issue. But bankruptcy courts routinely consider tax matters. Defendants' attempts to characterize what appear to be commonplace tax law issues here as sufficient to mandate withdrawal of the reference seem disingenuous.

Certain of the Defendants (HCMFA and NexPoint Advisors) contend that federal securities laws are implicated by the Adversary Proceeding. But the Plaintiff has not asserted any claims that are based on federal securities law statutes. Rather, HCMFA and NexPoint Advisors have

merely made barebone references to potential defenses that might implicate federal securities laws. While certain of the parties in the litigation are "registered investment advisors," this does not mean that the parties' alleged conduct will implicate broad questions of federal securities law. "If a party to a case is federally regulated, such as a bank or securities brokerage, but no federal regulation applies to the dispute at hand, the court need not withdraw the proceeding because no federal regulation will have to be considered." *Contemp. Lithographers, Inc. v. Hibbert*, 127 B.R. 122, 125 (M.D.N.C. 1991). The rule advanced by HCMFA and NexPoint Advisors would mean that bankruptcy courts would be unable to hear virtually any claims against any investment advisor or other financial entity regulated under the federal securities laws.

In summary, mandatory withdrawal of the reference is inapplicable here.

D. CONCLUSION

In light of: (a) the non-core, related-to claims in the Complaint; (b) the jury trial rights of most Defendants; (c) the fact that only one Defendant out of 23 still has a proof of claim pending—that might arguably negate jury trial rights; and (d) the lack of consent by the Defendants to the Bankruptcy Court presiding over a jury trial or issuing final judgments, the Bankruptcy Court recommends that the District Court: refer all pre-trial matters to the Bankruptcy Court, and grant the Motions to Withdraw upon certification by the Bankruptcy Court that the parties are trial-ready.

With regard to such pre-trial matters, the Bankruptcy Court further recommends that, to the extent a dispositive motion is brought that the Bankruptcy Court determines should be granted and would finally dispose of claims in this Adversary Proceeding, the Bankruptcy Court should submit a report and recommendation to the District Court for the District Court to either adopt or reject.

*****END OF REPORT AND RECOMMENDATION*****

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] 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; 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 –	Adv. Pro. No. 21-03076-sgj AMENDED COMPLAINT AND OBJECTION TO CLAIMS

EXHIBIT

FF

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

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.; AND SAS ASSET RECOVERY, LTD.,

Defendants.

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PRAYER FOR RELIEF 141

Plaintiff Marc S. Kirschner (the "Litigation Trustee"), as Litigation Trustee of the Litigation Sub-Trust (the "Trust") established pursuant to the Fifth Amended Plan of Reorganization (the "Plan") of Highland Capital Management L.P. ("HCMLP" or the "Reorganized Debtor") (Docket No. 1472), through his undersigned counsel, brings this action and alleges as follows:

I. INTRODUCTION[2]

1. The Litigation Trustee brings this action to recover hundreds of millions of dollars in damages that HCMLP suffered at the hands of its founder, James Dondero, acting in concert with other entities that he owned and/or controlled (collectively, the "Dondero Entities"), and with the aid of other HCMLP officers and attorneys who disregarded their fiduciary duties to HCMLP in favor of Dondero and their own self-interests.

2. HCMLP was founded in 1993 as an investment advisor that also provided middle- and back-office services and engaged in proprietary trading. Prior to its bankruptcy filing on October 16, 2019, HCMLP was one of more than 2,000 Dondero Entities. The Dondero Entities were operated and controlled for Dondero's benefit, with Dondero utilizing complex corporate structures and transactions to transfer money and assets between the various Dondero Entities in the manner he viewed most advantageous to his own bottom line, including to avoid creditors, exploit personal tax benefits, and ensure that assets were preserved for his benefit and profits ultimately flowed to him.

3. HCMLP was at the center of Dondero's web: it employed nearly all of the people who performed services for myriad Dondero Entities, and it was those employees who carried out the substantive work for the Dondero Entities. Even when HCMLP's full role was hidden—

[2] Capitalized terms not defined in this section are defined later in the Amended Complaint.

either because it was not credited at all, or because it was identified only as a sub-advisor or service provider to Dondero's other management companies—it was HCMLP personnel executing Dondero's strategies for a wide array of Dondero Entities.

4. In or about 2008, after years of successful operations, HCMLP was hit hard by the economic recession. The recession gave rise to a multitude of lawsuits against HCMLP, and it became embroiled in litigations that threatened to impose crippling damages amounting to hundreds of millions of dollars.

5. Faced with this looming threat, Dondero devised a plan to siphon business away from HCMLP through the creation of "lifeboats" that he owned and controlled, which he sought to insulate from the claims of HCMLP's litigation creditors once they crystalized. The lifeboats were set up to provide the management services that HCMLP had been providing before the lifeboats' creation. The lifeboats were really HCMLP in disguise, however, as they conducted their business through HCMLP's employees, operated out of HCMLP's office, and in several cases, simply took over HCMLP's contracts, diverting the resulting fees away from HCMLP while HCMLP continued to provide the underlying services. The lifeboats collected the lion's share of the profits for HCMLP's work, while HCMLP bore the majority of expenses.

6. In the years that followed, Dondero—acting with the aid of certain HCMLP officers and employees—operated HCMLP to further his own personal interests, to HCMLP's detriment. Among other transgressions, Dondero, standing behind HCMLP's perceived corporate shield:

- Caused HCMLP to pay tens of millions of dollars to or for the benefit of Dondero and his affiliates in order to evade creditors, at a time when HCMLP was insolvent, inadequately capitalized, or intended to incur debts beyond its ability to pay;

- Caused HCMLP to transfer assets to other Dondero Entities for less than reasonably equivalent value at a time when HCMLP was insolvent, inadequately capitalized, or intended to incur debts beyond its ability to pay, in order to deprive creditors of the value of the transferred assets;

- Exploited HCMLP to exact vendettas on employees he perceived as disloyal, going so far as to destroy value at HCMLP and other Dondero Entities solely to inflict losses on his perceived enemies;

- Used HCMLP as a vehicle to fraudulently induce an investment of approximately $75 million into another Dondero Entity, with the goal of moving funds to yet another Dondero Entity;

- Caused the fraudulent transfer of assets worth at least $100 million out of HCMLP-managed funds to evade pending litigation claims asserted by UBS;

- Disregarded HCMLP's contractual and fiduciary obligations to investors in certain of HCMLP liquidating funds; and

- Siphoned funds out of HCMLP for use by other Dondero Entities, in exchange for artificially low interest, long-term notes that Dondero later purported to extend (by 30 years) or retroactively forgive, all for no consideration to HCMLP.

7. Dondero's conduct resulted in a second wave of litigation against HCMLP, exacerbating HCMLP's insolvency, inadequate capitalization, and inability to pay its debts. As was wholly foreseeable, Dondero's conduct hobbled HCMLP with hundreds of millions of dollars of additional contingent litigation liabilities that were all but certain to come due given Dondero's brazen wrongdoing.

8. In October 2019, the dam broke, and the repercussions of Dondero's actions came crashing down on HCMLP. An arbitration award of approximately $190 million was issued against HCMLP based on Dondero's failure to abide by a negotiated plan of distribution for certain of its liquidating funds, forcing HCMLP to file for bankruptcy protection. Shortly thereafter, a judgment of more than $1 billion was rendered for UBS against two HCMLP-managed funds, leading UBS to file a proof of claim against HCMLP that sought to hold

HCMLP responsible for its role in preventing the Fund Counterparties (defined below) from satisfying any of their debt to UBS.

9. In 2020, HCMLP, finally operating under the control of true and independent fiduciaries, negotiated a settlement with UBS for a total of $75 million in allowed claims. HCMLP was forced to reopen settlement discussions and increase that number to $125 million, however, when HCMLP discovered that in 2017, Dondero and his loyalists had surreptitiously transferred the two funds' remaining assets to a Dondero Entity. Other settlements followed, as HCMLP, burdened by Dondero's blatant wrongdoing, was forced to compromise claim after claim in order to avoid even greater dilution of creditor recoveries.

10. HCMLP now stands liable for more than $350 million in allowed creditor claims—in addition to tens of millions of dollars of costs occasioned by HCMLP's bankruptcy filing—that stem solely from, and would not exist but for, the knowing misconduct of Dondero and his loyalists. The Litigation Trustee thus brings this action to seek redress for the significant harm Dondero and his affiliates and accomplices inflicted on HCMLP, and to ensure that Dondero and those who aided him are not permitted to abscond with or divert value that rightfully belongs to HCMLP and its creditors.

II. PARTIES

11. Plaintiff Marc S. Kirschner is the Litigation Trustee for the Trust established under HCMLP's Plan.

12. Defendant James D. Dondero is an individual who, upon information and belief, at all times relevant to this Amended Complaint was residing in Dallas, Texas. Dondero is the co-founder of HCMLP and, prior to his removal on January 9, 2020, was the Chief Executive Officer and President of HCMLP. From the time that HCMLP was founded through October

16, 2019, when it filed for bankruptcy (the "Petition Date"), Dondero controlled HCMLP through his position at HCMLP, his ownership of HCMLP's general partner, and his ownership of, or control over the owners of, HCMLP's limited partnership interests. As set forth below, Dondero also owns and/or directly or indirectly controls hundreds of Dondero Entities within the Highland web, including the dozens of Dondero Entities referenced herein.

13. Defendant Mark A. Okada is an individual who, upon information and belief, at all times relevant to this Amended Complaint was residing in Dallas, Texas. Okada is the co-founder of HCMLP and was its Chief Investment Officer until he stepped down in 2019, after which he assumed an advisory role through the end of that year. After Dondero, Okada was the next-largest owner of HCMLP or a beneficiary of the distributions it made to its limited partners. Like Dondero, Okada held his interest in HCMLP directly and through trusts.

14. Defendant Strand Advisors, Inc. ("Strand") is a Delaware corporation that is wholly-owned by Dondero. Since HCMLP's formation, Strand has been its general partner and owned limited partnership interests in HCMLP. At all times relevant to this Amended Complaint, Strand's principal place of business was 300 Crescent Court, Suite 700, Dallas, Texas 75201.

15. Defendant NexPoint Advisors, L.P. ("NexPoint") is a Delaware limited partnership. NexPoint is 99.9% owned by the Dugaboy Investment Trust, its sole limited partner. NexPoint's general partner, NexPoint Advisors GP, LLC ("NexPoint GP"), owns the remaining 0.1%. NexPoint and NexPoint GP were both formed on March 20, 2012. NexPoint concedes that it is controlled by Dondero, who owns 100% of NexPoint GP and is NexPoint GP's sole member and president. At all times relevant to this Amended Complaint, NexPoint's principal place of business was 300 Crescent Court, Suite 700, Dallas, Texas 75201.

16. Defendant Nancy Dondero is named in her capacity as Trustee of Defendant Dugaboy Investment Trust ("Dugaboy"). Dugaboy is a grantor trust established under the laws of the state of Delaware. Dugaboy was formed pursuant to an October 2010 Trust Agreement between Dana Scott Breault, as Settlor, and James D. Dondero and Commonwealth Trust Company, as Trustees. Dondero is Dugaboy's primary beneficiary. Under the Dugaboy trust agreement, Dondero has the power to remove trustees without cause, as well as the power to appoint successive trustees. Dugaboy's original Family Trustee was Dondero, and Defendant Grant James Scott III ("Scott") was its Independent Trustee. In 2015, Dondero appointed Scott as the Family Trustee, and shortly thereafter replaced Scott with his sister Nancy. Between 2016 through confirmation of the Plan, Dugaboy owned a 0.1866% economic interest and a 74.4426% voting interest in HCMLP's Class A partnership interests, and, as set forth above, owns a 99.9% economic interest in NexPoint. At all times relevant to this Amended Complaint, Dugaboy's principal place of business was 300 Crescent Court, Suite 700, Dallas, Texas 75201.

17. Defendant Highland Capital Management Fund Advisors, L.P. ("HCMFA") is a Delaware limited partnership.[3] HCMFA is owned by Strand Advisors XVI, Inc.[4] (which is HCMFA's general partner and owns a 1% interest in HCMFA); Highland Capital Management Services, Inc. ("HCMS") (which owns limited partnership interests in HCMFA equal to a 89.6667% ownership interest); and the Okada Family Revocable Trust (which owns limited partnership interests in HCMFA equal to a 9.3333% ownership interest). Dondero controls,

[3] HCMFA was originally created by Dondero on February 9, 2009, as Highland Funds Asset Management, L.P. ("HFAM"). On January 9, 2012, HFAM was renamed Pyxis Capital, L.P. ("Pyxis"), and on February 8, 2013, Pyxis was renamed HCMFA.

[4] Strand Advisors XVI, Inc. purports to be managed by six individuals, all but one of whom were previously on HCMLP's payroll.

and is the sole stockholder and director of, Strand Advisors XVI, Inc. Additionally, Dondero and Okada own 75% and 25% of HCMS, respectively.[5] HCMFA has acknowledged that it is controlled by Dondero. At all times relevant to this Amended Complaint, HCMFA's principal place of business was 300 Crescent Court, Suite 700, Dallas, Texas 75201.

18. Defendant Scott is an individual who currently resides in North Carolina. At all times relevant to this proceeding, Scott had various roles at numerous Dondero-controlled or affiliated entities: he was the trustee of Get Good Trust; a director of the Highland Dallas Foundation; the managing member of Charitable DAF GP, LLC; the sole director of Charitable DAF Holdco, Ltd.; the managing member of the Charitable DAF Fund; and the director of CLO Holdco, Ltd. Scott is Dondero's long-time friend, former college roommate, and was the best man at Dondero's wedding. Scott has testified under oath that Dondero is his "closest friend." Dondero personally selected Scott as his successor to run the Charitable DAF Fund. Dondero also caused Scott to serve on multiple boards on which Dondero also served, including the boards of the Highland Dallas Foundation, Inc., Highland Santa Barbara Foundation, Inc., and Highland Kansas City Foundation, Inc. Scott is also the executor of Dondero's will. Dondero, HCMLP, and/or entities controlled by Dondero transferred tens of thousands of dollars' worth of "business gifts" to Scott in the five years prior to the Petition Date. Scott has no training in finance or compliance and no investment experience. Scott routinely rubber-stamped Dondero's and HCMLP's directives without asking questions or requesting additional information.

[5] Dondero is the Director and President of Highland Capital Management Services, Inc. Scott Ellington is its Secretary.

19. Defendant Scott Ellington ("Ellington") was HCMLP's Chief Legal Officer and General Counsel until he was terminated for cause in January 2021 for acting in a manner adverse to HCMLP's interest. At all times relevant to this Amended Complaint, Ellington was a Texas resident.

20. Defendant Isaac Leventon ("Leventon") was Assistant General Counsel at HCMLP from March 2011 until he was terminated for cause in January 2021 for acting in a manner adverse to HCMLP's interests. At all times relevant to this Amended Complaint, Leventon was a Texas resident.

21. Defendant Charitable DAF Fund, LP (the "DAF") is an exempted company incorporated in the Cayman Islands. Dondero was the initial managing member of the DAF's General Partner, Charitable DAF GP, LLC ("DAF GP"), but in January 2011 he transferred all membership interests to Scott, who held those interests until March 2021. At all times relevant to this proceeding, Scott served as managing member of DAF GP and director of the DAF. HCMLP acted as the formal or informal non-discretionary investment manager for the DAF from its inception through 2020, and provided advisory and back-office services to the DAF and its subsidiaries, including CLO Holdco, Ltd., from 2012 until HCMLP terminated that relationship in February 2021. According to the DAF, Dondero currently serves as its investment advisor (although without an advisory contract).

22. Defendant Charitable DAF Holdco, Ltd. ("DAF Holdco") is an exempted company incorporated in the Cayman Islands. At all times relevant to this proceeding, Scott served as DAF Holdco's managing member and sole director. DAF Holdco is the limited partner of the DAF and owns 100% of the partnership interests in the DAF.

23. Defendant CLO Holdco, Ltd. ("CLO Holdco") is an exempted company incorporated in the Cayman Islands that was formed on December 13, 2010. CLO Holdco is a wholly-owned subsidiary of the DAF. CLO Holdco filed a proof of claim in HCMLP's bankruptcy case, which was subsequently amended to reduce the claim amount to zero.[6] In January 2022, CLO Holdco attempted to further amend the proof of claim to reassert a positive claim amount. CLO Holdco has no employees or officers. According to CLO Holdco, Dondero currently serves as an investment advisor to CLO Holdco (although without an advisory contract). Until Dondero's departure from HCMLP in January 2020, HCMLP (through Dondero) effectively made all investment decisions for the DAF which allocated the investments to CLO Holdco, which would then be rubber-stamped by Scott. At all times relevant to this Amended Complaint, CLO Holdco's principal place of business was 300 Crescent Court, Suite 700, Dallas, Texas 75201.

24. As of December 31, 2020, CLO Holdco and the DAF collectively controlled approximately $260 million in assets. Dondero has testified under oath that he was unaware of a single investment decision that HCMLP ever recommended to Scott regarding the DAF that Scott rejected. Likewise, Dondero was unaware of any investment Scott made on behalf of the DAF that did not originate with HCMLP.

25. Defendant Highland Dallas Foundation ("Highland Dallas") is registered as a Delaware nonprofit, nonstock corporation. The directors of Highland Dallas at the time of the events relevant to this proceeding were Dondero, Scott, and Mary Jalonick. Dondero also acted

[6] This proof of claim was signed by Grant Scott in his capacity as CLO Holdco's sole director. Grant Scott served in that capacity at all times relevant to this proceeding.

as Highland Dallas's president, and Scott served as its treasurer. Highland Dallas's principal office address is 3963 Maple Avenue, Suite 390, Dallas, Texas, 75219.

26. Defendant Scott, in addition to being named above in his individual capacity, is named in his capacity as Trustee of Get Good Trust, a trust established under the laws of the State of Delaware. According to Get Good's July 9, 2021, disclosure to this Court, Get Good consists of three related trusts: Get Good Trust, Get Good Non Exempt Trust No. 1, and Get Good Non Exempt Trust No. 2, all of which are included in the term "Get Good." Dondero is the settlor of Get Good, its beneficiaries are his "living descendants," and Scott was Get Good's trustee at all times relevant to this Amended Complaint.

27. Defendant Hunter Mountain Investment Trust ("Hunter Mountain") is a statutory trust established under the laws of the state of Delaware. Hunter Mountain was formed on December 17, 2015, shortly before it purchased limited partnership interests in HCMLP from HCMLP's then-existing limited partners (*i.e.*, Dondero, Okada, and entities that they controlled) and HCMLP. Through a complex series of transactions that occurred on December 21, 2015, and December 24, 2015, Dondero caused Hunter Mountain to become the owner-in-name of 99.5% of the economic interests of HCMLP. Meanwhile, Dondero caused Hunter Mountain to issue a series of notes and cash, such that Dondero, Okada, and certain entities that they controlled (including Dugaboy, The Mark & Pamela Okada Family Trust – Exempt Trust #1, and The Mark & Pamela Okada Family Trust – Exempt Trust #2) continued to receive the economic benefit of limited partnership distributions made by HCMLP to Hunter Mountain even after they had purportedly sold their limited partnership interests to Hunter Mountain. One such note was a $63 million secured promissory note Hunter Mountain entered into with HCMLP on December 21, 2015 (the "Hunter Mountain Note").

28. Rand PE Fund I, LP, Series 1 ("Rand") is a Delaware series limited partnership. Rand is the indirect parent of Hunter Mountain and is a guarantor of the Hunter Mountain Note.

29. Defendant Lawrence Tonomura is named in his capacity as trustee of Defendant The Mark & Pamela Okada Family Trust – Exempt Trust #1 ("MAP #1"), a trust established under the laws of the state of Texas. Okada controls MAP #1, which he created for the benefit of his children.

30. Defendant Lawrence Tonomura is named in his capacity as trustee of Defendant The Mark & Pamela Okada Family Trust – Exempt Trust #2 ("MAP #2"), a trust established under the laws of the state of Texas. Okada controls MAP #2, which he created for the benefit of his siblings.

31. Defendant Massand Capital, Inc. ("Massand Inc.") is a New York corporation that was created in 2002. Defendant Massand Capital, LLC ("Massand LLC") is a Delaware limited liability company created in 2014, pursuant to a certificate of incorporation signed by Leventon. Massand Inc. received payments from HCMLP between February 4, 2014 and January 7, 2015. Massand LLC received payments from HCMLP between February 25, 2015, and August 1, 2019. Massand Inc. and Massand LLC are referred to collectively herein as "Massand Capital".

32. Defendant SAS Asset Recovery Ltd. ("SAS") is a Cayman Island entity created in 2012, whose principal place of business is Dallas, Texas. Upon information and belief, SAS is a litigation funding and management business created by Dondero and Ellington in 2012 and operated out of HCMLP's headquarters. SAS, along with its direct and indirect subsidiaries, is owned and controlled by Dondero and Ellington, who own 70% and 30% of the economic

interests in SAS, respectively. Upon information and belief, Ellington is the Chief Executive Officer of SAS.

III. JURISDICTION, VENUE & STANDING

33. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 because this is a civil proceeding arising under or relating to the bankruptcy petition filed by HCMLP under Chapter 11 of the United States Bankruptcy Code. *See In re Highland Capital Management, L.P.*, No. 19-34054-sgj11 (Bankr. N.D. Tex.). This is a core proceeding pursuant to 28 U.S.C. § 157(b).

34. Venue is proper in this Court under 28 U.S.C. § 1409(a).

35. This Court has personal jurisdiction over the defendants because each of the Defendants: (i) is a Texas resident; (ii) was formed under the laws of Texas; (iii) is the alter ego of a Texas resident or an entity that was formed under the laws of Texas; (iv) has a business presence in Texas; (v) filed a proof of claim in HCMLP's bankruptcy case; and/or (vi) had minimum contacts with the state of Texas by either invoking the benefits and protections of the state of Texas or otherwise purposefully directing conduct toward a Texas resident.

36. The Plan created the Claimant Trust, which was vested with assets including substantially "all Causes of Action" and "any proceeds realized or received from such Assets." The Plan also created the Litigation Sub-Trust, as a "sub-trust established within the Claimant Trust or as a wholly-owned subsidiary of the Claimant Trust," for the purpose of "investigating, prosecuting, settling, or otherwise resolving the Estate Claims" transferred to it by the Claimant Trust pursuant to the Plan. The Plan defines Estate Claims to include "any and all estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of [HCMLP], and each of the Related Entities, including any promissory notes held by any of the foregoing." Proceeds

from the Litigation Trust's pursuit of claims "shall be distributed . . . to the Claimant Trust for distribution to the Claimant Trust Beneficiaries[.]"

37. On October 8, 2021, the Claimant Trust confirmed the assignment of certain Causes of Action (as defined in the Plan) to the Trust, including all claims set forth in this Amended Complaint. All of the claims asserted in this Amended Complaint belong to the Litigation Sub-Trust, not the Reorganized Debtor.

38. Under the Plan, the Claimant Trust Beneficiaries are (i) the Holders of Allowed General Unsecured Claims and (ii) the Holders of Allowed Subordinated Claims, whose Claims are junior to those distributed to Holders of Allowed General Unsecured Claims.[7] The Claimant Trust Beneficiaries' claims against the Reorganized Debtor's estate are substantial and exceed, in aggregate, $380 million. To date, neither the Holders of Allowed General Unsecured Claims nor the Holders of Allowed Subordinated Claims have been paid at all.

39. The Trustee has standing to avoid all transfers described herein pursuant to 11 U.S.C. § 544(b) and applicable law. On the date of the Debtor's bankruptcy filing, at least one or more unsecured creditors who held an allowable claim, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis (all as defined herein), could have sought under state law to avoid each of the transfers made on or after October 16, 2015. The Internal Revenue Service filed an amended Proof of Claim in the Debtor's bankruptcy case on October 6, 2021, which asserts unsecured claims including for the tax period of June 30, 2015. Under applicable state and federal law, the IRS was entitled to seek to avoid all transfers at issue herein

[7] Holders of certain Allowed Limited Partnership Interests may become Claimant Trust Beneficiaries but only if *all* Allowed General Unsecured Claims, Allowed Subordinated Claims, and costs and expenses are indefeasibly paid in full.

as a present or future creditor, including transfers that occurred on or before October 16, 2015, because the IRS's claim arose within a reasonable time of those transfers.

IV. FACTUAL ALLEGATIONS

A. Dondero Creates HCMLP

40. HCMLP was a global alternative investment manager and registered investment advisor that was founded in 1993 by Dondero and Okada. The funds managed by HCMLP originally focused on the leveraged loan market, and subsequently expanded into other asset classes such as high-yield credit, public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific industries.

41. By the mid-2000s, HCMLP employed over 100 employees, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel. As of the Petition Date, HCMLP had three primary business lines: (i) investment management; (ii) the provision of middle- and back-office services ("shared services") to other registered investment advisors; and (iii) proprietary trading.

42. Dondero exercised complete control over HCMLP from its founding until January 9, 2020, when this Court entered an order implementing the settlement and term sheet entered into between HCMLP and the unsecured creditors' committee, pursuant to which three new independent directors (the "Independent Board") were appointed at Strand to oversee the management and reorganization of HCMLP. HCMLP's employees have bluntly acknowledged that, prior to the appointment of the Independent Board, Dondero was HCMLP's solitary decision-maker on all matters concerning the company's operation and management. Dondero

served as HCMLP's Chief Executive Officer and President from the time that HCMLP was founded until he resigned from those roles on January 9, 2020.

43. As of December 31, 2006, HCMLP provided investment advisory services pursuant to management agreements for: (i) 22 CLOs, (ii) 1 SLT; (iii) 11 RICs, (iv) 7 warehouse transactions, (v) 4 SMAs; (vi) one trust; and (vii) 10 hedge fund structures.[8] At that time, the value of HCMLP's assets under management ("AUM") was approximately $33.1 billion.[9]

B. HCMLP Narrowly Survives The Financial Crisis Of 2008, And Emerges Facing Hundreds Of Millions Of Dollars In Potential Litigation Damages

44. Around 2008, HCMLP's business began to falter, as the financial crisis began to set in. The funds that HCMLP managed faced large losses, followed by substantial redemptions. In January 2008, HCMLP experienced its worst performance to date, with the value of many of its managed funds deteriorating significantly.

45. At the same time that HCMLP was facing significant losses that threatened its existence, the company also became ensnared in litigation posing the threat of hundreds of millions of dollars in damages. In March 2008, HCMLP and its managed funds Highland CDO

[8] A collateralized loan obligation ("CLO") is a structure that acquires and manage a pool of debt or loans. The CLO issues multiple debt tranches as well as equity, and uses the proceeds of those issuances to obtain loans. A structured loan transaction ("SLT") is a transaction involving structured financial instruments such as collateralized loan obligations. A registered investment company ("RIC") is a corporation, partnership, or trust registered with the Securities and Exchange Commission under the Investment Company Act of 1940. A warehouse transaction is an intermediate transaction that involves purchasing loans or bonds that will undergo the warehousing period prior to serving as collateral for a CLO security. A separately-managed account ("SMA") is a managed investment vehicle that has only one investor. A trust is a fiduciary agreement in which one entity that holds property or assets as its owner for one or more beneficiaries. A hedge fund structure is an actively managed investment pool held by a limited partnership of investors that allows partners to "redeem" their investment, subject to certain limitations.

[9] At its high-water mark, HCMLP's AUM exceeded $40 billion.

Opportunity Master Fund, L.P. ("CDO Fund") and Highland Special Opportunities Holding Company ("SOHC" and together with CDO Fund, the "Fund Counterparties")[10] had entered into a transaction with UBS to finance the purchase of various CLO tranches (*i.e.*, tranches of debt issued by existing CLOs) and other assets, including credit default swaps ("CDS"). The governing agreements required the Fund Counterparties to post collateral based on the mark-to-market value of certain collateralized debt obligations. The value of these assets dropped by more than $400 million in the fall of 2008, and in November 2008, the Fund Counterparties failed to meet UBS's margin demand. In December 2008, UBS terminated the agreements, and claimed that it was owed 100% of its losses—which UBS alleged was as much as $745 million—from HCMLP and the Fund Counterparties.

46. On February 24, 2009, UBS commenced an action against HCMLP and the Fund Counterparties in New York state court. As amended and consolidated, UBS asserted claims against HCMLP for actual and constructive fraudulent transfer and breach of the implied covenant of good faith and fair dealing. Among other things, UBS alleged that in March 2009, HCMLP had orchestrated transfers of approximately $233 million of assets from SOHC's parent entity HFP, which UBS alleged was the alter ego of SOHC or its subsidiaries (the "March 2009 Transfers"). UBS sought to disgorge those transfers, and also sought damages against

[10] The CDO Fund is an indirectly-controlled subsidiary of HCMLP. At all times relevant to this proceeding, the CDO Fund was controlled by HCMLP, either pursuant to an investment advisory agreement and/or through HCMLP's indirect ownership of CDO Fund's general partner. SOHC is a subsidiary of Highland Financial Partners, L.P. ("HFP"). At all times relevant to this proceeding, HFP was managed and controlled by Dondero in his capacity as an officer of HFP and its general partner and as a member of HFP's monitoring committee. HFP's general partner is a wholly-owned indirect subsidiary of HCMLP. After 2010, Dondero was the sole member of HFP's monitoring committee until his resignation in mid-2021. At all times relevant to this Complaint, Dondero managed and controlled SOHC through his control of HFP.

HCMLP, including punitive damages, attorneys' fees, and pre-judgment interest (calculated at 9% under New York law).

47. Meanwhile, in December 2008, CDO Fund ceased meeting margin calls issued by Citibank N.A., Citigroup Global Markets Limited, Citigroup Financial Products Inc., and Citigroup Global Markets Inc. (together, "Citi") in connection with CDS entered into by CDO Fund and Citi. Citi seized assets posted by CDO Fund to collateralize the CDS, and, by March 2009, conducted two auctions to sell the collateral. The proceeds of the collateral sales, however, were not sufficient to satisfy CDO Fund's obligations to Citi. On April 5, 2012, CDO Fund sued Citi, alleging various claims arising from the margin calls. On May 3, 2013, Citi answered and countersued CDO Fund, HCMLP, and Highland CDO Opportunity Fund GP, L.P. ("CDO Fund GP") to: (i) recover a deficit of more than $24 million, plus accrued interest, still owed under the agreements governing the CDS; (ii) recoup $3 million in liquidation proceeds mistakenly received from a third party; and (iii) seek indemnification for all losses and costs Citi incurred as a result of CDO Fund's breach.

48. In addition, on April 2, 2009, Barclays Bank PLC ("Barclays PLC") and its wholly-owned subsidiary HYMF, Inc. ("HYMF" and, together with Barclays PLC, "Barclays") commenced an action against HCMLP and certain of its managed funds (the "Fund Defendants") and related entities for breach of contract, breach of fiduciary duty, and equitable accounting (the "Barclays Action"). The Barclays Action focused on hedge contracts that HYMF had entered into with various HCMLP-managed funds, which provided that HYMF would be able to remove its investments in a preferential fashion via a "redemption" right, usually as quickly as one day. Barclays alleged that HYMF attempted to exercise that redemption right in mid-October 2008 but was rejected by HCMLP and its managed funds,

notwithstanding the clear terms of the HYMF contracts. This breach of the HYMF contracts was accompanied by Dondero personally stating he would withhold over $100 million for over a year unless HYMF performed certain unrelated financial services for the Fund Defendants. Barclays alleged that it had invested more than $700 million into the Fund Defendants, that Dondero personally held at least $100 million of that "hostage," and that "hundreds of millions of dollars" were still owed to HYMF.

49. Additionally, on June 3, 2011, HCMLP became aware that on November 1, 2010, the Securities and Exchange Commission (the "SEC") had commenced an investigation with respect to potential violations of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940. While the SEC investigation was settled years later for a reduced amount, HCMLP's understanding in 2011 was that the SEC investigation could result in significant penalties, including substantial monetary penalties, for the company.

C. In A Scheme To Evade HCMLP's Creditors, Dondero Creates "Lifeboats" To Usurp HCMLP's Business

50. In 2012, Dondero explained HCMLP's precarious financial condition, testifying under oath that the 2008 financial crisis took HCMLP "to a state of insolvency and we've been juggling liquidity since that," and that "[t]he last three, four years have been negative to the tune of hundreds of millions of dollars[.]" Dondero testified further that the contingent liabilities resulting from the lawsuits filed against HCMLP were a primary driver of HCMLP's insolvency.

51. It was against this backdrop that in or about 2011, Dondero determined to create a series of new entities—referred to internally by some at HCMLP as "lifeboats"—to take over HCMLP's business, with the aim of placing the resulting profits beyond the reach of HCMLP's

creditors. Ultimately, the most successful of the lifeboats were NexPoint and HCMFA, which are described in greater detail below. However Dondero also created other lifeboats at or around this time, including:

- Tunstall Capital Management, LP—which was created to manage stressed and distressed investing in hedge funds, private equity funds, and retail funds;
- Falcon E&P Opportunities GP, LLC—which was created to manage oil and gas investments in private equity funds;
- Granite Bay Advisors, LP—which was created to manage long-short credit investing; and
- Highland Capital Healthcare Advisors, LP ("HCHA")—which was created to serve as a healthcare equity advisor.

1. NexPoint

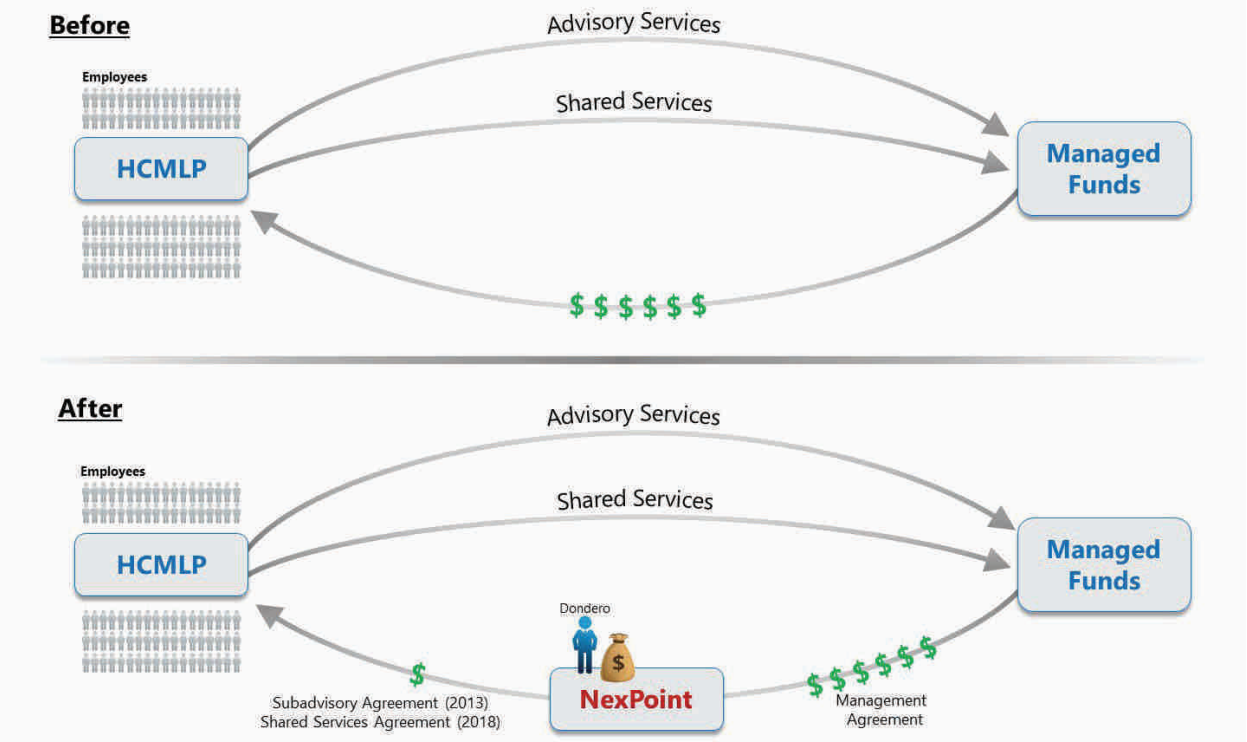
52. NexPoint was effectively a shell entity that Dondero created in March 2012 to siphon profits from HCMLP in order to evade HCMLP's creditors. Dondero's family trust Dugaboy, of which Dondero is the primary beneficiary, owns 99.9% of NexPoint.

53. Between 2012 and 2015, NexPoint had no employees of its own, and performed no business activities that were distinguishable from those performed by HCMLP. To the contrary, NexPoint used HCMLP's employees to perform the same investment management and advisory services—including investment advisory, compliance, accounting, tax, human resources, and information technology services—that were performed by HCMLP.

54. For over a year, HCMLP performed all services for NexPoint, without any sub-advisory or shared services agreements that even purported to compensate HCMLP for the use of its employees. In mid-2013, Dondero attempted to retroactively infuse this scheme with a patina of legitimacy, by causing NexPoint to enter into a shared services agreement with HCMLP that required NexPoint to pay fees to HCMLP based on a formula that resulted in low

fee payments. NexPoint continued to reap the vast majority of the generated fees, however. NexPoint's fees were based on a percentage of AUM, set at a level to yield fees far in excess of those NexPoint was paying HCMLP. The NexPoint scheme is illustrated in Figure 1, below.

Figure 1.



55. Adding insult to injury, HCMLP funded NexPoint's operations whenever needed, seeded large investments made by NexPoint, and funded a large portion of the distributions NexPoint made to its owner, Dugaboy (the beneficiary of which was Dondero). Indeed, in June 2012, at the time that Dondero was transferring HCMLP's advisory services business to NexPoint, Okada complained to Dondero that he was "using Highland's cash flow" to set up new entities controlled by Dondero and to "fund all their negative working capital."

56. Between 2012 and 2017, HCMLP loaned NexPoint approximately $30 million, and entered into a revolving line of credit to provide NexPoint with additional liquidity. Initially, the loans were in the form of demand notes and were unsecured, frequently below-

market, and had few to no covenants. NexPoint paid no principal or interest to HCMLP on the loans during the 2012-2017 period. At the same time, NexPoint made limited partner distributions of approximately $34 million—99.9% of which were made to Dugaboy for Dondero's benefit.

57. Dondero caused HCMLP to enter into multiple forbearance agreements with respect to the NexPoint loans, pursuant to which HCMLP agreed not to collect on the NexPoint loans for a period of one year from the time of the agreement. According to NexPoint's financial statements, these agreements were entered into to provide NexPoint "with the necessary financial support to fund [NexPoint's] obligations as they come due[.]" By May 2017, NexPoint owed HCMLP more than $30 million. Although all of these obligations were payable on demand, HCMLP again agreed not to demand repayment—this time through May 31, 2018—and also agreed to provide support to fund NexPoint's obligations through the same period. Meanwhile, HCMLP recorded the NexPoint loans at face amount on HCMLP's books.

58. Upon information and belief, on May 31, 2017, following discussions with NexPoint's auditors, Dondero restructured the NexPoint loans into a consolidated $30,746,812.33 note (the "NexPoint Loan") with an unusually long 30-year term maturity, a low coupon rate, no covenants, and no security. HCMLP received no consideration in exchange for its agreement to extend the NexPoint loans' maturity date from on-demand to 30 years.

59. Subsequent to Dondero's resignation from HCMLP, on December 31, 2020, NexPoint defaulted on the NexPoint Loan and the full outstanding amount of the loan was accelerated. On January 22, 2021, HCMLP filed an adversary proceeding in the Bankruptcy Court to collect on the NexPoint Loan. *See Highland Capital Management, L.P. v. NexPoint Advisors, L.P.*, Adv. Pro. 21-03005-sgj (Bankr. N.D. Tex. Jan. 22, 2021). NexPoint has raised

a series of frivolous defenses to HCMLP's claims, including that HCMLP—acting through the owner of a majority of its Class A interests, Dugaboy (which was acting through Dondero's sister, as Dugaboy's Family Trustee)—orally agreed to forgive the NexPoint Loan as part of Dondero's compensation. More than $23 million remains outstanding on the NexPoint Loan, and interest and fees continue to accrue. HCMLP has moved for summary judgment on this matter.

60. From the time that it was created in 2012 through 2019, NexPoint—which used HCMLP's employees to perform the same management and advisory services that are performed by HCMLP—earned over $150 million in revenues (including over $120 million in advisory and administrative fees) and approximately $50 million in operating income. Between 2012 and 2015, NexPoint's AUM increased 34%, from $700 million to $936 million, and revenues increased from $4.1 million to $16.2 million. Between 2015 and 2019, NexPoint's AUM increased by approximately 408%—from $936 million to $4.8 billion, and revenue increased from $16.2 million to $46.8 million. By contrast, over the same 2015 to 2019 period, HCMLP's AUM decreased from $9.5 billion to $2.3 billion.

2. HCMFA

61. Dondero utilized the same basic playbook for HCMFA, which is directly or indirectly owned by Dondero and Okada. HCMFA was created to replace HCMLP as the new investment manager for certain open-ended retail investment funds, but in a manner similarly designed to ensure that the profits generated by the business would not be available to HCMLP's litigation creditors in the event they achieved favorable judgments.

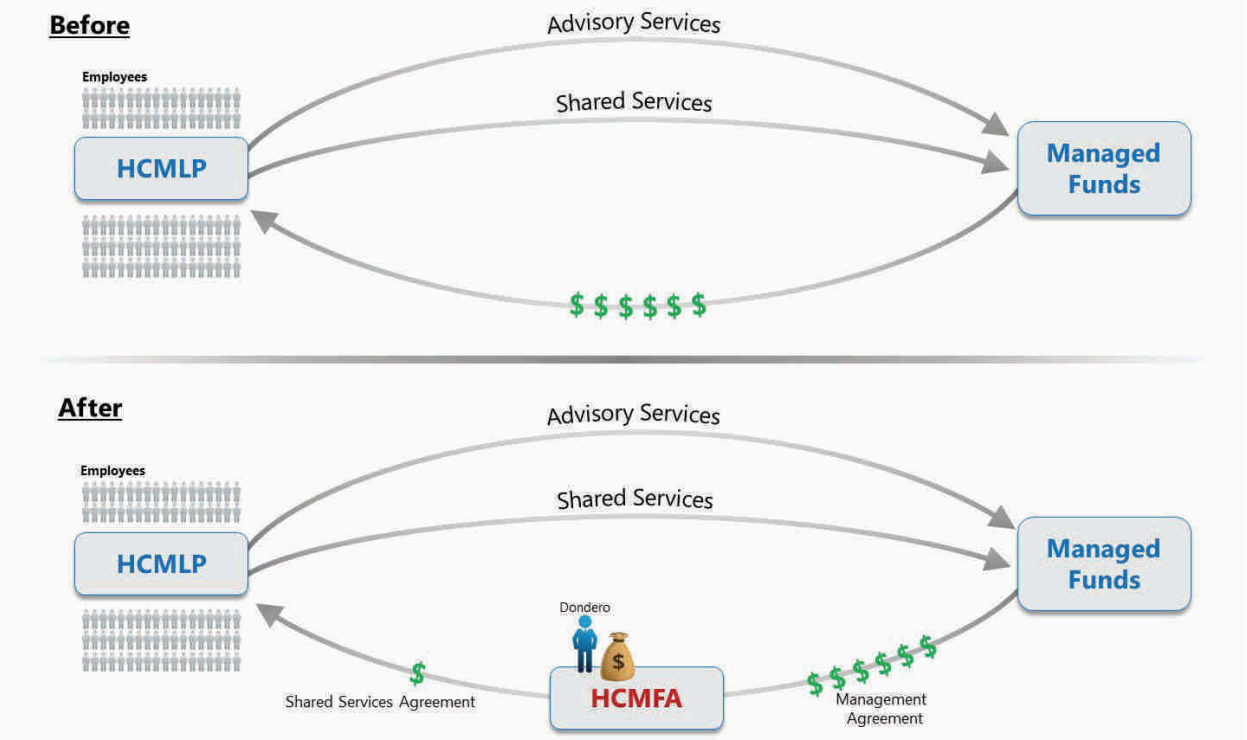
62. On December 15, 2011, Dondero caused HCMLP to transfer HCMLP's rights and obligations to provide investment advisory services for Highland Credit Strategies Fund,[11] Highland Floating Rate Opportunities Fund ("HFRO") (n/k/a Highland Income Fund), Highland Long/Short Equity Fund, Highland Long/Short Healthcare Fund, and Highland Special Situations Fund to HCMFA. HCMLP received no consideration for the transfer. Prior to the transfer, HCMLP received management and advisory fees under those agreements in return for the services it performed. Following the transfer, it was HCMFA rather than HCMLP that received those fees, notwithstanding that HCMFA used HCMLP's employees to perform most services. Thus, the effect of the transfer was to insert a new entity to reap the profits earned from the same HCMLP employees performing the same work that had been performed prior to the transfer.

63. HCMFA collected management fees from its managed funds based on a percentage of their net asset value ("NAV"). Meanwhile, HCMLP—whose employees performed most services required by HCMFA—received a low fee that was only a small fraction of the fees earned by HCMFA. And HCMLP received no fee with respect to the advisory services it provided to HCMFA, despite the fact that HCMLP's employees were named portfolio managers, and constituted entire teams of supporting investment analysts, for HCMFA-managed funds. Indeed, HCMFA did not execute a sub-advisory agreement with HCMLP, and it was only in May 2018 that HCMFA executed a payroll reimbursement agreement to partially compensate HCMLP for the services of certain HCMLP employees. If

[11] On June 13, 2012, the management agreements for Highland Credit Strategies Fund were purportedly "novated" to the newly-created NexPoint. Highland Credit Strategies Fund's name was changed to NexPoint Credit Strategies Fund, referred to herein as "NHF." The result of this transfer was simply to shift management fees relating to NHF—which had previously been diverted from HCMLP—from one lifeboat (Pyxis/HCMFA) to another (NexPoint).

HCMLP had managed the HCMFA-managed funds directly rather than doing so through an entity that was created to evade HCMLP's creditors, then HCMLP would have earned tens of millions of dollars (potentially over $100 million) in additional fees between 2012 and 2018. The HCMFA scheme is illustrated by Figure 2, below.

Figure 2.



64. Following Dondero's "lifeboat" playbook, HCMLP also provided financial support to HCMFA so that HCMFA was well-positioned to earn profits that bypassed HCMLP's creditors and flowed directly to Dondero and his affiliated entities, primarily through HCMFA's largest limited partner, HCMS (of which Dondero and Okada owned 75% and 25%, respectively). Between 2011 and 2019, HCMLP loaned HCMFA approximately $12 million. Those HCMFA loans were evidenced by demand notes, for which Dondero caused HCMLP to enter into multiple forbearances, ultimately preventing HCMLP from demanding payment until May 31, 2021. As of the Petition Date, $6.3 million was outstanding on the notes subject to the

forbearance agreement. In May 2019, HCMFA borrowed an additional $7.4 million from HCMLP pursuant to two additional demand notes.

65. Subsequent to Dondero's resignation from HCMLP, HCMFA defaulted on its debt to HCMLP. On January 22, 2021, HCMLP filed an adversary proceeding in the Bankruptcy Court to collect on the debt. HCMFA has raised a series of frivolous defenses to HCMLP's claims, including that the notes were executed in error. As of December 11, 2020, approximately $7.7 million in principal and interest was due and owing to HCMLP on the HCMFA notes dated May 2 and 3, 2019 and, as of June 4, 2021, approximately $3.1 million in principal and interest was due and owing to HCMLP on the HCMFA notes dated February 26, 2014, and February 26, 2016, and interest and fees continue to accrue. HCMLP has moved for summary judgment on this matter.

D. Dondero, Ellington, and Leventon Cause HCMLP To Engage In Misconduct That Exposes It To Additional Liability

66. As described more fully below, in addition to establishing the lifeboats to usurp HCMLP's business and evade its contingent creditors, Dondero, along with Scott Ellington, HCMLP's Chief Legal Officer and General Counsel, and Isaac Leventon, HCMLP's Assistant General Counsel, engaged in other actions that meaningfully harmed HCMLP. This included exposing HCMLP to significant liability by utilizing it to exact revenge on Dondero's perceived adversaries, and carrying out schemes that personally benefitted Dondero and, in certain instances, Ellington, but conferred no benefit on HCMLP. Ellington and Leventon were also financially rewarded by Dondero for faithfully serving Dondero's interest, rather than HCMLP's, even where doing was detrimental to HCMLP. As described below, these actions ultimately resulted in more than one billion dollars in litigation and arbitration claims against

HCMLP and millions of dollars in legal fees, necessitated HCMLP's bankruptcy filing, and ultimately forced HCMLP to enter into settlements for hundreds of millions of dollars.

1. Dondero Causes HCMLP To Engage In Misconduct Designed To Exact Revenge On Joshua Terry

67. In 2011, Dondero formed Acis Capital Management, L.P. ("Acis") and Acis Capital Management GP, LLC ("Acis GP"). Dondero was President both of Acis and Acis GP, and controlled their overall financial strategies and decisions. Upon information and belief, prior to its bankruptcy filing in 2018, Acis was indirectly owned by Dondero (through Dugaboy), Okada, and Joshua Terry ("Terry"), an HCMLP employee that Dondero tapped to manage Acis. Like HCMLP, Acis was a registered investment advisor whose purpose was to raise money from third-party investors to launch or invest in CLOs. HCMLP was the investment manager for Acis, and Acis performed almost all of its services through HCMLP employees. Dondero created Acis to act as another lifeboat—*i.e.*, to divert income away from HCMLP when HCMLP was facing the risk that all of its assets would be absorbed by its creditors. In 2013, HCMLP began what proved to be a short-lived turnaround, spurred by improving financial performance and settlement of the Barclays litigation. At this point, Dondero became more troubled by the dilution of his share of Acis's income, caused by Terry's ownership in Acis, than he was about evading HCMLP's liabilities. As a result, Dondero once again redirected the flow of money for his own benefit, this time by siphoning value from Acis back to HCMLP.

68. By 2016, tensions between Dondero and Terry hit a boiling point. Dondero sought to finance an acquisition by an HCMLP portfolio company through a loan from HCMLP-managed CLOs, and an extension of the maturity dates on the portfolio company's notes that were held by the CLOs. Terry was the investment manager for the CLOs, and

opposed the plan on the ground that agreeing to extend the notes' maturity dates would breach his fiduciary duties to the CLOs. Dondero responded to Terry's opposition by firing him from Acis and HCMLP, making up a pretextual claim of termination for "cause." Shortly thereafter, Dondero amended the Acis limited partnership agreement to terminate Terry's interests in Acis, and directed Acis to sue Terry in Texas state court. Terry counterclaimed and demanded arbitration.

69. On October 20, 2017, following a ten-day arbitration, the arbitration panel issued Terry an award of $7,949,749.15, plus interest, against Acis. The arbitration panel found, among other things, that (i) Terry's termination was "without cause," and Acis had "knowingly and willfully" invoked HCMLP's false pretext of "for cause" in order to deny Terry his contractual entitlement to the value of his Acis partnership interest, (ii) Acis had breached its limited partnership agreement, and breached the fiduciary duties it owed to Terry as Acis's limited partner, (iii) beginning in 2013, Dondero had caused Acis to pay HCMLP more than its contractual entitlement for shared expenses in order to reduce the amount of Terry's limited partnership distributions, and (iv) one month after Terry was terminated from Acis, Dondero significantly increased the amounts that Acis was paying HCMLP under their shared services and sub-advisory agreements, retroactive to January 1, 2016.

70. Beginning on October 24, 2017—four days after Terry's arbitration judgment was issued—Dondero, acting through HCMLP, and with the aid of Ellington and Leventon, entered into numerous transactions designed to take control of Acis's assets and business, and strip Acis of assets so that it would be unable to pay Terry's arbitration award. Ellington and Leventon aided Dondero by implementing Dondero's directives and taking the steps necessary to consummate these transactions, notwithstanding their knowledge that the transactions

benefitted only Dondero, and would ultimately harm HCMLP by exposing it to significant liability.

71. Ultimately, Dondero's elaborate schemes to render Acis judgment-proof led Terry to file involuntary petitions for protection under chapter 11 of the United States Bankruptcy Code against Acis and Acis GP on January 30, 2018. In response to the bankruptcy filings, Dondero caused HCMLP, which served as the sub-advisor to the Acis CLOs, to grossly mismanage the Acis CLOs, including by failing to purchase a single loan for the CLOs following the appointment of a chapter 11 trustee in the Acis bankruptcy case. This abrogation of duties caused the chapter 11 trustee to replace HCMLP with Brigade Capital Management, LP ("Brigade") and Cortland Capital Markets Services LLC ("Cortland"). Put another way, Dondero's use of HCMLP to cause damage to Acis actually harmed HCMLP itself, leading HCMLP to incur exorbitant legal fees attacking Acis, the loss of its investment management contracts and the income flowing from those contracts, and reputational harm that precluded HCMLP from launching any future CLOs and generating fee income therefrom.

72. Dondero also caused HCMLP to commence litigation against the Acis chapter 11 trustee, prompting a countersuit pursuant to which the chapter 11 trustee sought to recover fraudulent transfers Dondero had directed (through HCMLP) and to stop HCMLP from engaging in a course of conduct that was harmful to Acis and the Acis CLOs. This led to the entry of a temporary restraining order against HCMLP, which Dondero caused HCMLP to violate. Dondero also caused Highland CLO Funding, Ltd. ("HCLOF") to initiate an additional frivolous lawsuit against Terry in the Royal Court of Guernsey (the "Guernsey Suit"), which was ultimately dismissed, resulting in Terry arguing that HCMLP, as the owner of HCLOF's

advisor Highland HCF Advisors, Ltd. ("HHCFA"), was liable for Terry's attorneys' fees and expenses under Guernsey's "loser pays" regime.[12]

2. Dondero And Ellington Expose HCMLP To Liability By Fraudulently Inducing An Investment From HarbourVest

73. Dondero and Ellington also exposed HCMLP to substantial liability to third-party investors HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, "HarbourVest"). At the same time that Dondero was surreptitiously transferring valuable rights associated with the Acis CLOs away from Acis in order to evade Terry's arbitration award, he and Ellington were using HCMLP to induce the HarbourVest Entities to purchase 49.9% of HCLOF—the owner of the equity tranche of the Acis CLOs—from CLO Holdco for approximately $75 million in cash, with a commitment to invest an additional $75 million in HCLOF.[13] In soliciting this investment, Dondero and Ellington failed to disclose material facts

[12] Dondero's litigation crusade against Terry and Acis continues to date. On May 14, 2021, NexPoint, acting under Dondero's direction, caused one of its managed retail funds, NSOF, to commence a lawsuit in the district court for the Southern District of New York against Acis, Terry, U.S. Bank, N.A., and Brigade, alleging that the Acis CLOs had been mismanaged. On May 20, 2021, NSOF then filed a motion in Acis's bankruptcy case, seeking a ruling that the complaint did not violate the injunction contained in Acis's plan of reorganization. On September 9, 2021, the bankruptcy court conducted a lengthy hearing, and on September 24, 2021, declined to issue the order requested by NSOF and held that NSOF must amend its complaint to comply with the plan injunction. On October 8, 2021, NSOF then filed a motion asking the Bankruptcy Court to reconsider its ruling, but withdrew the motion on December 1, 2021. NSOF filed an Amended Complaint in the SDNY action on November 23, 2021. Acis, U.S. Bank, N.A., Brigade, and HCLOF (as defendant intervenor) filed motions to dismiss, which were fully briefed in March 2022, and remain pending.

[13] CLO Holdco acquired Acis CLO equity tranches when the CLOs were launched and then transferred them to HCLOF in exchange for a 100% ownership interest in HCLOF after it was formed.

to HarbourVest regarding the Terry disputes and Acis frauds, thus exposing HCMLP to substantial and unnecessary liability.[14]

74. In inducing HarbourVest's investment, Dondero and Ellington, purportedly acting through HCMLP, made numerous misrepresentations and omissions, including: (1) failing to disclose that Dondero intended to cause Acis to evade Terry's $7.9 million arbitration award against it, including by causing Acis to consummate a series of fraudulent transfers; (2) misrepresenting the reasons that Dondero changed the name of the holding company for the Acis CLOs from Acis Loan Funding, Ltd. ("ALF") to HCLOF immediately prior to the HCLOF Investment; and (3) expressing confidence in HCLOF's ability to reset or redeem the CLOs under its control, when in actuality Dondero's actions to evade Terry's arbitration award against Acis resulted in Acis's bankruptcy, and rendered the resets impossible.

75. Moreover, unbeknownst to HarbourVest, Dondero intended for CLO Holdco to use the $75 million that it received from HarbourVest to make investments in other Dondero-owned entities, including entities managed by NexPoint and HCMFA. Thus, the HarbourVest investment benefitted Dondero personally, but left HCMLP exposed to hundreds of millions of dollars in potential damages to HarbourVest.

3. Dondero And His Accomplices, Including Ellington and Leventon, Cause HCMLP To Engage In Misconduct That Increases Its Liability To UBS

76. In March 2017, the New York state court presiding over UBS's claims against HCMLP and the Fund Counterparties ruled that UBS's claims against the Fund Counterparties,

[14] HCLOF has never paid a management fee to HHCFA, a wholly-owned subsidiary of HCMLP that is managed and controlled by HCMLP and operated using HCMLP employees. Consequently, HCMLP has indirectly provided free investment management services to HCLOF since its inception.

and its fraudulent transfer claims against HCMLP, could proceed to trial.[15] Shortly thereafter, Dondero, Ellington, and Leventon, along with HCMLP employees Jean Paul Sevilla, Katie (Irving) Lucas, and Matthew DiOrio, took steps to transfer the Fund Counterparties' remaining assets to Sentinel Reinsurance, Ltd. ("Sentinel"), a Cayman Islands entity indirectly owned and controlled by Dondero and Ellington,[16] in order to ensure that such assets would be out of UBS's reach in the event that a judgment was entered in its favor.[17] In or around August 2017, Dondero, Ellington, Leventon, Sevilla, Lucas, and DiOrio orchestrated the surreptitious transfer of substantially all of the Fund Counterparties' assets—with a face amount of $300 million and a fair market value of at least $100 million—to Sentinel.

77. The pretextual justification for these transfers was to satisfy a $25 million premium on an "after the event" insurance policy issued by Sentinel that purportedly insured the Fund Counterparties' first $100 million of liability to UBS. The real goal of the transfer, however, was to drain the Fund Counterparties' assets and render the Fund Counterparties judgment-proof, while keeping the assets within Dondero's and Ellington's control. There is no legitimate explanation as to why the Fund Counterparties transferred assets worth at least four times the premium payment to Sentinel. And given that Dondero and Ellington indirectly own and control Sentinel, they personally and improperly benefitted from this overpayment.

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[15] UBS's claim against HCMLP for breach of the implied covenant of good faith and fair dealing was subsequently also permitted to proceed.

[16] Sentinel was created in 2012 and is 70%-owned by Dondero and 30%-owned by Ellington through intermediate holding companies. Sentinel has no employees or physical office space. HCMLP employees, including Leventon, performed work on behalf of Sentinel.

[17] In December 2017, Ellington caused Dilip Massand and DiOrio to be appointed as directors of Sentinel.

78. Moreover, Ellington and Leventon (along with Sevilla, Lucas, and DiOrio) actively concealed the transfer of assets and the existence of the purported insurance policy from the Independent Board, apparently in order to prevent the Fund Counterparties from making a claim under the policy. Indeed, Leventon, who was directly involved in the transfers to Sentinel, was tasked with educating the Independent Board about UBS's claim and the assets potentially available to satisfy it. In response, Leventon delivered an extensive—but intentionally misleading—presentation to the Independent Board that said nothing about the August 2017 asset transfer and the purported Sentinel insurance policy, and lied to HCMLP regarding the Fund Counterparties' assets. Additionally, around the same time that Ellington and Leventon were hiding this secret insurance policy from the Independent Board, (i) Ellington charged the policy for personal expenses in excess of $500,000 that bore no relation to the UBS litigation and provided no benefit whatsoever to the Fund Counterparties or HCMLP; and (ii) Ellington and Leventon, among others, entered into agreements whereby Sentinel agreed to pay attorneys' fees and expenses they incurred in connection with HCMLP's bankruptcy.

79. As a direct result of Ellington's and Leventon's fraudulent concealment of the transfers to Sentinel, HCMLP inadvertently made factually inaccurate statements to the Bankruptcy Court and incurred millions of dollars in additional fees litigating (rather than settling) with UBS. In March 2021, after the policy was uncovered through HCMLP's diligence (notwithstanding Ellington's and Leventon's cover-up), the CDO Fund made a claim on the policy. To date, Sentinel has refused to make any payments.

80. On February 10, 2020, the New York state court entered a judgment against the Fund Counterparties in connection with the phase one litigation, in the principal amount of $519,374,149, plus $523,016,882.79 in prejudgment interest, for an overall judgment of

$1,042,391,031.79. Trial on UBS's claims against HCMLP was still pending when HCMLP filed for bankruptcy on October 16, 2019 (as discussed *infra*).

4. Dondero Causes HCMLP To Engage In Misconduct That Results In Liability To HERA And Patrick Daugherty

81. HCMLP's poor performance during the 2008-09 financial crisis left it with insufficient available cash and assets to offer incentive-based compensation to key senior employees. After HCMLP defaulted on a credit facility with a group of unsecured banks, the lender group demanded a security interest in all HCMLP's assets, but permitted the creation of a retention program to stave off an exodus of employees. With the consent of the lenders, on June 23, 2009, HCMLP created Highland Employee Retention Assets LLC ("HERA"), an employee-owned (subject to a two-year vesting period) entity that served as a replacement for certain senior employees' deferred compensation, which had been previously-awarded but wiped out by the financial crisis. HCMLP contributed assets to HERA, which then distributed proceeds from time to time. Patrick Daugherty, a former senior HCMLP employee, was a director of HERA and its largest unitholder.

82. Dondero's relationship with Daugherty deteriorated, and Daugherty resigned from HCMLP in the fall of 2011. Instead of simply allowing HERA to pay Daugherty what he was owed, Dondero caused HCMLP to carry out his personal vendetta against Daugherty through years of spiteful, unnecessary litigation borne out of personal animosity. As a result of that litigation, HCMLP accrued (i) litigation expenses and pre- and post-judgment interest that exceeded the amounts that HERA owed Daugherty in the first place; and (ii) liability in connection with a jury verdict that HCMLP defamed Daugherty with malice and breached the implied covenant of good faith and fair dealing.

83. Moreover, Dondero, through HCMLP, engaged in an asset-stripping campaign designed to render HERA judgment-proof, further exposing HCMLP to liability and unnecessary legal costs. In furtherance of that scheme, Dondero caused: (i) HCMLP to buy out all HERA unitholders except for Daugherty; (ii) HERA's board to transfer its powers to Highland ERA Management, a newly formed entity for which Dondero served as president and sole member; and (iii) HERA to distribute substantially all of HERA's assets to HCMLP, while claiming that HCMLP would place Daugherty's interests in HERA into escrow.

84. When Daugherty demanded payment of his judgment from HERA, HERA claimed it had become insolvent, citing that it owed HCMLP more than $7.5 million for legal expenses—approximately $4.9 million of which HCMLP had written off because of "lack of collectability."

85. Daugherty then sued HCMLP, HERA, Highland ERA Management, and Dondero in the Delaware Chancery Court. A Vice Chancellor concluded that HCMLP, Dondero, and the other defendants (who were also controlled by Dondero) were "improperly withholding documents," that "there is a reasonable basis to believe" that they perpetrated a fraud—and solicited "the services of attorneys to aid in furtherance of that fraud"—as part of an effort to evade Daugherty's judgment during the pendency of his case. The Vice Chancellor concluded that "defendants, with [counsel's] advice and assistance, were never going to let the assets held in the escrow agreement to make their way to Daugherty."

86. In total, HCMLP suffered at least $10 million in harm as a result of Dondero's decision to launch a protracted and unnecessary war against Daugherty.

E. Dondero, Ellington, and Leventon Cause HCMLP To Engage In Conduct That Results In An Arbitration Award Against It Of Approximately $190 Million And Forces HCMLP Into Bankruptcy

87. Dondero, Ellington, and Leventon also engaged in misconduct relating to HCMLP managed funds Highland Offshore Partners L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the "Crusader Funds") that resulted in an arbitration award against HCMLP of approximately $190 million. HCMLP had placed the Crusader Funds into wind-down in October 2008. Investors in the funds subsequently commenced lawsuits alleging breach of fiduciary duty claims against HCMLP, based on allegations that Dondero had refused to make mandated distributions and honor redemption requests, and traded the funds' positions in a manner designed to render them illiquid in order to deter future redemptions, which led to multiple disputes among redeeming investors. Certain of these lawsuits were ultimately resolved in July 2011, when the parties entered into a Joint Plan of Distribution of the Crusader Fund and a Scheme of Arrangement for its creditors (together, the "Joint Plan and Scheme"). As part of the Joint Plan and Scheme, a committee referred to as the "Redeemer Committee" was elected from the Crusader Funds' investors to oversee HCMLP's wind-down of the Crusader Funds and distribution of proceeds to investors.

88. The peace would not last, however. On July 5, 2016, the Redeemer Committee (i) terminated HCMLP as investment manager; (ii) filed a complaint in Delaware Chancery Court against HCMLP seeking a limited status quo order, a declaration that the Redeemer Committee had "cause" to terminate HCMLP as manager, and a declaration that HCMLP had forfeited any right to indemnification as a result of its failure to distribute proceeds to investors of various funds; and (iii) commenced an arbitration proceeding (the "Redeemer Arbitration")

against HCMLP alleging that it had engaged in various forms of misconduct in its role as investment advisor. After two years of arbitration proceedings, the Redeemer Arbitration culminated in a nine-day evidentiary hearing in September 2018 that included testimony from eleven fact witnesses and four expert witnesses. On March 6, 2019, the arbitration panel issued an award in favor of the Redeemer Committee, which resulted in gross damages of $136.8 million and total damages (including interest) of $190.8 million. Ultimately, the panel awarded ten forms of damages: (1) the Deferred Fee Claim ($43,105,395); (2) the Distribution Fee Claim ($22,922,608); (3) the Taking of Plan Claims ($3,277,991); (4) the CLO Trades Claim ($685,195); (5) the Credit Suisse Claim ($3,660,130); (6) the UBS Claim ($2,600,968); (7) the Barclays Claim ($30,811,366); (8) the Legal Fees, Costs, and Expenses Claim ($11,351,850); (9) the Portfolio Company Award ($71,894,891); and (10) the Administrative Fees Award ($514, 164).

89. The claims that were asserted against HCMLP by the Redeemer Committee stemmed from the various breaches of fiduciary duty to the Crusader Funds that Dondero, Ellington, and Leventon caused HCMLP to commit. For example, the "Barclays Claim"—which gave rise to over $30 million in liability for HCMLP—arose out of Dondero, Ellington, and Leventon causing HCMLP to transfer Barclays' limited partnership interests in the Crusader Funds to HCMLP's wholly-owned affiliate, Eames, after the Redeemer Committee had already refused to approve that transfer. In so doing, Dondero, Ellington, and Leventon caused HCMLP to violate the Joint Plan and Scheme and its fiduciary duties. Because of Dondero, Ellington, and Leventon's wrongful conduct, HCMLP was ordered to pay: (1) over $30 million on account of disgorged partnership interests; (2) additional sums for disgorgement

of distribution fees (that were included within the $22.9 million Distribution Fee Award); and (3) interest, fees, and expenses incurred in connection with the arbitration.

90. In addition, from December 2013 through January 2016, Dondero, Ellington, and Leventon caused HCMLP to purchase 28 Plan Claims from Crusader investors in violation of the Redeemer Committee's right of first refusal ("ROFR"). During this time, Leventon told multiple investors interested in possible transfers of their interests that Highland had a ROFR to purchase any Plan Claims, never mentioning the Committee's prior and superior ROFR. Leventon also made affirmative misrepresentations to the Redeemer Committee to disguise the fact that HCMLP had purchased the Plan Claims. Pursuant to the arbitration award, HCMLP was required to transfer the 28 Plan Claims to the Redeemer Committee, and to disgorge to the Committee whatever financial benefits Highland obtained from the 28 transactions, plus interest at the rate of 9%, from the date of each purchase.

91. Dondero's, Ellington's, and Leventon's conduct also resulted in HCMLP becoming liable to the Redeemer Committee for over $71 million (the "Portfolio Company Claim") in connection with claims arising from a portfolio company that was owned, directly and indirectly, by HCMLP (the "Portfolio Company"). Some of the Portfolio Company's stock was owned by the Crusader Funds. Dondero, Ellington, and Leventon caused HCMLP to covertly purchase shares in the Portfolio Company from another fund that Dondero controlled at below-market prices, and failed to liquidate the Crusader Funds' shares in the Portfolio Company as their fiduciary duties required. Pursuant to the arbitration award, HCMLP was required to purchase the Crusader Funds' shares in the Portfolio Company at a fixed price of $48,070,407, and to pay pre-judgment interest that brought the total claim to $71,894,891.

92. Additionally, the Joint Plan and Scheme required HCMLP to defer receipt of certain Deferred Fees until the liquidation of the Crusader Funds was complete. Dondero, Ellington, and Leventon caused HCMLP to violate that provision of the Joint Plan and Scheme by causing HCMLP to surreptitiously transfer approximately $32 million in Deferred Fees from the Crusader Funds' accounts on January 21 and April 6, 2016. The arbitration panel ruled that as a consequence of Dondero's, Ellington's, and Leventon's blatant breach of the payment requirements of the Joint Plan and Scheme, HCMLP forfeited its right to these fees entirely.

93. The Redeemer Committee set a hearing in Delaware Chancery Court for October 8, 2019 to obtain entry of a judgment with respect to the award. The hearing was subsequently continued to October 16, 2019. HCMLP filed for bankruptcy on the day of oral arguments for the Redeemer Committee's motion to enforce the Award in Delaware Chancery Court.

F. Dondero's Schemes Result In Hundreds Of Millions Of Dollars Of Liability For HCMLP

94. As noted, Dondero's schemes ultimately resulted in hundreds of millions of dollars of liability for HCMLP. As described below, the creditors that Dondero had sought to cheat and evade filed proofs of claim in HCMLP's bankruptcy proceeding, and HCMLP's management, burdened with Dondero's blatant misconduct (and that of Ellington, Leventon, and other of Dondero's loyalists), was forced to settle these claims for amounts that enabled HCMLP to escape the risk of even greater liability.

95. Additionally, HCMLP has incurred in excess of $40 million in professional fees in connection with the bankruptcy filing, which was necessitated solely as a result of Dondero's misconduct. HCMLP also incurred legal expenses for entities that HCMLP did not own, including several of the "lifeboats."

1. HCMLP Incurs $125 Million In Liability To UBS As A Result Of Dondero's, Leventon's, and Ellington's Misconduct

96. On June 26, 2020, UBS filed a proof of claim (the "UBS Claim") in HCMLP's bankruptcy proceeding for the full $1,039,957,799.44 of its judgment against the Fund Counterparties.[18] The UBS claim sought "damages arising from HCMLP's breach of the implied covenant of good faith and fair dealing, its specific role in directing the fraudulent transfers of assets involving HFP," and interest, punitive damages, and attorneys' fees.

97. In November 2020, the Court considered the value of the UBS Claim for purposes of plan voting. In connection therewith, the Court temporarily allowed the UBS Claim in the amount of $94,761,076. Of that amount, approximately $43 million related to transfers HCMLP caused to be made to one of HCMLP's managed funds, based on the Court's estimation that there was a 90% chance that UBS would prevail on that portion of its claim under either a fraudulent conveyance or breach of implied covenant theory.

98. Subsequently, HCMLP and UBS engaged in settlement discussions and mediation. Following mediation, the parties reached an initial settlement in principle, pursuant to which UBS would receive a $75 million unsecured claim, consisting of a $50 million Class 8 General Unsecured Claim and a $25 million Class 9 Subordinated General Unsecured Claim. That settlement was disclosed to the Court at the February 2, 2021 confirmation hearing. This settlement was in satisfaction of damages resulting from conduct that Dondero, Ellington, and Leventon perpetrated on behalf of HCMLP. But for that conduct, HCMLP would not have been liable to, or required to enter into the settlement with, UBS.

[18] The UBS Claim consists of two substantively identical claims: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG, London Branch.

99. While the preliminary settlement for the known misconduct of Dondero, Ellington, and Leventon was being finalized, the Independent Board learned that Dondero and Ellington had surreptitiously caused the Fund Counterparties to transfer their remaining assets to Sentinel, and had caused HCMLP to misrepresent to UBS that the Fund Counterparties had no assets prior to that transfer occurring. Purportedly acting on behalf of HCMLP, Dondero, Ellington, and Leventon had concealed this transfer from the Independent Board, while advising the Independent Board that the Fund Counterparties lacked any material assets. The Independent Board had communicated that information to UBS (and the Court) and negotiated with UBS on those bases.

100. When the Independent Board discovered that Dondero, Ellington, and Leventon engaged in a conspiracy to cover up the fraudulent Sentinel transfer, it disclosed the transfer to UBS. As a result, the parties reopened settlement discussions. Ultimately, in order to limit HCMLP's potential liability to UBS as a result of Dondero's, Leventon's, and Ellington's bad acts, HCMLP entered into a revised settlement with UBS that granted UBS a claim totaling $125 million, consisting of a $65 million Class 8 General Unsecured Claim and a $60 million Class 9 Subordinated Unsecured Claim. In addition to the increased settlement amount and litigation costs, HCMLP is required to expend up to $3 million (subject to reimbursement) pursuant to certain cooperation provisions contained in the settlement agreement with UBS as a result of the fraudulent Sentinel transfer. The Bankruptcy Court approved the UBS settlement on May 27, 2021.

2. HCMLP Incurs More Than $185 Million In Liability To The Redeemer Committee And Crusader Funds As A Result Of Dondero's Misconduct

101. On April 3, 2020, the Redeemer Committee filed a general unsecured claim in the amount of its $190,824,557.00 arbitration award, plus "post-petition interest, attorneys' fees, costs and other expenses that continue to accrue." Likewise, on April 3, 2020, the Crusader Funds filed a claim for $23.5 million, consisting of $8.2 million in management fees and $15.3 million in distribution fees. Faced with this potential liability, HCMLP entered into a settlement whereby, among other things: (i) the Redeemer Committee was granted an allowed general unsecured claim of $136,696,610.00; (ii) the Crusader Funds were granted an allowed general unsecured claim of $50,000.00; (iii) HCMLP and Eames each consented to the cancellation of interests they and the Charitable DAF held in the Crusader Funds that the arbitration panel had determined were wrongfully-acquired; (iv) HCMLP and Eames each acknowledged that they would not receive any portion of distributions reserved by the Crusader Funds, and HCMLP further acknowledged that it will not receive any future payments from the Crusader Funds in respect of any Deferred Fees, Distribution Fees, or Management Fees; and (v) HCMLP and the Redeemer Committee agreed to a form of amendment to the Portfolio Company's shareholders' agreement and to a process whereby HCMLP would use commercially reasonable efforts to monetize all Portfolio Company shares held by HCMLP, funds managed by HCMLP, and the Crusader Funds.[19] The Bankruptcy Court approved HCMLP's settlement with the Redeemer Committee and Crusader Funds on October 23, 2020.

[19] Because HCMLP did not have the money to purchase the shares, the Redeemer Committee and HCMLP agreed to treat the Portfolio Company's shares differently than the process required under the arbitration award. Rather than having HCMLP purchase the Crusader Funds' shares in the Portfolio Company for approximately $48 million, they agreed that the Crusader Funds would

3. HCMLP Incurs More Than $100 Million In Liability To Acis, Terry, And HarbourVest As A Result Of Dondero's Misconduct

102. Acis also filed proofs of claim against HCMLP, seeking, among other things, the amounts Dondero had caused HCMLP to overcharge Acis in order to diminish Terry's limited partner distributions from Acis, and damages arising from HCMLP's efforts to transfer assets out of Acis, in order to evade Terry's arbitration award and ensure that Dondero would benefit from the transferred assets. Terry and his wife also filed a proof of claim against HCMLP, alleging that HCMLP, acting through Dondero, had misappropriated assets in their retirement account. The Acis and Terry proofs of claim were settled in mediation after Dondero resigned from HCMLP. Pursuant to that settlement, Acis received a $23 million allowed claim against HCMLP, and HCMLP was required to pay (1) Terry and his wife $425,000 plus 10% interest to resolve the Terry's claim that HCMLP had misappropriated their retirement account;[20] (ii) Terry $355,000 in legal fees because of HCLOF's frivolous suit in Guernsey; and (iii) Acis an additional $97,000 for legal fees incurred defending another frivolous lawsuit initiated by Dondero.

103. On April 8, 2020, the HarbourVest entities filed proofs of claim against HCMLP (the "HarbourVest Proofs of Claim") alleging that HCMLP had fraudulently induced them into entering into the HCLOF Investment based on HCMLP's misrepresentations and omissions concerning certain material facts, including that HCMLP: (1) failed to disclose that Dondero intended to cause Acis to evade Terry's $7.9 million arbitration award; (2) failed to disclose that it orchestrated a series of fraudulent transfers to prevent Terry from collecting on his

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retain their shares in the Portfolio Company and that the total damages award would be reduced by approximately $30.5 million to account for the perceived fair market value of those shares.

[20] Because of the interest component, HCMLP ultimately paid the Terrys approximately $1 million to compensate them for Dondero's theft of their retirement account.

arbitration award, and misrepresented the reasons for changing the portfolio manager for HCLOF immediately prior to HarbourVest's HCLOF Investment; (3) indicated that the dispute with Terry would not impact HCLOF's investment activities; and (4) falsely expressed confidence in HCLOF's ability to reset or redeem the CLOs under its control.

104. HarbourVest sought to rescind its HCLOF Investment and alleged damages in excess of $300 million. Ultimately, following Dondero's departure from HCMLP, the parties reached a resolution whereby HarbourVest agreed to transfer its interests in HCLOF to a new entity designated by HCMLP in exchange for a $45 million general unsecured claim and a $35 million subordinated general unsecured allowed claim. The value of the HCLOF interests that HarbourVest transferred to the HCMLP-designated entity was tens of millions of dollars less than the allowed amount of HarbourVest's claim against HCMLP.

G. HCMLP Was Insolvent, Inadequately Capitalized, And/Or Intended To Incur Debts Beyond Its Ability To Pay Well Before The Redeemer Committee Arbitration Award Forced It Into Bankruptcy

105. The Redeemer Committee's $190 million arbitration award left HCMLP with no choice but to file for bankruptcy. But HCMLP was insolvent, inadequately capitalized, and/or intended to incur debts beyond its ability to pay well before the Redeemer Committee arbitration award was issued. As Dondero himself has acknowledged under oath, as a result of the economic recession of 2008 HCMLP "almost went under and . . . moved to a state of insolvency" from which HCMLP was still struggling to emerge in 2012.[21] Indeed, as shown below, a valuation of HCMLP's assets and liabilities shows that HCMLP was balance sheet insolvent, inadequately capitalized, and/or intended to incur debts beyond its ability to pay in

[21] Mar. 28, 2012 H'rg Tr. 62:06-10 (J. Dondero), *In the Matter of the Marriage of I.C. and Q.C.*, Cause No. 11-16417-Z (Tex. Dist. [256th Dist.]).

2011 and 2012, when Dondero created lifeboats NexPoint and HCMFA, and transferred certain of HCMLP's management contracts to HCMFA for no value. Contemporaneous valuations performed by the company itself corroborate this conclusion.

106. More specifically, these valuations show that when litigation liabilities resulting from claims by Barclays and UBS against HCMLP are taken into account, HCMLP was insolvent from no later than April 9, 2010 until no earlier than April 30, 2013.

	Apr. 9, 2010	Dec. 31, 2010	Dec. 31, 2011	Dec. 31, 2012	Apr. 30, 2013
Total Assets Less Financial Liabilities[22]	($32M)	($22)	$60M	$101M	$145M
Litigation Liabilities[23]	$365M	$365M	$365M	$145M	$145M
Net Value	($397M)	($387M)	($305M)	($44M)	($1M)

107. The creation of the lifeboats and subsequent transfer of management contracts (and business value) all but ensured HCMLP's demise. HCMLP's assets under management, operating income from its investment management business, and operating margins steadily declined, and almost no new third-party investor money came into the company. HCMLP continued to shoulder the burden of providing services to NexPoint and HCMFA without compensation. HCMLP's financial condition began to improve in late 2013, due largely to

[22] HCMLP's "Total Assets Less Financial Liabilities" is exclusive of litigation liabilities and is estimated as the sum of the enterprise value of the investment fund management business, the fair market value of HCMLP's investment portfolio, and the value of related parties notes receivable, less HCMLP's non-contingent financial liabilities. HCMLP's valuation is corroborated by valuations prepared by CBIZ, Inc. on behalf of HCMLP's general partner. Figures are rounded to the nearest million.

[23] Litigation liabilities are set at the values at which they were settled, or the values at which they were estimated by the Court in the course of the bankruptcy proceeding.

successful proprietary trading and overall improving market conditions, but those gains began to dissipate in 2015 due to Dondero's reckless trading.

108. By December 2016, the company was again firmly insolvent, inadequately capitalized, and/or unable to pay its debts as they came due, in large part because its CLOs were generating diminishing returns, and the company was earning only minimal fees for servicing other Dondero Entities rather than generating new business of its own, while continuing to bear significant employee expenses. HCMLP's financial condition deteriorated further between 2017 and 2019, as additional litigation claims were levied against the company, and it was forced to answer for the misconduct perpetrated in its name by Dondero and his loyalists.

109. Specifically, as shown below, when litigation liabilities resulting from claims by UBS, the Redeemer Committee, and Acis against HCMLP are taken into account in valuations prepared on HCMLP's behalf, HCMLP was insolvent from no later than December 31, 2016, until the date it filed for bankruptcy.

	Dec. 19, 2016	Dec. 31, 2017	Dec. 31, 2018	Oct. 16, 2019
Total Assets Less Financial Liabilities[24]	$183M	$260M	$184M	$101M
Litigation Liabilities[25]	$212M	$365M	$365M	$365M
Net Value	($29M)	($105M)	($181M)	($264M)

[24] HCMLP's "Total Assets Less Financial Liabilities" is exclusive of litigation liabilities and is estimated as the sum of the enterprise value of the investment fund management business, the fair market value of HCMLP's investment portfolio, and the value of related parties notes receivable, less HCMLP's non-contingent financial liabilities. HCMLP's valuation is corroborated by valuations prepared by CBIZ, Inc. on behalf of HCMLP's general partner. Figures are rounded to the nearest million.

[25] Litigation liabilities are set at the values at which they were settled, or the values at which they were estimated by the Court in the course of the bankruptcy proceeding.

H. At All Time Relevant To This Amended Complaint, Dondero Hopelessly Commingled And Exploited Entities Within His Enterprise For His Own Personal Benefit

110. At all times relevant to this Amended Complaint, Dondero exploited HCMLP, Strand, and the various entities he controlled within the Highland empire for his own personal benefit, both directly and through other HCMLP fiduciaries whose loyalties ran to Dondero rather than HCMLP, and who aided Dondero in his various schemes. Dondero treated the elaborate corporate web he had created as a single integrated entity that existed solely to further his own self-enriching schemes, rather than as individual entities with their own respective stakeholders and corporate governance.

1. Prior To Dondero's Resignation From Strand, Dondero Was The Alter Ego Of Strand

111. Dondero singularly dominated and controlled HCMLP and was its solitary decision-maker. Dondero made every material business, operational, management, and financial decision for HCMLP. Dondero exercised his complete control of HCMLP through HCMLP's general partner Strand, which Dondero similarly dominated and controlled. Dondero was Strand's 100% owner, sole director, and president between 1993 and 2020. For eight years he was also its secretary and only officer.

112. Strand did not even attempt to maintain the pretenses of observing corporate formalities. As an initial matter, Strand did not hold regular board meetings. Indeed, the Litigation Trustee, having reviewed HCMLP's books and records, has been unable to identify a single instance in which a Strand board meeting was held prior to the Petition Date. This is consistent with Dondero's own testimony in 2020 in an unrelated proceeding that he cannot recall ever attending a board meeting for Strand or seeing Strand board meeting minutes.

113. Although Strand's bylaws require annual meetings of stockholders, over the 26 years that Dondero controlled Strand, only six annual stockholder meetings were ever held, and no such meetings took place after 2005. The Litigation Trustee was able to identify only twelve instances of documented corporate action taken by the Strand board over the course of approximately 26 years, eight of which related to the appointment or removal of officers.

114. Dondero was the only officer of Strand between 1993 and 2001. Although Strand had certain elected officers between 2001 and 2019, they performed no duties in their capacities as officers of Strand and were appointed or fired from their roles based on their loyalty to, and standing with, Dondero. Indeed, when Dondero was asked under oath in 2020 about Strand's officers, he testified that he did not know if Strand even had officers, and stated that he was "not aware of [Strand] having any employees or active … governance." Moreover, he did not know whether Strand had a board of directors or if he was solely Strand's president.

2. Dondero Routinely Commingled Entities And Employees Throughout The Dondero Corporate Web And Abused The Corporate Form

115. As of the Petition Date, the Highland complex spanned more than 2,000 entities. For at least the last two decades, it has functioned largely as a single economic unit that was operated and controlled by Dondero, who abused his direct or indirect ownership stakes for his own personal benefit. Dondero directed the integrated enterprise himself, using friends, family members, and directors-for-hire that the Court has previously described as "nominal figureheads"[26] to carry out his will. As high-level HCMLP employees have testified under

[26] *See In re Acis Cap. Mgmt., L.P.*, No. 18-30264-SGJ-11, 2019 WL 417149, at *17 (Bankr. N.D. Tex. Jan. 31, 2019), *aff'd*, 604 B.R. 484 (N.D. Tex. 2019), *appeal dismissed as moot sub nom. Matter of Acis Cap. Mgmt. G.P., L.L.C.*, 850 F. App'x 300 (5th Cir. 2021), and *aff'd sub nom. Matter of Acis Cap. Mgmt., L.P.*, 850 F. App'x 302 (5th Cir. 2021).

oath, Dondero was the "ultimate decision-maker" for "every [] entity in the firm and for the firm as a whole."

116. Dondero managed the entities as a single integrated unit. Internal business plans and projections were prepared in the aggregate across entities, including entities that were not owned by HCMLP, but were instead otherwise directly or indirectly owned by Dondero. Internal financial forecasts even projected AUM growth in non-HCMLP entities that was predicated upon HCMLP acting as support and service provider, even though HCMLP itself was effectively a melting ice-cube when those projections were made. Indeed, as far back as 2011, company projections provided to the valuation advisor CBIZ Valuation Group projected negative operating income for HCMLP.

117. Dondero used his domination of his web of entities, operated as a single unit, to facilitate his pillaging of HCMLP, moving HCMLP's assets and revenue out of reach of its creditors while preserving those funds and assets for his own use or for the benefit of other entities he created or controlled. As described above, Dondero operated NexPoint and HCMFA for the purpose of siphoning off HCMLP's revenue and value; in addition, he used HCMLP as NexPoint's and HCMFA's direct piggy-bank, transferring not only HCMLP's business and agreements, but also its cash, which was used to seed new funds and investment vehicles, among other things.

118. Dondero's control of the various entities within the Highland web was so pervasive that his own co-founder Okada remarked at one point in 2012, "I am not cool with you coming up with ideas, using Highland's cash flow to set them up, fund all their negative working capital and then somehow think the split shouldn't be 75 25 without some sort of negotiation and true up [(i.e., making new entities that Dondero owned entirely on his own)]."

Indeed, a 2016 draft accounting memo concluded that HCMLP, HCMFA, and NexPoint (and all of their subsidiaries) "are considered to be under common control … James Dondero controls all 3 of the entities." This conclusion accords with statements NexPoint's and HCMFA's own funds have made in public filings,[27] as well as the Bankruptcy Court's finding that they are both "controlled by Dondero."[28]

119. Dondero also funneled his own personal expenses through HCMLP, routinely seeking expense reimbursements from HCMLP in excess of $1 million per year. At Dondero's direction, HCMLP employed certain employees whose only responsibilities and obligations were to manage Dondero's and Okada's personal affairs and private business interests. For example, Melissa Schroth was employed by HCMLP, but her only duties were to serve as Dondero's and Okada's personal bookkeeper. Her duties involved no work for HCMLP, but rather concerned Dondero's and Okada's personal investments and entities, including but not limited to Dugaboy and Get Good. Dondero also used HCMLP and its employees for the benefit of other entities he dominated without adequate compensation to HCMLP—including for the benefit of NexPoint and HCMFA as described above, as well as for the benefit of his personal trusts. For example, Dondero used his domination of HCMLP to make its employee resources available to Dugaboy and Get Good at his sole discretion. HCMLP employees were involved

[27] *See*, *e.g.*, NexPoint Real Estate Strategies Fund, Prospectus (Form 497) (as filed Apr. 29, 2022) ("NexPoint Advisors, L.P. … is controlled by James Dondero by virtue of his control of its general partner, Nexpoint Advisors GP, LLC."); Highland Income Fund, Prospectus Supplement (To Prospectus dated July 1, 2019) (Form 497) (July 29, 2019) ("HCMFA is owned by Highland Capital Management Services, Inc. ("HCM Services") and its general partner, Strand Advisors XVI, Inc., of which James Dondero is the sole stockholder. HCM Services is controlled by Mr. Dondero and Mr. Mark Okada by virtue of their respective share ownership.").

[28] *See* Order Dismissing as Moot Debtor's Motion for a Mandatory Injunction, *Highland Capital Mgmt., L.P. v. Highland Capital Mgmt. Fund Advisors, L.P. (In re Highland Capital Mgmt., L.P.)*, Adv. Proc. No. 21-03010-sgj11 (Bankr. N.D. Tex. Feb. 24, 2021) (Docket No. 25).

in creating, managing, and providing accounting services to Dugaboy, and certain of those employees, including Melissa Schroth, performed work on behalf of Get Good in connection with Dondero's estate planning and transactions between Get Good and other Dondero Entities. Moreover, both Dugaboy and Get Good have acknowledged in the course of HCMLP's bankruptcy that HCMLP hosted their documents on its server. However, neither Dugaboy nor Get Good compensated HCMLP for the use of its employees or its resources.

120. This use of HCMLP's employees for Dondero's personal benefit continued even after the commencement of HCMLP's bankruptcy. For example, after the bankruptcy commenced, Schroth instructed Nancy Dondero to send a letter in her capacity as a trustee of Dugaboy instructing the Swiss entity Highland Capital Management AG ("HCM AG"), which is majority-owned by Dugaboy (which is ultimately owned and controlled by Dondero), to write off a liability that it owed to HCMLP for payments that HCMLP had made on its behalf. Schroth even ghost-wrote a letter for Nancy Dondero to send to HCM AG authorizing this theft. Likewise, Dondero frequently instructed HCMLP's employees to perform services in connection with Dondero's personal and business interests, which conferred no value on HCMLP.

121. Highland employees frequently did not know whether they or their colleagues were employees of HCMLP or another entity within the Dondero web. Employees shared the same office space in HCMLP's headquarters. Indeed, each of Strand, NexPoint, NexPoint GP, HCMFA, Dugaboy, CLO Holdco, the Highland Dallas Foundation, the Highland Santa Barbara Foundation, the Highland Kansas City Foundation, HFP, SAS, and Acis listed its business headquarters at this same address: 300 Crescent Court, Suite 700, Dallas, Texas 75201. Moreover, when employees of HCMLP performed services for other Dondero entities, they

sometimes did so pursuant to agreements that Dondero signed for both HCMLP, on the one hand, and the counterparty, on the other hand. In other instances, HCMLP's employees performed services for non-HCMLP entities without any formal agreements in place at all. For example, Leventon testified that he performed work for SAS "on and off" for approximately seven years (*e.g.*, in connection with whether to invest in a new litigation funding case), notwithstanding that he was never an employee of SAS and HCMLP did not have a shared services agreement with SAS.[29] Moreover, when shared services and advisory agreements were in place, HCMLP frequently charged Dondero's other entities below-market rates for use of HCMLP's employees and resources.

122. Additionally, Dondero delegated authority to his loyalists irrespective of their titles or roles. For example, Dondero delegated decision-making authority for Acis to Ellington, notwithstanding that he was not an officer, director, or employee of Acis. And Leventon testified that although he was an HCMLP employee, HCMLP could request that he perform legal services for any of the 2,000 entities in the Highland web.

123. Dondero would also use HCMLP as his own personal piggy-bank. For example, between January and August of 2018, Dondero borrowed $16,725,000 on four demand notes. Dondero remains obligated on three of the demand notes and maintains an outstanding principal

[29] Similarly, several HCMLP employees, including Ellington, Leventon, Katie Irving, and JP Sevilla, had SAS email addresses, and there were frequent meetings among HCMLP's legal department—including Ellington, Leventon, and Sevilla—and Dilip Massand in connection with SAS. SAS did not compensate any of these HCMLP employees for their work for SAS. Moreover, in 2014, when a telephone call was placed to the number listed on SAS's website, the call was routed to HCMLP's office in Dallas with a message that stated: "Thank you for calling SAS Asset Recovery. For reception press 0. For Scott [Ellington], press 1. For Dilip [Massand], press 2. For JP [Sevilla], press 3. For Tabor [Pittman, former HCMLP Associate GC], press 4. For Katie [Irving], press 5. For Isaac [Leventon], press 6. Thanks and have a good day."

balance of approximately $9 million. HCMLP has demanded payment on all of the outstanding demand notes, but to date, Dondero has failed to make any repayments on that debt.[30]

124. Dondero also effectively paid himself and Okada distributions from HCMLP through other Dondero Entities, including HCMS. Between 2013 and 2017, HCMS issued dozens of demand notes to HCMLP in return for tens of millions of dollars in cash, and between May 2017 through 2020, HCMS issued four additional promissory demand notes with an aggregate face amount of $900,000. Frequently, these notes functioned as disguised distributions to Dondero and Okada, by virtue of a "loan" from HCMLP to HCMS followed by a "loan" from HCMS to Dondero and Okada. As with other intercompany notes between HCMLP and other Dondero Entities, these notes had minimal covenants. Moreover, Dondero caused HCMLP to issue these loans to HCMS with minimal interest.

125. To take yet another example, Dondero exploited HCMLP's employees and capital in order to launch HCRE Partners, LLC ("HCRE"), another entity designed to evade HCMLP's creditors.[31] HCRE pursued financial and real estate investments, failing to pay

[30] In January 2021, HCMLP filed adversary proceedings against Dondero and four of his affiliated entities (HCMFA, NexPoint, HCRE, and HCMS) in the Bankruptcy Court to collect on these notes. *See*, *e.g.*, *Highland Capital Management, L.P. v. James Dondero*, Adv. Pro. 21-03003-sgj (Bankr. N.D. Tex. Jan. 22, 2021). Dondero and his affiliated entities have raised a series of frivolous defenses to repayment of the notes, including that Dugaboy—acting through Dondero's sister—agreed to forgive the notes as part of Dondero's compensation. As of December 2021, the defendants owed an aggregate of over $50 million in past-due principal and interest on the notes. In November 2021, HCMLP filed a second adversary proceeding against HCMFA to collect on additional notes. *See Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P.*, Adv. Pro. 21-03082-sgj. In this second notes litigation, HCMFA has raised a similarly frivolous defense.

[31] HCRE is 70% owned by Dugaboy, 25% owned by Highland Capital Management Real Estate Holdings I, LLC ("HCMRE I") (owned by a former HCMLP managing director) and 5% owned by Highland Capital Management Real Estate Holdings II, LLC ("HCMRE II") (owned by Ellington).

HCMLP any consideration for advisory, administrative, and other services HCMLP provided. Moreover, Dondero (1) caused HCMLP to loan HCRE tens of millions of dollars on terms that were unfair to HCMLP; (2) used the proceeds of those loans to pay approximately $32 million in distributions (between 2016 and 2020) to Dugaboy, Ellington, and another former HCMLP employee; and (3) caused HCRE to default on its debt to HCMLP and assert frivolous defenses to HCMLP's right to repayment. As of January 8, 2021, approximately $6.1 million in principal and interest was due and owing to HCMLP on HCRE notes.

126. As explained above, Dondero also used HCMLP to support the growth of lifeboats like NexPoint and HCMFA. Additionally, in December 2010, certain preferred tranches of CLOs managed by HCMLP and held by Highland CDO Holding Company, a portion of which was indirectly owned by HCMLP, were sold to CLO Holdco, a Cayman Islands entity then owned and controlled by a Dondero trust. CLO Holdco purported to pay approximately $39 million in return, but $33 million of that amount consisted of a note that was never repaid. The value of these preferred securities predictably skyrocketed soon thereafter, and generated substantial income that was used to benefit Dondero's lifeboats. An analysis of CLO Holdco's cash flows over time demonstrates that income generated from these assets was used to seed a variety of NexPoint-managed funds and entities, HCMFA-managed funds and entities, and Acis-managed CLOs and other vehicles—all for Dondero's benefit—rather than accruing in favor of HCMLP or its subsidiaries.

127. Dondero used HCMLP's funds to support other entities in his web as well. In or around 2013, HCM AG entered into a joint venture with a Brazilian entity named Brasilinvest Investimentos e Participacoes Ltda ("Brasilinvest Investimentos") for a shared interest in a Brazilian entity named Highland Capital Brasilinvest Gestora de Recursos, Ltda (a.k.a Highland

Capital Brasil Gestora de Recursos). With Dondero's approval, HCM AG acquired Brasilinvest Investimentos's shares in this joint venture through a $230,000 cash payment in October 2016. However, at Dondero's direction, the $230,000 was paid by HCMLP rather than HCM AG or Dugaboy.

128. Dondero did not bother to distinguish between himself and HCMLP. After Dondero was removed as HCMLP's Chief Executive Officer and President in January 2020, he continued using his HCMLP email account and continued working out of HCMLP's headquarters until his forced resignation in October 2020 and removal from HCMLP's premises in December 2020. When the Court entered an order restraining Dondero from communicating with HCMLP employees, Dondero flouted the order, including by communicating with Ellington and instructing Melissa Schroth (an HCMLP employee at the time) to resist Dugaboy-related document production requests, even though those documents were always kept on HCMLP's computer system. Likewise, a temporary restraining order entered by this Court prohibited Dondero from participating in, or encouraging others to participate in, any action that undermined decisions made by HCMLP's Chief Restructuring Officer, James Seery ("Seery"), regarding the disposition of HCMLP assets. Nevertheless, Dondero did so multiple times, including by contacting various employees and instructing them to act in a manner that was inconsistent with Seery's directions.

129. Dondero evinced no respect for HCMLP as an entity separate and apart from himself. Thus, he disposed of a cell phone that belonged to HCMLP that contained relevant data, likely resulting in the spoliation of valuable evidence that HCMLP could have used to pursue claims benefitting HCMLP. In addition, Dondero interfered with document productions of HCMLP and trespassed on HCMLP's property.

I. Dondero And His Loyalists Also Engaged In Other Conduct That Harmed HCMLP

1. Dondero And His Loyalists Fraudulently Transferred Assets To Themselves And Their Affiliated Entities

130. Dondero and his loyalists also engaged in other transactions that siphoned value from HCMLP to themselves. As described in greater detail below, these included (i) transfers of liquid assets for illiquid notes that could not have been monetized for the same value as the assets for which they were exchanged, (ii) limited partner distributions, and (iii) payments for services provided to other Dondero Entities rather than HCMLP.

(a) The Fraudulent CLO Holdco Transaction

131. On December 28, 2016, shortly after the Redeemer Committee commenced its Delaware state court action and arbitration against HCMLP, and while UBS's action against HCMLP was pending, Dondero, acting with substantial assistance from Scott, undertook a scheme whereby HCMLP transferred assets valued by the company at approximately $24 million through a series of related assignments (the "Transferred CLO Holdco Assets") to CLO Holdco, in exchange for an assignment from Get Good of an existing Dugaboy obligation (the "Dugaboy Note"), which was worth significantly less than the transferred assets (the "CLO Holdco Transaction").

132. Upon information and belief, Dondero consummated the CLO Holdco Transaction in order to claim a charitable deduction on his tax returns, and to place value out of his ex-wife's reach. Specifically, Dondero wanted to transfer assets out of Get Good so that they would not be available to his ex-wife, and to do so through a charitable donation so that he would get the added benefit of a tax deduction. Get Good, however, did not own enough assets that qualified for a tax-deductible charitable donation. Accordingly, Dondero caused Get Good

to exchange the Dugaboy Note, which did not qualify for a tax-deductible donation, for HCMLP's Transferred CLO Holdco Assets, which did. Dondero, acting with Scott's assistance, then caused the Transferred CLO Holdco Assets to be immediately transferred from Get Good to Highland Dallas, to the Charitable DAF, to the DAF, and ultimately to CLO Holdco. The CLO Holdco Transaction thus furthered Dondero's personal interests, but harmed HCMLP and its creditors by replacing liquid and liquidating assets with an illiquid note of significantly less value.

133. The Transferred CLO Holdco Assets consisted of: (1) $2,032,183.24 or potentially more in Series A Interests in Highland Capital Loan Fund, L.P., an HCMLP-managed hedge fund investing primarily in liquid loans; (2) a participation interest worth $8,710,000 or potentially more in call options of publicly-traded American Airlines Group, Inc. (the "AA Interests"); and (3) a participation interest in certain Highland Crusader Fund L.P. and Highland Crusader Fund II, Ltd. shares, as well as a tracking interest in certain participation shares of Highland Crusader Fund II, Ltd., which at the time of the transfer HCMLP valued at $12,625,395.44 (the "Crusader Interests"). The transfer of the Transferred CLO Holdco Assets was initiated pursuant to a Purchase and Sale Agreement executed by Dondero, on behalf of HCMLP, and Scott, on behalf of Get Good. Pursuant to that agreement, the Transferred CLO Holdco Assets were received by Get Good.

134. Dondero caused HCMLP to transfer the Transferred CLO Holdco Assets to Get Good in exchange for the Dugaboy Note. While the face amount of the Dugaboy Note was equal to the reported value of the Transferred CLO Holdco Assets, in actuality, the value of the Dugaboy Note did not come close to the value of the Transferred CLO Holdco Assets. The interest rate on the Dugaboy Note was a paltry 2.75%. There was no security interest provided

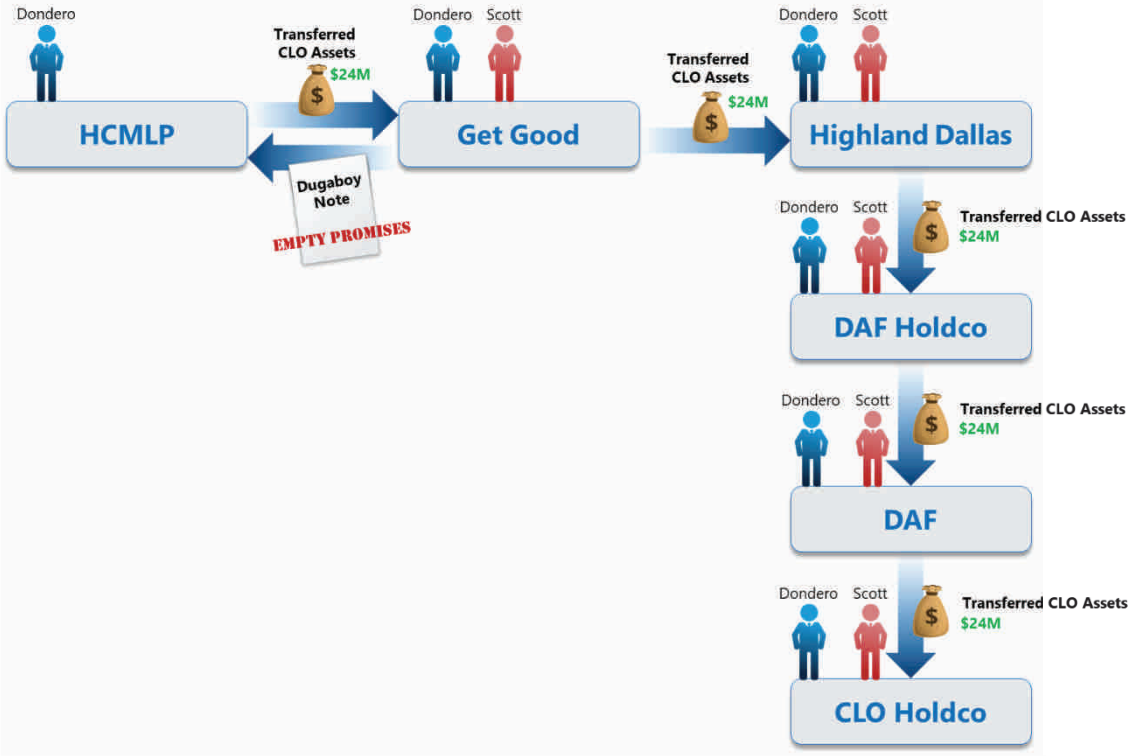
in respect of the Dugaboy Note or other material covenants or lender protections other than rights to cost of collections. No payments of principal or interest were required on the note until 2036. And because Dugaboy was a completely private and opaque counterparty, there was no third-party market for the sale of the Dugaboy Note. Lastly, from a counterparty risk perspective, Dondero's control over the repayment of a note clearly does not ensure timely repayment without litigation, as evidenced by the several entities controlled by Dondero that are currently seeking to evade their unambiguous payment obligations on other notes owed to HCMLP, on frivolous grounds such as mistake and subsequent alleged oral agreements between Dondero and his sister. In the end, Dondero caused HCMLP to exchange valuable liquid or otherwise near-term liquidating assets for a paper-thin promise 20 years into the future.

135. Following Get Good's receipt of the Transferred CLO Holdco Assets, Scott—at Dondero's direction—immediately caused Get Good to donate the assets to Highland Dallas Foundation in his capacity as trustee of Get Good. Dondero and Scott caused the Highland Dallas Fund to immediately contribute the Transferred CLO Holdco Assets to DAF Holdco by unanimous written consent executed by Dondero, Scott, and Jalonick, each in their capacity as the directors of Highland Dallas Foundation. Following that transfer, through an omnibus assignment agreement, Scott caused DAF Holdco to transfer the Transferred CLO Holdco Assets to the DAF, which itself immediately transferred them to CLO Holdco. The DAF GP issued a written resolution, as general partner of the DAF and as 100% owner of CLO Holdco, contributing the Transferred CLO Holdco Assets to CLO Holdco. Scott again executed this document as managing member of DAF GP. As purported consideration for these transfers, the Highland Dallas Foundation, DAF Holdco, the DAF, and CLO Holdco all agreed to be fully bound by apparently unrelated "Multi Strat Governing Documents." Scott executed the

requisite consent documents on behalf of each entity, in his capacities as director of DAF Holdco, managing member of the DAF, and director of CLO Holdco. Upon information and belief, Scott consented to each step of the CLO Holdco Transaction on behalf of Get Good, DAF Holdco, the DAF, DAF GP, and CLO Holdco solely at Dondero's request, and without performing any independent analysis.

136. The structure of the CLO Holdco Transaction is set forth below in Figure 3.

Figure 3.



(b) Fraudulent Distributions

137. Notwithstanding HCMLP's limited liquidity and hundreds of millions of dollars in looming liabilities, Dondero caused HCMLP to make a series of equity distributions between 2010 and 2012, and 2015 and 2019, for Dondero's and Okada's ultimate benefit, and to the detriment of HCMLP's creditors. These distributions were made at a time when HCMLP was insolvent, inadequately capitalized, and/or intended to incur debts beyond its ability to pay, and

were intended to hinder, delay, and/or defraud creditors by siphoning value to limited partners that should have been preserved for creditors' benefit.

138. Although Dondero and Okada placed certain of their limited partnership interests in trusts that they ultimately owned or controlled, Dondero frequently disregarded corporate formalities, including with respect to limited partnership distributions. Until 2015, distributions were made to Dondero personally, notwithstanding that he owned HCMLP largely through certain trusts. Beginning in 2015, it appears that distributions were made directly to Strand and Dugaboy, *i.e.*, the Dondero Entities that actually held HCMLP limited partnership interests. As such, the distributions made to Dondero between April 9, 2010 and February 28, 2015 (identified below) were made for the benefit of Dondero, Dugaboy, and/or Strand. The distributions made after February 28, 2015, were, upon information and belief, made directly to the limited partnership interest holders, for the benefit of Dondero and Okada.

139. Likewise, until 2015, distributions were made to Okada individually, rather than HCMLP's limited partners MAP #1 and MAP #2. As such, the distributions made to Okada between April 9, 2010, and February 28, 2015, (identified below) were made for the benefit of Okada, MAP #1, and/or MAP #2. The distributions to Okada made after February 28, 2015, were broken out into three transfers in HCMLP's records, in amounts proportionate to the limited partnership interests of Okada, MAP #1, and MAP #2.

140. On or around April 9, 2010, HCMLP made distributions to Dondero and Okada, in the amounts of $1,216,756.87 (two transfers of $1,125,000.00 and $91,756.87) and

$405,585.62 (two transfers of $375,000.00 and $30,585.62), respectively (the "April 9, 2010 Distributions").[32]

141. On or around April 13, 2011, HCMLP made distributions to Dondero and Okada, in the amounts of $649,318.45 and $216,439.49, respectively (the "April 13, 2011 Distributions").

142. On or around May 2, 2011, HCMLP made distributions to Dondero and Okada, in the amounts of $3,124,435.00 and $1,024,018.00, respectively (the "May 2, 2011 Distributions").

143. On or around September 13, 2011, HCMLP made distributions to Dondero and Okada, in the amounts of $5,351,316.00 and $1,705,813.00, respectively (the "September 13, 2011 Distributions").

144. On or around November 25, 2011, HCMLP made distributions to Dondero and Okada, in the amounts of $5,250,000.00 and $1,750,000.00, respectively (the "November 25, 2011 Distributions").

145. On or around February 22, 2012, HCMLP made distributions to Dondero and Okada, in the amounts of $3,000,000.00 and $1,000,000.00, respectively (the "February 22, 2012 Distributions").

146. On or around February 29, 2012, HCMLP made distributions to Dondero and Okada, in the amounts of $4,514,780.25 and $1,504,926.75, respectively (the "February 29, 2012 Distributions").

[32] Plaintiff's original Complaint referred to the distributions as being made on or around the dates reflected on HCMLP's general ledger. Plaintiffs have now located the bank transfer statements for each distribution, and use the bank transfer date instead. The distributions being challenged, however, have not changed.

147. On or around April 10, 2012, HCMLP made distributions to Dondero and Okada, in the amounts of $6,221,364.15 and $2,073,788.05, respectively (the "April 10, 2012 Distributions").

148. On or around April 9, 2013, HCMLP made distributions to Dondero and Okada, in the amounts of $25,375,083.16 and $8,440,148.31, respectively (the "April 9, 2013 Distributions").

149. On or around December 19, 2016, HCMLP made distributions to Hunter Mountain,[33] Dugaboy, and Strand, in the amounts of $4,769,570, $8,945, and $12,017, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $2,334, $470, and $201, respectively (the "December 19, 2016 Distributions").

150. On or around January 5, 2017, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $11,034,754, $20,694, and $27,803, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2,[34] in the amounts of $5,401, $1,087, and $466, respectively (the "January 5, 2017 Distributions").

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[33] In December 2015, Dondero orchestrated two sequential transactions, whereby Hunter Mountain purchased virtually all of HCMLP's limited partnership interests in exchange for cash and notes (collectively, the "Hunter Mountain Transaction"). The effect of the Hunter Mountain Transaction was to consolidate over 99% of all existing limited partners' interests in HCMLP into a single entity, Hunter Mountain. Hunter Mountain is owned through a series of intermediate shell companies, and ultimately all economic interests are held in a series of tax-favored life insurance accounts at Crown Global Life Insurance Ltd. ("Crown Global"). On information and belief, these accounts were created by Dondero and Okada, who were the direct or indirect owners of nearly all of the Debtor's limited partner interests prior to the Hunter Mountain Transaction. Dondero orchestrated the Hunter Mountain Transaction in order to avail himself of personal tax benefits.

[34] At the time of the December 19, 2016 distributions and thereafter, Okada and two trusts (MAP #1 and MAP #2) established for the benefit of Okada's children and siblings held economic interests in HCMLP. HCMLP's accounting records indicate that distributions allocated to Okada, MAP #1, and MAP #2 were all made to a single account in Okada's name. Thus, with respect to this and subsequent, applicable distributions, Plaintiff pleads that they were made to or for the benefit of Okada, MAP #1, and MAP #2.

151. On or around February 7, 2017, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $7,169,970.00, $13,446.40, and $18,065.44, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $3,509.32, $706.19, and $302.65, respectively (the "February 7, 2017 Distributions").

152. On or around June 15, 2017, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $79,600.00, $149.28, and $200.56, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $38.96, $7.84, and $3.36, respectively (the "June 15, 2017 Distributions").

153. On or around December 21, 2017, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $2,651,675.00, $4,972,89, and $6,681.16, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $1,297.86, $261.17, and $111.93, respectively (the "December 21, 2017 Distributions").

154. On or around March 9, 2018, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $84,575.00, $158.61, and $213.10, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $41.40, $8.33, and $3.57, respectively (the "March 9, 2018 Distributions").

155. On or around December 19, 2018, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $4,930,722.50, $9,246.96, and $12,423.44, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $2,413.33, $485.64, and $208.13, respectively (the "December 19, 2018 Distributions").

156. On or around March 28, 2019, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $3,711,456.47, $6,960.38, and $9,351.38, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $1,816.56, $365.55,

and $156.66, respectively (the "March 28, 2019 Distributions," and together with the April 9, 2010 Distributions, April 13, 2011 Distributions, May 2, 2011 Distributions, September 13, 2011 Distributions, November 25, 2011 Distributions, February 22, 2012 Distributions, February 29, 2021 Distributions, April 10, 2012 Distributions, April 9, 2013 Distributions, December 19, 2016 Distributions, January 5, 2017 Distributions, February 7, 2017 Distributions, June 15, 2017 Distributions, December 21, 2017 Distributions, March 9, 2018 Distributions, December 19, 2018 Distributions, March 28, 2019 Distributions, the "HCMLP Distributions").

157. All of these distributions were made at a time when HCMLP was insolvent and as part of a scheme to transfer HCMLP's value to Dondero and Okada and divert value away from HCMLP's current and potential future creditors. The March 28, 2019 Distributions, which were made shortly after the arbitration panel awarded the Redeemer Committee over $190 million, were the final distributions made by HCMLP. The distributions ceased at that time—the end result of HCMLP's valuable businesses being usurped by the "lifeboats" and a years-long effort to transfer HCMLP's remaining cash to its limited partners via distributions.

(c) Fraudulent Transfers To Massand

158. HCMLP also made payments of at least $519,000 per year to Massand Capital from November 2014 through 2019. On January 1, 2014, HCMLP entered into a one-year consulting agreement with Massand Inc., pursuant to which HCMLP agreed to pay Massand Inc. $25,000 per month in fees, $7,500 per month in "accommodations," $750 per month in cell phone expenses, and other "reasonable" expenses. Then, on January 5, 2015, HCMLP entered into a consulting agreement (together, the "Massand Consulting Agreements") on the same terms with Massand LLC, pursuant to which HCMLP agreed to pay Massand LLC $35,000 per

month in fees, $7,500 per month in "accommodations," $750 per month in cell phone expenses, and other "reasonable" expenses. In exchange, the Massand Consulting Agreements provided that HCMLP's Chairman, Dondero, and its General Counsel, Ellington, would assign certain unspecified "tasks" to Massand Capital.

159. Massand Capital's monthly invoices to HCMLP were consecutively numbered, indicating that Massand Capital had no customers other than HCMLP. Moreover, Massand Capital's invoices contained no information about the services it purportedly rendered to HCMLP.

160. The Massand Consulting Agreements noted that Massand Capital would be responsible for advising HCMLP on its "Investment Recovery Strategies business in the Countries of the Gulf Cooperation Council"—specifically Bahrain, Saudi Arabia, the United Arab Emirates, Kuwait, Qatar, and Oman. Based upon a review of information to date, it appears that Massand Capital provided no actual services to HCMLP, and that HCMLP did not have any "business" that was related to "investment recovery strategies."

161. Rather, Massand Capital appears to have provided services solely to SAS—a separate entity that was owned and controlled by Dondero and Ellington. The owner of Massand Capital, Dilip Massand, was assigned an SAS email address, was bestowed the title of "Managing Director" of SAS, and was involved in communications relating to SAS's claims purchase litigation financing business.[35] As set forth above, SAS was owned by Dondero and Ellington, not HCMLP.

[35] In a speaker profile in 2014, Dilip Massand was described as overseeing "the operations of SAS Asset Recovery in the Middle East."

162. Thus, based on the documents and information that Plaintiff has reviewed to date, Dondero caused HCMLP to pay millions of dollars in consulting fees to Massand Capital in exchange for no value to HCMLP, all solely to benefit other Dondero-controlled entities. HCMLP received no value for the payments that Dondero and Ellington directed to Massand Capital.

J. Dondero And Ellington Breach Their Fiduciary Duties To HCMLP By Misappropriating Its Funds

163. HCMLP owned a 97.5% interest in HE Capital 232 Phase I, LLC ("HE Capital 232"). In February 2018, HE Capital 232 and its wholly-owned subsidiary, HE Capital 232 Phase I Property, LLC ("HE Capital 232 Property"), sold real property in Arizona. Net of costs and expenses in connection with the transaction, HE Capital 232 was due $8,687,245.15. These proceeds were placed in an escrow account maintained by HCMLP's counsel, Wick Phillips Gould & Martin LLP ("Wick Phillips"), "pending distribution of the proceeds to the direct and indirect owners of interests in [HE Capital 232 Property]."

164. On March 2, 2018, Ellington directed Wick Phillips to disburse from the escrow account $4,510,000 to HCMLP and $1,200,000 to an HCMLP managed fund to pay down mezzanine debt. This left $2,977,245.15 in the escrow account that was due and owing to HCMLP. On information and belief, Dondero and Ellington directed Wick Phillips to keep these funds in the escrow account so that they could funnel the money to themselves. For three months, Wick Phillips requested disbursement instructions for the remaining funds from Ellington, but Ellington demurred while "waiting for answers from others so can tell you where to send." Upon information and belief, during this period, Ellington and Dondero were determining how to direct the funds to themselves.

165. On June 4, 2018, Ellington dropped HCMLP's Managing Director (Real Estate) from an email chain and directed Wick Phillips to disburse the remainder to an account in the name of MaplesFS—a fiduciary services company in the Cayman Islands acting as a payment agent—for further credit to Grey Royale Ltd., a Cayman Islands shell company owned and controlled by Dondero and Ellington. MaplesFS subsequently transferred the full amount to Grey Royale Ltd. A Wick Phillips employee commented that the payment to Grey Royale Ltd. was "pretty suspicious."

166. In September 2019, in connection with the preparation of HE Capital 232's tax return, HCMLP's Tax Director inquired about the missing funds owed to HCMLP as a result of the Arizona property sale. Ellington responded that the "facts as I know them" were that the approximately $3 million in missing HCMLP funds were "additional cost[s] of sale, reducing the gain," and "used to pay various legal expenses and other closing costs." Ellington did not disclose that he had directed that the funds be paid to a Cayman Islands shell company owned by Dondero and Ellington, which had no role in the real estate transaction and was not owed any legal expenses or closing costs.

167. Neither Dondero, Ellington, nor Grey Royale Ltd. were parties to the escrow agreement or had any legal claim to the proceeds of the real estate sale held by the escrow agent.

K. Dondero Loyalists Receive Their Deferred Compensation By Engaging In The Tall Pine Transaction

168. HCMLP employees other than Dondero also engaged in, and improperly benefited from, self-interested transactions and schemes involving HCMLP.

169. In early 2020, only months after the Petition Date, Ellington and Leventon formed a group of entities that have received millions of dollars of payments from four Dondero Entities pursuant to a services agreement dated March 13, 2020, among Tall Pine, NexBank,

DAF Holdco, NexPoint, and HCMFA (the "Tall Pine Services Agreement"). The Tall Pine scheme was an elaborate arrangement pursuant to which Dondero would be able to keep certain key employees, including Ellington and Leventon, loyal to Dondero during the bankruptcy. Through the Tall Pine scheme, Ellington and Leventon ensured that they would profit off their wrongdoing, and that Dondero would compensate them no matter what happened to HCMLP.

170. Pursuant to the Tall Pine Services Agreement, HCMLP employees, including Ellington and Leventon, would receive approximately $17 million through pass-through entities that they created and owned over the course of two years. When Tall Pine would receive a payment from any of the counterparties to the Tall Pine Services Agreement, Tall Pine contemporaneously transferred funds to Leventon's pass-through entity, Clairmont Holdings, LLC ("Clairmont"). Ellington, who owned Tall Pine, profited from the amounts that remained in Tall Pine after it had distributed sums to Clairmont and other pass-through entities controlled by HCMLP employees.

171. After the Petition Date, Dondero surreptitiously approved wire transfers from accounts held by NexPoint, NexBank, and the DAF to Tall Pine for the benefit of himself, Ellington, and Leventon. These payments were made to compensate Ellington and Leventon for the amounts that would have been paid to them in 2020 but for the Committee's objection. Ellington and Leventon did not disclose these payments to the Independent Board.

V. CAUSES OF ACTION

COUNT I
Avoidance and Recovery of HCMLP Distributions as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, 26 U.S.C. § 6502, and Other Applicable Law
(Against Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain)

172. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

173. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

174. As set forth below, HCMLP made the following HCMLP Distributions to or for the benefit of Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain.

	Dondero (for the benefit of Dondero, Strand, and/or Dugaboy)	**Hunter Mountain**	**Dugaboy**	**Okada (for the benefit of Okada)**	**Okada (for the benefit of MAP #1)**	**Okada (for the benefit of MAP #2)**	**Strand**
April 9, 2010 Distributions	$1,216,756.87 (two transfers of $1,125,000.00 and $91,756.87)	N/A	N/A	$405,585.62 (two transfers of $375,000.00 and $30,585.62)			N/A
April 13, 2011 Distributions	$649,318.45	N/A	N/A	$216,439.49			N/A
May 2, 2011 Distributions	$3,124,435.00	N/A	N/A	$1,024,018.00			N/A
September 13, 2011 Distributions	$5,351,316.00	N/A	N/A	$1,705,813.00			N/A
November 25, 2011 Distributions	$5,250,000.00	N/A	N/A	$1,750,000.00			N/A
February 22, 2012 Distributions	$3,000,000.00	N/A	N/A	$1,000,000.00			N/A
February 29, 2012 Distributions	$4,514,780.25	N/A	N/A	$1,504,926.75			N/A
April 10, 2012 Distributions	$6,221,364.15	N/A	N/A	$2,073,788.05			N/A
April 9, 2013 Distributions	$25,375,083.16	N/A	N/A	$8,440,148.31			N/A
December 19, 2016 Distributions	N/A	$4,769,570.00	$8,945.00	$2,334.00	$470.00	$201.00	$12,017.00

	Dondero (for the benefit of Dondero, Strand, and/or Dugaboy)	Hunter Mountain	Dugaboy	Okada (for the benefit of Okada)	Okada (for the benefit of MAP #1)	Okada (for the benefit of MAP #2)	Strand
January 5, 2017 Distributions	N/A	$11,034,754.00	$20,694.00	$5,401.00	$1,087.00	$466.00	$27,803.00
February 7, 2017 Distributions	N/A	$7,169,970.00	$13,446.40	$3,509.32	$706.19	$302.65	$18,065.44
June 15, 2017 Distributions	N/A	$79,600.00	$149.28	$38.96	$7.84	$3.36	$200.56
December 21, 2017 Distributions	N/A	$2,651,675.00	$4,972.89	$1,297.86	$261.17	$111.93	$6,681.16
March 9, 2018 Distributions	N/A	$84,575.00	$158.61	$41.40	$8.33	$3.57	$213.10
December 19, 2018 Distributions	N/A	$4,930,722.50	$9,246.96	$2,413.33	$485.64	$208.13	$12,423.44
March 28, 2019 Distributions	N/A	$3,711,456.47	$6,960.38	$1,816.56	$365.55	$156.66	$9,351.38
Total	$54,703,053.88	$34,432,322.97	$64,573.52	$18,142,416.67			$86,755.08
Grand Total	$107,429,122.12						

175. At the time of each HCMLP Distribution, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

176. HCMLP received less than reasonably equivalent value in exchange for each of HCMLP Distributions set forth above. Indeed, HCMLP received no value for HCMLP the Distributions, each of which was a gratuitous transfer from HCMLP, either to one of its limited partners or for the benefit of one of its limited partners and/or Dondero.

177. Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain did not receive HCMLP Distributions in good faith. To the contrary, at the times that Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain received each of HCMLP Distributions, they knew that HCMLP was balance sheet insolvent (or would be rendered balance sheet insolvent), inadequately capitalized, and/or unable to pay its debts as they came due. Each of these defendants was aware that Dondero had siphoned HCMLP's valuable assets and business opportunities after HCMLP had incurred substantial contingent liabilities. Moreover, each of these defendants was aware that HCMLP Distributions were yet another effort to siphon value from HCMLP to Dondero, Okada, and their affiliated entities at a time when HCMLP was insolvent, inadequately capitalized, and unable to pay its debts as they came due.

178. Dondero, Dugaboy, Okada, MAP #1, and MAP #2 were the beneficiaries of distributions made to Hunter Mountain, given that Hunter Mountain transferred proceeds of such distributions to them.

179. Each HCMLP Distribution is voidable as a constructively fraudulent transfer. Accordingly, each HCMLP Distribution should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT II
Avoidance and Recovery of HCMLP Distributions as Intentional Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, 26 U.S.C. § 6502, and Other Applicable Law
(Against Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain)

180. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

181. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

182. As set forth below, HCMLP made the following HCMLP Distributions to or for the benefit of Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain.

	Dondero (for the benefit of Dondero, Strand, and/or Dugaboy)	**Hunter Mountain**	**Dugaboy**	**Okada (for the benefit of Okada)**	**Okada (for the benefit of MAP #1)**	**Okada (for the benefit of MAP #2)**	**Strand**
April 9, 2010 Distributions	$1,216,756.87 (two transfers of $1,125,000.00 and $91,756.87)	N/A	N/A	$405,585.62 (two transfers of $375,000.00 and $30,585.62)			N/A
April 13, 2011 Distributions	$649,318.45	N/A	N/A	$216,439.49			N/A
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September 13, 2011 Distributions	$5,351,316.00	N/A	N/A	$1,705,813.00			N/A
November 25, 2011 Distributions	$5,250,000.00	N/A	N/A	$1,750,000.00			N/A
February 22, 2012 Distributions	$3,000,000.00	N/A	N/A	$1,000,000.00			N/A
February 29, 2012 Distributions	$4,514,780.25	N/A	N/A	$1,504,926.75			N/A
April 10, 2012 Distributions	$6,221,364.15	N/A	N/A	$2,073,788.05			N/A
April 9, 2013 Distributions	$25,375,083.16	N/A	N/A	$8,440,148.31			N/A
December 19, 2016 Distributions	N/A	$4,769,570.00	$8,945.00	$2,334.00	$470.00	$201.00	$12,017.00

	Dondero (for the benefit of Dondero, Strand, and/or Dugaboy)	Hunter Mountain	Dugaboy	Okada (for the benefit of Okada)	Okada (for the benefit of MAP #1)	Okada (for the benefit of MAP #2)	Strand
January 5, 2017 Distributions	N/A	$11,034,754.00	$20,694.00	$5,401.00	$1,087.00	$466.00	$27,803.00
February 7, 2017 Distributions	N/A	$7,169,970.00	$13,446.40	$3,509.32	$706.19	$302.65	$18,065.44
June 15, 2017 Distributions	N/A	$79,600.00	$149.28	$38.96	$7.84	$3.36	$200.56
December 21, 2017 Distributions	N/A	$2,651,675.00	$4,972.89	$1,297.86	$261.17	$111.93	$6,681.16
March 9, 2018 Distributions	N/A	$84,575.00	$158.61	$41.40	$8.33	$3.57	$213.10
December 19, 2018 Distributions	N/A	$4,930,722.50	$9,246.96	$2,413.33	$485.64	$208.13	$12,423.44
March 28, 2019 Distributions	N/A	$3,711,456.47	$6,960.38	$1,816.56	$365.55	$156.66	$9,351.38
Total	$54,703,053.88	$34,432,322.97	$64,573.52	$18,142,416.67			$86,755.08
Grand Total	$107,429,122.12						

183. Dondero was HCMLP's Chief Executive Officer, President, Co-Chief Investment Officer, and Co-Founder. Okada was HCMLP's Co-Chief Investment Officer and Co-Founder. Together, Dondero and Okada directly or indirectly owned substantially all of the equity interests in HCMLP, or were the beneficiaries of all distributions HCMLP made to its limited partners. Dondero exercised complete control over HCMLP, and Okada acquiesced to and profited from schemes orchestrated by Dondero to enrich HCMLP's direct and indirect owners.

184. To that end, Dondero caused HCMLP to make the HCMLP Distributions set forth above with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero and Okada were insiders of HCMLP;

(b) before HCMLP Distributions were made, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(c) HCMLP, through Dondero, was engaged in a multi-faceted scheme to remove assets from HCMLP and conceal them from HCMLP's creditors, which involved both siphoning HCMLP's valuable business opportunities through newly-created "lifeboat" entities and siphoning HCMLP's value through HCMLP Distributions (among other means);

(d) HCMLP received less than reasonably equivalent value (and in fact, received zero consideration) in exchange for the HCMLP Distributions;

(e) at the time of each HCMLP Distribution, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(f) The initial recipients of the HCMLP Distributions were Dondero, Dugaboy, Okada, Strand, and Hunter Mountain, each of which was owned and/or controlled by Dondero and Okada;

(g) Dondero and Okada personally received certain HCMLP Distributions instead of HCMLP's limited partners Dugaboy, Strand, MAP #1, and MAP #2; and

(h) Dondero made HCMLP Distributions during a period when he believed HCMLP would be forced to file for bankruptcy as a result of looming

contingent liabilities, and effected the transfers in order to siphon value so that such value would not be available to satisfy HCMLP's creditors.

185. Dondero, Dugaboy, Okada, MAP #1, and MAP #2 were the beneficiaries of distributions made to Hunter Mountain, given that Hunter Mountain transferred proceeds of such distributions to them.

186. Each HCMLP Distribution is voidable as an intentionally fraudulent transfer. Accordingly, each of the HCMLP Distributions should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT III
Illegal Distributions Under Delaware Revised Uniform Limited Partnership Act
(Against Dondero, Dugaboy, Strand, and Hunter Mountain)

187. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

188. The Delaware Revised Uniform Limited Partnership Act ("DRULPA") § 17-607(a) prohibits distributions "to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited partnership … exceed the fair value of the assets of the limited partnership[.]"

189. Under 17-607(b), "[a] limited partner who receives a distribution in violation of subsection (a) … and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to the limited partnership for the amount of the distribution."

190. As set forth below, between December 31, 2016 and the Petition Date, HCMLP made the following distributions to Hunter Mountain, Dugaboy, and Strand (the "Illegal Distributions").

	Hunter Mountain	Dugaboy	Strand
December 31, 2016 Distributions	$4,769,570.00	$8,945.00	$12,017.00
January 31, 2017 Distributions	$11,034,754.00	$20,694.00	$27,803.00
February 28, 2017 Distributions	$7,169,970.00	$13,446.40	$18,065.44
June 30, 2017 Distributions	$79,600.00	$149.28	$200.56
December 31, 2017 Distributions	$2,651,675.00	$4,972.89	$6,681.16
March 31, 2018 Distributions	$84,575.00	$158.61	$213.10
December 31, 2018 Distributions	$4,930,722.50	$9,246.96	$12,423.44
March 31, 2019 Distributions	$3,711,456.47	$6,960.38	$9,351.38
Total	$34,432,322.97	$64,573.52	$86,755.08
Grand Total	$34,583,651.57		

191. Hunter Mountain, Dugaboy, and Strand knew that HCMLP made the Illegal Distributions at a time that its liabilities exceeded the fair value of its assets. As set forth herein and in the counts below, each of Hunter Mountain, Dugaboy, and Strand were the alter egos of Dondero. Even if Hunter Mountain, Dugaboy, or Strand were not the alter egos of Dondero, they would be imputed with Dondero's knowledge. Dondero was the sole owner of Strand. Likewise, Dondero created Hunter Mountain as a shell entity whose sole purpose was to purchase the majority of HCMLP's limited partnership interests from himself and his Dugaboy trust (among others). Through Hunter Mountain, Dondero continued to receive the economic

benefit of HCMLP's limited partnership distributions through distributions on notes that would be triggered by those Illegal Distributions made to Hunter Mountain.

192. Hunter Mountain, Dugaboy, and Strand are liable to HCMLP and its creditors for the full amount of the Illegal Distributions, plus interest.

COUNT IV
Breach of Fiduciary Duty Arising Out Of Dondero's Lifeboat Scheme
(Against Dondero and Strand)

193. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

194. During all periods relevant to the allegations set forth herein, Strand owed fiduciary duties to HCMLP in its capacity as HCMLP's general partner. Likewise, during all periods relevant to the allegations set forth herein, Dondero owed fiduciary duties to HCMLP by virtue of his control over Strand and HCMLP and as an officer of HCMLP.

195. Neither the Litigation Trustee nor the Estate could have discovered the conduct by Dondero or Strand set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given Strand's and Dondero's fiduciary obligations, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the breaches set out herein prior to Dondero's removal. By their nature, the breaches alleged herein were inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit. Dondero and Strand transferred HCMLP's valuable business to the lifeboat entities, including but not limited to NexPoint and HCMFA. Pursuant to the scheme, the lifeboats utilized HCMLP's employees to

perform management and advisory services that HCMLP had provided directly, and should have continued to provide directly. As a result of this scheme, HCMLP would perform the same services via the same employees, but would now either receive only a small fraction of the profits that were generated or, in some instances, provide these services at a loss because the service agreements between HCMLP and the lifeboats would not even cover HCMLP's costs of providing the services. The majority of profits were paid to the lifeboats, which were owned by Dondero and/or entities that he controlled, placing those profits beyond the reach of HCMLP's creditors.

196. Dondero and Strand willfully and wantonly orchestrated this scheme in bad faith in order to evade HCMLP's present and future creditors.

197. Strand was dominated and controlled by its sole owner, Dondero. Dondero also owned substantial economic interests in each of the lifeboats either directly or through entities that he owned and/or controlled. As such, Dondero appeared on both sides of the agreements and transactions entered into between HCMLP, on one hand, and NexPoint, HCMFA, Acis, and the other lifeboats, on the other hand.

198. The wrongful acts that Dondero and Strand committed in connection with the lifeboat scheme—including but not limited to funneling new business to the lifeboat entities and undercompensating HCMLP for the use of its employees—continued through the Petition Date. Likewise, injury to HCMLP—in the form of lost profits and misappropriation of its employees and resources—continued through the Petition Date.

199. HCMLP suffered tens or hundreds of millions of dollars of harm, as the result of Dondero's and Strand's breaches, in the form of lost management and advisory fee revenue that far exceeded the amounts that the lifeboats paid to HCMLP under their respective shared

services and other agreements. Between the date of its formation and the Petition Date, NexPoint earned approximately $120 million in advisory and administrative fees and approximately $50 million in profits. Between the date of its formation and the Petition Date, HCMFA earned approximately $150 million in advisory and administrative fees.

200. Strand and Dondero profited from their breaches of fiduciary duties in connection with their lifeboat scheme in violation of Delaware law. Strand and Dondero are liable to HCMLP for their breaches of fiduciary duty in connection with the lifeboat scheme in an amount to be proven at trial.

COUNT V
Breach of Fiduciary Duty Arising Out Of Conduct That Resulted in HCMLP Liabilities To Third Parties
(Against Dondero, Strand, Ellington, and Leventon)

201. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

202. During all periods relevant to the allegations set forth herein: (1) Strand owed fiduciary duties to HCMLP in its capacity as HCMLP's general partner; (2) Dondero owed fiduciary duties to HCMLP by virtue of his control over Strand and HCMLP, and as an officer of HCMLP; (3) Ellington owed fiduciary duties to HCMLP in his capacity as HCMLP's Chief Legal Officer and General Counsel; and (4) Leventon owed fiduciary duties to HCMLP in his capacity as HCMLP's Assistant General Counsel.

203. Neither the Litigation Trustee nor the Estate could have discovered the conduct by Dondero, Strand, Ellington, or Leventon set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed by all these parties to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into

the breaches set out herein prior to Dondero's removal. By their nature, the breaches alleged herein were inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

204. Dondero (and in turn, Strand), Ellington, and Leventon each breached their fiduciary duties to HCMLP by engaging in willful and wanton misconduct that foreseeably resulted in liability to HCMLP. In total, these breaches resulted in more than $350 million in allowed claims against HCMLP. But for their breaches of fiduciary duty, either HCMLP never would have incurred these claims, or HCMLP would have resolved these claims for substantially lower amounts. These breaches resulted in millions of dollars to Dondero, Ellington, and Leventon, either directly, through transfers from HCMLP to entities owned in whole or in part by Dondero and Ellington, or indirectly, through compensation paid to Ellington and Leventon in exchange for their loyalty to Dondero in perpetrating schemes that breached their duties to HCMLP.

205. **Liabilities to UBS.** Dondero, Ellington, and Leventon willfully and wantonly caused HCMLP to incur substantial liability to UBS. Dondero exposed HCMLP and its subsidiaries to litigation against UBS that resulted in an adverse judgment that exceeded $1 billion. Among other things, acting through HCMLP, Dondero caused the Fund Counterparties to refuse to meet their obligations to UBS, and orchestrated transfers of more than $233 million of assets from HFP, exposing HCMLP to claims for fraudulent transfer, breach of the implied covenant of good faith and fair dealing, and extensive prejudgment interest and legal fees.

206. Then, in 2017, after a New York state court ruled that UBS's fraudulent transfer claims against HCMLP and claims against the Fund Counterparties could proceed to trial,

Dondero, Ellington, Leventon, Sevilla, Lucas, and DiOrio caused HCMLP, in its capacity as investment manager for the Fund Counterparties, to orchestrate the surreptitious transfer of assets worth at least $100 million to Sentinel, an entity located in the Cayman Islands that was indirectly owned and controlled by Dondero and Ellington. Neither HCMLP nor the Fund Counterparties received legitimate value in exchange for this transfer.

207. After the Petition Date, Dondero, Ellington, and Leventon actively concealed this transfer from the Independent Board, UBS, and the Bankruptcy Court. Ellington even went so far as to state in August 2020 that "[Leventon] and myself have spent in excess of 100 hours trying to piece together everything we can [about the Fund Counterparties' assets] to create a true and accurate document based record of what happened with these target entities['s assets]." Ellington made this statement knowing that the Fund Counterparties' assets had been transferred to an offshore entity he owned and controlled. When this transfer was uncovered, HCMLP was forced to increase the amount of its settlement with UBS from a total of $75 million in allowed claims to $125 million in allowed claims.

208. **Liabilities to Acis.** Dondero willfully and wantonly caused HCMLP to incur over $23 million in liability to Acis and Terry. As with NexPoint and HCMFA, Acis was originally created to perform management and advisory services that were previously provided by HCMLP. When Dondero's relationship with Terry deteriorated, Dondero set in motion a series of contentious litigation with Terry, which resulted in Terry obtaining a $7.95 million arbitration award against Acis.

209. Dondero then embarked on a crusade to ensure Terry would not collect from Acis. In connection therewith, Dondero acted through HCMLP to, among other things: (1) siphon assets from Acis, causing Terry to commence an involuntary bankruptcy against Acis

and causing HCMLP to lose its advisory and shared services contracts with Acis; (2) enter into costly, frivolous litigation with Terry in Guernsey, a "loser pays" jurisdiction; (3) convert the retirement accounts owned by Terry and his wife, leading to additional legal fees incurred in litigation in Texas state court; (4) violate injunctive provisions set forth in Acis's plan of reorganization, exposing HCMLP to additional liability; (5) enter into costly litigation with Acis's chapter 11 trustee in connection with Acis's bankruptcy case; and (6) mismanage Acis CLOs, exposing HCMLP to substantial liability in its capacity as advisor and fiduciary to Acis. As a result of these actions and the reputational harm they caused, it became impossible for HCMLP to launch another CLO either directly or indirectly.

210. In connection with his vendetta against Terry, Dondero willfully and wantonly subjected HCMLP to substantial liability to Acis and Terry, including by giving testimony at trial which, along with Leventon's testimony, was found "to be of questionable reliability" and structured "to convey plausible deniability." Ultimately, in order to avoid further liability to Terry and Acis, HCMLP settled those claims for more than $23 million pursuant to a settlement approved by this Court.

211. Beginning on October 24, 2017, four days after Terry's arbitration judgment was issued, Dondero, Ellington, and Leventon willfully and wantonly caused HCMLP to enter into numerous transactions to take control of Acis's business and strip it of assets so it could not pay the arbitration award. Ellington and Leventon implemented Dondero's directives and took the steps necessary to consummate the transactions.

212. Leventon willfully and wantonly helped to transfer value away from Acis in an attempt to make it judgment-proof. Among other things, Leventon assisted in the drafting and execution of the agreement that transferred Acis's interest in a note receivable from HCMLP,

which had a balance owing of over $9.5 million, to Cayman Island entity Highland CLO Management Ltd. just ten days after Terry obtained his arbitration award. The agreement recites that (1) HCMLP is no longer willing to continue providing support services to Acis; (2) Acis, therefore, can no longer fulfill its duties as a collateral manager; and (3) Highland CLO Management Ltd. agrees to step in to the collateral manager role. Given the timing of the assignment—just days after Terry's arbitration award—Leventon knew that it was part of a scheme to strip Acis of its assets, which ultimately resulted in millions of dollars of damage to HCMLP.

213. **Liabilities to HarbourVest.** Dondero and Ellington also willfully and wantonly caused harm to HCMLP by exposing it to substantial liability to HarbourVest. Dondero and Ellington, acting through HCMLP, fraudulently induced HarbourVest to purchase 49% of HCLOF from CLO Holdco for approximately $75 million in cash, with a commitment for an additional $75 million in the future, while concealing that Dondero was actively engaged in a campaign against Terry that would significantly impair the value of HarbourVest's investment. In addition, Dondero did not intend to use the $75 million that CLO Holdco received from HarbourVest to satisfy capital calls at HCLOF, and instead intended for CLO Holdco to use those funds as part of a scheme to infuse other Dondero Entities (including entities that benefitted the NexPoint and HCMFA lifeboats) with additional cash. Ultimately, HCMLP was forced to settle with HarbourVest by providing it with $80 million in allowed claims, in exchange for a transfer of HarbourVest's interests in HCLOF to a new entity designated by HCMLP. But for Dondero's and Ellington's conduct, HCMLP would not have incurred the foregoing liabilities. As a result of their conduct, those interests in HCLOF were then worth tens of millions of dollars less than the $75 million HarbourVest paid to acquire them.

214. **Liabilities to Crusader Funds.** Dondero, Ellington, and Leventon willfully and wantonly caused HCMLP to incur substantial liability to the Redeemer Committee due to their conduct in connection with HCMLP's wind-down of the Crusader Funds and distribution of proceeds to investors. Among other things, Dondero, Ellington, and Leventon caused HCMLP to: (1) transfer Barclays' limited partnership interests in the Crusader Funds to HCMLP's wholly-owned affiliate, Eames, Ltd., after the Redeemer Committee had refused to approve that transfer, in violation of the Joint Plan and Scheme and HCMLP's fiduciary duties; (2) purchase 28 Plan Claims for the benefit of HCMLP without the approval of the Redeemer Committee, in violation of the Joint Plan and Scheme and HCMLP's fiduciary duties; (3) covertly purchase the stock of the Portfolio Company and fail to liquidate the Crusader Funds' shares in the Portfolio Company, in violation of HCMLP's fiduciary duties; and (4) violate the provision of the Joint Plan and Scheme requiring HCMLP to defer receipt of certain Deferred Fees until the liquidation of the Crusader Funds was complete, causing HCMLP to forfeit its rights to those fees entirely. Both Ellington and Leventon provided false narratives and misrepresentations in furtherance of Dondero's harm to the Crusader Funds. The Redeemer Arbitration panel found, for example, that Leventon "was significantly involved in providing direction" to keep the Redeemer Committee in the dark and "was the principal instrument through which [certain] misrepresentation[s] and omission[s] were communicated." As a result of Dondero's, Ellington's, and Leventon's conduct, the Redeemer Committee received an arbitration award against HCMLP in excess of $190 million, and in HCMLP's bankruptcy, HCMLP agreed to pay over $136 million in connection therewith.

215. Beyond the direct losses identified in the preceding paragraphs, HCMLP suffered additional harm from the breaches of fiduciary duty committed by Dondero, Ellington,

Leventon and Strand. For example, the $190 million Redeemer arbitration award—which was itself caused by Dondero's, Ellington's, Leventon's and Strand's breaches of their fiduciary duty to HCMLP—caused HCMLP to file for bankruptcy. As of October 15, 2021, HCMLP had incurred in excess of $40 million in professional fees in connection with the bankruptcy. But for Dondero's, Ellington's, Leventon's, and Strand's willful and wanton misconduct, HCMLP would not have been obligated to pay any of these fees.

216. In light of the foregoing, Dondero, Strand, Ellington, and Leventon are liable for breaches of their fiduciary duties to HCMLP in an amount to be determined at trial.

COUNT VI
Declaratory Judgment That Strand Is Liable For HCMLP's Debts In Its Capacity As HCMLP's General Partner
(Against Strand)

217. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

218. Under DRULPA § 17-403(b), "a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law … to persons other than the partnership and the other partners." Moreover, "[e]xcept as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law … to the partnership and to the other partners." *Id.*

219. Under Delaware Uniform Partnership Law ("DUPL") § 15-306(a), partners of a partnership "are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law."

220. During all periods relevant to the allegations set forth herein, Strand was the general partner of HCMLP. Moreover, Strand has not been relieved of its obligation to satisfy HCMLP's obligations by agreement or law.

221. Accordingly, under the operative partnership agreements and applicable law, Strand is liable to HCMLP and "to persons other than [HCMLP]" for the full amount of HCMLP's liabilities.

COUNT VII
Declaratory Judgment That Dondero Is Liable For Strand's Debts As Strand's Alter Ego
(Against Dondero)

222. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

223. Between the formation of Strand and the Petition Date, Dondero, Strand's sole equity owner, dominated and controlled Strand such that Dondero and Strand operated as a single economic entity. Although Strand was the general partner of HCMLP, Strand—as opposed to Dondero himself—rarely took any official corporate action. Between its formation and the Petition Date, Strand documented only 12 instances in which it took corporate action, eight of which related to the appointment or removal of officers.

224. Dondero was the only officer of Strand between 1993 and 2001. Although Strand elected certain officers between 2001 and the Petition Date, they performed no duties in their capacities as officers of Strand and were appointed or fired from their roles based on their loyalty to, and their current relationship with, Dondero. Dondero testified that he did not know whether Strand even had any officers, stating that he was "not aware of [Strand] ever having any employees or active … governance." Likewise, Dondero did not know whether Strand had a board of directors and whether he sat on Strand's board.

225. Strand did not observe corporate formalities. Based on a review of HCMLP's books and records, between the formation of Strand and the Petition Date, Strand never held a board meeting. Indeed, Dondero testified that he is not aware of attending a board meeting for Strand and does not recall ever seeing board minutes for Strand.

226. Strand did not comply with its own bylaws, which require annual meetings of stockholders.

227. Strand was a sham entity whose sole purpose was to serve as a vehicle through which Dondero could dominate and control HCMLP. Dondero used this abuse of the corporate form to facilitate his scheme to make HCMLP act contrary to its own interests and in favor of Dondero's interests by insulating assets from HCMLP's creditors, including those whose liabilities were the direct result of Dondero's own wrongdoing. As such, Dondero is Strand's alter ego, and the Court should pierce the corporate veil to hold Dondero liable for Strand's debts.

COUNT VIII
Declaratory Judgment That Dondero and Strand Are Liable For HCMLP's Debts In Their Capacities As HCMLP's Alter Ego
(Against Dondero and Strand)

228. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

229. Dondero, using his alter ego Strand, dominated and exercised total control over HCMLP through the Petition Date, such that Dondero, Strand, and HCMLP operated as a single economic entity. Dondero had total decision-making authority and governed HCMLP by decree—using the lack of an independent Strand to render HCMLP a mere instrumentality of Dondero. HCMLP had no independence and could not exercise any business discretion separate

and apart from Dondero, in service of his personal interests and the interests of his integrated web of entities.

230. Strand, like innumerable entities within Dondero's empire—including NexPoint GP, HCMFA, Dugaboy, CLO Holdco, Highland Dallas, Highland Santa Barbara, Highland Kansas City, HFP, and Acis—listed HCMLP's headquarters as its business address.

231. Dondero failed to observe corporate formalities with regard to HCMLP. Indeed, he did not distinguish between HCMLP and his personal interests and businesses. Dondero used HCMLP employees to service his own interests that were unrelated to HCMLP. For example, Dondero caused HCMLP to employ individuals to carry out roles serving Dondero personally. Such employees included Dondero's accountant, security guard, and landscaper. Dondero also frequently instructed HCMLP's legal department to perform legal services in connection with his own personal and business interests, which conferred no value on HCMLP.

232. Dondero used his domination and control over HCMLP to perpetrate numerous injustices, abuses, and frauds.

233. Dondero siphoned value from HCMLP to other entities he owned and controlled by causing HCMLP's employees and resources to be used for his lifeboat businesses. In connection with this fraudulent scheme to move assets out of the reach of HCMLP's creditors, Dondero exploited HCMLP by using its employees and resources for the benefit of other lifeboat entities, either at no cost to the lifeboats, at a loss to HCMLP, or at substantially below-market rates. In fact, HCMLP should have received all of the profits generated from the services performed by the lifeboats, which in fact were performed by HCMLP's employees. The purpose and effect of this scheme was to cause HCMLP to provide the employees and

infrastructure that were needed by Dondero's profitable business ventures, while also ensuring that HCMLP would remain cash poor and lack the funds to satisfy its own obligations.

234. Dondero caused HCMLP to enter into agreements, including the Massand Consulting Agreement, the object and purpose of which were to cause HCMLP to incur obligations for services that conferred benefits on Dondero, through benefits conferred to entities he owned other than HCMLP.

235. Dondero used his abusive domination and control to cause HCMLP's assets to be commingled with those of his other businesses, without observing corporate formalities. By commingling entities and using HCMLP's employees and resources to further his own personal goals, Dondero exposed HCMLP to hundreds of millions of dollars in liability to numerous parties, including UBS, Acis, Terry, HarbourVest, the Redeemer Committee, and the Crusader Funds.

236. By virtue of his complete control over HCMLP, Dondero caused HCMLP to willfully and wantonly breach contractual obligations and take measures to render HCMLP "judgment-proof." Ultimately, this brazen disregard for HCMLP as an independent entity with its own obligations rendered HCMLP insolvent, including by resulting in multiple adverse awards such as the $190 million arbitration award that caused HCMLP to file for bankruptcy.

237. Dondero further abused the corporate form to siphon assets from HCMLP by orchestrating intercompany transfers that were designed to siphon assets from HCMLP. For example, Dondero orchestrated the CLO Holdco Transaction, through which he caused HCMLP to transfer assets valued by the company at approximately $24 million through a series of entities he controlled in exchange for consideration that was worth a small fraction of the value of the transferred assets.

238. Because Dondero operated Strand and HCMLP as a single economic entity and used that domination to defraud HCMLP's creditors, Dondero and Strand are the alter egos of HCMLP and should be held liable for the full amount of HCMLP's obligations.

COUNT IX
Declaratory Judgment That Dugaboy Is Liable For The Debts Of Dondero and HCMLP In Its Capacity As Dondero's Alter Ego
(Against Dugaboy)

239. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

240. Dondero operated Dugaboy—Dondero's personal trust—as an extension of himself and his alter ego HCMLP. Dondero treated himself, Dugaboy, and HCMLP as a single economic entity. Dondero dominated and controlled Dugaboy. Under the terms of Dugaboy's trust agreement, Dondero has the power to remove trustees without cause—leverage that allowed him to control Dugaboy. Dondero appointed Scott, his longtime personal friend, as the trustee of Dugaboy, for the purpose of serving as a rubber stamp of approval for all transactions that Dondero (or HCMLP employees acting at Dondero's direction) presented to Scott.

241. Dondero treated Dugaboy as a vehicle for his own interests. For example, Dondero caused Dugaboy to falsely assert in HCMLP's notes litigation that Dugaboy, acting through Dondero's sister, Nancy Dondero, allegedly caused HCMLP to enter into an agreement whereby the notes owed to HCMLP by various Dondero Entities would be forgiven as compensation to Dondero upon satisfaction of certain conditions subsequent. Dondero also caused Dugaboy to help facilitate HCMLP's transfer of the Transferred CLO Holdco Assets to Get Good, by agreeing to provide the Dugaboy Note, purportedly but not actually equal to the value of the Transferred CLO Holdco Assets and with a paltry 2.75% interest rate and no security, covenants, lender protections provided to Dugaboy, or payments due until 2036.

242. Dondero disregarded corporate formalities between Dugaboy and HCMLP. Dondero used HCMLP employees, on HCMLP's payroll, to transact business on behalf of Dugaboy, without any compensation to HCMLP. Dondero used HCMLP employees for Dondero's personal estate planning and caused HCMLP to comingle Dugaboy's electronically stored information with HCMLP's data. Dugaboy shared its principal place of business, 300 Crescent Court, Suite 700, Dallas, Texas 75201, with HCMFA and other Dondero Entities.

243. With Dondero as the primary beneficiary of Dugaboy, there are no other innocent shareholders whose expectations could be impaired by holding Dugaboy liable for Dondero or HCMLP's debts. There are no innocent third-party creditors of Dugaboy who would be harmed by holding Dugaboy liable for Dondero's or HCMLP's debts.

244. Dugaboy is the alter ego of Dondero, and the Court should hold Dugaboy liable for Dondero's debts. Because Dondero is also HCMLP's alter ego, and because Dugaboy knowingly participated in Dondero's scheme to abuse the corporate form to defraud creditors, Dugaboy is also the alter ego of HCMLP and the Court should hold Dugaboy liable for the debts of HCMLP.

COUNT X
Declaratory Judgment That NexPoint Is Liable
For The Debts Of Dondero and HCMLP As Their Alter Egos
(Against NexPoint)

245. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

246. Dondero dominated and controlled NexPoint such that Dondero, NexPoint, and Dondero's alter ego HCMLP operated as a single economic entity. NexPoint is owned and controlled by Dondero through Dugaboy and NexPoint GP.

247. NexPoint knowingly participated in—and played a core role in accomplishing—Dondero's scheme to move HCMLP's assets out of reach of its creditors by operating NexPoint as a facade of HCMLP, in order to siphon profits away from HCMLP and to Dondero and other entities he controlled. Dondero and NexPoint acted together to place the profits that were generated from HCMLP's business and services beyond the reach of HCMLP's then present and future creditors.

248. Dondero disregarded the corporate formalities and the distinctions between himself, NexPoint, and HCMLP. Between 2012 and 2015, NexPoint had no employees of its own, and performed no business activities that were distinguishable from those performed by HCMLP. NexPoint shared its principal place of business, 300 Crescent Court, Suite 700, Dallas, Texas 75201, with HCMFA and other Dondero Entities. NexPoint was a facade of HCMLP that used HCMLP's employees to perform the same investment management and advisory services that HCMLP routinely performed. Dondero caused internal business plans and projections to be prepared as if these entities were part of a single economic unit.

249. For over one year, HCMLP performed all services for NexPoint without any sub-advisory or shared services agreements that even purported to compensate HCMLP for the use of its employees. Even after Dondero attempted to infuse this scheme with a patina of legitimacy by causing NexPoint to enter into agreements with HCMLP, they were structured to ensure that NexPoint retained the vast majority of profits for the work performed by HCMLP and its employees.

250. Dondero used NexPoint as a part of his scheme to extract value from HCMLP. Dondero caused HCMLP to fund NexPoint's operations, seed its investments, and provide a substantial amount of the capital that ultimately funded distributions NexPoint made to its

owner, Dugaboy. Transferring funds from HCMLP to NexPoint funded distributions by NexPoint to Dondero's alter ego Dugaboy, draining HCMLP's value to Dondero with NexPoint's knowledge and participation. Between 2012 and 2017, HCMLP loaned NexPoint approximately $30 million, and during that same period, NexPoint made limited partner distributions of approximately $34 million—99.9% of which were paid to Dugaboy. Distributions to Dugaboy were made at the direction of, and for the benefit of, Dondero.

251. Dondero and NexPoint worked together to further extract value from HCMLP by causing HCMLP to lend to NexPoint on terms entirely determined by Dondero. Dondero further caused HCMLP to enter into multiple agreements with NexPoint providing for forbearance and other relief. As of the Petition Date, NexPoint owed HCMLP approximately $23 million, and HCMLP is currently embroiled in litigation with Dondero and NexPoint following a payment default that occurred January 2021.

252. There are no other innocent shareholders whose expectations could be impaired by holding NexPoint liable for Dondero or HCMLP's debts. Similarly, there are no innocent third-party creditors of NexPoint who would be harmed by holding NexPoint liable for Dondero or HCMLP's debts.

253. NexPoint is the alter ego of Dondero and the Court should hold NexPoint liable for the debts of its ultimate shareholder Dondero. Because Dondero is also HCMLP's alter ego, and because NexPoint knowingly participated in Dondero's scheme to abuse the corporate form to defraud creditors, NexPoint is also alter ego of HCMLP and the Court should hold NexPoint liable for the debts of HCMLP.

COUNT XI
Declaratory Judgment That HCMFA Is Liable
For The Debts Of Dondero and HCMLP As Their Alter Ego
(Against HCMFA)

254. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

255. Dondero dominated and controlled HCMFA such that Dondero, HCMFA, and Dondero's alter ego HCMLP operated as a single economic entity. HCMFA is controlled by Dondero through its general partner, Strand Advisors XVI, Inc., which owns a 1% interest in HCMFA and is wholly-owned by Dondero. Dondero and Okada are the ultimate owners of the remaining stakes in HCMFA: HCMS owns an 89.6667% ownership interest in HCMFA, and is itself owned 75% by Dondero and 25% by Okada; the Okada Family Revocable Trust owns the remaining 9.3333% ownership interest in HCMFA. Dondero caused internal business plans and projections to be prepared as if these entities were part of a single economic unit.

256. HCMFA knowingly participated in—and played a key role in accomplishing—Dondero's scheme to move HCMLP's assets out of reach of its creditors by operating HCMFA as a facade of HCMLP, in order to siphon profits away from HCMLP and to Dondero directly or indirectly through other entities he controlled. Dondero and HCMFA acted together to place the profits that were generated from HCMLP's business and services beyond the reach of HCMLP's then present and future creditors.

257. Dondero disregarded the corporate formalities and the distinctions between HCMFA and HCMLP. HCMFA was a facade of HCMLP that used HCMLP's employees to perform the same investment management and advisory services that HCMLP routinely performed. Strand Advisors XVI, Inc., HCMFA's general partner, purports to be managed by six individuals, all but one of whom were previously on HCMLP's payroll. HCMFA shared its

principal place of business, 300 Crescent Court, Suite 700, Dallas, Texas 75201, with HCMFA and other Dondero Entities.

258. HCMFA was effectively a shell entity created to replace HCMLP as the new investment manager for open-ended retail investment funds. Agreements between HCMLP and HCMFA were structured to ensure that HCMFA retained the vast majority of profits for the work performed by HCMLP and its employees. To the extent that sub-advisory and shared services agreements existed between HCMLP and HCMFA, they existed to lend credibility to Dondero's fraudulent scheme to divert HCMLP's profits to himself and Okada through HCMFA.

259. Dondero used HCMFA as a part of his scheme to extract value from HCMLP. Dondero caused HCMLP to use its resources to support HCMFA. Between 2011 and 2019, HCMLP loaned HCMFA approximately $12 million; Dondero caused HCMLP to enter into multiple forbearances on HCMFA's debts. In May 2019, HCMLP loaned HCMFA an additional $7.4 million, and HCMFA again failed to repay. Dondero exerted his control and dominance of these entities to direct both sides of those agreements, with the knowing participation of HCMFA, to accomplish his own ultimate goal of siphoning value from HCMLP to insulate it from creditors.

260. There are no other innocent shareholders whose expectations could be impaired by holding HCMFA liable for Dondero or HCMLP's debts. Similarly, there are no innocent third-party creditors of HCMFA who would be harmed by holding NexPoint liable for Dondero or HCMLP's debts.

261. HCMFA is the alter ego of Dondero and the Court should hold HCMFA liable for Dondero's debts. Because Dondero is also HCMLP's alter ego, and because HCMFA

knowingly participated in Dondero's scheme to abuse of the corporate form to defraud creditors, HCMFA is also the alter ego of HCMLP and the Court should hold HCMFA liable for the debts of HCMLP.

COUNT XII
Avoidance of Transfer of Management Agreements As Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Other Applicable Law
(Against HCMFA and NexPoint)

262. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

263. On the date of the Debtor's bankruptcy filing, the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

264. On December 15, 2011, HCMLP entered into a novation agreement, pursuant to which HCMFA became the investment advisor for Highland Credit Strategies Fund, Highland Floating Rate Opportunities Fund, the Highland Long/Short Equity Fund, the Highland Long/Short Healthcare Fund, and the Highland Special Situations Fund (collectively, the "Transferred Funds"). Dondero caused HCMLP to transfer these agreements to HCMFA as part of his scheme to evade HCMLP's creditors.

265. HCMLP received less than reasonably equivalent value in connection with the novation agreement. Prior to the transfer, HCMLP received management and advisory fees in return for the services that its employees performed for the Transferred Funds. After the transfer, HCMLP's employees provided the same services for the Transferred Funds, except that the vast majority of the profits were diverted to HCMFA following the extinguishment of HCMLP's credit facility.

266. At the time of the transfer, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

267. On June 13, 2012, Dondero caused HCMFA to transfer the Highland Credit Strategies Fund to the newly-created NexPoint, after which Highland Credit Strategies Fund's name was changed to NexPoint Credit Strategies Fund, referred to herein as NHF. The result of this transfer was simply to shift the management fees relating to NHF from one lifeboat entity to another.

268. The transfer of HCMLP's valuable management and advisory contracts with the Transferred Funds (the fair market value of which likely exceeded $25 million at the time of transfer) is voidable as constructively fraudulent against HCMFA and its subsequent transferee, NexPoint. Accordingly, these transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and applicable state law, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XIII
Avoidance of Transfer of Management Agreements As Intentionally Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Other Applicable Law
(Against HCMFA and NexPoint)

269. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

270. On the date of the Debtor's bankruptcy filing, the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count. On December 15, 2011, HCMLP entered into

a novation agreement, pursuant to which HCMFA became the investment advisor for the Transferred Funds. Dondero caused HCMLP to transfer these agreements to HCMFA as part of his scheme to evade HCMLP's creditors.

271. Dondero caused HCMLP to make the transfer with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero was an insider of HCMLP and HCMFA;

(b) before the transfer, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(c) HCMLP, through Dondero, was engaged in a multi-faceted scheme to defraud HCMLP's creditors, which involved, among other things, causing HCMLP to transfer its valuable management contracts and business opportunities to newly-created "lifeboat" entities;

(d) at the time of the transfer, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(e) Dondero caused HCMLP to make the transfer during a period when he believed the value of HCMLP may ultimately be distributed to its creditors, as a result of its looming contingent liabilities, and effected the transfers in order to siphon value so that it would not be available to satisfy HCMLP's present and future creditors; and

(f) HCMLP did not receive reasonably equivalent value in return for transferring its valuable management and advisory contracts with the Transferred Funds to HCMFA.

272. On June 13, 2012, Dondero caused HCMFA to transfer the Highland Credit Strategies Fund to the newly-created NexPoint, after which Highland Credit Strategies Fund's name was changed to NexPoint Credit Strategies Fund, referred to herein as NHF. The result of this transfer was simply to shift the management fees relating to NHF from one lifeboat entity to another.

273. The transfer of HCMLP's valuable management and advisory contracts with the Transferred Funds is voidable as intentionally fraudulent against HCMFA and its subsequent transferee, NexPoint. Accordingly, these transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and applicable state law, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XIV
Breach of Fiduciary Duty In Connection With Fraudulent Transfers And Schemes
(Against Dondero, Strand, Ellington, and Okada)

274. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

275. During all periods relevant to the allegations set forth herein: (1) Strand owed fiduciary duties to HCMLP in its capacity as HCMLP's general partner; (2) Dondero owed fiduciary duties to HCMLP by virtue of his control over Strand and HCMLP, and as an officer of HCMLP; (3) Ellington owed fiduciary duties to HCMLP in his capacity as HCMLP'S Chief Legal Officer and General Counsel; and (4) Okada owed fiduciary duties to HCMLP in his capacity as Chief Investment Officer.

276. Neither the Litigation Trustee nor the Estate could have discovered the conduct by Dondero, Strand, Ellington, or Okada set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed by all these parties to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the breaches set out herein prior to Dondero's removal. By their nature, the breaches alleged herein were inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

277. Dondero and Ellington caused HCMLP to enter into the Massand Consulting Agreements, with the intent to have Massand Capital perform services for SAS, an entity that they surreptitiously created and owned. Likewise, Dondero and Ellington oversaw and approved the Massand Transfers. The payment obligations Dondero and Ellington caused HCMLP to incur, and the payments that Dondero and Ellington caused HCMLP to make, conferred no benefit on HCMLP. In addition, Dondero and Ellington caused HCMLP employees to perform work for SAS—at least seven HCMLP employees received SAS email addresses—without compensating HCMLP.

278. Likewise, Dondero orchestrated the fraudulent CLO Holdco Transaction, pursuant to which he (acting through Strand) siphoned valuable assets from HCMLP in return for illusory consideration, in the form of a note from Dugaboy, an entity that he controlled. Dondero siphoned these assets from HCMLP in order to benefit other entities that he owned and controlled, including CLO Holdco, NexPoint, and HCMFA.

279. Moreover, as part of his scheme to evade HCMLP's creditors, Dondero, acting through Strand, approved hundreds of millions of dollars of distributions from HCMLP at a time that Dondero believed HCMLP was insolvent and would not be able to satisfy its obligations to its present and future creditors.

280. As Dondero's co-founder and HCMLP's Chief Investment Officer, Okada knew or willfully blinded himself to the fact that the HCMLP Distributions—including, but not limited to, the distributions made to Okada, MAP #1, and MAP #2—were made at times that HCMLP was insolvent and would not be able to satisfy its obligations to its present and future creditors.

281. By willfully and wantonly not returning the distributions made to Okada, MAP #1, and MAP #2 that were made at times that Okada knew that HCMLP was insolvent, and knowingly permitting unlawful distributions to Dondero and his controlled entities, Okada breached his fiduciary duties to HCMLP.

282. Dondero and Okada further breached their fiduciary duties by using HCMLP employees for their own personal affairs and private business interests, on HCMLP's time and payroll.

283. Dondero and Ellington breached their fiduciary duties by diverting approximately $3 million that was held in escrow for HCMLP to an entity that they owned in the Cayman Islands.

284. By willfully and wantonly orchestrating these fraudulent transfers, Dondero, Strand, and Ellington breached their fiduciary duties to HCMLP.

COUNT XV
Aiding and Abetting Breach of Fiduciary Duty Under Delaware Law or Knowing Participation in Breach of Fiduciary Duty under Texas Law
(Against NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, Highland Dallas)

285. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

286. NexPoint and HCMFA aided and abetted the breaches of fiduciary duty committed by Dondero and Strand. NexPoint and HCMFA were each dominated and controlled by Dondero. As such, each of NexPoint and HCMFA knowingly participated in their breaches of their fiduciary duties to HCMLP. NexPoint and HCMFA knowingly participated in Dondero's scheme to divert HCMLP's valuable business into new "lifeboat" entities that he owned and controlled. The breaches of fiduciary duty that were aided and abetted by NexPoint and HCMFA caused tens of million (and potentially over one hundred million) of dollars in damage to HCMLP.

287. SAS, which was owned and controlled by Dondero and Ellington, knowingly participated in Dondero's and Ellington's breaches of their fiduciary duties in connection with the Massand Consulting Agreement and Massand Transfers. SAS was aware of the fiduciary duties that Dondero and Ellington owed to HCMLP as high ranking officers. SAS received the benefit of the services performed by Massand Capital, which Dondero and Ellington surreptitiously charged to HCMLP. The breaches of fiduciary duty that were aided and abetted by SAS caused millions of dollars of damage to HCMLP.

288. Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas aided and abetted Dondero's breach of fiduciary duties relating to the CLO Holdco Transaction. Scott—and in turn, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas—

knowingly participated in the scheme to transfer assets valued by the company at approximately $24 million to CLO Holdco in exchange for a note worth significantly less than the transferred assets. Scott either knew or willfully blinded himself to the fact that Dondero breached his fiduciary duties to HCMLP by orchestrating the CLO Holdco Transaction, as evidenced by, among other things, the low interest rate on the Dugaboy Note; the lack of security, material covenants; or other protections; the unfair repayment terms; and the fact that Dondero stood on both sides of the transaction. Moreover, Scott dutifully executed the necessary documentation in order to cause the Transferred CLO Holdco Assets to be transferred to Get Good, DAF Holdco, DAF, CLO Holdco, and Highland Dallas.

289. Neither the Litigation Trustee nor the Estate could have discovered the conduct set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the breaches set out herein prior to Dondero's removal. By its nature, the conduct alleged herein was inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

COUNT XVI
Civil Conspiracy to Breach Fiduciary Duties Under Texas Law
(Against Dondero, Ellington, Leventon, NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, Highland Dallas)

290. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

291. Ellington, Leventon, NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas conspired with Dondero to breach his fiduciary duties to HCMLP by intentionally siphoning assets away from HCMLP to evade HCMLP's creditors. To effectuate the conspiracy, Dondero, Ellington, and Leventon acted outside the scope of their HCMLP employments, as agents of the non-HCMLP entities they owned and controlled, and for their personal benefits.

292. Neither the Litigation Trustee nor the Estate could have discovered the conduct set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the breaches set out herein prior to Dondero's removal. By its nature, the conspiracy alleged herein was inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

293. Dondero, Ellington, and Leventon orchestrated myriad transactions to divert funds from HCMLP to Dondero and the entities that he owned and controlled, as well as to Ellington, Leventon, and the entities they owned and controlled. NexPoint and HCMFA took over valuable HCMLP management agreements and used HCMLP's employees to usurp HCMLP's business in return for little or no consideration to HCMLP. SAS—which is owned and controlled by Dondero and Ellington, who own 70% and 30% of the economic interests in SAS, respectively—received valuable services from Massand while HCMLP bore the expense. Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas participated in the

fraudulent CLO Holdco Transaction that siphoned valuable assets from HCMLP in return for patently insufficient consideration.

294. Ellington and Leventon understood that their conduct was directed at enriching themselves and Dondero at the expense of HCMLP, and each of them were compensated in excess of their HCMLP salaries by Dondero (sometimes via minority ownership in an entity, like Ellington's stake in SAS, and sometimes via complex, circuitous schemes like the Tall Pine arrangement) for their participation. NexPoint, HCMFA, and SAS—each of which was controlled by Dondero—likewise understood that their role in the conspiracy was to obtain value for Dondero at HCMLP's expense. Scott, too, understood that he was appointed to be a rubber-stamp for Dondero's self-interested schemes to siphon value from HCMLP and distribute it throughout the vast web of Dondero Entities. Scott acted on the basis of his longstanding loyalty to his "closest friend" Dondero and was compensated with "business gifts" for his service in furtherance of the conspiracy.

295. In furtherance of the conspiracy, Dondero, Ellington, Leventon, NexPoint, HCMFA, SAS, CLO Holdco, DAF Holdco, the DAF, Get Good, and Highland Dallas undertook, *inter alia*, the following schemes and overt acts:

(a) Dondero, NexPoint, and HCMFA conspired to perpetrate the lifeboat scheme in order to place valuable assets outside the reach of HCMLP's creditors, in violation of Dondero's fiduciary duties. NexPoint and HCMFA were each dominated and controlled by Dondero and, as such, they each consciously acted in furtherance of the conspiracy, including by transferring existing business to NexPoint and HCMFA, generating new business through NexPoint and HCMFA, and failing to compensate

HCMLP for the use of its employees and resources. NexPoint and HCMFA were aware that the lifeboat scheme caused substantial damages to HCMLP.

(b) Dondero, Ellington, and SAS caused HCMLP to enter into the fraudulent Massand Consulting Agreements, pursuant to which HCMLP paid Massand millions of dollars in return for services that were rendered for SAS, which Dondero and Ellington owned and controlled. Likewise, SAS acted in furtherance of the conspiracy by surreptitiously receiving the benefits from the Massand Consulting Agreements while HCMLP incurred the costs under those agreements. Each of Dondero, Ellington, and SAS were aware that causing HCMLP to pay SAS's expenses—for the benefit of SAS and its owners Dondero and Ellington—harmed HCMLP.

(c) Dondero, Scott, CLO Holdco, DAF Holdco, the DAF, Get Good, and Highland Dallas conspired to cause HCMLP to transfer valuable assets to CLO Holdco for less than reasonably equivalent value. Scott—and in turn, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas—consciously participated in the scheme to transfer assets valued by the company at approximately $24 million to CLO Holdco in exchange for a note worth significantly less than the transferred assets, including by executing the necessary documentation to cause the Transferred CLO Holdco Assets to be transferred to Get Good, DAF Holdco, DAF, CLO Holdco, and Highland Dallas. Each of Dondero, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas were aware that the CLO Holdco Transaction breached fiduciary duties to HCMLP, constituted a

fraudulent transfer, and harmed HCMLP by diverting valuable assets in exchange for the far less valuable Dugaboy Note.

(d) Ellington and Dondero conspired to disburse to a Cayman Islands shell company they owned and controlled nearly $3 million of escrowed proceeds rightfully owing to HCMLP.

(e) In furtherance of the conspiracy and to maintain loyalty to Dondero, Ellington and Leventon accepted benefits like minority ownership in entities (like Ellington's stake in SAS) and additional compensation via complex, circuitous schemes like the Tall Pine arrangement.

296. Each of Dondero, Ellington, Leventon, NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas understood that his or its conduct was causing damage to HCMLP and that Dondero was breaching his fiduciary duties to HCMLP by orchestrating and participating in these transactions. The participants specifically intended to benefit themselves and Dondero at the expense of HCMLP, and agreed with Dondero to undertake acts in furtherance of the conspiracy notwithstanding the harm to HCMLP.

COUNT XVII
Tortious Interference with Prospective Business Relations
(Against Dondero, NexPoint, and HCMFA)

297. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

298. Dondero siphoned business away from HCMLP and its creditors through the creation of "lifeboats" owned and controlled by Dondero. The "lifeboats," which included

NexPoint and HCMFA, were companies set up to provide management services that HCMLP had previously been providing.

299. But for the actions of Dondero, NexPoint, and HCMFA, HCMLP would have continued to pursue the business opportunities that Dondero diverted to NexPoint and HCMFA. Indeed, NexPoint and HCMFA used HCMLP's employees, operated out of HCMLP's office, and performed the same advisory and administrative services for its managed funds that HCMLP had previously performed.

300. By using NexPoint and HCMFA as part of his lifeboat scheme, Dondero breached his fiduciary duties to HCMLP. In addition, Dondero breached his fiduciary duties to HCMLP by causing HCMLP to fraudulently transfer certain of its existing management contracts to NexPoint and HCMFA. NexPoint and HCMFA conspired with, and aided and abetted, Dondero's breaches of his fiduciary duties and HCMLP's fraudulent transfers.

301. Dondero, NexPoint, and HCMFA acted with a conscious desire to prevent HCMLP from continuing to directly manage the funds that were subsequently managed by NexPoint and HCMFA. Moreover, Dondero, NexPoint, and HCMFA knew that their interference in HCMLP's business relationships was certain to occur as a result of their conduct.

302. HCMLP suffered, at minimum, tens of millions of dollars in damage from Dondero's, NexPoint's, and HCMFA's tortious interference with its prospective business relations.

COUNT XVIII
Avoidance of CLO Holdco Transfer and Recovery of Transferred CLO Holdco Assets as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550 and Applicable State Law
(Against Dondero, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas Foundation)

303. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

304. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

305. On December 28, 2016, HCMLP transferred to Get Good the Transferred CLO Holdco Assets, which were valued by the company at approximately $24 million. The transfer of the Transferred CLO Holdco Assets was effectuated pursuant to a Purchase and Sale Agreement executed by Dondero, on behalf of HCMLP, and Scott, on behalf of Get Good.

306. As purported consideration for the Transferred CLO Holdco Assets, HCMLP received the Dugaboy Note, which was worth substantially less than the Transferred CLO Holdco Assets. The Dugaboy Note replaced HCMLP's liquid or liquidating assets with an illiquid, private loan on below market terms.

307. Immediately after HCMLP transferred the Transferred CLO Holdco Assets to Get Good, Dondero caused Get Good to transfer the Transferred CLO Holdco Assets to Highland Dallas by an exercise of discretion executed by Scott in his capacity as trustee of Get Good.

308. Immediately after the Transferred CLO Holdco Assets were transferred to Highland Dallas by Get Good, Dondero caused Highland Dallas to transfer the Transferred CLO Holdco Assets to DAF Holdco by unanimous written consent executed by Dondero, Scott, and Jalonick in their capacities as the sole directors of Highland Dallas.

309. Immediately after the Transferred CLO Holdco Assets were transferred to DAF Holdco by Highland Dallas, Dondero caused DAF Holdco, DAF, and CLO Holdco to enter into an omnibus assignment agreement, pursuant to which DAF Holdco transferred the Transferred CLO Holdco Assets to DAF, and DAF transferred the Transferred CLO Holdco Assets to CLO Holdco. Scott signed on behalf of each entity, as director of DAF Holdco, managing member of the DAF, and director of CLO Holdco. Scott also executed a written resolution by DAF GP, in his capacity as the managing member of the general partner of the DAF, effectuating the transfer of the Transferred CLO Holdco Assets to CLO Holdco (which was wholly-owned by the DAF).

310. Dondero directly or indirectly controlled each entity in the chain of transfers that together constitute the CLO Holdco Transaction. Dondero controlled each of Get Good, Highland Dallas, DAF Holdco, DAF, and CLO Holdco either along with or through Scott, who was Dondero's longtime friend, former roommate, loyalist, and fellow board member on multiple boards of directors.

311. At the time of the CLO Holdco Transaction, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

312. None of Get Good, DAF Holdco, the DAF, or CLO Holdco paid reasonably equivalent value for the Transferred CLO Holdco Assets, or received the Transferred CLO Holdco Assets in good faith.

313. At all relevant times, each of Get Good, DAF Holdco, the DAF, and CLO Holdco was aware that, pursuant to the CLO Holdco Transaction, HCMLP transferred its assets to CLO Holdco for less than reasonably equivalent value.

314. The CLO Holdco Transaction is voidable as constructively fraudulent transfers. Accordingly, the CLO Holdco Transaction should be set aside and avoided and Transferred CLO Holdco Assets should be recovered under 11 U.S.C. §§ 544 and 550 and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XIX
Avoidance of CLO Holdco Transfer and Recovery of Transferred CLO Holdco Assets as Intentionally Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550 and Applicable State Law
(Against Dondero, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas Foundation)

315. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

316. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

317. On December 28, 2016, HCMLP transferred to Get Good the Transferred CLO Holdco Assets, which the company valued at approximately $24 million. The transfer of the Transferred CLO Holdco Assets was effectuated pursuant to a Purchase and Sale Agreement executed by Dondero, on behalf of HCMLP, and Scott, on behalf of Get Good.

318. As purported consideration for the Transferred CLO Holdco Assets, HCMLP received the Dugaboy Note, which was worth substantially less than the Transferred CLO Holdco Assets. The Dugaboy Note replaced HCMLP's liquid or liquidating assets with an illiquid, private loan that was worth significantly less than the value of the transferred assets.

319. After HCMLP transferred the Transferred CLO Holdco Assets to Get Good, Dondero caused the assets to be transferred to Get Good, Highland Dallas, DAF Holdco, DAF, and CLO Holdco. Dondero effected each transfer through his direct or indirect control of each of these entities.

320. Dondero caused HCMLP to enter into the CLO Holdco Transaction with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero was an insider of HCMLP;

(b) Dondero controlled Get Good, the initial transferee, and each of the subsequent transferees, Highland Dallas, DAF Holdco, DAF, and CLO Holdco, through Scott;

(c) before the CLO Holdco Transaction, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(d) at the time of the CLO Holdco Transaction, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were

unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(e) The CLO Holdco Transaction siphoned value away from HCMLP, so that such value would not be available to satisfy HCMLP's creditors; and

(f) The purported consideration for the Transferred CLO Holdco Assets, the Dugaboy Note, was worth less than the reasonably equivalent value of the Transferred CLO Holdco Assets, and replaced HCMLP's liquid or liquidating assets with an illiquid, private loan on below-market terms, the repayment of which was subject to Dondero's control.

321. None of Get Good, DAF Holdco, the DAF, or CLO Holdco paid reasonably equivalent value for the Transferred CLO Holdco Assets, or received the Transferred CLO Holdco Assets in good faith.

322. At all relevant times, each of Get Good, DAF Holdco, the DAF, and CLO Holdco was aware that the CLO Holdco Transaction transferred HCMLP's assets to CLO Holdco for less than reasonably equivalent value.

323. The CLO Holdco Transaction is voidable as an intentionally fraudulent transfer. Accordingly, the CLO Holdco Transaction should be set aside and avoided, and the Transferred CLO Holdco Assets should be recovered under 11 U.S.C. §§ 544 and 550 and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XX
Avoidance of Obligations Under Massand Consulting Agreement as Constructively Fraudulent Under 11 U.S.C. § 544, 26 U.S.C. § 6502, and Applicable State Law
(Against Massand LLC)

324. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

325. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

326. On January 5, 2015, HCMLP entered into a consulting agreement with Massand LLC. Pursuant to each agreement, HCMLP agreed to pay Massand Capital tens of thousands of dollars per month.

327. HCMLP received less than reasonably equivalent value in exchange for the payment obligations that it incurred under the Massand Consulting Agreements (and in fact, received zero value). Dondero and Ellington caused HCMLP to hire Massand Capital in order for Massand Capital to provide services to SAS, which conferred no benefit to HCMLP.

328. At the time it entered into the Massand Consulting Agreements, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

329. HCMLP's obligations incurred under the Massand Consulting Agreements are voidable as constructively fraudulent.

COUNT XXI
Avoidance of Obligations Under Massand Consulting Agreement as Intentionally Fraudulent Under 11 U.S.C. § 544, 26 U.S.C. § 6502, and Applicable State Law
(Against Massand Capital)

330. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

331. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

332. On January 1, 2014, HCMLP entered into a consulting agreement with Massand Inc. On January 5, 2015, HCMLP entered into a consulting agreement with Massand LLC. Pursuant to each agreement, HCMLP agreed to pay them tens of thousands of dollars per month.

333. Dondero caused HCMLP to enter into the Massand Consulting Agreements with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero was an insider of HCMLP;

(b) Dondero was an insider of SAS;

(c) Dondero benefitted from HCMLP's payments to Massand Capital because they conferred value on SAS, an entity that Dondero owned and controlled;

(d) before HCMLP entered into the Massand Consulting Agreements, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(e) HCMLP, through Dondero, was engaged in a multi-faceted scheme to remove assets from HCMLP and conceal them from HCMLP's creditors, which involved, among other things, causing HCMLP to incur obligations of other entities owned or controlled by Dondero, including SAS;

(f) at the time HCMLP entered into the consulting agreement with Massand LLC, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due; and

(g) Dondero caused HCMLP to enter into the Massand Consulting Agreements during a period when he believed HCMLP would be forced to file for bankruptcy as a result of looming contingent liabilities, and effected the transfers in order to siphon value so that it would not be available to satisfy HCMLP's creditors.

334. HCMLP's obligations incurred under the Massand Consulting Agreements are voidable as intentionally fraudulent.

COUNT XXII
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
(Against Massand Capital, SAS, Dondero, and Ellington)

335. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

336. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and

Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

337. HCMLP entered into the fraudulent Massand Consulting Agreements, pursuant to which HCMLP agreed to pay Massand Capital tens of thousands of dollars per month. The transfers from HCMLP to Massand Capital (the "Massand Transfers") are set forth below:

Date	Amount	Date	Amount
January 3, 2017	$49,644	May 1, 2018	$55,852
February 1, 2017	$55,691	June 1, 2018	$55,093
March 3, 2017	$47,929	July 2, 2018	$64,516
April 3, 2017	$57,563	August 1, 2018	$56,539
May 1, 2017	$57,861	September 4, 2018	$53,749
June 1, 2017	$60,814	October 1, 2018	$52,537
July 3, 2017	$51,974	November 1, 2018	$53,278
August 1, 2017	$58,074	December 3, 2018	$52,219
September 5, 2017	$50,371	January 2, 2019	$47,812
October 2, 2017	$53,016	February 1, 2019	$51,437
November 1, 2017	$59,971	March 1, 2019	$51,156
December 1, 2017	$56,031	April 2, 2019	$54,063
January 2, 2018	$52,894	May 1, 2019	$55,359
February 1, 2018	$51,378	June 3, 2019	$56,470
March 1, 2018	$54,396	July 1, 2019	$54,878
April 3, 2018	$54,538	August 1, 2019	$54,979
		Total	$1,742,082

338. HCMLP did not receive any consideration in exchange for its payments to Massand Capital. The consulting agreement between Massand Capital and HCMLP provided that Massand would be responsible for advising HCMLP on its "investment recovery strategies" business in certain countries where HCMLP did not have any business.

339. Rather, upon information and belief, Massand Capital provided services to SAS, a separate entity owned and controlled by Dondero. As such, HCMLP's transfers to Massand Capital were made for the benefit of SAS and Dondero.

340. Massand Capital's monthly invoices to HCMLP were consecutively numbered, indicating that Massand Capital had no customers other than HCMLP, and Massand Capital's invoices contained no information about the services it purportedly rendered to HCMLP.

341. At the time of each of the Massand Transfers, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

342. The Massand Transfers are voidable as constructively fraudulent transfers. Accordingly, the Massand Transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and applicable state law, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XXIII
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
(Against Massand Capital, SAS, Dondero, and Ellington)

343. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

344. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

345. On January 5, 2015, HCMLP entered into a fraudulent consulting agreement, pursuant to which HCMLP agreed to pay Massand Capital tens of thousands of dollars per month. The transfers from HCMLP to Massand Capital (the "Massand Transfers") are set forth below:

Date	Amount	Date	Amount
January 3, 2017	$49,644	May 1, 2018	$55,852
February 1, 2017	$55,691	June 1, 2018	$55,093
March 3, 2017	$47,929	July 2, 2018	$64,516
April 3, 2017	$57,563	August 1, 2018	$56,539
May 1, 2017	$57,861	September 4, 2018	$53,749
June 1, 2017	$60,814	October 1, 2018	$52,537
July 3, 2017	$51,974	November 1, 2018	$53,278
August 1, 2017	$58,074	December 3, 2018	$52,219
September 5, 2017	$50,371	January 2, 2019	$47,812
October 2, 2017	$53,016	February 1, 2019	$51,437
November 1, 2017	$59,971	March 1, 2019	$51,156
December 1, 2017	$56,031	April 2, 2019	$54,063
January 2, 2018	$52,894	May 1, 2019	$55,359
February 1, 2018	$51,378	June 3, 2019	$56,470
March 1, 2018	$54,396	July 1, 2019	$54,878

Date	Amount	Date	Amount
April 3, 2018	$54,538	August 1, 2019	$54,979
		Total	$1,742,082

346. Dondero caused HCMLP to make the Massand Transfers with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero was an insider of HCMLP and Massand Capital;

(b) before the Massand Transfers, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(c) HCMLP, through Dondero, was engaged in a multi-faceted scheme to defraud HCMLP's creditors, which involved, among other things, causing HCMLP to become an obligor on certain contracts, including the Massand Consulting Agreements, that did not confer value on HCMLP;

(d) at the time of the transfers to Massand LLC, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(e) Dondero caused HCMLP to make the Massand Transfers during a period when he believed HCMLP would be forced to file for bankruptcy as a result of looming contingent liabilities, and effected the transfers in order to siphon value so that it would not be available to satisfy HCMLP's creditors; and

(f) The Massand Transfers were made for no consideration to HCMLP, and the services provided by Massand were made for the benefit of SAS, an entity that was not owned by HCMLP.

347. The Massand Transfers are voidable as intentionally fraudulent transfers. Accordingly, the Massand Transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and applicable state law, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XXIV
Breach of Contract Arising Out of Hunter Mountain Note
(Against Hunter Mountain and Rand)

348. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

349. On December 21, 2015, HCMLP and Hunter Mountain entered into the Hunter Mountain Note, pursuant to which Hunter Mountain agreed to pay HCMLP $63 million at an interest rate of 2.61% per annum.

350. Rand is a guarantor on the Hunter Mountain Note.

351. Pursuant to the Hunter Mountain Note, accrued interest and principal is due and payable in accordance with an amortization schedule attached to the note.

352. Hunter Mountain breached the Hunter Mountain Note by failing to make the payments due under the note on December 21, 2019 and December 21, 2020.

353. On May 3, 2021, HCMLP sent a demand letter to Hunter Mountain stating that the Hunter Mountain Note was in default and therefore, pursuant to the "Remedies" section of the note, all principal, interest, and any other amounts due and owing on the Hunter Mountain

Note are immediately due and payable. As of May 5, 2021, that amount was more than $72 million, with interest continuing to accrue.

354. The Hunter Mountain Note is currently in default. Pursuant to the Hunter Mountain Note, HCMLP is entitled to damages from Hunter Mountain and Rand in an amount equal to all unpaid principal and interest, in addition to HCMLP's cost of collection, including attorneys' fees.

COUNT XXV
Conversion
(Against Dondero and Ellington)

355. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

356. In February 2018, HE Capital 232 and its wholly-owned subsidiary, HE Capital 232 Property obtained the HE Capital 232 Proceeds and placed them in an escrow account maintained by HCMLP's counsel, Wick Phillips, "pending distribution of the proceeds to the direct and indirect interest owners in [HE Capital 232 Property]."

357. On March 2, 2018, Wick Phillips disbursed a portion of those funds from the escrow account. The Remaining HE Capital 232 Proceeds, worth approximately $2.98 million, were never disbursed to HCMLP.

358. HCMLP owned, had possession of (through its counsel Wick Phillips), or had entitlement to possession of the Remaining HE Capital 232 Proceeds.

359. The Remaining HE Capital 232 Proceeds had been held for safekeeping, were intended to be kept segregated, specific and identifiable money, in the form they were received, and not subject to a claim by anyone other than HCMLP.

360. Upon information and belief, Dondero and Ellington directed Wick Phillips to withhold the Remaining HE Capital 232 Proceeds in a scheme to funnel the money to themselves through shell companies that they owned in the Cayman Islands. Indeed, on June 4, 2018, at Ellington's direction, Wick Phillips disbursed the remainder of the proceeds to MapleFS, a fiduciary services company in the Cayman Islands, which subsequently transferred the full amount to Grey Royale Ltd., a Cayman Islands shell company owned and controlled by Dondero and Ellington.

361. Dondero's and Ellington's acts manifest a clear repudiation of HCMLP's rights in the Remaining HE Capital 232 Proceeds.

COUNT XXVI
Unjust Enrichment or Money Had and Received
(Against Dondero)

362. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

363. As set forth above, Dondero caused HCMLP to enter into numerous intercompany note transactions with other Dondero Entities in order to, among other things: (i) fund distributions to himself and his loyalists; (ii) inject funds into other entities he owns; and (iii) obtain personal tax benefits. Now, Dondero is actively spearheading an expensive, frivolous litigation campaign against HCMLP, through these same Dondero Entities, in order to avoid or delay their repayment obligations.

364. Dondero exploited HCMLP by using it to pursue goals that did not benefit HCMLP. Dondero orchestrated countless transactions and schemes designed to benefit himself and other Dondero Entities at the expense of HCMLP, including but not limited to: (i) the lifeboat scheme; (ii) distributions from HCMLP to himself and certain trusts he owned and

controlled during periods when HCMLP was insolvent; and (iii) intercompany transactions involving various Dondero Entities that distributed cash throughout his vast web of entities. Dondero unjustly profited from these schemes, either by directly transferring value to himself (*e.g.*, through distributions) or by using HCMLP's money to seed business activities and investments that would inure to his own personal benefit. Dondero diverted millions or tens of millions of dollars to himself, at HCMLP's expense.

365. Likewise, Dondero was willing to harm HCMLP even when it would seem economically irrational for him to do so, such as when he caused HCMLP to incur more in legal fees pursuing a vendetta against Daugherty than the total funds Daugherty was owed.

366. Dondero, together with Ellington, caused HCMLP's counsel to improperly divert approximately $3 million of HCMLP's cash being held in an escrow account to an entity that they owned and controlled in the Cayman Islands.

367. Dondero obtained personal services from individuals who were employed and paid by HCMLP, including with respect to private business ventures.

368. There was no valid express contract governing the subject matter of this dispute.

369. As a result of fraud, duress, or taking undue advantage of his own position of authority within HCMLP, Dondero holds or has held money that in equity and good conscience belongs to HCMLP, which unjustly enriched him and would be unconscionable to retain.

370. Plaintiff seeks restitution from Dondero and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by him as a result of the unjust conduct set forth above.

COUNT XXVII
Unjust Enrichment or Money Had and Received
(Against Ellington and Leventon)

371. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

372. Ellington and Leventon were employees of HCMLP who received millions of dollars in compensation. However, each of them understood and performed their duties as functionaries for Dondero. As such, both Ellington and Leventon subordinated the interests of HCMLP to the interests of Dondero, and actively participated in and implemented his schemes to divert value from HCMLP. Portions of Ellington's and Leventon's compensation, paid for by HCMLP, was consideration for their willingness to elevate Dondero's interests over those of HCMLP.

373. Together with Dondero, Ellington caused HCMLP's counsel to improperly divert approximately $3 million of HCMLP's cash being held in an escrow account to an entity that they owned and controlled in the Cayman Islands.

374. Ellington and Leventon engaged in willful and wanton misconduct that gave rise to more than $350 million in allowed claims against HCMLP. Among other things, Ellington and Leventon participated in the scheme to evade UBS collection efforts by fraudulently transferring assets to Sentinel.

375. There was no valid express contract governing the subject matter of this dispute.

376. As a result of fraud, duress, or taking undue advantage of their own positions of authority within HCMLP, Ellington and Leventon hold or have held money that in equity and good conscience belongs to HCMLP, which unjustly enriched them and would be unconscionable to retain.

377. Plaintiff seeks restitution from Ellington and Leventon and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by them as a result of the unjust conduct set forth above.

COUNT XXVIII
Unjust Enrichment or Money Had and Received
(Against NexPoint and HCMFA)

378. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

379. The lifeboat scheme was perpetrated primarily through NexPoint and HCMFA. NexPoint and HCMFA utilized HCMLP's employees to perform management and advisory services that HCMLP had directly provided, and should have continued to provide directly. Neither NexPoint nor HCMFA fairly compensated HCMLP for the use of its employees or resources.

380. HCMLP provided substantial financial support for NexPoint and HCMFA, including in the form of below-market note agreements. Both NexPoint and HCMFA have defaulted on their debts to HCMLP and are currently pursuing expensive, frivolous litigation against HCMLP in an effort to evade their payment obligations.

381. NexPoint and HCMFA were effectively HCMLP in disguise, conducting HCMLP's business, with HCMLP's employees, operating out of HCMLP's office, beginning with HCMLP's contracts.

382. Through their exploitation of HCMLP, NexPoint and HCMFA received tens or hundreds of millions of dollars of profits.

383. There was no valid express contract governing the subject matter of this dispute.

384. As a result of fraud, duress, or taking undue advantage of HCMLP, NexPoint and HCMFA hold or have held money that in equity and good conscience belongs to HCMLP, which unjustly enriched them and would be unconscionable to retain.

385. Plaintiff seeks restitution from NexPoint and HCMFA and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by them as a result of the unjust conduct set forth above.

COUNT XXIX
Unjust Enrichment or Money Had and Received
(Against Massand Capital and SAS)

386. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

387. Massand Capital received millions of dollars in payments from HCMLP under the Massand Consulting Agreements. Nevertheless, Massand Capital was aware that it would not and never intended to perform any services on behalf of HCMLP. Rather, Massand Capital was performing services on behalf of SAS, with HCMLP footing the bill. HCMLP received no benefit under the Massand Consulting Agreements.

388. Further, the value of the services provided to SAS were far less than HCMLP's payments, resulting in Massand receiving unearned profits to the tune of millions of dollars.

389. HCMLP employees performed work for SAS. Indeed, at least four HCMLP employees even received SAS email addresses. SAS did not compensate HCMLP for these services.

390. SAS has profited from the services performed by Massand Capital and from the use of HCMLP's employees and resources.

391. There was no valid express contract governing the subject matter of this dispute.

392. As a result of fraud, duress, or taking undue advantage of HCMLP, Massand and SAS hold or have held money that in equity and good conscience belongs to HCMLP, which unjustly enriched them and would be unconscionable to retain.

393. Plaintiff seeks restitution from Massand Capital and SAS and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by them as a result of the unjust conduct set forth above.

COUNT XXX
Unjust Enrichment or Money Had and Received
(Against CLO Holdco)

394. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

395. Dondero, acting through HCMLP, fraudulently induced HarbourVest to purchase 49% of HCLOF for approximately $75 million, with a commitment to fund an additional $75 million. CLO Holdco was the beneficiary of the funds invested by HarbourVest. HCMLP received no benefit from the HarbourVest investment. Nevertheless, HarbourVest filed a proof of claim against HCMLP for fraudulently inducing the HarbourVest investment, and HCMLP was ultimately forced to settle with HarbourVest by providing them with $80 million in allowed claims, in exchange for a transfer of HarbourVest's interests in HCLOF to a new entity designated by HCMLP. As a result of Dondero's conduct, however, the HCLOF interests were then worth significantly less than the face amount of HarbourVest's allowed claim. HCMLP bore the consequences for Dondero and CLO Holdco in a scheme that deposited $75 million into the coffers of CLO Holdco.

396. CLO Holdco was aware that HarbourVest was fraudulently induced by Dondero to make the $75 million investment. Nonetheless, CLO Holdco said nothing to HarbourVest

and received their money, all while leaving HCMLP on the hook when HarbourVest ultimately filed their proof of claim.

397. There was no valid express contract governing the subject matter of this dispute.

398. As a result of fraud, duress, or taking undue advantage of HCMLP, CLO Holdco holds or has held money that in equity and good conscience belongs to HCMLP, which unjustly enriched it and would be unconscionable to retain

399. Plaintiff seeks restitution from CLO Holdco and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by it as a result of its unjust receipt and use of the proceeds of the HarbourVest investment.

COUNT XXXI
Avoidance and Recovery of the One-Year Transfers as Preferential Transfers under 11 U.S.C. §§ 547 and 550
(Against Dondero and Ellington)

400. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

401. Dondero and Ellington are insiders of HCMLP.

402. As set forth below, within one year of the Petition Date, HCMLP made payments to Dondero of $4,753,911 and payments to Ellington of $318,893 (the "Alleged Expense Transfers" and the "March 28, 2019 Repayment Transfer," as set forth below, and collectively the "One-Year Transfers"):

March 28, 2019 Repayment Transfer		
Date	Transferee	Amount
March 28, 2019	Dondero	$3,750,000
Alleged Expense Transfers		
Date	Transferee	Amount
October 31, 2018	Dondero	$8,986

November 15, 2018	Dondero	$65,078
December 14, 2018	Dondero	$115,481
January 15, 2019	Dondero	$96,786
January 31, 2019	Dondero	$38,628
February 15, 2019	Dondero	$42,435
February 28, 2019	Dondero	$19,063
March 15, 2019	Dondero	$50,771
March 29, 2019	Dondero	$21,935
April 15, 2019	Dondero	$60,191
April 30, 2019	Dondero	$7,164
May 15, 2019	Dondero	$89,257
May 31, 2019	Dondero	$38,804
June 14, 2019	Dondero	$82,710
June 28, 2019	Dondero	$7,605
July 15, 2019	Dondero	$47,006
August 15, 2019	Dondero	$85,059
August 30, 2019	Dondero	$12,714
August 30, 2019	Ellington	$205,788
September 13, 2019	Dondero	$56,763
September 30, 2019	Dondero	$24,498
October 15, 2019	Dondero	$32,977
October 15, 2019	Ellington	$113,105
Total	Dondero	$4,753,911
Total	Ellington	$318,893
Grant Total		$5,072,804

403. The One-Year Transfers were made on account of antecedent debt.

404. HCMLP was insolvent when each One-Year Transfer was made.

405. Each One-Year Transfer enabled Dondero and Ellington to receive more than they would have if (i) the One-Year Transfers had not been made; and (ii) Dondero and Ellington received payment on account of the debt paid by the One-Year Transfers to the extent provided by the Bankruptcy Code.

406. Each One-Year Transfer constitutes an avoidable preference pursuant to Section 547(b) of the Bankruptcy Code.

407. Plaintiff is entitled to an order and judgment under 11 U.S.C. §§ 547 and 550 that each of the One-Year Transfers is avoided and recoverable.

COUNT XXXII
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
(Against Dondero and Ellington)

408. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

409. To the extent the Alleged Expense Transfers do not constitute reimbursement for valid expenses, they constitute constructive fraudulent transfers that were made to or for the benefit of Dondero and Ellington.

410. At the time of each Alleged Expense Transfer, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

411. HCMLP received less than reasonably equivalent value in exchange for each of the Alleged Expense Transfers. Indeed, HCMLP received no value for the Alleged Expense Transfers, each of which was a gratuitous transfer from HCMLP to or for the benefit of Dondero and Ellington.

412. Each Alleged Expense Transfer is voidable as a constructively fraudulent transfer. Accordingly, each Alleged Expense Transfer should be set aside, avoided, and recovered under 11 U.S.C. §§ 544, 548, and 550, and Delaware and Texas law, as applicable,

against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XXXIII
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
(Against Dondero and Ellington)

413. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

414. To the extent the Alleged Expense Transfers do not constitute reimbursement for valid expenses, they constitute intentional fraudulent transfers that were made to or for the benefit of Dondero and Ellington.

415. Dondero was HCMLP's Chief Executive Officer, President, Co-Chief Investment Officer, and Co-Founder. Ellington was HCMLP's Chief Legal Officer and General Counsel until he was terminated for cause in January 2021 for acting in a manner adverse to HCMLP's interest. Dondero exercised complete control over HCMLP, and Ellington acquiesced to and profited from schemes orchestrated by Dondero to enrich Dondero, Ellington, and HCMLP's direct and indirect owners.

416. To that end, Dondero and Ellington caused HCMLP to make the Alleged Expense Transfers with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero and Ellington were insiders of HCMLP;

(b) although Dondero and Ellington assert that the Alleged Expense Transfers constitute reimbursement for valid expenses, on information and belief, there is no factual basis for that assertion;

(c) before the Alleged Expense Transfers were made, HCMLP had been sued and Dondero and Ellington believed HCMLP's legal exposure rendered it insolvent;

(d) HCMLP, through Dondero, was engaged in a multi-faceted scheme to remove assets from HCMLP and conceal them from HCMLP's creditors, which involved both siphoning HCMLP's valuable business opportunities through newly-created "lifeboat" entities and siphoning HCMLP's value through HCMLP Distributions (among other means);

(e) HCMLP, through Dondero, was engaged in a multi-faceted scheme to remove assets from HCMLP and conceal them from HCMLP's creditors, which involved siphoning HCMLP's value through the Alleged Expense Transfers (among other means);

(f) HCMLP received less than reasonably equivalent value (and in fact, received zero consideration) in exchange for the Alleged Expense Transfers;

(g) at the time of each Alleged Expense Transfer, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(h) Dondero and Ellington made the Alleged Expense Transfers during a period when they believed HCMLP would be forced to file for bankruptcy as a result of looming contingent liabilities, and effected the transfers in order to

siphon value so that such value would not be available to satisfy HCMLP's creditors.

417. Each Alleged Expense Transfer is voidable as an intentionally fraudulent transfer. Accordingly, each of the Alleged Expense Transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544, 548, and 550, and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XXXIV
Aiding and Abetting Breach of Fiduciary Duty Under Delaware Law or Knowing Participation in Breach of Fiduciary Duty under Texas Law Out Of Conduct That Resulted in HCMLP Liabilities
(Against Ellington and Leventon)

418. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

419. Ellington and Leventon aided and abetted the breaches of fiduciary duty committed by Dondero and Strand that foreseeably resulted in liability to HCMLP. Ellington and Leventon knowingly participated in Dondero's schemes that foreseeably resulted in liability to HCMLP. In total, these breaches that were aided and abetted by Ellington and Leventon resulted in more than $350 million in allowed claims against HCMLP.

420. Neither the Litigation Trustee nor the Estate could have discovered the conduct by Ellington and Leventon set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the conduct set out herein prior to Dondero's removal. By its nature, the conduct alleged herein was inherently undiscoverable because of

the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

421. **Liabilities to UBS.** Ellington and Leventon aided and abetted Dondero in causing HCMLP to incur substantial liability to UBS. In 2017, after a New York state court ruled that UBS's fraudulent transfer claims against HCMLP and claims against the Fund Counterparties could proceed to trial, Ellington and Leventon aided Dondero in causing HCMLP, in its capacity as investment manager for the Fund Counterparties, to orchestrate a surreptitious transfer of more than $300 million in face amount of assets from the Fund Counterparties to Sentinel, an entity located in the Cayman Islands that was indirectly owned and controlled by Dondero and Ellington, ostensibly to pay a premium on the Sentinel insurance policy that was only $25 million. Ellington and Leventon knew or willfully blinded themselves to the fact that Dondero breached his fiduciary duties to HCMLP by orchestrating the transfer to Sentinel

422. After the Petition Date, Dondero, Ellington, and Leventon actively concealed this transfer from the Independent Board, UBS, and the Bankruptcy Court. When this transfer was uncovered, HCMLP was forced to increase the amount of its settlement with UBS from a total of $75 million in allowed claims to $125 million in allowed claims.

423. **Liabilities to Acis.** After the Terry arbitration award issued, Ellington and Leventon aided and abetted Dondero in causing HCMLP to enter into numerous transactions to take control of Acis's business and strip it of assets so it could not pay the arbitration award. Ellington and Leventon implemented Dondero's directives and took necessary steps to

consummate the transactions, knowingly or willfully blinding themselves to the fact that Dondero breached his fiduciary duties to HCMLP by stripping Acis of assets.

424. Leventon knowingly participated in the scheme to transfer value away from Acis in an attempt to make it judgment-proof. Among other things, Leventon assisted in the drafting and execution of the agreement, approved by Dondero in a breach of his fiduciary duty, that transferred Acis's interest in a note receivable from HCMLP, which had a balance owing of over $9.5 million, to Cayman Island entity Highland CLO Management Ltd. just ten days after Terry obtained his arbitration award. The agreement recites that (1) HCMLP is no longer willing to continue providing support services to Acis; (2) Acis, therefore, can no longer fulfill its duties as a collateral manager; and (3) Highland CLO Management Ltd. agrees to step in to the collateral manager role. Given the timing of the assignment—just days after Terry's arbitration award—Leventon knew that it was part of a scheme to strip Acis of its assets and a breach of Dondero's fiduciary duty, which ultimately resulted in millions of dollars of damage to HCMLP.

425. **Liabilities to HarbourVest.** Ellington also aided and abetted Dondero in causing harm to HCMLP by exposing it to substantial liability to HarbourVest. Ellington aided Dondero, acting through HCMLP, in fraudulently inducing HarbourVest to purchase 49% of HCLOF from CLO Holdco for approximately $75 million in cash, with a commitment for an additional $75 million in the future, while concealing that Dondero was actively engaged in a campaign against Terry that would significantly impair the value of HarbourVest's investment. In addition, Dondero did not intend to use the $75 million that CLO Holdco received from HarbourVest to satisfy capital calls at HCLOF, and instead intended for CLO Holdco to use those funds as part of a scheme to infuse other Dondero Entities (including entities that

benefitted the NexPoint and HCMFA lifeboats) with additional cash. Ultimately, HCMLP was forced to settle with HarbourVest by providing it with $80 million in allowed claims, in exchange for a transfer of HarbourVest's interests in HCLOF to an affiliate of HCMLP. As a result of Dondero's and Ellington's conduct, those interests in HCLOF were then worth tens of millions of dollars less than the $75 million HarbourVest paid to acquire them. Ellington either knew or willfully blinded himself to the fact that Dondero breach his fiduciary duties to HCMLP by fraudulently inducing HarbourVest to purchase 49% of HCLOF from CLO Holdco for approximately $75 million in cash.

426. **Liabilities to Crusader Funds.** Ellington and Leventon aided and abetted Dondero in causing HCMLP to incur substantial liability to the Redeemer Committee due to his conduct in connection with HCMLP's wind-down of the Crusader Funds and distribution of proceeds to investors. Among other things, Dondero, Ellington, and Leventon caused HCMLP to: (1) transfer Barclays' limited partnership interests in the Crusader Funds to HCMLP's wholly-owned affiliate, Eames, Ltd., after the Redeemer Committee had refused to approve that transfer, in violation of the Joint Plan and Scheme and HCMLP's fiduciary duties; (2) purchase 28 Plan Claims for the benefit of HCMLP without the approval of the Redeemer Committee, in violation of the Joint Plan and Scheme and HCMLP's fiduciary duties; (3) covertly purchase the stock of the Portfolio Company and fail to liquidate the Crusader Funds' shares in the Portfolio Company, in violation of HCMLP's fiduciary duties; and (4) violate the provision of the Joint Plan and Scheme requiring HCMLP to defer receipt of certain Deferred Fees until the liquidation of the Crusader Funds was complete, causing HCMLP to forfeit its rights to those fees entirely. Additionally, both Ellington and Leventon were active participants in Dondero's scheme; they both provided false narratives or misrepresentations in furtherance

of Dondero's harm to the Crusader Funds. The Redeemer Arbitration panel found, for example, that Leventon "was significantly involved in providing direction" to keep the Redeemer Committee in the dark and "was the principal instrument through which [certain] misrepresentation[s] and omission[s] were communicated." As a result of Dondero's, Ellington's, and Leventon's conduct, the Redeemer Committee received an arbitration award against HCMLP in excess of $190 million, and in HCMLP's bankruptcy, HCMLP agreed to pay over $136 million in connection therewith. Ellington and Leventon either knew or willfully blinded themselves to the fact that Dondero breached his duties to HCMLP through the foregoing acts.

427. Beyond the direct losses identified in the preceding paragraphs, HCMLP suffered additional harm from Ellington's and Leventon's aiding and abetting the breaches of fiduciary duty committed by Dondero and Strand. For example, the $190 million Redeemer arbitration award—which was itself caused by the Dondero's and Strand's breaches of their fiduciary duty to HCMLP and Ellington's and Leventon's aiding and abetting of those breaches—caused HCMLP to file for bankruptcy. As of October 15, 2021, HCMLP had incurred in excess of $40 million in professional fees in connection with the bankruptcy. Ellington and Leventon either knew or willfully blinded themselves to the fact that Dondero and Strand breached their fiduciary duties to HCMLP through their actions that led to the $190 million Redeemer arbitration award.

428. In light of the foregoing, Ellington and Leventon are liable for aiding and abetting Dondero's breaches of fiduciary duties to HCMLP in an amount to be determined at trial.

COUNT XXXV
Aiding and Abetting Breach of Fiduciary Duty Under Delaware Law or Knowing Participation in Breach of Fiduciary Duty under Texas Law In Connection With Fraudulent Transfers And Schemes
(Against Ellington and Okada)

429. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

430. Neither the Litigation Trustee nor the Estate could have discovered the conduct by Ellington and Okada set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the conduct set out herein prior to Dondero's removal. By its nature, the conduct alleged herein was inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

431. Ellington aided and abetted Dondero in causing HCMLP to enter into the Massand Consulting Agreements. Likewise, Ellington aided and abetted Dondero in overseeing and approving the Massand Transfers. The payment obligations Dondero and Ellington caused HCMLP to incur, and the payments that Dondero and Ellington caused HCMLP to make, conferred no benefit on HCMLP. In addition, Ellington aided and abetted Dondero in causing HCMLP employees to perform work for SAS—at least seven HCMLP employees received SAS email addresses—without compensating HCMLP. Ellington either knew or willfully blinded himself to the fact that Dondero breached his fiduciary duties to HCMLP through the foregoing actions.

432. Moreover, as part of his scheme to evade HCMLP's creditors, Dondero, acting through Strand, approved hundreds of millions of dollars of distributions from HCMLP at a time that Dondero believed HCMLP was insolvent and would not be able to satisfy its obligations to its present and future creditors.

433. As Dondero's co-founder and HCMLP's Chief Investment Officer, Okada knew or willfully blinded himself to the fact that the HCMLP Distributions—including the distributions made to Okada, MAP #1, and MAP #2—were made at times that HCMLP was insolvent and would not be able to satisfy its obligations to its present and future creditors. Okada either knew or willfully blinded himself to the fact that Dondero breached his fiduciary duties to HCMLP by approving hundreds of millions of dollars of distributions from HCMLP at a time HCMLP was insolvent.

COUNT XXXVI
Disallowance or Subordination of Claims Under Section 502 and 510 of the Bankruptcy Code
(Against CLO Holdco)

434. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

435. On April 8, 2020, CLO Holdco filed Claim No. 133 seeking approximately $11 million (the "CLO Holdco Claim"). The basis of the CLO Holdco Claim was that CLO Holdco purchased a participation interest in certain interests that HCMLP held in the Crusader Fund.

436. HCMLP acquired the interests in the Crusader Fund that are the subject of the CLO Holdco Claim in violation of the Joint Plan and Scheme. HCMLP released its claim on those interests in connection with HCMLP's settlement with the Redeemer Committee. Accordingly, CLO Holdco is not entitled to any value on account of the CLO Holdco Claim. In recognition of this fact, on October 21, 2020, CLO Holdco amended its claim to seek $0.

437. Additionally, CLO Holdco subsequently agreed to withdraw the CLO Holdco Claim. Nevertheless, CLO Holdco has failed to date to actually withdraw the claim, notwithstanding the Reorganized Debtor's request. Accordingly, out of an abundance of caution, and to the extent that CLO Holdco attempts to pursue the CLO Holdco Claim, the Litigation Trustee objects to the CLO Holdco Claim, and the CLO Holdco Claim should be disallowed in its entirety or subordinated.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and against Defendants as follows:

A. awarding Plaintiff damages against, and disgorgement and restitution from each Defendant in an amount to be determined at trial;

B. setting aside, avoiding, and granting recovery of the HCMLP Distributions;

C. setting aside, avoiding, and granting recovery of the CLO Holdco Transfer;

D. setting aside and avoiding the payment obligations under the Massand Consulting Agreement;

E. setting aside, avoiding, and granting recovery of the Massand Transfers;

F. setting aside and avoiding the transfers of management and advisory agreements to HCMFA and NexPoint;

G. setting aside, avoiding, and granting recovery of the One-Year Transfers;

H. disallowing or subordinating, to the extent applicable, the CLO Holdco Claim;

I. awarding Plaintiff pre- and post-judgment interest at the maximum rate permitted by law;

J. awarding Plaintiff his attorneys' fees, costs, and other expenses incurred in this action; and

K. awarding Plaintiff such other and further relief as the Court deems just and proper.

Dated: May 19, 2022
Dallas, Texas

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail via the Court's ECF system to parties authorized to receive electronic notice in this case on May 19, 2022.

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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 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

EXHIBIT

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BRIEF IN SUPPORT OF DEFENDANT LEVENTON'S MOTION TO DISMISS THE AMENDED COMPLAINT

Defendant Isaac Leventon hereby files his brief in support of the *Motion to Dismiss the Amended Complaint* (the "***Motion***")[1], and respectfully states as follows:

PRELIMINARY STATEMENT

1. Nothing in the Amended Complaint cures the serious deficiencies evident in the initial pleading. The Amended Complaint confirms that Isaac Leventon has no place in this case, and all claims against him require dismissal as a matter of law.

2. The Amended Complaint lodges four claims against Leventon: Counts V for breach of fiduciary duty, XVI for civil conspiracy to breach fiduciary duty, XXVII for unjust enrichment or money had and received, and a new Count XXXIV for aiding and abetting or knowing participation in a breach of fiduciary duty.

3. First and foremost, Kirschner lacks standing to bring any claims against Leventon because the claims were not adequately preserved under the Plan. Even if preserved, the claims are not "Estate Claims" (the only claims Kirschner has authority to pursue under the Plan), as Leventon is not and never has been an insider of HCMLP. Moreover, the Assignment Agreement (as defined below) upon which Kirschner now relies (for the first time in the Amended Complaint) does not confer standing because the purported assignment from the Claimant Trust to the Litigation Sub-Trust is an impermissible modification of the Plan. The Court also lacks subject matter jurisdiction to preside over the claims. For all of these reasons, Rule 12(b)(1) requires dismissal of all claims asserted against Leventon.

[1] On January 18, 2022, Leventon filed the *Motion to Withdraw the Reference for the Causes of Action in the Complaint Asserted Against the Former Employee Defendants* [Adv. Proc. Dkt. 27]. Such motion remains pending a decision by the District Court. Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to them in the Motion or in the Amended Complaint [Dkt. 2934], and docket number identifications refer to Case No. 19-34054-sgj11 (the "***Bankruptcy Case***").

4. In addition, all claims against Leventon should be dismissed for failure to state claims upon which relief may be granted under Rule 12(b)(6). The Amended Complaint asserts nothing more than conclusory allegations of guilt-by-association with the former leadership of HCMLP, alleging that Leventon merely drafted documents and performed other customary in-house counsel activities, all at the direction of HCMLP's then authorized leadership and in his role as an employee (not an officer) of HCMLP. Without more, Kirschner's claims against Leventon amount to no more than new management's efforts to make in-house counsel an insurer of old management's litigation losses.

RELEVANT BACKGROUND

5. Leventon was employed by HCMLP from September 21, 2009 until January 2021, and served as Assistant General Counsel from 2011 until 2021. Dkt. 2869 ¶ 7; Am. Compl. ¶ 20.

6. On October 16, 2019, HCMLP filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On February 22, 2021, the Bankruptcy Court confirmed the Plan [Dkt. 1808] pursuant to the *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* [Dkt. 1943].

7. The "Effective Date" of the Plan occurred on August 11, 2021. *Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization* [Dkt. 2700]. The Plan established two trusts established to assert post-confirmation causes of action: (1) the Claimant Trust and (2) the Litigation Sub-Trust. The Plan transferred all causes of action other than "Reorganized Debtor Assets" from the Debtor to the Claimant Trust on the Effective Date. *See* Plan § IV.B; Claimant Trust Agreement §§ 2.2, 2.3 [Dkt. 1811-2].[2] Under the Plan, the Claimant Trust then transferred only "Estate Claims" to the Litigation Sub-Trust. *See* Plan § IV.B.;

[2] *See* Plan, Definition of "Claimant Trust Assets" (expressly carving out "Reorganized Debtor Assets" from the definition); Plan, Definition of "Reorganized Debtor Assets." Only the Reorganized Debtor has standing to assert a cause of action that is considered a Reorganized Debtor Asset.

Litigation Sub-Trust Agreement, § 2.3 [Dkt. 1811-4]. Since the Effective Date, the Plan has been substantially consummated. *See Appellee's Motion to Dismiss Appeal as Equitably Moot*, pp. 11-14, Fifth Cir. Case No. 21-10449 [Doc. No. 00516045149].

8. On October 15, 2021, Kirschner commenced this Adversary Proceeding. On May 19, 2022, Kirschner filed the Amended Complaint.

ARGUMENT AND AUTHORITIES

I. All Claims Against Leventon Must be Dismissed Due to Kirschner's Lack of Standing

A. The Plan Did Not Adequately Preserve *Any* Specific State Law Claims.

9. A plan must be "specific and unequivocal" in identifying causes of action that a debtor intends to preserve and pursue post-confirmation. *See Wooley v. Haynes & Boone, L.L.P. (In re SI Restructuring Inc.)*, 714 F.3d 860, 864 (5th Cir. 2013) (citing *Dynasty Oil & Gas, LLC v. Citizens Bank (In re United Operating, LLC)*, 540 F.3d 351, 355-56 (5th Cir. 2008)). Such reservation is a prerequisite to Kirschner's standing and a jurisdictional requirement that is separate from the issue of the court's subject matter jurisdiction to preside over the claims. *See United Operating*, 540 F.3d at 354-55 ("Standing is a jurisdictional requirement, and we are obliged to ensure it is satisfied regardless whether the parties address the matter").

10. Blanket statements purporting to reserve "any and all" causes of action do not meet the required level of specificity. *Id*. The Fifth Circuit explained that "a debtor must put its creditors on notice of any claim it wishes to pursue after confirmation." *Id*. at 355. Proper notice "allows creditors to determine whether a proposed plan resolves matters satisfactorily before they vote to approve it," and, "absent 'specific and unequivocal' retention language in the plan, creditors lack sufficient information regarding their benefits and potential liabilities to cast an intelligent vote." *Id*. (quoting *In re Paramount Plastics, Inc.*, 172 B.R. 331, 334 (Bankr. W.D. Wash. 1994)).

11. Attached as Exhibit DD to the *Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, dated as of February 1, 2021 [Dkt. 1875], is the "Schedule of Retained Causes of Action." This schedule—a generic laundry list of claims that may be asserted post-confirmation, with a 17-page list of potential defendants—is tantamount to the "any and all claims" language rejected by the Fifth Circuit in *United Operating*. 540 F.3d at 356. Pursuant to this precedent, all state law claims in the Amended Complaint must be dismissed, as they were not preserved.

B. Kirschner Lacks Standing to Bring the Civil Conspiracy (Count XVI) and Aiding and Abetting or Knowing Participation in Breach of Fiduciary Duty (Count XXXIV) Claims.

12. Even if the Schedule of Retained Causes of Action adequately preserved Kirschner's right to assert certain state law claims, it did not expressly include civil conspiracy (Count XVI) or "aiding and abetting or knowing participation in breach of fiduciary duty" (Count XXXIV). Accordingly, these claims must be dismissed, as they were not preserved.

C. Because Leventon Is Not an Insider, Kirschner Lacks Standing to Assert *Any* Claims Against Leventon that Are Not Estate Claims.

13. Kirschner also lacks standing to assert ***any*** of the causes of action asserted against Leventon because Leventon is not an insider against whom Estate Claims may be brought.

14. Pursuant to the Plan, the Litigation Sub-Trust Agreement, and the Claimant Trust Agreement, the Litigation Sub-Trust has no standing to pursue *non*-Estate Claims. *See* Plan § IV.B ("Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims."); Claimant Trust Agreement § 2.3 ("The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor ***other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee*** pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets") (emphasis added); Litigation Sub-Trust

Agreement § 2.2 ("The Litigation Sub-Trust and Litigation Trustee shall have and retain any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to ***any Estate Claim***.") (emphasis added).

15. The Plan incorporates Dkt. 354 (the "***Final Term Sheet***"), which defines "Estate Claims" as "any and all estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and each of the Related Entities . . . ." Am. Compl. ¶ 36. An Estate Claim cannot be asserted against Leventon, as he is neither an insider of the Debtor nor a Related Entity.

16. Because the Debtor is organized as a partnership, insider status is determined by section 101(31)(C) or section 101(31)(E) of the Bankruptcy Code. Section 101(31)(C) provides that an "insider" of a debtor partnership includes a (1) general partner in the debtor; (2) relative of a general partner in, general partner of, or person in control of the debtor; (3) partnership in which the debtor is the general partner; (4) general partner of the debtor; or (5) person in control of the debtor. Leventon cannot be considered an insider of HCMLP pursuant to section 101(31)(C) because, at all relevant times, (1) Strand was the general partner of HCMLP (Am. Compl. ¶ 14), and Leventon is not alleged to be (2) a relative of Strand or Dondero, (3) a partnership in which HCMLP is a general partner, (4) a "general partner of" HCMLP, or (5) a "person in control" of HCMLP.

17. Pursuant to section 101(31)(E), an insider of a debtor also means an "affiliate, or insider of an affiliate as if such affiliate were the debtor." Leventon is not an insider of HCMLP under this definition either because the Amended Complaint does not allege—nor could it—that Leventon is an insider of any affiliate of HCMLP. Nor is Leventon one of the "Related Entities." Exhibit D to the Final Term Sheet defines that term, in relevant part, as "(v) any relative . . . of Mr. Dondero or Mr. Okada . . . [or] (vii) any entity or person that is an insider of the Debtor under

section 101(31) of the Bankruptcy Code . . . ." The Amended Complaint does not allege that Leventon fits any of those roles. Finally, Schedule C to the Final Term Sheet identifies all natural persons covered under the definition of Related Entities, but does not include Leventon. [Dkt. 354, Ex. D, Schedule C].[3]

D. Kirschner Lacks Standing to Bring Breach of Fiduciary Duty Claims (Count V), Thereby Also Defeating Kirschner's Derivative Civil Conspiracy (Count XVI) and Aiding and Abetting or Knowing Participation (Count XXXIV) Claims.

18. Kirschner also lacks standing to bring the breach of fiduciary duty claim against Leventon (Count V) because the claim constitutes part of the Reorganized Debtor Assets, which only the Reorganized Debtor may pursue. In turn, Kirschner lacks standing to bring the derivative torts of civil conspiracy (Count XVI) and aiding and abetting or knowing participation (Count XXXIV), each of which necessarily requires an underlying breach of fiduciary duty (which Kirschner cannot assert). Specifically, the Plan provides that the Reorganized Debtor will administer "Reorganized Debtor Assets," Plan § IV.A, which expressly ***include*** breach of fiduciary duty claims.[4] The Plan then expressly ***excludes*** those Reorganized Debtor Assets from the assets transferred to the Claimant Trust.[5] Therefore, Kirschner lacks standing to bring "claims for breach

[3] Throughout the docket in the Bankruptcy Case, HCMLP acknowledges that Leventon is not an insider. HCMLP filed the above-cited Schedule C (listing all individual insiders) three times without including Leventon. Dkt. 281-1, 354, and 466. The Debtor's Statement of Financial Affairs lists all payments to insiders for one year prior to filing for bankruptcy; it includes salary payments to officers of Strand, but does not include payment of Leventon's salary. Dkt. 248 at Ex. C to SOFA #4. HCMLP filed an exhibit with a "complete list of individual persons listed as Insiders," but did not include Leventon. Dkt. 848-1 at Ex. A, p.5. Finally, HCMLP's Monthly Operating Reports, each signed by post-Dondero management, included salary payments to insiders that also were HCMLP employees, but did not include such payments to Leventon. Dkt. 800, 913, 1014, 1115, 1329, 1493, 1710, 1949, and 2030.

[4] "Reorganized Debtor Assets" means, in relevant part, "any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action ***(including, without limitation, claims for breach of fiduciary duty***), that, for any reason, are not capable of being transferred to the Claimant Trust." *See* Plan, Definition of "Reorganized Debtor Assets" (emphasis added).

[5] "Claimant Trust Assets" means "(i) ***other than the Reorganized Debtor Assets (which are expressly excluded from this definition)***, all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of

of fiduciary duty," as they remained with the Reorganized Debtor, were not transferred to the Claimant Trust, and could not have been assigned to the Litigation Sub-Trust. Derivative torts to the breach of fiduciary duty claim, namely civil conspiracy and aiding and abetting or knowing participation, are "connected to the underlying tort and survive[] or fail[] alongside it." *See Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 141 (Tex. 2019); *see also Hunter v. Berkshire Hathaway, Inc.*, 829 F.3d 357, 365 (5th Cir. 2016) (dismissing plaintiffs' "derivative participation claim" when plaintiff did not sufficiently plead the underlying breach claim). In the absence of standing to assert the breach of fiduciary duty claim, Kirschner also lacks standing to bring the civil conspiracy and aiding and abetting or knowing participation claims.

E. The Assignment Agreement Is an Impermissible Modification of the Plan

19. Kirschner incorrectly contends that "[a]ll of the claims asserted in this Amended Complaint belong to the Litigation Sub-Trust." Am. Compl. ¶ 37. Kirschner presumably is relying upon that certain Assignment Agreement, dated October 8, 2021, by and between the Claimant Trust and the Litigation Sub-Trust, which purported to transfer and assign any and all causes of action not previously assigned by operation of the Plan, or otherwise, from the Claimant Trust to the Litigation Sub-Trust (the "***Assignment Agreement***"). *Id*. The Assignment Agreement, however, constitutes an impermissible modification of the Plan, and, therefore, any assignment of claims from the Claimant Trust to the Litigation Sub-Trust was ineffective. Moreover, because the Reorganized Debtor is not even a party to the Assignment Agreement, that document could not possibly have had the effect of assigning the Reorganized Debtor Assets.

20. Under the Bankruptcy Code, "the proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan ***and before substantial***

being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets." *See* Definition of "Claimant Trust Assets" (emphasis added).

consummation of such plan, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title." 11 U.S.C. § 1127(b) (emphasis added). Once a plan of reorganization is substantially consummated, it may not be modified. *United States Brass Corp. v Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296, 307-08 (5th Cir. 2002) ("[Section 1127(b)] operates to prohibit modification once 'substantial consummation' has occurred."); *Alberta Energy Partners v. Blast Energy Servs. (In re Blast Energy Servs.)*, 593 F.3d 418, 427 n.8 (5th Cir. 2010) (Section 1127(b) "operates to prohibit *any* modification after substantial consummation"); *see also Rodgers v. Colin-G Props., Ltd*., Civil Action No. 3:12-CV-4831-L, 2013 U.S. Dist. LEXIS 119744, at *19 (N.D. Tex. 2013) (same). As the Fifth Circuit noted in *Blast Energy*, "Section 1127(b) of the Bankruptcy Code—which provides that the debtor or proponent of a confirmed reorganization plan may modify the plan *before* it has been substantially consummated—is 'the sole means for modification of the plan of reorganization after it has been confirmed.'" *Id.* at 427 (citing *In re Brass*, 301 F.3d at 306-08). Here, the Plan was substantially consummated by at least October 6, 2021—***before*** the Assignment Agreement was executed. *See Appellee's Motion to Dismiss Appeal as Equitably Moot*, pp. 11-14, Fifth Cir. Case No. 21-10449 [Doc. No. 00516045149]. The only issue, then, is whether the Assignment Agreement is an attempted modification of the Plan—*and it clearly is*.

21. The Fifth Circuit holds that any alteration of parties' "rights, obligations, and expectations" under a plan of reorganization that was not "specifically contemplated and negotiated by the parties at confirmation" constitutes a plan modification. *See United States Brass*, 301 F.3d at 308-309; *cf. Highland Capital Mgmt. Fund Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, Civil Action No. 3:21-CV-1895-D, 2022 U.S. Dist. LEXIS 15648, at *5 (N.D. Tex. 2022) (holding that a bankruptcy order did *not* alter the parties'

rights, obligations, and expectations because its proposed actions *were* "specifically contemplated" by the plan). An attempt to change the party with standing to pursue claims under a plan constitutes a modification prohibited under section 1127(b). *See De Montaigu v. Ginther (In re Ginther Trs.)*, Nos. 98-32663-11, 06-3556, 2006 Bankr. LEXIS 3676, at *35 (Bankr. S.D. Tex. 2006).

22. At the Effective Date, the Plan only permitted the Litigation Trustee to bring Estate Claims. The Plan clearly contemplated at confirmation that the Claimant Trust might *initiate* actions that are ***not*** Estate Claims. *See* Plan § IV.B.1 (expressly providing that "[t]he Claimant Trustee ***shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims***") (emphasis added); *accord id.* § IV.B.10 (stating that the "***[t]he Claimant Trustee shall have the exclusive right***, on behalf of the Claimant Trust, ***to institute***, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw ***any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) . . .*** [and] ***the Litigation Trustee shall have the exclusive right to institute***, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all ***Estate Claims*** included in the Claimant Trust Assets . . .") (emphasis added). The Plan language contains a clear division of rights as between the Litigation Sub-Trust and the Claimant Trust—the Litigation Sub-Trust can ***only*** pursue Estate Claims and nothing more, while the Claimant Trust retains the sole right to assert all other causes of action, except those that constitute Reorganized Debtor Assets. Any alteration of these expectations following substantial consummation of the Plan constitutes an impermissible plan modification.

II. All Claims Against Leventon Must Be Dismissed for Lack of Subject Matter Jurisdiction (Counts V, XVI, XXVII and XXXIV).

23. The arguments set forth in the Former Employee Defendants' Brief in Support of Motion to Withdraw the Reference [Adv. Proc. Dkt. 28] (the "***Motion to Withdraw Brief***") and their Reply in support thereof [Adv. Proc. Dkt. 108] (the "***Motion to Withdraw Reply***") explain

why the Court lacks subject matter jurisdiction over the claims against Leventon. Leventon hereby incorporates section II(A) of the Motion to Withdraw Brief, section I of the Motion to Withdraw Reply, section I of the *Objection to Report and Recommendation* [Case No. 22-cv-00203, Dkt. 16], and section I of the *Reply in Support of Objection to Report and Recommendation* [*Id.* at Dkt. 29], for all purposes. Accordingly, under binding Fifth Circuit precedent in *Bank of La. v. Craig's Stores of Texas, Inc. (In re Craig's Stores of Tex., Inc.)*, 266 F.3d 388 (5th Cir. 2001) and its progeny, no jurisdiction exists under 28 U.S.C. § 1334, and the claims must be dismissed.

III. The Amended Complaint Fails to State a Claim Upon Which Relief Can Be Granted as to All Claims Asserted Against Leventon.

A. Kirschner Fails to State a Claim for Breach of Fiduciary Duty by Leventon Based on Alleged Conduct Resulting in HCMLP Liabilities to Third Parties (Count V).

1. Count V Fails to State a Claim Because Kirschner Asserts a Professional Negligence Claim Under the Guise of Breach of Fiduciary Duty.

24. The Amended Complaint acknowledges that Leventon was merely an employee in HCMLP's legal team, not an officer or director; as such, his only alleged fiduciary duty arises from his provision of legal services as an in-house attorney. Am. Compl. ¶¶ 20, 202. Because Kirschner's allegations sound in professional negligence (*i.e.*, legal malpractice) and also fail to plausibly allege that Leventon obtained an improper, direct benefit as a result of the transactions at issue, Kirschner fails to state a breach of fiduciary duty claim for which relief may be granted.

25. To prevail on a breach of fiduciary duty claim against an attorney, Texas courts have adopted an "anti-fracturing rule," which prevents plaintiffs from converting professional negligence claims against an attorney into other claims, such as breach of fiduciary duty. *Won Pak v. Harris*, 313 S.W.3d 454, 457 (Tex. App.—Dallas 2010, pet. denied). As explained by the Dallas Court of Appeals, this rule is important because, "[e]ven if a complaint implicates a lawyer's fiduciary duties, it does not necessarily follow that such a complaint is actionable apart from a

negligence claim." *Won Pak*, 313 S.W.3d at 458; *see also Isaacs v. Schleier*, 356 S.W.3d 548, 559-560 (Tex. App.—Texarkana 2011, pet. denied) (attorney's alleged failure to disclose that he represented both sides of a real estate transaction sounded in negligence, not fiduciary duty). This Court must look beyond mere labels in the Amended Complaint and determine, *as a question of law*, whether the "gravamen" of the allegations sound in negligence because they focus on "the quality or adequacy of the attorney's representation," or, in contrast, whether the "gravamen" of the allegations sound in fiduciary duty because they focus on "the attorney obtain[ing] an improper benefit from representing the client . . . ." *Won Pak*, 313 S.W.3d at 457 ("Whether certain allegations asserted against an attorney and labeled as breach of fiduciary duty or fraud are actually claims for professional negligence is a question of law to be determined by the court"); *Official Stanford Investors Comm. v. Greenberg Traurig, LLP*, 2014 WL 12572881, at *6 (N.D. Tex. Dec. 17, 2014) (Godbey, J.).

26. *Won Pak v. Harris* is instructive on the factual situation before the Court. 313 S.W.3d at 457-58. In that case, an attorney represented Sun Tec and multiple investors in a merger transaction to be accomplished via a new Texas limited partnership. Shortly after Sun Tec assigned its service contracts to the new partnership, the investors used their powers as general partner to exclude Sun Tec's owners, thereby stripping away future profits. Sun Tec's owners sued the attorney, alleging conspiracy, failure to disclose material information, divided loyalties, and fraud. *Id*. at 458. In affirming the trial court's dismissal of the claims as sounding in negligence only, the Dallas Court of Appeals held that "the heart of [the] complaint is [the] alleged failure to provide adequate legal representation by his failure to properly inform, advise, and communicate with [plaintiffs]. As such, we conclude the gist of [the] allegations involves the quality of [the] representation rather than the integrity and fidelity of the attorney." *Id*.

27. Similarly here, the conduct allegations specific to Leventon in Count V concern quality of the legal representation and failure to adequately inform or advise the client, or others on behalf of the client, of a conflict of interest. *See, e.g.*, Am. Compl. ¶ 207 (alleged postpetition failure to disclose transfer made to an entity years earlier); ¶ 210 (allegedly deficient trial testimony); ¶¶ 211-12 (allegedly "took the steps necessary to consummate the transactions" and "assisted in the drafting and execution of the agreement" that effected a transfer); and ¶ 213 ("'providing direction' to keep the Redeemer Committee in the dark" about Dondero's alleged scheme). These allegations sound in negligence, and, as a result, the claim must be dismissed. *Border Demolition & Entvl., Inc. v. Pineda*, 535 S.W.3d 140, 159-60 (Tex. App.—El Paso 2017, no pet.); *Beck v. Law Offices of Edwin J. (Ted) Terry, Jr., P.C.*, 284 S.W.3d 416, 429 (Tex. App.—Austin 2009, no pet.).

28. The claim also must be dismissed because the Amended Complaint fails to allege that Leventon obtained an improper, direct pecuniary benefit from the transactions whereby he allegedly breached his fiduciary duty. Kirschner vaguely alleges that Leventon benefited from "faithfully serving Dondero's interest" through his compensation (Am. Compl. ¶ 204), but Kirschner never ties Leventon's compensation to any of the transactions. Kirschner's allegation that Leventon "indirectly" benefited by merely continuing to receive his normal pay for serving as in-house counsel during the time of the relevant transactions (*see* Am. Compl. ¶¶ 204, 372) fails under settled law and does not constitute an "improper benefit" sufficient to make out a breach of fiduciary duty claim. *Official Stanford Investors Committee*, 2014 WL 12572881, at *6 (law firm's work "in order to assure its continued employment by Stanford … does not allege an improper pecuniary interest supporting a conflict of interest; rather, it alleges the same general interest in getting paid that underlies every legal representation, an interest that Texas courts have

consistently found insufficient to support a claim for breach of fiduciary duty"). Kirschner also alleges that an entity unrelated to HCMLP made payments "to compensate Ellington and Leventon for the amounts that would have been paid to them in 2020 but for the Committee's objection." Am. Compl. ¶ 171. The transactions that form the basis of Count V in the Amended Complaint occurred pre-bankruptcy, and, therefore, cannot be connected to the 2020 payments. Additionally, the payments are not an "improper benefit" as a matter of law because they were ordinary compensation due to be paid and promised by HCMLP to be paid. It is not plausible for the Court to leap from (a) Leventon being promised his normal pay for serving as in-house counsel to HCMLP in 2019 (*after* the occurrence of the events alleged in support of Count V), to (b) alleged payment of that compensation by an entity unrelated to HCMLP in 2020 (even more years after the events allegedly occurred) to (c) such compensation being both improper ***and*** a direct benefit arising from such earlier transactions. Even Kirschner does not attempt to connect those dots. The Amended Complaint does not plead (nor could it), that Leventon received a direct benefit from any of the transactions alleged in Count V, and the payments as alleged by Kirschner amount to nothing more than normal compensation. *Official Stanford Investors Committee*, 2014 WL 12572881, at *6 (dismissing a fiduciary duty claim against a law firm that allegedly was "aware to a substantial degree of Stanford's misconduct, yet nevertheless continued to provide legal services that ultimately contributed to the proliferation and success of the underlying scheme" when the law firm's only benefit was continued employment compensation).[6]

2. The Amended Complaint Fails to Allege Leventon Did Anything but Obey and Follow Lawful Client Instructions.

29. The Amended Complaint states that Leventon performed all of the conduct alleged

[6] See also *Won Pak*, 313 S.W.3d at 458 (favoring obtaining one's own legal fees, even over the client's interests, is not sufficient to convert a negligence claim to a fiduciary duty claim); *Murphy v. Gruber*, 241 S.W.3d 689, 692-93 (Tex. App.—Dallas 2007, pet. denied) (same); *Beck*, 284 S.W.3d at 433 (expectation of compensation cannot convert a negligence claim into a fiduciary duty claim).

in support of the breach of the fiduciary duty claim (Count V) at the instruction of Dondero, the founder and head of HCMLP and Leventon's client representative, while serving as in-house counsel for HCMLP. Compl. ¶¶ 204-207, 211-216. Notably, however, the Amended Complaint fails to allege that Dondero's instructions constituted a breach of the Fourth Amended and Restated Agreement of Limited Partnership of HCMLP (the "***Fourth LPA***") [Adv. Proc. No. 21-03003-sgj, Dkt. 109-8.]. Texas law is well-established that an attorney cannot be liable for malpractice if they obey and follow a client's lawful instruction. *See Edwards v. Dunlop-Gates*, 344 S.W.3d 424, 433 (Tex. App.—El Paso 2011, pet. denied); *Isaacs*, 356 S.W.3d at 559; *see also Wolf v. Ramirez*, 622 S.W.3d 126, 142 (Tex. App.—El Paso 2020, no pet.) (attorneys have "the duty to follow the client's instructions" as part of their fiduciary duty of integrity and fidelity).

3. The Amended Complaint Cannot, as a Matter of Texas Law, Adequately Allege the Element of Harm, as Kirschner May Not Substitute his Assessment of Leventon's Legal Work for that of the Then-Client, HCMLP.

30. The Fifth Circuit has rejected post-hoc attempts such as those employed by Kirschner in the Amended Complaint to substitute a trustee's judgment for that of the then-client. *In re Segerstrom*, 247 F.3d 218, 226 (5th Cir. 2001) ("Texas courts have recognized that legal malpractice actions are 'intrinsically personal,' and that the satisfaction of the client in a legal malpractice case is 'paramount.'") (*citing Zuniga v. Groce, Locke & Hebdon*, 878 S.W.2d 313, 318 (Tex. App.—San Antonio 1994, writ ref'd.); *Charles v. Tamez*, 878 S.W.2d 201, 208 (Tex. App.—Corpus Christi 1994, writ denied)). In the foregoing well-reasoned decisions, state and federal courts following Texas law explain why allegations must focus on the satisfaction of the client then-served by the attorney, and not on the satisfaction of a latter-arising bankruptcy estate asserting its dissatisfaction on behalf of the client. The courts also warn of the consequences of ignoring this rule when, as is the case here, a client's former litigation opponents gain control of the client. *See McLaughlin v. Martin*, 940 S.W.2d 261, 264 (Tex. App.—Houston [14th Dist.]

1997, no writ) ("The assignment of a malpractice claim is perhaps most incompatible with an attorney's duty of loyalty. An attorney's loyalty to his client is likely to be compromised if he knows the client can sell a potential malpractice claim to his adversary."); *Zuniga*, 878 S.W.2d at 318 ("By agreeing to represent an insolvent defendant, a lawyer could be putting his own assets and insurance within reach of a plaintiff who otherwise would have an uncollectible judgment."); *Tamez*, 878 S.W.2d at 208 (allowing previous litigation opponents to seize control of a malpractice claim "does not promote . . . the overall purpose of the Texas legal system.").

31. The Amended Complaint makes no allegation that HCMLP was anything less than satisfied with Leventon's work when it was performed. The Amended Complaint does not allege that Leventon mismanaged litigation, but rather that he effectuated the underlying transactions leading to the litigation by following the instructions of HCMLP, issued through Dondero. When the client "receive[d] the precise goal" he sought in the representation, the acts of counsel cannot be said to have caused "injury" to the client. *In re Segerstrom*, 247 F.3d at 226.

4. The Amended Complaint Fails to Plausibly Allege that Leventon's Conduct Caused HCMLP Damages.

32. A required element for a breach of a fiduciary duty or professional negligence claim against an attorney is but-for causation. In order to plead but-for causation, the plaintiff must allege that the client (1) was unaware of the illegality of its actions or (2) would have acted differently if advised differently. *See Taylor v. Scheef & Stone, LLP*, No. 3:19-CV-2602-D, 2020 WL 4432848 at *6 (N.D. Tex. July 31, 2020) (finding it "speculative to assume" a change in action of counsel would have altered the action of the client) (*citing Smith v. O'Donnell*, 288 S.W.3d 417, 422 (Tex. 2009)); *In re Segerstrom*, 247 F.3d at 226 ("The estate must prove not only that an alternative trial strategy was available to [the client], but that [the client] would have pursued that strategy with independent representation."). This element is important because the "measure of damages [is]

'the difference between the result obtained for the client and the result that would have been obtained with competent counsel.'" *Rogers v. Zanetti*, 518 S.W.3d 394, 404 (Tex. 2017).

33. The Amended Complaint's conclusory assertion that "[b]ut for" the breach of "Dondero (and in turn, Strand), Ellington, and Leventon," HCMLP "never would have incurred" $350 million in allowed claims or would have resolved them "for substantially lower amounts" is insufficient to adequately plead and prove but-for causation as to Leventon. Am. Compl. ¶ 204. Kirschner fails to allege facts that, if true, show that there would have been a different outcome in the UBS, Crusader, and Acis litigations described in Count V absent Leventon's specific conduct. Indeed, Leventon is not mentioned at all in relation to the HarbourVest transaction. "[A]llegations that a lawyer 'assisted' a client's illegal action or provided deficient legal advice that contributed to the client's harm, without more, are insufficient to satisfy the causation prong [of a] professional negligence claim." *Taylor*, WL 4432848, at *7. In *Taylor*, Judge Fitzwater held that allegations that an attorney lied to the client's regulator and drafted documents in furtherance of the client's illegal scheme "fail to plead sufficient facts" that the law firm's "assistance in illegal conduct constituted a breach of its duties to [the clients] or otherwise proximately caused their damages" because (1) the lawyer did not lie to his client, but rather (allegedly) to a third party, (2) the lawyer owed no duty to his client to whistle-blow on the client's alleged scheme, (3) the client allegedly was aware of the illegality of its conduct, and (4) there was no allegation the client would have acted differently if given different legal advice. *Id.* at *5-7.

34. Rather than plead any allegations particularized to Leventon, the Amended Complaint focuses on the alleged conduct of Dondero and others as driving and profiting from these transactions, with Leventon's role limited to non-specific in-house counsel work that any lawyer on the legal team could have performed. *See* Am. Compl. ¶ 70. Yet the Amended Complaint

fails to allege that Dondero and HCMLP would have acted any differently but for Leventon's "aid" in "implementing Dondero's directives" and drafting legal documents to "consummate these transactions." *See* Am. Compl. ¶ 70. The Amended Complaint alleges numerous facts that compel the opposite conclusion to but-for causation, including that "Dondero made every material business, operational, management, and financial decision for HCMLP" (Am. Compl. ¶ 111); "Dondero was the 'ultimate decision-maker' for 'every [] entity in the firm and for the firm as a whole'" (Am. Compl. ¶ 115); and "Dondero frequently instructed HCMLP's employees to perform services in connection with Dondero's personal and business interests." (Am. Compl. ¶ 120). These general and non-specific allegations do not adequately plead but-for causation as to Leventon. *Taylor*, 2020 WL 4432848, at *7. The specific transactions alleged in support of Count V, the allegations fall woefully short of particularized allegations as to Leventon:

- As to the UBS liabilities, Leventon was not even employed by HCMLP at the time UBS commenced its initial action against HCMLP. *Compare* Dkt. 2869 at ¶ 7 (Leventon's employment began September 21, 2009), *with* Am. Compl. ¶ 46 (the UBS action commenced against HCMLP February 24, 2009). The allegations against Leventon are that he was one of six people (including Dondero) who "took steps to transfer" non-detor assets to Sentinel, and that "[a]fter the Petition Date, Dondero, Ellington, and Leventon actively concealed this transfer [to Sentinel in 2017]." Am. Compl. ¶¶ 76, 207. The Amended Complaint, however, does not allege any facts suggesting that the transfer would not have occurred without Leventon's alleged involvement or what "steps" Leventon allegedly took.
- As to the Acis liabilities, the Amended Complaint makes no attempt to make the requisite specific causal connection with the liability incurred by HCMLP. Testimony at trial characterized as of "questionable reliability" does not constitute a breach of a duty to HCMLP. Am. Compl. ¶ 210. Likewise, "implement[ing] Dondero's directives" (Am. Compl. ¶ 211), and "assist[ing] in the drafting and execution of the agreement that transferred Acis's interest in a note receivable from HCMLP" (Am. Compl. ¶ 212) do not permit the conclusion that the subject transfer and $23 million liability would not have occurred but for Leventon's drafting assistance because (a) Leventon merely "assisted" others in drafting the documents (which presumably would have been drafted without Leventon's involvement); (b) Leventon is not alleged to have thought up, advised, or instructed that the transaction take place; and (c) the Amended Complaint never links the drafting of the note receivable agreement to any portion of the $23 million Acis liability. Am. Compl. ¶ 212.
- As to the Crusader liabilities, the Amended Complaint lists four underlying transactions that allegedly led to the Crusader liability. Am. Compl. ¶ 214. The Amended Complaint merely

alleges that Leventon somehow aided Dondero in "keep[ing] the [Crusader] Redeemer Committee in the dark" by allegedly communicating HCMLP's misrepresentations. Am. Compl. ¶ 214. There is no allegation that but-for Leventon's communications, the Redeemer Committee would not have sought, and obtained, the same judgment against HCMLP or that Leventon thought up, drafted documents, advised, or was otherwise instrumental in any of such transactions.

5. The Amended Complaint Cannot Claim Breach of Fiduciary Duties for Allegedly Enabling Conduct Harmful to Creditors.

35. Claims that a company's professionals aided and abetted the company in causing injury to its creditors do not belong to a party standing in the shoes of the company. *Reneker v. Offill*, 2009 WL 804134, at *6 (N.D. Tex. Mar. 26, 2009). As such, Kirschner, standing in the shoes of HCMLP, has no standing to assert claims resulting in injuries caused by HCMLP to its creditors. Moreover, Kirschner cannot recover against Leventon for the harms allegedly caused by HCMLP under the guise of a breach of fiduciary duty.

36. In *Reneker*, Chief Judge Fitzwater dismissed a breach of fiduciary duty claim against a company's law firm for allegedly enabling conduct that harmed the company's creditors, which then resulted in the estate being liable to such creditors. *Id.* at *9. In so doing, he held that "allowing the [clients] to continue illegal and/or fraudulent activity, would only amount to a breach of fiduciary duty if [the law firm] owed the [clients] a fiduciary duty not to enable them to continue such activities." *Id.*; *see also Latitude Sols., Inc. v. DeJoria*, 922 F.3d 690, 697 (5th Cir. 2019) (adopting *Reneker* in reversing breaches of fiduciary duty damages award).

37. Where the debtor "has joined with a third party in defrauding its creditors, the [debtor's] trustee cannot recover against the third party for the damage to the creditors." *Newby v. Enron Corp., (In re Enron Corp. Sec., Derivative & "ERISA" Litig.)*, 511 F. Supp. 2d 742, 797-798 (S.D. Tex. 2005) (*citing Breeden v. Kirkpatrick & Lockhart LLP* (*In re Bennett Funding Group, Inc.*), 336 F.3d 94, 100 (2d Cir. 2003)); *Shearson Lehman Hutton, Inc. v. Wagoner*, 944 F.2d 114 (2d Cir. 1991). This is the so-called "*Wagoner* Rule"; "though the Fifth Circuit has not

directly addressed the *Wagoner* Rule specifically, district courts within this Circuit have agreed with the underlying principle." *Brickley for CryptoMetrics, Inc. Creditors' Trust v. ScanTech Identification Beams Sys., LLC*, 556 B.R. 815, 838 (W.D. Tex. 2017) (citing *In re Enron Corp.*, 2007 WL 789141, at *7); *Finova Capital Corp. v. Lawrence*, No. 399CV2552-M, 2000 WL 1808276, at *2 (N.D. Tex. Dec. 8, 2000). "The rationale for the *Wagoner* rule is the fundamental principle of agency that the misconduct of managers within the scope of their employment will normally be imputed to the corporation." *Bennett Funding*, 336 F.3d at 100. The corporation only may recover against the agent if he "is really committing fraud for his own benefit" and "has totally abandoned the principal's interests." *Id*. "This rule applies to professional liability claims," and the rule supports dismissal of the claim here. *Newby*, 511 F. Supp. 2d at 797.

6. The Amended Complaint Fails to Sufficiently Allege an Entitlement to Damages, as it Does Not Plausibly Allege "Willful or Wanton Misconduct" Necessary for Liability Under the Governing Partnership Agreement.

38. The Fourth LPA, effective at the time of the conduct alleged in the Amended Complaint, is governed by the laws of Delaware. *See* Fourth LPA at § 6.11. Under Delaware law, "if the limited partnership agreement unambiguously provides for fiduciary duties, any claim of a breach of fiduciary duty must be analyzed generally in terms of the partnership agreement." *Gotham Partners, L.P. v. Hallwood Realty Partners, L.P.*, 817 A.2d 160, 170-71 (Del. 2002). Here, the Fourth LPA specifically provides for fiduciary duties. *See, e.g.*, Fourth LPA at §§ 4.1(e)(ii)-(iii), 4.1(g). Therefore, the Fourth LPA "leaves no room for the application of common law fiduciary duty principles to measure the General Partner's conduct," and breach of the Fourth LPA is the "sole source of protection." *Gotham Partners,* 817 A.2d at 171.

39. Section 4.1(i)(i) of the Fourth LPA, titled "Liability of General Partner," provides, "Neither the General Partner nor its directors, officers, ***employees, agents, or representatives*** shall be liable to the Partnership or any Limited Partner for errors in judgment or for any acts or

omissions that do not constitute gross negligence or willful or wanton misconduct." As the Amended Complaint alleges that Leventon acted as an agent of the General Partner, Kirschner is barred from recovering damages for any conduct of Leventon that does not satisfy a "willful and wanton misconduct" standard. Yet, as discussed above, the allegations against Leventon in Count V sound in professional negligence, were performed at the authorization of his client, and, as alleged, do not rise to the requisite level of "willful or wanton misconduct," despite the tacking on of that term in the Amended Complaint.

B. Kirschner Fails to State a Claim Against Leventon for Civil Conspiracy to Breach Fiduciary Duties (Count XVI).

1. As an Agent of HCMLP, Leventon Cannot Legally Conspire with Other Agents of HCMLP.

40. Count XVI fails because Leventon, acting as one of HCMLP's employees in the legal team, cannot conspire with other HCMLP employees when acting within the scope of his work authority, and the Amended Complaint fails to allege conduct outside of the scope of his authority. *See Graham v. Pazos De La Torre*, 821 S.W.2d 162, 166 (Tex. App.—Corpus Christi-Edinburg 1991, writ denied) ("the general rules are that the principal is liable for the authorized acts of his agent and an agent is liable only if he acts beyond the scope of his authority."); *cf. Adidas Am. Inc. v. Shoebacca Ltd.*, 3:20-CV-03248-N, 2021 U.S. Dist. LEXIS 183828, 2021 WL 4399745, at *4 (N.D. Tex. Sept. 27, 2021) ("Under Texas law, a corporation's agents generally cannot conspire with each other or with the corporation because their acts are attributed to the corporation."); *see also III Forks Real Estate, L.P. v. Cohen*, 228 S.W.3d 810, 814 (Tex. App.—Dallas 2007, no pet.) ("A principal is liable for the fraudulent acts and misrepresentations of its authorized agent, even though the principal had no knowledge of the fraud and did not consent to it, whether or not the principal derives a benefit from it.").

41. The Amended Complaint vaguely alleges that Leventon, Ellington, and Dondero

"orchestrated myriad transactions to divert funds from HCMLP to Dondero . . . ." Am. Compl. ¶ 293. Yet the Amended Complaint cannot plausibly allege that Leventon's alleged acts with regard to these transactions—described elsewhere in the Amended Complaint as essentially drafting legal documents at the direction of his superiors—were outside the scope of his authority. Indeed, "[c]onduct that serves ***any*** purpose of the employer is within the scope of employment even if the conduct escalates beyond that assigned or permitted." *Fink v. Anderson*, 477 S.W.3d 460, 466 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (emphasis added). Strand (and thereby Dondero) had sole discretion to control HCMLP under the Fourth LPA, and the Amended Complaint specifically alleges that Dondero orchestrated the wrongful actions underlying the alleged conspiracy. *See* Section 4.1(a) of the LPA ("The General Partner shall conduct, direct, and exercise full control of over all activities of the Partnership …"). The Amended Complaint solely seeks relief against Leventon for actions taken at the instruction, or with the consent, of Dondero, in whom the Fourth LPA vested sole control. Therefore, the Amended Complaint does not (and cannot) plausibly allege that Leventon's conduct failed to serve ***any*** purpose of HCMLP.

2. No Actionable Civil Conspiracy Exists Because the Amended Complaint Fails to Allege a "Meeting of the Minds" to Cause the Injury.

42. Even if a valid conspiracy claim could be pled in Texas under the facts alleged, the Amended Complaint fails to allege any non-conclusory facts to show that Leventon had the specific intent to harm HCMLP, as required to allege a "meeting of the minds on the object or course of action." *See MVS Int'l Corp. v. Int'l Advert. Sols., LLC*, 545 S.W.3d 180, 192 (Tex. App.—El Paso 2017, no pet.) ("The conspiring parties must be aware of the intended harm or proposed wrongful conduct at the outset of the combination or agreement," and an "actionable civil conspiracy requires specific intent to agree to accomplish something unlawful or to accomplish something lawful by unlawful means."). Agreeing to the conduct alone is not enough:

"Conspiracy… requires a specific intent to cause the intended injury." *In re Artho*, 587 B.R. 866, 884-85 (Bankr. N.D. Tex. 2018); *see also Chu v. Hong*, 249 S.W.3d 441, 447 (Tex. 2008) (same). Instead, the Amended Complaint vaguely lumps Leventon into a group of defendants and alleges that they "specifically intended to benefit themselves and Dondero at the expense of HCMLP." Am. Compl. ¶ 296. These bare allegations (which never even identify any direct or indirect "benefit" to Leventon) are insufficient to support Leventon's intent.

3. Dismissal of Certain of the Dondero Fiduciary Duty Claims Also Requires Dismissal of Count XVI.

43. Leventon allegedly conspired with Dondero in violating his fiduciary duty in relation to the transactions listed at Am. Complaint ¶ 295 (a) – (e). *See* Am. Compl. at Count IV and XIV (breach of fiduciary duty claims against Dondero for the same transactions). Conspiracy is a derivative tort that depends on participation in some underlying tort. *West Ford Advisors, LLC v. Sungard Consulting Servs., Inc.*, 437 S.W.3d 917, 920 (Tex. App.—Dallas 2014, pet. denied). If the underlying tort claim is dismissed, then Count XVI must also be dismissed. *Id.*

C. Kirschner Fails to State a Claim for Unjust Enrichment or Money Had and Received Under Texas Law (Count XXVII).

1. Unjust Enrichment Is Not an Independent Claim Cognizable Under Texas Law.

44. The Amended Complaint includes a claim for "unjust enrichment" against Leventon, but, as the Fifth Circuit has held, no such independent cause of action exists under Texas law. *Midwestern Cattle Mktg., LLC v. Legend Bank, N.A.*, 999 F.3d 970, 972 (5th Cir. 2021) ("unjust enrichment describes the nature of certain claims and remedies, not a distinct cause of action itself"). Where, as here, a party alleges unjust enrichment in tandem with a money had and received claim, courts address both claims "as one claim for money had and received" and dismiss the unjust enrichment claim "as repetitive and superfluous." *See Assure Re Intermediaries, Inc. v. W. Surplus Lines Agency, Inc.*, No. 1:20-CV-189-H, 2021 U.S. Dist. LEXIS 110090, at *20 (N.D.

Tex. 2021). As such, the unjust enrichment claim must be dismissed.

2. The Amended Complaint Fails to Sufficiently Allege What Money Leventon Received that Belongs to HCMLP.

45. Dismissal of a money had and received claim is appropriate when the plaintiff fails "to identify what money [Defendant] actually received individually and why, exactly, that money belongs to [Plaintiff]." *Bates Energy Oil & Gas v. Complete Oilfield Servs*., 361 F. Supp. 3d 633, 675 (W.D. Tex. 2019). Here, Kirschner seeks to recover "portions" of Leventon's compensation (Am. Compl. ¶ 372), but fails to identify what Kirschner means by "portions." Kirschner does not identify either a specific monetary value or even a date range for what compensation could be at issue, let alone *why* those specific funds belong in good conscience to Kirschner. This failure to describe what "portion" of compensation belongs to Kirschner is fatal to his claim under 12(b)(6).

3. To the Extent the Amended Complaint Seeks to Recover Employee Compensation Governed by Contract, Kirschner's "Money Had and Received" Claim Fails Under Texas Law.

46. In the alternative, to the extent Kirschner is seeking to recover "[p]ortions of . . . Leventon's compensation" governed by the terms of a contract, Kirschner's quasi-contract claim of "money had and received" is barred and must be dismissed.

47. "In Texas, a claim for money had and received is an equitable or quasi-contract theory of relief that is available only when there is no contract between the parties that covers the subject matter of the dispute." *Assure*, 2021 U.S. Dist. LEXIS 110090, at *18 (quotations omitted). "When a valid agreement already addresses the matter, recovery under an equitable theory is generally inconsistent with the express agreement." *Fortune Prod. Co. v. Conoco, Inc*., 52 S.W.3d 671, 684 (Tex. 2000). Here, Kirschner makes the conclusory assertion that there was "no valid express contract governing the subject matter of this dispute," and in turn seeks to recover "portions" of Leventon's compensation. Am. Compl. ¶¶ 375, 372. Filings in the Bankruptcy Case, including by the Debtor itself, make clear that this conclusory assertion is unequivocally false and

that employee compensation was governed by contractual agreements.[7] Leventon's compensation under such agreements, inclusive of bonus amounts and base salary, is reflected in Leventon's 2018, 2017, and 2016 *Compensation and Benefit Statements* issued by the Debtor. *See* Dkt. 1796-13. Given the contractual basis for Leventon's compensation, Kirschner's money had and received claim cannot lie.

D. Kirschner Fails to State a Claim for Aiding and Abetting or Knowing Participation in a Breach of Fiduciary Duty (Count XXXIV)

48. The Fourth LPA precludes Kirschner's claims for aiding and abetting or knowing participation in a breach of fiduciary duty by Dondero and Strand. To prevail on an aiding and abetting or knowing participation claim, Kirschner must demonstrate the existence of an underlying breach of fiduciary duty. *See Marshall v. Ribosome LP*, 2019 WL 2041062, at *6 (Tex. App.—Houston [1st Dist.] May 9, 2019, no pet.). For the reasons set forth above, Strand (and thereby Dondero) had "full control" over HCMLP by virtue of the express terms of the Fourth LPA. *See* Section 4.1(a) of the LPA ("The General Partner shall conduct, direct, and exercise full control of over all activities of the Partnership . . ."). The Fourth LPA granted Strand, and Dondero as Strand's director, broad authority to undertake every action that allegedly constituted a breach of their fiduciary duties. In view of the language of the Fourth LPA, Kirschner has not plausibly pled that Strand or Dondero acted beyond their powers under the Fourth LPA, nor does Kirschner allege that any of the conduct alleged breached the Fourth LPA.

49. The Amended Complaint also does not (and cannot) plausible allege that Leventon *knew* that following Dondero's instruction constituted assisting a breach of Dondero's fiduciary duty. "The pleading standard a plaintiff must achieve is [] a high one; a plaintiff must plead facts

[7] *See Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations under Employee Bonus Plans and Granting Related Relief* [Dkt. 177], wherein the Debtor recognized, and sought to honor, its obligations under the annual employee bonus plan and deferred employee bonus plan.

making it reasonably conceivable that the alleged aider-and-abettor acted with scienter." *See Morrison v. Berry*, C.A. No. 12808-VCG, 2020 Del. Ch. LEXIS 200 (Del. Ch. June 1, 2020); *see also Cent. Tex. Express Metalwork v. Chavez*, No. 2:20-CV-193, 2021 U.S. Dist. LEXIS 159150, at *22 (S.D. Tex. 2021) (knowing participation requires a defendant to be "aware of his participation in the third party's breach."). Strand (and thereby Dondero) had sole discretion under the Fourth LPA to control HCMLP and to direct Leventon as an attorney on behalf of HCMLP. Without actual knowledge or awareness by Leventon that the conduct he was instructed to perform was an underlying breach, the aiding and abetting or knowing participation claim fails. *See Jacobs v. Meghji*, C.A. No. 2019-1022-MTZ, slip op. at 25 (Del. Ch. Oct. 8, 2020) (dismissing claims against investor in a transaction when specific facts regarding knowing participation in a breach were lacking).

50. The Amended Complaint also fails to allege facts to plausibly support a claim for aiding and abetting breach of fiduciary duty. The Amended Complaint recognizes that Leventon took each of the actions pled in connection with the litigation liabilities as an attorney on behalf of HCMLP at the instruction HCMLP's principal Dondero. Am. Compl. ¶ 419-427. Leventon cannot be held liable for following his client's lawful instructions, even if such instructions later resulted in liabilities to HCMLP. *See supra* Section III(A); *see also Chavez*, 2021 U.S. Dist. LEXIS 159150, at *22 (dismissing knowing participation claim when the alleged tortfeasors acted as agents of the principal).

CONCLUSION AND REQUESTED RELIEF

51. The Court should dismiss without prejudice the claims against Leventon because Kirschner lacks standing and the Bankruptcy Court lacks subject matter jurisdiction to adjudicate them. Moreover, the Court should dismiss with prejudice all the claims because the Amended Complaint fails to state claims for which relief can be granted against Leventon.

Dated: July 11, 2022

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CERTIFICATE OF SERVICE

I certify that on July 11, 2022, a true and correct copy of the above and foregoing document was served via electronic email through the Court's CM/ECF system to the parties that have requested or consented to such service.

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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 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

EXHIBIT

HH

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BRIEF IN SUPPORT OF DEFENDANT ELLINGTON'S MOTION TO DISMISS THE AMENDED COMPLAINT

Defendant[1] Scott Ellington hereby files his brief in support of the Motion to Dismiss the Amended Complaint (the "***Motion***")[2] and respectfully states as follows:

PRELIMINARY STATEMENT

1. HCMLP is a limited partnership and, as such, is a creature of contract. Kirschner casts a wide net of 36 different claims against 23 different Defendants, but—incredibly—fails to allege a single violation of the terms of the Fourth LPA (as defined herein), which governs the conduct at issue in this case. No doubt that is by design, as the Fourth LPA vested sole and exclusive authority in Strand (and thereby Dondero, its sole owner and director) to manage HCMLP, including specific rights to engage in the conduct that the Amended Complaint decries.

2. The Amended Complaint repeatedly characterizes Ellington, the former General Counsel of HCMLP, as working in furtherance of Dondero's purported schemes and seeks to impose broad liability against Ellington for a variety of debts that HCMLP incurred at the direction of Dondero. Ellington, however, did *not* control HCMLP, and Kirschner cannot now blame Ellington for acting in accordance with the instructions of HCMLP, which was controlled by its general partner, Strand. The Amended Complaint is devoid of the necessary allegations to support the majority of claims against Ellington and should be dismissed.

3. Seven of the claims against Ellington (breach of fiduciary duties (Counts V and XIV), civil conspiracy (Count XVI), conversion (Count XXV), unjust enrichment or money had and received (Count XXVII), and aiding and abetting or knowing participation in breach of

[2] On January 18, 2022, Ellington filed the *Motion to Withdraw the Reference for the Causes of Action in the Complaint Asserted Against the Former Employee Defendants* [Adv. Proc. Dkt. 27]. Such motion remains pending a decision by the District Court. Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to them in the Motion or in the Amended Complaint [Dkt. 2934], and docket number identifications refer to Case No. 19-34054-sgj11 (the "***Bankruptcy Case***").

fiduciary duty (Counts XXXIV and XXXV)) are for state law claims that do not arise under the Bankruptcy Code (the "***Non-Core Causes of Action***"). Kirschner lacks standing to bring such claims as the Plan did not adequately preserve the ability to assert the Non-Core Causes of Action post-confirmation. Additionally, the Bankruptcy Court lacks post-confirmation subject matter jurisdiction over the Non-Core Causes of Action, and the Court must dismiss the Non-Core Causes of Action under Rule 12(b)(1). Alternatively, the Court must dismiss the breach of fiduciary duty claims (Counts V and XIV), as those claims remained with HCMLP, were not transferred to the Claimant Trust, and could not have been subsequently assigned to the Litigation Sub-Trust.

4. Further, six of the seven Non-Core Causes of Action (breach of fiduciary duties (Counts V and XIV), civil conspiracy (Count XVI), unjust enrichment or money had and received (Count XXVII), and aiding and abetting or knowing participation in breach of fiduciary duty (Counts XXXIV and XXXV)), the preferential transfer claim (Count XXXI), and the majority of the avoidance and recovery claims against Ellington (Counts XXIII, XXXII, and XXXIII), should be dismissed for failure to state claims upon which relief may be granted under Rule 12(b)(6). Initially, the Amended Complaint fails to include allegations that, if true, would satisfy the respective elements of the majority of the state law claims under applicable law, and indeed, alleges conduct that is not actionable under the Fourth LPA. Secondly, the Amended Complaint fails to state a claim for the preferential transfer claim and three avoidance and recovery claims by either failing to plead due diligence, failing to satisfy a heightened pleading standard, or failing to plausibly allege a basis that such transfers are anything other than valid. As such, Rule 12(b)(6) supports dismissal of ten of the claims against Ellington.

RELEVANT BACKGROUND

5. Ellington was employed by Highland Capital Management, L.P. ("***HCMLP***" or the "***Debtor***") until January 2021. At the time of termination of Ellington's employment with HCMLP,

he served as its general counsel. Am. Compl. ¶ 19.

6. On October 16, 2019, HCMLP filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On February 22, 2021, the Bankruptcy Court confirmed the Plan [Dkt. 1808] by the *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* [Dkt. 1943].

7. The "Effective Date" of the Plan occurred on August 11, 2010. *Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization* [Dkt. 2700]. The Plan established two trusts to assert post-confirmation causes of action: (1) the Claimant Trust and (2) the Litigation Sub-Trust. The Plan transferred all causes of action other than "Reorganized Debtor Assets" from the Debtor to the Claimant Trust and then only "Estate Claims" from the Claimant Trust to the Litigation Sub-Trust. *See* Plan § IV.B; Claimant Trust Agreement §§ 2.2, 2.3 [Dkt. 1811-2].[3]

8. Since the Effective Date, the Plan has been substantially consummated. *See Appellee's Motion to Dismiss Appeal as Equitably Moot*, pp. 11-14, Fifth Cir. Case No. 21-10449 [Doc. No. 00516045149].

9. On October 15, 2021, Kirschner commenced this Adversary Proceeding. On May 19, 2022, Kirschner filed the Amended Complaint.

LEGAL STANDARD

10. The applicable legal standard under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) is set forth more fully in the "Legal Standard" section of the *Brief in Support of the*

[3] *See* Plan, Definition of "Claimant Trust Assets" (expressly carving out "Reorganized Debtor Assets" from the definition); Plan, Definition of "Reorganized Debtor Assets." Only the Reorganized Debtor has standing to assert a cause of action that is considered a Reorganized Debtor Asset.

Defendant Leventon's Motion to Dismiss the Amended Complaint (the "***Leventon Brief***"), which is hereby incorporated herein by reference for all purposes.

ARGUMENT AND AUTHORITIES

I. All Non-Core Causes of Action Against Ellington Must be Dismissed Pursuant to Rule 12(b)(1) (Counts V, XIV, XVI, XXV, XXVII, XXXIV, and XXXV).

A. Kirschner Lacks Standing to Pursue the Non-Core Causes of Action.

11. Kirschner lacks standing on *any* of the state law Non-Core Causes of Action (Counts V, XIV, XVI, XXV, XXVII, XXXIV, and XXXV) because the Plan failed to adequately preserve them in a generic laundry list of claims itemized under the "Schedule of Retained Causes of Action",[4] the civil conspiracy and aiding and abetting claims (Counts XVI, XXXIV, and XXXV) because those causes of action were not identified at all as being retained under the Plan, and the fiduciary duty claims (Counts V and XIV) and the civil conspiracy and aiding and abetting or knowing participation claims (Counts XVI, XXXIV, and XXXV) because such claims may only be pursued by HCMLP. The arguments in support of dismissal for lack of standing of these claims are set forth more fully in sections I.A, I.B and I.D of the Leventon Brief, which are hereby incorporated herein by reference for all purposes.

B. The Bankruptcy Court Lacks Post-Confirmation Jurisdiction Over the Non-Core Causes of Action.

12. The arguments set forth in the *Former Employee Defendants' Brief in Support of Motion to Withdraw the Reference* [Adv. Proc. Dkt. 28] (the "***Motion to Withdraw Brief***") and their Reply in support thereof [Adv. Proc. Dkt. 108] (the "***Motion to Withdraw Reply***") explain why the Court lacks subject matter jurisdiction over "***Non-Core Causes of Action***" applicable to Ellington (Counts V, XIV, XVI, XXV, XXVII, XXXIV, and XXXV). Ellington hereby incorporates section II(A) of the Motion to Withdraw Brief, section I of the Motion to Withdraw

[4] The Schedule of Retained Causes of Action is attached as Exhibit DD to the *Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, dated as of February 1, 2021 [Dkt. 1875].

Reply, section I of the *Objection to Report and Recommendation* [Case No. 22-cv-00203, Dkt. 16], and section I of the *Reply in Support of Objection to Report and Recommendation* [*Id.* at Dkt. 29], for all purposes. Accordingly, under binding Fifth Circuit precedent in *Bank of La. v. Craig's Stores of Texas, Inc. (In re Craig's Stores of Tex., Inc.)*, 266 F.3d 388 (5th Cir. 2001), and its progeny, no jurisdiction exists under 28 U.S.C. § 1334, and the claims must be dismissed.

C. The Assignment Agreement Did Not Assign the Breach of Fiduciary Duty Claims (Counts V and XIV) to the Litigation Sub-Trust

13. Kirschner inaccurately suggests that "[a]ll of the claims asserted in this Amended Complaint belong to the Litigation Sub-Trust." This flawed conclusion is based upon that certain Assignment Agreement, dated October 8, 2021, by and between the Claimant Trust and the Litigation Sub-Trust, which purported to transfer and assign any and all causes of action not previously assigned by operation of the Plan, or otherwise, from the Claimant Trust to the Litigation Sub-Trust (the "***Assignment Agreement***"). For the reasons stated in section I.D. of the Leventon Brief, which is hereby incorporated herein by reference for all purposes, the breach of fiduciary duty causes of action are Reorganized Debtor Assets. Because the Reorganized Debtor is not a party to the Assignment Agreement, the breach of fiduciary duty claims could not have been assigned to the Litigation Sub-Trust.

II. The Amended Complaint Fails to State a Claim Upon Which Relief Can be Granted as to the Majority of Claims Against Ellington.

A. Kirschner Fails to State a Claim for Breach of Fiduciary Duty by Ellington (Counts V and XIV).

1. Counts V and XIV Fail Because Kirschner Does Not Plead a Breach of Ellington's Fiduciary Obligations, as Limited by the Fourth LPA.

14. The Amended Complaint alleges that "Ellington owed fiduciary duties to HCMLP in his capacity as HCMLP's Chief Legal Officer and General Counsel," lumping him in with Strand, which "owed fiduciary duties . . . in its capacity as HCMLP's general partner" and Dondero, who "owed fiduciary duties to HCMLP by virtue of his control over Strand and HCMLP,

and as an officer of HCMLP." Am. Comp. ¶ 202. Yet the Amended Complaint utterly fails to identify any actual breach of a provision of the governing partnership agreement that is the sole source of any applicable fiduciary duties. Under applicable Delaware law, such deficiency is fatal to Kirschner's fiduciary duty claims against Ellington.

15. The Delaware Revised Uniform Limited Partnership Act permits a limited partnership agreement to restrict or even "eliminate all duties, other than the implied contractual covenant of good faith and fair dealing, that a person acting under that agreement may owe to a limited partnership." *Gerber v. EPE Holdings, LLC*, No. 3543-VCN, 2013 Del. Ch. LEXIS 8, at *25 (Ch. Jan. 18, 2013); 6 Del. C. § 17-1101(d). Thus, "[w]hen dealing with the internal affairs of a limited partnership, the reviewing court's first task is to determine what duties the defendants owe. Although a general partner and its affiliates may owe fiduciary duties to a limited partnership and its limited partners, a limited partnership agreement may 'establish[ ] a contractual standard of review that supplants fiduciary duty analysis.'" *Id*. at *24-25 (internal citations omitted). "[I]f the limited partnership agreement unambiguously provides for fiduciary duties, any claim of a breach of fiduciary duty must be analyzed generally in terms of the partnership agreement." *Gotham Partners, L.P. v. Hallwood Realty Partners, L.P.*, 817 A.2d 160, 170-71 (Del. 2002).

16. Here, the *Fourth Amended and Restated Agreement of Limited Partnership of HCMLP* (the "***Fourth LPA***") [Adv. Proc. No. 21-03003-sgj, Dkt. 109-8.], governed by Delaware law, was effective at the time of the conduct alleged in the Amended Complaint. *See* Am. Compl. ¶¶ 218, 221; Fourth LPA at § 6.11. It specifically provides for fiduciary duties and limits the liability of the general partner (and its agents). *See, e.g.*, Fourth LPA at §§ 4.1(e)(ii)-(iii), 4.1(g). For instance, the Fourth LPA grants to the general partner Strand (and thereby Dondero) the exclusive power to "conduct, direct, and exercise full control over all activities of the Partnership,"

including "all management powers over the business and affairs of the Partnership." *Id.* at § 4.1(a). It also expressly permits conflicts of interest, entitling the General Partner, Affiliates and, among others, their officers and agents to engage in, "without limitation, business interests and activities in direct competition with the Partnership." *Id.* at § 4.1(f). Expressly replacing any other legal standard, the Fourth LPA provides that such a conflict will not constitute a breach of fiduciary duty "in the absence of bad faith by the General Partner . . . ."[5] In addition, the Fourth LPA directly limits the liability of the General Partner and its officers and agents, providing in section 4.1(i)(i), "Neither the General Partner nor its directors, officers, employees, agents**,** or representatives shall be liable to the Partnership or any Limited Partner for errors in judgment or for any acts or omissions that do not constitute gross negligence or willful or wanton misconduct." Accordingly, the Fourth LPA "leaves no room for the application of common law fiduciary duty principles," and breach of its terms is the "sole source of protection." *Gotham Partners*, 817 A.2d at 171.

17. The Amended Complaint's failure to allege that Ellington breached any fiduciary duty established in the Fourth LPA warrants dismissal of Counts V and XIV. As the Delaware Supreme Court has held, in the limited partnership context plaintiffs cannot "litigate . . . as if they were investors in a corporation, whose directors had the traditional duties of loyalty and care," but rather are "restrict[ed] to relying upon the agreement's terms for protection." *Haynes Family Tr. v. Kinder Morgan G.P., Inc.*, 135 A.3d 76, 76 (Del. 2016) (affirming dismissal of complaint alleging self-dealing transaction by general partner and board members because it sought to hold defendants "responsible for duties inconsistent with the agreement," which was "the exclusive source of protective rights"); *Norton v. K-Sea Transp. Partners L.P.*, 67 A.3d 354, 368-69 (Del.

[5] Fourth LPA at § 4.1(g) ("whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership or any Limited Partner, on the other hand, any action taken by the General Partner, in the absence of bad faith by the General Partner, shall not constitute a breach of the [Fourth LPA] or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or under the Delaware Act or any other applicable law, rule, or regulation.").

2013) (dismissing claims against general partner parent's board members because plaintiff "cannot state a cognizable claim for relief against [them] for causing [the general partner] to take an action that did not breach [the general partner's] duties under the LPA"). The Amended Complaint fails to plausibly allege that Ellington engaged in any conduct that rises to the level of "gross negligence or willful or wanton misconduct," as is the requisite standard under the Fourth LPA. Fourth LPA § 4.1(i)(i). Instead, the Amended Complaint alleges Ellington implemented transactions at the specific direction of Dondero, who "exercised complete control over HCMLP" and had the discretion to do so under the Fourth LPA.

18. In addition, the Fourth LPA provides that the authority and duties of officers extends only to those that the General Partner delegated to them. Fourth LPA § 4.1(k). There is no allegation in the Amended Complaint that Dondero delegated any such duties to Ellington. As such, Kirschner cannot allege that Ellington breached a duty for which he was never delegated.

2. Count V Also Fails to State a Claim Because Kirschner Asserts a Professional Negligence Claim Under the Guise of Breach of Fiduciary Duty.

19. In the alternative, and to the extent the Amended Complaint seeks to allege a breach of fiduciary duty based on Ellington's role as an in-house attorney (Am. Compl. ¶ 202), Count V also fails to state a breach of fiduciary duty claim for which relief may be granted because the allegations sound in professional negligence (*i.e.*, legal malpractice).

20. To prevail on a breach of fiduciary duty claim against an attorney, Texas courts have adopted an "anti-fracturing rule," which prevents plaintiffs from converting what are actually professional negligence claims against an attorney into other claims such as a breach of fiduciary duty. *Won Pak v. Harris*, 313 S.W.3d 454, 457 (Tex. App.—Dallas 2010, pet. denied). As explained by the Dallas Court of Appeals, this rule is important because, "[e]ven if a complaint implicates a lawyer's fiduciary duties, it does not necessarily follow that such a complaint is

actionable apart from a negligence claim." *Won Pak*, 313 S.W.3d at 458; *see also Isaacs v. Schleier*, 356 S.W.3d 548, 559-560 (Tex. App.—Texarkana 2011, pet. denied) (attorney's alleged failure to disclose that he represented both sides of a real estate transaction sounded in negligence, not fiduciary duty). This Court must look beyond mere labels in the Amended Complaint and determine, as a question of law, whether the "gravamen" of the allegations sound in negligence because they focus on "the quality or adequacy of the attorney's representation" or, in contrast, whether the "gravamen" of the allegations sound in fiduciary duty because they focus on "the attorney obtain[ing] an improper benefit from representing the client . . . ." *Won Pak*, 313 S.W.3d at 457; *Official Stanford Investors Comm. v. Greenberg Traurig, LLP*, 2014 WL 12572881, at *6 (N.D. Tex. Dec. 17, 2014) (Godbey, J.)

21. *Won Pak v. Harris* is instructive on the factual situation before the Court. 313 S.W.3d at 457-58. In that case, an attorney represented Sun Tec and multiple investors in a merger transaction to be accomplished via a new Texas limited partnership. Shortly after Sun Tec assigned its service contracts to the new partnership, the investors used their powers as general partner to exclude Sun Tec's owners, thereby stripping away future profits. Sun Tec's owners sued the attorney, alleging conspiracy, failure to disclosure material information, divided loyalties, and fraud. *Id*. at 458. In affirming the trial court's dismissal of the claims as sounding in negligence only, the Dallas Court of Appeals held that "the heart of [the] complaint is [the] alleged failure to provide adequate legal representation by his failure to properly inform, advise, and communicate with [plaintiffs]. As such, we conclude the gist of [the] allegations involves the quality of [the] representation rather than the integrity and fidelity of the attorney." *Id*.

22. Similarly here, the conduct allegations specific to Ellington on Count V sound in negligence and concern quality of the legal representation and failure to adequately inform or

advise the client, or others on behalf of the client, of a conflict of interest. *See, e.g.*, Am. Compl. ¶ 207 (alleged postpetition failure to disclose transfer); and ¶ 213 (providing false narratives). Kirschner never plausibly pleads, in support of Count V, that Ellington personally received an improper, direct financial benefit from any transactions addressed in Count V—at most, Kirschner merely alleges that funds were transferred through affiliated *entities* in which Ellington allegedly had an ownership share. *See* Am. Compl. ¶¶ 201-16. As Judge Godbey held in the *Official Stanford Investors Committee* decision, such omission is fatal to the breach of fiduciary duty claim against Ellington, and Count V must be dismissed. 2014 WL 12572881, at *6 (dismissing a fiduciary duty claim and holding that the law firm's work "in order to assure its continued employment by Stanford . . . does not allege an improper pecuniary interest supporting a conflict of interest; rather, it alleges the same general interest in getting paid that underlies every legal representation, an interest that Texas courts have consistently found insufficient to support a claim for breach of fiduciary duty"). These allegations sound in negligence, and, as a result, the claim must be dismissed. *Border Demolition & Entvl., Inc. v. Pineda*, 535 S.W.3d 140, 159-60 (Tex. App.—El Paso 2017, no pet.); *Beck v. Law Offices of Edwin J. (Ted) Terry, Jr., P.C.*, 284 S.W.3d 416, 429 (Tex. App.—Austin 2009, no pet.). [6]

3. The Amended Complaint Fails to Allege Ellington Did Anything but Obey and Follow Lawful Client Instructions.

23. The Amended Complaint states that Ellington performed the conduct alleged in support of the breach of the fiduciary duty claims (Counts V and XIV) at the instruction of Dondero, the founder and head of HCMLP and Ellington's client representative while serving as in-house counsel for HCMLP. Am. Compl. ¶¶ 204-207, 214-216, 277. Notably, however, the

[6] See also *Won Pak*, 313 S.W.3d at 458 (favoring obtaining one's own legal fees, even over the client's interests, is not sufficient to convert a negligence claim to a fiduciary duty claim); *Murphy v. Gruber*, 241 S.W.3d 689, 692-93 (Tex. App.—Dallas 2007, pet. denied) (same); *Beck*, 284 S.W.3d at 433 (expectation of compensation cannot convert a negligence claim into a fiduciary duty claim).

Amended Complaint fails to allege that such instructions constituted a breach of the Fourth LPA. Texas law is well established that an attorney cannot be liable for malpractice if they obey and follow a client's lawful instruction. *See Edwards v. Dunlop-Gates*, 344 S.W.3d 424, 433 (Tex. App.—El Paso 2011, pet. denied); *Isaacs*, 356 S.W.3d at 559; *see also Wolf v. Ramirez*, 622 S.W. 3d 126, 142 (Tex. App.—El Paso 2020, no pet.) (attorneys have "the duty to follow the client's instructions" as part of their fiduciary duty of integrity and fidelity).

4. The Amended Complaint Cannot, as a Matter of Texas Law, Adequately Allege the Element of Harm, as Kirschner May Not Substitute his Assessment of Ellington's Legal Work for that of the Then-Client, HCMLP

24. The Fifth Circuit has rejected post-hoc attempts such as those employed by Kirschner in the Amended Complaint to substitute a trustee's judgment for that of the then-client. *In re Segerstrom*, 247 F.3d 218, 226 (5th Cir. 2001) ("Texas courts have recognized that legal malpractice actions are 'intrinsically personal' and that the satisfaction of the client in a legal malpractice case is 'paramount.'") (*citing Zuniga v. Groce, Locke & Hebdon*, 878 S.W.2d 313, 318 (Tex. App.—San Antonio 1994, writ ref'd.); *Charles v. Tamez*, 878 S.W.2d 201, 208 (Tex. App.—Corpus Christi 1994, writ denied)).

25. In the foregoing well-reasoned decisions, state and federal courts following Texas law explain why allegations must focus on the satisfaction of the client then-served by the attorney and not on the satisfaction of a latter-arising bankruptcy estate asserting its dissatisfaction on behalf of the client. The courts also warn of the consequences of ignoring this rule when, as is the case here, a client's former litigation opponents gain control of the client. *See Zuniga*, 878 S.W.2d at 318 ("By agreeing to represent an insolvent defendant, a lawyer could be putting his own assets and insurance within reach of a plaintiff who otherwise would have an uncollectible judgment"); *Tamez*, 878 S.W.2d at 208 (allowing previous litigation opponents to seize control of a malpractice claim "does not promote . . . the overall purpose of the Texas legal system"). The Amended

Complaint fails to allege that HCMLP was anything but satisfied with Ellington's work when it was performed, and, on that basis, Counts V and XIV must be dismissed. *In re Segerstrom*, 247 F.3d at 226 (when the client "receive[d] the precise goal" he sought in the representation, then the acts of counsel cannot be said to have caused "injury" to the client).

5. The Amended Complaint Fails to Plausibly Allege that Ellington's Conduct Caused HCMLP Damages.

26. A required element for a breach of a fiduciary duty or professional negligence claim against an attorney is but-for causation. In order to plead but-for causation, the plaintiff must allege that the client (1) was unaware of the illegality of its actions or (2) would have acted differently if advised differently. *See Taylor*, 2020 WL 4432848 at *6 (N.D. Tex. July 31, 2020) (finding it "speculative to assume" a change in action of counsel would have altered the action of the client); *In re Segerstrom*, 247 F.3d at 226 ("The estate must prove not only that an alternative trial strategy was available to [the client], but that [the client] would have pursued that strategy with independent representation") (*citing Trinity Universal Ins. Co. v. Bleeker*, 966 S.W.2d 489, 491 (Tex. 1998)). The Amended Complaint fails to adequately plead but-for causation.

27. The Amended Complaint's conclusory assertion that "[b]ut for" the breach of "Dondero (and in turn, Strand), Ellington, and Leventon," HCMLP "never would have incurred" $350 million in allowed claims or would have resolved them "for substantially lower amounts" is insufficient to adequately plead and prove but-for causation as to Ellington. Am. Compl. ¶ 204. Kirschner fails to allege facts that, if true, would show that there would have been a different outcome in the UBS, Acis and Crusader litigations described in Count V absent Ellington's specific conduct. Likewise in Count XIV, concerning the Massand Transfers, Ellington is always mentioned as an add-on to Dondero—never for any conduct he allegedly performed himself. *See* Am. Compl. ¶¶ 277, 283 (repeating "Dondero and Ellington" six times).

28. The Amended Complaint fails to allege that Dondero and HCMLP would have acted any differently but for Ellington's "aid" in drafting legal documents to "consummate these transactions" in Count V or in connection with the alleged execution of and payment on consulting agreements or directing the use of escrow account funds in Count XIV. *See* Am. Compl. ¶¶ 70, 277, 283. The Amended Complaint alleges numerous facts that compel the opposite conclusion to but-for-causation, including the following: "Dondero made every material business, operational, management, and financial decision for HCMLP" (Am. Compl. ¶ 111); "Dondero was the 'ultimate decision-maker' for 'every [] entity in the firm and for the firm as a whole'" (Am. Compl. ¶ 115); and "Dondero frequently instructed HCMLP's employees to perform services in connection with Dondero's personal and business interests" (Am. Compl. ¶ 120). These general and non-specific allegations do not adequately plead but-for causation as to Ellington. *Taylor v. Scheef & Stone, LLP*, No. 3:19-CV-2602-D, 2020 WL 4432848, at *7 (N.D. Tex. July 31, 2020). ("[A]llegations that a lawyer 'assisted' a client's illegal action or provided deficient legal advice that contributed to the client's harm, without more, are insufficient to satisfy the causation prong [of a] professional negligence claim."). To take one example, as to the UBS liability, the allegations against Ellington in Count V include acting with Dondero to "cause" HCMLP to "orchestrate a surreptitious transfer" of non-debtor assets having a face value of $300 million which in turn led to an allowed claim of $125 million with UBS. But the Amended Complaint's repeated grouping of Ellington with Dondero is not sufficient to plead that Ellington's purported conduct was the but-for cause of the increase in the UBS settlement amount. The Amended Complaint does not set forth why or how HCMLP agreed to ***settle*** with UBS for a higher amount as a result of the alleged "surreptitious transfer" or that the so-called surreptitious transfer even involved assets of HCMLP. *See* Am. Compl. ¶ 206. Accordingly, Counts V and XIV must be

dismissed for failure to sufficiently allege but-for causation against Ellington.

6. The Amended Complaint Cannot Claim Breach of Fiduciary Duties for Allegedly Enabling Conduct Harmful to Creditors

29. Claims that a company's professionals aided and abetted the company in causing injury to its creditors do not belong to a party standing in the shoes of the company. *Reneker v. Offill*, 2009 WL 804134, at *6 (N.D. Tex. Mar. 26, 2009). As such, Kirschner, standing in the shoes of HCMLP, has no standing to assert claims resulting in injuries caused by HCMLP to its creditors.

30. Moreover, Kirschner cannot recover against Ellington for the harms allegedly caused by HCMLP under the guise of a breach of fiduciary duty. In *Reneker*, Chief Judge Fitzwater dismissed a breach of fiduciary duty claim against a company's law firm for allegedly enabling conduct that harmed the company's creditors, which then resulted in the estate being liable to such creditors. *Id.* at *9. In so doing, he held that "allowing the [clients] to continue illegal and/or fraudulent activity, would only amount to a breach of fiduciary duty if [the law firm] owed the [clients] a fiduciary duty not to enable them to continue such activities." *Id.*; *see also Latitude Sols., Inc. v. DeJoria*, 922 F.3d 690, 697 (5th Cir. 2019) (adopting *Reneker* in reversing breaches of fiduciary duty damages award).

31. Where the debtor "has joined with a third party in defrauding its creditors, the [debtor's] trustee cannot recover against the third party for the damage to the creditors." *Newby v. Enron Corp., (In re Enron Corp. Sec., Derivative & "ERISA" Litig.)*, 511 F. Supp. 2d 742, 797-798 (S.D. Tex. 2005) (*citing Breeden v. Kirkpatrick & Lockhart LLP* (*In re Bennett Funding Group, Inc.*), 336 F.3d 94, 100 (2d Cir. 2003)); *Shearson Lehman Hutton, Inc. v. Wagoner*, 944 F.2d 114 (2d Cir. 1991). This is the so-called "*Wagoner* Rule." "[T]hough the Fifth Circuit has not directly addressed the *Wagoner* rule specifically, district courts within this Circuit have agreed

with the underlying principle." *Brickley for CryptoMetrics, Inc. Creditors' Trust v. ScanTech Identification Beams Sys., LLC*, 556 B.R. 815, 838 (W.D. Tex. 2017) (citing *In re Enron Corp.*, 2007 WL 789141, at *7); *Finova Capital Corp. v. Lawrence*, No. 399CV2552-M, 2000 WL 1808276, at *2 (N.D. Tex. Dec. 8, 2000). "The rationale for the *Wagoner* rule is the fundamental principle of agency that the misconduct of managers within the scope of their employment will normally be imputed to the corporation." *Bennett Funding*, 336 F.3d at 100. The corporation only may recover against the agent if he "is really committing fraud for his own benefit" and "has totally abandoned the principal's interests." *Id*. "This rule applies to professional liability claims," and the rule supports dismissal of the claim here. *Newby*, 511 F. Supp. 2d at 797.

B. Kirschner Fails to State a Claim Against Ellington for Civil Conspiracy to Breach Fiduciary Duties (Count XVI).

1. As an Agent of HCMLP, Ellington Cannot Legally Conspire with Other Agents of HCMLP.

32. Count XVI fails because Ellington, as an HCMLP employee in the legal team, cannot conspire with other HCMLP employees when acting within the scope of his work authority, and the Amended Complaint fails to plausibly allege conduct outside of the scope of his authority. *See Graham v. Pazos De La Torre*, 821 S.W.2d 162, 166 (Tex. App.—Corpus Christi-Edinburg 1991, writ denied) ("the general rules are that the principal is liable for the authorized acts of his agent and an agent is liable only if he acts beyond the scope of his authority."); *see also III Forks Real Estate, L.P. v. Cohen*, 228 S.W.3d 810, 814 (Tex. App.—Dallas 2007, no pet.) ("A principal is liable for the fraudulent acts and misrepresentations of its authorized agent, even though the principal had no knowledge of the fraud and did not consent to it, whether or not the principal derives a benefit from it.").

33. The Amended Complaint vaguely alleges that Ellington, Leventon, and Dondero "orchestrated myriad transactions to divert funds from HCMLP to Dondero," and in so doing, that

they "acted outside the scope of their HCMLP employments." Am. Compl. ¶¶ 293, 291. Yet the Amended Complaint does not plausibly allege that Ellington took any action that was not at the direction, or with the approval, of Dondero. Indeed, "[c]onduct that serves ***any*** purpose of the employer is within the scope of employment even if the conduct escalates beyond that assigned or permitted." *Fink v. Anderson*, 477 S.W.3d 460, 466 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (emphasis added). Strand (and thereby Dondero) had sole discretion to control HCMLP under the Fourth LPA. *See* Section 4.1(a) of the Fourth LPA ("The General Partner shall conduct, direct, and exercise full control of over all activities of the Partnership . . . ***all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner*** . . .") (emphasis added). Dondero had the exclusive right under the Fourth LPA to determine what actions HCMLP should take and to determine whether any such actions served any purpose of HCMLP. Kirschner cannot rewrite the Fourth LPA, and, therefore, cannot (and does not) allege that any transactions breached the Fourth LPA, that Dondero exceeded the scope of his authority under the Fourth LPA, or that Ellington was not entitled to follow the instructions of Dondero. Accordingly, Count XVI must be dismissed.

2. No Actionable Civil Conspiracy Exists Because the Amended Complaint Fails to Allege a "Meeting of the Minds" to Cause the Injury.

34. Even if a valid conspiracy claim could be pled in Texas under the facts alleged, the Amended Complaint fails to allege any non-conclusory facts to show that Ellington had the specific intent to harm HCMLP, as is required to allege a "meeting of the minds on the object or course of action." *See MVS Int'l Corp. v. Int'l Advert. Sols., LLC*, 545 S.W.3d 180, 192 (Tex. App.—El Paso 2017, no pet.) ("The conspiring parties must be aware of the intended harm or proposed wrongful conduct at the outset of the combination or agreement," and an "actionable civil conspiracy requires specific intent to agree to accomplish something unlawful or to

accomplish something lawful by unlawful means."). Agreeing to the conduct alone is not enough. Conspiracy "requires a specific intent to cause the intended injury." *In re Artho*, 587 B.R. 866, 885 (Bankr. N.D. Tex. 2018); *see also Chu v. Hong*, 249 S.W.3d 441, 447 (Tex. 2008) (same). Instead, the Amended Complaint vaguely alleges that Ellington and others "specifically intended to benefit themselves and Dondero at the expense of HCMLP," that Ellington's conduct was directed at enriching himself, and that Ellington was "aware that causing HCMLP to pay SAS's expenses . . . harmed HCMLP." Am. Compl. ¶¶ 294-96. These bare allegations are insufficient to support intent.

C. Kirschner Fails to State a Claim for Unjust Enrichment or Money Had and Received Under Texas Law (Count XXVII).

1. Unjust Enrichment Is Not an Independent Claim Cognizable Under Texas Law.

35. The Amended Complaint includes a claim for "unjust enrichment" against Ellington, but, as the Fifth Circuit has held, no such independent cause of action exists under Texas law. *Midwestern Cattle Mktg., LLC v. Legend Bank, N.A.*, 999 F.3d 970, 972 (5th Cir. 2021) ("unjust enrichment describes the nature of certain claims and remedies, not a distinct cause of action itself"). Where, as here, a party alleges unjust enrichment in tandem with a money had and received claim, courts address both claims "as one claim for money had and received," and dismiss the unjust enrichment claim "as repetitive and superfluous." *See Assure Re Intermediaries, Inc. v. W. Surplus Lines Agency, Inc.*, No. 1:20-CV-189-H, 2021 U.S. Dist. LEXIS 110090, at *20 (N.D. Tex. 2021). As such, the unjust enrichment claim must be dismissed.

2. The Amended Complaint Fails to Sufficiently Allege Which Money Ellington Holds that Belongs to HCMLP.

36. Dismissal of a money had and received claim is appropriate when the plaintiff fails "to identify what money [Defendant] actually received individually and why, exactly, that money belongs to [Plaintiff]." *Bates Energy Oil & Gas v. Complete Oilfield Servs.*, 361 F. Supp. 3d 633,

675 (W.D. Tex. 2019). Here, Kirschner seeks to recover "portions" of Ellington's compensation (Am. Compl. ¶ 372), but fails to identify what Kirschner means by "portions." Kirschner does not identify either a specific monetary value or even a date range for what compensation could be at issue, let alone *why* those specific funds belong in good conscience to Kirschner. This failure to describe what "portion" of compensation belongs to Kirschner is fatal to his claim under 12(b)(6).

3. To the Extent the Amended Complaint Seeks to Recover Employee Compensation Governed by Contract, Kirschner's "Money Had and Received" Claim Fails Under Texas Law.

37. In the alternative, to the extent Kirschner is seeking to recover "[p]ortions of Ellington's . . . compensation" governed by the terms of a contract, Kirschner's quasi-contract claim of "money had and received" is barred and should be dismissed.

38. "In Texas, a claim for money had and received is an equitable or quasi-contract theory of relief that is available only when there is no contract between the parties that covers the subject matter of the dispute." *Assure*, 2021 U.S. Dist. LEXIS 110090, at *18 (quotations omitted). "When a valid agreement already addresses the matter, recovery under an equitable theory is generally inconsistent with the express agreement." *Fortune Prod. Co. v. Conoco, Inc*., 52 S.W.3d 671, 684 (Tex. 2000). Here, Kirschner makes the conclusory assertion that there was "no valid express contract governing the subject matter of this dispute," and in turn seeks to recover "portions" of Ellington's compensation. Am. Compl. ¶¶ 375, 372. However, filings in the Bankruptcy Case, including by the Debtor itself, make clear that that this conclusory assertion is unequivocally false, and rather, that employee compensation was governed by contractual agreements.[7] Ellington's compensation under such agreements, inclusive of bonus amounts and base salary, is reflected in Ellington's 2018, 2017, and 2016 *Compensation and Benefit Statements*

[7] *See Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations under Employee Bonus Plans and Granting Related Relief* [Dkt. 177], wherein the Debtor recognized, and sought to honor, its obligations under the annual employee bonus plan and deferred employee bonus plan.

issued by the Debtor. *See* Dkt. 1796-14. Given the contractual basis for Ellington's compensation, Kirschner's money had and received claim cannot lie.

D. Kirschner Fails to State a Claim for Aiding and Abetting or Knowing Participation in a Breach of Fiduciary Duty (Counts XXXIV and XXXV)

39. The Fourth LPA precludes Kirschner's claims for aiding and abetting or knowing participation in a breach of fiduciary duty by Dondero and Strand. To prevail on an aiding and abetting or knowing participation claim, Kirschner must demonstrate the existence of an underlying breach of fiduciary duty. *See Marshall v. Ribosome LP*, 2019 WL 2041062, at *6 (Tex. App.—Houston [1st Dist.] May 9, 2019, no pet.). For the reasons set forth above, Strand (and thereby Dondero) had "full control" over HCMLP by virtue of the express terms of the Fourth LPA. *See* Section 4.1(a) of the LPA ("The General Partner shall conduct, direct, and exercise full control of over all activities of the Partnership . . ."). The Fourth LPA granted Strand, and Dondero as Strand's director, broad authority to undertake every action that allegedly constituted a breach of their fiduciary duties. In view of the language of the Fourth LPA, Kirschner has not plausibly pled that Strand or Dondero acted beyond their powers under the Fourth LPA, nor does Kirschner allege that any of the alleged conduct breached the Fourth LPA.

40. Moreover, the Amended Complaint does not (and cannot) plausibly allege that Ellington *knew* that he was assisting Dondero in breaching Dondero's fiduciary duties when Ellington followed the direction of Dondero. "The pleading standard a plaintiff must achieve is [] a high one; a plaintiff must plead facts making it reasonably conceivable that the alleged aider-and-abettor acted with scienter." *See Morrison v. Berry*, C.A. No. 12808-VCG, 2020 Del. Ch. LEXIS 200 (Del. Ch. June 1, 2020); *see also Cent. Tex. Express Metalwork v. Chavez*, No. 2:20-CV-193, 2021 U.S. Dist. LEXIS 159150, at *22 (S.D. Tex. 2021) (knowing participation requires a defendant to be "aware of his participation in the third party's breach."). Strand (and thereby

Dondero) had sole discretion to control HCMLP under the Fourth LPA, as well as sole discretion to direct Ellington as an attorney on behalf of HCMLP. Without actual knowledge or awareness by Ellington that the conduct he was instructed to perform was an underlying breach, the aiding and abetting or knowing participation claims fail. *See Jacobs v. Meghji*, C.A. No. 2019-1022-MTZ, slip op. at 25 (Del. Ch. Oct. 8, 2020) (dismissing claims against investor in a transaction when specific facts regarding knowing participation in a breach were lacking).

41. The Amended Complaint also fails to allege facts to plausibly support a claim for aiding and abetting a breach of fiduciary duty under Count XXXIV. The Amended Complaint recognizes that Ellington took each of the actions pled in connection with the litigation liabilities as an attorney on behalf of HCMLP at the instruction HCMLP's principal, Dondero. Am. Compl. ¶ 419-427. Ellington cannot be held liable for following his client's lawful instructions, even if such instructions later resulted in liabilities to HCMLP. *See supra* Section II(A); *see also Chavez*, 2021 U.S. Dist. LEXIS 159150, at *22 (dismissing knowing participation claim when the alleged tortfeasors acted as agents of the principal).

E. Kirschner Fails to Satisfy the Reasonable Due Diligence Requirement Necessary to State a Preference Claim (Count XXXI).

42. Kirschner's claim for avoidance and recovery of preferential transfers fails under 11 U.S.C. § 547(b) due to Kirschner's failure to satisfy a condition precedent to his claim, *i.e.*, pleading reasonable due diligence and consideration of known affirmative defenses. Section 547(b) sets forth the prima facie elements of a trustee's preference action:

> (b) Except as provided in subsections (c), (i), and (j) of this section, the trustee may, based on *reasonable due diligence* in the circumstances of the case *and taking into account a party's known or reasonably knowable affirmative defenses* under subsection (c), avoid any transfer of an interest of the debtor in property—…

11 U.S.C. § 547(b) (emphasis added). When "a condition precedent [is] an element of the prima facie case, rather than an affirmative defense, it must be plead." *See Husted v. Taggart (In re ECS*

Ref., Inc.), 625 B.R. 425, 453 (Bankr. E.D. Cal. 2020). In *Husted*, the bankruptcy court dismissed a trustee's preference transfer claim under section 547(b) when the complaint did "not expressly recite the efforts [the trustee] undertook to evaluate the merits of a prima facie case or reasonably knowable affirmative defenses … suggest[ing] a lack of pre-filing due diligence." *Id.* Although the Northern District of Texas has not yet decided whether due diligence is an element of a preferential transfer claim, it has recognized how the addition of the due diligence requirement to section 547(b) is meant "to curb perceived abuses by trustees of their ability to avoid and recover preferential transfers." *See Faulkner v. Lone Star Brokering, LLC* (*In re Reagor-Dykes Motors, LP*), Nos. 18-50214-RLJ-11, 20-05028, 20-05038, 20-05044, 2021 Bankr. LEXIS 1643 (Bankr. N.D. Tex. 2021) (dismissing preferential transfer claim on another basis). Moreover, "[i]f due diligence is an element, merely paraphrasing the element will not satisfy Rule 8." *See Arete Creditors Litig. Tr. v. TriCounty Fam. Med. Care Grp., LLC* (*In re Arete Healthcare LLC)*, Nos. 19-52578-cag, 21-05079-cag, 2022 Bankr. LEXIS 322, at *29-30 (Bankr. W.D. Tex. 2022).

43. In Count XXXI, Kirschner alleges two transfers to Ellington with the conclusory statement that such transfers "constitute[] an avoidable preference pursuant to Section 547(b) of the Bankruptcy Code." Am. Compl. ¶ 406. Kirschner does not even attempt to plead due diligence, let alone consideration of Ellington's affirmative defenses or other pre-filing due diligence. As such, the Amended Complaint falls woefully short of the requirements for a preference claim, and Count XXXI against Ellington should be dismissed.

F. Kirschner Fails to Satisfy the Heightened Pleading Standard Applicable to the Intentional Fraudulent Transfer Claim of Certain Massand Transfers (Count XXIII).

44. Kirschner has failed to plead with particularity, in accordance with Rule 9(b), "the circumstances constituting fraud or mistake" that support his intentional fraudulent transfer claims in Count XXIII.

45. Rule 9(b) requires a complaint to lay out the "who, what, when, where, why, and how the false statements were made and to whom they were made." *See VeroBlue Farms USA, Inc. v. Wulf*, 465 F. Supp. 3d 633, 647 (N.D. Tex. 2020) (applying Rule 9 heightened pleading standard to intentional fraudulent transfer claims). Here, Count XXIII is premised on the underlying alleged fraudulent conduct of Dondero. Am. Compl. ¶ 346 ("Dondero caused HCMLP to make the Massand Transfers with actual intent to hinder, delay, and defraud HCMLP's creditors"). As a result, Kirschner must plead with particularity the factual basis for the alleged fraudulent intent of HCMLP (acting at the direction of Dondero) to state a plausible claim against Ellington, which he clearly has not done. *See Brown v. Douglas (In re Dual D Health Care Operations, Inc.),* Nos. 17-41320-ELM, Adv. No. 20-04059, 2021 Bankr. LEXIS 1934, at *35 (Bankr. N.D. Tex. 2021) (the complaint must "plead with particularity the facts relied upon by the plaintiff to support such badges of fraud and, ultimately, the actual fraud alleged").

46. Instead, the Amended Complaint concludes, with no factual support, that "Dondero caused HCMLP to make the Massand Transfers with actual intent to hinder, delay, and defraud HCMLP's creditors." Am. Compl. ¶¶ 333, 346. Kirschner does not plead with particularity how Dondero "caused" HCMLP to make the Massand Transfers or in what way Dondero intended the alleged harm. Kirschner's actual fraud claims are predicated on HCMLP receiving no consideration in exchange for its payments to Massand Capital, but these allegations are wholly conclusory and certainly not pled with the level of particularity mandated by Rule 9(b).

G. Kirschner Fails to State a Claim Against Ellington for Avoidance and Recovery of the Alleged Expense Transfers (Counts XXXII and XXXIII).

47. The Amended Complaint seeks to avoid and recover "Alleged Expense Transfers" Ellington purportedly received from HCMLP within one year of the Petition Date under theories of constructive (Count XXXII) and intentional (Count XXXIII) fraudulent transfers. The statutory

bases Kirschner uses to pursue these claims are the same as recounted for the Massand Transfers, with the addition of section 548 of the Bankruptcy Code. Section 548(a)(1)(A) allows for the avoidance of intentional fraudulent transfers if the debtor "made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud." Section 548 also allows for the avoidance of constructive fraudulent transfers when the debtor "received less than a reasonably equivalent value in exchange for such transfer or obligation" and was insolvent at the time of the transfer, or satisfied other enumerated conditions at the time of the transfer. These claims should be dismissed as well.

1. Kirschner Fails to Plead That the Alleged Expense Transfers Are Anything Other than Valid Expense Reimbursements (Count XXXII and XXXIII).

48. Kirschner seeks to challenge each and every expense reimbursement made to Ellington within one year of the Petition Date, but only "to the extent" they did not constitute legitimate reimbursement claims. Am. Compl. ¶¶ 402, 409, 414. In so doing, Kirschner fails to plead affirmatively that HCMLP did *not* receive reasonably equivalent value in exchange, and Kirschner improperly attempts to shift the burden to Ellington to prove the legitimacy of the payments. Without some alleged factual basis, the Court is not required to accept unsupported allegations that 100% of an employee's expense reimbursements are fraudulent. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (a pleading does not set forth a legally "plausible claim" unless its non-conclusory allegations of wrongdoing are "more likely" than a lawful, alternative explanation). Kirschner has the burden of alleging facts showing the transfers are other than for reimbursement of valid expenses. Mere threadbare recitals such as these are insufficient to survive a motion to dismiss and certainly do not meet the pleading standard under either Rule 8 or 9(b).

49. Likewise, Kirschner's intentional fraudulent transfer claim is premised on the speculation that no underlying expenses related to the Alleged Expense Transfers exist. Kirschner

states that, "although Dondero and Ellington assert that the Alleged Expense Transfers constitute reimbursement for valid expenses, on information and belief, there is no factual basis for that assertion." Am. Compl. ¶ 416(b). Kirschner has access to ***all*** HCMLP's books and records, yet the Amended Complaint fails to state any underlying facts for how the expenses were not valid and reimbursable, and the Amended Complaint does not plead with particularity how or in what way Ellington intended to defraud HCMLP in relation to the Alleged Expense Transfers. *See VeroBlue Farms USA, Inc. v. Wulf*, 465 F. Supp. 3d 633, 647 (N.D. Tex. 2020) (applying Rule 9(b) to intentional fraudulent transfer claim and noting it requires the complaint to lay out the "who, what, when, where, why, and how the false statements were made and to whom they were made."). Kirschner also does not plead with particularity how Ellington "caused" HCMLP to make the Alleged Expense Transfers. Because Kirschner fails to satisfy his pleading requirement under Rules 8 and 9(b), and 11 U.S.C. § 548, the intentional fraudulent transfer claim must be dismissed.

2. The Constructive Fraudulent Transfer Claim (Count XXXII) Fails to Allege Lack of Reasonably Equivalent Value of the Alleged Expense Transfers.

50. With respect to section 548(a)(1)(B)(i) of the Bankruptcy Code, a trustee may only avoid a transfer if the debtor "received less than a reasonably equivalent value in exchange for such transfer or obligation." Section 24.005(s) of the Texas Uniform Fraudulent Transfer Act (Tex. Bus. & Com. Code § 24, "TUFTA") also requires a lack of "reasonably equivalent value in exchange for the transfer" as an element of a constructive fraudulent transfer claim. "A complaint that only states that the debtor received less than reasonably equivalent value does not meet the pleading standard of Rule 8." *Faulkner v. Lone Star Brokering, LLC (In re Reagor-Dykes Motors, LP)*, 2021 Bankr. LEXIS 1643, at *11-12 (Bankr. N.D. Tex. 2021). To sufficiently plead a "constructive fraudulent transfer under § 548, the complaint *must* plausibly allege that the debtor received less than reasonably equivalent value." *Id.* at *10 (emphasis added).

51. Here, Kirschner fails to plausibly allege that HCMLP received less than reasonably equivalent value for the Alleged Expense Transfers to Ellington, which is fatal to his constructive fraudulent transfer claim (Count XXXII). The Amended Complaint in this case, like the one in *Reagor-Dykes*, lists the amount of expenses submitted by Ellington "without any information related to any invoices" and with conclusory statements regarding reasonably equivalent value.[8] These conclusory statements are insufficient to support Kirschner's requisite burden to show lack of reasonably equivalent value, and as such, the constructive fraudulent transfer claims must be dismissed. *See also Crescent Res. Litig. Tr. v. Nexen Pruet, LLC* (*In re Crescent Res., LLC*), No. 09-11507-CAG, Adv. No. 11-01082- CAG, 2012 Bankr. LEXIS 287, at *24-25 (Bankr. W.D. Tex. 2012) (ordering dismissal of section 548 fraudulent transfers when, "other than dates, amounts, and names of transferees . . . along with general conclusory allegations of insolvency and reasonably equivalent value, the Trust fails to support its allegations with factual assertions").

CONCLUSION AND REQUESTED RELIEF

52. The Court should dismiss without prejudice all claims against Ellington because Kirschner lacks standing, and the claims have been brought in a court that lacks subject matter jurisdiction to adjudicate them. Alternatively, the Court should dismiss with prejudice ten of the claims against Ellington because the Amended Complaint fails to state claims for which relief can be granted against Ellington.

[8] *See* Am. Compl. at ¶¶ 402, 411, 416(f) ("HCMLP received less than reasonably equivalent value in exchange for each of the Alleged Expense Transfers. Indeed, HCMLP received no value for the Alleged Expense Transfers, each of which was a gratuitous transfer from HCMLP to or for the benefit of Dondero and Ellington," and "HCMLP received less than reasonably equivalent value (and in fact, received zero consideration) in exchange for the Alleged Expense Transfers.").

Dated: July 11, 2022

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CERTIFICATE OF SERVICE

I certify that on July 11, 2022, a true and correct copy of the above and foregoing document was served via electronic email through the Court's CM/ECF system to the parties that have requested or consented to such service.

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

In re:	§	**Case No. 19-34054-sgj11**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Chapter 11**
	§	
Debtor	§	

MARC S. KIRSCHNER, AS TRUSTEE OF THE LITIGATION SUB-TRUST	§	**Adversary No. 21-03076-sgj**
Plaintiff,	§	
	§	
vs.	§	
	§	
JAMES D. DONDERO; MARK A. OKADA; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT	§	

EXHIBIT

II

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.**	§ §

BRIEF IN SUPPORT OF MOTION TO DISMISS AND MOTION FOR MORE DEFINITE STATEMENT

****RELIEF SOUGHT FROM DISTRICT COURT****

CLO HoldCo, Ltd. ("CLO HoldCo"), Charitable DAF HoldCo, Ltd. ("DAF HoldCo"), Charitable DAF Fund, L.P. ("DAF Fund"), and Highland Dallas Foundation ("HDF," together

with CLO HoldCo, DAF HoldCo, DAF Fund, and HDF, the "Charitable Defendants")[1] file this *Brief in Support* ("Brief in Support") of their *Motion to Dismiss and Motion for More Definite Statement* (the "Motion"),[2] and respectfully show as follows:

[1] The Charitable Defendants have filed a *Motion to Withdraw the Reference* [Dkt. No. 59], which moves for immediate withdrawal of the reference to the District Court. This Motion to Dismiss is filed without any waiver of the Charitable Defendants' right to adjudication of this matters by the District Court and any and all rights to a jury trial on all claims.

[2] Any and all capitalized terms that are not defined herein shall have the same meaning as ascribed to them in the Motion.

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As set forth in the Motion, for the reasons stated herein, the Charitable Defendants move for dismissal of the Aiding Bad Conduct Action, Civil Conspiracy Action, and Unjust Enrichment Action, and for a more definite statement of the Get Good Avoidance Actions.

I. THE TRUSTEE DOES NOT HAVE STANDING TO ASSERT COUNTS XV, XVI, OR XXX AND THEREFORE THESE COUNTS MUST BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION.

The requirement that a litigant have standing to invoke the power of a federal court is one of the most significant case-or-controversy doctrines. *Crane v. Napolitano*, 920 F.Supp.2d, 724, 732 (N.D. Tex. 2013). The issue of standing directly implicates the court's subject matter jurisdiction and as such, the court should apply the standards for a motion to dismiss and may dismiss pursuant to Rule 12(b)(1) and 12(b)(6). *Id.* To prove standing, the plaintiff must establish injury-in-fact, causation, and redressability. *Crane*, 920 F.Supp.2d at 732; *Croft v. Governor of Tex.*, 562 F.3d 735, 745 (5th Cir. 2009) (internal citations omitted). The Trustee lacks standing to assert Counts XV, XVI, and XXX.

A. The Plan did not retain the Aiding and Abetting Bad Conduct Action and Civil Conspiracy Action.

1. While the Bankruptcy Code permits a plan to "provide for the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any" claim belonging to the estate. *See* 11 U.S.C. § 1123(b)(3)(B), the Fifth Circuit has held that a representative of the estate may only continue to enforce a claim previously held by the estate after confirmation if the claim was retained by the plan, through retention language is "specific and unequivocal.". *In re United Operating*, 540 F.3d 351, 355 (5th Cir. 2008). Absent such language, the court must dismiss that claim for lack of subject matter jurisdiction under Rule 12(b)(1) and 12(b)(6). *See United Operating*, 540 F.3d at 356 (affirming dismissal pursuant to

Rule 12(b)(6)); *Rossco*, 613 Fed. App'x 302, 308 (5th Cir. 2015) (affirming dismissal pursuant to Rule 12(b)(1)).[3]

2. Whether courts cite to Rule 12(b)(1) or Rule 12(b)(6), the applicable standard is clear: "in order for a debtor (or successor to the debtor) to have standing to bring an action post-confirmation, the plan of reorganization must contain specific and unequivocal language retaining that cause of action." *In re Crescent Res., LLC*, 463 B.R. 423, 426 (Bankr. W.D. Tex. 2011).

3. Here, the Schedule of the Retained Causes of Action fails the "specific and unequivocal" language requirement of the Fifth Circuit. Notwithstanding the boilerplate listing of claims and causes of action retained (which itself is insufficient), there is no mention of civil conspiracy, and no specific mention of aiding and abetting breach of fiduciary duty under Delaware law or knowing participation in breach of fiduciary duty under Texas law. The Fifth Circuit has specifically found that blanket descriptions used by the Trustee, like "claims brought under state law, claims brought under federal law, claims under any common-law theory of tort or law or equity, and any claims similar in nature to the foregoing claims," ***are not a specific and unequivocal*** reservation. *Crescent Res.,* 463 B.R. at 430 (citing to *United Operating*, 540 F.3d at 354). Here there is not even the proscribed vague, general reservation, and therefore the Trustee lacks standing to bring either, and therefore this Court is without subject matter jurisdiction to adjudicate the supposed claims raised in Counts XV and XVI.

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[3] As the Fifth Circuit has explained while a dismissal for lack of constitutional standing should be granted under Rule 12(b)(1), a dismissal for lack of prudential or statutory standing is properly granted under Rule 12(b)(6). *See Blanchard 1986, Ltd. v. Park Plantation, LLC*, 553 F.3d 405, 409 (5th Cir.2008); *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 795 (5th Cir. 2011)

B. Further, the Trustee lacks standing under applicable state law regarding the Civil Conspiracy Action.

4. Even had the Civil Conspiracy Action been retained, state law precludes the Trustee. To establish a civil conspiracy claim, the plaintiff must establish: "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result." *Massey v. Armco Steel Co.*, 652 S.W.2d 932, 934 (Tex. 1983). However, conspiracy is a derivative tort, and a defendant's liability for conspiracy "depends on participation in some underlying tort." *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996). There is no underlying tort upon which to hang this claim. In fact, the Civil Conspiracy Action does not relate to any alleged "breach of fiduciary duty", rather it is derivative of the Get Good Avoidance Actions. But for the fraudulent transfer claims the Trustee has no alleged damages. While Trustee purposefully tried to tie the Civil Conspiracy Action to his breach of fiduciary duty claim to sidestep any standing argument, he failed.

5. The Fifth Circuit has specifically found that under Texas law, a bankruptcy trustee does not have a cause of action for civil conspiracy related to a fraudulent transfer. *Mack v. Newton*, 737 F.2d 1343, 1356 (5th Cir. 1984). In *Mack*, the trustee brought an action against debtor's principals and lender seeking recovery on basis of civil conspiracy, conversion, fraudulent conveyances, and usury. The Fifth Circuit reiterated the Texas Supreme Court's prior holding that "a general creditor does not have a cause of action for civil conspiracy when a debtor's property is conveyed to others to evade payment." Further, "[t]he essence of a cause of action for conspiracy is damage resulting from the commission of a wrong which injures another, and not the conspiracy itself. The damage suffered by a general creditor when property is fraudulently conveyed to another to evade payment is the deprivation of an opportunity to make a levy on the

property. This damage, however, is too remote to support recovery." *Id.*; *Stonecipher v. Estate of Butts*, 591 S.W.2d 806, 808 (Tex. 1980).

6. The Fifth Circuit concluded that "since the Trustee is a representative of [debtor's] general creditors in this action, it has suffered no damage for which it may recover under a cause of action for civil conspiracy as such." *Mack*, 737 F.2d at 1356.[4] *Clapper v. American Realty Investor*s further confirms the Trustee's lack of standing. No. 3:14-CV-2970-D, 2015 WL 3504856, at *4–5 (N.D. Tex. June 3, 2015). There, discovering that the defendants had transferred all of its stock for no value, the creditors filed suit for TUFTA fraudulent conveyance, unjust enrichment, and civil conspiracy, amongst others. The defendants moved to dismiss the civil conspiracy claim arguing that under Texas law, general creditors, such as the plaintiffs, may sue for fraudulent transfers but cannot recover damages for conspiracy to commit a fraudulent conveyance. *Id*. at *4. The court agreed and explained that "a mere general creditor without a lien has no interest in the debtor's property, and hence is not legally injured by any conspiracy with the debtor to aid him in disposing of his property in order to evade the payment of his financial obligations, and cannot maintain an action based upon such conspiracy." *Id*. Here, the Trustee is utilizing his Section 544(b) avoidance powers on behalf of the unsecured creditors, attempting to avoid the Get Good Transfer, pursuant to TUFTA.

7. Where, as here, "because a mere general creditor without a lien has no interest in the Debtor's property, and hence is not legally injured by any conspiracy with the Debtor to aid

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[4] *See also Ingalls v. Beutel*, No. A-05-CA-461-SS, 2007 WL 9718103, at *4 (W.D. Tex. Nov. 28, 2007) (holding that the *Mack* opinion was not superseded by 11 U.S.C. § 544(a)(1), and that the trustee did not have standing to bring a cause of action for civil conspiracy). Clearly under Section 544(b) the Trustee's rights are derivative of the rights of particular unsecured creditors. Under 11 U.S.C. § 544(b), "the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim . . . ." 11 U.S.C. § 544(b).

him in disposing of his property in order to evade the payment of his financial obligations," the Trustee lacks standing to maintain its conspiracy claim. *ClaimHub, Inc. v. Universal Risk Ins. Servs., Inc.*, No. H-10-2841, 2011 WL 13247456, at *7 (S.D. Tex. July 25, 2011). Therefore, the Trustee lacks standing on this additional ground regarding the Civil Conspiracy Action, necessitating dismissal pursuant to Rule 12(b)(1) or 12(b)(6).

II. THERE IS NO SUBJECT MATTER JURISDICTION OVER THE UNJUST ENRICHMENT ACTION, BECAUSE THE COMPLAINT WAS FILED AFTER THE EFFECTIVE DATE OF THE CONFIRMED PLAN, AND NO OTHER GROUND OF JURISDICTION IS PLEAD EXCEPT FOR 28 U.S.C §1334.

8. A federal court must dismiss a case for lack of subject matter jurisdiction under Rule 12(b)(1) when the court lacks the statutory or constitutional power to adjudicate the case. *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). The Fifth Circuit recognizes a distinction between a "facial" and a "factual" attack upon a complaint under Rule 12(b)(1).[5] When a defendant submits a factual attack, he must provide support with affidavits, testimony, or other evidentiary materials, and is required to submit facts through some evidentiary method and has the burden of proving by a preponderance of evidence that the court does have subject matter jurisdiction. *Paterson*, 644 F.2d at 523. Here, the Charitable Defendants' factual attack and supporting evidence reflect that there is no subject matter jurisdiction over the Unjust Enrichment Action.

9. The Trustee pleads the sole basis for jurisdiction over the matter is 28 U.S.C. §§ 157 and 1334, asserting that the proceeding is one arising under or relating to the bankruptcy

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[5] *Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981); *see also In re OGA Charters, LLC*, 2017 WL 3141918, at *16 (Bankr. S.D. Tex. 2017); *Daniels v. Church of the Living Word #4 PGT Assoc.*, 2001 WL 1445407, at *1 (N.D. Tex. Nov. 14, 2001). The Charitable Defendants acknowledge that they bring a factual attack.

petition filed by HCMLP. *See* Amended Complaint, ¶33. 28 U.S.C. § 1334 provides for original and exclusive jurisdiction of all cases under Title 11 and all proceedings arising under, arising in, or related to a bankruptcy case, i.e. bankruptcy jurisdiction. Here, the Adversary Proceeding was commenced post-confirmation and post-plan effective date. The Unjust Enrichment Action could only have been a proceeding "related to" the bankruptcy case.

10. In *Bank of La. v. Craig's Stores of Tex., Inc. (In re Craig's Stores of Tex., Inc.)*, the Fifth Circuit announced that it would apply an "exacting theory of post-confirmation bankruptcy jurisdiction." 266 F.3d 388, 391 (5th Cir. 2001). In *Craig's Stores*, the Fifth Circuit expressly rejected the "related to" test for determining whether the bankruptcy court had jurisdiction over the post-confirmation action. Instead, the Fifth Circuit imposed its "more exacting theory of post-confirmation bankruptcy jurisdiction," explaining that "[a]fter a debtor's reorganization plan has been confirmed, the debtor's estate, and thus bankruptcy jurisdiction, ceases to exist, other than for matters pertaining to the implementation or execution of the plan." *Id*. at 390.

11. Declining to find that the bankruptcy court had post-confirmation jurisdiction, the Fifth Circuit reasoned that (i) the debtor's claim principally dealt with post-confirmation relations between the parties, (ii) no "antagonism" or claim was pending between the parties at the time of confirmation, ***and*** (iii) no facts or law deriving from the reorganization or the plan were necessary to the claim asserted by the debtor against the defendant. *Craig's Stores*, 266 F.3d at 391 (emphasis supplied). The Fifth Circuit dismissed the debtor's argument that the bankruptcy court had post-confirmation jurisdiction because the status of the debtor's contract would affect distributions to creditors under the plan, noting that "the same could be said of any other post-confirmation contractual relations in which [the debtor] is engaged." Nor was the court persuaded by the "[t]he

fact that [the relevant contract] existed throughout the reorganization and was, by implication, assumed as part of the plan," noting that this "is of no special significance." *Id*.

12. Bankruptcy jurisdiction must be evaluated over each claim independently.[6] *In re Pompa*, No. 06-31759, 2012 WL 2571156, at *3 (Bankr. S.D. Tex. June 29, 2012) (citing *WRT Creditors Liquidation Trust v. C.I.B. C. Oppenheimer Corp*., 75 F.Supp.2d 596, 608 (S.D. Tex. 1999)). Therefore, to determine if post-confirmation bankruptcy jurisdiction exists, a court must consider as to each claim the distinguishing factors of whether:

> (1) the claims primarily arise from pre-confirmation or post-confirmation relations between the parties; (2) any claims or antagonisms were pending between the parties on the date of plan confirmation; ***and*** (3) any facts or law deriving from the bankruptcy are necessary to the claims.

In re Dune Energy, Inc., 575 B.R. 716, 725 (Bankr. W.D. Tex. 2017) (emphasis supplied).

13. In other words, a three-part test. The Unjust Enrichment Action admittedly relates to pre-confirmation relations, so part 1 favors jurisdiction. However, prior to the complaint, there was no mention of any claim against CLO HoldCo in any way related to the HCLOF Investment or the HarbourVest Claim which the Unjust Enrichment Action is. Further, while the Plan provides the authorization for the Litigation Sub-Trust to pursue Estate Claims (as defined in the Plan), litigation of Estate Claims requires no reference to facts or law deriving from the bankruptcy that are necessary to the Estate Claims, which could be litigated in any other court having jurisdiction

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[6] Whether the jurisdictional statute speaks in terms of jurisdiction over a "civil action" (as does, e.g., the general federal question statute and the diversity statute) or a "proceeding" (as does the bankruptcy jurisdiction statute), "[o]riginal jurisdiction attaches on a claim-by-claim or 'claim-specific' basis." Indeed, "the original jurisdiction of the district courts is claim-specific in a pervasive and fundamental sense that pertains to the entire statutory and constitutional structure of federal subject matter jurisdiction."

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on the same basis as in federal court So, parts 2 and 3 are the linchpin components of the analysis (the test is conjunctive). We focus on the "pending antagonism" prong first.

14. The exact definition of an antagonism has not been settled in the Fifth Circuit. *Brickley for CryptoMetrics, Inc. Creditors' Tr. v. ScanTech Identification Beams Sys., LLC,* 566 B.R. 815, 831 (W.D. Tex. 2017). Some bankruptcy courts have determined that the "pending antagonism" is met where there is a specific preservation of claims in the plan and assignment of those claims to a creditor's trust for prosecution, with net recoveries to be distributed to creditors pursuant to the plan. *Id.* at 831.

15. In response to various motions to withdraw the reference, the Trustee argues that those cases should apply here, but much unlike those cases, here, there was so no such preservation. The Schedule of Retained Causes of Action lists certain persons and entities in the body, but not CLO HoldCo; however, the Schedule of Retained Causes of Action adds any entities listed on Annex 1 which includes several ***hundreds*** of entities and any entity "related to" those entities. Such an overly broad reservation of any and all generically described claims (with no factual underpinning or even assertion that any such claims exist) against hundreds of parties, none of whom are connected to any particular claim of cause of action by any suggestion within the description of claims and causes of action reserved, cannot be sufficient "antagonism or claim" to confer bankruptcy jurisdiction post-confirmation, much less post-effective date, as such a mechanism would render the required more exacting test for post-confirmation jurisdiction meaningless. If such a mechanism would accomplish an expansion of jurisdiction, then we are not really talking about jurisdiction, except that which can be conferred by sharp lawyering.

16. Worse, here, months after confirmation of the Plan, the Trustee took the position that: all previous investigation of estate causes of action was limited to facts and circumstances

connected with "specific transactions" that were already made the subject of an adversary complaint, and that it would be "simply inaccurate" to state that the "Committee had already conducted an expansive investigation of estate causes of action." *See* Appendix, p. 00453-00454. So in August 2021, months post-confirmation and even post-effective date, the Trustee took the position that there had not yet even been an ***investigation*** of estate causes of action except for certain claims already raised within a filed complaint. Without investigation, the Trustee cannot in good faith argue there was a pending antagonism.

17. So while the Fifth Circuit has not set forth an exact definition of "pending antagonism", to find that prong met here—where there had not even been an investigation into potential causes of action—would render the requirement of a pending antagonism meaningless, which has been the Trustee's position. According to the Trustee, if a cause of action accrued pre-confirmation, the antagonism factor is met. *See* Dkt. No. 155, p. 15-16. The Bankruptcy Court adopted this same rationale when it determined that bankruptcy subject matter jurisdiction exists in its *Report and Recommendation* related to the motions to withdraw the reference. Dkt. No. 151. According to the Bankruptcy Court, the "exception to jurisdiction at issue in *Craig's Store's*" does not arise where a trustee of a litigation trust created under a confirmed plan of reorganization for the benefit of creditors pursues post-confirmation causes of action, predicated on pre-confirmation conduct, for the creditors' benefit. *Id*. at 15. In other words, there is no "pending antagonism" requirement, only an accrual pre-confirmation requirement.

18. But this short-cut *per se* rule collapses two of these critical factors into one (recall part 1 - whether or not the claim accrued pre-confirmation, a distinct factor from part 2 - that there be a "pending antagonism"), and replaces the analytical framework required by the Fifth Circuit, which sets forth three distinct "critical" factors, with one of the Bankruptcy Court's making.

19. This *per se* rule is particularly imprudent as applied here where, there was not only no "pending antagonism," but as well, no pre-confirmation articulation of specific causes of action or even investigation of causes of action.

20. Because there was no pending antagonism present as of confirmation related to the Unjust Enrichment Claim, and no facts or law deriving from the bankruptcy that are necessary to the Unjust Enrichment Claim, there is no post-confirmation bankruptcy jurisdiction, and this Court lacks subject matter jurisdiction over the Unjust Enrichment Claim on this additional ground. Dismissal of the Unjust Enrichment Claim is required under Rule 12(b)(1).

III. THE UNJUST ENRICHMENT CLAIM MUST BE DISMISSED, WITH PREJUDICE, FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.[7]

A. State law precludes this claim.

21. In deciding a motion to dismiss under Rule 12(b)(6), a court generally accepts as true all factual allegations contained within the complaint. *Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Uni*t, 507 U.S. 163, 164 (1993). However, a court is not bound to accept legal conclusions couched as factual allegations. *Papasan v. Allain*, 478 U.S. 265, 286 (1986). The Amended Complaint must include "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). FED. R. CIV. P. 8(a)(2) ("Rule 8") "requires a showing, rather than a blanket assertion, of entitlement to relief." *Id.* at 555 n.3. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, [the complaint] 'stops short of the line between possibility and plausibility of 'entitlement

[7] This Article III is applicable in the event the Court does not dismiss on the basis of lack of subject matter jurisdiction as plead and argued above.

to relief.'" *Ashcroft*, 556 U.S. at 678. After all, "where the well-pleaded facts do not permit the court to infer more than the mere ***possibility*** of misconduct, the complaint has alleged—but it has not shown—the pleader is entitled to relief." *Id.* at 679 (emphasis added, internal quotations omitted).

22. The Supreme Court's interpretation of Rule 8, incorporated here pursuant to FED. R. BANKR. P. 7008(a), requires pleadings that demonstrate "facially plausible claims," a standard satisfied when "the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Courts should not strain to find inferences favorable to the plaintiff or accept "conclusory allegations, unwarranted deductions, or legal conclusions." *R2 Invs. LDC v. Phillips*, 401 F.3d 638, 642 (5th Cir. 2005) (citations omitted). Rather, after removing the conclusory allegations, a complaint must contain sufficient well pleaded factual allegations to "nudge[] [plaintiff's] claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570.

23. As set forth in the Motion, the Trustee amended the Unjust Enrichment Action related to the HCLOF Investment to plead that the claim was one for unjust enrichment "or money had and received." This amendment was necessitated because Texas law does not recognize unjust enrichment as a claim, but rather, unjust enrichment is a theory of recovery that a plaintiff can pursue through several equitable causes of action, including money had and received. *Hancock v. Chicago Title Ins. Co.*, 635 F. Supp. 2d 539, 560–61 (N.D. Tex. 2009) (citing *Redwood Resort Props., LLC v. Holmes Co.*, 2006 WL 3531422, at *9 (N.D. Tex. Nov. 27, 2006). Here, the Trustee has solely plead money had and received as an equitable doctrine to prevent unjust enrichment and therefore, the only theory of recovery plead by the Trustee in Count XXX, as amended, remains unjust enrichment. *Bank of Saipan v. CNG Fin. Corp.*, 380 F.3d 836, 840 (5th Cir. 2004) ("Money

had and received is an equitable doctrine applied to prevent unjust enrichment." (quoting *Miller–Rogaska, Inc. v. Bank One, Tex., N.A.*, 931 S.W.2d 655, 662 (Tex. App. 1996, no pet.))).

24. Normally under an unjust enrichment theory of recovery, "a plaintiff can only recover [for unjust enrichment] when 'one person has obtained a benefit from another by fraud, duress, or the taking of an undue advantage.'"[8] Some courts also recognize that unjust enrichment can occur when a person has wrongfully secured a benefit or has passively received one which it would be unconscionable to retain."[9]

25. The Fifth Circuit in *Okedokun* considered the meaning of "unconscionable benefit" in the context of unjust enrichment. There, the debtor had defaulted on a loan from his private lender and the lender retained an attorney, Prins, to post the property for sale. 968 F.3d at 385. The morning of the foreclosure sale the debtor filed for bankruptcy but the foreclosure sale nonetheless proceeded with an investor, Elbar wiring $2.4 million to Prins with knowledge that automatic stay was in place. *Id*. Prins then stole the $2.4 million and paid off other clients from whom he had stolen. *Id*. Elbar sued the other clients in the debtor's bankruptcy case under a theory of unjust enrichment, amongst others. *Id*. at 390.

26. In rejecting the unjust enrichment theory, the Fifth Circuit ***rejected*** the argument that it would be unconscionable for the other clients to retain what they were paid. The Fifth Circuit explained:

> The bankruptcy court noted that "it is difficult to understand how a party receives a windfall which would be unconscionable to retain when that party genuinely

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[8] *Matter of Okedokun*, 968 F.3d 378, 391 (5th Cir. 2020) (citing *Heldenfels Bros. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992)); *Zakaria v. STL Int'l, Inc.*, No. 4:20-CV-01722, 2020 WL 4368096, at *4 (S.D. Tex. July 30, 2020) (quoting *Sullivan v. Leor Energy, LLC*, 600 F.3d 542, 550 (5th Cir. 2010)).

[9] *Gilliam v. JPMorgan Chase Bank, N.A.*, No. CV H-18-2698, 2019 WL 2648017, at *7 (S.D. Tex. June 27, 2019) (citing *Eun Bok Lee v. Ho Chang Lee*, 411 S.W.3d 95, 111 (Tex. App.—Houston [1st Dist.] 2013, no pet.)).

> believed it was receiving back its own funds." We agree. Elbar does not indicate how any action on the part of [the other clients] amounts to fraud, duress, or the taking of an undue advantage. Elbar argues that it would be unconscionable for [the other clients] to retain the benefits of Prins's actions. But the bankruptcy court correctly pointed out the uncomfortable truth: "Elbar is the ultimate source of its own misfortune." Elbar broke the law when it violated the automatic stay by wiring Prins $2.4 million; to make [the other clients] hold the bag for that decision would be the unjust result. The bankruptcy court did not err in denying Elbar's claim.

Id.

27. Similarly here, according to the Amended Complaint, it was the bad acts of ***HCMLP*** that caused damage to HarbourVest. CLO HoldCo, an advisee of HCMLP, simply sold a portion of its interest in an entity, HCLOF, to HarbourVest while being advised with respect to investment decisions by HCMLP. The Amended Complaint represents the *Okedoku* situation in only slightly different and worse clothing. Here, HCMLP is accused by a third party of bad/illegal conduct, that if true (abuse of HCLOF both prior to and after the acquisition by HarbourVest), created claims on behalf of HarbourVest against HCMLP.

28. It was HarbourVest, a third party, that invested in HCLOF by purchasing a 49% share from CLO HoldCo, on the advice of HCMLP (and CLO HoldCo that sold pursuant to the HCMLP advice). The Amended Complaint makes no allegation that HCMLP was damaged at all by the purchase by HarbourVest from CLO HoldCo; nor any assertion that any assets of HCMLP were somehow ferreted out to CLO HoldCo; nor any assertion that CLO HoldCo, in taking the advice of HCMLP, did anything wrong.

29. So, in fact, this situation is far less of a claim than that asserted in *Okedoku*, as at least there, the plaintiff alleged that the third party transferees received ill-gotten funds from plaintiff through the payment by Prins. There is no Prins here, no funds of HCMLP that somehow wound up in the hands of CLO HoldCo. The Trustee's Unjust Enrichment Action is more analogous to a different version of *Okedoku*, one in which Prins himself would have sued the

clients he paid after stealing from Elbar, on the basis that the payment to the clients he first stole from damaged him because he had to steal from Elbar to get the money to pay them with. The asserted ground for the Unjust Enrichment Action is that the HCMLP misconduct toward HarbourVest (which also would have damaged CLO HoldCo just as much), caused the HarbourVest Claims, and without recognition of the backwardness of its assertions, now CLO HoldCo owes HCMLP the money it received from HarbourVest to assuage HCMLP for its own misconduct. Like in *Okedokun*, the ultimate source of HCMLP's "misfortune" is HCMLP (and, allegedly, Dondero/Ellington). To make CLO Holdco pay HCMLP to full amount received, so that CLO HoldCo should receive nothing for its interest in HCLOF sold to HarbourVest, when the sale was advised by HCMLP, and the misconduct of HCMLP is the cause of its troubles, would surely be the kind of "money had a received claim" that would give CLO HoldCo an unjust enrichment right against HCMLP, the bad actor; not the reverse.

30. And still worse here, despite the fact that the HarbourVest claim included fraudulent inducement component, the allegations did not implicate CLO HoldCo, but rather the abuse by HCMLP of HCLOF (using the entity as a litigation pawn which devalued it =and not disclosing this activity to HarbourVest, which if true would also have damaged CLO HoldCo's interest in HCLOF). As well, HCMLP, under the direction of Seery, did ***not*** settle the HarbourVest Claims because of the purported fraud in the inducement claims, which under any applicable law, requires that the plaintiff reasonably rely upon the purported misrepresentation.[10]

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[10] *Bohnsack v. Varco, L.P.*, 668 F.3d 262, 277 (5th Cir. 2012)(under Texas law, fraud in the inducement requires reliance by the plaintiff*); Container Store, Inc. v. Fortna Inc.*, No. 3:20-CV-2893-B, 2021 WL 1250334, at *5 (N.D. Tex. Apr. 5, 2021) (Texas fraudulent inducement and common-law fraud share the same basic elements).

31. Because the Trustee has asserted a cause of action expressly arising from the Settlement Agreement, the Settlement Agreement is a document referred to in the Amended Complaint and central to the Trustee's claim, and thus, properly considered in a Rule 12(b)(6) motion. *Causey v. Sewell Cadillac–Chevrolet, Inc*., 394 F.3d 285, 288 (5th Cir. 2004). The Settlement Agreement was subject to approval of the Bankruptcy Court under FED. R. BANKR. P. 9019, in connection with which a bankruptcy court relies upon "the opinions of the debtor, the parties to the settlement, and professionals in evaluating..." *Embraer S.A. v. Dougherty Air Tr., LLC*, 348 F. Supp. 3d 246, 258 (S.D.N.Y. 2018). Therefore, the testimony by HCMLP to the Bankruptcy Court regarding the Settlement Agreement is an integral part of the Settlement Agreement itself and also properly considered in a Rule 12(b)(6) motion.

32. HCMLP testified to the Bankruptcy Court that HarbourVest, a highly sophisticated and experienced investor which managed over one hundred billion dollars, retained two of the most well-known law firms in the world to conduct due diligence into the HCLOF Investment. *See* Appendix, p. 00561. While HCMLP reached the Settlement Agreement with HarbourVest, as explained by Mr. Seery, the driver behind the Settlement ***was not the fraud in the inducement claim*** which was subject to strong defenses, but rather the Improper Legal Fees. *See* Appendix, pp. 00508, 00509.[11] And in explaining the reasonableness of the settlement, Mr. Seery testified that "the actual value going out … well could be, is less than on a pro forma basis the fees that were taken and charged to HCLOF." *Id*. at p. 00505.

[11] As Mr. Seery explained to the Bankruptcy Court: "with respect to the claim around the fees, I believed there was significant risk. With respect to the other claims, I thought our defenses would make them worthless." Appendix, p. 00508.

33. Therefore, the only tether plead by the Trustee between CLO HoldCo and the HarbourVest Claims—the inducement by HCMLP to purchase the HCLOF Investment from CLO HoldCo—was expressly ***not*** the basis for the HarbourVest Settlement. Rather, it was the Improper Legal Fees which, if HCMLP did cause HCLOF to pay the Improper Legal Fees, CLO HoldCo itself was damaged just as much as HarbourVest was, because it owned close to the same share in HCLOF.

34. CLO HoldCo received the price for what it sold while being advised by HCMLP. HCMLP allegedly charged the Improper Legal Fees harming all investors in HCLOF—CLO HoldCo and HarbourVest alike, and HCMLP settled with HarbourVest expressly based upon these Improper Legal Fees. And now the Trustee, standing in the shoes HCMLP, is asserting that CLO HoldCo as its advisee is liable to HCMLP, the advisor, because the advisor hurt a third party in the same way it harmed CLO HoldCo.[12] Objectively shameless.

35. Taking the facts plead in the Amended Complaint as true, the Trustee has not plead a theory of recovery of unjust enrichment against CLO HoldCo.

B. The Unjust Enrichment Action is barred by affirmative defenses.

36. When an affirmative defense appears on the face of the pleadings, a complaint can be dismissed pursuant to Rule 12 (b)(6).[13]

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[12] The nonsensical nature of the Unjust Enrichment Claim is amplified when considering the requested damages. The Trustee asserts that CLO Holdco should have to disgorge "all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by it as a result of its unjust receipt and use of the proceeds of the HarbourVest investment." *See* Amended Complaint, ¶399. So according to the Trustee, CLO HoldCo should have to pay the estate more than $75 million when according to HCMLP, the net economic impact of the HarbourVest Claims was between $12 and $14 million. *See* Appendix, p.00 459. Therefore, again according to the Trustee, HCMLP's estate is entitled to receive $60 million more than its purported harm, which of course was based solely upon HCMLP's own misconduct. Such a windfall predicated upon the debtor's own misconduct is unconscionable.

[13] *Kansa Reins. Co. v. Cong. Mortg. Corp. of Tex.*, 20 F.3d 1362, 1366 (5th Cir.1994) (citation omitted); *see also Fisher v. Halliburton*, 667 F.3d 602, 608–09 (5th Cir.2012); *Miller v. BAC Home Loans Servicing, L.P.*, 726 F.3d 717, 726 (5th Cir. 2013).

i. The doctrine of unclean hands bars the Unjust Enrichment Action

37. The "unclean" hands doctrine is an affirmative defense to equitable relief. *Bank of Saipan v. CNG Fin. Corp.*, 380 F.3d 836, 840 (5th Cir. 2004). The doctrine of unclean hands requires that the party seeking equitable relief must come into court with clean hands. *Bank of Saipan*, 380 F.3d at 840. Once the defense is raised, "a plaintiff seeking equitable relief... must show that [it] has not contributed to the harm at issue." *Id.* The unclean hands doctrine applies when a plaintiff's conduct "has been unconscientious, unjust, marked by a want of good faith or violates the principles of equity and righteous dealing."[14]

38. In bankruptcy, a trustee is authorized to "commence and prosecute any action or proceeding in behalf of the estate before any tribunal." *See Off. Comm. of Unsecured Creditors v. R.F. Lafferty & Co.*, 267 F.3d 340, 356-57 (3d Cir. 2001) (citing FED. R. BANKR. P. 6009; 11 U.S.C. §§ 1207, 1306). "Such actions fall into two categories: (1) those brought by the trustee as successor to the debtor's interest included in the estate under Section 541, and (2) those brought under one or more of the trustee's avoiding powers." *Id.* (citing 3 Collier on Bankruptcy ¶ 323.03[2] (15th rev. ed. 2001)).

39. As to the former, which is implicated here, where a trustee brings claims as a successor to HCMLP's interest, Section 541 covers such claims, and under Section 541, the bankruptcy estate includes "all legal or equitable interests of the debtor in property as of the commencement" of bankruptcy. 11 U.S.C. § 541(a); *see also O'Dowd v. Trueger*, 233 F.3d 197,

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[14] *Balfour Beatty Rail, Inc. v. Kansas City S. Ry. Co.*, 173 F. Supp. 3d 363, 407 (N.D. Tex. 2016), *aff'd as modified and remanded*, 725 F. App'x 256 (5th Cir. 2018).

202 (3d Cir. 2000). These legal and equitable interests include causes of action. 3 Collier on Bankruptcy ¶ 323.02[1]; *accord O'Dowd*, 233 F.3d at 202–03.

40. Courts have held that "in actions brought by the trustee as successor to the debtor's interest under Section 541, the trustee stands in the shoes of the debtor and can only assert those causes of action possessed by the debtor. Conversely, the trustee is, of course, subject to the same defenses as could have been asserted by the defendant had the action been instituted by the debtor.'" *Hays & Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc*., 885 F.2d 1149, 1154 (3d Cir.1989) (quoting Collier on Bankruptcy ¶ 323.02[4]).

41. Thus, here, accepting the facts in the Amended Complaint as true, the Trustee as successor to HCMLP, has unclean hands. As alleged by the Trustee, it is HCMLP, through Dondero and Ellington, that is alleged to have committed the bad acts against HarbourVest (and CLO HoldCo, though the Trustee ignores this). Because the Trustee is subject to the same defenses that could have been asserted against HCMLP, the equitable claim of Unjust Enrichment Action is barred by the affirmative defense of unclean hands.

ii. The doctrine of in pari delicto bars the Unjust Enrichment Action

42. The doctrine of *in pari delicto* is an affirmative defense that provides that wrongdoers ought to bear the consequences of their wrongdoing without legal recourse against each other. *Jones v. Wells Fargo Bank, N.A.*, 666 F.3d 955, 965 (5th Cir. 2012). The *in pari delicto* doctrine "embodies the common-law notion that a plaintiff's recovery may be barred by his own wrongful conduct and is undergirded by the concerns, first, that courts should not lend their good offices to mediating disputes among wrongdoers; and second, that denying judicial relief to an admitted wrongdoer is an effective means of deterring illegality." *Rogers v.*

McDorman, 521 F.3d 381, 385 (5th Cir. 2008) (citing *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 306, 105 S.Ct. 2622, 86 L.Ed.2d 215 (1985)).

43. Under the *Bateman Eichler* formulation of the *in pari delicto* doctrine, a plaintiff "cannot recover where, as a result of his own actions, the plaintiff bears at least substantially equal responsibility for the underlying wrongdoing of which he is complaining." *Matter of Royale Airlines, Inc.*, 98 F.3d 852, 856 (5th Cir.1996) (emphasis added); *see also Rogers*, 521 F.3d at 390 (citing *Bateman Eichler*, 472 U.S. at 310–11, 105 S. Ct. 2622). Again, the Trustee is subject to all defenses available against the debtor. *In re Segerstrom*, 247 F.3d 218, 224 (5th Cir. 2001).

44. While some courts have found that the defense of *in pari delcito* is improper for a motion to dismiss because it must be determined whether the pre-petition corporation bore at least equal responsibility for the wrongdoing forming the basis for the plaintiff's claim, here the Amended Complaint is clear and unambiguous: it is only the debtor, HCMLP, into whose shoes the Trustee has stepped, that committed wrongdoing. Further, it is this sole actor's wrongdoing for which the Trustee now seeks to recover—not from an alleged wrongdoer, but from its very client to which HCMLP provided investment advice while (allegedly) committing wrongs against a third party and the advisee to whom the Trustee's predecessor gave advice. *Floyd v. CIBC World Markets, Inc.*, 426 B.R. 622, 642 (S.D. Tex. 2009). The Trustee asserts plainly that HCLMP, through Dondero and Ellington, fraudulently induced the HCLOF Investment by HarbourVest by withholding information that HCMLP was and would keep on harming HCLOF through its management of it, and further harmed HarbourVest through continued harm done to HCLOF (of course the same damage allegedly suffered by HarbourVest would have been suffered by CLO HoldCo as well, a fact the Trustee ignores).

45. The Trustee asserts only the conclusion that CLO HoldCo was aware that HarbourVest was fraudulently induced to engage in the HCLOF Investment but said nothing to HarbourVest. Amended Complaint, ¶396. First, there has been no allegation or showing, nor could there be, that there even was a fraudulent inducement because HarbourVest was a sophisticated investor which undertook extensive due diligence into the HCLOF Investment. But of course, a third party like CLO HoldCo could never be responsible for what HCMLP and HarbourVest disclosed or failed to disclose to one another. The Trustee's grasping and gasping is evident.

46. Accepting the facts of the Amended Complaint as true, HCMLP bears sole responsibility for the purported wrongdoing forming the basis of the Unjust Enrichment Action. *See Brickley*, 566 B.R. at 842 (finding the *in pari delicto* defense on the face of complaint when the debtor via the trustee sought to recover from another for its own intentional wrongdoing through its officers). Here, the only parties who have been alleged to have engaged in unconscionable or like behavior with respect to the HCLOF Investment are Dondero, Ellington, and HCMLP. Accepting the allegations in the Amended Complaint as true, the Unjust Enrichment Action is barred by *in pari delicto*.

iii. The pleading of adequate legal remedies precludes the Unjust Enrichment Action

47. Like other equitable claims and defenses, the existence of an adequate legal remedy renders equitable claims of unjust enrichment unavailable with respect to true causes of action.[15]

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[15] *See, e.g., BMG Direct Mktg., Inc. v. Peake*, 178 S.W.3d 763, 770 (Tex. 2005); *see also Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 683–84 (Tex. 2000).

Where a party seeks damages based on the same conduct under another legal theory, there is no claim for unjust enrichment. *In re TXCO Res., Inc.*, 475 B.R. 781, 837 (Bankr. W.D. Tex. 2012).

48. For instance, in *TXCO*, the debtor, brought an adversary proceeding, later prosecuted by the reorganized debtor, against the potential prepetition buyer of debtor's assets, asserting claims for misappropriation of trade secrets, violation of Texas Theft Liability Act (TTLA), unfair competition by misappropriation, breach of contract, tortious interference with prospective business relations, and imposition of constructive trust to prevent unjust enrichment. Judge King determined that damages for misappropriation of trade secrets were warranted, and therefore, "[t]he existence of an adequate legal remedy precludes TXCO's claim for unjust enrichment because the same conduct by [defendant] forms the basis of both claims." *Id*. at. 838.

49. In the Amended Complaint, the Trustee asserts the HCMLP Liability Claim, against Dondero and Ellington, for breach of fiduciary duty grounded in their contractual/officer/employment relationships with HCMLP. The Trustee asserts an almost verbatim recitation of purported facts underlying the HCMLP caused damage to itself through its misconduct related to the HarbourVest HCLOF Investment, and argues that on the basis of the duties owed by Dondero and Ellington to HCMLP because of their positions with the company, they are responsible for any liability to HarbourVest arising from the HCLOF Investment and therefore the damages to HCMLP. HCMLP has therefore plead the right to recover for breach of fiduciary duty against other parties because of those parties' contractual/officer and employee status with HCMLP. Therefore, because it has plead the right to legal recovery from third parties it cannot assert the Unjust Enrichment Action against CLO HoldCo.

IV. THE TRUSTEE MUST MAKE A MORE DEFINITE STATEMENT OF THE GET GOOD AVOIDANCE ACTIONS TO REMEDY THE INCONSISTENT ALLEGATIONS.

50. "If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002); *see Jones v. Gee*, No. CV 18-5977, 2020 WL 564956, at *8 (E.D. La. Feb. 5, 2020) ("When evaluating a motion for a more definite statement, courts must look to Federal Rule of Civil Procedure 8 for the minimal pleading requirements when analyzing the complaint."). Here, the Trustee's Get Good Avoidance Actions are premised upon the idea that the Transferred Assets (the majority of the "value" of which included tracking and participation interests in shares of certain Crusader Funds held by HCMLP) were worth less than the Dugaboy Note. Amended Complaint, ¶134.

51. The Amended Complaint alleges that the assets transferred by HCMLP were valued at least $23,367,578, noticeably absent from the Amended Complaint is any recitation of what the Trustee asserts the value of the Dugaboy Note to be. *See* Amended Complaint, ¶¶134, 136 (describing the Dugaboy Note but not pleading any type of valuation). Rather than pleading a value of the Dugaboy Note, the Trustee describes a "paltry" interest rate, lack of security, and that it "does ensure timely repayment without litigation" because ***other*** Dondero controlled entities are seeking to evade payment obligations on ***other*** notes. Amended Complaint, ¶134. All conclusory.

52. But what is more, the Trustee pleads that Dondero orchestrated the Get Good Transfer to " transfer assets out of Get Good so that they would not be available to his ex-wife." Amended Complaint, ¶132. So while superficially bemoaning the value of Dugaboy Note on one hand, the Trustee also lauds the value of the Dugaboy Note as cause for Dondero wanting to move it out of Get Good and away from his ex-wife.

53. In reality, since the date of the Dugaboy Note, the principal balance has been paid down by $5,982,353.53, or approximately 25% and interest is current. Appendix, p. 00636-38.

54. On the other side of Get Good Transaction, the Trustee alleges that claims asserted by the Redeemer Committee in the Redeemer Arbitration—which included the claim that HCMLP's interests in the Crusader Funds (the "Crusader Funds Interests" - which are the basis for Crusader Participation Interests) were obtained without Redeemer Committee approval and thus, were illegal from inception—were so damning that they caused HCMLP to begin siphoning off assets. *See* Amended Complaint, ¶¶320(b), (e). Yet, the Trustee ignores the inconsistency that the majority of the very assets allegedly transferred months after the Redeemer Arbitration commenced in July 2016, consisted of the Crusader Funds Interests that were being directly attacked by the same Redeemer Arbitration as having been illegally obtained by HCMLP. *See* Amended Complaint, ¶88, Appendix p. 00395, 00411.

55. Texas law provides that the value of a particular transaction is determined at the time of the exchange. *Janvey v. Golf Channel, Inc*., 487 S.W.3d 560, 582 (Tex. 2016). Here, as plead by the Trustee, on July 5, 2016, the Redeemer Committee commenced the Redeemer Arbitration which directly attacked the Crusader Funds Interests. *See* Complaint, ¶88, Appendix p. 00395. Specifically, the Redeemer Committee asserted that the Crusader Funds Interests were obtained by HCMLP in breach of the Plan and Scheme and in breach of HCMLP's fiduciary duty because the Redeemer Committee had a right of first refusal. Appendix, p. 00411.

56. So well ***before*** the Get Good Transfer, HCMLP was aware that the Redeemer Committee asserted claims in the Redeemer Arbitration that the Crusader Funds Interests were illegally obtained. But according to the Trustee, it was HCMLP's certainty of liabilities arising from Redeemer Arbitration that motivated HCMLP to siphon off assets, i.e. commence the Get

Good Transfer. Amended Complaint, ¶320(b), (e). In doing so, according to the Trustee, HCMLP was so certain of defeat in the Redeemer Arbitration, it rid itself of the Crusader Funds Interests that were plagued by the very same arbitration as being illegally obtained (so of little or no value from inception, a fact known to HCMLP as alleged by the Trustee).

57. To prevail on his intentionally fraudulent transfer action, the Trustee must prove actual intent to hinder, delay, or defraud. *Matter of Life Partners Holdings, Inc.*, 926 F.3d 103, 117 (5th Cir. 2019) (citation omitted); *see* TEX. BUS. & COM. CODE § 24.005(a)(1). While the Trustee of course copies this standard in the Amended Complaint, when considering a Rule 12(b) motion, the court does not accept as true facts in the complaint that are internally inconsistent.[16]

58. Taking the allegations of the Trustee as true, ***at the time*** of the Get Good Transfer HCMLP so feared the Redeemer Arbitration that it began siphoning assets, including the Crusader Funds Interests, which comprised more than half of the "value" of the Transferred Assets and were being directly attacked and threatened by that very Redeemer Arbitration. If HCMLP believed at the time of the Get Good Transfer that the Redeemer Committee would be successful in the Redeemer Arbitration (which the Trustee pleads), then when HCMLP transferred the Crusader Funds Interests in exchange for the Dugaboy Note, it did so with the belief that it was transferring away troubled assets. This act of transferring away troubled assets for value cannot show intent to hinder, delay or defraud creditors. Yet this is what the Trustee alleges.

59. As to constructive fraud, the Trustee must demonstrate a: (1) lack of reasonably equivalent value for the transfer; and (2) the transfer was 'financially vulnerable' or insolvent at

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[16] *See Cicalese v. Univ. of Texas Med. Branch*, 456 F. Supp. 3d 859, 872 (S.D. Tex. 2020); *In re Rambo Imaging, L.L.P.*, No. 07-11190FRM, 2007 WL 3376163, at *12 (Bankr. W.D. Tex. Nov. 8, 2007) (citing *Gersten v. Rundle*, 833 F.Supp. 906 (S.D.Fla.1993), *aff'd*, 56 F.3d 1389 (11th Cir. 1995), *cert. denied*, 516 U.S. 1118 (1996)).

the time of the transaction. *See Janvey*, 487 S.W.3d at 562, 566 & n.21 (Tex. 2016); TEX. BUS. & COM. CODE § 24.006(a); TEX. BUS. & COM. CODE § 24.005(a)(2). Here, the lack of pleading of value of the Dugaboy Note is particularly problematic.

60. On the one hand, the Amended Complaint alleges specifically that the assets transferred were "valued" at $23,367,578 and specifically asserts that the Crusader Funds Interests component of the valuation was more than 50% of the value of the assets transferred, but completely ignores is that the Crusader Funds Interests were subject to cancellation by the very same Redeemer Arbitration. The Trustee bemoans the value of the Dugaboy Note, but also argues that it was so valuable that Dondero wanted to move it out of his ex-wife's reach. The Trustee never pleads what he knows—that the principal balance of the Dugaboy Note has been reduced by some 25%, and is current. But while bemoaning a lack of value, the Trustee in fact never offers any even rough valuation of the Dugaboy Note.

61. The Amended Complaint is rife with irreconcilable conflicting statements, which preclude a rational response. *See* FED. R. CIV. P. 12(e). As such, the Charitable Defendants move for a more definite statement of the Get Good Avoidance Actions particularly the Trustee's assertion of value of the Dugaboy Note and the Crusader Participation Interests.

V. CONCLUSION

For the reasons set forth herein and in the Motion, the Charitable Defendants move for dismissal of the Aiding Bad Conduct, Civil Conspiracy, and Unjust Enrichment Actions, and for a more definite statement of the Get Good Avoidance Actions.

[***signature block on following page***]

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was served through this Court's CM/ECF Service on counsel for the Plaintiff and all Defendants on this July 11, 2022.

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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; 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.; AND SAS ASSET RECOVERY, LTD.,** **Defendants.**	**Adv. Pro. No. 21-03076-sgj** **MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS NEXPOINT ADVISORS, L.P. AND HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.'S MOTION TO DISMISS**

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Defendants Highland Capital Management Fund Advisors, L.P. ("HCMFA") and NexPoint Advisors, L.P. ("NPA," together, "Defendants") move to dismiss Counts 10, 11, 12, 13, 15, 16, 17, and 28 of Plaintiff's Amended Complaint (the "Complaint")[1], as follows:

I. Introduction

1. Reacting to Defendants' first Motion to Dismiss with an Amended Complaint, Marc Kirschner ("Plaintiff"), the Litigation Trustee for the Debtor Highland Capital Management, L.P. ("HCM"), brings a 142-page, thirty-six count lawsuit against Defendants HCMFA and NPA, among many others, attempting to substitute his judgment for the permissible business judgment of nearly all the defendants he has sued, still blaming all defendants for the financial travails of the last decade. Plaintiff's newest Complaint is still riddled with flaws, both jurisdictional and substantive, and no amount of hyperbole can substitute for the missing required elements.

II. Background[2]

2. HCM filed its bankruptcy petition on October 16, 2019,[3] and its Plan on November 24, 2020, which was confirmed on February 22, 2021.[4] The Plan established a Litigation Sub-Trust, which received transferred "Estate Claims" via the Litigation Sub-Trust Agreement, Section 2.3.[5]

3. HCM was founded in 1993 as an investment advisor that also provided back- and middle-office services and engaged in proprietary trading.[6] HCMFA engaged in some of the same

[1] Dkt. No. 158.
[2] Defendants adopt and incorporate the "Relevant Background" portion of co-Defendants Leventon and Ellington's memoranda for the purpose of providing further background. *See Brief in Support of Defendant Leventon's Motion to Dismiss the Amended Complaint*, § I.A., filed on July 11, 2022 ("Leventon Mem."); *Brief in Support of Defendant Ellington's Motion to Dismiss the Amended Complaint*, § I.A., filed on July 11, 2022 ("Ellington Mem.").
[3] Dkt. No. 1.
[4] Dkt. No. 1943.
[5] *See* Dkt. No. 1811-4.
[6] *Id.*, ¶ 2.

business activities as HCM,[7] and was "created to replace HCM as the new investment manager for certain open-ended retail funds."[8] HCMFA had a shared services agreement pursuant to which HCM employees provided services to HCMFA.[9] NPA was created in March 2012 as a Delaware limited partnership,[10] but not "to siphon profits from HCM in order to evade HCM's creditors,"[11] as Plaintiff contends. Rather, NPA was created to provide fund-management services and had a shared services agreement providing that HCM would provide back- and middle-office services for NPA.[12] Thus, it is no surprise that "[NPA and HCMFA] used HCM's employees to perform the same . . . services . . . that were performed by HCM."[13] HCM's partnership agreement allowed for the creation of companies, such as NPA and HCMFA, in the same line of business as HCM.[14]

III. Standard of Review

A. Federal Rule of Civil Procedure 12(b)(1)

4. Federal courts have jurisdiction only where a case is presented by a party with

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[7] *Id.*, ¶ 17 ("[HCMFA] is a Delaware limited partnership.") (internal footnote omitted).
[8] *Id.*, ¶ 61.
[9] *Id.*, ¶ 63.
[10] *Id.*, ¶ 15 ("[NPA] is a Delaware limited partnership.").
[11] *Id.*, ¶ 52.
[12] Plaintiff acknowledges these shared services agreements: "As of the Petition Date, [Plaintiff] had three primary business lines: (i) investment management; (ii) *the provision of middle- and back-office services ("shared services") to other registered investment advisors*; and (iii) proprietary trading." *Id.*, ¶ 41 (emphasis added).
[13] *Id.*, ¶¶ 53, 63 ("Meanwhile, HCMLP – whose employees performed most services required by HCMFA – received a [] fee. . .").
[14] Fourth Amended and Restated Limited Partnership Agreement of Highland Capital Management, L.P. (the "4th LPA"), § 1.3, included in Appendix A as Defendants' Ex. A, D. Appx. pp. 5-41. The Second Amended and Restated LPA (the "2nd LPA"), Defendants' Ex. B, Appx. p. 42-100, which was in effect between 2004 and late 2015, is also included. The 2nd and 4th LPAs are identical in relevant respects. "In the event that a plaintiff alleges a claim based on a written instrument, as is the case here, the court may consider such an instrument in ruling on a Rule 12(b)(6) motion even if it was not attached to the complaint and made a part thereof under Rule 10(c)," and "if the allegations of a complaint are contradicted by documents made a part thereof, the document controls and the court need not accept as true the allegations of the complaint." *Sazerac Co. v. Falk*, 861 F. Supp. 253, 257 (S.D.N.Y. 1994). The movant may attach to a motion to dismiss any documents "mentioned in the Complaint and central to [the] claim," and the court will consider the documents along with the motion, even if the plaintiff did not attach the document to the complaint. *Marks v. CDW Computer Centers, Inc.,* 901 F. Supp. 1302, 1309–10 (N.D. Ill. 1995). Here, the HCM Partnership Agreement is mentioned in ¶ 221 of the Complaint. The basis for any claim related to breach of fiduciary duty against Strand and Dondero must be the Partnership Agreement because the Partnership Agreement disclaims traditional fiduciary duties. *Brinckerhoff v. Enbridge Energy Co., Inc.*, 159 A.3d 242, 252–53 (Del. 2017), *as revised* (Mar. 28, 2017).

standing.[15] At the pleading stage of the case, "the plaintiff must 'clearly . . . allege facts demonstrating' each element."[16] Standing is a required element of subject matter jurisdiction and is therefore properly challenged on a Federal Rule 12(b)(1) motion to dismiss.[17]

B. Federal Rule of Civil Procedure 12(b)(6)

5. To survive a motion to dismiss pursuant to Federal Rule 12(b)(6), a complaint must contain sufficient factual allegations to "state a claim to relief that is plausible on its face."[18] Mere "threadbare recitals of the elements of a cause of action," and those that do not permit a court to "infer more than the mere possibility of misconduct," are insufficient to overcome a motion to dismiss.[19] "Factual allegations must be enough to raise a right to relief above the speculative level."[20] Thus, a pleading does not set forth a legally "plausible claim" unless its non-conclusory allegations of wrongdoing are "more likely" than a lawful, alternative explanation.[21]

IV. Arguments and Authorities

A. Jurisdictional Arguments.

1. Plaintiff Lacks Standing to Pursue His State Law Claims Because the Bankruptcy Plan Did Not Specifically and Unequivocally Reserve the State Law Claims Against Defendants.

6. Without an effective reservation of the estate's state law claims against HCMFA and NPA,[22] Plaintiff has no standing to bring those claims. As more specifically detailed in the motions to dismiss filed by co-Defendants,[23] the Plan's listing of reserved claims is so lengthy it

[15] *Nevares v. San Marcos Consol. Indep. Sch. Dist.*, 111 F.3d 25, 25 (5th Cir. 1997).
[16] *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 1547 (2016) (internal citation omitted).
[17] *Sherman v. Wal-Mart Associates, Inc.*, 550 B.R. 105, 107 (N.D. Tex. 2016).
[18] *Ashcroft v. Iqbal, 556* U.S. 662, 678 (2009) (citations omitted).
[19] *Id*. at 678-79.
[20] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
[21] *Id*. at 680, 681-82.
[22] This argument covers Counts 10, 11, 15, 16, 17, and 28.
[23] For the sake of efficiency, Defendants adopt and incorporate the arguments and authorities cited in the memoranda of law in support of the motions to dismiss of the Dondero Parties [Dkt. 1xx], the Okada Parties [Dkt. 126], Leventon [Dkt. 129], and Ellington [Dkt. 133].

effectively becomes what the Fifth Circuit forbids, a reference to "any and all claims."[24] Indeed, Plaintiff directly refers to the Plan's designation of claims as "any and all estate claims and causes of action against [all Defendants]," clearly running afoul of the holding in *SI Restructuring*.[25] Even if the Court does not agree that the Plan's reservation was too expansive to be effective at all, under *SI Restructuring*, it must at least dismiss the claims not identified at all.[26] Allegations in the Amended Complaint cannot retroactively modify the Plan.[27]

2. Plaintiff's State Law Non-Core Claims Must be Dismissed for Lack of Subject Matter Jurisdiction.

7. For all of the reasons previously briefed in the parties' motions to withdraw the reference, this Court lacks subject matter jurisdiction over Counts 10, 11, 15, 16, 17, and 28.[28] Further, the Fifth Circuit has specifically held that under Texas Law, a bankruptcy trustee does not have a cause of action for civil conspiracy related to an alleged fraudulent transfer.[29]

3. The Assignment Agreement Constitutes an Impermissible Modification of the Plan.

8. As argued in the *Leventon Mem.* and *Ellington Mem.*, incorporated herein by reference,[30] the plain language of the Plan demonstrates a clear division of rights between the Litigation Sub-Trust and the Claimant Trust—the Litigation Sub-Trust can ***only*** pursue Estate Claims and nothing more, while the Claimant Trust retains the sole right to assert all other causes

[24] *In re SI Restructuring Inc.*, 714 F.3d 860, 864 (5th Cir. 2013). This argument has been rejected by *Faulkner v. AimBank (In re Reagor-Dykes Motors)*, 2021 Bankr. LEXIS 800 at 18-20 (Bankr. N.D. Tex. Mar. 31, 2021), but here, given the extensive laundry list of both claims and possible defendants, it should be accepted.
[25] Complaint, ¶ 36.
[26] *SI Restructuring* at 866 (upholding the dismissal of state law claims that were not specifically reserved in the plan).
[27] *See Leventon Mem.*, ¶¶ 19-22*; Ellington Mem.*, ¶ 13.
[28] Dkt. Nos. 27, 28, 36, 37, 39, 40, 45, 46, 50, 51, and 59, and the transcript of the hearing on the motions. Dkt. No. 96. NPA and HCMFA further adopt and incorporate the arguments and authorities in co-Defendants' memoranda.
[29] *See Mack v. Newton*, 737 F.2d 1343, 1356 (5th Cir. 1984) (Fifth Circuit reiterating the Supreme Court of Texas' holding that a general creditor does not have a cause of action for civil conspiracy when a debtor's property is conveyed to others allegedly to evade payment).
[30] *Leventon Mem.,* (also referencing defined terms in this Section); *Ellington Mem.*, (same).

of action, except those that constitute Reorganized Debtor Assets. The attempt to assign such rights to the Litigation Sub-Trust was not contemplated at confirmation and alters the expectations of the parties, making the Assignment Agreement an impermissible modification of a substantially consummated Plan. Therefore, the purported assignment of claims from the Claimant Trust to the Litigation Sub-Trust was ineffective, and the Complaint must be dismissed on these grounds alone.

B. Plaintiff's Claims are Time-barred and Otherwise Unsustainable.

1. Plaintiff's Counts X and XI Seeking a Declaration that HCMFA and NPA are Alter Egos of HCM, Strand and Dondero Does Not State a Claim.

(a) Defendants Cannot Be Treated as the Alter Egos of HCM Because Plaintiff Does Not Plead that Defendants Own Any Interest in HCM.

9. Under the governing Delaware law,[31] NPA and HCMFA, which are incorporated in Delaware,[32] cannot be alter egos of HCM and Strand because they do not own any interests in HCM or Strand, regardless of Plaintiff's new allegations that HCM, through Jim Dondero, exercised control over NPA and HCMFA.[33]

10. Under Delaware law, "in order to state a claim for piercing the corporate veil under an alter ego theory, [plaintiff] must show (1) that the corporation *and its shareholders* operated as a single economic entity, and (2) that an overall element of injustice or unfairness is present."[34] In

[31] Texas courts apply the law of the state of incorporation to veil-piercing issues such as alter ego liability. *Weaver v. Kellogg*, 216 B.R. 563, 585 (S.D. Tex. 1997); *In re Moore*, 379 B.R. 284, 289 (Bankr. N.D. Tex. 2007) (citing *Jefferson Pilot Broadcasting Co. v. Hilary & Hogan, Inc.*, 617 F.2d 133, 135 (5th Cir. 1980)); *In re Bass*, No. ADV. 10-01101-CAG, 2011 WL 722384, at *8 (Bankr. W.D. Tex. Feb 11, 2011) (collecting cases).

[32] Complaint, ¶¶ 15, 17.

[33] In the Complaint, Plaintiff now only claims that NPA and HCMFA are alter egos of Dondero. Complaint, ¶¶ 253, 261. Defendants reserve the argument that Defendants cannot be treated as the alter egos of HCMLP and Strand in the event that Plaintiff reverts to its prior arguments. Plaintiff alleges that Jim Dondero owns and controls both HCMFA and NPA, but never once pleads that either HCMFA or NPA have any ownership in HCMLP, which is required to prove alter ego claims under Delaware law.

[34] *Trevino v. Merscorp, Inc.*, 583 F. Supp. 2d 521, 528 (D. Del. 2008) (citing *Lailfail, Inc. v. Learning 2000, Inc.*, No. 01-599-GMS, 2002 WL 31667861 at *11 (D. Del. Nov. 25, 2002), and dismissing a claim for alter ego liability under Rule 12(b)(6) where plaintiff failed to plead facts showing that the corporation and its shareholders operated as a single economic entity) (emphasis added).

short, the Trustee's admission that HCMFA and NPA do not own HCM and do not operate as a single entity with it,[35] preclude his alter ego claim.[36]

(b) Alter Ego Liability is Not an Independent Cause of Action.

11. Plaintiff's Tenth and Eleventh Counts for alter ego fail because alter ego is not an independent cause of action under Delaware law. "[A]lter ego liability is *not an independent cause of action*, rather it is a theory of liability that is properly asserted with [an] ***underlying breach of contract claim***."[37] Here, Plaintiff alleges only that NPA and HCMFA are "alter ego[s] of Dondero."[38] Plaintiff has improperly asserted alter ego as an independent cause of action rather than as a theory of liability for an underlying claim against NPA or HCMFA, ***much less an underlying breach of contract claim***.

(c) Plaintiff Fails to Plead That Each Defendant and Dondero Operated as Single Economic Entity.

12. Plaintiff fails to plead facts necessary to allege NPA and Dondero, or HCMFA and Dondero, each operated as a single economic entity. The Third Circuit sets forth a multi-factor test for determining whether a "single economic entity" exists between entities, listing: (1) undercapitalization; (2) failure to observe corporate formalities; (3) nonpayment of dividends; (4) the insolvency of the debtor corporation at the time; (5) siphoning of the corporation's funds by the dominant stockholder; (6) absence of corporate records; and (7) the fact that the corporation is merely a facade for the operations of the dominant stockholder or stockholders.[39]

13. In so many words, Plaintiff alleged that Dondero dominated and controlled each

[35] Complaint, ¶¶ 13, 14 (Strand is "wholly-owned by Dondero," and Dondero and Okada held HCMLP "directly and through trusts.").

[36] *See Trevino,* 583 F. Supp. 2d at 528.

[37] *In re Essar Steel Minnesota LLC,* 602 B.R. 600, 606 (Bankr. D. Del. 2019) (searching Delaware law and determining that alter ego liability is not a stand-alone cause of action but rather a "theory of liability" that can be asserted "with [an] underlying breach of contract claim") (emphasis added).

[38] Complaint, ¶¶ 253, 261.

[39] *Trevino*, 583 F. Supp. 2d at 528–29.

Defendant; that each Defendant benefited from HCM's investment, services, and forbearance against it; and that each Defendant in turn made distributions for Dondero's benefit.[40] Plaintiff fails to allege that any of this activity caused Defendants to be undercapitalized or insolvent, that Defendants do not observe formalities such as board meetings or recordkeeping, or that Defendants do not pay dividends (on the contrary, it is alleged that distributions were made).

14. "While no single factor justifies a decision to disregard the corporate entity", some combination of the above is required, and "an overall element of injustice or unfairness must always be present, as well."[41] Here, Plaintiff fails to allege that honoring the separate entity of each Defendant will cause anyone injustice or unfairness. Instead, Plaintiff alleges that disregarding each entity will not cause any of Defendants' shareholders or creditors any harm.[42] That is a misconstruction of the standard. Plaintiff's claim must be dismissed.

2. The Trustee's Claims for Avoidance Based on Constructive and Intentional Fraudulent Transfer Must Be Dismissed.

(a) The Claims are Barred by the Statute of Limitations.

15. While the introductory allegations of the Complaint (i.e., all those before the claims section) contain many confusing and non-specific allegations of fraudulent transfers across broad swaths of time ranging between 2011 and 2019, the only claims alleging that HCMFA and NPA engaged in fraudulent transfers – Counts 12 and 13 – challenge only two transfers. The transfers alleged to be fraudulent are the December 15, 2011 transfer of management and advisory contracts from HCM to HCMFA[43] and the June 13, 2012 transfer by HCMFA of "Highland Credit Strategies Fund to the newly-created [NPA]."[44] HCM filed its petition on October 16, 2019. The Complaint

[40] Complaint, ¶¶ 245–61.
[41] *Trevino* at 529.
[42] Complaint, ¶¶ 252, 260.
[43] *Id.*, ¶¶ 62, 264, 270.
[44] *Id.*, ¶¶ 62, 267, 272.

was filed on October 15, 2021. The allegedly fraudulent transfers took place over seven years before the petition date and over nine years before the Complaint was filed.

16. Here, the statutes of limitation are determined by state law.[45] A claim for constructive fraudulent transfer is time-barred "four years after the transfer was made or the obligation was incurred,"[46] and a claim for actual fraudulent transfer is time-barred "four years after the transfer was made or the obligation was incurred, or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant."[47] The transactions at issue (in 2011 and 2012 respectively) occurred more than four years before the Complaint was filed.

17. Plaintiff's "right to avoid transfers [under § 544(b)] is derivative of an actual unsecured creditor's right. Thus, to establish standing under § 544(b), the Trustee must show the existence of an actual unsecured creditor holding an allowable unsecured claim as of the date of the petition that could avoid the challenged transfer."[48] Plaintiff has "no greater rights of avoidance than the creditor would have if the creditor were asserting invalidity on its own behalf."[49] "Consequently, if the creditor is barred from recovery because of the running of a statute of limitations prior to the commencement of the case, the [trustee] is likewise barred."[50] The "fraudulent transfer claims [] will be timely so long as one of [the] creditors was entitled as of the Petition Date to assert a claim against the Defendants under the fraudulent transfer laws of [the

[45] *E.g.*, *In re Kipnis*, 555 B.R. 877, 883 (S.D. Fla. 2016) (looking to state statute of limitations for § 544 claims); *In re Vaughan Co.*, 498 B.R. 297, 302 (D. N.M. 2013) (same).
[46] Tex. Bus. & Com. Code § 24.010(a)(2).
[47] Tex. Bus. & Com. Code § 24.010(a)(1).
[48] *In re Essential Fin. Ed., Inc.*, 629 B.R. 401, 419-20 (Bankr. N.D. Tex. 2021) (considering 11 U.S.C. § 544(b)(1)).
[49] *In re Zohar III, Corp.*, 631 B.R. 133, 160 (Bankr. Del. 2021); *In re LSC Wind Down, LLC*, 610 B.R. 779, 784 (Bankr. Del. 2020); *In re National Service Industries, Inc.*, 2015 WL 3827003, at *6–9 (Bankr. Del. June 19, 2015).
[50] *In re Zohar III, Corp.*, 631 B.R. at 160 (internal marks omitted).

applicable state]."[51]

18. Here, Plaintiff is barred from recovery because the statute of limitations has run on the fraudulent transfer claims. Plaintiff alleges that UBS, the Redeemer Committee, Patrick Daugherty, and Acis held allowable claims to avoid each of the transfers made *on or after* October 16, 2015.[52] Because the December 15, 2011 transfer of management and advisory contracts from HCM to HCMFA[53] and the June 13, 2012 transfer by HCMFA of "Highland Credit Strategies Fund to the newly-created [NPA]"[54] occurred long *before* October 16, 2015, the statute of limitations has run on Counts 12 and 13 and they must be dismissed.

(b) The IRS Cannot Be A Triggering Creditor Here.

19. Plaintiff seeks to override the normal 4-year statute of limitations and avoid transfers that took place in 2011 and 2012 by contending that it stands in the shoes of the IRS.[55] As a preliminary matter, as discussed in the motions to withdraw the reference, whether the IRS has the power to reach that far back in these circumstances is an unanswered question of federal non-bankruptcy law that should be decided by the District Court.[56]

20. The use of a federal tax claim to enhance Plaintiff's avoidance powers is a controversial legal issue that is especially inappropriate here. While a trustee can potentially step into the shoes of the IRS to recover allegedly fraudulent transfers over a longer period than the state statute of limitations would allow, the policy behind this is to prevent the IRS from being deprived of the ability to satisfy its claims by reaching those transfers simply because the bankruptcy trustee, who on the petition date becomes the only person able to pursue the claim

[51] *Id.*
[52] Complaint, ¶ 39.
[53] *Id.*, ¶¶ 62, 264, 270.
[54] *Id.*, ¶¶ 62, 267, 272.
[55] Complaint, ¶¶ 39, 263, 270.
[56] *See* Motions to Withdraw Reference and briefs in support [Dkt. Nos. 27, 28, 36, 37, 39, 40, 45, 46, 50, and 51].

(depriving the IRS of its independent ability to do so), would be bound by the state statute of limitations.[57] Here, Plaintiff seeks millions, if not hundreds of millions of dollars in damages, on the basis of an approximately $4000 already-allowed IRS claim.[58] That cannot be what Congress intended, and courts and commentators are increasingly so stating.

21. In February, a bankruptcy court rejected the use of the IRS as a golden creditor even when a debtor alleged that it owed payroll taxes as of the petition date.[59] While the court specifically relied upon the fact that the IRS had not filed a proof of claim, a fact not present here, it noted that "[p]ayroll taxes accrue as wages are paid, but a deposit for those taxes is not due to the IRS until some period of time later . . . . As a result, virtually every business entity that files for bankruptcy will have accrued unpaid payroll taxes because those taxes are not yet due to be paid to the IRS."[60] Here, the IRS filed protective proofs of claim as placeholders, eventually seeking an extremely small amount of excise tax.[61] This, like the buildup of payroll tax in the *J&M Sales* case, is a common practice. Thus, as the court noted in the *J&M Sales* case, "[u]nder the Trustee's theory, therefore, every business bankruptcy case would automatically have a ten-year lookback period for fraudulent transfers under Section 544(b). That cannot be what Congress intended when enacting Section 544(b)."[62]

22. Another court completely rejected the notion that the existence of an IRS claim enables a bankruptcy trustee to preempt state statutes of limitation, finding that although "the

[57] *E.g.*, *In re CVAH, Inc.*, 570 B.R. 816, 835-36 (Bankr. D. Idaho 2017) (with giving a trustee the expanded powers, the "IRS would be deprived of its statutory right to recover the transfers the defendants received[,]" because the bankruptcy filing prevents the IRS from pursuing its claims directly).

[58] *See* motions to withdraw reference and briefs in support at Dkt. Nos. 27, 28, 36, 37, 39, 40, 45, 46, 50, 51, and 59; Second Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, LP [Bk. Dkt. 3307] at 4 (allowed IRS claims totaling $3,990.16).

[59] *In re J&M Sales Inc*., 2022 WL 532721, at *3 n.7 (Bankr. D. Del. Feb. 22, 2022).

[60] *Id*.

[61] *See* Proofs of Claim Nos. 32, 173, 248, and 252; Def. Ex. C-F; Def. Appx. 101-123.

[62] *In re J&M Sales Inc.*, at *3 n.7.

Trustee may stand in the shoes of any unsecured creditor to set aside transfers to third parties . . . [i]t does not necessarily follow . . . that a bankruptcy trustee standing in the shoes of the IRS is immunized from state statutes of limitations."[63] The federal government is typically not subject to state statutes of limitations as a function of sovereign immunity: "no time runs against the king."[64] However, even the federal government is not wholly immune from state statutes of limitations. "[I]f an action brought in the name of the United States does not involve public rights or interests, state statutes of limitations typically apply."[65] Section 6502 – which permits suits instituted by the IRS to collect taxes – involves the vindication of public rights. But here, Plaintiff is not seeking to recover money to pay the IRS; the Plaintiff here (as in *Vaughan*) is asserting only private rights of creditors. In short, allowing Plaintiff to evade state statutes of limitations would give him ***greater*** power than that afforded to the federal government. When an interpretation of a statute produces that incongruous a result, it cannot be correct.[66] The U.S. Supreme Court has instructed that "[s]tatutory construction . . . is a holistic endeavor" and that a court should select a "meanin[g that] produces a substantive effect that is compatible with the rest of the law."[67] As in *Czyzewski v. Jevic Holding Corp*., 137 S. Ct. 973, 984 (2017), the phrase "applicable law" is "too weak a reed upon which to rest so weighty a power."[68] The Fifth Circuit has little patience for "clever"

[63] *See In re Vaughan Co.*, 498 B.R. 297, 304 (Bankr. D.N.M. 2013).

[64] *Id.* at 302.

[65] *Id*. at 304; *see also U.S. v. Summerlin*, 310 U.S. 414, 416 (1940).

[66] *Demarast v. Manspeaker*, 498 U.S. 184, 190 (1991) ("When we find the terms of a statute unambiguous, judicial inquiry is complete except in rare and exceptional circumstances . . . [such as] where the application of the statute as written will produce a result 'demonstrably at odds with the intentions of its drafters.'"); *Thomas v. Reeves*, 961 F.3d 800, 802-08 (5th Cir. 2020) (en banc) (Costa, J., concurring) (rejecting reading of statute justified by typical rules of statutory construction because it made no sense in the context of the purpose of the statute); *U.S. v. Rodriguez-Rios*, 14 F.3d 1040, 1044 (5th Cir. 1985) ("We are authorized to deviate from the literal language of a statute only if the plain language would lead to absurd results, or if such interpretation would defeat the intent of Congress."); *see also U.S. v. Ret. Serv. Grp*., 302 F.3d 425, 435 (5th Cir. 2002) (rejecting a proposed statutory interpretation based on the plain language).

[67] *United Sav. Assn. of Tex. v. Timbers of Inwood Forest Assocs., Ltd*., 484 U.S. 365, 371 (1988).

[68] *Czyzewski*, 137 S. Ct. at 984; *see also id*. (noting that if "Congress were to intend a major departure" to important statutory schemes, we should "expect more than simple statutory silence").

interpretation "creating unforeseen meaning or legal effects" from language with otherwise explainable meaning.[69] Indeed, in a very similar context, the Fifth Circuit rejected the use of the Federal Debt Collection Procedures Act as "applicable law" under section 544(b) to enable a trustee to step into the shoes of the IRS to expand the statute of limitations.[70]

23. With this backdrop, reading § 544(b)(1) in conjunction with 26 U.S.C. §§ 6502(a)(1) and 6901(a) produces a very different result than the cases that stretch to increase the power and reach of bankruptcy debtors and trustees, and by necessary implication, courts.[71] Section 544(b)(1) authorizes a litigation trustee to "avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is ***voidable*** under applicable law by a creditor holding an unsecured claim that is allowable under section 502 . . . ."[72] IRS Code Section 6502(a)(1) provides that "[w]here an assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun within 10 years after the assessment of the tax." Section 6901(a) concerns "transferred assets" and establishes that they can generally be assessed, paid and collected in the same manner as the tax at issue. Neither section of the IRS Code says anything about avoiding transfers, and none of the cases advocating use of

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[69] *Thomas,* 961 F.3d at 807-09.

[70] *In re Mirant Corp.*, 675 F.3d 530, 535 (5th Cir. 2012). The underlying bankruptcy case was even more instructive, holding that "[T]he avoidance powers in the FDCPA are exercisable by the United States solely for the benefit of the United States. Nothing in subchapter D of the FDCPA manifests any intent by Congress to benefit parties other than the United States." *In re Mirant Corp.*, 2010 WL 8708772, at *14 (Bankr. N.D. Tex. Apr. 22, 2010).

[71] *E.g.*, *In re Zagaroli*, 2020 WL 6495156, at *3 (Bankr. W.D.N.C. Nov. 3, 2020) (trustee could step into shoes of IRS to avoid state's four-year statute of limitations); *In re Gaither*, 595 B.R. 201 (Bankr. D.S.C. 2018) (same); *In re Porras*, 312 B.R. 81, 97 (Bankr. W.D. Tex. 2004) ("[T]he Trustee under § 544(b) may use statutes of limitations available to any creditor in whose shoes he stands in bringing the action."); *In re Hunt*, 136 B.R. 437, 451 (Bankr. N.D. Tex. 1991) ("[T]his Court concludes that Plaintiffs are not barred by the applicable state statutes of limitations since they acquired the status of the United States pursuant to § 544(b) of the Code."). It bears noting that some of the cases approving use of the IRS as the "golden creditor" include the issue of whether the FDCPA can be "applicable law" and reject the Fifth Circuit decision in *Mirant*, suggesting that they are not good indicia of what the Fifth Circuit would do if squarely faced with the issue. *E.g.*, *In re CVAH, Inc.*, 570 B.R. 816, 826-32 (Bankr. D. Idaho 2017); *In re Gaither*, 595 B.R. 201, 212-14 (Bankr. D.S.C. 2018); *In re Tronox*, 503 B.R. 239, 273 (Bankr. S.D.N.Y. 2013).

[72] 11 U.S.C. § 544(b) (emphasis added).

the IRS Code to abrogate state states of limitations explains exactly how the IRS statutes relied upon are the requisite "applicable law" when neither provides the IRS with an avoidance power.[73]

24. Further, the Fifth Circuit has recognized that section 6502 is a forward-looking statute, stating that 6502 "makes clear that it is the 'assessment' itself that, once made, starts the running of the ten-year period within which the IRS can commence efforts to *collect* the assessed tax."[74] By its plain terms, section 6502 permits the IRS to begin collection attempts within 10 years "after" the assessment of taxes.[75] Accordingly, "[t]he ten-year period appears to be a look-forward period rather than a lookback period."[76] Plaintiff's Complaint now alleges that the IRS filed a proof of claim asserting an unsecured tax claim for the period of June 30, 2015.[77]Therefore, even if Plaintiff were permitted to "stand in the shoes" of the IRS and utilize section 6502, Plaintiff would not have the ability to "reach back" to transactions taking place in 2011 and 2012.[78]

25. In short, use of the IRS code to override state fraudulent transfer statutes of limitation is inconsistent with the purposes of section 544(b), which is to "incorporate" state law, not "subordinate" or "eviscerate" it.[79] This Court should follow the better reasoned *Vaughan* case that is consistent with the Fifth Circuit's *Mirant* opinion, and not the handful of cases that overreach to provide litigation trustees with powers that vastly exceed and contravene what state legislatures have provided to all other plaintiffs. Finally, HCMFA and NPA join in and adopt the

[73] *See* cases cited in notes 57 and 66 *supra.*

[74] *Remington v. U.S.*, 210 F.3d 281, 284 (5th Cir. 2000) (emphasis in original).

[75] *See* 26 U.S.C. § 6502(a)(1) ("Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun – (1) within 10 years ***after*** the assessment of the tax . . . .") (emphasis added).

[76] *In re Taylor, Bean & Whitaker Mtg. Corp.*, 2018 WL 6721987, at *6 (Bankr. M.D. Fla. Sep. 28, 2018) (slip opin.).

[77] Complaint, ¶ 39.

[78] *In re Taylor, Bean & Whitaker Mtg. Corp.*, 2018 WL 6721987, at *6 ("The Court is unaware of case law permitting the IRS to avoid transfers made prior to the original taxpayer assessment (or, alternatively, prior to the accrual of the tax liability) . . . .").

[79] *Vaughan*, at 304-05.

arguments and authorities cited by co-Defendants in connection with the argument that Plaintiff may not use the IRS as the "golden creditor."

3. Plaintiff's Claim for Successor Liability Has Multiple Fatal Flaws.

26. There are four theories of successor liability under Delaware law: (1) express assumption of liability; (2) a *de facto* merger; (3) a mere continuation of a company under a different name; and (4) fraud.[80] Plaintiff does not allege express assumption of liability or fraud, so it appears to be relying on one of the other two theories.[81] It has not sufficiently plead either.[82]

4. Plaintiff's Claims for Aiding and Abetting Breach of Fiduciary Duty and Knowing Participation in Breach of Fiduciary Duty and Civil Conspiracy to Breach Fiduciary Duty Are Fatally Flawed.

27. In Counts 15 and 16, Plaintiff alleges that HCMFA and NPA conspired in and/or participated in Strand and Dondero's alleged breach of fiduciary duty to HCM by knowingly participating in Dondero's alleged lifeboat scheme,[83] itself addressed in Count Four.[84] As a preliminary matter, the claims are time-barred. Moreover, contrary to Plaintiff's allegations, Strand and Dondero did not owe fiduciary duties to HCM. Even if they did owe such duties, the Complaint fails to sufficiently allege a breach or causation of damages. Finally, stripped of labels, Plaintiff is really contending that HCMFA and NPA participated in a conspiracy and/or aided and abetted a fraudulent transfer, and there is no such cause of action in either Texas or Delaware.

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[80] *Magnolia's at Bethany, LLC v. Artesian Consulting Engineers, Inc.*, No. CIV.A. S11C-04013ESB, 2011 WL 4826106, at *2 (Del. Super. Ct. Sept. 19, 2011) (citing *Fountain v. Colonial Chevrolet Co.*, No. C.A. 85C-DE-88, 1988 WL 40019, at 7 (Del. Super. Ct. Apr. 13, 1988); *Fehl v. S.W.C. Corp.*, 433 F. Supp. 939, 945 (D. Del. 1977); *Elmer v. Tenneco Resins, Inc.*, 698 F. Supp. 535, 540 (D. Del. 1988)). Similar to alter ego determinations, the law of the state of incorporation governs successor liability issues. *Sourcing Mgmt., Inc. v. Simclar, Inc.*, 118 F. Supp. 3d 899, 918 (N.D. Tex. 2015) ("under general choice of law principles, the law of the state of incorporation generally applies to successor liability," citing Restatement (Second) of Conflict of Laws § 302).

[81] Plaintiff's Original Complaint (Dkt. No. 1), ¶¶ 255-258.

[82] While Plaintiff amended its Complaint to abandon this claim, Defendants reserve their arguments made in Plaintiff's Original Complaint, Dkt. No. 1in the event Plaintiff re-pleads to include it again.

[83] Complaint, ¶¶ 285–96.

[84] *Id.*, at ¶¶ 193–200.

(a) Counts 15 and 16 Are Time-Barred.

28. Counts 15 and 16 are barred by the applicable statute of limitations under either Texas law, which is four years, or Delaware law, which is three years.[85] Here, the statute of limitations has run because the events constituting the alleged breach occurred in 2011 and 2012.[86]

29. Plaintiff fails to plead sufficient facts that would support tolling the statute of limitations. Plaintiff alludes to the "adverse domination" doctrine by stating that, before Dondero was removed on January 9, 2020 (after HCM filed bankruptcy), "the conduct alleged herein was inherently undiscoverable because of the complete domination and control that Dondero exercised over HCM and the Dondero Entities."[87]

30. But the "adverse domination" doctrine is not recognized under applicable Delaware law. When "the jurisdiction[] whose substantive law controls views statutes of limitations as substantive, that jurisdiction's limitations, and not the procedural limitations of the forum state, will apply."[88] The LPA provides that Delaware substantive law controls the breach of fiduciary duty claims by HCM against Strand and Dondero that underlie the third-party claims against

[85] *Janvey* v. *Adams & Reese, LLP*, No. 3:12-CV-0495-N, 2013 WL 12320921, at *4 (N.D. Tex. Sept. 11, 2013) (rejecting application of internal affairs doctrine to statute of limitations on the basis that the limitations period was procedural); Delaware law, however, may supply the statute of limitations because HCMLP is incorporated and Delaware and the LPA's choice of law provision provides for Delaware law. *Pilepro, LLC* v. *Chang*, 152 F. Supp. 3d 659, 675 (W.D. Tex. 2016) (Delaware law governed breach of fiduciary duty claims because place of incorporation was Delaware); 4th LPA § 6.11, Def. Ex. A, Def. Appx. 33; 2nd LPA § 6.11, Def. Ex. B, Def. Appx. 70; *see also In re Avado Brands, Inc.*, 358 B.R. 868, 881–82 (Bankr. N.D. Tex. 2006) (looking to Georgia statute of limitations for fiduciary duty claims with respect to a Georgia corporation); Restatement (Second) of Conflict of Laws § 187(1) (the law chosen by the parties should govern "if the particular issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue"). *In re The Brown Sch.*, 368 B.R. 394, 402–03 (Bankr. D. Del. 2007) (denying motion to dismiss because the Complaint relied on events that occurred within three years of the bankruptcy petition date).

[86] Complaint, ¶¶ 51, 55, 62, 195, 286, 293, 295(a). *See In re The Brown Sch.*, 368 B.R. 394, 402–03 (Bankr. D. Del. 2007) (denying motion to dismiss because the Complaint relied on events that occurred within three years of the bankruptcy petition date). Even under the 4-year Texas statute of limitations, the claims would be time-barred.

[87] Complaint, ¶¶ 195, 203, 276, 289, 292.

[88] *Cypress/Spanish Ft. I, L.P. v. Professional Service Industries, Inc.*, 814 F. Supp.2d 698, 709, n. 4 (N.D. Tex. 2011) (citing *Johansen v. E.I. Du Pont De Nemours & Co.*, 810 F.2d 1377, 1381 (5th Cir. 1987)) ("if that jurisdiction's limitations period is considered substantive, that provision will govern").

Defendants.[89] Delaware law also views the adverse domination doctrine as substantive and does not recognize it.[90] Other courts have expressly characterized the adverse domination doctrine as conferring substantive rights.[91] Because Delaware substantive law controls and views the adverse domination doctrine as substantive, Delaware law must apply. Because Delaware law does not recognize the adverse domination doctrine, Plaintiff's allegations pursuant to that doctrine fail as a matter of law to plead grounds to toll the statute on Plaintiff's claims.

31. Delaware does not recognize the adverse domination doctrine because its law affords a partnership and its creditors other avenues for recovery based on breach of fiduciary duty. In Delaware, limited partners and creditors (when the partnership is insolvent), have standing to bring breach of fiduciary duty claims.[92] Where a creditor fails to do so and later attempts to bring such claims after the statute of limitations has run, the claims are barred.[93] HCM was allegedly insolvent from 2010 to 2013,[94] therefore the time for HCM and its creditors[95] to bring claims against Dondero and Strand (and the Defendants) related to the transfers in question in 2011 and 2012 expired no later than in 2016 (assuming a four-year statute of limitations under Texas law).

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[89] 4th LPA §§ 4.1(g), 6.11, Def. Ex. A, Def. Appx. 33; 2nd LPA §§ 4.1(g), 6.11, Def. Ex. B, Def. Appx. 70.

[90] *In re AMC Investors, LLC*, 637 B.R. 43, 57, n. 60 (Bankr. Del. 2022) ("Because the court believes that Delaware's tolling mechanisms, in combination with the availability of shareholder derivative actions, already address the concerns that underlie the adverse domination doctrine, the court declines to recognize adverse domination as a viable tolling mechanism in Delaware.")

[91] *Antioch Company Litigation Trust v. Morgan*, 644 Fed. Appx. 579, 583 (6th Cir. 2016) (Where state law did not recognize adverse domination, "federal courts do not have the power . . . to create substantive rights denied by State law") (quoting *Guaranty Trust Co. v. York*, 326 U.S. 99, 105 (1945) (internal marks omitted)); *Resolution Trust Co. v. Walke*, 1994 WL 777355, at *9 (W.D. La. July 29, 1994) ("the court declines to create new substantive law for Louisiana"); *Resolution Trust Corp. v. Scaletty*, 891 P.2d 1110, 1115 (Kan. 1995) (stating that some courts view the adverse domination doctrine as similar to a substantive statute of repose).

[92] *Bren v. Capital Realty Group Senior Housing, Inc.*, 2004 WL 370214, at *4–6 (Del. Ch. Feb. 27, 2004).

[93] *Id.* at * 6.

[94] Complaint, ¶ 106.

[95] The two largest alleged unsecured creditors with allowable claims for whose alleged benefit Plaintiff makes the claims against Defendants—UBS and the Redeemer Committee—brought claims against HCMLP years ago. UBS filed suit in 2009 and proceeded to trial in 2017. Complaint, ¶¶ 45, 46, 76. Various investors (which led to formation of the Redeemer Committee in 2011) made claims in 2008, filed suit in 2016, and received an arbitration award in 2019. Complaint, ¶¶ 87, 88. During HCMLP's alleged period of insolvency from 2010 to 2013 (Complaint, ¶ 106), UBS and the Redeemer Committee could have also made claims against Dondero, Strand, and the Defendants regarding the transfers in 2011 and 2012 that the Plaintiff is now making for their alleged benefit.

32. Even if the adverse domination doctrine was applicable under Texas law, "Plaintiff has failed to show that the doctrine has bearing in this case" against the Defendants.[96] Where the claim is against a third party rather than officers or directors, there is "no justification for applying the 'adverse domination' theory to toll the applicable statute of limitations."[97] Even where a plaintiff alleges that an officer prevented suit against the third party "in order to avoid exposure of his own wrongdoing," the doctrine does not extend "beyond corporate officers and directors."[98]

33. Plaintiff otherwise has failed to plead facts that would support application of the "discovery rule" under either Texas or Delaware law. Under Texas law, the rule "defers the time a cause of action accrues (and the time that the limitation period begins) to the date that the injury is actually discovered" when the claim arises from a fiduciary relationship.[99] Under Delaware law, "the statute will begin to run only upon the discovery of facts constituting the basis of the cause of action or the existence of facts sufficient to put a person of ordinary intelligence and prudence on inquiry which, is pursued, would lead to the discovery of facts."[100]

34. Here, Plaintiff fails to allege that HCM and its creditors during HCM's alleged period of insolvency from 2010 to 2013 (which overlaps the alleged 2011 and 2012 transfers to Defendants) did not know and were not on inquiry notice of the injuries allegedly caused them by Dondero, Strand, and the Defendants by the 2011 and 2012 transfers. Rather, Plaintiff makes the irrelevant allegation that neither he nor the Estate could have discovered the conduct or inquired about the conduct before Dondero was removed on January 9, 2020.[101] Therefore, the claims against the Defendants must be dismissed.

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[96] *Federal Deposit Ins. Corp. v. Shrader & York*, 777 F. Supp. 533, 535 (S.D. Tex. 1991).
[97] *Id.*
[98] *F.D.I.C. v. Shrader & York*, 991 F.2d 216, 227 (5th Cir. 1993).
[99] *In re Jones*, 445 B.R. 677, 718, n. 124 (Bankr. N.D. Tex. 2011).
[100] *In re Bridgeport Holdings, Inc.*, 388 B.R. 548, 561 (Bankr. Del. 2008).
[101] Complaint, ¶¶ 195, 203, 276, 289, 292.

(b) Plaintiff Lacks Standing to Bring Claims for Breach of Fiduciary Duty, Defeating His Derivative Aiding and Abetting, Knowing Participation, and Conspiracy Claims.

35. Plaintiff's claims for Aiding and Abetting Breach of Fiduciary Duty under Delaware Law or Knowing Participation in Breach of Fiduciary Duty under Texas Law[102] (Count 15) and Civil Conspiracy to Breach Fiduciary Duties under Texas Law (Count 16) must be dismissed because Plaintiff lacks standing to assert claims for breach of fiduciary duty. As more particularly described in the Leventon and Dondero Briefs, breach of fiduciary duty claims are expressly reserved as "Reorganized Debtor Assets," and the assets transferred to the Claimant Trust explicitly excludes Reorganized Debtor Assets. Claims of aiding and abetting breach of fiduciary duty under Delaware law,[103] knowing participation in breach fiduciary duty under Texas law,[104] and civil conspiracy to breach fiduciary duties under Texas law[105] are theories of vicarious liability. Thus, Plaintiff cannot prevail on those claims without proving an underlying breach of fiduciary duty. Because Plaintiff does not have standing to assert a breach of fiduciary duty claim, the claims for aiding and abetting, knowing participation, and civil conspiracy relating to breach of fiduciary duty must be dismissed.

(c) Strand and Dondero Owed no Fiduciary Duties to HCM.

36. Under Texas law, a Delaware business entity's internal affairs, including whether a

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[102] The Fifth Circuit has yet to recognize the cause of action of aiding and abetting the breach of a fiduciary duty in Texas. *See Midwestern Cattle Mktg., L.L.C. v. Legend Bank, N.A.*, 800 Fed. Appx. 239, 250 (5th Cir. 2020) ("We noted that the 'Texas Supreme Court has no expressly decided whether Texas recognizes a cause of action for aiding and abetting,' and '[w]hen sitting in diversity, a federal court exceeds the bounds of its legitimacy in fashioning novel causes of action not yet recognized by the state courts.' Therefore, we cannot recognize a claim that the Texas Supreme Court has yet to expressly adopt. For these reasons, we affirm the dismissal of the aiding and abetting claim.") (internal citations omitted).

[103] *See Gotham Partners, LP v. Hallwood Realty Partners, LP*, 817 A.2d 160, 172 (Del. 2002) (the elements of a claim for aiding and abetting breach of fiduciary duty include "the fiduciary breached its duty").

[104] *See Marshall v. Ribosome LP*, 2019 WL 2041062, at *6 (Tex. App.—Houston [1st Dist.] May 9, 2019, no pet.) (a claim for knowing participation in breach of fiduciary duty claim includes "the requirement that the plaintiff prove the existence of an underlying breach of fiduciary duty").

[105] *See Agar Corp. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019) ("[C]ivil conspiracy is not an independent tort . . . . Civil conspiracy requires an underlying tort that has caused damages.").

fiduciary duty is owed, are governed by the law of the state where the entity is organized.[106] HCM is a Delaware limited partnership[107] and the LPA provides that Delaware law applies.[108] Delaware permits a general and limited partners' fiduciary duties and liability for breach of those fiduciary duties to be limited or eliminated by a partnership agreement, except for the duty of good faith.[109] Where fiduciary duties are disclaimed in the partnership agreement, duties of partners are determined "exclusively" by the partnership agreement.[110] In other words, "a limited partnership agreement 'may establish[] a contractual standard of review that supplants the fiduciary duty analysis,'"[111] and if so, "any claim of a breach of fiduciary duty must be analyzed generally in terms of the partnership agreement."[112] Under those circumstances, the partnership agreement is the "sole source of protection."[113]

37. Under the LPA, in the event of a "conflict of interest" between HCM and Strand (or its affiliates) in a transaction, "any action taken" by Strand is subject to the duty to not act in "bad faith" and no other "standard of care or duty imposed herein or therein or under the Delaware Act or any other applicable law, rule, or regulation."[114]

38. When a plaintiff raises a claim based upon a permissibly eliminated duty, that claim must be dismissed.[115] Here, the Complaint alleges that Strand and Dondero owed fiduciary duties to HCM and challenges their acting on "both sides of the agreements and transactions" between

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[106] *Klinek v. LuxeYard, Inc*., 596 S.W.3d 437, 449–50 (Tex. App.—Houston [14th Dist.] 2020, pet denied).
[107] Complaint, n. 1.
[108] 2nd LPA, § 6.11, Def. Ex. B, Def. Appx. 70; 4th LPA, § 6.11, Def. Ex. A, Def. Appx. 33.
[109] Del. Code Ann. tit. 6, § 17-1101(d), (f); *Brinckerhoff v. Enbridge Energy Co., Inc.*, 159 A.3d 242, 252–53 (Del. 2017).
[110] *Brinckerhoff*, 159 A.3d at 252–53.
[111] *Gerber v. EPE Holdings, LLC*, No. 3543-VCN, 2013 Del. Ch. LEXIS 8, at *23 (Del. Ch. Jan. 18, 2013) (internal citations omitted).
[112] *Gotham Partners, LP v. Hallwood Realty Partners, LP*, 817 A.2d 160, 170-71 (Del. 2002).
[113] *Id*. at 171.
[114] 2nd LPA, § 4.1(g), Def. Ex. B, Def. Appx. 63; 4th LPA, § 4.1(g), Def. Ex. A, Def. Appx. 25.
[115] *Malpiede v. Townson*, 780 A.2d 1075, 1094 (Del. 2001).

HCM, on one hand, and NPA or HCMFA, on the other.[116] But doing so is precisely what the LPA permitted.[117] Plaintiff must allege a breach of the LPA to state a claim, which he failed to do.

(d) The Complaint Fails to Allege Facts that the Alleged Breach Damaged HCM.

39. Plaintiff pleads that HCM had a financial turnaround after the alleged breaches.[118] Where the pleader's conclusion regarding insolvency and related fraudulent activity "is not only not justified but is contradicted by the facts alleged," the complaint should be dismissed.[119] Here, the Complaint alleges HCM's initial insolvency was the result of the 2008 financial crisis.[120] After the transfers in 2011 and 2012 to NPA and HCMFA, the Complaint recognizes that HCM turned around financially.[121] HCM then returned to insolvency in December, 2016, due to other factors.[122] The Complaint fails to state facts to support the element of causation of damages because Plaintiff's allegations demonstrate that the transfers of accounts to NPA and HCMFA resulted in a financial turnaround in 2013, while other factors drove it back into insolvency in 2015.[123]

(e) Counts 15 and 16 Complain About Transfers, and There is No Secondary Liability for Fraudulent Transfers.

40. Counts 15 and 16 must be dismissed because Delaware and Texas law disallow secondary liability for fraudulent transfers.[124] "[T]he District Court for the Northern District of

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[116] Complaint, ¶ 197.

[117] 2nd LPA, § 4.1(g), Def. Ex. B, Def. Appx. 63; 4th LPA, § 4.1(g), Def. Ex. A, Def. Appx. 25.

[118] Complaint, ¶¶ 67, 107.

[119] *Consol. Cement Corp. v. Pratt*, 47 F.2d 90, 93 (10th Cir. 1931).

[120] Complaint, ¶¶ 50, 105.

[121] *Id.*, ¶¶ 67, 107.

[122] *Id.*, ¶ 108.

[123] *See Mora v. Univ. of Texas Sw. Med. Ctr.*, 469 Fed. Appx. 295, 299 (5th Cir. 2012) (holding that plaintiff's allegation that she was retaliated against was "contradicted by other facts alleged in the complaint, making the claim implausible on its face"); *see also Bot M8 LLC v. Sony Corp. of Amer.*, 4 F.4th 1342, 1354 (Fed. Cir. 2021) ("Where, as here, the factual allegations are actually *inconsistent* with and contradict [the plaintiff's claim], they are likewise insufficient to state a plausible claim. As we have said before, while a plaintiff's pleading obligations are not onerous, it is possible that, in pleading its claims, a plaintiff may find that it has pleaded itself out of court.").

[124] *In re Silver State Holdings, Assignee-7901 Boulevard 26 LLC*, No. 19-41579-MXM, 2020 WL 7414434, at *31 (Bankr. N.D. Tex. Dec. 17, 2020).

Texas concluded that Texas law does not provide for secondary liability for fraudulent transfers through conspiracy, aiding and abetting, and similar secondary-liability theories."[125] Likewise, "[u]nder Delaware law, a 'conspiracy cannot be predicated on fraudulent transfer.'"[126]

41. Plaintiff alleges in Count 15 that "[Defendants] aided and abetted the breaches of fiduciary duty committed by Dondero and Strand. . . . [by] knowingly participat[ing] in Dondero's scheme to divert HCM's valuable business into new 'lifeboat' entities that he owned and controlled."[127] By basing its claim on Dondero's alleged "lifeboat" scheme, Plaintiff does nothing more than refer to alleged fraudulent transfers it pleads in prior claims.[128] In Count 16, Plaintiff again refers back to its "lifeboat" theory (a/k/a its fraudulent transfer theory): "Dondero, [and Defendants] conspired to perpetrate the lifeboat scheme in order to place valuable assets outside the reach of HCM's creditors, in violation of Dondero's fiduciary duties."[129] Thus, Counts 15 and 16 are simply disguised efforts to pursue Defendants for secondary liability for fraudulent transfers, which, as discussed above, has been rejected under both Delaware and Texas law.

5. Plaintiff's Claim for Tortious Interference with Prospective Business Relations Has Two Fatal Flaws.

(a) Plaintiff's Allegations of Tortious Conduct Are Insufficient.

42. Plaintiff has not established the elements of tortious interference with prospective business relations because the tortious conduct Plaintiff alleges – the fraudulent transfers – fails as

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[125] *Id.*

[126] *Quadrant Structured Products Co., Ltd. v. Vertin*, 102 A.3d 155, 203 (Del. Ch. 2014) (quoting *Cornell Glasgow, LLC v. LaGrange Props., LLC,* 2012 WL 3147124, at 5 (Del. Super. Aug. 1, 2012); *Edgewater Growth Capital P'rs, L.P. v. H.I.G. Capital, Inc.*, 2010 WL 720150, at 2 (Del. Ch. Mar. 3, 2010)).

[127] Complaint, ¶¶ 262–73.

[128] *See* Complaint, Count 12 [Constructive Fraudulent Transfer] ¶ 267 (describing the alleged fraudulent transfer of assets: "[t]he result of this transfer was simply to shift the management fees relating to NHF from one lifeboat entity to another) (emphasis added); Count 13 [Intentionally Fraudulent Transfer] ¶ 271(c) (alleging that "HCMLP, through Dondero, was engaged in a multi-faceted scheme to defraud HCMLP's creditors, which involved, among other things, ***causing HCMLP to transfer its valuable management contracts and business opportunities to newly-created 'lifeboat' entities***") (emphasis added).

[129] *Id.*, ¶ 295(a).

discussed *supra*, IV.B.2(a-b). Under both Texas and Delaware law, to prevail on a claim for tortious interference with prospective business relations, a plaintiff must establish that the defendant's conduct was "independently tortious or unlawful."[130] To be independently tortious, "the plaintiff must prove that the defendant's conduct would violate some other recognized tort duty."[131] Here, Plaintiff alleges that "[b]ut for the actions of Dondero, [NPA], and HCMFA, HCM would have continued to pursue the business opportunities that Dondero diverted to [NPA] and HCMFA[,]"[132] and that "[b]y using [Defendants] as part of his lifeboat scheme, Dondero breached his fiduciary duties to HCM."[133] However, as discussed *supra*, IV.B.2 and IV.B.4, the lifeboat scheme Plaintiff references (a/k/a the alleged fraudulent transfers) fails to state a claim, whether plead directly or disguised as aiding and abetting, knowing participation, or conspiracy. Therefore, Plaintiff does not state the independently tortious conduct required to state a claim.

(b) The LPA Precludes Plaintiff's Claim for Tortious Interference of Business Relations.

43. Plaintiff does not state a viable claim against Defendants for tortious interference with business relations because HCM disclaimed any rights to the very business relations it contends Defendants interfered with. Under Delaware law, the parties are free to do so, because courts do not "import standards of conduct from corporate or tort law to govern" limited partnerships, leaving partners free to agree to conduct that might be prohibited in other contexts.[134]

44. The LPA defines an "*Affiliate*" as "any Person that directly or indirectly controls,

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[130] *Cantu v. Falcon Int'l Bank*, No. 04-17-00467-CV, 2018 WL 1831651, at *3 (Tex. App.—San Antonio Apr. 18, 2018, pet. denied) (citing *Coinmach Corp. v. Aspenwood Apartment Corp.*, 417 S.W.3d 909, 923 (Tex. 2013)); *accord Wal-Mart Stores, Inc. v. Sturges*, 52 S.W.3d 711, 713 (Tex. 2001) (emphasis added); *see, e.g.*, *Orthopaedic Assocs. of S. Delaware, P.A. v. Pfaff,* No. CV S17C-07-016 ESB, 2018 WL 822020, at *2 (Del. Super. Ct. Feb. 9, 2018).

[131] *Wal-Mart Stores, Inc.*, 52 S.W.3d at 713; *see also Cantu*, 2018 WL 1831651, at *3; *see also ProTradeNet, LLC v. Predictive Profiles, Inc.*, 369 F. Supp. 3d 788, 794–95 (W.D. Tex. 2019).

[132] Complaint, ¶ 299.

[133] *Id.*, ¶ 300.

[134] *See Allen v. Encore Energy Partners, L.P.*, 72 A.3d 93, 106 (Del. 2013).

is controlled by, or is under common control with the Person in question."[135] HCM disclaimed "any rights . . . in any business ventures" of Defendants because Defendants are alleged to be Affiliates of Strand (the "General Partner") (which Plaintiff alleges are under the common control of Dondero).[136] HCM disclaimed any rights it may have had in the business ventures of entities such as NPA and HCMFA in the LPA.[137] Because HCM disclaimed any rights in any business ventures of Affiliates of the General Partner, it relinquished the right to bring this claim.

6. Plaintiff's Claims for Unjust Enrichment and Money Had and Received Must Be Dismissed Because They Fail to State a Claim for Relief.

(a) Unjust Enrichment is not an Independent Cause of Action under Texas Law.

45. Unjust enrichment is not an independent claim in Texas and must be dismissed.[138]

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[135] 2nd LPA, § 2.1, Def. Ex. B, Def. Appx. 48; 4th LPA, § 2.1, Def. Ex. A, Def. Appx. 10.

[136] Complaint, *passim*.

[137] 2nd LPA, § 4.1(f-g), Def. Ex. B, Def. Appx. 62-63 (emphasis added); 4th LPA, § 4.1(f-g), Def. Ex. A, Def. Appx. 25 (emphasis added):

> (f) Outside Activities' Conflicts of Interest. The General Partner or any Affiliate thereof and any director, officer, employee, agent, or representative of the General Partner or any Affiliate thereof shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including, without limitation, business interests and activities *in direct competition with* the Partnership. *Neither the Partnership nor any of the Partners shall have any rights* by virtue of this Agreement or the partnership relationship created hereby *in any business ventures* of the General Partner, any Affiliate thereof, or any director, officer, employee, agent, or representative of either the General Partner or any Affiliate thereof.
>
> (g) Resolution of Conflicts of Interest. Unless otherwise expressly provided in this Agreement or any other agreement contemplated herein, whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership or any Limited Partner, on the other hand, any action taken by the General Partner, in the absence of bad faith by the General Partner, shall not constitute a breach of this Agreement or any other agreement contemplated herein or a *breach of any standard of care or duty imposed herein or therein or under the Delaware Act or any other applicable law, rule, or regulation*.

[138] *See Midwestern Cattle Mktg., LLC v. Legend Bank, N.A.,* 999 F.3d 970, 972 (5th Cir. 2021) (". . .unjust enrichment describes the nature of certain claims and remedies, [but is] not a distinct cause of action itself"); *McCullough v. Scarbrough, Medlin & Assocs.*, 435 S.W.3d 871, 891 (Tex. App.—Dallas 2014, pet. denied) ("unjust enrichment is not an independent claim; rather it is a theory of recovery"); *Hancock v. Chicago Title Ins. Co.*, 635 F. Supp.2d 539, 561 (N.D. Tex. 2009) ("Because Texas law does not afford an independent cause of action for unjust enrichment, plaintiffs cannot simultaneously maintain both of these claims [for unjust enrichment and money had and received]," dismissing unjust enrichment claim); *Taylor v. Tervino*, No. 3:20-CV-0393-D, 2021 WL 347566, at *4 (N.D. Tex. Feb. 2, 2021) ("The court has previously held that Texas law does not recognize an independent cause of action for unjust enrichment," dismissing unjust enrichment claim on 12(b)(6) motion, since non-movant could not provide any authority to the contrary); *Redwood Resort Properties, LLC v. Holmes Co. Ltd.*, No. CIVA 3:06CV1022 D, 2006 WL

(b) Plaintiff Cannot Recover under Unjust Enrichment or Money Had and Received Because a Valid Contract Governs the Issue.

46. A claim for unjust enrichment does not lie when there is a contract governing the parties' dispute,[139] and the same principle applies to money had and received.[140] Plaintiff alleges that HCMFA and NPA paid too little for HCM's services.[141] When compensation is determined by a contract, there can be no claim for unjust enrichment when the price determined by the contract is paid.[142] Regarding Plaintiff's claim for money had and received, Plaintiff alleges that "[t]here was no valid express contract governing the subject matter of this dispute."[143] However, this allegation is contradicted by other portions of the Complaint. The "dispute" referred to in Plaintiff's money had and received claim is that "NexPoint and HCMFA utilized HCM's employees to perform management and advisory services that HCM had directly provided, and should have continued to provide. Neither NexPoint nor HCMFA fairly compensated HCM for

3531422, at *9 (N.D. Tex. Nov. 27, 2006) (dismissing unjust enrichment claim on 12(b)(6) motion because "[u]njust enrichment 'is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits. . .which give rise to an implied or quasi-contractual obligation to repay'"); *Arencibia v. AGA Serv. Co.,* No. 4:20-cv-00819-O, 2020 WL 10056799, at *5 (N.D. Tex. Nov. 13, 2020) (dismissing unjust enrichment claim on 12(b)(6) motion because ". . .Texas courts of appeals have consistently held that unjust enrichment is not an independent cause of action, but is instead a theory upon which an action for restitution may rest."); *Clapper v. Am. Realty Inv'rs, Inc.*, No. 3:14-cv-2970-L, 2019 WL 5865709, at *9 (N.D. Tex. Nov. 7, 2019) (same).

[139] *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000); *Reveille Trucking, Inc., v. Lear Corp.*, No. 4:14-CV-511, 2017 WL 661521, at *13 (S.D. Tex. Feb. 17, 2017); *Maxwell v. Neri N. Am.*, No. 4:13-CV-269, 2014 WL 2441200, at *6 (S.D. Tex. May 30, 2012).

[140] *City Nat'l Rochdale Fixed Inc. Opps. (Ireland) Ltd. v. Amer. General Life Ins. Co.*, No. 3:17-CV-2067-S, 2018 WL 4732431, at *4 (N.D. Tex. Sep. 13, 2018) (internal quotation marks omitted); *see also Payne v. Wells Fargo Bank N.A.*, 637 Fed. Appx. 833, 838 (5th Cir. 2016) ("[T]he existence of an express contract precludes equitable relief under the theory of money had and received."); *Universal MRI & Diagnostics, Inc. v. Med Lien Mgmt., Inc.*, 497 S.W.3d 653, 663 (Tex. App.—Houston [14th Dist.] 2016, no pet.) ("As a general rule, there can be no recovery under a quasi-contractual theory – such as money had and received – when a valid, express contract covers the subject matter of the parties' dispute.").

[141] Complaint, ¶ 379 ("Neither NexPoint nor HCMFA fairly compensated HCMLP for the use of its employees or resources [under the shared services agreements]"). The shared services agreements between HCMLP and Defendants are alleged (with illustrations) throughout the Complaint: ¶¶ 54, 62, 63, 121, 169, 195, 197, 199, 234, 249, 258, 264, 270, 293. The Complaint also alleges the existence of various potentially relevant forbearance agreements (¶¶ 57, 64, 251), a note agreement (¶ 380), and a payroll reimbursement agreement (¶ 63).

[142] *Musgrave v. Horne Re-Abilene, LLC*, No. 1:09-CV-138-C, 2010 WL 11613937, at *6 (N.D. Tex. July 12, 2010) (dismissing unjust enrichment theory of recovery where the parties contested the amount payable for a tract of land, but there was a valid express contract governing the price to be paid).

[143] *See* Amended Complaint, ¶ 383.

the use of its employees or resources."[144] Other portions of the Amended Complaint specifically refer to Shared Services Agreements between HCM, on the one hand, and NexPoint and HCMFA, on the other hand, which governed the terms of the services provided and the fees and costs charged.[145] Plaintiff's claim for money had and received specifically references multiple agreements,[146] and its effort to repackage its allegations to fit every conceivable tort should be rejected and Plaintiff's unjust enrichment and money had and received claims must be dismissed.

(c) Plaintiff's Claim for Money Had and Received is Barred by the Applicable Statute of Limitations.

47. Further, Plaintiff's claim for money had and received is subject to a two-year statute of limitations,[147] and is based on alleged misconduct between 2012 and 2017.[148] Accordingly, the Court should dismiss Plaintiff's claim for money had and received because the statute of limitations expired before Plaintiff filed his claims.

V. Conclusion

48. Defendants NPA and HCMFA therefore respectfully request this Court dismiss Plaintiff's Tenth, Eleventh, Twelfth, Thirteenth, Fifteenth, Sixteenth, Seventeenth, and Twenty-Eighth Counts in its Complaint under Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). Additionally, Defendants NPA and HCMFA do not consent to the Bankruptcy Court entering final orders or a judgment in this Adversary Proceeding.

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[144] *See* Amended Complaint, ¶ 379.
[145] *See* Amended Petition, ¶¶ 52-65; *see also id*., ¶ 54 ("[Dondero] caus[ed] NexPoint to enter into a SSA with HCMLP that required NexPoint to pay fees to HCMLP based on a formula . . . ."); *id*. ¶ 249 (same); *id*. ¶ 258 ("Agreements between HCMLP and HCMFA were structured to ensure that HCMFA retained the vast majority of profits for the work performed by HCMLP and its employees. To the extent that sub-advisory and shared services agreements existed between HCMLP and HCMFA . . . .").
[146] *See id*. ¶ 380 ("HCMLP provided substantial financial support for NexPoint and HCMFA, including in the form of below-market ***note agreements***.") (emphasis added).
[147] *See Verizon Employee Benefits Comm. v. Frawley*, 655 F. Supp. 2d 644, 647-48 (N.D. Tex. 2008).
[148] *See* Amended Complaint, ¶¶ 52-65.

Dated: July 11, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 11, 2022, a true and correct copy of the foregoing document was served via the Court's Electronic Case Filing system to the parties that are registered or otherwise entitled to receive electronic notices in this case.

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez

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 (SGJ)
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; 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.; AND SAS ASSET	Adv. Pro. No. 21-03076-sgj **MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS OF DEFENDANTS JAMES DONDERO, THE DUGABOY INVESTMENT TRUST, GET GOOD TRUST, HUNTER MOUNTAIN INVESTMENT TRUST, RAND PE FUND I, LP, AND STRAND ADVISORS, INC.**

EXHIBIT

KK

RECOVERY, LTD.,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS OF DEFENDANTS JAMES D. DONDERO, THE DUGABOY INVESTMENT TRUST, GET GOOD TRUST, HUNTER MOUNTAIN INVESTMENT TRUST, RAND PE FUND I, LP, AND STRAND ADVISORS, INC.

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I. INTRODUCTION

Defendants James D. Dondero, The Dugaboy Investment Trust, Get Good Trust, Hunter Mountain Investment Trust, Rand PE Fund I, LP, and Strand Advisors, Inc. (collectively, "Defendants")[1] move to dismiss the Amended Complaint and Objection to Claims ("Amended Complaint") filed on May 19, 2022, by Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust ("Litigation Trustee") because those claims are deficient under Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(h)(2).[2]

The Amended Complaint, which asserts 36 sweeping causes of action against 21 defendants, attempts to saddle Mr. Dondero, his employees, and numerous entities with liability for legally and contractually sanctioned management activities undertaken for the benefit of Highland Capital Management, L.P. ("HCMLP"). Hoping to paint everyone and everything with the same bad brush, the Amended Complaint vastly overreaches and falls well short of alleging viable claims against Defendants. As explained below, the Amended Complaint should be dismissed under Rule 12(b)(1) because the Court lacks subject matter jurisdiction to hear or decide any of the non-core state-law claims asserted against Defendants. In addition, the Amended Complaint should be dismissed under Rule 12(b)(6) and 12(h)(2) because the Litigation Trustee lacks standing to assert the claims, they are barred by the applicable statutes of limitations, and/or the allegations of the Amended Complaint fail to sufficiently plead the claims asserted.

[1] Defendants Hunter Mountain Investment Trust and Rand PE Fund I, LP were formerly represented by other counsel. As of July 5, 2022, they are represented in this adversary proceeding by the undersigned counsel. *See* Dkt. 170 (order granting motion to substitute counsel).

[2] Rules 12(b)(1), 12(b)(6), and 12(h)(2) are made applicable in bankruptcy through Federal Rules of Bankruptcy Procedure 7012(b). Defendants do not consent to the entry of final orders or judgment by the Bankruptcy Court.

II. FACTUAL BACKGROUND

A. HCMLP's History

HCMLP is an SEC-registered investment advisory business founded in 1993 by Mr. Dondero and defendant Mark A. Okada. *See* Am. Compl., ¶¶ 2, 12-13. Although the Amended Complaint describes HCMLP and its affiliates as a complex "web" of entities operated at the whim and for the sole benefit of Mr. Dondero, for 26 years prior to filing a chapter 11 petition, HCMLP operated as a legitimate (and heavily regulated) Registered Investment Advisor ("RIA") for the benefit of its managed funds and investors. As the Amended Complaint acknowledges, under Mr. Dondero's leadership, by the mid-2000s, HCMLP grew to over 100 employees, including "executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel." *Id.*, ¶ 41. Thus, while the Litigation Trustee alleges that Mr. Dondero was "HCMLP's solitary decision-maker on all matters concerning the company's operation and management," *id.*, ¶ 42, that allegation makes no sense. As the Litigation Trustee acknowledges, over the years—with the assistance of an expanded workforce and skilled executive team—HCMLP's original focus shifted from the leveraged loan market to "other asset classes, such as high-yield credit, public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific industries." *Id.*, ¶ 40. At its peak, HCMLP had assets under management exceeding $40 billion. *Id.*, ¶ 43 n.9.

Following the financial crisis in 2008, HCMLP and some of its managed funds and affiliates, like many other financial institutions and financial advisors across the globe, faced several lawsuits. Am. Compl., ¶ 4. The Amended Complaint characterizes those lawsuits as a "looming threat," *id.*, ¶ 5, but between 2008 and HCMLP's bankruptcy filing in 2019, virtually none of those lawsuits resulted in any sizeable liability against HCMLP. Indeed, the only significant award issued against HCMLP at any time between 2008 and 2019 (and the only one

identified in the Complaint) is a $190 million arbitration award in favor of the Redeemer Committee. *See* Am. Compl., ¶ 8. While the Amended Complaint alleges that lawsuits filed against HCMLP by UBS, Citibank, and Barclays between 2009-2012 presented "the threat of hundreds of millions of dollars in damages," *id*. ¶¶ 45-48, the Litigation Trustee does not allege that any of these lawsuits resulted in any specific liability against HCMLP.

B. The Defendants

James D. Dondero and Strand. For most of its operating history, Mr. Dondero served as the Chief Executive Officer of HCMLP by virtue of his ownership (and role as sole director) of its general partner, Strand Advisors, Inc. ("Strand"). Am. Compl., ¶¶ 12, 14. Notably, when HCMLP filed for bankruptcy, Mr. Dondero did not own any direct economic interest in the Debtor.[3]

Moreover, as the Litigation Trustee acknowledges, the management of HCMLP prior to Plan confirmation was governed by a Fourth Amended and Restated Agreement of the Limited Partnership of Highland Capital Management, L.P. ("LPA"). *See* Am. Compl., ¶ 221 (referencing the "operative partnership agreements").[4] That LPA contains several salient provisions that bear upon the allegations at issue. In particular, the LPA permitted Strand, as general partner:

- To "make such pro rata or non-pro rata distributions as it may determine in its sole and unfettered discretion" (LPA, §3.9(a));

  To "have business interests and engage in business activities in addition to those relating to the Partnership, including, without limitation, business interests and activities in direct competition with the Partnership" (*id.*, § 4(f)).[5]

[3] *See* Order (I) Confirming the Fifth Amended Plan Reorganization of Highland Capital Management, L.P (as Modified) and (II) Granting Related Relief ("Confirmation Order"), Dkt. 1943, at ¶ 5; *see also id.*, ¶ 18 ("Mr. Dondero owns no equity in the Debtor directly.").

[4] *See* Dkt. 143-1, Declaration of Amy L. Ruhland, ¶ 2. The Court may consider the LPA because it is incorporated into the Amended Complaint by reference. *See* Compl., ¶ 221; *Randall D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011).

[5] This right extended to Strand's directors, officers, agents, and representatives. Dkt. 143-1, Ruhland Decl., Ex. A, § 4.1(f).

- To exercise "full control over all activities of the Partnership," including by, among other things, (1) "purchasing and selling any asset, any debt instruments, any equity interests, any commercial paper, any note receivables, and any other obligation" of HCMLP, (2) "exchang[ing] . . . any or all of the assets of the Partnership," (3) executing on behalf of HCMLP "notes . . . and any and all other contracts," (4) "us[ing] the assets of the Partnership (including, without limitation, cash on hand) for any Partnership purpose on any terms [Strand] s[aw] fit," (5) "distributing . . . Partnership cash or other assets," (6) forming other limited or general partnerships, joint ventures, or other relationships and to contributing to "such partnerships, ventures, or relationships . . . assets and properties of the Partnership," and (7) controlling "the conduct of any litigation, the incurring of legal expenses, and the settlement of claims and suits" (*id.*, § 4.1(a)); and

Mr. Dondero, in turn, was authorized to act on behalf of Strand by virtue of his role as Strand's sole director, as set forth in Strand's organizational documents.[6] This makes sense: an entity like Strand could not act without an individual at the helm.

Dugaboy. Prior to Plan confirmation, Defendant The Dugaboy Investment Trust ("Dugaboy") held a minority (0.1866%) economic interest and a 74.4426% voting interest in HCMLP's Class A partnership interests. *See* Am. Compl., ¶ 16; Plan Confirmation Order, ¶ 18. Despite these interests, there is no allegation that Dugaboy exercised any control of HCMLP or orchestrated or directed any of the transactions at issue.

Get Good. Defendant Get Good Trust ("Get Good") is a Delaware trust established by Mr. Dondero for the benefit of his living descendants. *See* Am. Compl., ¶ 26. Get Good is neither a residual equity holder in the Debtor's estate nor a creditor.

Hunter Mountain Investment Trust. Defendant Hunter Mountain Investment Trust ("HMIT") is a Delaware statutory trust and the owner of 99.5% of the economic interests of HCMLP. Am. Compl., ¶ 27. HMIT is thus an equity interest holder in the Debtor.

[6] *See* Dkt. 143-1, Ruhland Decl., Exs. B & C. The Court may take judicial notice of a company's publicly filed organizational documents. *See Rittgers v. United States*, 131 F. Supp. 3d 644, 649-50 (S.D. Tex. 2015) (on a motion to dismiss, court may consider "documents that are subject to judicial notice as public record"); *see also In re Wheelabrator Techs., Inc. S'holders Litig.*, 1992 WL 212595, at *11-12 (Del. Ch. Sept. 1, 1992) (taking judicial notice of certificate of incorporation).

Although the Amended Complaint alleges that "Dondero caused" HMIT to issue "a series of notes and cash," including a $63 million secured promissory note to HCMLP (termed the "Hunter Mountain Note"), Am. Compl., ¶ 27, there is no allegation that Dondero has any ownership stake or other management role in HMIT, either directly or indirectly. *See generally id.*

Rand PE Fund I, LP. Defendant Rand PE Fund I, LP ("Rand") is a Delaware series limited partnership and indirect parent of HMIT. Am. Compl., ¶ 28. Although Rand is neither a creditor nor residual equity holder in the Debtor's estate, the Litigation Trustee has sued Rand as the guarantor of the Hunter Mountain Note. *Id.*, ¶¶ 349-354.

C. The Bankruptcy Proceedings

On October 16, 2019 (the "Petition Date"), in response to an adverse arbitration award of $190 million, HCMLP filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code. Dkt. 1. Just three months after HCMLP's bankruptcy filing, on January 9, 2020, Mr. Dondero agreed to resign from his positions at HCMLP and Strand. Compl., ¶ 12.

On November 24, 2020, HCMP filed its Fifth Amended Plan of Reorganization (the "Plan"), *see* Dkt. 1808, which the Bankruptcy confirmed on February 22, 2021 ("Confirmation Date"). *See* Dkt. 1943. The Plan became effective on August 11, 2021 (the "Effective Date"), *see* Dkt. 2700, and HCMLP has since represented that the Plan has been substantially consummated. *See* Adv. Proc. No. 3:21-cv-01895-D, Dkt. 14, at 17-20.

D. This Adversary Proceeding

The Litigation Trustee did not commence this Adversary Proceeding until October 15, 2021, more than eight months after the Confirmation Date and well after the Effective Date. On January 26, 2022, Defendants and several other defendants in this action moved for an order withdrawing the reference of this adversary proceeding to the United States District Court for the Northern District of Texas on the grounds that the Bankruptcy Court lacks subject matter

jurisdiction. *See* Dkt. 45. The motions to withdraw the reference remain pending before the District Court.

On March 23, 2022, Defendants James D. Dondero, Dugaboy, Get Good, and Strand, filed a motion to dismiss the Complaint. Dkt. 147. On May 19, 2022, the Litigation Trustee filed the Amended Complaint. Dkt. 158.

III. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 12(b)(6) and Federal Rule of Bankruptcy Procedure 7012(b), to survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, 'to state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "[A] complaint must allege 'more than labels and conclusions,' as 'a formulaic recitation of the elements of a cause of action will not do." *Heinze v. Tesco Corp.*, 971 F.3d 475, 479 (5th Cir. 2020) (quoting *Twombly*, 550 U.S. at 555); *see also In re Soporex, Inc.*, 463 B.R. 344, 367 (Bankr. N.D. Tex. 2011) ("[A] court is not to strain to find inferences favorable to the plaintiff and is not to accept conclusory allegations, unwarranted deductions, or legal conclusions.") (internal quotation omitted). Further, where (as here), a complaint alleges multiple claims against multiple defendants, courts must apply the pleading standards "separately to each claim and each defendant." *Winslow v. Paxton*, No. 4:17-CV-057-A, 2017 WL 283281, at *2 (N.D. Tex. Jan. 20, 2017).

IV. THE COURT SHOULD DISMISS THE AMENDED COMPLAINT[7]

A. The Litigation Trustee Lacks Standing To Pursue Non-Retained State-Law Claims

The Court should dismiss the state-law claims asserted against Defendants because the

[7] The Amended Complaint alleges many similar allegations against defendants Mark A. Okada (and his

Litigation Trustee lacks standing to pursue them. Specifically, the Litigation Trustee lacks standing to pursue Counts III–IX, XIV–XVII, and XXV–XXVI because the Plan did not specifically and unequivocally reserve those claims. It is axiomatic that, after confirmation of a plan of reorganization, the bankruptcy estate "ceases to exist, and the debtor loses its status as debtor-in-possession along with its authority to pursue claims as though it were a trustee." *Rossco Holdings, Inc. v. McConnell*, 613 F. App'x 302, 306 (5th Cir. 2015) (quoting *In re SI Restructuring Inc.*, 714 F.3d 860, 864 (5th Cir. 2013)). "[B]y losing authority to pursue a claim, the debtor loses *standing* with respect to that claim." *Id.* (emphasis added). A plan of reorganization may vest a post-confirmation debtor or trustee with authority to pursue one or more claims held by the estate, 11 U.S.C. § 1123(b)(3), but "the ability of the debtor to enforce a claim once held by the estate is limited to that which has been retained in the plan." *In re United Operating, LLC*, 540 F.3d 351, 355 (5th Cir. 2008). "Without an effective reservation, the debtor has no standing to pursue a claim that the estate owned before it was dissolved." *In re SI Restructuring*, 714 F.3d at 864 (internal quotations omitted); *In re United Operating*, *LLC,* 540 F.3d at 355.

Under Fifth Circuit law, a plan's claim retention language must be "specific and unequivocal." *In re United Operating, LLC*, 540 F.3d at 355; *accord Rossco Holdings, Inc.*, 613 F. App'x at 308. This requirement ensures that creditors have adequate notice of which claims the debtor intends to pursue after confirmation so that they can "determine whether a proposed plan resolves matters satisfactorily before they vote to approve it." *In re United Operating, LLC*, 540 F.3d at 355. A blanket reservation of "any and all" claims, or a laundry list of generic claims, is insufficiently specific to meet this requirement. *Id.* at 356; *Rossco Holdings, Inc.*, 613 F. App'x

family trusts), Scott Ellington, Isaac Leventon, NexPoint Advisors, L.P., and Highland Capital Management Fund Advisors, L.P. Defendants hereby incorporate by reference as if fully set forth herein the Motions to Dismiss filed by these defendants.

at 306–07. Likewise, a reservation of claims "arising under the Bankruptcy Code"—even if specific and unequivocal—is insufficient to preserve state common-law claims. *In re United Operating*, 540 F.3d at 356; *accord In re SI Restructuring Inc.*, 714 F.3d at 862-63; *Rossco Holdings, Inc.*, 613 F. App'x at 306–07; *see also Tepper v. Keefe Bruyette & Woods, Inc.*, No. 3:11-CV-2087-L-BK, 2012 WL 4119490, at *5 (N.D. Tex. Sept. 19, 2012) (no "standing to pursue a fraudulent transfer claim under Texas and New York statutory law" where the plan "only provide[d] for avoidance claims under . . . sections 544, 548, and 550 of the Bankruptcy Code").

Pursuant to these standards, the Plan and Plan Supplement fail to specifically and unequivocally retain the state-law claims asserted against the Defendants. The Plan contains sweeping language purporting to "retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action," defined to include "any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims." *See* Plan, Dkt. No. 1943, at 101, 146–47. That is exactly the kind of generalized, nonspecific language that the Fifth Circuit has repeatedly found insufficient to preserve standing. *See In re United Operating*, 540 F.3d at 356 (neither "blanket reservation of 'any and all claims' arising under the Code," nor "specific reservation of other types of claims under various Code provisions" sufficient to preserve the common-law claims); *In re SI Restructuring, Inc.*, 714 F.3d at 860 (same). The Plan Supplement fares no better. In what can only be described as a kitchen-sink approach, the Supplement contains a laundry list of purportedly retained claims—including "claims brought under state law, claims brought under federal law, [and] claims under any common-law theory of tort or law or equity"—that is the equivalent of an impermissible, blanket reservation of claims. *See* Dkt. No. 1875-3. What is more, the Supplement broadly purports to retain that laundry list of claims against a multi-page list of potential defendants. That overbroad list of potential claims

and defendants did not apprise the Defendants of which, if any, claims might actually be filed against which, if any, of them post-confirmation. In the absence of a more "specific and unequivocal" retention of the state-law claims asserted against Defendants, the Plan and Supplement fail to confer the requisite standing on the Litigation Trustee.

At the very least, the Litigation Trustee's claims against Defendants for illegal distributions under the DRULPA (Count III), declaratory judgment (Counts VI-IX), aiding and abetting or knowing participation in breach of fiduciary duty (Count XV), and conspiracy (Count XVI) should be dismissed because neither the Plan nor the Supplement mentions those claims at all. As a result, those claims were not retained, and the Litigation Trustee lacks standing to pursue them.

B. The Court Does Not Have Subject Matter Jurisdiction Over The Non-Core, State-Law Claims Asserted Against The Defendants

The Litigation Trustee asserts that this Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 157 and 1334 because it is a "civil proceeding arising under or relating to the bankruptcy petition filed by HCMLP" and is a "core proceeding" under § 157(b). Am. Compl., ¶ 33. But as this Court already has held, the majority of the 22 claims asserted against the Defendants are non-core, state-law claims. *See* Adv. Proc. Dkt. 151 at 6-7.[8] Consequently, the Bankruptcy Court lacks subject matter jurisdiction to adjudicate those claims under 28 U.S.C. § 1334.[9] "Federal courts are courts of limited jurisdiction . . . and possess only the power

[8] Specifically, the Court found that the following 14 claims asserted by the Litigation Trustee against the Defendants are non-core: Count III (illegal distributions under the Delaware Revised Uniform Partnership Act), Counts IV–V and XIV (breach of fiduciary duty), Counts VI-IX (declaratory judgment), Count XV (aiding and abetting breach of fiduciary duty), Count XVI (civil conspiracy), Count XVII (tortious interference with prospective business relations), Count XXIV (breach of contract), Count XXV (conversion), and Count XXVI (unjust enrichment). Adv. Proc. Dkt. 151 at 6-7.

[9] *See In re Morrison*, 409 B.R. 384, 390 (S.D. Tex. 2009) (breach of fiduciary duty, conspiracy, and conversion proceedings are non-core); *Mirant Corp. v. The Southern Co.*, 337 B.R. 107, 117–18 (N.D. Tex. 2006) (alter-ego, unlawful dividend, and aiding and abetting breach of fiduciary duty claims are non-core); *In re Royce Homes, L.P.*, No. 09-32467-H4-7, 2011 WL 13340482, at *2 (Bankr. S.D. Tex. Oct. 13, 2011) (fiduciary duty, conversion, conspiracy, and unjust enrichment are non-core); *In re Castex Energy Partners,*

authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "The source of the bankruptcy court's jurisdiction is 28 U.S.C. §§ 1334 and 157." *In re U.S. Brass Corp.*, 301 F.3d 296, 303 (5th Cir. 2002) (citation omitted). In relevant part, Section 1334 provides federal "district courts" with "original but not exclusive jurisdiction of all civil proceedings . . . related to cases under title 11." 28 U.S.C. § 1334(b).[10] The district court may refer (and has referred here) "proceedings . . . related to a case under title 11 . . . to the bankruptcy judges for the district." *Id.* § 157(a); Misc. Order No. 33 (N.D. Tex. Aug. 3, 1984). But the "related to" jurisdiction of the district courts under Section 1334(b), and by reference, the bankruptcy courts, is much narrower after confirmation of the relevant plan of reorganization. *In re Craig's Stores of Texas, Inc.*, 266 F.3d 388, 390 (5th Cir. 2001). For the most part, it "*ceases to exist*." *Id.* (emphasis added); *accord In Matter of Galaz*, 841 F.3d 316, 322 (5th Cir. 2016) (same). Post-confirmation, the debtor no longer needs the "protection" of the bankruptcy court to "facilitate 'administration' of the . . . estate." *Id.* Accordingly, in ascertaining its post-confirmation subject matter jurisdiction, the Bankruptcy Court must conform to an "*exacting*," "*narrow[]*" theory of jurisdiction. *Id.* The Court continues to have jurisdiction only over "matters pertaining to the implementation or execution of the plan." *Id.*

The exacting standard adopted and applied by the Fifth Circuit makes clear that this Court

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LP, 584 B.R. 150, 155 (Bankr. S.D. Tex. 2018), *aff'd sub nom. In re Castex Energy Partners LP,* No. AP 17-3453, 2018 WL 3068803 (S.D. Tex. June 21, 2018) (state law breach of contract claims are non-core). Notably, even the fraudulent transfer claims arise in part under state law—namely, the Texas Uniform Fraudulent Transfer Act ("TUFTA"). *See* Tex. Bus. & Com. Code Ann. § 24.005(a)(1)-(2). The Fifth Circuit has not decided whether fraudulent transfer claims are core or non-core when the pleading asserts those claims under both the TUFTA and the Bankruptcy Code. At least one Texas bankruptcy court has held that they are non-core. *See In re Brown Med. Ctr., Inc.*, 578 B.R. 590, 597 (Bankr. S.D. Tex. 2016).

[10] Because these claims are "non-core," the only relevant proceedings described in 28 U.S.C. § 1334(b) are those "related to cases under title 11." *See Matter of Wood*, 825 F.2d 90, 97 (5th Cir. 1987); In re *U.S. Brass Corp.*, 301 F.3d at 304.

lacks post-confirmation jurisdiction over the non-core, state law claims asserted in the Amended Complaint against the Defendants. None of those claims bears upon the "implementation or execution of the plan."[11] Further, this is not a situation where the Court can assert supplemental jurisdiction over non-core, state-law claims—no such jurisdiction exists in bankruptcy court—nor has the Litigation Trustee asserted any other basis for federal court jurisdiction. Accordingly, at the very least, this Court should dismiss Counts III-IX, XIV-XVII, and XXV–XXVI against the Defendants for lack of subject matter jurisdiction.

C. The Fraudulent Transfer Claims Should Be Dismissed

In Counts I-II, XVIII-XIX, XXII-XXIII, and XXXII-XXXIII, the Litigation Trustee seeks avoidance of transfers allegedly made to the Defendants dating back to 2010. Am. Compl., ¶¶ 172-186, 303-323, 335-342, 408-417. These claims should be dismissed for several reasons.

Constructive & Fraudulent Transfers (Counts I-II, XVIII-XIX, & XXII-XXIII). These Counts seek avoidance of transfers that occurred many years into the past. But the Litigation Trustee's avoidance powers are limited in time. Section 548(a)(1) allows the Litigation Trustee to avoid transfers only to the extent they were "made or incurred on or within 2 years before the date of the filing of the petition." 11 U.S.C. § 548(a)(1). Because HCMLP's chapter 11 bankruptcy petition was filed on October 16, 2019, the Litigation Trustee generally cannot avoid transfers made before October 16, 2017. *Curtis v. Cerner Corp.*, 621 B.R. 141, 179-80 (S.D. Tex. 2020). To justify a longer lookback period, the Litigation Trustee relies on two statutory provisions: 11 U.S.C.A. § 544 and 26 U.S.C. § 6502. As explained below, the Trustee's reliance on these

[11] Some courts have wrongly considered whether a plan reserved particular claims in determining their post-confirmation "related to" jurisdiction. *See, e.g.*, *In re Coho Energy, Inc.*, 309 B.R. 217, 221 (Bankr. N.D. Tex. 2004). That is error. The terms of the plan *cannot* confer subject matter upon a bankruptcy court. *In re U.S. Brass Corp.*, 301 F.3d at 303; *accord Pelican Refining Co. LLC v. Adams & Reese, LLP*, No. CIV.A. H-07-0578, 2007 WL 1306808, at *3 (S.D. Tex. May 3, 2007); *Kokkonen*, 511 U.S. at 377 (federal jurisdiction "is not to be expanded by judicial decree").

statutory provisions is unavailing, and the Court should dismiss the fraudulent transfer claims to the extent that the transfers occurred prior to October 16, 2017.

First, the Trustee has not pleaded allegations to support this Court's application of Bankruptcy Code § 544. To utilize Section 544(b)(1) and acquire the benefit of the longer, four-year statute of limitations for avoidance actions prescribed under state law (the TUFTA),[12] the Litigation Trustee must plead the existence of a triggering unsecured creditor for *each* of the alleged fraudulent transfers at issue. The Litigation Trustee does not do this; it merely alleges the existence of an unsecured creditor holding an allowable claim as of the Petition Date. *See* Am. Compl., ¶ 39. There are no allegations that an unsecured creditor exists that could avoid each of the transfers at issue. Indeed, the Amended Complaint does not tether the alleged existence of an unsecured creditor to *any* of the transfers at issue. That is fatal to the Litigation Trustee's fraudulent transfer claims.

In any event, application of Section 544 would only allow the Trustee to avoid transfers dating back four years before the Petition Date—to October 16, 2015. To the extent the Amended Complaint seeks to avoid transfers before that date (as it does in Counts I-II, XVIII-XIX, & XXII-XXIII), the Court should dismiss the Amended Complaint.

Second, the Litigation Trustee's effort to invoke the so-called "golden creditor" rule by making passing reference to 26 U.S.C. § 6502 is also unavailing. *See* Am. Compl., ¶¶ 179, 186, 268, 273 (citing § 6502). Section 6502 affords the IRS ten years to bring a collection action from the date of a timely tax assessment. While a minority of courts have allowed a trustee to stand in the shoes of the IRS and benefit from this ten-year lookback period, the Fifth Circuit has not sanctioned this practice. And for several reasons, the Court should reject the Litigation Trustee's

[12] Under the TUFTA, a fraudulent transfer claim must be filed "within four years after the transfer was made or the obligation was incurred." Tex. Bus. & Com. Code § 24.010.

effort to invoke the IRS lookback period.

First, there is no allegation that would permit the Court to infer that the IRS could even invoke this statute to collect taxes dating back ten years. *See In re Taylor, Bean & Whitaker Mortgage Corp.*, No. 3:09-BK-07047-JAF, 2018 WL 6721987, at *6 (Bankr. M.D. Fla. Sept. 28, 2018) ("The Court is unaware of case law permitting the IRS to avoid transfers made prior to the original taxpayer assessment (or, alternatively, prior to accrual of the tax liability).").[13] Under these circumstances, the Complaint fails to plead any facts that would entitle the Litigation Trustee to invoke the golden creditor rule.

Second, as a matter of statutory interpretation and policy, the Court should reject the Litigation Trustee's invitation to apply the golden creditor rule. Notably, only in a "'few and far' between" adversary proceedings have courts permitted bankruptcy trustees to wield federal tax law as a "weapon" to extend the relevant statute of limitations. *In re Kipnis*, 555 B.R. 877, 883 (Bankr. S.D. Fla. 2016). There are several problems with these courts' analysis.

Most notably, the operative language of § 544(b)(1) states that certain transfers are "*voidable* under applicable law." By its plain terms, § 6502(a)(1) does not grant the IRS the power to "void" any transfer (nor does it provide the IRS with any state-law remedy); it merely gives the IRS the right to levy taxes. It makes no sense to read 26 U.S.C. § 6502 to permit the avoidance of transfers—something not even the IRS can do. Moreover, it is inappropriate to treat a trustee in bankruptcy as if it is on par with a sovereign. *In re Vaughan Co.*, 498 B.R. 297, 304-05 (Bankr. D.N.M. 2013). Unlike the IRS, a trustee is not vindicating public rights—it is vindicating the

[13] As several of the defendants previously have argued in connection with their motions to withdraw the reference, whether the IRS itself could invoke the ten-year lookback period requires "substantial and material" consideration of federal tax laws which must be resolved by the District Court. *See, e.g.*, *In re Nat'l Gypsum Co.*, 145 B.R. 539, 541 (N.D. Tex. 1992).

rights of private creditors. *See id*. at 305. Where the U.S. government seeks to vindicate private rather than public rights in bankruptcy, the state statute of limitations generally applies. *Id.* at 304 (citing *Marshall v. Intermountain Elec. Co., Inc.*, 614 F.2d 260, 263 n.3 (10th Cir. 1980); *S.E.C. v. Calvo*, 378 F.3d 1211, 1218 (11th Cir. 2004)).

Further, interpreting the law to permit a bankruptcy trustee to invoke the tax statute's ten-year lookback period has the potential to "eviscerate" the bankruptcy courts' long-standing practice of looking to state law for the relevant limitations period. *In re Kipnis*, 555 B.R. at 883. Because "[t]he IRS is a creditor in a significant percentage of bankruptcy cases," such an interpretation would undoubtedly encourage "widespread use of § 544(b) to avoid state statute of limitations." *Id*. at 883. The Fifth Circuit has prevented similar efforts to extend Section 544(b)(1) before. *See, e.g.*, *In re Mirant Corp.*, 675 F.3d 530, 535 (5th Cir. 2012) (Federal Debt Collection Procedures Act does not constitute "applicable law" under § 544(b)). The law should not be interpreted in this manner, and the few courts that have done so are wrong.

Expense Transfers (Counts XXXII-XXXIII). The Amended Complaint also seeks to avoid alleged expense transfers made to Mr. Dondero in the year before the Petition Date, invoking 11 U.S.C. § 548. Am. Compl., ¶¶ 408-417. Section 548 allows a trustee to avoid intentional fraudulent transfers if the transfers occurred "with actual intent to hinder, delay, or defraud." The statute also allows the avoidance of constructive fraudulent transfers if the debtor received "less than a reasonably equivalent value in exchange for such transfer" and was insolvent at the time of the transfer, or if other conditions existed at the time of the transfer warranting its avoidance. The Amended Complaint fails to adequately plead facts supporting the avoidance of any of the alleged expense transfers.

As to the allegedly constructively fraudulent expense transfers, the Amended Complaint

only seeks avoidance of the transfers "[t]o the extent [they] do not constitute reimbursement for valid expenses." Am. Compl., ¶ 409. In other words, the Amended Complaint does not allege the transfers were not valid reimbursements, nor does it make any plausible allegations about why they should be considered invalid (other than allegations made on speculative "information and belief").

Likewise, the Amended Complaint's allegations that Mr. Dondero made intentional fraudulent expense transfers are deficient. Again, the Amended Complaint only seeks to avoid these transfers "[t]o the extent [they] do not constitute reimbursement for valid expenses," Am. Compl., ¶ 414, but offers no reason why the Court should consider the transfers anything other than valid reimbursements. *See* Am. Compl., ¶ 416. Further, beyond rehashing allegations relating to Mr. Dondero's other unrelated alleged bad acts, the Amended Complaint makes no particular allegations demonstrating that Mr. Dondero made the transfers with specific intent to "hinder, delay, or defraud" creditors, which is preclusive. *See VeroBlue Farms USA, Inc. v. Wulf*, 465 F. Supp. 3d 633, 647 (N.D. Tex. 2020) (Rule 9(b) applies to intentional fraudulent transfer claims).

Counts XXXII and XXXIII are deficiently pleaded, and so the Court should dismiss them.

D. The Amended Complaint Should Be Dismissed For Multiple Additional Reasons

1. The Amended Complaint's Breach Of Fiduciary Duty Claims Fail

In Counts IV, V, XIV, XV, and XVI, the Litigation Trustee alleges that Mr. Dondero and Strand breached their fiduciary duties to HCMLP by, among other things, (1) creating certain "lifeboats," including NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"), (2) engaging in actions leading to pre-petition litigation, and (3) facilitating or directing certain transfers. *See* Am. Compl., ¶¶ 193-216, 274-284. The Amended Complaint further alleges that Get Good aided and abetted a breach of fiduciary duty by Mr.

Dondero and Strand with respect to the CLO Holdco Transaction. *Id.*, ¶ 288.[14] And finally, the Amended Complaint alleges that Get Good "conspired with Dondero to breach his fiduciary duties to HCMLP by intentionally siphoning assets away from HCMLP to evade HCMLP's creditors." *Id.*, ¶ 291. These claims each fail for several independent reasons.

a. The LPA precludes the breach of fiduciary claims.

Counts IV, V, and XIV fail because the LPA precludes those claims. The DRULPA permits a limited partnership to restrict or even eliminate all fiduciary duties by contract. Del. Code Ann. Tit.6, § 17-1101(d) (West); *see also Brickell Partners v. Wise*, 794 A.2d 1, 3–4 (Del. Ch. 2001) ("principles of contract preempt fiduciary principles" where a limited partnership agreement governs fiduciary duties). Where, as here, "the limited partnership agreement unambiguously provides for fiduciary duties, any claim of a breach of fiduciary duty must be analyzed generally in terms of the partnership agreement." *Gotham Partners, L.P. v. Hallwood Realty Partners, L.P.*, 817 A.2d 160, 170-71 (Del. 2002). Applying these principles, the Litigation Trustee's breach of fiduciary duty claims are unsustainable.

The Litigation Trustee alleges that Mr. Dondero and Strand breached their fiduciary duties to HCMLP by (1) "transferr[ing] HCMLP's valuable business to the lifeboat entities, including but not limited to NexPoint and HCMFA"; (2) incurring liability to UBS, Acis, Terry, HarbourVest, the Crusader Funds, and the Redeemer Committee by managing HCMLP's business in a manner that resulted in potential or actual litigation liabilities; and (3) approving transfers of money and assets to Massand Capital and CLO Holdco and approving partnership distributions to

[14] The Complaint describes the CLO Holdco Transaction as one in which Dugaboy issued a note to Get Good. Am. Compl., ¶ 132. Get Good then gave the note to HCMLP in exchange for certain assets. *Id.*, ¶¶ 132-33. The Litigation Trustee alleges that this transaction was problematic because liquid assets were exchanged for an illiquid note worth less than the assets. *Id.*, ¶ 132. Ultimately the assets were contributed to defendant CLO Holdco Ltd. *Id.*

various individuals and entities. *See* Am. Compl., ¶¶ 187-213, 259-65. The Litigation Trustee does not allege that Mr. Dondero or Strand breached HCMLP's LPA by taking (or directing) any of these actions, nor could it. As set forth above, the HCMLP LPA granted Strand (by and through its officers, directors, representatives, and agents) the authority to:

- Form other entities and to contribute to those entities "assets and properties of the Partnership," as well as to engage in "business interests and activities in direct competition with the Partnership" (LPA, §§ 4.1(a)(xi), 4.1(f))—as Strand allegedly did in the "lifeboat scheme";
- Perform "any and all acts necessary or appropriate to the operation of any business of the Partnership," including taking out loans, incurring indebtedness, using the assets of the Partnership, determining whether to negotiate, execute, or perform contracts, and controlling "the conduct of any litigation" (*id.*, § 4.1(a)(ii), (v), (vi), (vii), (viii), & (xii)—as Strand allegedly did in relation to UBS, Acis, Terry, HarbourVest, the Crusader Funds, and the Redeemer Committee; and
- Distribute "Partnership cash or other assets" in its "sole and unfettered discretion" (*id.*, § 4.1(ix); *id.*, § 3.9(a))—as Strand did in approving transfers and distributions to Massand, CLO Holdco, and others.

In short, the LPA granted Strand, and Mr. Dondero as Strand's director, the broad authority to undertake each and every action that allegedly constituted a breach of their fiduciary duties.

Further, Section 4.1(i) of the LPA expressly limits the liability of the General Partner and those acting on its behalf. Specifically, that section states that "[n]either the General Partner nor its directors, officers, employees, agents, or representatives shall be liable to the Partnership or any Limited Partner for errors in judgment or for any acts or omissions that do not constitute gross negligence or willful or wanton misconduct." LPA, § 4.1(i)(i). The section also reiterates that the General Partner may "exercise any of the powers granted to it" under the LPA "either directly or by or through its directors, officers, employees, agents, or representatives" and states that "the General Partner ***shall not be responsible for any misconduct or negligence on the part of any agent or representative appointed by the General Partner***." *Id.*, § 4.1(i)(ii). Again, the Litigation Trustee has not even attempted to plead that Mr. Dondero or Strand took actions that were beyond

their powers under the LPA, nor has the Trustee alleged that Mr. Dondero's actions amounted to "gross negligence or willful or wanton misconduct," as is required. Under these circumstances, the breach of fiduciary duty claims must be dismissed.

b. The Court Should Dismiss Counts XV And XVI.

Aiding and Abetting. In Count XV, the Litigation Trustee alleges that "Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas aided and abetted Dondero's breach of fiduciary duties relating to the CLO Holdco Transaction." Am. Compl., ¶ 288. This single-sentence allegation against Get Good fails to state a claim against it for several reasons. First, the allegation is conclusory and impermissibly lumps several defendants together. *See Johnson v. E. Baton Rouge Fed'n of Tchrs.*, 706 F. App'x 169, 170 (5th Cir. 2017) (citing *Iqbal*, 556 U.S. at 687) ("conclusory" allegations "will not be afforded the presumption of truth"); *Winslow*, 2017 WL 283281, at *2 (allegations must be made separately for "each defendant").

Second, the allegation fails to state a claim against Get Good for aiding and abetting liability under Delaware law. The Litigation Trustee must plead, at a minimum: (1) the existence of a fiduciary relationship, (2) a breach of the fiduciary's duty, (3) knowing participation by a non-fiduciary in the fiduciary's breach, and (4) damages proximately caused by the breach. *Malpiede v. Townson*, 780 A.2d 1075, 1096 (Del. 2001). For the reasons set forth above, *see* Section IV.D.1.a, the Litigation Trustee fails to plead that Mr. Dondero breached any fiduciary duty to HCMLP in view of the language of the LPA, nor does the Litigation Trustee even attempt to plead Get Good's "knowing participation" in any breach of fiduciary duty in relation to the CLO Holdco Transaction. These failures are fatal to the claim against Get Good.

Civil Conspiracy. In Count XVI, the Litigation Trustee alleges that "Ellington, Leventon, NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas conspired with Dondero to breach his fiduciary duties to HCMLP by intentionally siphoning assets

away from HCMLP to evade HCMLP's creditors." Am. Compl., ¶ 291. The Amended Complaint fails to adequately plead civil conspiracy for two core reasons.

First, as with the aiding and abetting claim, a civil conspiracy claim cannot survive without a viable underlying tort claim. There is no viable underlying claim because the breach of fiduciary duty claims against Mr. Dondero fail. Thus, the civil conspiracy claim cannot survive.

Second, the Amended Complaint fails to allege the requisite "meeting of the minds" by the supposed co-conspirators, which is required. *MVS Int'l Corp. v. Int'l Advert. Sols., LLC*, 545 S.W.3d 180, 196 (Tex. App. 2017) (citing *Tri v. J.T.T.*, 162 S.W.3d 552, 556 (Tex. 2005)). In this regard, conclusory allegations are insufficient. Instead, a plaintiff must make specific allegations demonstrating that the conspiring parties were "aware of the intended harm or proposed wrongful conduct at the outset of the combination or agreement" and specifically intended and agreed "to accomplish something unlawful." *Id*. Agreeing to engage in any particular conduct or transaction is not enough; conspiracy "requires a specific intent to cause the intended injury." *In re Artho*, 587 B.R. 866, 885 (Bankr. N.D. Tex. 2018); *see also Chu v. Hong*, 249 S.W.3d 441, 447 (Tex. 2008) (same). The Amended Complaint includes no allegations of intent against Get Good and makes only conclusory allegations against Mr. Dondero and thus fails to state claims against them.

2. The Declaratory Judgment Claims Are Insufficient

Counts VI-VIII and IX seek declaratory judgment that Mr. Dondero, Strand, and Dugaboy are liable for HCMLP's debts in various capacities. Each of these claims is deficient and should be dismissed.

Count VI (Strand Liable as GP). As an initial matter, as the Delaware statute cited in the Amended Complaint provides, the liabilities of a general partner to the partnership may be altered by the relevant partnership agreement, which is precisely what occurred here. *See* DRULPA, § 17-403(b) (cited in Am. Compl., ¶ 218). Count VI makes no reference to HCMLP's LPA, Strand's

liabilities pursuant to the LPA, or whether and to what extent the LPA supports a judgment that Strand should be liable for HCMLP's "liabilities" (none of which are specifically identified). Under these circumstances, the Complaint falls well short of alleging a plausible claim for relief.

Count VII (Dondero Liable as Strand's Alter Ego). Count VII suffers from similar problems. Again, Mr. Dondero's liabilities as an acting officer and director of Strand are governed by HCMLP's LPA—a document that Count VII simply ignores. But in addition, the allegations of Count VII fall short in several other respects.

Most notably, the claim fails to sufficiently allege facts that would support a finding that Mr. Dondero is Strand's alter ego. Under Delaware law, "to state a claim for piercing the corporate veil under an alter ego theory, [the plaintiff] must show (1) that the corporation and its shareholders operated as a single economic entity, and (2) that an overall element of injustice or unfairness is present." *Trevino v. Merscorp, Inc.*, 583 F. Supp. 2d 521, 528 (D. Del. 2008) (dismissing alter ego claim where plaintiff failed to plead facts showing that corporation and shareholders operated as a single economic entity). The Litigation Trustee fails to adequately plead either element here.

First, although the Litigation Trustee alleges that Dondero and all his companies acted as a "single economic entity," that bare allegation is insufficient for the imposition of alter ego liability. Under Delaware law, the court must ascertain whether the claimant has adequately alleged such factors as undercapitalization, failure to observe corporate formalities, nonpayment of dividends, insolvency of the particular company whose veil is to be pierced, siphoning of the corporation's funds by the dominant stockholder, the absence of corporate records, and that the corporation is merely a "façade" for the dominant shareholder. *Trevino*, 583 F. Supp. 2d at 528-29 (citing *United States v. Pisani*, 646 F.2d 83, 88 (3d Cir. 1981)). The existence of any one of these factors "is not per se a reason to pierce the corporate veil." Rather, the inquiry is whether

the corporation was established to defraud investors or for some improper purpose. *Id.* at 530.

The Amended Complaint falls well short of alleging the existence of the various veil-piercing factors. For example, although the Litigation Trustee alleges that Strand was a "sham entity," the most the Litigation Trustee alleges is that Strand did not hold board meetings or frequently document corporate action. *See* Am. Compl., ¶¶ 223, 225. At the same time, the Amended Complaint acknowledges that Strand was formed to act as the general partner of HCMLP (a necessary and legitimate purpose in the creation and operation of a limited partnership), operated according to a set of bylaws and a limited partnership agreement, employed officers over the years, and documented some corporate actions. *See id.*, ¶¶ 14, 223-24; *see also Trevino*, 583 F. Supp. 2d at 530 (that the corporation "was established for a *legitimate* purpose" weighed against veil piercing). That Strand did not regularly document corporate actions or hold board meetings does not mean the entity's corporate form was being abused. Moreover, as the Complaint acknowledges, Mr. Dondero was Strand's sole director and owner, which would make any documentation of meetings with himself quite surprising, to say the least. And the Amended Complaint fails to allege any of the other veil-piercing factors against Strand. There are no allegations, for example, that *Strand* was undercapitalized, was insolvent, failed to make distributions to shareholders, or was used as Mr. Dondero's personal piggybank.

The Amended Complaint also fails to sufficiently allege that Mr. Dondero used Strand's corporate form to perpetrate an injustice or unfairness. In this regard, the allegations of the complaint must support an inference that the dominant shareholder is "using 'an independent corporation' to 'defeat the ends of justice, to perpetrate fraud, to accomplish a crime, or otherwise evade the law.'" *Trevino*, 583 F. Supp. 2d at 529 (quoting *Bd. of Trustees of Teamsters Local 863 Pension Fund v. Foodtown, Inc.*, 296 F.3d 164, 171 (3d Cir. 2002)). Importantly, "under Delaware

law, the fraud or injustice . . . must be found in the defendant['s] use of the corporate form." *Id.* at 530 (internal quotations and citations omitted). Merely rehashing the "underlying cause[s] of action . . . does not supply the necessary fraud or injustice." *Id.* at 531. Again, the Amended Complaint does not explain how Strand's corporate form was used to perpetrate any fraud or injustice; rather, the Amended Complaint merely rehashes the conclusory allegation that Mr. Dondero dominated Strand "to make HCMLP act contrary to its own interests." Am. Compl., ¶ 227. That allegation falls far short of the required pleading standard.

Count VIII (Strand Liable as HCMLP's Alter Ego). Count VIII likewise fails to set forth allegations sufficient to demonstrate that Strand acted as HCMLP's alter ego. The Amended Complaint ignores that the relationship between Strand and HCMLP was governed by the LPA, pursuant to which Strand was permitted to take various unilateral actions in its management of HCMLP. Nor does the Amended Complaint point to any provisions of the LPA that Strand or Mr. Dondero violated in the conduct of HCMLP's affairs.

The Amended Complaint also contains virtually no allegations about Strand that would support a finding that a legally-formed and heavily regulated general partner should nonetheless bear all of the limited partnership's liabilities. Indeed, the only real allegation in the Amended Complaint says about Strand is that it shared HCMLP's business address. Am. Compl., ¶ 230. But that of course makes sense: Strand was HCMLP's sole general partner, and it had no other business. And the Amended Complaint is devoid of any allegation that Strand's corporate form was abused in a manner that perpetrated some sort of fraud or injustice. Under these circumstances, the alter ego claim against Strand should be dismissed.

Count IX (Dugaboy as Dondero's Alter Ego). The Amended Complaint's allegation against Dugaboy is even more specious. Upon review, Defendants are unaware of any case in

Delaware ever holding a *company* liable as the alter ego of an *individual*. Indeed, to allege a plausible alter ego claim against Dugaboy, the Litigation Trustee would have to allege (among other things) that *Mr. Dondero* was insolvent, that *Mr. Dondero* failed to observe corporate formalities (when he is not a corporation), that Dugaboy was siphoning *Mr. Dondero's* assets for its own benefit, etc. Even more ridiculously, the Litigation Trustee would have to allege that *Mr. Dondero's* existence was used to perpetrate a fraud. Of course, the Amended Complaint does not make any of these allegations. Instead, the Amended Complaint seeks to hold Dugaboy, a Delaware trust, liable for all the bad acts of its beneficiary. There is no basis in law to do so, and the Litigation Trustee's baseless alter ego claim against Dugaboy should be dismissed.

3. The Amended Complaint Fails To Plead A Viable Conversion Claim

In Count XXV, the Litigation Trustee alleges that Mr. Dondero is liable for conversion. To state a claim for conversion, a plaintiff must plead (1) the plaintiff "owned or had possession of the property or entitlement to possession;" (2) the defendant "unlawfully and without authorization assumed and exercised control over the property to the exclusion of, or inconsistent with, the plaintiff's rights as an owner;" and (3) resulting damages. *Gibson v. Wells Fargo Bank, N.A.*, No. 4:16-CV-98-O, 2016 WL 11755377, at *3 (N.D. Tex. June 9, 2016). The Complaint fails to plead these requisite elements.

Critically, the Amended Complaint fails to plead that Mr. Dondero "unlawfully and without authorization assumed and exercised control over the property." *See id.* at *3. At most, the Complaint surmises "on information and belief" that Mr. Dondero "directed Wick Phillips to withhold the . . . proceeds" rightfully due to HCMLP. Am. Compl., ¶ 360. But the Amended Complaint does not allege that Mr. Dondero's instruction was unlawful or unauthorized, or that Mr. Dondero ever assumed or exercised actual control of or ownership of the proceeds. To the contrary, the Amended Complaint alleges that Wick Phillips, and subsequently two Cayman

Islands entities, exercised that control. *Id.*, ¶¶ 356, 360.[15]

Further, to maintain a claim for the conversion of money under Texas law, the Litigation Trustee must also show that "the money (1) was delivered to the defendant for safekeeping, (2) was intended to be kept segregated, (3) was substantially in the form in which it was received or intact, and (4) was not the subject of a title claim by the defendant." *Matter of Okedokun*, 968 F.3d 378, 392 (5th Cir. 2020). Nowhere does the Litigation Trustee allege that any funds were delivered to Mr. Dondero for safekeeping. At most, the Litigation Trustee alleges that the funds were delivered *to HCMLP's counsel* for safekeeping. Am. Compl., ¶ 356.

Finally, under Texas law, a claim for the conversion of money fails "when the plaintiff cannot trace the exact funds claimed to be converted, making it impossible to identify the specific monies in dispute." *Ellis v. Wells Fargo Bank, N.A.*, No. CV G-13-249, 2014 WL 12596473, at *5-6 (S.D. Tex. Feb. 10, 2014), *report and recommendation adopted,* No. CV G-13-249, 2014 WL 12596480 (S.D. Tex. Mar. 5, 2014) (dismissing conversion claim where plaintiff did not "allege that he can trace the funds to, for example, an escrow account."). The Litigation Trustee does not allege that the funds in question can be traced. To the contrary, according to the Amended Complaint, the funds were transferred out of an escrow account and to entities in the Cayman Islands. Am. Compl., ¶ 360. The Litigation Trustee's allegations are insufficient to maintain a claim for conversion of money under Texas law and Count XXV should therefore be dismissed.

4. The Litigation Trustee's Claim For Unjust Enrichment Or Money Had And Received Fails As A Matter Of Law

Count XXVI should be dismissed for several reasons. First, unjust enrichment is not an independent cause of action under Texas law. *Redwood Resort Properties, LLC v. Holmes Co.*

[15] Although the Complaint alleges that Grey Royale Ltd., was "owned and controlled by Dondero and Ellington," *see* Am. Compl., ¶ 360, that allegation, standing alone, does not permit a factfinder to ignore the corporate form and hold the owners of Grey Royale Ltd. liable for conversion.

Ltd., No. CIVA 3:06CV1022 D, 2006 WL 3531422, at *8 (N.D. Tex. Nov. 27, 2006) ("Unjust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits . . . Accordingly, the court holds that Redwood has failed to state an unjust enrichment claim on which relief can be granted, and it dismisses this action."); *accord Midwestern Cattle Mktg., L.L.C. v. Legend Bank, N.A.*, 999 F.3d 970, 972 (5th Cir. 2021) (affirming dismissal of unjust enrichment claim because it is "not a distinct cause of action itself"). Because unjust enrichment is not an independent cause of action, the Court should dismiss XXVI of the Amended Complaint.

The Litigation Trustee's allegations also fall far short of pleading a claim for money had and received under Texas law. To avoid dismissal, a plaintiff must "identify what money [Defendant] actually received individually and why, exactly, that money belongs to [Plaintiff]." *Bates Energy Oil & Gas v. Complete Oilfield Servs.*, 361 F. Supp. 3d 633, 675 (W.D. Tex. 2019). Here, the Litigation Trustee does not identify what sum Dondero received or when, and instead seeks to disgorge "all payments, transfers, profits, fees, benefits, incentives, and other things of value" obtained by Dondero. This vague and conclusory allegation is insufficient to plead a claim for money had and received.

V. CONCLUSION

The Court should dismiss the counts against Defendants, either in whole or in part, because (1) the Court lacks subject matter under 28 U.S.C. § 1334 to adjudicate any of the non-core state-law claims, (2) the Litigation Trustee lacks standing to pursue many of the claims; (3) applicable statutes of limitations bar the claims either in whole or in part; and (4) the Amended Complaint fails to sufficiently plead the requisite elements of the claims asserted.

Dated: July 11, 2022

DLA PIPER LLP (US)

/s/ Amy L. Ruhland (Rudd)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 11, 2022, 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/ Amy L. Ruhland

Amy L. Ruhland (Rudd)

Docket #3532 Date Filed: 9/20/2022

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 20, 2022

United States Bankruptcy Judge

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

ORDER APPROVING STIPULATION AUTHORIZING THE RESOLUTION OF PROOFS OF CLAIM 32, 173, 179, 195, 248, 250, 252 AND 255 FILED BY THE DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE

Upon consideration of the *Stipulation Authorizing the Resolution of Proofs of Claim 32, 173, 179, 195, 248, 250, 252 and 255 Filed by the Department of the Treasury, Internal Revenue Service* [Docket No. 3531] (the "Stipulation") by and between Highland Capital Management, L.P., the reorganized debtor in the above-captioned proceeding, and the United States on behalf of its agency the Internal Revenue Service, it is **HEREBY ORDERED THAT**:

EXHIBIT
LL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

1. The Stipulation, a copy of which is attached hereto as **Exhibit A**, is **APPROVED**.

2. The Stipulation shall become effective immediately upon entry of this Order.

3. The Court shall retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of the Stipulation.

###END OF ORDER###

EXHIBIT A

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

STIPULATION AUTHORIZING THE RESOLUTION OF PROOFS OF CLAIM 32, 173, 179, 195, 248, 250, 252 AND 255 FILED BY THE DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE

This *Stipulation Authorizing the Resolution of Proofs of Claim 32, 173, 179, 195, 248, 250, 252 and 255 Filed by the Department of the Treasury, the Internal Revenue Service* (the "Stipulation") is entered into between Highland Capital Management, L.P., the reorganized debtor

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are 8357. The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

(the "Reorganized Debtor"), and the United States on behalf of its agency the Internal Revenue Service (the "IRS").

RECITALS

WHEREAS, the IRS filed: (a) proof of claim number 32 on February 13, 2020 ("Claim 32"); (b) proof of claim number 173 on April 14, 2020 ("Claim 173"); and (c) proof of claim number 248 on July 7, 2021 ("Claim 248" and, together with Claim 32 and Claim 173, the "Superseded Prepetition Claims").

WHEREAS, the IRS filed requests for payment of administrative expenses which were assigned proof of claim number 179 filed on April 27, 2020 ("Claim 179"); proof of claim number 195 filed on August 4, 2020 ("Claim 195"); and proof of claim No. 250 filed on September 2, 2021 ("Claim 250" and, together with Claim 179 and Claim 195, the "Superseded Administrative Claims").

WHEREAS, on September 11, 2020, the Bankruptcy Court entered an order [Docket No. 1042] finding that the *Debtor's First Omnibus Objection to Certain Claims* [Docket No. 906] was moot as to Claim 179.

WHEREAS, on October 6, 2021, the IRS filed proof of claim number 252 ("Claim 252"), which amended and superseded the Superseded Prepetition Claims.

WHEREAS, on June 1, 2022, the IRS filed a request for payment of administrative expense which was assigned proof of claim No. 255 ("Claim 255"), which amended and superseded the Superseded Administrative Claims. Claim 252 and Claim 255 are referred to collectively as the "Surviving Claims".

WHEREAS, on February 22, 2021, this Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Docket No.

1943], which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (the "Plan").[2]

WHEREAS, the effective date of the Plan occurred on August 11, 2021 (the "Effective Date") [Docket No. 2700][3].

WHEREAS, on August 5, 2022, the Reorganized Debtor filed the *Reorganized Debtor's Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No-Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service* [Docket No. 3432] (the "Objection") objecting to the Superseded Prepetition Claims, the Superseded Administrative Claims, and the Surviving Claims.[4]

WHEREAS, the IRS and the Reorganized Debtor now desire to resolve the Objection and request that the Court authorize KCC, LLC, the Claims Agent appointed in this case, to mark the claims register as follows:

STIPULATION

Now, therefore, the Reorganized Debtor and the IRS agree and stipulate as follows:

1. Claim 32 is hereby superseded and disallowed with prejudice.

2. Claim 173 is hereby superseded and disallowed with prejudice.

3. Claim 248 is hereby superseded and disallowed with prejudice.

4. The unsecured portion of Claim 252 with respect to the 2017 civil penalty is hereby withdrawn with prejudice. The priority portion of Claim 252 has been paid in full and may be marked as such on the Debtor's claims register.

5. Claim 179 has been paid in full and may be marked as such on the Debtor's claims register.

[2] The confirmed Plan included certain amendments filed on February 1, 2021. *See Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Docket No. 1875, Exh. B.

[3] For periods of time prior to the Effective Date, the Reorganized Debtor is referred to herein as the Debtor.

[4] Claim 250 was not included in the Objection as it was paid in full but is included in this Stipulation for the purpose of completeness.

6. Claim 195 is hereby withdrawn with prejudice

7. Claim 250 has been paid in full and may be marked as such on the Debtor's claims register.

8. Claim 255 is hereby withdrawn with prejudice.

9. The IRS confirms that all claims which arose prepetition against the Debtor or the Reorganized Debtor have been paid in full or are withdrawn or disallowed pursuant to the terms of this Stipulation.

10. The IRS confirms that all claims or requests for payment of administrative expenses which arose prior to the Effective Date against the Debtor or the Reorganized Debtor have been paid in full or are withdrawn.

[*Remainder of Page Intentionally Blank*]

IT IS SO STIPULATED:

Dated: September 20, 2022

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] 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; 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	Adv. Pro. No. 21-03076-sgj

EXHIBIT
MM

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

#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.; AND SAS ASSET RECOVERY, LTD.,

Defendants.

THE LITIGATION TRUSTEE'S
MOTION TO STAY THE ADVERSARY PROCEEDING

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Marc S. Kirschner (the "Trustee" or "Litigation Trustee"), the Litigation Trustee of the Litigation Sub-Trust established pursuant to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Bankr. Dkt. 1808][2] (as amended, the "Plan"), through his undersigned counsel, hereby moves the court for entry of an order under section 105 of title 11 of the United States Code (the "Bankruptcy Code") to stay the above-captioned adversary proceeding for a period of six months, i.e., through September 30, 2023. In support of this Motion, the Litigation Trustee respectfully states as follows:

PRELIMINARY STATEMENT[3]

1. The Litigation Trustee filed the above-captioned action (the "Action") on October 15, 2021. As contemplated by the confirmed Plan, the Action is extensive, asserting claims against a wide array of individuals and entities associated with James Dondero, the founder and longtime dominant operator of Highland Capital Management, L.P. ("HCMLP") and scores of affiliated entities. All told, the Complaint asserts 36 causes of action against 23 Defendants. The claims all arise from pre-confirmation conduct perpetrated by Dondero and individuals and entities affiliated with him, which resulted in hundreds of millions of dollars in damages to HCMLP.

2. Simultaneous with the prosecution of this Action, the reorganized HCMLP has continued to monetize its assets for the benefit of the Claimant Trust Beneficiaries—again, as contemplated by the Plan—with proceeds to be distributed through the Highland Claimant Trust. To date, those efforts have been successful and meaningful distributions have been made to the Claimant Trust Beneficiaries.

[2] "Bankr. Dkt." refers to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

[3] All capitalized terms used but not defined in this Preliminary Statement have the meanings given to them below or in the Plan, as applicable.

3. While it remains uncertain whether HCMLP's Plan will yield sufficient funds to enable the Claimant Trust to pay all expenses, satisfy all indemnification obligations, and pay holders of Class 8 and Class 9 claims in full, Dondero and his affiliates have argued in this and other courts that that the value of the Claimant Trust's assets exceeds the amount needed to pay Claimant Trust Beneficiaries in full such that the Action is a wasteful and unnecessary exercise. For example, in their Valuation Motions—filed ostensibly to obtain information on the value of the Claimant Trust's assets—The Dugaboy Investment Trust ("Dugaboy") and Hunter Mountain Investment Trust ("HMIT") argue that "the combination of cash and other assets held by the Claimant Trust in its own name and held in various funds, reserve accounts, and subsidiaries, if not depleted by unnecessary litigation would be sufficient to pay all Claimant Trust Beneficiaries in full, with interest, now." Bankr. Dkt. 3662 at 6-7. Building on their contention that the value of the Claimant Trust's assets exceeds the value of the claims, Dugaboy and HMIT assert that the Action is being prosecuted at their expense because, as the residual beneficiaries of the Claimant Trust, they are effectively bearing the cost as any recovery will supposedly go to them. *Id.*

4. While the Litigation Trustee disputes these assertions, he requests—in the interests of judicial economy—that the Court stay this Action until September 30, 2023, and to continue the stay thereafter until one party to the Action provides 30 days' written notice to all other parties and the Court of their intent to resume the Action (the "Stay Period"). The Stay Period will preserve Claimant Trust assets and enable further consummation of the confirmed Plan, all of which is expected to reduce the uncertainty that exists today.

5. The relief sought directly addresses the concerns set forth in the Valuation Motions (and elsewhere) that this Action is an unnecessary waste of assets. Surprisingly, Defendants have

not agreed to the relief sought herein. Accordingly, the Litigation Trustee is forced to make this motion for a stay, even though the relief being sought is plainly beneficial to all parties.

RELEVANT BACKGROUND

A. THE DEBTOR FILES FOR BANKRUPTCY AND THE LITIGATION SUB-TRUST IS CREATED

6. On October 16, 2019 (the "Petition Date"), HCMLP 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 Bankruptcy Court"). On December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of HCMLP's bankruptcy case to this Court.

7. Shortly after the case was transferred, HCMLP's committee of unsecured creditors (the "Committee") informed HCMLP that it intended to seek appointment of a chapter 11 trustee because it did not believe Dondero could act as an estate fiduciary based on his past conduct. To avoid a trustee, Dondero and HCMLP entered into a settlement with the Committee which, among other things, appointed an independent board (the "Independent Board") to manage the bankruptcy.[4]

8. In August 2020, HCMLP, Dondero, the Committee, and HCMLP's largest creditors entered into mediation, resulting in settlements with HCMLP's largest creditors but not a global settlement with Dondero. Thereafter, HCMLP and the Committee began negotiating a plan of reorganization that would monetize HCMLP's assets and distribute the proceeds to creditors.

9. On February 22, 2021, this Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Bankr. Dkt. 1943] (the "Confirmation Order"), which confirmed the Plan

[4] Bankr. Docket No. 339 (approving settlement and appointment of Independent Board).

Bankr. Dkt. No. 1808. The Plan went effective on August 11, 2021 (the "Effective Date"). Bankr. Dkt. 2700. Among other things, the Plan created the Litigation Sub-Trust, as a "sub-trust established within the Claimant Trust or as a wholly-owned subsidiary of the Claimant Trust," for the purpose of "investigating, litigating, and settling the Estate Claims" transferred to it by the Claimant Trust pursuant to the Plan. Bankr. Dkt. 1808 ¶¶ 81, 83. Proceeds from the Litigation Trust's pursuit of claims "shall be distributed . . . to the Claimant Trust for distribution to the Claimant Trust Beneficiaries[.]" *Id.* at 27.

B. THE LITIGATION SUB-TRUST COMMENCES THIS ACTION

10. The Litigation Trustee commenced this Action on October 15, 2021. The Complaint asserts 36 causes of action against 23 Defendants. The Complaint asserts claims for the avoidance and recovery of intentional and constructive fraudulent transfers and obligations under sections 544, 548, and 550 of the Bankruptcy Code, illegal distributions under Delaware partnership law, breach of fiduciary duty, declaratory judgment that certain entities are liable for the debts of others by statute or under an alter ego theory, aiding and abetting or knowing participation in breach of fiduciary duty, civil conspiracy, tortious interference with prospective business relations, breach of contract, conversion, unjust enrichment, and disallowance or subordination of claims under sections 502 and 510 of the Bankruptcy Code.

11. While the broad scope of the claims ensured that this would be a substantial litigation, the Defendants in this action have exacerbated the cost by propounding sweeping and unreasonable discovery of HCMLP and third parties, while simultaneously obstructing the Litigation Trustee's discovery of Defendants. As a result, to date, the Litigation Trustee has reviewed over 700,000 documents and produced 655,432 documents comprising 7,390,270

pages.[5] Defendants have responded by demanding ever more documents, from more complicated and difficult to search sources,[6] and have served 45 subpoenas seeking the production of documents from third parties.[7] Remarkably, Defendants have yet to produce a single document in response to the Litigation Trustee's requests.[8]

C. THE DONDERO PARTIES COMPLAIN ABOUT THE COSTS OF THIS ACTION AND CONTEND IT IS UNNECESSARY

12. On June 30, 2022, Dugaboy filed a *Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Bankr. Dkt. 3382] (the "First Valuation Motion"), seeking a valuation of the Claimant Trust's assets. This Court denied the First Valuation Motion as procedurally improper on December 7, 2022. Bankr. Dkt. 3645. Accordingly, on February 6, 2023, Dugaboy and HMIT filed a *Motion for Leave to File Proceeding* [Bankr. Dkt. 3662] (the "Second Valuation Motion," and together with the First Valuation Motion, the "Valuation Motions"), this time making baseless allegations against HCMLP, the Claimant Trust, and their fiduciaries and professionals, and seeking leave to file an Adversary Proceeding seeking information concerning the Claimant Trust.

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[5] *See* Appendix Ex. A - Loigman Decl. ¶ 2.

[6] After the Litigation Trustee agreed to produce over 859 prepetition emails and attachments, Defendants demanded an even more expansive search into every single non-e-mail system the debtor had used in the past ten years, without any regard as to whether those sources would duplicate the pre-petition email results. Specifically, Defendants made over 95 additional requests, spanning from requesting "[a]ll documents from 1/1/2009 through 10/15/2019 maintained locally on the computers issued to" twenty-two different custodians; "all documents" found within debtor's entire executive accounting drive, and full folder contents for any folder in the debtor's entire shared drive in which "[a]ny document" hit on certain key words in the title. *See* Appendix Ex. C (Annex A to Defendants' March 13, 2023 Letter to Plaintiff, rows 9, 22, 44).

[7] *See* Dkts. 194, 233-261, 278-82, 294-96, 305-08, 311-13, 316.

[8] In fact, to date, not a single Defendant has even provided a complete hit report in response to search terms that the Litigation Trustee sent ***over four months ago***, on December 13, 2022. *See* Appendix Ex. A - Loigman Decl. ¶ 3. Counsel to NexPoint and HCMFA provided a partial hit report on March 13, 2023. *Id.*

13. In the Valuation Motions, Dugaboy and HMIT assert that they have residual contingent interests in the Claimant Trust because they hold unvested, contingent trust interests.[9] Dugaboy and HMIT further assert that the Claimant Trust has sufficient assets to pay all current Claimant Trust Beneficiaries in full and that they are thus somehow in the money (notwithstanding that that is not how the Plan works). Finally, Dugaboy and HMIT assert that protections are necessary to preserve the Claimant Trust's assets and that continued prosecution of this Action "threatens to depress the value of the Claimant Trust" (*Id*. at ¶ 18) and diminish the value of their contingent, residual interests.

14. This is not the first time the Dondero Parties have complained about the cost of this Action and contended that it is unnecessary since the value of the Claimant Trust's assets supposedly exceed the value of the Claimant Trust Beneficiaries' interests.[10]

15. While reserving the Claimant Trusts' rights to contest the Dondero Parties' assertions, the Litigation Trustee believes it would be prudent to stay the Action during the Stay Period to allow assets to be monetized pursuant to the Plan while conserving resources for all parties and third parties. And, while the Defendants have not consented to this relief, it is astounding that they would contest it because it directly addresses the concerns set forth in the Valuation Motions. Accordingly, the Litigation Trustee respectfully requests that this Court stay proceedings in this Action for six months until September 30, 2023, and to continue the stay thereafter until one party to the Action provides 30 days' written notice to all other parties and the Court of their intent to resume the Action.

---

[9] Dugaboy and HMIT were members of Class 10 and Class 11 under the Plan, but they will receive no interest or rights in the Claimant Trust unless and until all senior classes have been paid in full with interest, all disputed claims have been resolved, and the Claimant Trustee has filed a certificate with this Court. Bankr. Dkt. 1943 ¶ 60b.

[10] *See, e.g, Reply Brief of Appellant, The Dugaboy Investment Trust*, Case No. 22-10831, Document No. 00516578672 at 9 (5th Cir. Dec. 14, 2022) ("[T]he Kirschner litigation continues to this day to erode the value of the estate, which most significantly impacts" Dugaboy's and HMIT's pecuniary interests).

ARGUMENT

16. Pursuant to section 105(a) of the Bankruptcy Code, the Court "may issue any order . . . that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). Moreover, the Supreme Court has held:

> [T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.

Landis v. N. Am. Co., 299 U.S. 248, 254-55 (1936). This Court possesses broad discretion to grant stays, particularly where doing so is unlikely to cause harm to any other party. *See, e.g.*, *Fishman Jackson PLLC v. Israely*, 180 F. Supp. 3d 476, 483 (N.D. Tex. 2016) ("Courts have 'broad' discretion to grant stay[s] . . . especially when there is not a 'fair possibility' that the stay 'will work damage to someone else.'"); *In re Ramu Corp.*, 903 F.2d 312, 318 (5th Cir. 1990) ("The stay of a pending matter is ordinarily within the trial court's wide discretion to control the course of litigation . . . . This authority has been held to provide the court the 'general discretionary power to stay proceedings before it in control of its docket and in the interests of justice.'" (internal citations omitted)).

17. While stays should "not be immoderate or of an indefinite duration," *Fishman*, 180 F. Supp. 3d at 483, courts routinely grant stays of six months where doing so promotes judicial efficiency. *See, e.g.*, *14th St. Props., LLC v. S. Fid. Ins. Co.*, No. CV 22-1593, 2023 WL 416317, at *1 (E.D. La. Jan. 26, 2023) (granting stay and administratively closing matter for six months due to state insolvency proceedings); *Integrated Claims Sys., LLC v. Old Glory Ins. Co.*, No. 2:15-CV-00412-JRG, 2020 WL 1027771, at *1 (E.D. Tex. Mar. 3, 2020) (granting motion to stay for six months); *Cleveland Air Serv., Inc. v. Pratt & Whitney Canada*, No. 4:13-CV-161-DMB-DAS, 2016 WL 4179987, at *2 n.3 (N.D. Miss. Aug. 5, 2016) (staying discovery for six months); *Maples*

v. Donzinger, No. CIV.A. 13-223, 2014 WL 688965, at *2 (E.D. La. Feb. 21, 2014) (granting a six month stay). Courts have also granted stays which may only be lifted by the parties after a determined time. *See, e.g.*, *Scarborough v. Integricert, LLC*, No. 6-12-CV-00396, 2014 WL 12662272, at *3 (W.D. La. Apr. 4, 2014) ("Lastly, this Court's intention is not to stay the case for an indefinite period. To the contrary, the Court will issue a stay for a period of one-hundred and twenty days, at the end of which, either party may move to lift the stay upon a showing of good cause. Thus, the stay will not last for an 'indefinite' period such as Scarborough fears.").

18. Here, the Action should be stayed in the interests of judicial economy and efficiency and in the interests of the recipients of the 45 third-party subpoenas served by Defendants, the Litigation Sub-Trust, the Claimant Trust, and even the Defendants—two of whom (Dugaboy and HMIT) have actually advocated for the relief requested herein. A grant of the requested stay will enable HCMLP to focus on executing its Plan without incurring further expenses on this litigation, which, as explained above, have been exacerbated by Defendants' litigation tactics. *See In re Janes*, No. 92-2712-BKC-3P7, 1993 WL 476493, at *4 (Bankr. M.D. Fla. Nov. 8, 1993) (granting "Defendant's motion to stay adversary proceeding," and noting that "one of the goals of the code is maximization of assets available in the estate to pay creditors"). The result is a conservation of HCMLP and Claimant Trust funds, while maintaining the Litigation Trustee's flexibility to pursue the claims in this Action should it be necessary in order to satisfy the Claimant Trust's obligations.

19. A stay would also promote judicial efficiency because pursuit of this litigation *may* prove unnecessary, in which case the Court would be spared the burden of further adjudicating this Action.

20. Finally, a stay will benefit Defendants, not harm them—as their own repeated complaints demonstrate. Like the Claimant Trust, Defendants can defer extensive litigation expenses during the Stay Period, and perhaps permanently, depending on the results of the monetization of HCMLP's remaining assets and the satisfaction of indemnification obligations. Moreover, staying this case addresses the very issue Defendants raise in their Valuation Motions; namely, purported depletion of Claimant Trust assets through the burden of litigation expenses.

21. In sum, the Stay Period—which is neither "immoderate" nor "of an indefinite duration"—falls within this Court's broad discretion. *Fishman*, 180 F. Supp. 3d at 483; *see also McKnight v. Blanchard*, 667 F.2d 477, 479 (5th Cir. 1982) (vacating indefinite stay that could last for seven years or longer where trial court "gave no reason for such a protracted stay"). The requested stay squarely serves the interests of judicial economy, ensures efficient management of this adversary proceeding, and is in the best interests of the parties to this Action and the Claimant Trust Beneficiaries.

CONCLUSION

22. For the foregoing reasons, the Trustee respectfully requests that the Court grant an Order staying all proceedings in the Action through the Stay Period.

Dated: March 24, 2023

Respectfully submitted,

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-and-

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Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies, that on Thursday, March 23, 2023, counsel for the Litigation Trustee corresponded with counsel for Defendants regarding the relief requested in the foregoing motion. Defendants did not provide a response indicating whether or not they would agree to the motion, so this Motion is submitted as being **OPPOSED**.

/s/ *Robert S. Loigman*
Robert S. Loigman

CERTIFICATE OF SERVICE

The undersigned hereby certifies, that on this 24th day of March 2023, the undersigned caused to be served a true and correct copy of the *Litigation Trustee's Motion To Stay The Adversary Proceeding*, by electronically filing it with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

/s/ *Paige Holden Montgomery*
Paige Holden Montgomery

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Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] 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; 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 &	Adv. Pro. No. 21-03076-sgj

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

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.; AND SAS ASSET RECOVERY, LTD., Defendants.

APPENDIX IN SUPPORT OF THE LITIGATION TRUSTEE'S MOTION TO STAY THE ADVERSARY PROCEEDING

Pursuant to Local Bankruptcy Rule 7007-1(g), Marc S. Kirschner (the "Trustee" or "Litigation Trustee"), the Litigation Trustee of the Litigation Sub-Trust established pursuant to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* (as amended, the "Plan"), submits the following evidence corresponding to the Motion to Stay the Adversary Proceeding.

APP. #	EX.	DESCRIPTION
001-005	A	Declaration of Robert S. Loigman is Support of the Litigation Trustee's Motion to Stay the Adversary
006-011	B	Defendants' March 13, 2023 letter to the Litigation Trustee regarding non-email requests
012-027	C	Excerpt from letter attachments (Annex A)

Dated: March 24, 2023

Respectfully submitted,

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Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

CERTIFICATE OF SERVICE

The undersigned hereby certifies, that on this 24th day of March 2023, the undersigned caused to be served a true and correct copy of the *Appendix in Support of the Litigation Trustee's Motion to Stay the Adversary Proceeding* by electronically filing it with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

/s/ *Paige Holden Montgomery*
Paige Holden Montgomery

EXHIBIT A

QUINN EMANUEL URQUHART & SULLIVAN LLP
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Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] 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; 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	Adv. Pro. No. 21-03076-sgj

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

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.; AND SAS ASSET RECOVERY, LTD.,

Defendants.

DECLARATION OF ROBERT S. LOIGMAN IN SUPPORT OF THE LITIGATION TRUSTEE'S MOTION TO STAY THE ADVERSARY PROCEEDING

I, Robert S. Loigman, hereby state as follows:

1. I am a partner with the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust (the "Litigation Trustee") in the above-captioned action. I submit this declaration in support of the Litigation Trustee's Motion To Stay The Adversary Proceeding. I have personal knowledge of the matters set forth in this declaration based upon my involvement in this case and a review of the file.

2. To date, the Trustee has reviewed over 700,000 documents, and produced 655,432 documents comprising 7,390,270 total pages.

3. The Trustee sent Defendants a proposed list of search terms for them to run on their electronically stored information on December 13, 2022. To date, no Defendant has produced a complete hit report in response to those search terms. Counsel to NexPoint and HCMFA produced a partial hit report on March 13, 2023.

4. Attached to the Appendix in Support of the Litigation Trustee's Motion to Stay the Adversary Proceeding as Exhibit B is a true and correct copy of Defendants' March 13, 2023 letter to the Litigation Trustee regarding non-email requests.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this March 24, 2023 at New York, New York.

/s/ Robert S. Loigman
Robert S. Loigman

CERTIFICATE OF SERVICE

The undersigned hereby certifies, that on this 24th day of March 2023, the undersigned caused to be served a true and correct copy of the *Litigation Trustee's Motion To Stay The Adversary Proceeding*, by electronically filing it with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

/s/ *Paige Holden Montgomery*
Paige Holden Montgomery

EXHIBIT B

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Rio de Janeiro**
San Francisco
Santiago
Sao Paulo**
Tijuana
Toronto
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* Associated Firm
** In cooperation with Trench, Rossi e Watanabe Advogados

March 13, 2023

Deborah J. Newman
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51 Madison Avenue, 22nd Floor
New York, NY 10010

By email
deborahnewman@quinnemanuel.com

Re: Kirschner v. Dondero et al., Adv. Pro. No. 21-03076-sgj

Dear Debbie:

We write on behalf of Defendants copied below in response to your email of January 18, 2023 setting forth Plaintiff's updated positions regarding document production from non-email sources identified in Defendants' letters of May 3, 2022, June 10, 2022, and November 9, 2022 for documents responsive to Defendants' Omnibus First Set of Requests for Production of Documents to Plaintiff served on February 11, 2022.

For all active requests, Defendants have included specific responses in Column N of an updated version of the Annex A Excel spreadsheet tracker previously attached to Defendants' letter of November 9, 2022. The status of active requests is summarized in the table below.

Status of Active Requests	#	Request Numbers
Agreed	31	Requests 2, 11, 12, 13, 14, 15, 16, 17, 18, 23, 26, 27, 28, 39, 40, 41, 42, 43, 44, 45, 46, 47, 62, 65, 66, 67, 69, 80, 81, 82, 83
Agreed, subject to further clarification of the Litigation Trustee's position	2	Requests 61, 64
Further clarification needed to confirm the Litigation Trustee's position	29	Requests 1, 3, 4, 6, 19, 20, 21, 24, 25, 29, 30, 33, 35, 36, 37, 38, 48, 52, 53, 54, 55, 58, 60, 68, 72, 75, 79, 92, 94
Refused by the Litigation Trustee	21	Requests 7, 8, 22, 31, 32, 34, 49, 50, 56, 57, 63, 70, 71, 73, 74, 77, 86, 87, 88, 89, 95
No response from the Litigation Trustee since request was made in May 2022	2	Requests 9, 76

A. Requests Agreed

As summarized in the table above, Defendants noted that agreement has been reached (or is expected to be reached subject to minor clarifications) on 33 requests. Fourteen of these requests were agreed five or more months ago, and the remainder were agreed more than two months ago, as of the Litigation Trustee's December 21, 2023 response. With respect to each request, please confirm within one week of this letter (1)

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whether such documents were included in the Litigation Trustee's initial rolling production of February 13, 2023, (2) if so, whether the document production for the request is complete, and (3) if not, the final production date for the documents.

B. Requests Requiring Further Clarification of the Litigation Trustee's Position on Production

Unfortunately, however, a majority of requests still remain in contention. Despite Defendants' previous requests for clarification during the December 16 meet and confer and further detailed in Defendants' email of December 21, the Litigation Trustee's responses on 29 requests require further clarification of the Litigation Trustee's position. In most of these instances, the Litigation Trustee's responses were too vague or non-responsive for Defendants to understand which sources and documents the Litigation Trustee is and is not agreeing to search for and produce.

For instance, for many requests, the Litigation Trustee fails to confirm whether or not it is agreeing to search the specific source identified in the request, instead noting that "documents may not come from the specifically listed sources because they are duplicative of other sources from which collection is easier"--usually, the "G-Drive," which was a general shared drive at HCMLP and, in many instances, not the best or most complete, reliable repository for the requested documents. This type of vague response fails to identify what is and is not being included in the Litigation Trustee's search methodology and production. Moreover, the Litigation Trustee provides no basis to conclude that the documents found in the specified source will be entirely duplicative of those found in the Litigation Trustee's substitute source. Indeed, the Litigation Trustee has given no indication of whether it has conducted any inquiry into these sources sufficient to inform its position. Defendants, in contrast, have expounded on the nature of these sources at some length in the various responses collated in Annex A, but has been met with no substantive response by the Litigation Trustee. Based on Defendants' knowledge of the documents maintained by HCMLP in the ordinary course of business, each of the specific non-email sources requested in Annex A was included *precisely because* it contains unique information that is not "unreasonably cumulative or duplicative" and cannot "be obtained from some other source that is more convenient." Fed. R. Civ. P. 26(b)(2)(C)(i). The Litigation Trustee therefore has a duty to conduct a reasonable search of these sources.[1]

[1] *Kunze v. Baylor Scott & White Health*, 2021 U.S. Dist. LEXIS 202938, at 10 (N.D. Tex. 2021) (requests for potentially overlapping documents not duplicative because each would "likely contain information that would not be found" in the other); *see also June Med. Servs., LLC v. Gee*, 2018 U.S. Dist. LEXIS 181337 (M.D. La. 2018) (granting motion to compel and ordering party to certify that search of additional sources would return duplicative information). Defendants further note that the Litigation Trustee has not argued or made any showing that any of the requested sources are "not reasonably accessible" under the standard set out in Rule 26(b)(2)(B).

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With respect to these 29 requests, it is imperative that the Litigation Trustee clarify its position so that Defendants may determine whether or not court intervention is required. In an effort to aid the Litigation Trustee in identifying specific sources of relevant documents, Defendants have gone to great lengths to provide very detailed explanations of the sources (often down to specific folder paths) as well as the relevance of each source and the types of documents contained. As the Litigation Trustee has had many months to consider these specific requests, it should have no difficulty in providing a clear position. Please provide the requested responses no later than one week from receipt of this letter.

C. Requests Refused by the Litigation Trustee

The Litigation Trustee appears to be refusing to search for or produce any documents with respect to a further 21 active non-email requests. For 17 of these requests (Nos. 22, 31, 32, 34, 49, 50, 56, 57, 63, 73, 74, 77, 85, 86, 87, 88, 95), the Litigation Trustee continues to provide only the barest of boilerplate reasons for its position, stating only that it "objects to this request as overly broad, unduly burdensome, duplicative, and disproportionate to the needs of the case, and seeking documents not relevant to any party's claims or defenses, and will not produce" (or a nearly identical statement) for each request. This is not, as the Litigation Trustee contends, objecting "with particularity."

Since the Litigation Trustee's email of December 21 professed not to be aware of the wealth of case law in this district prohibiting such conduct, Defendants will briefly reiterate the explanation and case law previously provided in their November 9 letter and referenced in our last meet and confer. Boilerplate objections of the type asserted by the Litigation Trustee,[2] unsupported by any "particularized facts" revealing the nature of the burden or reason for the objection, are not permitted in this district.[3] For instance, with respect to an objection that a request is overly broad or unduly burdensome,

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[2] Such generalized and boilerplate responses are found both in the Litigation Trustee's responses and objections to Defendants' Omnibus First Set of Requests for Production of Documents to Plaintiff, as well as in the Litigation Trustee's responses to Defendants' specific follow-up requests regarding non-email sources (collated in Annex A).

[3] *Heller v. City of Dallas*, 303 F.R.D. 466, 490-491 (N.D. Tex. 2014); *Orchestratehr, Inc. v. Trombetta*, No. 3:13-CV-2110-P, 2015 U.S. Dist. LEXIS 179784, at *23 (N.D. Tex. 2015) ("generic objections violate the Federal Rules of Civil Procedure and are invalid even where they reference a particular document request because, even then, they are merely boilerplate or unsupported"); *Samsung Elecs. Am., Inc. v. Chung*, 321 F.R.D. 250, 281-283 (N.D. Tex. 2017) ("general or boilerplate objections are invalid . . . and the responding party has the obligation to explain and support its objections"); *Lopez v. Don Herring Ltd.*, 327 F.R.D. 567 (N.D. Tex. 2018) (overruling numerous discovery objections as "unsupported and unsustainable boilerplate" and granting motion to compel); *Baker v. Walters*, No. , 2023 U.S. Dist. LEXIS 13303, at *20-26 (N.D. Tex., Jan. 26, 2023) (granting motion to compel after finding that discovery objections similar to the Litigation Trustee's "are all unsupported boilerplate and are invalid based on . . . failing to make the objections with specificity and to explain and support their objections") (internal marks and citation omitted).

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> [a] party resisting discovery must show specifically how each . . . document request is overly broad, unduly burdensome, or oppressive. . . . Failing to do so, as a general matter, makes such an unsupported objection nothing more than unsustainable boilerplate. . . . [I]t would be difficult to dispute the notion that the very act of making such boilerplate objections is *prima facie* evidence of a Rule 26(g) violation, because if the lawyer had paused, made a reasonable inquiry, and discovered facts that demonstrated the burdensomeness or excessive cost of the discovery request, he or she should have disclosed them in the objection, as both Rule 33 and 34 responses must state objections with particularity, on pain of waiver.[4]

The repeated refusal, over the course of many months, to provide virtually any facts that would explain the basis for the Litigation Trustee's objections has stymied Defendants' effort to meaningfully engage on these specific non-email requests over these past many months. As noted in Column N, Defendants therefore simply ask the Litigation Trust to confirm that it is standing on its objections, such as they are, and will refuse to search for and produce documents with respect to the 21 requests noted above. With respect to 11 of these requests (Nos. 7, 8, 22, 34, 56, 73, 85, 86, 87, 88), Defendants have revised the request as indicated in Column N and therefore also request an updated position from the Litigation Trustee. If Defendants do not receive a response within one week from the date of this letter, it will treat the Litigation Trustee's silence as a final refusal on these 21 requests.

D. Requests Not Answered for Over Ten Months

Finally, the Litigation Trustee has failed to provide any substantive response whatsoever to Requests 9 and 76, despite the fact that Defendants first made these requests over ten months ago, in a May 3, 2022 letter. Request 9 concerns electronic documents stored on computers used for business purposes by key custodians in this case. Request 76 requests a discrete set of production logs further identified by the likely document format, drive location, and author. These are not difficult requests, yet as of its January 18, 2023 update, the Litigation Trustee's responses are still "under investigation." Please confirm the result of the Litigation Trustee's investigation, whether the Litigation Trustee will agree to search for and produce the documents, and, if not the basis for non-production, no later than one week following receipt of this letter.

Defendants reserve all rights.

[4] *Heller*, 303 F.R.D. at 490-91 (internal marks and citations omitted).

Baker McKenzie.

Regards,

/s/ Michelle Hartmann

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Cc: Amy Ruhland
Brian Glueckstein
Deborah Deitsch-Perez
Louis Phillips

EXHIBIT C

No.	Category	Non-Email Document Source	Defendants' Requests	Date(s)/Source of Request 5/3/22 - Letter re Initial Requests 6/10/22 - Letter re Priority Requests 11/9/22 - Specific Follow Up Request	Litigation Trustee's Response	Date(s)/Source of LT Response	LT Agreed to Produce? M=maybe, P=partial	Defendants' Request Status as of November 9	Defendants' November 9 Response	LT's Response as of December 12	Defendants' Dec 21 Categories [column added by LT on 1/18/23]	LT Revised Response/Clarification (1/18/23)	Defendants' Response to LT's Revised Position (3/13/23)	Defendants' Request Status (3/13/23)
1	Solvency	Accounting Systems	A list of HCMLP affiliates whose accounting was conducted in Oracle, QuickBooks, and/or Geneva systems, including: (a) Oracle—list of companies and associated company codes; (b) QuickBooks—file names of all .qbw files saved on the G-Drive; and (c) Geneva—list of portfolios.	5/3/22 Letter	Objected to the production without search terms of "the complete records of HCMLP's accounting, payroll, tax, and investment tracking systems"; "Once the Parties to come to agreement on a search protocol for HCMLP's email server, the Litigation Trustee will evaluate whether these sources contain nonduplicative documents relevant to the Parties' claims and defenses and whether a narrow, supplementary production would be proportional to the needs of the case."	5/24/22 M&C 6/14/22 Letter	N	Pursue original request	Defendants' request does not request "the complete records of HCMLP's accounting, payroll, tax, and investment tracking systems" as the Trustee objected. Rather, this search specifically requests a list of the accounting systems used by each entity so that targeted requests may be formulated.	The Trustee will produce documents relevant to a solvency analysis that are reasonable and proportionate to the needs of the case.	Source Clarification Requested	These documents may not come from the specifically listed sources because they are duplicative of other sources from which collection is easier. The Trustee will produce documents from the G-Drive or Oracle.	Defendants seek limited information required to confirm which accounting systems were used by which HCMLP affiliates. It is not sufficiently clear whether the Litigation Trustee agrees to provide the requested information for Oracle and QuickBooks. Defendants reserve rights on this portion of the request pending review of the production regarding these sources. Please confirm by stating "Yes" or "No": Does the Litigation Trustee refuse to search for and produce a list of HCMLP affiliates whose accounting was conducted in the Geneva system, as well as the list of portfolios in Geneva? If they answer is "Yes," please also confirm whether the Litigation Trustee has preserved Geneva system data. Additionally, please confirm by stating "Yes" or "No": Does the Litigation Trustee refuse to search for and produce a list of HCMLP affiliates whose accounting was conducted using the Oracle and/or Quickbooks programs?	Further clarification needed on LT production position
2	Solvency	Axcess	Documents for tax years 2009- 2019[, identified via the following methodology: Login to CCH Axcess, go to documents, and search by "Clients." Search for HCMLP or Highland Capital Management. Produce the contents of any folders specific to HCMLP, Strand, or Strand Advisors (including, but not limited to, the folder for each tax year from 2009 to 2019).]* *bracketed portion added 6/10	5/3/22 Letter 6/10/22 Letter	6/14/22 - Objected to the production without search terms of "the complete records of HCMLP's accounting, payroll, tax, and investment tracking systems"; "Once the Parties to come to agreement on a search protocol for HCMLP's email server, the Litigation Trustee will evaluate whether these sources contain nonduplicative documents relevant to the Parties' claims and defenses and whether a narrow, supplementary production would be proportional to the needs of the case." 7/6/22 - Using Defendants' search methodology, the Litigation Trustee will identify and produce relevant tax returns for HCMLP or Strand Advisors, Inc. from 2010 to 2019. 10/12/22 - The Trustee was able to locate tax returns for HCMLP or Strand Advisors, Inc. from 2010 to 2019 and agrees to produce them.	5/24/22 M&C 6/14/22 Letter 7/6/22 Letter 10/12/22 Letter	Y/P	Request agreed	Please provide the timing for the production of the agreed upon documents. Defendants request production of such documents no later than November 21, 2022.		Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
3	NPA/HCMFA Claims	Box	Any folders specific to HCMFA, HFAM or Pyxis Capital.	6/10/22 Letter	The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time.	7/6/22 Letter	N	Pursue original request	Box is the location of the audit file for these entities. The audit files includes the audits, draft audits, memos, letters and comments prepared as part of the audit process, the documents provided to the auditors as audit support and the auditors' responses to such documents. The Box locations only contain the audit files. As the Trustee claims that all of the revenue of these companies constitutes damages, then Defendant is entitled to the files. Additionally, at most, these would constitute the files of NPA/HCMFA that should have been provided when the companies separated.	The Trustee will produce documents sufficient to show the revenues and source of revenues for HCMFA, HFAM, and Pyxis Capital.	Source Clarification Requested	These documents may not come from the specifically listed sources because they are duplicative of other sources from which collection is easier. Specifically, it is the Trustee's understanding that materials in Box are duplicative of the G-Drive.	The Litigation Trustee's agreement to produce only documents "sufficient to show" revenue and sources of revenue is inadequate and vague. The request is for all audit-related documents for these entities, including the audits, draft audits, memos, letters and comments prepared as part of the audit process, the documents provided to the auditors as audit support and the auditors' responses to such documents, as such documents are relevant to the claims and defenses in the litigation. Defendants disagree that the materials in Box are duplicative of the "G-Drive." As previously stated, Box was the designated repository for housing the complete set of audit files for these entities and is the more reliable source. All information on Box for folders named for these entities is likely to be responsive as Box only contains audit-related documents, reducing the burden to sift out non-responsive information both for the Litigation Trustee in gathering documents and for Defendants in reviewing them. By contrast, any audit-related information that happened to be stored on the G-Drive is likely less complete, more likely to have been modified or deleted over time, and will no doubt have different metadata. Please confirm by stating "Yes" or "No": Does the Litigation Trustee refuse to search for and produce audit-related documents from Box folders specific to HCMFA, HFAM, and Pyxis Capital?	Further clarification needed on LT production position
4	Solvency	Box	Account data for audit years 2009-2019	5/3/22 Letter	Objected to the production without search terms of "the complete records of HCMLP's accounting, payroll, tax, and investment tracking systems"; "Once the Parties to come to agreement on a search protocol for HCMLP's email server, the Litigation Trustee will evaluate whether these sources contain nonduplicative documents relevant to the Parties' claims and defenses and whether a narrow, supplementary production would be proportional to the needs of the case."	5/24/22 M&C 6/14/22 Letter	N	Pursue modified request	Box is the location of the audit file for HCMLP, Strand, and other entities. All Box data should be produced for HCMLP and Strand for audit years 2009 - 2019.	The Trustee will produce audit documents sufficient to show revenues and sources of revenue for HCMLP and Strand, such as audited financial statements.	Source Clarification Requested	These documents may not come from the specifically listed sources because they are duplicative of other sources from which collection is easier. Specifically, it is the Trustee's understanding that materials in Box are duplicative of the G-Drive.	The Litigation Trustee's agreement to produce only documents "sufficient to show" revenue and sources of revenue is inadequate and vague. The request is for all audit-related documents for these entities, including the audits, draft audits, memos, letters and comments prepared as part of the audit process, the documents provided to the auditors as audit support and the auditors' responses to such documents, as such documents are relevant to the claims and defenses in the litigation. Defendants disagree that the materials in Box are duplicative of the "G-Drive." As previously stated, Box was the designated repository for housing the complete set of audit files for these entities and is the more reliable source. All information on Box for folders named for these entities is likely to be responsive as Box only contains audit-related documents, reducing the burden to sift out non-responsive information both for Trustee in gathering documents and for Defendants in reviewing them. By contrast, any audit-related information that happened to be stored on the G-Drive is likely less complete, more likely to have been modified or deleted over time, and will no doubt have different metadata. Please confirm by stating "Yes" or "No": Does the Litigation Trustee refuse to search for and produce audit-related documents from Box folders specific to HCMLP and Strand for audit years 2009-2019?	Further clarification needed on LT production position
5	N/A	ClearPar	All documents related to any trade of any asset that Plaintiff alleges was fraudulently transferred.	6/10/22 Letter	7/6/22 - The Litigation Trustee is in the process of evaluating whether ClearPar is an appropriate and nonduplicative document source.	7/6/22 Letter 7/22/22 M&C 10/12/22 Letter	N	Request withdrawn	N/A					N/A (withdrawn)
6	Unjust Enrichment/Preference Payments Claims	Concur	All system entries and expense reports (including supporting data) for Jim Dondero, Mark Okada, Scott Ellington, or Isaac Leventon (during any time period that Plaintiff contends is within the statute of limitations). *time period parenthetical was added on 6/10/22	5/3/22 Letter 6/10/22 Letter	6/14/22 - Generally objected to all 5/3 requests as overbroad. 7/6/22 - Using Defendants' search methodology, the Litigation Trustee will identify and produce relevant system entries and expense reports (including supporting data) for the Alleged Expense Transfers and the March 28, 2019 Repayment Transfer specified in the Litigation Trustee's Amended Complaint. 10/12/22 - The Trustee agreed to produce Concur reports and supporting documents for the One-Year Transfers, as defined and alleged in the Complaint, but the One Year Transfers do not appear in Concur. The Trustee has prepared and will produce a spreadsheet of the expenses for Dondero and Ellington that appear in Concur. However, because supporting documentation is burdensome to generate in Concur, and the reported expenses are not the One-	5/24/22 M&C 6/14/22 7/6/22 Letter 10/12/22 Letter	Y/P	Pursue original request	The Defendants understand that for all pre-bankruptcy time periods, Concur was the system utilized for Debtor employee expense reimbursements. Expenses would be submitted through Concur, including uploading the receipts in support of such expenses. Presumably, this would include the One Year Transfers referenced in the Amended Complaint. To the extent that the Trustee asserts this is not correct, Defendants would request a certification under oath. With respect to the spreadsheet prepared by the Trustee, please identify and produce the source of such spreadsheet data. With respect to the supporting documentation in Concur, notwithstanding the alleged burden on producing such documentation, the Trustee alleges that ALL of the expense reimbursements submitted by Defendants Dondero and Ellington are	The Trustee will produce the supporting documents for the expense reimbursements challenged in the Amended Complaint.	Source Clarification Requested	The Trustee will produce supporting documents for the expense reimbursements challenged in the Amended Complaint, to the extent it is available in Concur. The Trustee understands that certain reimbursements may be located outside of Concur and is in the process of locating the source for those documents.	Defendants request all system entries and expense reports for Dondero, Okada, Ellington and Leventon for the relevant time period, not just the challenged reimbursements. This information is relevant to Defendants' defenses as it will allow Defendants to compare allegedly tortious and non-tortious reimbursements. Please confirm by stating "Yes" or "No": Does the Litigation Trustee refuse to produce documents for reimbursements other than the challenged reimbursements? Please also confirm the sources, if any, that the Litigation Trustee is searching other than Concur for the expense reports and expense support for Defendants Dondero, Okada, Ellington, and Leventon.	Further clarification needed on LT production position

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7	Breach of Fiduciary Duty re UBS/Sentinel	Discovery Assistant	All native and production files from any cases in ImageMaker Discovery Assistant for any case created after 10/15/2019.	6/10/22 Letter	The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time.	7/6/22 Letter	N	Pursue original request	This is the most complete, readily accessible repository of HCMLP documents gathered by persons with knowledge in response to the Committee's requests. This is the least burdensome mechanism to provide most of the responsive categories of documents. If you cannot produce this, then please provide the list of Committee searches, the documents produced in response to each, and we can select the ones we believe are relevant. This will save the time and effort to regather the documents, plus will ensure that the original collection was by persons with knowledge, rather than post-effective date professionals with no personal	The Litigation Trustee is investigating its ability to respond to this request in a reasonable and proportionate manner and will provide a further response as soon as he is able.	RUI	The Litigation Trustee objects to this request as seeking information protected by, among other things, work production protection. To the extent this request seeks any non-privileged information, such information will be produced in response to other requests. The Litigation Trustee will not produce any documents in response to this request.	The Litigation Trustee's response is contradictory and vague, as it is impossible to understand what information it purports to withhold or produce. Defendants seek factual documents produced in discovery to the UCC that are potentially relevant to the allegations asserted in this case. Such documents are not shielded by Work Product protection merely because they were produced. Indeed, as stated in the November 9 response, Defendants believe this repository is the least burdensome way for the Litigation Trustee to access relevant documents. Nevertheless, Defendants are willing to address the Litigation Trustee's concerns about burden by further limiting its request to documents related to (1) the UBS Liability, (2) Sentinel Transaction, (3) CDO Fund, (4) HFP (and all of its subsidiaries, including SOHC and CDO Holdco). Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to produce documents in response to this modified request?	Refused
8	Breach of Fiduciary Duty re UBS/Sentinel	Discovery Assistant	A List of case names and dates that cases were opened	5/3/22 Letter	Generally objected to all 5/3 requests as overbroad.	5/24/22 M&C 6/14/22 Letter	N	Pursue original request	Trustee has objected that a request for all Discovery Assistant files are overly broad. Therefore, Defendants are entitled to the list of such cases (and when they were opened) for the purposes of narrowing Defendant's request for Discovery Assistant documents.	The Litigation Trustee is investigating its ability to respond to this request in a reasonable and proportionate manner and will provide a further response as soon as he is able.	RUI	The Litigation Trustee objects to this request as seeking information protected by, among other things, work production protection. To the extent this request seeks any non-privileged information, such information will be produced in response to other requests. The Litigation Trustee will not produce any documents in response to this request.	The Litigation Trustee's response is contradictory and vague, as it is impossible to understand what information it purports to withhold or produce. Defendants' request does not encompass any information that could be considered as subject to Work Product protection. Nevertheless, in response to the Litigation Trustee's concerns, Defendants further modify the request as follows: For any document productions to the UCC or UBS related to (1) the UBS Liability, (2) Sentinel Transaction, (3) CDO Fund, (4) HFP (and all of its subsidiaries, including SOHC and CDO Holdco), please produce a list or documents sufficient to show the case name in Discovery Assistant, date the case was opened, and a listing of any Bates prefixes used to label documents in such production. Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to produce documents in response to this modified request?	Refused
9	All claims	Electronic Documents on Computers	All documents from 1/1/2009 through 10/15/2019 maintained locally on the computers issued to or used for business purposes by the following custodians: (a) Paul Broadus (b) Matt DiOrio (c) Jim Dondero (d) Scott Ellington (e) Katie Irving (f) Isaac Leventon (g) Shawn Raver (h) JP Sevilla (i) Rick Swadley (j) Stephanie Vitiello (k) Mark Patrick (l) Frank Waterhouse (m) David Klos (n) Kristin Hendrix (o) Thomas Surgent (p) Vishal Patel (q) Mark Okada (r) Eliason, Hayley (s) Hillis, Blair (t) Wilson, Drew (u) Sullivan, Drew (v) Sullivan, Jourdan	5/3/22 Letter		5/24/22 M&C 6/14/22 Letter	N	Pursue original request	The local C drive and Desktop of the custodians should have been maintained by Debtor. This should not be a significant number of documents because the Debtor had a policy against employees saving documents on local machines. Nonetheless, this policy may not always have been followed and the results may contain relevant and responsive documents. The Trustee has a duty to search that location for documents relevant to any claim. While Defendants requested the entirety of each C-Drive to ease the search burden on the Trustee, if the Trustee determines that it does not want to produce the entire local C Drive of such custodians, then the Trustee has a duty to search such locations for relevant documents.	The Trustee is investigating the burdens associated with producing these documents and whether these drives contain responsive information. The Trustee understands that Drew Sullivan is not an individual, instead being a portmanteau of Drew Wilson and Jourdan Sullivan.	RUI		Defendants first made this request in May 2022 and have received no substantive response from the Litigation Trustee in the intervening 9 months, despite numerous follow ups. Defendants therefore will assume that the Litigation Trustee is refusing to produce documents from the computers of the specified custodians if no response is received in the next week. Further, Defendants have specified in Annex D a list of search terms for the Litigation Trustee to run to identify potentially responsive documents (Columns A and B), and refined the list of custodians (Column D). Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to produce documents in response to this modified request?	No LT response
10	Solvency; all fraudulent transfer claims	Electronic Documents on Computers	Work stations: all contents of Corporate Accounting members local work stations (Hayley Eliason, Blair Hillis, David Klos, Drew Sullivan, Jourdan Sullivan, Frank Waterhouse, Drew Wilson).	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	The local C drive and Desktop of the custodians should have been maintained by Debtor. The Trustee has a duty to search that location for documents relevant to any claim. While Defendants requested the entirety of each C-Drive to ease the search burden on the Trustee, if the Trustee determines that it does not want to produce the entire local C Drive of such custodians, then the Trustee has a duty to search such locations for relevant documents.	The Litigation Trustee objects to the request to seach "all contents of Corporate Accounting members local work stations" as overly broad, unduly burdensome, disproportionate to the needs of the case, and seeking documents not relevant to any party's claims or defenses, and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	Defendants withdraw this request as it has been replaced with Request 9.	N/A (withdrawn)
11	Breach of Fiduciary Duty re Acis/Terry	G-Drive	Under G-Legal, any folder whose title includes the word "Acis" or "Terry"	6/10/22 Letter	7/6/22 - The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time. 10/12/22 - The Trustee stands on his objections that this request is overbroad, unduly burdensome, irrelevant, and/or disproportionate to the needs of the case. Nonetheless, the Trustee has identified these folders and is in the process of exporting and reviewing them, and, subject to his Responses and Objections to Defendants Requests, will produce responsive documents to the extent they can be located and produced without undue burden.	7/6/22 Letter 10/12/22 Letter	Y/P	Request agreed	To the extent that the Trustee withholds any document in this repository on the basis of any objection or claim of privilege, please identify such withheld document.		Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
12	Breach of Fiduciary Duty re Acis/Terry	G-Drive	All copies and drafts of the Acis Transactional Documents[1]	6/10/22 Letter	7/6/22 - The Litigation Trustee will conduct a reasonable search for the Acis Transactional Documents and produce nonprivileged documents relevant to claims or defenses in this litigation. 10/12/22 - The Trustee has located these documents and will produce them.	7/6/22 Letter 10/12/22 Letter	Y	Request agreed	Please provide the timing for the production of the agreed upon documents. Defendants request production of such documents no later than November 21, 2022.		Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed

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13	Breach of Fiduciary Duty HarbourVest	G-Drive	All documents under any folder with a title that includes the word "HarbourVest"	6/10/22 Letter	7/6/22 - The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time. 10/12/22 - The Trustee stands on his objections that this request is overbroad, unduly burdensome, irrelevant, and/or disproportionate to the needs of the case. Nonetheless, the Trustee has identified these folders and is in the process of exporting and reviewing them, and, subject to his Responses and Objections to Defendants Requests, will produce responsive documents to the extent they can be located and produced without undue burden.	7/6/22 Letter 10/12/22 Letter	Y/P	Request agreed	To the extent that the Trustee withholds any document in this repository on the basis of any objection or claim of privilege, please identify such withheld document.		Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
14	Unjust Enrichment/Preference Payments Claims	G-Drive	All documents in the HR or personnel file(s) of the following: Mark Okada, Jim Dondero, Scott Ellington, Isaac Leventon, Patrick Daugherty. As an example, such folders are typically maintained with a naming structure similar to the following: G:\Human Resources\HRPrivate July 2007\Personnel Folders\[Employee name], or G:\Human Resources\HRPrivate July 2007\Personnel Folders\HCMLP\[Employee name])	6/10/22 Letter	7/6/22 - The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time. 10/12/22 - The Trustee stands on his objections that this request is overbroad, unduly burdensome, irrelevant, and/or disproportionate to the needs of the case. Nonetheless, the Trustee has identified these folders and is in the process of exporting and reviewing them, and, subject to his Responses and Objections to Defendants Requests, will produce responsive documents to the extent they can be located and produced without undue burden.	7/6/22 Letter 10/12/22 Letter	Y/P	Request agreed	To the extent that the Trustee withholds any document in this repository on the basis of any objection or claim of privilege, please identify such withheld document.		Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
15	Unjust Enrichment/Preference Payments Claims	G-Drive	Under the G-Drive HR files, all annual award letters for Jim Dondero, Scott Ellington, and Isaac Leventon (during any period Plaintiff claims is within the statute of limitations)	6/10/22 Letter	7/6/22 - The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time. 10/12/22 - The Trustee is attempting to locate these documents and ascertain their relevance, if any.	7/6/22 Letter 10/12/22 Letter	M	Pursue original request	These files may be found under G-Drive, HR folder, and sorted by the names of each individual defendant. Given that Defendants have provided the approximate drive location for each of these files, please provide an explanation for why it has taken the Trustee over four months to locate and produce these documents.	The Trustee will search for and produce any annual award letters for Jim Dondero, Scott Ellington, and Isaac Leventon located in their HR files on the G-Drive for any period Plaintiff claims is within the statute of limitation.	Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
16	Solvency	G-Drive	Under G-Accounting-Secured, search for a folder for HCMLP (likely called HCMLP, or Highland, or HCM, or Internal). Produce all documents contained therein	6/10/22 Letter	The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time.	7/6/22 Letter	N	Pursue original request	This was where the permanent and working files of the Corporate Accounting department were kept. This is the best repository of HCMLP financial documents and the primary source for solvency data. To the extent that the Trustee determines that it will not produce all documents in this drive location, it is nevertheless the Trustee's obligation to review the documents in this drive location and produce all relevant documents contained therein.	The Trustee will produce documents from G-Accounting-Secured relevant to a solvency analysis that are reasonable and proportionate to the needs of the case.	Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
17	NPA/HCMFA Claims	G-Drive	Legal Invoices Pivot Table: Defendants believe that copies of this table likely exist in the G- Drive (David Klos or Kristin Hendrix will likely know the correct reference). The table may also be found in the Z-Drive (Z-Legal-Invoices) and/or in the U- Drives of Helen Kim or Isaac Leventon.	6/10/22 Letter	7/6/22 - The Litigation Trustee is in the process of evaluating privileges that may apply to the Legal Invoices Pivot Table. If no privileges apply, the Litigation Trustee will produce the Legal Invoices Pivot Table. 7/22/22 - At M&C there was much discussion of the Pivot Table. LT said they would produce only the information that relates to this case, such as expenses related to litigations or transactions set forth in Complaint. Defs objected noting that this is a spreadsheet (i.e. a document) and should be produced since part of it contains potentially relevant information. 10/12/22 - The Trustee will produce the most recent version of the Legal Invoices Pivot Table that could reasonably be located as of the Petition Date. If a more recent version as of the Petition Date is located, the Trustee will produce it.	7/6/22 Letter 7/22/22 M&C 10/12/22 Letter	Y/P	Request agreed	Please provide the timing for the production of the agreed upon documents. Defendants request production of such documents no later than November 21, 2022.		Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
18	NPA/HCMFA Claims	G-Drive	Under G-Accounting, all law firm litigation disclosure letters in support of audits	6/10/22 Letter	7/6/22 - The Litigation Trustee will conduct a reasonable search of G- Accounting for law firm litigation disclosure letters in support of audits and produce nonprivileged documents relevant to claims or defenses in this litigation. 10/12/22 - The Trustee has located a number of such letters, both at this file path and through additional searches, and will produce them.	7/6/22 Letter 10/12/22 Letter	Y	Request agreed	Please provide the timing for the production of the agreed upon documents. Defendants request production of such documents no later than November 21, 2022.		Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
19	CLO Holdco Transaction	G-Drive	Under G-Accounting-Secured-Tax, all documents in any folder with "DAF" or "CLO Holdco" or "Dondero" or "Mark Patrick" in the name	6/10/22 Letter	The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time.	7/6/22 Letter	N	Pursue modified request	This is the permanent and working files for the Tax team. This is the best repository of documents related to Defendants DAF and CLO Holdco in relation to the CLO Holdco Transaction as referenced in the Amended Complaint at ¶¶ 131 - 136. To the extent that the Trustee determines that it will not produce all documents in this drive location, it is nevertheless the Trustee's obligation to review the documents in this drive location and produce all relevant documents contained therein. Alternatively, if the Trustee will provide a folder tree and list of files from these drive locations, the Defendants may be able to narrow the scope of requested folders.	The Trustee will produce responsive documents relied upon to make CLO Holdco claims.	Source Clarification Requested	The Trustee expects that these documents will come from the G-Drive.	Defendants are entitled to production of all documents relevant to the CLO Holdco Transaction, not just those documents that the Litigation Trustee selectively "relied upon" to make its claims. Please confirm the Litigation Trustee will produce all documents that make reference to, or are relevant to, the CLO Holdco Transaction. Additionally, Defendants specifically requested that the Litigation Trustee search the designated G-Drive folders, but received the vague response that "The Trustee expects that these documents will come from the G-Drive." That response neither confirms nor denies that LT will search the designated G-Drive folders. Please clarify by stating "Yes" or "No": does the Litigation Trustee agree to search, under G-Accounting-Secured-Tax, folders with "DAF" or "CLO Holdco" or "Dondero" or "Mark Patrick" in the name?	Further clarification needed on LT production position

No.	Category	Non-Email Document Source	Defendants' Requests	Date(s)/Source of Request 5/3/22 - Letter re Initial Requests 6/10/22 - Letter re Priority Requests 11/9/22 - Specific Follow Up Request	Litigation Trustee's Response	Date(s)/Source of LT Response	LT Agreed to Produce? M=maybe, P=partial	Defendants' Request Status as of November 9	Defendants' November 9 Response	LT's Response as of December 12	Defendants' Dec 21 Categories [column added by LT on 1/18/23]	LT Revised Response/Clarification (1/18/23)	Defendants' Response to LT's Revised Position (3/13/23)	Defendants' Request Status (3/13/23)
20	CLO Holdco Transaction	G-Drive	Under G-Accounting, all documents located in folder(s) for DAF or CLO Holdco	6/10/22 Letter	Pursue modified request	7/6/22 Letter	N	Pursue modified request	This is the permanent and working files for the accountants that kept the fund accounting records for Defendants DAF and CLO Holdco. This is the best repository of documents related to the financial condition and transactions of Defendants DAF and CLO Holdco in relation to the CLO Holdco Transaction. To the extent that the Trustee determines that it will not produce all documents in this drive location, it is nevertheless the Trustee's obligation to review the documents in this drive location and produce all relevant documents contained therein. Alternatively, if the Trustee will provide a folder tree and list of	The Trustee will produce responsive documents relied upon to make CLO Holdco claims.	Source Clarification Requested	The Trustee expects that these documents will come from the G-Drive.	Defendants are entitled to production of all documents relevant to the CLO Holdco Transaction, not just those documents that the Litigation Trustee selectively "relied upon" to make its claims. Please confirm the Litigation Trustee will produce all documents that make reference to, or are relevant to, the CLO Holdco Transaction. Additionally, Defendants specifically requested that the Litigation Trustee search the designated G-Drive folders, but received the vague response that "The Trustee expects that these documents will come from the G-Drive." That response neither confirms nor denies that the Litigation Trustee will search the designated G-drive folders. Please clarify by stating "Yes" or "No": does the Litigation Trustee agree to search, under G-Accounting, folders with "DAF" or "CLO Holdco" in the name?	Further clarification needed on LT production position
21	Solvency; all fraudulent transfer claims	G-Drive	Under G-Accounting-Secured, any Quickbooks files (.qbw) related to Strand, HCMLP, Dugaboy, Dondero, Multi-Strat, NPA, HCMFA, any other Defendant, or any other alleged transferor or transferee of a fraudulent transfer	6/10/22 Letter	The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time.	7/6/22 Letter	N	Pursue original request	This will be a limited number of files, relatively easy to gather and produce. Punch in the file extension .qbw to Windows Explorer, and it will return all of the files. Again, this is the primary source of accounting for the allegedly fraudulent transactions. To the extent that the Trustee determines that it will not produce all such documents, it is nevertheless the Trustee's obligation to review the documents in this drive location and produce all documents (a) related to any alleged fraudulent transfer; (b) reflecting on the solvency of HCMLP or Strand and (c) containing any transfers between NPA or HCMFA on one hand and HCMLP on the other.	The Trustee will produce responsive documents relied upon to make CLO Holdco claims.	Source Clarification Requested	The Trustee expects that these documents will come from the G-Drive.	Defendants are entitled to production of all Quickbooks files relevant to the CLO Holdco Transaction, not just those that the Litigation Trustee selectively "relied upon" to make its claims. Please confirm the Litigation Trustee will produce all Quickbooks files that make reference to, or are relevant to, the CLO Holdco Transaction. In addition, Defendants' request was not limited to the CLO Holdco Transaction, but also covered Quickbooks files (a) related to any alleged fraudulent transfer; (b) reflecting on the solvency of HCMLP or Strand and (c) containing any transfers between NPA or HCMFA on one hand and HCMLP on the other. Additionally, Defendants specifically requested that the Litigation Trustee search the designated G-Drive folders, but received the vague response that "The Trustee expects that these documents will come from the G-Drive." That response neither confirms nor denies that LT will search the designated G-drive folders. Please clarify by stating "Yes" or "No": does the Litigation Trustee agree to search under G-Accounting-Secured for Quickbooks files related to the topics listed above?	Further clarification needed on LT production position
22	Alter ego claims; fraudulent transfer claims v. Dondero, Okada, and Dugaboy	G-Drive	Under G-Accounting-Executive Accounting, produce all documents found therein	6/10/22 Letter	The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time.	7/6/22 Letter	N	Pursue modified request	This is the best repository of documents related to the financial condition and transactions of Defendants Dondero, Okada, Dugaboy, Get Good, and the Okada Trustees. To the extent that the Trustee determines that it will not produce all documents in this drive location, it is nevertheless the Trustee's obligation to review the documents in this drive location and produce all relevant documents contained therein. Alternatively, if the Trustee will provide a folder tree and list of	The Litigation Trustee objects to the request for all documents in G-Accounting-Executive Accounting for each entity as overly broad, unduly burdensome, disproportionate to the needs of the case, and seeking documents not relevant to any party's claims or defenses, and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	The Litigation Trustee appears to be operating under a misapprehension of what the G-Accounting-Executive Accounting folder will hold. This is the repository for key documents of the Executive Accounting team, which--unlike Corporate Accounting--dealt only with accounting for Defendants Okada and Dondero, as well as their related trusts or entities including Dugaboy, Get Good, and the Okada Trustees. Access to such a folder would have been limited to the Executive Administrative team. The documents housed therein are likely to be highly relevant to claims and defenses in this litigation. For clarity, Defendants request that the Litigation Trustee search this location for documents responsive to the topics listed in Annex B, rows 4, 5, 23, 24, 25, and 26. Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to produce documents in response to this modified request?	Refused
23	HE Capital 232 Claim	G-Drive	Under G-Investments-Teams- Dameris or G-Investments-Teams- Real Estate, all documents in any folder or sub-folder with "HE 232" or "232" or "Asante" in the name, including but not limited to those located under "HE Deals" or "Ellman" folder. Produce all contents located in the folders.	6/10/22 Letter	7/6/22 - The Litigation Trustee will conduct a reasonable search of G- Investments-Teams-Dameris and G-Investments-Teams-Real Estate for documents in any folder or sub-folder with "HE 232" or "232" or "Asante" in the name and produce nonprivileged documents relevant to claims or defenses in this litigation. 10/12/22 - The Trustee has identified these folders and is in the process of exporting and, subject to his Responses and Objections to Defendants Requests, will produce responsive documents to the extent they can be located and produced without undue burden.	7/6/22 Letter 10/12/22 Letter	Y	Request agreed	To the extent that the Trustee withholds any document in this repository on the basis of any objection or claim of privilege, please identify such withheld document.		Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
24	NPA/HCMFA Claims	G-Drive	Under G-Legal & Compliance, locate any folders for NPA, HCMFA, HFAM, or Pyxis; produce all documents contained therein	6/10/22 Letter	The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time.	7/6/22 Letter	N	Pursue modified request	These are the compliance records for these Defendants, and should have been provided when the companies separated, but were not. Also, these files show the on-going regulatory and compliance reasons for separating NPA/HCMFA from HCMLP. To the extent that the Trustee determines that it will not produce all documents in this drive location, it is nevertheless the Trustee's obligation to review the documents in this drive location and produce all relevant documents contained therein. Alternatively, if the Trustee will provide a folder tree and list of files from these drive locations, the Defendants may be able to narrow the scope of requested folders.	The Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case. Subject to these objections, the Trustee has identified potentially relevant Compliance-related subfolders within the G-Legal & Compliance folder, and will further search those for any folders for NPA, HCMFA, HFAM, or Pyxis, and will produce compliance records from the time period that NPA, HCMFA, HFAM or Pyxis were created that are relevant, reasonable, and proportionate to the claims and defenses at issue.			Please (i) clarify the search methodology used by the Litigation Trustee to identify relevant documents, and (ii) clarify any folders designated in this Request that the Litigation Trustee did not search and any documents withheld on the grounds that they were not "reasonable or proportionate."	Further clarification needed on LT production position

No.	Category	Non-Email Document Source	Defendants' Requests	Date(s)/Source of Request 5/3/22 - Letter re Initial Requests 6/10/22 - Letter re Priority Requests 11/9/22 - Specific Follow Up Request	Litigation Trustee's Response	Date(s)/Source of LT Response	LT Agreed to Produce? M=maybe, P=partial	Defendants' Request Status as of November 9	Defendants' November 9 Response	LT's Response as of December 12	Defendants' Dec 21 Categories [column added by LT on 1/18/23]	LT Revised Response/Clarification (1/18/23)	Defendants' Response to LT's Revised Position (3/13/23)	Defendants' Request Status (3/13/23)
25	NPA/HCMFA Claims	G-Drive	Under G-Accounting-Secured, all documents from any folders for NexPoint or HCMFA	6/10/22 Letter	The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time.	7/6/22 Letter	N	Pursue modified request	These are the accounting records for these Defendants, and should have been provided when the companies separated, but were not. Also, these files will reflect each of the transactions between such Defendants and HCMLP. To the extent that the Trustee determines that it will not produce all documents in this drive location, it is nevertheless the Trustee's obligation to review the documents in this drive location and produce all relevant documents contained therein. Alternatively, if the Trustee will provide a folder tree and list of files from these drive locations, the Defendants may be able to narrow the scope of requested folders.	The Trustee will produce documents sufficient to show the challenged intercompany transfers with the Lifeboats.	Source Clarification Requested	The Trustee expects that these documents will come from the G-Drive.	The Litigation Trustee's agreement to produce "documents sufficient to show the challenged intercompany transfers with the Lifeboats" is insufficient. The Litigation Trustee alleges that every net dollar generated by NexPoint and HCMFA belongs to Highland. Therefore, Defendants are entitled to accounting data relevant to the defense of and calculation of damages for this claim, including the determination of how much revenue went to Highland, and evidence regarding individual revenue sources to show that these revenues were not available to Highland. Specifically, Defendants seek the following types of documents that are likely to be found in the designated folders: (i) consolidated audited and unaudited financials, balance sheets, income statements, cash flow statements, and statements of shareholder or partner equity from 2010 through the present, including all pro formas and drafts of such documents; (ii) documents specific to or reflecting any of the specific transactions identified in the Complaint that allegedly include NPA or HCMFA as transferor or transferee of any consideration; (iii) schedules of transactions and transaction ledgers; and (iv) transactional documents or schedules reflecting any transaction between HCMFA or NPA on one hand and Highland on the other. Additionally, Defendants specifically requested that LT search the designated G-Drive folders, but received the vague response that "The Trustee expects that these documents will come from the G-Drive." That response neither confirms nor denies that LT will search the designated G-drive folders. Please confirm by stating "Yes" or "No": does the Litigation Trustee agree to search, under G-Accounting-Secured, folders for NexPoint or HCMFA?	Further clarification needed on LT production position
26	Breach of Fiduciary Duty Claims	G-Drive	Under Backoffice - Employee Services, all policy documents posted for employee review	6/10/22 Letter	7/6/22 - The Litigation Trustee will conduct a reasonable search of Backoffice - Employee Services for policy documents posted for employee review and produce nonprivileged documents relevant to claims or defenses in this litigation. 10/12/22 - The Trustee has identified documents responsive to this request and will produce them.	7/6/22 Letter 10/12/22 Letter	Y	Request agreed	Please provide the timing for the production of the agreed upon documents. Defendants request production of such documents no later than November 21, 2022.		Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
27	Breach of Fiduciary Duty Claims	G-Drive	Under G-Legal & Compliance, all minutes of the Conflicts Committee	6/10/22 Letter	7/6/22 - The Litigation Trustee will conduct a reasonable search of Backoffice - Employee Services for minutes of the Conflicts Committee and produce nonprivileged documents relevant to claims or defenses in this litigation. 10/12/22 - The Trustee has identified these folders and is in the process of exporting and reviewing them, and, subject to his Responses and Objections to Defendants Requests, will produce responsive documents to the extent they can be located and produced without undue burden.	7/6/22 Letter 10/12/22 Letter	Y	Request agreed	To the extent that the Trustee withholds any document in this repository on the basis of any objection or claim of privilege, please identify such withheld document.		Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
28	Breach of Fiduciary Duty Claims	G-Drive	Under G-Legal & Compliance - all employee handbooks, policies, conflicts policies, and trading and allocation policies for all RIAs (HCMLP, HCMFA, NPA)	6/10/22 Letter	7/6/22 - The Litigation Trustee will conduct a reasonable search of G- Legal & Compliance for employee handbooks, policies, conflicts policies, and trading and allocation policies for all RIAs (HCMLP, HCMFA, NPA) and produce nonprivileged documents relevant to claims or defenses in this litigation. 10/12/22 - The Trustee has identified these folders and is in the process of exporting and reviewing them, and, subject to his Responses and Objections to Defendants Requests, will produce responsive documents to the extent they can be located and produced without undue burden.	7/6/22 Letter 10/12/22 Letter	Y	Request agreed	To the extent that the Trustee withholds any document in this repository on the basis of any objection or claim of privilege, please identify such withheld document.		Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
29	NPA/HCMFA Claims	G-Drive	Under G-Accounting-Secured, all documents from any folder specific to NexPoint Advisors. [Note that David Klos and Kristin Hendrix should be able to locate the NexPoint audits and audit support documents on the G-Drive.]	6/10/22 Letter	The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time.	7/6/22 Letter	N	Pursue modified request	These are the accounting records for these Defendants, and should have been provided when the companies separated, but were not. Also, these files will reflect each of the transactions between such Defendants and HCMLP, as well as provided information demonstrating that NPA's finances and operations were independent from those of HCMLP. To the extent that the Trustee determines that it will not produce all documents in this drive location, it is nevertheless the Trustee's obligation to review the documents in this drive location and produce all relevant documents contained therein. In particular, the Trustee should produce all documents reflecting or related to any transfer between HCMLP and NPA and anything demonstrating NPA's operations as independent from those of HCMLP. Alternatively, if the Trustee will provide a folder tree and list of files from these drive locations, the Defendants may be able to narrow the scope of requested folders.	The Trustee will produce documents sufficient to show the challenged intercompany transfers with the Lifeboats.	Source Clarification Requested	The Trustee expects that these documents will come from the G-Drive.	The Litigation Trustee's agreement to produce "documents sufficient to show the challenged intercompany transfers with the Lifeboats" is insufficient. The Litigation Trustee alleges that every net dollar generated by NexPoint Advisors belongs to Highland. Therefore, Defendants are entitled to accounting data relevant to the defense of and calculation of damages for this claim, including the determination of how much revenue went to Highland, and evidence regarding individual revenue sources to show that these revenues were not available to Highland. Specifically, Defendants seek the following types of documents that are likely to be found in the designated folders: (i) consolidated audited and unaudited financials, balance sheets, income statements, cash flow statements, and statements of shareholder or partner equity from 2010 through the present, including all pro formas and drafts of such documents; (ii) documents specific to or reflecting any of the specific transactions identified in the Complaint that allegedly include NexPoint Advisors as transferor or transferee of any consideration; (iii) schedules of transactions and transaction ledgers; and (iv) transactional documents or schedules reflecting any transaction between NPA on one hand and Highland on the other. Additionally, Defendants specifically requested that LT search the designated G-Drive folders, but received the vague response that "The Trustee expects that these documents will come from the G-Drive." That response neither confirms nor denies that LT will search the designated G-drive folders. Please confirm by stating "Yes" or "No": does the Litigation Trustee agree to search, under G-Accounting-Secured, folders for NexPoint Advisors?	Further clarification needed on LT production position

No.	Category	Non-Email Document Source	Defendants' Requests	Date(s)/Source of Request 5/3/22 - Letter re Initial Requests 6/10/22 - Letter re Priority Requests 11/9/22 - Specific Follow Up Request	Litigation Trustee's Response	Date(s)/Source of LT Response	LT Agreed to Produce? M=maybe, P=partial	Defendants' Request Status as of November 9	Defendants' November 9 Response	LT's Response as of December 12	Defendants' Dec 21 Categories [column added by LT on 1/18/23]	LT Revised Response/Clarification (1/18/23)	Defendants' Response to LT's Revised Position (3/13/23)	Defendants' Request Status (3/13/23)
30	NPA/HCMFA Claims	G-Drive	Under G-Accounting-Secured, all documents from any folders specific to HCMFA, Highland Funds, HFAM or Pyxis. [Note that David Klos and Kristin Hendrix should be able to locate the HCMFA audits and audit support documents on the G-Drive.]	6/10/22 Letter	The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time.	7/6/22 Letter	N	Pursue modified request	These are the accounting records for these Defendants, and should have been provided when the companies separated, but were not. Also, these files will reflect each of the transactions between such Defendants and HCMLP, as well as provided information demonstrating that NPA's finances and operations were independent from those of HCMLP. To the extent that the Trustee determines that it will not produce all documents in this drive location, it is nevertheless the Trustee's obligation to review the documents in this drive location and produce all relevant documents contained therein. In particular, the Trustee should produce all documents reflecting or related to any transfer between HCMLP and HCMFA and anything demonstrating HCMFA's operations as independent from those of HCMLP. Alternatively, if the Trustee will provide a folder tree and list of files from these drive locations, the Defendants may be able to narrow the scope of requested folders.	The Trustee will produce documents sufficient to show the challenged intercompany transfers with the lifeboats.	Source Clarification Requested	The Trustee expects that these documents will come from the G-Drive.	The Litigation Trustee's agreement to produce "documents sufficient to show the challenged intercompany transfers with the Lifeboats" is insufficient. The Litigation Trustee alleges that every net dollar generated by NexPoint Advisors belongs to Highland. Therefore, Defendants are entitled to accounting data relevant to the defense of and calculation of damages for this claim, including the determination of how much revenue went to Highland, and evidence regarding individual revenue sources to show that these revenues were not available to Highland. Specifically, Defendants seek the following types of documents that are likely to be found in the designated folders: (i) consolidated audited and unaudited financials, balance sheets, income statements, cash flow statements, and statements of shareholder or partner equity from 2010 through the present, including all pro formas and drafts of such documents; (ii) documents specific to or reflecting any of the specific transactions identified in the Complaint that allegedly include HCMFA, Highland Funds, HFAM or Pyxis as transferor or transferee of any consideration; (iii) schedules of transactions and transaction ledgers; and (iv) transactional documents or schedules reflecting any transaction between HCMFA, Highland Funds, HFAM or Pyxis on one hand and Highland on the other. Additionally, Defendants specifically requested that LT search the designated G-Drive folders, but received the vague response that "The Trustee expects that these documents will come from the G-Drive." That response neither confirms nor denies that LT will search the designated G-drive folders. Please confirm by stating "Yes" or "No": does the Litigation Trustee agree to search, under G-Accounting-Secured, folders for HCMFA, Highland Funds, HFAM or Pyxis?	Further clarification needed on LT production position
31	NPA/HCMFA Claims	G-Drive	G:\Retail Funds\ ; produce all documents contained therein	6/10/22 Letter	The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time.	7/6/22 Letter	N	Pursue modified request	These are the investments and operations records for these Defendants, and should have been provided when the companies separated, but were not. To the extent that the Trustee determines that it will not produce all documents in this drive location, if the Trustee will provide a folder tree and list of files from these drive locations, the Defendants may be able to narrow the scope	The Trustee stands on his objections to this request and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	The Litigation Trustee's refusal to search this source or provide a folder tree that would allow for a narrower search is noted and Defendants reserve all rights, but will hold this request in abeyance pending review of the Litigation Trustee's forthcoming productions from other sources.	Refused
32	Fraudulent transfer claims	G-Drive	Under G-Legal & Compliance, a folder called "Trading" or "Trades" and then a folder called "Cross Trades." Look for any documents, including a "Cross Trade Packet" or "Cross Trade Approval" related to any of the Acis Transactions, Crusader interest assignment to HCMLP (or an affiliate), and the Sentinel Transfer	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	These are essential documents to demonstrate that the allegedly fraudulent trades were conducted in accordance with HCMLP's compliance department rules.	The Litigation Trustee objects to this request as overly broad, unduly burdensome, disproportionate to the needs of the case, and seeking documents not relevant to any party's claims or defenses, and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	As noted in Defendants' November 9 response, these documents are highly relevant to Defendants' defenses as they are essential to demonstrate that the allegedly fraudulent trades related to the Acis Transactions, Crusader interest assignment to HCMLP (or an affiliate), and the Sentinel Transfer were conducted in accordance with HCMLP's compliance department rules. Moreover, Defendants expect the search in the designated folders to yield a very reasonable amount of documents, so there is no undue burden or overbreadth. Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to search for responsive documents in a sub-sub folder called "Cross Trades" under a sub-folder called "Trading," which is under the G-Legal & Compliance folder?	Refused
33	Breach of Fiduciary Duty re Acis/Terry	G-Drive	Under G-Accounting, a folder either called "Secured" or "Corporate". Look within this folder tree for the Acis Note, a payment ledger on the Acis Note, and any other documents related to the Acis note.	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	This is essential to determine the payment history of the allegedly fraudulently transferred note and what net damages Debtor incurred as a result of said transfer.	The Trustee will search for and produce documents sufficient to show the existence of the Acis Note and any payments made thereon.	Source Clarification Requested	The Trustee expects that these documents will come from the G-Drive.	In addition to the documents the Litigation Trustee identified and agreed to in its December 12 response, please confirm the Litigation Trustee will produce transactional documents related to the creation of the Note, any subsequent transfer of the Note, and the current ownership and value of the Note (or the extinguishment or payoff of the Note if it no longer exists). Additionally, Defendants specifically requested that the Litigation Trustee search the designated G-Drive folders, but received the vague response that "The Trustee expects that these documents will come from the G-Drive." That response neither confirms nor denies that LT will search the designated G-drive folders. Please clarify "Yes" or "No": does the Litigation Trustee agree to search, under G-Accounting, a folder either called "Secured" or "Corporate" for these documents?	Further clarification needed on LT production position
34	Breach of Fiduciary Duty re Crusader	G-Drive	Search for term "Eames" under the entire G-Drive (start with folders Accounting, Legal & Compliance, and Operations)	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Eames was related to the Barclays transaction which allegedly led to a portion of the Debtor's liability to the Crusader Redeemer Committee. Eames was set up for the sole purpose of holding the transferred Barclays' interest in Crusader, everything related to Eames would be relevant.	The Litigation Trustee objects to this request as overly broad, unduly burdensome, duplicative, and disproportionate to the needs of the case, and seeking documents not relevant to any party's claims or defenses, and will not produce it at this time.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	As noted in Defendants' November 9 response, documents related to Eames, and in particular documents related to the transaction whereby Eames (a Special Purpose Vehicle set up for this purpose) received Barclays's interest in Crusader, are necessarily relevant to the claims and defenses regarding the Crusader allegations in the Amended Complaint. Nevertheless, as Defendants understand from the last meet and confer that the Litigation Trustee faces technical difficulties in running search terms across the entire G-drive, rather than sub folders, Defendants will limit their request to a search for the term "Eames" under the following G-drive folders: Accounting, Legal & Compliance, Operations, and Investment. Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to search for and produce documents in response to this modified request?	Refused
35	Breach of Fiduciary Duty HarbourVest	G-Drive	G-Accounting-Funds, a folder for Highland CLO Funding, Ltd. (may be called "HCLOF" or "Highland CLO Funding" or "ALF"). Within that folder, all NAV statements and packages, balance sheets, investor statements, audited or unaudited financial statements, capital rolls, for 2020, 2021, and 2022.	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	As HCMLP purchased HarbourVest's interest in HCLOF as part of the settlement agreement with HarbourVest, Defendants are entitled to (1) the value of such interest at any relevant time and (2) any documents reflecting any cash payment to HCMLP on account of such interest.	The Trustee will search for and produce documents sufficient to show the value of HCLOF from 2020-2022.	Source Clarification Requested	The Trustee expects that these documents will come from the G-Drive.	In addition to the documents LT identified and agreed to in its December 12 response, please confirm LT will produce documents sufficient to show the value of the HCLOF interest purchased by HCMLP as part of the HarbourVest settlement. Additionally, Defendants specifically requested that LT search the designated G-Drive folders, but received the vague response that "The Trustee expects that these documents will come from the G-Drive." That response neither confirms nor denies that LT will search the designated G-drive folders. Please clarify by stating "Yes" or "No": does the Litigation Trustee agree to search, under G-Accounting-Funds, a folder for Highland CLO Funding, Ltd. (which may be called "HCLOF" or "Highland CLO Funding" or "ALF")?	Further clarification needed on LT production position
36	Breach of Fiduciary Duty re HarbourVest	G-Drive	Trade documents relating to Highland's purchase of HarbourVest's interests in HCLOF (search folders for Trading or Operations)	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	As HCMLP purchased HarbourVest's interest in HCLOF as part of the settlement agreement with HarbourVest, Defendants are entitled to (1) the value of such interest at any relevant time and (2) any documents reflecting any cash payment to HCMLP on account of such interest.	The Trustee will search for and produce documents sufficient to show payments made to HCMLP on account of the HCLOF shares from 2020-2022.	Source Clarification Requested	The Trustee expects that these documents will come from the G-Drive.	In addition to the documents the Litigation Trustee identified and agreed to in its December 12 response, please confirm the Litigation Trustee will produce the underlying transactional documents related to the transfer of the HCLOF shares. Defendants will interpret the Litigation Trustee's clarification that it "expects that these documents will come from the G-Drive" as the Litigation Trustee's agreement to search Trading and Operations folders in the G-Drive for the requested documents. If this is not correct, please clarify what the the Litigation Trustee means by its response.	Further clarification needed on LT production position
37	Breach of Fiduciary Duty re HarbourVest	G-Drive	Any models or calculations showing the value HarbourVest's interests in HCLOF at any time in 2020 through today	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	As HCMLP purchased this interest as part of the settlement agreement with HarbourVest, Defendants are entitled to (1) the value of such interest at any relevant time and (2) any documents reflecting any cash payment to HCMLP on account of such interest.	The Trustee will search for and produce documents sufficient to show the value of HCLOF from 2020-2022.	Source Clarification Requested	The Trustee expects that these documents will come from the G-Drive.	In addition to the documents the Litigation Trustee identified and agreed to in its December 12 response, please confirm the Litigation Trustee will produce any models or calculations showing the value of HarbourVest's interest in HCLOF from 2020 to present. Defendants will interpret the Litigation Trustee's clarification that it "expects that these documents will come from the G-Drive" as the Litigation Trustee's agreement to search the G-Drive for the requested documents. If this is not correct, please clarify what the Litigation Trustee means by its response.	Further clarification needed on LT production position

No.	Category	Non-Email Document Source	Defendants' Requests	Date(s)/Source of Request 5/3/22 - Letter re Initial Requests 6/10/22 - Letter re Priority Requests 11/9/22 - Specific Follow Up Request	Litigation Trustee's Response	Date(s)/Source of LT Response	LT Agreed to Produce? M=maybe, P=partial	Defendants' Request Status as of November 9	Defendants' November 9 Response	LT's Response as of December 12	Defendants' Dec 21 Categories [column added by LT on 1/18/23]	LT Revised Response/Clarification (1/18/23)	Defendants' Response to LT's Revised Position (3/13/23)	Defendants' Request Status (3/13/23)
38	Solvency	G-Drive	G-Accounting-Secured, should be a folder for HCMLP (likely called HCMLP, or Highland, or HCM, or Internal). Within this folder, locate and produce all of "HCMLP's consolidated and consolidating audited and unaudited financials, balance sheets, income statements, cash flow statements, and statements of shareholder or partner equity from 2010 through the present, including all pro formas and drafts of such documents."	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants need HCMLP's financial statements and the related documentation for the purposes of establishing solvency.	The Trustee will provide HMCLP's financial statements.	Source Clarification Requested	The Trustee expects that these documents will come from the G-Drive.	In its December 12 response, the Litigation Trustee agreed to produce "HCMLP's financial statements." Please confirm (1) the date range the Litigation Trustee agrees to produce and (2) that "financial statements" include "consolidated and consolidating audited and unaudited financials, balance sheets, income statements, cash flow statements, and statements of shareholder or partner equity from 2010 through the present, including all pro formas and drafts of such documents." Additionally, Defendants specifically requested that the Litigation Trustee search the designated G-Drive folders, but received the vague response that "The Trustee expects that these documents will come from the G-Drive." That response neither confirms nor denies that the Litigation Trustee will search the designated G-drive folders. Please confirm by stating "Yes" or "No": does the Litigation Trustee agree to search, under G-Accounting-Secured, a folder for HCMLP (likely called HCMLP, or Highland, or HCM, or Internal)?	Further clarification needed on LT production position
39	CLO Holdco Transaction	G-Drive	G-Accounting-Secured; the Dugaboy Note referenced in Complaint Para. 126; any amendments thereto; and any other transactional documents related to the CLO Holdco Transaction referenced in Complaint Paras. 125 - 130	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to the transactional documents related to each allegedly tortious transaction referenced in the Amended Complaint.	The Trustee will produce transaction documents related to the Dugaboy Note and related to the CLO Holdco transaction as referenced in paragraphs 130-136 of the Amended Complaint.	Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
40	CLO Holdco Transaction	G-Drive	G-Accounting; any documents showing payments on account of the Crusader Participation interests referenced in Complaint Para. 127	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to the transactional documents related to each allegedly tortious transaction referenced in the Amended Complaint.	The Trustee will produce transaction documents showing any payments on account of the Crusader interests referenced in paragraph 133 of the Amended Complaint.	Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
41	CLO Holdco Transaction	G-Drive	Capital Loan Fund, L.P., capital rolls, NAV packages, or financial statements showing (a) any payment from Highland Capital Loan Fund to any party on account of the Series A interests referenced in Complaint Para. 127 and (b) the current holder and NAV balance of the Series A interests referenced in Complaint Para. 127	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to the transactional documents related to each allegedly tortious transaction referenced in the Amended Complaint.	The Trustee will produce transaction documents showing payments from HCLF to any party relating to the Series A interests, and documents sufficient to show the current holder and NAV balance of the Series A interests referenced in paragraph 133 of the Amended Complaint.	Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
42	CLO Holdco Transaction	G-Drive	G-Accounting; G-Valuation; documents sufficient to show the value and disposition of the American Airlines call options referenced in Complaint Para. 127.	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to the transactional documents related to each allegedly tortious transaction referenced in the Amended Complaint.	The Trustee will produce documents sufficient to show the value and disposition of the AA call options referenced in paragraph 133 of the Amended Complaint.	Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
43	Massand Claims	G-Drive	Any document with "Massand" in the title	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to the transactional documents related to each allegedly tortious Massand payments referenced in the Amended Complaint.	The Litigation Trustee objects to this request as overly broad, unduly burdensome, disproportionate to the needs of the case, and seeking documents not relevant to any party's claims or defenses. Subject to these objections, the Trustee will locate and produce documents found in folders with "Massand" in the title that are relevant to the claims.	Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
44	Massand Claims	G-Drive	G-Accounting; search for any folder with "Massand" in the title - produce all folder contents	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to the transactional documents related to each allegedly tortious Massand payments referenced in the Amended Complaint.	The Litigation Trustee objects to this request as overly broad, unduly burdensome, disproportionate to the needs of the case, and seeking documents not relevant to any party's claims or defenses. Subject to these objections, the Trustee will locate and produce documents found in folders with "Massand" in the title that are relevant to the claims.	Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
45	HE Capital 232 Claim	G-Drive	All transactional documents related to HE Capital 232 (if not located in G-Investments-Teams, may need to look in G-Accounting-Secured).	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to the transactional documents related to the allegedly tortious HE Capital 232 transaction referenced in the Amended Complaint.	The Litigation Trustee will locate and produce transactional documents related to HE Capital 232.	Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
46	HE Capital 232 Claim	G-Drive	G-Accounting; any Quickbooks files (.qbw) related to "He Capital 232"	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to the transactional documents related to the allegedly tortious HE Capital 232 transaction referenced in the Amended Complaint.	The Litigation Trustee has searched for and located folders relating to HE Capital 232 and will produce documents that are relevant to the HE 232 transaction referenced in the Amended Complaint.	Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
47	Hunter Mountain	G-Drive	G-Accounting-Secured; locate any excel documents tracking payments to or from Hunter Mountain	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to the transactional documents related to each allegedly tortious transaction referenced in the Amended Complaint.	The Trustee will produce transaction documents sufficient to show payments to or from Hunter Mountain.	Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
48	Breach of Fiduciary Duty re UBS/Sentinel	G-Drive	Search for term "Sentinel" under the entire G-Drive (start with folders Accounting, Legal & Compliance, and Operations)	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to the transactional documents related to each allegedly tortious Sentinel transaction referenced in the Amended Complaint.	The Litigation Trustee objects to this request as overly broad, unduly burdensome, disproportionate to the needs of the case, and seeking documents not relevant to any party's claims or defenses. Instead, the Litigation Trustee will produce non-privileged documents relevant to the claims regarding Sentinel asserted in the Amended Complaint.	Source Clarification Requested Privilege Clarification Requested	The Trustee intends to comply with the Limited Waiver that the Parties have agreed to, i.e., a waiver of privilege over pre-petition documents. However, to the extent there are any post-petition privileged documents found in this source, the Trustee maintains its privilege objections as to those documents. Further, the Trustee cannot perform a keyword search for "Sentinel" within the entire G Drive; instead, as with other requests, the Trustee will search for folders containing that word that are located within the G Drive.	The Litigation Trustee's agreement to produce documents "relevant to the claims regarding Sentinel that are asserted in the Amended Complaint" is insufficient; Defendants are also entitled to documents relevant to their defenses and, given the broad allegations concerning Sentinel in the Amended Complaint, this encompasses documents related to Sentinel or the allegedly tortious Sentinel transactions referenced in the Amended Complaint. Nevertheless, as Defendants understand from the last meet and confer that the Litigation Trustee faces technical difficulties in running search terms across the entire G-drive, rather than sub folders. However, a search for "Sentinel" in the name of a sub-folder is insufficient as this does not reflect how documents were organized in the ordinary course of business. Defendants will limit their request to a search for the term "Sentinel" in file names under the following G-drive folders: Accounting, Legal & Compliance, Operations, and Settlement. Please confirm by stating "Yes" or "No": does the Litigation Trustee agree to search for and produce documents in response to this modified request?	Further clarification needed on LT production position

No.	Category	Non-Email Document Source	Defendants' Requests	Date(s)/Source of Request 5/3/22 - Letter re Initial Requests 6/10/22 - Letter re Priority Requests 11/9/22 - Specific Follow Up Request	Litigation Trustee's Response	Date(s)/Source of LT Response	LT Agreed to Produce? M=maybe, P=partial	Defendants' Request Status as of November 9	Defendants' November 9 Response	LT's Response as of December 12	Defendants' Dec 21 Categories [column added by LT on 1/18/23]	LT Revised Response/Clarification (1/18/23)	Defendants' Response to LT's Revised Position (3/13/23)	Defendants' Request Status (3/13/23)
49	NPA/HCMFA Claims	HOME	All legal invoices from Ropes & Gray, Simpson Thatcher, K+L Gates, Paul Hastings, Stradley Ronan, Akin Gump, Blank Rome, WilmerHale, & Drinker Biddle paid for in part or in whole by NexPoint, HCMFA, or any fund managed by either of them (this can be determined by filtering by payor on the Legal Invoice Pivot Table). All invoices are saved in HOME under Backoffice-Legal & Compliance-Invoices and Backoffice-Legal & Compliance-Projects	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	These law firms provided legal advice regarding the necessity to establish and maintain separate Retail Advisors (NPA and HCMFA) from the Institutional Advisor (HCMLP). These invoices therefore are essential to the Defendants' position that NPA and HCMFA were established as separate advisors based on advice of counsel, and not as alleged "lifeboats." In particular, the time narratives will indicate what advice was given, by whom, and what written work product memorializing such advice, was drafted by counsel.	The Litigation Trustee objects to this request as overly broad, unduly burdensome, disproportionate to the needs of the case, and seeking documents not relevant to any party's claims or defenses, and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	For clarity, as the request itself indicates, this is a request for a specific and limited set of documents from HOME, not from the G-drive (as initially indicated in Column C). Please confirm by stating "Yes" or "No": the Litigation Trustee refuses to search HOME for and produce the requested documents, standing instead on its objections that the request is "overly broad, unduly burdensome, disproportionate to the needs of the case, and seeking documents not relevant to any party's claims or defenses."	Refused
50	NPA/HCMFA Claims	G-Drive	[illegible] questionnaires) from 2012 - 2019. Not sure where they are stored. Will need to search under Legal & Compliance, Marketing, and Retail. Additional: Go to G:\LEGAL-COMPLIANCE\HCFD\HCFD\DDQ; G:\Investor Relations\RFPs and DDQs; G:\Investor Relations\RFPs and DDQs\DDQs – Retail; G:\Investor Relations\RFPs and DDQs\NATIONAL ACCOUNTS; G:\Investor Relations\Retail Investor Requests; M:\Client Service\Prospect Requests, DDQs, RFPs; M:\Client Service\Client Correspondence; M:\Client Service\Useful General Materials; M:\Client Service\Capabilities Decks; M:\Client	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	All due diligence questionnaires, pitchbooks, or other marketing materials that address the on-going litigation or litigation risk of HCMLP, NPA, or HCMFA. As discussed with Plaintiff on August 26, the Defendants agreed to withdraw email search term 53 for DDQs, reserving all rights pending the results of Plaintiff's production of such documents from the G and/or M drives.	The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, seeking documents not relevant to any party's claims or defenses, and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	As Defendants previously have explained, the DDQs will tend to prove or disprove the allegation that third parties were willing to engage in the same transactions with HCMLP as with NPA and HCMFA, and that HCMLP therefore would have earned the same net revenue. The designated folders are the best source for locating such documents. Indeed, in the Parties' August 26, 2022 meet and confer, the Litigation Trustee represented that, in lieu of searching prepetition emails for the DDQs, it would agree to search for and produce DDQs from the G- and/or M-drives. In reliance on that representation, Defendants agreed to withdraw prepetition email search term 53 for DDQs, reserving all rights pending the results of the Litigation Trustee's production of such documents from the G- and/or M-drives. This is reflected in column O of the prepetition search term spreadsheet emailed by the Litigation Trustee's counsel on October 12, 2022. Please confirm the Litigation Trustee's change in position by stating "Yes" or "No": the Litigation Trustee refuses to search the G-drive and M-drive for and will not produce DDQs in response to this request.	Refused
51	N/A	G-Drive	G-Drive backup from the most recent date prior to 10/16/2019.	5/3/22 Letter	Objected to request for production without search terms of "entirety of HCMLP's four main servers as they existed prior to the Petition Date" "Once the Parties to come to agreement on a search protocol for HCMLP's email server, the Litigation Trustee will evaluate whether these sources contain nonduplicative documents relevant to the Parties' claims and defenses and whether a narrow, supplementary production would be proportional to the needs of the case."	5/24/22 M&C 6/14/22 Letter	N	Request withdrawn	N/A					N/A (withdrawn)
52	Fraudulent transfer claims	Geneva	All ledger entries, wire reports, financials, or other data showing any transfer to any Defendant or to any entity that Plaintiff alleges directly or indirectly received a fraudulent transfer or for whose benefit a fraudulent transfer was made.	6/10/22 Letter	7/6/22 - The Litigation Trustee will conduct a reasonable search of Geneva for ledger entries, wire reports, financials, or other data showing fraudulent transfers alleged in the Litigation Trustee's Amended Complaint and produce documents relevant to claims or defenses in this litigation. 10/12/22 - Based on discussions with the Reorganized Debtor, the Trustee understands that the Debtor's contract with Geneva was terminated, and that Geneva was not used to make or support any allegations in the Complaint. Accordingly, the Trustee will not produce items from Geneva.	7/6/22 Letter 10/12/22 Letter	N	Pursue modified request	It is not sufficient that Geneva data was not used to make or support the allegations in the Complaint. Rather, the standard is whether or not Geneva has (or had) any data relevant to any of the claims or defenses in this proceeding. Please provide a written certification signed under oath that Geneva did not contain any data relevant to any of the claims or defenses in this proceeding. Additionally, please provide information about when the Geneva contract was terminated, and what, if any, actions were taken by the Debtor to extract and store Geneva data prior to such termination.	The Trustee will produce documents sufficient to show the basis for the fraudulent transfer claims alleged in the Amended Complaint	Source Clarification Requested	These documents may not come from the specifically listed sources because they are duplicative of other sources from which collection is easier, including the G Drive.	Geneva was the primary accounting software and therefore best and most reliable repository of transactional data for certain Defendants and entities. Therefore Defendants are entitled to, at a minimum, production of all Geneva data related to alleged fraudulent transfers, as the Litigation Trustee recognized in its initial response to this request in July 2022. Please confirm by stating "Yes" or "No": Does the Litigation Trustee refuse to search Geneva for responsive documents? If the answer is "Yes," please also confirm whether the Litigation Trustee has preserved Geneva system data, as requested more than 4 months ago on November 9, 2022.	Further clarification needed on LT production position
53	Breach of Fiduciary Duty re UBS/Sentinel	Geneva	All ledger entries, wire reports, financials, or other data showing any transfer to Sentinel or any of its affiliates	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to the transactional documents related to each allegedly tortious Sentinel transaction referenced in the Amended Complaint.	The Trustee will produce documents sufficient to show the basis for the claims concerning the challenged transfers to Sentinel or any of its affiliates.	Source Clarification Requested	These documents may not come from the specifically listed sources because they are duplicative of other sources from which collection is easier, including the G Drive.	The Litigation Trustee's agreement to produce "documents sufficient to show the basis for the claims concerning the challenged transfers to Sentinel or any of its affiliates" is insufficient and vague. Defendants are entitled to all transactional documents related to each allegedly tortious Sentinel transaction referenced in the Amended Complaint, not a selection handpicked by the Litigation Trustee. Please confirm by stating "Yes" or "No": in addition to the documents referenced in its December 12 response, the Litigation Trustee will produce "all ledger entries, wire reports, financials, or other data showing any transfer to Sentinel or any of its affiliates." Additionally, Defendants specifically requested that the Litigation Trustee search Geneva, because this is the accounting system that would have been used to record the transactions and trades, is by far the most reliable and complete source for the transactional data sought, and is easy to search. By contrast, Defendants understand that the G-drive would have less complete records on this topic that might be housed in a number of locations. As the sources are clearly not duplicative, the Litigation Trustee's vague response that the documents "may not come from the specifically listed source" is unacceptable. Moreover, the response is vague as it neither confirms nor denies that the Litigation Trustee will search Geneva. Please confirm by stating "Yes" or "No": does the Litigation Trustee agree to search Geneva for the requested documents? Please also confirm whether the Litigation Trustee has preserved Geneva system data.	Further clarification needed on LT production position

No.	Category	Non-Email Document Source	Defendants' Requests	Date(s)/Source of Request 5/3/22 - Letter re Initial Requests 6/10/22 - Letter re Priority Requests 11/9/22 - Specific Follow Up Request	Litigation Trustee's Response	Date(s)/Source of LT Response	LT Agreed to Produce? M=maybe, P=partial	Defendants' Request Status as of November 9	Defendants' November 9 Response	LT's Response as of December 12	Defendants' Dec 21 Categories [column added by LT on 1/18/23]	LT Revised Response/Clarification (1/18/23)	Defendants' Response to LT's Revised Position (3/13/23)	Defendants' Request Status (3/13/23)
54	Unjust Enrichment/Preference Payments Claims	HOME	Under Backoffice - Wire Transfers, filter for all wires to (1) any Defendant, (2) Tall Pine, (3) Prive, (4) FHCT, (5) Sunshine Coast, (6) Clairmont Holdings, (7) Dilip Massand, (8) Grey Royale, (9) SS Holdings, (10) Sentinel, or (11) any other entity that Plaintiff alleges directly or indirectly received a fraudulent transfer or for whose benefit a fraudulent transfer was made, unjust enrichment, or other payment subject to clawback, payment, or repayment to Plaintiff under any theory of liability. Produce the wire transfer data and all supporting documents attached to the wire entries.	6/10/22 Letter	7/6/22 - The Litigation Trustee will conduct a reasonable search of HOME for wire transfer data and supporting documents attached to the wire entries showing fraudulent transfers alleged in the Litigation Trustee's Amended Complaint and produce documents relevant to claims or defenses in this litigation. 10/12/22 - Based on discussions with the Reorganized Debtor, the Trustee understands that HOME -- BackOffice does not contain this type of information. This system contains only transfers to or from HCMLP and a Managed Fund. Transfers to Managing Funds or other funds not officially managed by HCMLP are not logged in this system.	7/6/22 Letter 10/12/22 Letter	N	Pursue modified request	To the extend the payment information is not in HOME, then it may be in Concur. In Concur, go to Invoices and search for any payments to any of the listed entities. Also, to pull the invoice, you may use Invoice □ Processor □ Process invoices □ Search by selected criteria and select the individual invoice □ select invoice and download or print. Alternatively, the invoices may be saved in the G-Drive. H:\Accounting\Private\Accounts Payable\Vendor Invoices H:\Accounting\Secured\Accounts Payable\Vendor Invoices There may be some combination of "Private" or "Secured" in the file path.	The Trustee will produce documents sufficient to show payments challenged as fraudulent transfers.	Source Clarification Requested	These documents may not come from the specifically listed sources because they are duplicative of other sources from which collection is easier, including the G Drive.	Defendants understand that HOME is the best and most reliable source for this information, as it is linked to the wire system and includes all Wires sent by HCMLP, including for instance to law firms. Please confirm that the Litigation Trustee is representing that it does not, and that the Litigation Trustee has searched HOME and that there are no wires to the designated entities in this database. Defendants also specified on November 9 alternative locations to search to the extent a transfer is not located in HOME. The Litigation Trustee's vague response that "documents may not come from the specifically listed sources because they are duplicative of other sources from which collection is easier, including the G Drive" is insufficient and neither confirms nor denies that it will search any of the designated sources. Please confirm that the Litigation Trustee has searched HOME as well as the alternate sources for anything that it has confirmed is not in HOME. Defendants requested both challenged and unchallenged transfers. This information is relevant to Defendants' defenses as it will allow Defendants to compare allegedly tortious and non-tortious transfers. Please confirm by stating "Yes" or "No": Does the Litigation Trustee refuse to produce documents reflecting wires to the designated entities other than the challenged transfers?	Further clarification needed on LT production position
55	Breach of Fiduciary Duty re HarbourVest	HOME	All data in HOME reflecting the trade order in the OMS for Highland's purchase of HarbourVest's interests in HCLOF	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to information related to the allegedly fraudulent investment by HarbourVest into HCLOF	The Trustee has agreed to provide documents sufficient to show Highland's purchase of HarbourVest's interests in HCLOF.	Source Clarification Requested	These documents may not come from the specifically listed sources because they are duplicative of other sources from which collection is easier, including the G Drive.	The Litigation Trustee's December 12 response that it will produce "documents sufficient to show Highland's purchase of HarbourVest's interests in HCLOF" is vague and insufficient. Defendants are entitled to all data related to the allegedly fraudulent investment by HarbourVest into HCLOF, not a selection hand-picked by the Litigation Trustee. In addition, the Litigation Trustee's clarification of January 18 that the "documents may not come from the specifically listed sources because they are duplicative of other sources from which collection is easier, including the G Drive" is insufficient and neither confirms nor denies that it will search HOME, which is the repository where the requested information is located. Please confirm by stating "Yes" or "No": does the Litigation Trustee agree to search HOME for the Order Management System ("OMS") data related to Highland's purchase of HCLOF from HarbourVest?	Further clarification needed on LT production position
56	NPA/HCMFA Claims	HOME	Any legal invoices for any firm that advised on the creation of HCMFA or NPA (start with Ropes & Gray). Will be under Backoffice-Legal & Compliance-Invoices and Backoffice-Legal & Compliance-Projects	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	These law firms provided legal advice regarding the necessity to establish and maintain separate Retail Advisors (NPA and HCMFA) from the Institutional Advisor (HCMLP). These invoices therefore are essential to the Defendants' position that NPA and HCMFA were established as separate advisors based on advice of counsel, and not as alleged "lifeboats." These invoices therefore are essential to the Defendants' position that NPA and HCMFA were established as separate advisors based on advice of counsel, and not as alleged "lifeboats." In particular, the time narratives will indicate what advice was given, by whom, and what written work product memorializing such advice, was drafted by counsel.	The Litigation Trustee objects to this request as overly broad, unduly burdensome, duplicative, and disproportionate to the needs of the case, and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	Defendants clarify that this request may be limited to the time period 2008 - 2012 and the following law firms: Ropes & Gray, Simposon Thacher & Bartlett, Paul Hastings, and Akin Gump. The HOME system will allow a simple search for these entities, which will then display all invoice entries with the attached invoices and messages. Defendants further clarify that this request seeks production only of those invoices related to advice on the creation or maintenance of HCMFA or NPA as entities separate from Highland. Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to search HOME for and produce documents in response to this modified request?	Refused
57	HE Capital 232 Claim	HOME	In top search box, search for "HE 232", "232", or "HE Capital 232." Click on each results showing where securities (debt or equity) issued by HE Capital 232, also click on results for each "Instrument", identify where the Instrument was held (which funds) and all "Trades" or "Transactions" related to each instrument (when you click on the instrument name, it will take you to a page for the instrument with a blue button; click that button, it gives a drop down menu for among other things, Trades and Transactions. Export all results to Excel (blue download button on right side of the screen). Do the same for all other entities in HE Capital 232 structure.	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to the transactional documents related to each allegedly tortious HE Capital 232 transaction referenced in the Amended Complaint.	The Litigation Trustee objects to this request as overly broad, unduly burdensome, duplicative, and disproportionate to the needs of the case, and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	Defendants note that this request is for the transactional documents related to each allegedly tortious HE Capital 232 transaction referenced in the Amended Complaint, and specifically identifies how to retrieve the relevant data in a few clicks from the HOME system which is the repository for such data. Defendants further note that the request is not burdensome as Defendants understand that the HE Capital 232 structure only involved a few entities, which should be readily ascertainable to the Litigation Trustee on the Legal SharePoint site by searching for "HE 232" and then filtering by document type for an organizational chart. Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to search HOME for and produce the requested documents?	Refused
58	NPA/HCMFA Claims	G-Drive	HR file for every employee hired by an affiliate other than HCMLP (including HCMFA, NPA, Highland Capital Fund Distributors, NXRT, NexAnnuity Management, and NexPoint Securities); G:\Human Resources\HRPrivate July 2007\Personnel Folders\[Employee name]. May be another folder level after "Personnel Folders" with the name of the employing affiliate (for example, G:\Human Resources\HRPrivate July 2007\Personnel Folders\HCMLP\[Employee name]).	Specific Follow Up Request	To be determined	N/A	TBD	Pursue modified request	From the HR files, produce documents sufficient to show each employee hired, which entity employed such employee, and the role of such employee. These documents are relevant to establish that such entities were not mere pass-throughs or shell entities of HCMLP. This should include all employees of HCMFA, NPA, Highland Capital Fund Distributors, NXRT, Vinebrook, NHT Operating Partnership, Eagle Equity, NREF, Inc., NexPoint Storage Partners, Highland Capital NY, and NexPoint Securities.	The Trustee will produce documents sufficient to show the employees hired by Nexpoint and HCMFA.			For clarity, as the request itself indicates, this is a request for a specific and limited set of documents from the G-Drive and not HOME (as initially indicated in Column C). The Litigation Trustee's response agreeing to produce documents sufficient to show the employees hired by Nexpoint and HCMFA is insufficient. Defendants seek documents sufficient to show the employees hired, along with their hiring dates and roles, for HCMFA, NPA, Highland Capital Fund Distributors, NXRT, Vinebrook, NHT Operating Partnership, Eagle Equity, NREF, Inc., NexPoint Storage Partners, Highland Capital NY, and NexPoint Securities. These documents are relevant to establish that numerous affiliates of NexPoint and HCMFA operated with their own employees, and that these defendants were not mere pass-throughs or shell entities of HCMLP. Please confirm by stating "Yes" or "No": will the Litigation Trustee agree to produce these documents in addition to those agreed in its December 12 response?	Further clarification needed on LT production position
59	N/A	HOME	Data as of 10/15/2019	5/3/22 Letter	Generally objected to all 5/3 requests as overbroad.	5/24/22 M&C 6/14/22 Letter	N	Request withdrawn	N/A					N/A (withdrawn)

No.	Category	Non-Email Document Source	Defendants' Requests	Date(s)/Source of Request 5/3/22 - Letter re Initial Requests 6/10/22 - Letter re Priority Requests 11/9/22 - Specific Follow Up Request	Litigation Trustee's Response	Date(s)/Source of LT Response	LT Agreed to Produce? M=maybe, P=partial	Defendants' Request Status as of November 9	Defendants' November 9 Response	LT's Response as of December 12	Defendants' Dec 21 Categories [column added by LT on 1/18/23]	LT Revised Response/Clarification (1/18/23)	Defendants' Response to LT's Revised Position (3/13/23)	Defendants' Request Status (3/13/23)
60	NPA/HCMFA Claims	HOME	Under Backoffice - Wire Transfers, filter for all wires from HCMFA or NPA to HCMLP. Produce the wire data and all supporting documents attached to the wire entries.	6/10/22 Letter	7/6/22 - The Litigation Trustee will conduct a reasonable search of SharePoint for wire data and supporting documents attached to the wire entries relating to wires from HCMFA or NPA to HCMLP and produce documents relevant to claims or defenses in this litigation. 10/12/22 - Based on discussions with the Reorganized Debtor, the Trustee understands that SharePoint does not contain this type of information. Only managed fund transfers are recorded here, not managing funds.	7/6/22 Letter 10/12/22 Letter	N	Pursue modified request	This should be a reference to the HOME system. Based on that modification, filter for and produce all wires to or from HCMLP and any Defendant.	The Trustee will produce documents sufficient to show payments challenged as fraudulent transfers.	Source Clarification Requested	These documents may not come from the specifically listed sources because they are duplicative of other sources from which collection is easier, including the G Drive.	Defendants will limit this request to a narrow set of documents: wire data and attached supporting documents for wires between HCMFA or NPA and HCMLP. Defendants understand that HOME is linked to the wire system and should include all wires sent to or from HCMLP. The Litigation Trustee's vague response that "documents may not come from the specifically listed sources because they are duplicative of other sources from which collection is easier, including the G Drive" is insufficient and neither confirms nor denies that it will search the designated location within HOME. Additionally, the Litigation Trustee's December 12 agreement to "produce documents sufficient to show payments challenged as fraudulent transfers" is vague and insufficient. Defendants requested both challenged and unchallenged transfers. This information is relevant to Defendants' defenses as it will allow Defendants to compare allegedly tortious and non-tortious transfers. Please confirm by stating "Yes" or "No": Does the Litigation Trustee refuse to search HOME for and produce the requested wire data for NPA and HCMFA?	Further clarification needed on LT production position
61	NPA/HCMFA Claims	M-Drive	M-Drive backup from the most recent date prior to 10/16/2019.	5/3/22 Letter	Objected to request for production without search terms of "entirety of HCMLP's four main servers as they existed prior to the Petition Date" "Once the Parties to come to agreement on a search protocol for HCMLP's email server, the Litigation Trustee will evaluate whether these sources contain nonduplicative documents relevant to the Parties' claims and defenses and whether a narrow, supplementary production would be proportional to the needs of the case."	5/24/22 M&C 6/14/22 Letter	N	Pursue modified request	All M-Drive due diligence questionnaires, pitchbooks, or other marketing materials that address the on-going litigation or litigation risk of HCMLP, NPA, or HCMFA. As discussed with Plaintiff on August 26, the Defendants agreed to withdraw email search term 53 for DDQs, reserving all rights pending the results of Plaintiff's production of such documents from the G and/or M drives.	The Trustee objects to this request as overly broad, unduly burdensome, disproportionate to the needs of the case, and irrelevant. Subject to these objections, the Trustee is investigating the feasibility and burdens associated with identifying, searching and reviewing these documents.	RUI	The Litigation Trustee has identified folders on the M Drive likely to contain DDQs and pitchbooks, and will produce responsive materials to the extent it is not unduly burdensome.	Please identify any portion of the clarified request that the Litigation Trustee does not perform because it is "unduly burdensome."	Agreed, subject to clarification
62	Fraudulent transfer claims	Oracle	All ledger entries, wire reports, financials, or other data showing any transfer to any Defendant or to any entity that Plaintiff alleges received a direct or indirect fraudulent transfer or for whose benefit a fraudulent transfer was made, and all payment or transfers from such entities to HCMLP or to any account or entity in which HCMLP owns an interest	6/10/22 Letter	7/6/22 - The Litigation Trustee will conduct a reasonable search of Oracle for ledger entries, wire reports, financials, or other data showing fraudulent transfers alleged in the Litigation Trustee's Amended Complaint and produce documents relevant to claims or defenses in this litigation. 10/12/22 - Based on discussions with the Reorganized Debtor, the Trustee understands that Oracle contains only ledger entries. The Trustee will search for and produce ledger entries in Oracle that are relevant to any claim or defense in this case.	7/6/22 Letter 10/12/22 Letter	Y/P	Request agreed	Please provide the timing for the production of the agreed upon documents. Defendants request production of such documents no later than November 21, 2022.		Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
63	Fraudulent transfer claims	Oracle	Account data for company codes 0010 (HCMLP), 1300 (CDO Opportunities Fund), 1500 (Select Equity), 1600 (Equity Focus), and 1900 (Credit Opportunities Fund) for all transactions from 1/1/2009 through 10/15/2019.	5/3/22 Letter	Objected to the production without search terms of "the complete records of HCMLP's accounting, payroll, tax, and investment tracking systems"; "Once the Parties to come to agreement on a search protocol for HCMLP's email server, the Litigation Trustee will evaluate whether these sources contain nonduplicative documents relevant to the Parties' claims and defenses and whether a narrow, supplementary production would be proportional to the needs of the case."	5/24/22 M&C 6/14/22 Letter	N	Pursue modified request	All payments to or from any Defendant to any of these account codes for all transactions from 1/1/2009 through 10/15/2009.	The Litigation Trustee objects to this request as overly broad, unduly burdensome, disproportionate to the needs of the case, duplicative of other requests, including Request 62, and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	To further clarify this request, Defendants seek the transactional data available in Oracle for all payments between any Defendant and HCMLP from 1/1/2009 through 10/15/2019 for the following account codes: 0010 (HCMLP), 1300 (CDO Opportunities Fund), 1500 (Select Equity), 1600 (Equity Focus), and 1900 (Credit Opportunities Fund). This request is not duplicative of any other request, including request 62, which seeks ledger entries, not transactional data for specific payments. Please confirm by stating "Yes" or No": does the Litigation Trustee refuse to search Oracle for and produce the requested information? If the answer is "Yes," please further confirm whether and the extent to which the Litigation Trustee has preserved Oracle data.	Refused
64	Solvency; all fraudulent transfer claims	Oracle	HCMLP's general ledger (in Excel, as previously provided to the UCC)	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	This files from 2014 - 2019 is located in the Z-drive and was produced to the UCC.	The Litigation Trustee will produce HCMLP's general ledger.			Please confirm that the Litigation Trustee will produce the general ledger in Excel format, as previously provided to the UCC.	Agreed, subject to clarification
65	Dugaboy Note Claim	Oracle	Any payments to HCMLP on account of the Dugaboy Note referenced Complaint Para. 126	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to the transactional documents related to each allegedly tortious transaction referenced in the Amended Complaint.	The Trustee will produce documents sufficient to show payments to HCMLP on account of the Dugaboy Note.	Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
66	CLO Holdco Transaction	Oracle	Any ledgers, financial documents, reports or other data for accounts held by DAF or CLO Holdco or any of their subsidiaries	Specific Follow Up Request	To be determined	N/A	TBD	Pursue modified request	All ledgers, financial documents, reports, or other data related to the CLO Holdco Transaction referenced in the Amended Complaint. To the extent that the Trustee alleges that Oracle only has ledgers, provide such ledgers.	The Trustee will produce ledgers or ledger entries related to the CLO Holdco Transaction.	Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
67	Massand Claims	Oracle	All accounting entries reflecting any payment to any Dillip Massand or Massand Capital	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to the transactional documents related to each allegedly tortious Massand payments referenced in the Amended Complaint.	The Trustee will produce ledgers orledger entries related to the Massand Payments.	Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
68	Breach of Fiduciary Duty re UBS/Sentinel	Oracle	All ledger entries, wire reports, financials, or other data showing any transfer of assets to or from CDO Opportunities Fund (Master or either feeder fund)	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to the transactional documents related to each allegedly tortious Sentinel transaction referenced in the Amended Complaint. To the extent that Plaintiff alleges that Oracle only has ledgers, provide such ledgers.	The Trustee will produce ledgers or ledger entries related to the Sentinel Transaction.			In addition to ledger entries, please confirm what other types of documents are available in Oracle. To the extent available, please produce all wire reports, financials, and other data showing transfer of assets from CDO Opportunities fund to Sentinel or any of its related entities. Please confirm by stating "Yes" or "No": will the Litigation Trustee produce these documents in addition to the documents promised in its December 12 response?	Further clarification needed on LT production position
69	All claims	Other	All documents reviewed by Plaintiff in making its allegations	6/10/22 Letter	In due course, and as part of normal productions, the Litigation Trustee will produce documents relied upon in making his allegations.	7/6/22 Letter	Y	Request agreed	Please provide the timing for the production of the agreed upon documents. Defendants request production of such documents no later than November 21, 2022.		Agreed		Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed

No.	Category	Non-Email Document Source	Defendants' Requests	Date(s)/Source of Request 5/3/22 - Letter re Initial Requests 6/10/22 - Letter re Priority Requests 11/9/22 - Specific Follow Up Request	Litigation Trustee's Response	Date(s)/Source of LT Response	LT Agreed to Produce? M=maybe, P=partial	Defendants' Request Status as of November 9	Defendants' November 9 Response	LT's Response as of December 12	Defendants' Dec 21 Categories [column added by LT on 1/18/23]	LT Revised Response/Clarification (1/18/23)	Defendants' Response to LT's Revised Position (3/13/23)	Defendants' Request Status (3/13/23)
70	Breach of Fiduciary Duty re HarbourVest	Outlook	Calendar entries of Scott Ellington, Isaac Leventon, Hunter Covitz, Mark Okada, JP Sevilla, or Trey Parker with any invitee from @harbourvest.com between 1/1/2017 - 1/31/2019	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Defendants are entitled to the transactional documents related to each allegedly tortious HarbourVest investment referenced in the Amended Complaint. The Amended Complaint alleges that misrepresentations were made to HarbourVest, including oral misrepresentations that were made on phone calls. The calendar entries will reflect who spoke to HarbourVest, when, and the potential subject matter or agenda of such calls.	The Litigation Trustee has agreed to run search terms related to HarbourVest and will produce those documents. The Trustee objects to producing any additional documents in response to this request.			This is a a simple and narrowly tailored request that merely requires the Litigation Trustee to run the single search term "Harbourvest" on Outlook calendar data for 6 individuals between 1/1/2017 and 1/31/2019. The calendar data will include information such as an attendee roster that is not duplicative of the information found in searches of email and is directly relevant to the allegations concerning HarbourVest in the Amended Complaint. Calendar entries also will identify any meeting attendees whose administrative assistants added the meeting directly to their calendar, rather than via an email invite. Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to search for and produce the requested Outlook calendar data? Please also confirm whether the Litigation Trustee has preserved this Outlook calendar data.	Refused
71	Breach of Fiduciary Duty re UBS/Sentinel	Outlook	Calendar entries of Scott Ellington, Isaac Leventon, JP Sevilla, Katie Irving, Clifford Stoops, Thomas Surgent, or Carter Chism between 4/1/1/2017 - 9/30/2017 in any way related to ATE, CDO Fund, HFP, Insurance, Sentinel, or UBS	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	Testimony taken in related cases indicates that there were a series of meetings related to the implementation of the Sentinel ATE policy between April and August 2017. Accordingly, Defendants require the meeting attendance rosters from Outlook in order to verify who accepted and attended such meetings.	The Trustee has agreed to run search terms related to the ATE, CDO Fund, HFP, Insurance, Sentinel, and UBS actions. The Trustee stands on its objections to producing any additional documents in response to this request.			This is a a simple and narrowly tailored request that merely requires the Litigation Trustee to run 6 search terms (ATE, "CDO Fund," HFP, insurance, Sentinel, UBS) on Outlook calendar data for 7 individuals over a 6 month period (4/1/2017 - 9/30/2017). The calendar data, including attendee information, is not duplicative of the information that may be found in searches of email, and in any event, with the exception of "Sentinel" the Litigation Trustee has not even agreed to run these search terms on prepetition emails. Moreover, as stated in Defendants' November 9 response, the information is directly relevant to the allegations concerning Sentinel in the Amended Complaint. Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to search for and produce the requested Outlook calendar data? Please also confirm whether the Litigation Trustee has preserved this Outlook calendar data.	Refused
72	Unjust Enrichment/Preference Payments Claims	Paylocity	All Paylocity system entries for Jim Dondero, Mark Okada, Scott Ellington, or Isaac Leventon (during any period Plaintiff claims is within the statute of limitations)	5/3/22 Letter 6/10/22 Letter	6/14/22 - Objected to the production without search terms of "the complete records of HCMLP's accounting, payroll, tax, and investment tracking systems"; "Once the Parties to come to agreement on a search protocol for HCMLP's email server, the Litigation Trustee will evaluate whether these sources contain nonduplicative documents relevant to the Parties' claims and defenses and whether a narrow, supplementary production would be proportional to the needs of the case." 7/6/22 - The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time. 10/12/22 - The Trustee has created and will produce a spreadsheet detailing Paylocity system entries for Dondero, Ellington, and Leventon, and will produce it. Because Paylocity includes only salary information, the Trustee will not include Paylocity entries for Mark Okada, whose salary is not at issue. Please note that Paylocity was adopted by HCMLP in 2013, and there is no access to the predecessor system	6/14/22 Letter 7/6/22 Letter 10/12/22 Letter	Y/P	Pursue modified request	Defendants will withdraw their request as it relates to Mark Okada, but Defendants believe that Paylocity includes payments to employees for salaries, bonuses, deferred compensation, and expense reimbursements. Therefore, Defendants expect each of these records for Defendants Dondero, Ellington, and Leventon. Additionally, Defendants are entitled to all available data within Paylocity with respect to these entries, not a selection of fields or data unilaterally chosen by Plaintiff. With respect the spreadsheet "created" by Plaintiff, Defendants request the following information: (1) who created it; (2) when was it created; (3) what criteria were used to create it; (4) what other fields/criteria were available but not included or used in the creation; (5) who instructed that it be created, (6) the names of all persons who determined the criteria for creating it and exactly which criteria were determined by which person(s); and (7) whether, with respect to the entries reflected in the spreadsheet, Paylocity contains or links to supporting documents.	To clarify, the spreadsheet that the Trustee will produce, which was generated from Paylocity, will reflect payments made via payroll, including salary, bonus, deferred compensation, and reimbursements. The Trustee understands that there is no other information stored in Paylocity.			Defendants reserve rights with respect to the information requested in their November 9 response, but will hold that portion of the request in abeyance pending production and review of the spreadsheet.	Further clarification needed on LT production position
73	All claims	Physical Documents	The following physical documents for certain custodians: all documents, including written notes located in or collected from the desk, desk drawers, or filing cabinets (including those located proximately to or directly behind the custodians' personal desks), for the following custodians: (a)Paul Broadus (b)Matthew DiOrio (c)James Dondero (d)Scott Ellington (e)Katie Irving (f)Isaac Leventon (g)Shawn Raver (h)JP Sevilla (i)Rick Swadley (j)Stephanie Vitiello (k)Mark Patrick (l)Frank Waterhouse (m)David Klos (n)Kristin Hendrix (o)Thomas Surgent (p)Vishal Patel (q)Mark Okada (r)Michael Throckmorton	5/3/22 Letter 6/10/22 Letter	6/14/22 - Objected to production without search terms of "every document from the offices of 17 current and former HCMLP employees" and to "all electronic and physical documents possessed by certain individuals" as "overbroad and in no way calibrated to yield documents and communications relevant to the Parties' claims and defenses and proportional to the needs of the case"; "Once the Parties to come to agreement on a search protocol for HCMLP's email server, the Litigation Trustee will evaluate whether these sources contain nonduplicative documents relevant to the Parties' claims and defenses and whether a narrow, supplementary production would be proportional to the needs of the case." 7/6/22 - The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time.	6/14/22 Letter 7/6/22 Letter	N	Pursue modified request	The physical document maintained at each custodian's desk or in proximately located filing cabinets would constitute a selection of materials specifically selected by each custodian as important or unique enough to be maintained in a physical format that was readily accessible by such custodian. In particular, any hand-written notes or annotation by any custodian would be unique documents not likely obtainable from an electronic source. Therefore, such records likely contain relevant and responses information. To the extent that the Trustee determines that it will not produce all documents in each identified physical location, it is nevertheless the Trustee's obligation to review the documents in each physical location and produce all relevant documents contained therein.	The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	For clarity, Defendants request that the Litigation Trustee search physical documents for the custodians identified in Annex D, Column E, using the search terms identified in Annex D, Columns A & B (or, alternatively in the event of a manual rather than electronic review, using the topics identified in Annex B). Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to produce documents in response to this modified request?	Refused
74	All claims	Physical Documents Archived at Iron Mountain:	Index of all documents stored with Iron Mountain	5/3/22 Letter	Objected that "all electronic and physical documents possessed by certain individuals or stored at Iron Mountain are overbroad and in no way calibrated to yield documents and communications relevant to the Parties' claims and defenses and proportional to the needs of the case. Once the Parties to come to agreement on a search protocol for HCMLP's email server, the Litigation Trustee will evaluate whether these sources contain nonduplicative documents relevant to the Parties' claims and defenses and whether a narrow, supplementary production would be proportional to the needs of the case."	5/24/22 M&C 6/14/22 Letter	N	Pursue original request	Defendants have not requested all electronic or physical documents stored at Iron Mountain, just an index of what is stored. This should be produced. Note this was requested as a priority item in order to reduce the burden of production on Plaintiff and work cooperatively with Plaintiff to identify potentially relevant archives; Defendants reserve rights to request documents stored at Iron Mountain based on a review of the index.	The Litigation Trustee objects to this request as overly broad, unduly burdensome, duplicative, and disproportionate to the needs of the case, and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	Defendants note the Litigation Trustee's refusal and reserve rights with respect to this request, but will hold this request in abeyance pending review of the Litigation Trustee's forthcoming productions from other sources.	Refused

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75	Breach of Fiduciary Duty Claims	Prepetition Documents Maintained by Vendors	(a) McKool Smith client file – - all trial exhibits from the UBS Phase I trial (Supreme Court of the State of New York, County of New York, Index No. 650097/2009); - all documents produced to Joshua Terry in Terry's state court lawsuit against Acis (District Court of Dallas County, Texas, 44th Judicial District, Cause No. DC-17-15244); - all documents produced to Joshua Terry in the involuntary bankruptcy proceeding instituted by Terry against Acis (referenced in ¶ 68 of the Complaint); and - all written filings, written discovery, privilege logs, legal submissions, correspondence, and trial exhibits from the Crusader arbitration against HCMLP (referenced in ¶ 84 of the Complaint). (b) Stinson LLP (as successor to Lackey Hershman LLP) client file – all written filings, written discovery, privilege logs, legal submissions, correspondence, and trial exhibits from the arbitration with Joshua Terry (referenced in ¶¶ 65-66 of the Complaint); (c) DLA Piper LLP client file – all hearing transcripts, deposition transcripts, and	5/3/22 Letter	We have requested the case files maintained by HCMLP's counsel in connection with various disputes identified by Defendants so that we may review them for potential production. Notably, Defendants have requested production of documents possessed by Stinson LLP and DLA Piper LLP as former counsel to HCMLP, notwithstanding that Stinson LLP and DLA Piper are now acting for Defendants adverse to HCMLP. The Litigation Trustee's participation in the discovery process, including notably the waiver of privilege for the pre-petition period, is premised on the assumption that Defendants' counsel will comply with all ethical obligations arising out of their past representations of HCMLP, including with respect to counsel's work product and strategic analyses that may not be reflected in any privileged communications that will be subject to disclosure. The Litigation Trustee reserves all rights in this regard.	6/14/22 Letter	M	Request agreed	To the extent that the Trustee withholds any document in this repository on the basis of any objection or claim of privilege, please identify such withheld document.	The Litigation Trustee requested from McKool Smith, Stinson LLP (as successor to Lackey Hershman LLP), and DLA Piper LLP client files for the requested documents and received no documents. The Trustee stands on its objections to the request to search the PwC client file and will not produce documents in response to this request.			Please provide a status update with respect to the requests the Litigation Trustee made to law firms. Defendants note the Litigation Trustee's refusal to search for and produce responsive documents from the PwC client file and reserve all rights.	Further clarification needed on LT production position
76	Breach of Fiduciary Duty re UBS/Sentinel	Production Logs	For document productions made to the Unsecured Creditors Committee and UBS during the pendency of HCMLP's bankruptcy. Defendants believe such logs likely exist in the Z-legal Drive and likely were created in Excel or .csv format by Stephanie Vitiello.	5/3/22 Letter	Generally objected to all 5/3 requests as overbroad.	5/24/22 M&C 6/14/22 Letter	N	Pursue original request	Amended Complaint Count V alleges, among other things, that Defendants withheld from disclosure and production documents related to certain transactions, including the Sentinel Transaction. The logs are the best source of information to determine what non-email documents were produced to the UCC and UBS during the pendency of the Bankruptcy and when such documents were produced, particularly if the Trustee continues to refuse to provide to Defendants the actual productions.	The Litigation Trustee is investigating its ability to respond to this request in a reasonable and proportionate manner and will provide a further response as soon as he is able.	RUI		Defendants first made this narrowly-tailored request in May 2022 and have received no substantive response from the Litigation Trustee in the intervening 9 months, despite numerous follow ups. This would be a discrete set of less than 50 documents readily identifiable in a document format and drive location we have identified for you. Please confirm the result of Litigation Trustee's investigation no later than one week following receipt of this response. By that date, please confirm if the Litigation Trustee will agree to produce or, if not, the basis for non-production.	No LT response
77	All claims	SharePoint	The Legal site on SharePoint has a complete repository of corporate documents (not including portfolio companies). Produce all documents under this repository.	6/10/22 Letter	The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time.	7/6/22 Letter	N	Pursue modified request	SharePoint is the primary repository for corporation organizational documents and should be searched for responsive documents. Such documents primarily include corporate governing documents (limited partnership agreements, LLCAs, shareholders agreements), corporate resolutions, organizational charts, incumbency certificates, and shared services and sub-advisory agreements. In SharePoint, there is a drop-down menu where a user can filter by documents associated with each entity. Defendants hereby request that the Trustee filter for, and produce the results of, all SharePoint documents for the following entities referenced in the Amended Complaint: (1) HCMLP; (2) Strand Advisors, Inc.; (3) James Dondero; (4) Mark Okada; (5) NexPoint Advisor, L.P.; (6) Highland Capital Management Fund Advisors, L.P.; (7) Dugaboy Investment Trust, (8) Get Good Trust, (9) Hunter Mountain Investment Trust, (10) Mark & Pamela Okada Family Trust; (11) Mark & Pamela Okada Family Trust – Exempt Trust #1; (12) Mark & Pamela Okada Family Trust – Exempt Trust	The Trustee stands on his objections to this request and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	As explained in Defendants' November 9 response, the Legal site on SharePoint is merely a repository for the key corporate organizational documents for various entities. Defendants expect this request to return only about 15-20 documents per entity, and note that one half of the requested entities are Defendants, approximately one-third are alleged fraudulent transfees to Defendants, and the rest are the entities allegedly harmd in the Count V allegations. Accordingly, this request is not burdensome and seeks documents that are easily obtainable and highly relevant to the case. Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to produce the requested documents?	Refused
78	N/A	SharePoint	Server backup from the most recent date prior to 10/16/2019	5/3/22 Letter	Objected to request for production without search terms of "the full server backup for HCMLP's share drive"; objected to production of "entirety of . . . SharePoint as they existed prior to the Petition Date" "Once the Parties to come to agreement on a search protocol for HCMLP's email server, the Litigation Trustee will evaluate whether these sources contain nonduplicative documents relevant to the Parties' claims and defenses and whether a narrow, supplementary production would be proportional to the needs of the case."	5/24/22 M&C 6/14/22 Letter	N	Request withdrawn	N/A					N/A (withdrawn)

No.	Category	Non-Email Document Source	Defendants' Requests	Date(s)/Source of Request 5/3/22 - Letter re Initial Requests 6/10/22 - Letter re Priority Requests 11/9/22 - Specific Follow Up Request	Litigation Trustee's Response	Date(s)/Source of LT Response	LT Agreed to Produce? M=maybe, P=partial	Defendants' Request Status as of November 9	Defendants' November 9 Response	LT's Response as of December 12	Defendants' Dec 21 Categories [column added by LT on 1/18/23]	LT Revised Response/Clarification (1/18/23)	Defendants' Response to LT's Revised Position (3/13/23)	Defendants' Request Status (3/13/23)
79	Breach of Fiduciary Duty re UBS/Sentinel	SharePoint	All documents within SharePoint UBS site (should be SharePoint - Legal - Matter Management (or maybe called Litigation) - UBS (NY)	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	These files relate to the UBS lawsuit allegations in Count V of the Amended Complaint. The files are litigation documents, including pleadings, deposition and hearing transcripts, and exhibits. In particular, the legal and factual allegations by UBS regarding any individual Debtor employee's responsibility for the underlying transaction or liability related thereto, as well as the Debtor's factual and legal assertions in response, will help a fact finder apportion responsibility for the UBS liability between the Defendants and other parties or persons involved in the underlying UBS transaction. While some of the pleadings are publicly available, others may be redacted or sealed. Additionally, deposition and hearing transcripts likely are not available. Finally, even the publicly available documents are well-organized in SharePoint and producing them should pose a minimal burden on the Trustee, while downloading all of the publicly available materials across multiple cases would be time-consuming for Defendants.	The Trustee will produce non-privileged responsive documents from Sharepoint UBS site that were prepared during or produced in connection with litigation with UBS.	Privilege Clarification Requested	The Trustee intends to comply with the Limited Waiver that the Parties have agreed to, i.e., a waiver of privilege over pre-petition documents. However, to the extent there are any post-petition privileged documents found in this source, the Trustee maintains its privilege objections as to those documents.	Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Further clarification needed on LT production position
80	Breach of Fiduciary Duty re Acis/Terry	SharePoint	All documents within SharePoint Josh Terry site (should be SharePoint - Legal - Matter Management (or maybe called Litigation) - Josh Terry or Terry	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	These files relate to the Josh Terry lawsuits which led to the Acis liabilities alleged in Count V of the Amended Complaint. The files are litigation documents, including pleadings, deposition and hearing transcripts, and exhibits. In particular, the legal and factual allegations by Terry regarding any individual Debtor employee's responsibility for the underlying transaction or liability related thereto, as well as the Debtor's factual and legal assertions in response, will help a fact finder apportion responsibility for the Terry liability between the Defendants and other parties or persons involved in the underlying Terry transactions. While some of the pleadings are publicly available, the arbitration record is not available. Additionally, deposition and hearing transcripts even for the state-court litigation likely are not available. Finally, even the publicly available documents are well-organized in SharePoint and producing them should pose a minimal burden on the Trustee, while downloading all of the publicly available materials across multiple cases would be time-consuming for Defendants.	The Trustee will produce non-privileged responsive documents from Sharepoint Josh Terry site that were prepared during or produced in connection with litigation with Joshua Terry.	Privilege Clarification Requested	The Trustee intends to comply with the Limited Waiver that the Parties have agreed to, i.e., a waiver of privilege over pre-petition documents. However, to the extent there are any post-petition privileged documents found in this source, the Trustee maintains its privilege objections as to those documents.	Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
81	Breach of Fiduciary Duty re Acis/Terry	SharePoint	All documents within SharePoint Acis site (should be SharePoint - Legal - Matter Management (or maybe called Litigation) - Acis BK	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	allegations in Count V of the Amended Complaint. The files are litigation documents, including pleadings, deposition and hearing transcripts, and exhibits. In particular, the legal and factual allegations by Acis regarding any individual Debtor employee's responsibility for the underlying transaction or liability related thereto, as	The Trustee will produce non-privileged responsive documents from Sharepoint Acis site that were prepared during or produced in connection with litigation with Acis.	Privilege Clarification R	the Limited Waiver that the Parties have agreed to, i.e., a waiver of privilege over pre-petition documents. However, to the extent there are any post-petition privileged documents found in this source, the Trustee maintains its privilege objections as to those documents.	Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
82	Breach of Fiduciary Duty Claims	SharePoint	All documents within SharePoint Daugherty sites (should be SharePoint - Legal - Matter Management (or maybe called Litigation) - then folders with "Daugherty" in the title (should include one for Texas and at least one, maybe more, for Delaware)	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	These files relate to the Daugherty lawsuit allegations in Count V of the Amended Complaint. The files are litigation documents, including pleadings, deposition and hearing transcripts, and exhibits.	The Trustee will produce non-privileged responsive documents from Sharepoint Daugherty site that were prepared during or produced in connection with litigation with Patrick Daugherty.	Agreed Privilege Clarification Requested	The Trustee intends to comply with the Limited Waiver that the Parties have agreed to, i.e., a waiver of privilege over pre-petition documents. However, to the extent there are any post-petition privileged documents found in this source, the Trustee maintains its privilege objections as to those documents.	Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed

No.	Category	Non-Email Document Source	Defendants' Requests	Date(s)/Source of Request 5/3/22 - Letter re Initial Requests 6/10/22 - Letter re Priority Requests 11/9/22 - Specific Follow Up Request	Litigation Trustee's Response	Date(s)/Source of LT Response	LT Agreed to Produce? M=maybe, P=partial	Defendants' Request Status as of November 9	Defendants' November 9 Response	LT's Response as of December 12	Defendants' Dec 21 Categories [column added by LT on 1/18/23]	LT Revised Response/Clarification (1/18/23)	Defendants' Response to LT's Revised Position (3/13/23)	Defendants' Request Status (3/13/23)
83	Breach of Fiduciary Duty re Crusader	SharePoint	All documents within SharePoint Crusader site (should be SharePoint - Legal - Matter Management (or maybe called Litigation) - Crusader. Will include both a site for the arbitration and a site for the arbitration award confirmation litigation.	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	These files relate to the Crusader lawsuits leading to the Crusader liability alleged in Count V of the Amended Complaint. The files are litigation documents, including pleadings, deposition and hearing transcripts, and exhibits. In particular, the legal and factual allegations by Crusader regarding any individual Debtor employee's responsibility for the underlying transaction or liability related thereto, as well as the Debtor's factual and legal assertions in response, will help a fact finder apportion responsibility for the Crusader liability between the Defendants and other parties or persons involved in the underlying Crusader transactions. While some of the pleadings are publicly available, the arbitration record is not available. Additionally, deposition and hearing transcripts even for the state-court litigation likely are not available. Finally, even the publicly available documents are well-organized in SharePoint and producing them should pose a minimal burden on the Trustee, while downloading all of the publicly available materials across multiple cases would be time-consuming for Defendants.	The Trustee will produce non-privileged responsive documents from Sharepoint Crusader site that were prepared during or produced in connection with litigation with Crusader.	Privilege Clarification Requested	The Trustee intends to comply with the Limited Waiver that the Parties have agreed to, i.e., a waiver of privilege over pre-petition documents. However, to the extent there are any post-petition privileged documents found in this source, the Trustee maintains its privilege objections as to those documents.	Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Agreed
84	N/A	U-Drive	U-Drive backup from the most recent date prior to 10/16/2019.	5/3/22 Letter	To be determined	5/24/22 M&C 6/14/22 Letter	N	Request withdrawn	N/A					N/A (withdrawn)
85	All claims	U-Drive	All documents within U-Drive of (1) Leventon, (2) Ellington, (3) Dondero, (4) Sevilla, (5) DiOrio, and (6) Irving	6/10/22 Letter	The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case, and will not produce it at this time.	7/6/22 Letter	N	Pursue modified request	These documents can be gathered in a short period of time and therefore are not burdensome to collect. In addition, the selection of documents by a custodian to go in their U-Drive indicates such documents were relevant or important to such custodian's work. The Trustee should produce the entire U-Drive contents of each custodian, or if the Trustee. To the extent that the Trustee determines that it will not produce all documents in each such drive location, it is nevertheless the Trustee's obligation to review the documents in each drive location and produce all relevant documents contained therein. 1.Paul Broadus 2.Matthew DiOrio 3.James Dondero 4.Scott Ellington 5.Katie Irving 6.Isaac Leventon 7.Shawn Raver 8.JP Sevilla 9.Rick Swadley 10.Stephanie Vitiello 11.Mark Patrick 12.Frank Waterhouse	The Trustee stands on its objections to this request and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	Defendants have specified in Annex D a list of search terms for the Litigation Trustee to run to identify potentially responsive documents (Columns A and B), and refined the list of custodians (Column C). Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to produce documents in response to this modified request?	Refused
86	Breach of Fiduciary Duty re Acis/Terry	U-Drive	All documents within Tim Cournoyer U-Drive under folders with "Acis" or "Terry" or "CMAO" in the name (U:/Cournoyer)	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	These files relate to the Acis transfers referenced in Amended Complaint ¶¶ 208 - 212	The Litigation Trustee objects to this request as overly broad, unduly burdensome, duplicative, and disproportionate to the needs of the case, and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	This request is narrowly tailored, requiring the Litigation Trustee to search only documents within a specific set of folders maintained by one custodian. Nevertheless, Defendants further limit this request to documents within the time period 1/1/2016 to present. Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to produce documents in response to this modified request?	Refused
87	Breach of Fiduciary Duty re Acis/Terry	U-Drive	Search for term "Acis" within Tim Cournoyer U-Drive	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	These files relate to the Acis transfers referenced in Amended Complaint ¶¶ 208 - 212	The Litigation Trustee objects to this request as overly broad, unduly burdensome, duplicative, and disproportionate to the needs of the case, and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	This request is narrowly tailored, requiring the Litigation Trustee to run only one search term in the files maintained by one custodian. Nevertheless, Defendants further limit this request to documents within the time period 1/1/2016 to present. Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to produce documents in response to this modified request?	Refused
88	Breach of Fiduciary Duty re Crusader	U-Drive	All documents within Leventon U-Drive under a folder labeled "Crusader" (should be U:/Leventon/Cases/Crusader)	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	These files relate to the Crusader liabilities referenced in Amended Complaint ¶¶ 214 - 216	The Litigation Trustee objects to this request as overly broad, unduly burdensome, duplicative, and disproportionate to the needs of the case, and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	This request is narrowly tailored, requiring the Litigation Trustee to search only documents within a specific folder maintained by one custodian, Defendant Isaac Leventon. Such folder was Mr. Leventon's personal case management folder for Crusader, and is thus highly relevant to the claims alleged against Mr. Leventon with respect to his work related to Crusader. Defendants expect this request to return only about 200 documents. Defendants further revise this request to extend to folders within Mr. Leventon's U-Drive that include the terms Acis, Terry, UBS or Daugherty. Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to produce documents in response to this modified request?	Refused
89	NPA/HCMFA Claims	U-Drive	All documents in the U-Drive of any current or former member of the Legal or Compliance teams including the terms (1) NexPoint (2) HCMFA (3) "Highland Funds" (4) Retail or (5) Institutional (see Custodian List 18)	Specific Follow Up Request	To be determined	N/A	TBD	Pursue original request	These documents can be gathered in a short period of time and therefore are not burdensome to collect. In addition, the selection of documents by a custodian to go in their U-Drive indicates such documents were relevant or important to such custodian's work. The Trustee should produce the entire U-Drive contents of each custodian, or if the Trustee. To the extent that the Trustee determines that it will not produce all documents in each such drive location, it is nevertheless the Trustee's obligation to review the documents in each drive location and produce all relevant documents contained therein.	The Litigation Trustee objects to this request as overly broad, unduly burdensome, duplicative, and disproportionate to the needs of the case, and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	Defendants withdraw this request as it has been replaced with modified Request 85.	N/A (withdrawn)
90	N/A	U-Drive; Z-Drive	Legal Invoices Pivot Table. Defendants believe that copies of this table likely exist in the Z-legal Drive and/or in the U-Drives of Helen Kim and Isaac Leventon.	5/3/22 Letter	Generally objected to all 5/3 requests as overbroad.	5/24/22 M&C 6/14/22 Letter	N	Request withdrawn	N/A					N/A (withdrawn)

No.	Category	Non-Email Document Source	Defendants' Requests	Date(s)/Source of Request 5/3/22 - Letter re Initial Requests 6/10/22 - Letter re Priority Requests 11/9/22 - Specific Follow Up Request	Litigation Trustee's Response	Date(s)/Source of LT Response	LT Agreed to Produce? M=maybe, P=partial	Defendants' Request Status as of November 9	Defendants' November 9 Response	LT's Response as of December 12	Defendants' Dec 21 Categories [column added by LT on 1/18/23]	LT Revised Response/Clarification (1/18/23)	Defendants' Response to LT's Revised Position (3/13/23)	Defendants' Request Status (3/13/23)
91	N/A	WallStreetOffice (WSO)	All accounts for transactions from 1/1/2009 through 10/15/2019	5/3/22 Letter	Objected to the production without search terms of "the complete records of HCMLP's accounting, payroll, tax, and investment tracking systems." "Once the Parties to come to agreement on a search protocol for HCMLP's email server, the Litigation Trustee will evaluate whether these sources contain nonduplicative documents relevant to the Parties' claims and defenses and whether a narrow, supplementary production would be proportional to the needs of the case."	5/24/22 M&C 6/14/22 Letter	N	Request withdrawn	N/A						N/A (withdrawn)
92	Fraudulent transfer claims	WallStreetOffice (WSO)	All documents related to any trade of any allegedly fraudulently transferred asset	6/10/22 Letter	7/6/22 - The Litigation Trustee will conduct a reasonable search of WallStreetOffice (WSO) for documents related to trades of allegedly fraudulently transferred assets and produce documents relevant to claims or defenses in this litigation. 10/12/22 - Based on discussions with the Reorganized Debtor, the Trustee understands that WSO does not contain this type of information.	7/6/22 Letter 10/12/22 Letter	N	Pursue modified request	WSO contains information related to the trades of assets such as equities, loans, and bonds. Therefore, the alleged transactions in the Amended Complaint involving those types of asset classes likely would be found in WSO. Therefore, the Trustee should produce all documents related to the trades involved in (a) the CLO Holdco Transaction; (b) the HE 232 Capital transaction, or (c) the transfer of assets any Highland affiliate to Sentinel Reinsurance, Ltd., as each of those transactions is referenced in the Amended Complaint.	The Trustee will produce documents sufficient to show the trades involved in the CLO Holdco Transaction, the HE 232 Capital transaction, and the transfer of assets to Sentinel Reinsurance, Ltd. related to the Sentinel transaction alleged in the Amended Complaint.	Source Clarification Requested	These documents may not come from the specifically listed sources because they are duplicative of other sources from which collection is easier, including the G drive.	The Litigation Trustee's December 12 response that it will produce "documents sufficient to show" the specified trades is insufficient. Defendants are entitled to all data in WSO related to those trades, not a selection hand-picked by the Litigation Trustee. In addition, the Litigation Trustee's clarification of January 18 that the "documents may not come from the specifically listed sources because they are duplicative of other sources from which collection is easier, including the G Drive" is insufficient and neither confirms nor denies that it will search WSO, which is the repository where the requested information is located. Additionally, Defendants are aware that certain WSO documents were not as a matter of course saved to the G-Drive, and likely were not saved for these transactions. Please confirm by stating "Yes" or "No": does the Litigation Trustee agree to search WSO for the data related to the trades specified in Defendants' November 9 response?	Further clarification needed on LT production position
93	N/A	Z-Drive	Z-Drive backup from the most recent date prior to 10/16/2019.	5/3/22 Letter	Objected to request for production without search terms of "entirety of HCMLP's four main servers as they existed prior to the Petition Date" "Once the Parties to come to agreement on a search protocol for HCMLP's email server, the Litigation Trustee will evaluate whether these sources contain nonduplicative documents relevant to the Parties' claims and defenses and whether a narrow, supplementary production would be proportional to the needs of the case."	5/24/22 M&C 6/14/22 Letter	N	Request withdrawn	N/A						N/A (withdrawn)
94	Breach of Fiduciary Duty Claims	Z-Drive	Under Z-Legal, all documents from any folder with a title including the words "UBS" "Acis" "Terry" "Crusader" "Daugherty" or "Harbourvest"	6/10/22 Letter	7/6/22 - The Litigation Trustee is evaluating the relevance of this material and any applicable privileges. 7/22/22 - At M&C, Baker provided further context for Z-Legal. LT said they were pulling the folders that are relevant to this litigation and would consider this context and get back to us with a position. 10/12/22 - The Trustee objects to this request on the grounds that it is overbroad, unduly burdensome, irrelevant, and/or disproportionate to the needs of the case. Nonetheless, the Trustee has identified these folders and is in the process of exporting and reviewing them, and, subject to his Responses and Objections to Defendants Requests, will produce responsive documents to the extent they can be located and produced without undue burden.	7/6/22 Letter 7/22/22 M&C 10/12/22 Letter	Y/P	Request agreed	To the extent that the Trustee withholds any document in this repository on the basis of any objection or claim of privilege, please identify such withheld document.		Agreed	The Z Drive search results for these terms resulted in an unduly burdensome number of results, including folders that are irrelevant or disproportionate to the needs of the case. The Litigation Trustee instead has further identified the folders likely to be relevant to the litigation, and subject to its review and ongoing objections, will produce responsive documents.	Please confirm whether this has been produced or provide the final production date. Please provide a privilege log if any documents are withheld in response to this request.	Further clarification needed on LT production position
95	Breach of Fiduciary Duty re UBS/Sentinel	Z-Drive	All documents from any folder used to track or store documents produced to the UCC, UBS, or any other party during the pendency of the Bankruptcy	6/10/22 Letter	7/6/22 - The Litigation Trustee objects to this request as overly broad, unduly burdensome, and disproportionate to the needs of the case. In particular, not "[a]all documents . . . produced to the UCC, UBS, or any other party during the pendency of the Bankruptcy" are relevant to this litigation or proportional to its needs. We have received and will re-produce the documents produced to UBS. With respect to documents produced to the UCC, we understand that a large portion of those documents were produced pursuant to a common interest privilege and without any review for relevance, and that such documents came primarily from HCMLP's email server, which we are already searching via a search protocol. We are coordinating with counsel for the Debtor and UCC to understand the scope of any additional productions. 10/12/22 - The Trustee made a production on 8/26/2022 of documents that were produced in litigation regarding UBS and the UCC. We will not be producing further documents from the Z drive in response to this request. To the extent there are additional productions Defendants specifically request for production, the Trustee will consider such request.	7/6/22 Letter 10/12/22 Letter	N	Pursue original request	This is the most complete, readily accessible repository of HCMLP documents gathered by persons with knowledge in response to the Committee's requests. This is the least burdensome mechanism to provide most of the responsive categories of documents. If you cannot produce this, then please provide the list of Committee searches, the documents produced in response to each, and we can select the ones we believe are relevant. This will save the time and effort to regather the documents, plus will ensure that the original collection was by persons with knowledge, rather than post-effective date professionals with no personal knowledge. Alternatively, to the extent that the Trustee objects to producing all of the documents produced during the bankruptcy, Defendants request that the Trustee (a) produce all documents produced to the UCC in response to the RFPs marked as "Y" in Column C of Sheet 2 and (b) provide copies of all informal, non-RFP requests for information from the UCC to the Debtor during the bankruptcy so that Defendants may identify additional relevant requests from the UCC to which the Debtor	The Litigation Trustee objects to this request as overly broad, unduly burdensome, duplicative, and disproportionate to the needs of the case, and will not produce documents in response to this request.	Boilerplate	The Litigation Trustee has objected with particularity to this request and thus stands on his objections.	Per Defendants' November 9 response, Defendants' volunteered to alleviate any burden on the Litigation Trustee by undertaking the relevance review itself (similar to what the Litigation Trustee had proposed for prepetition emails). However, to the extent the Litigation Trustee objects to that approach, Defendants request those productions made by HCMLP during the pendency of the Bankruptcy in response to requests that overlap with the claims asserted in this litigation. As noted in Defendants' November 9 response, these are identified in Annex C ("Req 95 - Sheet 2"). Please confirm by stating "Yes" or "No": does the Litigation Trustee refuse to produce documents in response to this request?	Refused

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] 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; 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 &	Adv. Pro. No. 21-03076-sgj

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

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.; AND SAS ASSET RECOVERY, LTD.,

Defendants.

ORDER GRANTING THE LITIGATION TRUSTEE'S MOTION TO STAY THE ADVERSARY PROCEEDING

Having considered the *Motion to Stay the Adversary Proceeding* (the "Motion")[2] filed by Marc S. Kirschner (the "Litigation Trustee"), the Litigation Trustee of the Litigation Sub-Trust established pursuant to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Bankr. Dkt. 1808][3] (as amended, the "Plan") and plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), the Court finds and concludes (i) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) notice of the Motion was sufficient under the circumstances; and (c) good cause exists to grant the relief requested in the Motion. Accordingly, **IT IS THEREFORE ORDERED THAT**:

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

2. All proceedings in the Adversary Proceeding are hereby **STAYED** through and including September 30, 2023, which stay will continue thereafter until any party to the Action

[2] Capitalized terms not otherwise defined in this Order shall have the meanings given them in the Motion.

[3] "Bankr. Dkt." refers to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

provides 30 days' written notice to all other parties and the Court of their intent to resume the Action.

3. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

END OF ORDER

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed April 4, 2023

United States Bankruptcy Judge

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] 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; STRAND ADVISORS, INC.; NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY	Adv. Pro. No. 21-03076-sgj

EXHIBIT

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[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

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.; AND SAS ASSET RECOVERY, LTD., Defendants.

ORDER GRANTING THE LITIGATION TRUSTEE'S MOTION TO STAY THE ADVERSARY PROCEEDING

Having considered the *Motion to Stay the Adversary Proceeding* (the "Motion")[2] filed by Marc S. Kirschner (the "Litigation Trustee"), the Litigation Trustee of the Litigation Sub-Trust established pursuant to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Bankr. Dkt. 1808][3] (as amended, the "Plan") and plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), the Court finds and concludes (i) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) notice of the Motion was sufficient under the circumstances; and (c) good cause exists to grant the relief requested in the Motion. Accordingly, **IT IS THEREFORE ORDERED THAT**:

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

[2] Capitalized terms not otherwise defined in this Order shall have the meanings given them in the Motion.

[3] "Bankr. Dkt." refers to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

2. All proceedings in the Adversary Proceeding, including the *Motion to Recuse Pursuant to* 18 U.S.C. §§ 144 *and* 455 [**Dkt. No. 309**], are hereby **STAYED** through and including September 30, 2023, which stay will continue thereafter until any party to the Adversary Proceeding provides 30 days' written notice to all other parties and the Court of their intent to resume the Adversary Proceeding.

3. Unless otherwise agreed by the Parties, the schedule set forth in the revised Scheduling Order filed with the Court on March 24, 2023, shall apply if the stay expires and the litigation has not been resolved, with the time periods extended commensurate with the period of the stay.

4. The *Motion to Stay and Response to Plaintiff's Motion to Stay* filed by Defendants James D. Dondero, Strand Advisors, Inc., Dugaboy Investment Trust, and Get Good Trust [**Dkt. No. 329**] is deemed WITHDRAWN based on counsel's representations to the Court.

5. All other objections and responses to the Motion including the *Response to the Litigation Trustee's Motion to Stay the Adversary Proceeding* filed by Defendants CLO Holdco, Ltd.; Charitable DAF Holdco, Ltd.; Charitable DAF Fund, LP; and Highland Dallas Foundation, Inc. [**Dkt. No. 332**]; and the *Joinder of Defendants NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. to Defendants James D. Dondero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc.'s Cross-Motion to Stay and Response to Plaintiff's Motion to Stay* [**Dkt. No. 331**], are also deemed WITHDRAWN based on counsel's representations to the Court.

6. Nothing in this Order shall be construed as a stay of the adjudication of the objections to this Court's *Report and Recommendation to the District Court Proposing that it: (A) Grant Defendants' Motions to Withdraw the Reference at Such Time as the Bankruptcy Court*

Certifies that Action is Trial Ready; But (B) Defer Pre-Trial Matters to the Bankruptcy Court, which are pending in the United States District Court of the Northern District of Texas in Case No. 22-cv-203-S.

7. The Defendant Parties will use good faith efforts to obtain agreements from subpoenaed third parties that objections to and compliance with those subpoenas are all tolled for the period of the stay, with documents to be preserved, and that new subpoenas will not be necessary if and when the stay is terminated. If such agreements cannot be obtained, the subpoenaing party(ies) may elect to pursue the outstanding discovery. The Defendant Parties shall notify Plaintiff's counsel if they are unable to reach an agreement with any such third-party.

8. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

END OF ORDER

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Reorganized Debtor.	§	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al., Defendants.	§	Case No. 3:21-cv-00881-X (Consolidated with 3:21-cv-00880; 3:21-cv-01010; 3:21-cv-01360; 3:21-cv-01362; 3:21-cv-01378; 3:21-cv-01379; 3:21-cv-03207; 3:22-cv-0789)

STIPULATED AND AGREED ORDER RESOLVING MOTION [DOCKET NO. 223] FOR WITHDRAWAL OF FUNDS PURSUANT TO 28 U.S.C. § 2042 WITH RESPECT TO THE JUDGMENTS ENTERED AGAINST DEFENDANTS

EXHIBIT

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[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

WHEREAS, on September 16, 2024, the Fifth Circuit issued its opinion and judgment affirming the Final Judgments entered in the above-referenced action in favor of Highland Capital Management, L.P. ("Plaintiff") and against Defendants;[2]

WHEREAS, on November 5, 2024, the Fifth Circuit's judgment was issued as the mandate;

WHEREAS, on November 6, 2024, Plaintiff filed the Motion and supporting declaration (*see* Docket No. 224);

WHEREAS, on November 26, 2024, Defendants filed their response in opposition to the Motion (Docket No. 228) (the "Opposition");

WHEREAS, on November 28, 2024, Plaintiff filed its reply to the Opposition (Docket No. 229) (the "Reply") (Docket No. 229);

WHEREAS, on November 28, 2024, in response to issues raised by Plaintiff on November 27, 2024, Defendants filed an amended response in partial opposition to the Motion (Docket No. 230);

WHEREAS, as of November 29, 2024, the aggregate amount owed by Defendants on the Final Judgments, inclusive of interest at the Federal Judgment Rate calculated in accordance with the Final Judgments and 28 U.S.C. § 1961, was $73,865,408.86;

WHEREAS, as of November 29, 2024, the aggregate Total Cash Security in the Registry of the Clerk of the Court to secure the Final Judgments in Plaintiff's favor was $73,723,827.91;

WHEREAS, Plaintiff and each of the Defendants desire to settle and finally resolve all disputes regarding the Final Judgments, the Total Cash Security, and the Motion, on the terms set forth in this Stipulated and Agreed Order;

[2] Capitalized terms used but not defined in this Order have the meanings ascribed to them in Plaintiff's *Motion for an Order of Withdrawal Pursuant to 28 U.S.C. § 2042 with Respect to the Judgments Entered Against Defendants* [Docket No. 223] (the "Motion").

WHEREAS, Defendants may seek review of the underlying dispute by way of petition for certiorari to the United States Supreme Court, and that if they do so, Plaintiff will oppose such review;

WHEREAS, the Court finds and concludes that: (a) notice of the Motion was adequate and no additional notice of the Motion is required; (b) the Court has jurisdiction to consider the Motion and the stipulated agreement contained herein; (c) venue is proper under 28 U.S.C. § 1409; (d) the Parties agreement to this Stipulated and Agreed Order is binding, and (e) the relief requested in the Motion and the agreements of the parties contained herein are appropriate. Accordingly,

IT IS ORDERED that:

1. The Motion is **GRANTED** on the agreed and stipulated terms set forth below.

2. Defendants shall collectively receive $75,000 from the Total Cash Security and Plaintiff shall receive the remaining Total Cash Security (the "Allocation").

3. To effectuate the Allocation, the Clerk is directed to promptly pay $75,000.00 to Judgement Debtor NexPoint Advisors, L.P. ("NPA"), as set forth in **Column C** below:

A. *Defendant*	*B.* *Registry Cash Security in Registry as of 11/29/24*	***C.*** *Payment of $75,000.00*[3]	*D.* *Balance Remaining to be Paid to Plaintiff (plus interest)*
James Dondero	$10,792,267.78	**$0.00**	$10,792,267.78
NexPoint Real Estate Partners, LLC	$14,173,314.35	**$0.00**	$14,173,314.35
NexPoint Asset Management, L.P.	$12,934,945.44	**$0.00**	$12,934,945.44
NexPoint Advisors, L.P.	$27,701,736.24	**$75,000.00**	$27,626,736.24
Highland Capital Management Services, Inc.	$8,121,564.10	**$0.00**	$8,121,564.10
Aggregate TOTAL	$73,723,827.91	**$75,000.00**	$73,648,827.91

[3] NPA shall be responsible for allocating the Allocation among the Judgment Debtors.

4. The Clerk is further directed to promptly pay to Plaintiff from the Registry (a) all remaining amounts of Total Cash Security securing the Final Judgments against each of the Defendants as of November 29, 2024,[4] *plus* (b) all interest earned or accrued on the Total Cash Security from November 29, 2024 to the date of payment to Plaintiff.

5. Upon payment of all remaining Total Cash Security to Plaintiff as required by paragraph 4 hereof (Column D plus all interest earned or accrued on the Total Cash Security to the date of payment to Plaintiff), each of the Final Judgments shall be deemed satisfied and neither the Plaintiff nor any of the Defendants shall have any claims against the other with respect to the Final Judgments, the Motion, or the Total Cash Security, all of which are deemed released by this Stipulated and Agreed Order.

6. The Clerk is directed to accept on a confidential basis written electronic transfer instructions from Defendant NPA's Counsel (identified below) so as to promptly transfer the aggregate $75,000.00 Allocation to NPA (as provided in paragraph 3, Column C of this Stipulated and Agreed Order) to be allocated to the other Defendants by NPA,. Defendant NPA's Counsel shall provide such written instructions to the Clerk promptly upon execution of this agreement.

7. The Clerk is directed to accept on a confidential basis written electronic transfer instructions from Plaintiff's Counsel (identified below) so as to promptly transfer to Plaintiff from the Registry the entire Total Cash Security as provided in paragraph 4 hereof except for the $75,000.00 provided in paragraph 3 hereof, which balance of the Total Cash Security when received by Plaintiff shall be applied in full satisfaction of the Final Judgments.

[4] For the avoidance of doubt, after payment of the total of $75,000.00 as required by paragraph 2 hereof, the remaining Total Cash Security as of November 29, 2024 will be $73,648,827.91 in the aggregate (**Column D above**).

8. Nothing herein precludes the Defendants from seeking review of the underlying dispute by way of petition for certiorari to the United States Supreme Court, and that if they do so, Plaintiff will oppose such review, and that nothing herein precludes either from taking such steps or other action in each's own interest if the decision and order of the Fifth Circuit is reversed, including Plaintiff's rights to seek the full amounts of the Final Judgments and all amounts owed under the underlying notes.

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9. This Court retains exclusive jurisdiction and authority to hear and determine all matters arising from or related to this action, including the terms and implementation of this Stipulated and Agreed Order.

STIPULATED AND AGREED THIS 9TH DAY OF DECEMBER 2024

PACHULSKI STANG ZIEHL & JONES LLP

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Counsel for Plaintiff Highland Capital Management, L.P.

- and -

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Counsel for Defendants James Dondero, NexPoint Advisors, HCMS, and NexPoint Real Estate

IT IS SO ORDERED THIS 12TH DAY OF DECEMBER 2024.

THE HONORABLE BRANTLEY STARR
UNITED STATES DISTRICT JUDGE

EXECUTION VERSION

SETTLEMENT AGREEMENT & GENERAL RELEASE

THIS SETTLEMENT AGREEMENT & GENERAL RELEASE (this "**Agreement**") is entered into as of May 19, 2025 (the "**Agreement Date**"), by and among Highland Capital Management, L.P., a Delaware limited partnership ("**Highland**"), the Highland Claimant Trust, a Delaware statutory trust governed by the Delaware Statutory Trust Act (the "**Claimant Trust**"), the Highland Litigation Sub-Trust, a Delaware statutory trust governed by the Delaware Statutory Trust Act (the "**Litigation Sub-Trust**"), and the Highland Indemnity Trust, a Delaware statutory trust governed by the Delaware Statutory Trust Act (the "**Indemnity Trust**", and together with Highland, the Claimant Trust and the Litigation Sub-Trust, the "**Highland Entities**"), on the one hand, and Hunter Mountain Investment Trust, a Delaware statutory trust ("**HMIT**"), Beacon Mountain LLC, a Delaware limited liability company ("**Beacon Mountain**"), Rand Advisors, LLC, a Delaware limited liability company ("**Rand Advisors**"), Rand PE Fund I, LP, a Delaware series limited partnership ("**Rand PE Fund**"), Rand PE Fund Management, LLC, a Delaware limited liability company ("**Rand GP**"), Atlas IDF, LP, a Delaware limited partnership ("**Atlas IDF**"), Atlas IDF GP, LLC, a Delaware limited liability company ("**Atlas GP**" and together with HMIT, Beacon Mountain, Rand Advisors, Rand PE Fund, Rand GP and Atlas IDF, the "**HMIT Entities**"), on the other hand. The Highland Entities and the HMIT Entities are collectively referred to as the "**Parties**," and each individually, as a "**Party**".

DEFINITIONS

Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Claimant Trust Agreement or the Plan, as applicable (in each case, as hereinafter defined). For purposes of this Agreement, the following capitalized terms have the following meanings:

"**9019 Motion**" means the motion seeking entry of the Bankruptcy Court Order pursuant to Bankruptcy Rule 9019 and in accordance with Section 18.

"**Action**" means any action, claim, demand, arbitration, hearing, charge, complaint, investigation, examination, indictment, litigation, suit or other civil, criminal, administrative or investigative proceedings, including any petition under Rule 202 of the Texas Rules of Civil Procedure.

"**Affiliate**" means a Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified Person as of the date on which, or at any time during the period for which, the determination of affiliation is being made. The term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interest, by contract or otherwise.

"**Amended Complaint**" means the *Amended Complaint and Objection to Claims*, filed as docket number 158 in *Kirschner v. Dondero*, Adv. Pro. No. 21-03076-sgj (Bankr. N.D. Tex. May 19, 2022).

EXHIBIT
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"**Bankruptcy Case**" means *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj (Bankr. N.D. Tex.) and its related proceedings.

"**Bankruptcy Code**" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended).

"**Bankruptcy Court**" means the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division.

"**Bankruptcy Court Approval Date**" means the date on which the Bankruptcy Court Order is issued.

"**Bankruptcy Court Order**" means an order of the Bankruptcy Court approving the allowance of the HMIT's Class 10 Interest as provided in this Agreement pursuant to the 9019 Motion.

"**Bankruptcy Rules**" means the Federal Rules of Bankruptcy Procedure.

"**Business Day**" means any day other than (i) a Saturday or a Sunday, (ii) a day on which the Federal Reserve Bank of New York or the New York Stock Exchange is closed, or (iii) a day on which banks in the States of Texas are required, or authorized by law, to close.

"**Claimant Trust Agreement**" means that certain Claimant Trust Agreement of the Claimant Trust (as may have been or may be amended, supplemented or otherwise modified in accordance with the terms thereof from time to time), effective as of August 11, 2021, by and among Highland, as settlor, James P. Seery, Jr., a Claimant Trustee, and Wilmington Trust, National Association, a national banking association, as Delaware trustee.

"**Claims**" means any claims, debts, liabilities, demands, obligations, breaches of contract, breaches of duty or any relationship, misfeasance, malfeasance, promises, acts, omissions, agreements, liens, losses, costs and expenses (including attorney's fees and related costs), damages, injuries, suits, Actions, and causes of action of whatever kind or nature, whenever and however, arising, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise.

"**Class 10**" means the class of Claims or Equity Interests described in Article II. Section H.10. of the Plan.

"**Class 11**" means the class of Claims or Equity Interests described in Article II. Section H.11. of the Plan.

"**Committee**" means the official committee of unsecured creditors appointed in the Bankruptcy Case.

"**Confirmation Order**" means that certain *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Docket No. 1943], as conformed in accordance with the Fifth Circuit's rulings.

"**Dugaboy Note**" means that certain Promissory Note dated May 31, 2017, in the original face amount of $24,268,621.69, from The Dugaboy Investment Trust, as Maker, and Highland Capital Management, L.P. and The Get Good Non-Exempt Trust, collectively as Payee.

"**Final Court Approval Date**" means the date on which the Bankruptcy Court Order becomes a Final Order.

"**Final Order**" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for certiorari, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for certiorari, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Highland Entities, as applicable, or, in the event that an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or certiorari, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for certiorari, or move for a new trial, reargument or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

"**Gatekeeper**" means the gatekeeping provision contained in Article IX. F of the Plan as of August 11, 2021.

"**Governmental Authority**" means any federal, provincial, state, local or foreign government or political subdivision thereof, court of competent jurisdiction, administrative agency, judicial or arbitral body, or commission or other governmental or regulatory authority or instrumentality.

"**Highland Released Parties**" means collectively (i) the Highland Entities, (ii) any Affiliate of any Highland Entity and any Person directly or indirectly majority-owned by any Highland Entity or any of their respective Affiliates, (iii) any Person directly or indirectly managed by any Highland Entity or any of their respective Affiliates, whether by contract or otherwise (the entities described in clauses (i)-(iii), collectively, the "**Highland Parties**"), (iv) each of the Highland Parties' current and former trustees and administrators (including the trustees of any of the Claimant Trust, the Litigation Sub-Trust, or the Indemnity Trust), officers, executives, agents, directors, advisors, advisory representatives, consultants, administrators, managers, members, partners (including limited and general partners), employees, beneficiaries, shareholders, other equityholders, participants, direct and indirect subsidiaries and parents, Affiliates, successors, designees, and assigns, (v) the current and former members of the Oversight Board of the Claimant Trust in any capacity (including Richard Katz) and their Affiliates, (vi) Farallon Capital Management, LLC, Stonehill Capital Management, LLC, Muck Holdings LLC, and Jessup Holdings LLC, in each case, in any capacity, (vii) the Independent Board and its members John Dubel, James P. Seery, Jr., and Russell Nelms, (viii) James P. Seery, Jr., individually and in all capacities for any Highland Released Party, including as Chief Executive Officer of Highland Capital Management, L.P., Claimant Trustee of the Claimant

Trust, and the Indemnity Trust Administrator of the Indemnity Trust, (ix) Marc S. Kirschner, individually and as Trustee of the Litigation Sub-Trust, (x) the Committee and each of its members, (xi) the professionals (and their respective firms) (a) retained by Highland or the Committee during the Bankruptcy Case or which provided services to Highland or the Committee during the Bankruptcy Case or (b) retained by any Highland Released Party on or after August 11, 2021, (xii) any Person indemnified by any Highland Party (the Persons described in clauses (i)-(xii), collectively, the "**Highland Covered Parties**"), and (xii) each Highland Covered Party's current and former officers, executives, agents, attorneys (and their respective firms), directors, advisors, consultants, administrators, managers, members, partners (including limited and general partners), employees, beneficiaries, shareholders, other equityholders, participants, direct and indirect subsidiaries and parents, Affiliates, successors, designees, and assigns, if not otherwise included in the defined term "Highland Covered Parties;" provided, however, and for the avoidance of doubt, and without in any way limiting the scope of the foregoing, "Highland Covered Parties" shall include Highland CLO Funding, Ltd., Highland HCF Advisor, Ltd., Highland Multi Strategy Credit Fund, L.P., Highland Multi Strategy Credit Fund GP, L.P., Highland Multi Strategy Credit GP, LLC, Highland Multi Strategy Credit Fund, Ltd., Highland Select Equity Master Fund, L.P., Highland Select Equity Fund GP, L.P., Highland Select Equity Fund, L.P., Highland Restoration Capital Partners Master, L.P., Highland Restoration Capital Partners GP, LLC, Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Offshore Director, LLC, Acis CLO Management, LLC, Neutra, Ltd., Pollack, Ltd., Acis CLO Management Holdings, L.P., Acis CLO Management Intermediate Holdings I, LLC, Acis CLO Management Intermediate Holdings II, LLC, Acis CLO Assets Holdings Limited, CHG Houston Holdings, LLC, Penant Management, L.P., Penant Management GP, LLC, Gunwale, LLC, HE Capital, LLC, Gleneagles CLO, Ltd., Aberdeen Loan Funding, Ltd. Highland Argentina Regional Opportunity Fund GP, LLC, Highland Argentina Regional Opportunity Fund, L.P., Highland Argentina Regional Opportunity Fund, Ltd., Highland Argentina Regional Opportunity Master Fund, L.P., Highland Latin America Consulting, Ltd., Highland Capital Management Korea Limited, Highland Capital Management Latin America, L.P., Highland Latin America GP, Ltd., Highland Latin America LP, Ltd., Highland Offshore Partners, L.P. (Diversified), Brentwood CLO, Ltd., Eastland CLO, Ltd., Bristol Bay Funding Ltd., Jasper CLO Ltd., Highland Legacy Limited, Grayson CLO, Ltd., Greenbriar CLO, Ltd., Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Liberty CLO, Ltd., Valhalla CLO, Ltd., Stratford CLO Ltd., Southfork CLO, Ltd., Pam Capital Funding, L.P., Stonebridge-Highland Healthcare Private Equity Fund, Pamco Cayman Ltd., Red River CLO, Ltd., Rockwall CDO II Ltd., Rockwall CDO, Ltd., Westchester CLO, Ltd. Longhorn Credit Funding, LLC, PensionDanmark Pensionsforsikringsaktieselskab, Highland Dynamic Income Master Fund L.P., Highland Dynamic Income Fund GP, LLC, Highland Dynamic Income Fund, L.P., Highland Dynamic Income Fund, Ltd., Highland JHT Holdings, LLC, Highland Prometheus Master Fund, L.P., Highland Prometheus Feeder Fund I, L.P., Highland Prometheus Feeder Fund II, L.P., Highland Sunbridge GP, LLC, Trussway Holdings, LLC, Trussway Industries, LLC, TW Company, Inc., T-Way Investments, LLC, SSP Holdings, LLC, Highland Flexible Income UCITS Fund, and Acis CLO 2017-7, Ltd. *Notwithstanding the forgoing or anything herein to the contrary*, none of "Highland Released Parties", "Highland Parties", nor "Highland Covered Parties" shall include James Dondero, Scott Ellington, Isaac Leventon, or any Person directly or indirectly owned as of the date hereof (in whole or in part) by, and/or Affiliated as of the date hereof with, or claiming

through, under or on behalf of, any of Mr. Dondero, Mr. Ellington, or Mr. Leventon in any manner and none of such Persons are released from any Claim by any Person in connection with this Agreement.

"**HMIT Class 10 Interest**" means the unvested, contingent Class 10 interest in the Claimant Trust (a) to be allowed on account of HMIT's pre-petition equity interest in Highland, and (b) subject to the terms and conditions, as applicable, of the Plan, the Plan Documents, the Claimant Trust Agreement, and in accordance with this Agreement, and applicable law.

"**HMIT Note**" means that certain Secured Promissory Note dated December 21, 2015, in the original face amount of $63,000,000 from HMIT, as maker, and Highland, as payee.

"**HMIT Note Claims**" means any Claim related to, in connection with or arising out of the HMIT Note.

"**HMIT Released Parties**" means collectively (i) the HMIT Entities, (ii) any Affiliate of any HMIT Entity and any Person directly or indirectly majority owned by any HMIT Entity or any of their respective Affiliates, (iii) any Person directly or indirectly managed by any HMIT Entity or any of their respective Affiliates, whether by contract or otherwise (the entities described in clauses (i) – (iii), collectively, the "**HMIT Parties**"), (iv) each of the HMIT Parties' current and former trustees, administrators, officer, executives, agents, directors, advisors, consultants, manager, members, partners (including limited and general partners), employees, beneficiaries, shareholders, other equityholders, participants, direct and indirect subsidiaries and parents, Affiliates, successors, designees, and assigns (v) the professionals (and their respective firms (a) retained by any HMIT Party during the Bankruptcy Case or which provided services to any HMIT Party during the Bankruptcy Case or (b) retained by any HMIT Released Party on or after August 11, 2021, (vi) any Person indemnified by any HMIT Party (the Persons described in clauses (i) – (vi), collectively, the "**HMIT Covered Parties**"), and (vii) each HMIT Covered Party's current and former officers, executives, agents, directors, advisors, consultants, administrators, managers, members, partners (including limited and general partners), employees, beneficiaries, shareholders, other equityholders, participants, direct and indirect subsidiaries and parents, Affiliates, successors, designees, and assigns, if not otherwise included in the defined term "HMIT Covered Parties." *Notwithstanding the forgoing*, none of "HMIT Released Parties", "HMIT Parties", nor "HMIT Covered Parties" shall include James Dondero, Scott Ellington, Isaac Leventon, or any Person directly or indirectly owned as of the date hereof (in whole or in part) by, and/or Affiliated as of the date hereof with, or claiming through, under or on behalf of, any of Mr. Dondero, Mr. Ellington, or Mr. Leventon in any manner, and none of such Persons are released from any Claims by any Person in connection with this Agreement.

"**Indemnity Trust Administrator**" has the meaning given to it in the Indemnity Trust Agreement.

"**Indemnity Trust Agreement**" means that certain *Second Amended and Restated Indemnity Trust Agreement of the Indemnity Trust* (as may be amended, supplemented or otherwise modified in accordance with the terms thereof from time to time), effective as of [April 28], 2025, by and among the Claimant Trust, as grantor, James P. Seery, Jr., as indemnity

trust administrator, and Wilmington Trust, National Association, a national banking association, as indemnity trustee and Delaware trustee.

"**Indemnity Trust Assets**" has the meaning set forth in the Indemnity Trust Agreement, but excluding Highland, the Claimant Trust, and their respective assets.

"**Independent Board**" means the independent board appointed by the Bankruptcy Court on January 9, 2020, pursuant to that certain *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 339].

"**Kirschner Claims**" means all Claims and causes of action that were asserted or could have been asserted by the Litigation Trustee of the Litigation Sub-Trust, in the Amended Complaint.

"**Liability**" means any liability, debt, obligation, loss, damage, claim, cost or expense (including costs of investigation and defense and attorney's fees, costs and expenses), in each case, whether direct or indirect, whether accrued or contingent, whether or not involving a third-party claim, and including incidental and consequential damages and diminution of value.

"**Litigation Protections**" means, individually and collectively, the rights, duties, and obligations set forth in Sections 1 – 2 and Sections 9 - 16.

"**Litigation Sub-Trust**" means the Highland Litigation Sub-Trust, a Delaware statutory trust governed by the Delaware Statutory Trust Act.

"**Litigation Sub-Trust Agreement**" means that certain Litigation Sub-Trust Agreement of the Litigation Sub-Trust (as may be amended, supplemented or otherwise modified in accordance with the terms thereof from time to time), effective as of August 16, 2021, by and among James P. Seery, Jr., as Claimant Trustee of the Claimant Trust, Wilmington Trust, National Association, a national banking association, as Delaware Trustee, and the Litigation Trustee.

"**Litigation Trustee**" means Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust.

"**LPA**" means that certain *Sixth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.* (as may be amended, supplemented or otherwise modified in accordance with the terms thereof from time to time), dated as of October 4, 2021.

"**Operating Expenses**" means, except for the expenses of the Indemnity Trust (including any payments to Trust Indemnified Parties or Indemnified Parties (in each case, as defined, and pursuant to the terms and conditions set forth, in the Indemnity Trust Agreement)), the expenses of operating and administering the Highland Entities, including legal expenses, employee compensation, Claimant Trustee/CEO and other trust and trustee related compensation, incentive compensation, and customary general and administrative expenses.

"**Original Plan**" means that certain *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* attached as Exhibit A to the *Order (A) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as modified) and (B) Granting Related Relief*, filed at Docket No. 1943 on the Bankruptcy Court's docket.

"**Oversight Board**" means the oversight board of the Highland Claimant Trust.

"**Pending Litigation**" means (i) *Hunter Mountain Investment Trust v. Highland Cap. Mgmt., L.P.*, Case No. 3:23-cv-02071-E (N.D. Tex.), on remand to the Bankruptcy Court (including *Hunter Mountain Investment Trust's Emergency Motion for Leave to File Adversary Proceeding* filed at Bankruptcy Court Docket No. 3699 and all proceedings, decisions, and orders relating there); (ii) *Dugaboy Investment Trust v. Highland Cap. Mgmt, L.P.*, 3:24-cv-01531-X (N.D. Tex.) (only as to HMIT), and (iii) *Hunter Mountain Investment Trust v. Highland Cap. Mgmt., L.P.*, Case No. 3:24-cv-01786-L (N.D. Tex.).

"**Permitted Investments**" has the meaning set forth in the Indemnity Trust Agreement.

"**Person**" means any natural person, partnership, limited liability partnership, corporation, limited liability company, association, joint stock company, trust, estate, joint venture, unincorporated organization or Governmental Authority.

"**Plan**" means that certain *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* as conformed in accordance with the Fifth Circuit's rulings.

"**Plan Documents**" has the meaning given to it in the Plan.

"**Plan Protections**" means, collectively, the provisions of the Plan contained in Article IX thereof.

"**Pro Rata**" means the proportion that (a) the allowed amount of a particular Claim or Equity Interest in Class 10 bears to (b) the aggregate allowed amount of all Claims or Equity Interests in Class 10.

"**Threats**" means any written threats of legal action, legal demands, filed complaints, petitions for pre-suit discovery, suits, litigations, arbitrations, actual or threated restraining orders or injunctions made in writing, or similar written actions of any kind, or sworn statements evidencing the same, in any forum against any Trust Indemnified Parties or Indemnified Party (both as defined in the Indemnity Trust Agreement), excluding any such action that would otherwise be a Threat except that any applicable statute of limitations that could be applicable to such action has expired.

"Threats Notice" means the written notice of any Threats received by the Indemnity Trust with respect to any Trust Indemnified Parties or Indemnified Party (both as defined in the Indemnity Trust Agreement), that is hereby required to be provided by the Indemnity Trust to the HMIT Entities, within five (5) Business Days after receipt of such Threat.

RECITALS

WHEREAS, as of the Petition Date, HMIT held Class B and Class C Limited Partnerships Interests in Highland;

WHEREAS, on December 21, 2015, HMIT entered into the HMIT Note with Highland, which had a total outstanding principal balance of Fifty-Seven Million Six Hundred Ninety Thousand Six Hundred Forty and 95/100 Dollars ($57,690,640.95) as of the Petition Date (the "**HMIT Note Balance**");

WHEREAS, HMIT's Class B and Class C Limited Partnership Interests in Highland were extinguished on August 11, 2021, in accordance with the Plan;

WHEREAS, pursuant to the LPA, HMIT's capital account balance at Highland on account of its Class B and Class C Limited Partnership Interests on the Petition Date was Three Hundred Ninety-Four Million Six Hundred Thirty Thousand Eight Hundred Seventy-One and 53/100 Dollars ($394,630,871.53) (the "**HMIT Capital Account Balance**");

WHEREAS, some or all of the HMIT Entities have asserted certain Claims against certain Highland Entities and certain other Highland Covered Parties, including those asserted in the Pending Litigation;

WHEREAS, certain distributions to be made to the holders of allowed Class 10 Claims or Equity Interests pursuant to the terms and subject to the conditions set forth herein are premised on the consent of certain Highland Covered Parties in their capacity as Holders of Class 9 Interests, and such Persons are only willing to provide such consent in exchange for the releases as set forth in this Agreement;

WHEREAS, some or all of the Highland Entities have asserted certain Claims against certain HMIT Entities, including the HMIT Note Claims;

WHEREAS, the Parties wish to terminate, extinguish, and release any and all rights, duties, obligations and Claims that (a) any of the Highland Released Parties owed or have, or may have owed or have, to or with respect to any of the HMIT Released Parties, and (b) any of the HMIT Released Parties owed or have, or may have owed or have, to or with respect to any of the Highland Released Parties, as provided in this Agreement (collectively, the "**Rights and Obligations**");

WHEREAS, the Parties agree that the Litigation Protections are intended to enact a permanent cessation of all litigation concerning or related to the Highland Released Parties through and including the Agreement Date; and

WHEREAS, the Parties, individually and collectively, wish to (a) resolve all disputes between and/or among any of the Highland Entities and their respective indemnitees, on the one hand, and any of the HMIT Entities, on the other hand, including those asserted or attempted to be asserted in the Pending Litigation, (b) fix and allow HMIT's Class 10 Interest at the amount and on the terms provided herein; and (c) terminate, extinguish, and release all Rights and Obligations on the terms provided herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Stay and Dismissal of Pending Litigation With Prejudice.

(a) Within five (5) Business Days after the Agreement Date, the HMIT Entities shall take all steps necessary (at their own cost) to stay the Pending Litigation.

(b) Within five (5) Business Days after the Bankruptcy Court Approval Date, the HMIT Entities shall take all steps necessary (at their own cost) to dismiss the Pending Litigation with prejudice.

2. Maintenance of Stay and Dismissal of Certain Defendants from the Amended Complaint.

(a) The Litigation Trustee shall continue to maintain the stay of Adv. Proc. No. 21-03076-sgj and all related proceedings arising therefrom through the Bankruptcy Court Approval Date. Within five (5) Business Days after the Bankruptcy Court Approval Date, the Litigation Sub-Trust shall take all steps necessary (at its own cost) to dismiss, with prejudice, HMIT and Rand PE from Counts I, II, III, and XXIV of the Amended Complaint.

3. Cash Payment to HMIT. Within five (5) Business Days following the Bankruptcy Court Approval Date, Highland shall pay HMIT a one-time, lump sum of Five Hundred Thousand Dollars (US$500,000.00) (the "**Payment**") by wire transfer:

Hunter Mountain Investment Trust
C/o CLO Holdco, LLC
Hancock Whitney
Account # - 071173413
Routing # - 113000968
(469) 604-0955

4. HMIT Class 10 Interest.

(a) Subject to entry of the Bankruptcy Court Order, and the terms of this Agreement, the HMIT Class 10 Interest shall be deemed allowed in the amount of Three Hundred Thirty-Six Million Nine Hundred Forty Thousand Two Hundred Thirty and 58/100 Dollars (US$336,940,230.58), which amount represents the HMIT Capital Account Balance, less the HMIT Note Balance.

(b) Notwithstanding anything to the contrary in the Plan or the Claimant Trust Agreement, as an integral part of this Agreement to consent to the allowance of the HMIT Class 10 Interest and the other considerations in this Agreement, HMIT shall not be deemed, and no holder of the HMIT Class 10 Interest shall be, a Claimant Trust Beneficiary or a "Beneficiary" under the Claimant Trust Agreement, and the Highland Released Parties, individually and collectively, shall owe no duty to any HMIT Releasor (whether contractual, fiduciary, equitable,

statutory or otherwise), including with respect to the HMIT Class 10 Interest, in each case, except as expressly set forth in this Agreement. Furthermore, without limiting the foregoing and for the avoidance of doubt, the contractual right of the holder of the HMIT Class 10 Interest to receive or recover any payments or Indemnity Trust Assets from the Indemnity Trust as set forth in this Agreement or the Indemnity Trust Agreement does not make any HMIT Releasor or any other Person a beneficiary of the Indemnity Trust or under the Indemnity Trust Agreement.

(c) Notwithstanding anything to the contrary in the Plan, the Claimant Trust Agreement or the Indemnity Trust Agreement, in no event shall HMIT sell, transfer, assign, pledge, hypothecate, participate or otherwise dispose of or encumber the HMIT Class 10 Interest or any rights (including any right to payment) with respect thereto (collectively, a "**Class 10 Assignment**"), and any attempted Class 10 Assignment shall be null and void.

(d) For the avoidance of doubt, the HMIT Class 10 Interest is and shall remain senior to the not yet allowed, unvested contingent Class 11 Claims of Equity Interests as provided for in the Plan, the Plan Documents, and the Claimant Trust Agreement.

5. Initial Interim Distributions on the Allowed Class 10 Interests.

(a) Within five (5) Business Days after the Bankruptcy Court Approval Date, the Indemnity Trust shall distribute (the date on which such distribution is made, the "**Initial Interim Distribution Date**") Pro Rata to the Holders of allowed Class 10 Claims or Equity Interests cash in the aggregate amount of Ten Million Dollars (US$10,000,000.00) (the "**Initial Interim Cash Distribution Amount**"), by means of wire transfer with the Pro Rata portion in respect of the HMIT Class 10 Interest sent to the wire instructions contained in Section 3 ("**Wire Transfer**").

(b) Within five (5) Business Days after the Bankruptcy Court Approval Date (the "**Note Assignment Date**"), the Highland Entities shall cause the portion of the Dugaboy Note held by the Highland Entities to be distributed to HMIT in-kind and take all actions necessary for HMIT to become the holder of such portion of the Dugaboy Note, and shall in addition pay to HMIT cash in the aggregate amount of all principal and interest payments actually received on the Dugaboy Note by the Highland Entities, including the Indemnity Trust, from the Agreement Date to the Note Assignment Date. Prior to the Bankruptcy Court Approval Date, HMIT will engage an independent valuation service provider to value the Dugaboy Note for purposes of determining the magnitude of reduction to the outstanding allowed Class 10 Interests on account of such in-kind distribution, which shall not be less than Fifty percent (50%) of the current balance owed under the Dugaboy Note. The HMIT Entities acknowledge and agree that none of the Highland Entities are representing or warranting that the Dugaboy Note can be sold, or the price, if any, that could be received for the Dugaboy Note and further acknowledge and agree that any such purchase price may be de minimis.

6. Subsequent Distribution(s) on the Allowed Class 10 Interests.

(a) On December 1, 2027, the Indemnity Trust shall distribute (such distribution, collectively, the "**First Subsequent Distribution**", and the date on which such Subsequent Distribution is made, the "**First Subsequent Distribution Date**") Pro Rata to the

Holders of allowed Class 10 Claims or Equity Interests: cash in the aggregate amount of Six Million Five Hundred Thousand Dollars (US$6,500,000.00), by Wire Transfer.

(b) On December 1, 2028, the Indemnity Trust shall distribute (such distribution, collectively, the "**Second Subsequent Distribution**", and the date on which such Subsequent Distribution is made, the "**Second Subsequent Distribution Date**") Pro Rata to the Holders of allowed Class 10 Claims or Equity Interests cash in the aggregate amount of Six Million Five Hundred Thousand Dollars (US$6,500,000.00) by Wire Transfer.

(c) Notwithstanding anything herein to the contrary, the obligations of the Indemnity Trust to make the First Subsequent Distribution or Second Subsequent Distribution is subject in all respects to (i) there being no Threats and (ii) a determination in accordance with Article VIII, Section 8.1(c) of the Indemnity Trust Agreement that the Indemnity Trust Assets comprising such distributions are not reasonably necessary to satisfy current or potential Indemnification Obligations (as defined in the Indemnity Trust Agreement) to all persons who are or might become Beneficiaries (as defined in the Indemnity Trust Agreement).

7. Final Distribution on the Allowed Class 10 Interests.

(a) On the later of the Final Court Approval Date and April 1, 2029, the Indemnity Trust will distribute all excess remaining Indemnity Trust Assets in accordance with Article VIII of the Indemnity Trust Agreement; provided, however, that the obligation of the Indemnity Trust to make any such distributions and/or dissolve and wind up the affairs of the Indemnity Trust is subject in all respects to (i) there being no Threats and (ii) a determination in accordance with Article VIII of the Indemnity Trust Agreement that (1) a Final Order(s) (as defined in the Indemnity Trust Agreement) has been entered resolving all litigation, claims or proceedings in any forum of any kind which could give rise to Indemnity Obligations (as defined in the Indemnity Trust Agreement) and payment in full of all such Indemnity Obligations and (2) all applicable statutes of limitations and any applicable tolling of such statutes of limitation have expired.

(b) The Indemnity Trust agrees to not use Indemnity Trust Assets to fund Operating Expenses.

(c) Following the Bankruptcy Court Approval Date, at the request of Mark Patrick, solely in his capacity, and to the extent he remains, as administrator of HMIT, but not more often than quarterly, Highland and the Indemnity Trust Administrator agree to review (i) the status of their respective assets, (ii) the balance of cash held, (iii) the status of any claims made for indemnification and any resolutions thereof, (iv) the status of any litigation, and (v) forecasted operating expenses with Mr. Patrick, and will each work in good faith to reduce operating expenses where reasonably practicable; provided, however, that all such reporting shall be subject to Mr. Patrick's agreement to maintain confidentiality with respect to any non-public information.

8. Transfer Kirschner Claims; Dismissal of HMIT Note Claims.

(a) Within five (5) Business Days after the Bankruptcy Court Approval Date, but after the dismissal provided for in Section 2, the Litigation Sub-Trust shall execute a short-

form assignment in in favor of the HMIT Entities transferring all of the Litigation Sub-Trust's right, title, and interest in and to the Kirschner Claims (the "**Kirschner Transfer**"). Such assignment shall be in a form mutually acceptable to the Parties and its substance shall be consistent with the terms, conditions and limitations set forth in this Agreement, including Section 8(b) below. Each HMIT Entity acknowledges and agrees that none of the Highland Entities will have any duty or obligation to assist the HMIT Entities in any way with respect to the Kirschner Claims, including the prosecution thereof, except as provided in this Agreement, including the terms of Section 8(c) below.

(b) THE HMIT ENTITIES SPECIFICALLY ACKNOWLEDGE AND AGREE THAT THE LITIGATION SUB-TRUST IS TRANSFERRING THE KIRSCHNER CLAIMS ON AN "AS IS AND WITH ALL FAULTS" BASIS AND THAT THE HMIT ENTITIES ARE NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE HIGHLAND ENTITIES OR THEIR REPRESENTATIVES AS TO ANY MATTERS CONCERNING THE KIRSCHNER CLAIMS AND AMENDED COMPLAINT, INCLUDING WITH RESPECT TO THE ENFORCEABILITY, TRANSFERABILITY, VIABILITY, STRENGTH, OR VALUE OF ANY OF THE KIRSCHNER CLAIMS OR THE AMENDED COMPLAINT. The HMIT Entities hereby specifically acknowledge that they have carefully reviewed this Section and have had the opportunity to discuss its import with legal counsel and that the provisions of this Section are a material part of this Agreement. Thus, if for any reason HMIT is precluded from or is otherwise unable to prosecute all or any of the Kirschner Claims, (i) the HMIT Releasors shall have no recourse against any Highland Released Parties whatsoever and shall not be entitled to compensation of any kind, it being agreed that the HMIT Entities are otherwise receiving adequate consideration for the duties and obligations they are undertaking pursuant to this Agreement and (ii) there will be no effect whatsoever on the validity and enforceability of this Agreement or any of the other transactions contemplated hereby.

(c) As promptly as reasonably practicable following the Bankruptcy Court Approval Date, the Highland Entities shall provide to the HMIT Entities electronic copies of written discovery requests and responses thereto, and documents produced in discovery in respect of the Kirschner Claims and the Amended Complaint. The Highland Entities will not provide any other documents regarding the Kirschner Claims including any attorney-client communications and any documents subject to the attorney work-product doctrine or similar privileges or immunities concerning the Kirschner Claims (collectively, the "**Kirschner Privileges**"), it being understood and agreed that the Highland Entities are retaining, and not transferring or waiving, the Kirschner Privileges.

(d) Each Party acknowledges and agrees that if (i) the Kirschner Transfer is found or deemed to be impermissible or invalid, for any reason, or (ii) any HMIT Entity materially breaches this Agreement, the Kirschner Claims and Amended Complaint will revert to, and remain an asset of, the Litigation Sub-Trust.

9. General Release By The HMIT Entities. On the Bankruptcy Court Approval Date, and to the maximum extent permitted by law, each of the HMIT Entities, on behalf of itself and each of its respective Affiliates (including Affiliated and/or managed funds, accounts and other investment vehicles) and its and their respective current and former advisors, consultants,

administrators, trustees, directors, officers, managers, executives, members, partners (including limited and general partners), employees, beneficiaries, direct and indirect shareholders and other equity holders, agents, participants, direct and indirect subsidiaries and parents, successors, predecessors, designees, and assigns (whether by operation of law or otherwise) and all Persons claiming through, under or on their behalf (collectively with the HMIT Entities, the "**HMIT Releasors**") hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, discharges, remises, and exonerates each Highland Released Party from, and waives and relinquishes, any and all Claims, which the HMIT Releasors, or any Person claiming through, under, or on behalf of any of the HMIT Releasors, ever had, now has, or hereafter can, shall, or may have against any of the Highland Released Parties by reason of, arising from, relating to, or in connection with, any fact, matter, or transaction that occurred prior to the Agreement Date, including any fact, matter, transaction, or occurrence asserted by any HMIT Entity in the Pending Litigation or in connection with, relating to, or with respect to the Bankruptcy Case, the management or operation of any of the Highland Released Parties, or the Highland Released Parties' property and including any defense, affirmative defenses, and right to setoff arising out of, or otherwise related to, any of the foregoing (collectively, the "**HMIT Entity Released Claims**").

10. General Release By The Highland Entities. On the Bankruptcy Court Approval Date, and to the maximum extent permitted by law, each of the Highland Entities, on behalf of itself and each of its respective Affiliates (including Affiliated and/or managed funds, accounts and other investment vehicles) and its or their respective current and former advisors, consultants, administrators, trustees, directors, officers, managers, executives, members, partners (including limited and general partners), employees, beneficiaries, direct and indirect shareholders and other equity holders, agents, participants, direct and indirect subsidiaries and parents, successors, predecessors, designees, and assigns (whether by operation of law or otherwise) and all Persons claiming through, under or on their behalf (collectively with the Highland Entities, the "**Highland Releasors**") hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, discharges, remises, and exonerates each HMIT Released Party from, and waives and relinquishes, any and all Claims which the Highland Releasors, or any Person claiming through, under, or on behalf of any of the Highland Releasors, ever had, now has, or hereafter can, shall, or may have against any of the HMIT Released Parties by reason of, arising from, relating to, or in connection with, any fact, matter, or transaction that occurred prior to the Bankruptcy Court Approval Date, including any fact, matter, transaction, or occurrence in connection with, relating to, or with respect to the Bankruptcy Case, the management or operation of any of the HMIT Released Parties, or the HMIT Released Parties' property and including any defense, affirmative defenses, and right to setoff arising out of, or otherwise related to, any of the foregoing (collectively, the "**Highland Released Claims**").

11. Further Provisions Concerning The General Releases.

(a) **FOR THE AVOIDANCE OF DOUBT, THE FOREGOING RELEASES ARE INTENDED TO BE GENERAL AND INCLUDE A RELEASE OF ALL RELEASED CLAIMS, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, ARISING OR EXISTING FROM THE BEGINNING OF TIME THROUGH AND INCLUDING THE AGREEMENT DATE.**

(b) To the maximum extent permitted by law, each of the HMIT Entities and the Highland Entities, on their own behalf and on behalf of the other HMIT Releasors and Highland Releasors, respectively, waives the benefit of any statute or other principle of law or equity that limits the applicability of a release with respect to Claims that the releasing party does not know or suspect to exist in his, her or its favor at the time of executing the release.

(c) Without limiting the scope of the foregoing waiver, in connection with the foregoing release, each of the HMIT Entities and the Highland Entities, on its own behalf and on behalf of the other HMIT Releasors and Highland Releasors, respectively, waives the benefits of Section 1542 of the California Civil Code (to the extent, if any, that Section 1542 might apply to the foregoing release), which provides as follows:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Each of the HMIT Entities and the Highland Entities, on their own behalf and on behalf of the other HMIT Releasors and Highland Releasors, respectively, hereby agrees that the provisions of Section 1542 of the Civil Code of the State of California and all similar federal or state law, rights, rules or legal principles, legal or equitable, in each case solely to the extent such provisions apply, **ARE HEREBY KNOWINGLY AND VOLUNTARILY WAIVED AND RELINQUISHED BY EACH OF THE HMIT ENTITIES AND THE HIGHLAND ENTITIES, ON THEIR OWN BEHALF AND ON BEHALF OF THE OTHER HMIT RELEASORS AND HIGHLAND RELEASORS, RESPECTIVELY,** in each and every capacity, to the full extent that such rights and benefits pertaining to the matters released herein may be waived, and each of the HMIT Entities and the Highland Entities, on their own behalf and on behalf of the other HMIT Releasors and Highland Releasors, respectively, hereby agrees and acknowledges that this waiver and relinquishment is an essential term of this Agreement, without which the consideration provided would not have been given.

In connection with such waiver and relinquishment, each of the HMIT Entities and Highland Entities acknowledges that it is aware that it may hereafter discover Claims presently unknown or unsuspected, or facts in addition to or different from those which it now knows or believes to be true, with respect to the matters released herein. Nevertheless, it is the intent of each of the HMIT Entities and the Highland Entities, on its own behalf and on behalf of the other HMIT Releasors and Highland Releasors, respectively, in executing this Agreement fully, finally, and forever to settle and release all such matters, and all Claims related thereto, which exist, may exist or might have existed (whether or not previously or currently asserted in any action) which are the subject to the releases granted above.

(d) As an integral component of this Agreement, and notwithstanding the Parties' intent set forth in the preamble hereto and the general nature of the releases in Sections 9 and 10, should:

(i) any HMIT Releasor contend or assert that any Claim of any kind whatsoever held by any HMIT Releasor against any Highland Released Party survives this Agreement and is in any way related to or arising from or in connection with any HMIT Entity Released Claim (such claim or cause of action, a "**HMIT Alleged Claim**"), such HMIT Releasor will be deemed to have irrevocably, fully, and finally assigned such HMIT Alleged Claim to the Highland Entities and the Highland Entities will be deemed to have forever, finally, full, unconditionally, and irrevocably, and completely released such HMIT Alleged Claim.

(ii) any Highland Releasor contend or assert that any Claim of any kind whatsoever held by any Highland Releasor against any HMIT Released Party survives this Agreement and is in any way related to or arising from or in connection with any Highland Entity Released Claim (such claim or cause of action, a "**Highland Alleged Claim**"), such Highland Releasor will be deemed to have irrevocably, fully, and finally assigned such Highland Alleged Claim to the HMIT Entities and the HMIT Entities will be deemed to have forever, finally, full, unconditionally, and irrevocably, and completely released such Highland Alleged Claim.

12. Covenant Not To Sue; Limitation on Standing. Upon the Agreement Date:

(a) Each of the HMIT Releasors covenants and agrees that it will not institute or prosecute any Action, in law, in equity or otherwise, against any of the Highland Released Parties, to recover, enforce, investigate, or collect any HMIT Entity Released Claim and will not (i) induce, encourage or direct any other Person to do so or (ii) act in concert with or assist (financially or otherwise) any other Person in doing so.

(b) Each of the Highland Releasors covenants and agrees that it will not institute or prosecute any Action, in law, in equity or otherwise, against any of the HMIT Released Parties, to recover, enforce, investigate, or collect any Highland Entity Released Claim and will not (i) induce, encourage or direct any other Person to do so or (ii) act in concert with or assist (financially or otherwise) any other Person in doing so.

(c) For the avoidance of doubt, this Agreement shall not operate to give any HMIT Entity standing for any purpose in connection with the Bankruptcy Case (or in connection with any appeal arising from any order entered by the Bankruptcy Court), except for the limited purpose of seeking Court approval of this Agreement (including with respect to any appeal concerning any order entered granting or denying such approval), and except for the limited purpose of enforcing this Agreement, no HMIT Entity shall commence any Action in connection with the HMIT Class 10 Interest.

13. Representations and Warranties.

(a) Each of the HMIT Entities hereby represents and warrants that every HMIT Entity Released Claim has not heretofore been assigned or encumbered and is not the subject of a transfer (as such term is defined in 11 U.S.C. § 101(54)), by any HMIT Releasor.

(b) The HMIT Entities, on their own behalf and on behalf of the other HMIT Releasors, acknowledge and agree that each Plan Provision is lawful, effective, and binding on the HMIT Releasors. The HMIT Entities further agree, on their own behalf and on behalf of the

other HMIT Releasors, that the HMIT Releasors will never, in any way, challenge or seek to modify, nullify, vacate, or revoke, or induce, encourage or direct any other Person to do so or act in concert with or assist (financially or otherwise) any other Person in doing so the Confirmation Order, the Plan, the Plan Protections, or any Plan Document, including the Claimant Trust Agreement, the LPA, the Indemnity Trust Agreement or the Litigation Sub-Trust Agreement, in the Bankruptcy Court, in any other state or federal court, in any other forum or tribunal, or otherwise, including administrative or regulatory tribunals and foreign courts.

(c) Each of the Highland Entities hereby represents and warrants that every Highland Entity Released Claim has not heretofore been assigned or encumbered and is not the subject of a transfer (as such term is defined in 11 U.S.C. § 101(54)), by any Highland Releasor.

(d) Each Party severally represents and warrants as to itself only that: (i) it has taken all necessary action to authorize and approve the execution, delivery and performance of this Agreement; (ii) such Party has full power and authority to execute and deliver this Agreement; and (iii) this Agreement constitutes a valid, legal and binding obligation of such Party, and is enforceable subject to its terms. Each individual signatory hereto individually warrants and represents to all Parties hereto that such individual has full power and authority to act on behalf of and bind the Party for which he or she has executed this Agreement; provided, however that no signatory shall otherwise provide any warranty or representation or otherwise be a party to this Agreement on an individual basis.

14. No Continuing Rights, Duties or Obligations. Except for the rights, duties, and obligations expressly set forth in this Agreement, all Rights and Obligations that existed or may have existed shall be deemed terminated, extinguished, and released upon the Agreement Date. For the avoidance of doubt, from and after the Agreement Date, (a) the Highland Released Parties, individually and collectively, shall owe no duty, past or present, including with respect to the Kirchner Claims, to the HMIT Released Parties, individually and collectively, whether contractual, fiduciary, equitable, statutory or otherwise, except as arising out of this Agreement, and (b) the HMIT Released Parties, individually and collectively, shall owe no duty to the Highland Released Parties, individually and collectively, whether contractual, fiduciary, equitable, statutory or otherwise, except as arising out of this Agreement.

15. Gatekeeper Standard.

(a) The HMIT Entities and the Highland Entities, on their own behalf and on behalf of the other HMIT Releasors and Highland Releasors, respectively, acknowledge and agree that, notwithstanding the United States Court of Appeals for the Fifth Circuit's decision in *Highland Capital Management Fund Advisors, L.P. v. Highland Capital Management, L.P.*, No. 23-10^{53}4 (5th Cir. Mar. 18, 2025), the "Gatekeeper" provisions contained in Highland's Original Plan is forever binding on each of the HMIT Entities and any Persons claiming through, under or on behalf of any of them, and for a claim or cause of action to be "colorable" for purposes of the Gatekeeper, it must be found by final order of the Bankruptcy Court (the "**Gatekeeper Court**"), which order shall be subject to appeal to a court of competent jurisdiction, to have satisfied the "Gatekeeper Colorability Test" as such term is defined in *In re Highland Capital Management, L.P.*, 2023 Bankr. LEXIS 2104 at *124-36 (Bankr. N.D. Tex. Aug. 24, 2023).

(b) The HMIT Entities and the Highland Entities, on their own behalf and on behalf of the other HMIT Releasors and Highland Releasors, respectively, acknowledge and agree that compliance with the Gatekeeper requires (i) a motion seeking leave to sue an Exculpated Party (as that term is defined in Highland's original Plan) and a finding that the litigant's claims and causes of action are "colorable" attaching a complaint setting forth the basis for such claims or causes of action and (ii), in the Gatekeeper Court's sole discretion, an evidentiary hearing (during which the Gatekeeper Court may, among other things, hear testimony and assess the credibility of any witness(es)) to determine whether a proposed claim or cause of action is "colorable."

(c) The HMIT Entities and the Highland Entities, on their own behalf and on behalf of the other HMIT Releasors and Highland Releasors, respectively, further acknowledge and agree that the moving party under the Gatekeeper has the burden of satisfying the "Gatekeeper Colorability Test," and that the dismissal of the Pending Litigation shall have res judicata effect.

16. Indemnification.

(a) Without in any manner limiting the available remedies for any breach of this Agreement, the HMIT Entities, severally but not jointly, agree to indemnify, defend, and hold the Highland Released Parties harmless from and against any and all Liability, that may arise or result from or on account of, or that are otherwise related or attributable to (x) any breach of this Agreement or of any representation or warranty contained in the Agreement, including the representations and warranties of any HMIT Entity set forth in Section 13 or (y) any Actions brought or prosecuted by or on behalf of, any HMIT Releasor or that are induced, encouraged, assisted or directed by any HMIT Releasor or brought or prosecuted in concert with any HMIT Releasor against any Highland Released Party with respect to or related to any HMIT Entity Released Claims. Without limiting the scope of the foregoing in any manner, any HMIT Entity that breaches Section 12 shall be liable to the Highland Released Party against whom the applicable Action has been brought or prosecuted in violation of Section 12 for the reasonable attorneys' fees and costs incurred by such Highland Released Party in defending against or otherwise responding to such Action. Each HMIT Entity acknowledges and agrees that the HMIT Entities are and shall be severally but not jointly liable for any Liability arising from or out of any breach of this Agreement or of any representation or warranty set forth in this Agreement.

(b) Without in any manner limiting the available remedies for any breach of this Agreement, the Highland Entities, severally but not jointly, agree to indemnify, defend, and hold the HMIT Released Parties harmless from and against any and all Liability, that may arise or result from or on account of, or that are otherwise related or attributable to (x) any breach of this Agreement or of any representation or warranty contained in the Agreement, including the representations and warranties of any Highland Entity set forth in Section 13 or (y) any suits, proceedings, or other actions brought or prosecuted by or on behalf of, any Highland Releasor or that are induced, encouraged, assisted or directed by any Highland Releasor or brought or prosecuted in concert with any Highland Releasor against any HMIT Released Party with respect to or related to any Highland Entity Released Claims. Without in any manner limiting the scope of the foregoing, any Highland Entity that breaches Section 12 shall be liable to the HMIT

Released Party against whom the applicable Action has been brought or prosecuted in violation of Section 12 for the reasonable attorneys' fees and costs incurred by such HMIT Released Party in defending against or otherwise responding to such Action. Each Highland Entity acknowledges and agrees that the Highland Entities are and shall be severally but not jointly liable for any Liability arising from or out of any breach of this Agreement or of any representation or warranty set forth in this Agreement.

17. Execution. This Agreement may be executed by the exchange of signatures by facsimile or by PDF attachment to an email transmittal and in counterparts, and if so executed, shall be fully executed when a counterpart has been executed and delivered by all Parties hereto through counsel. All counterparts taken together shall constitute one and the same agreement and shall be fully enforceable as such.

18. Bankruptcy Court Order. The allowance of the allowed HMIT Class 10 Interest pursuant to Section 4 is subject to the entry of the Bankruptcy Court Order. To that end, the Highland Entities shall file the 9019 Motion no later than five (5) Business Days after the Agreement Date. Each Party shall, and shall cause each of their respective Affiliates to, undertake any and all actions in compliance with applicable law to obtain the Bankruptcy Court Order as promptly as practicable, and without limiting the foregoing, if an Action is threatened or instituted by any Person opposing the 9019 Motion or otherwise challenging the validity or legality, or seeking to restrain the consummation, of the transactions contemplated by this Agreement or the Bankruptcy Court Order, each Party shall, and shall cause its respective Affiliates to, use their commercially reasonable best efforts to avoid, resist, resolve or, if necessary, and defend to effectuate this Agreement and consummate the transactions hereby. If the 9019 Motion is not approved by entry of the Bankruptcy Court Order or if the Bankruptcy Court Approval is precluded from becoming a Final Order, (a) there will be no effect on, adjustment to, or impairment of, in any way, the validity and enforceability of the remainder of this Agreement, and the other transactions contemplated hereby, all of which shall remain in full force and effect and (b) each Party shall, and shall cause its respective Affiliates to, use their best efforts to seek the allowance of the HMIT Class 10 Interest in a substantially similar amount and on substantially similar terms as set forth in Section 4 to the fullest extent possible so as to give effect to the original intent of the Parties as closely as possible.

19. Fees and Expenses. Whether or not the transactions contemplated hereby are consummated or the Bankruptcy Court Order is obtained, and except as otherwise expressly provided in this Agreement, each Party will bear its respective fees, costs and expenses (including legal, accounting and other professional fees) incurred in connection with the preparation, negotiation, execution and performance of this Agreement or the transactions contemplated hereby, including with respect to each Party's respective obligations pursuant to Section 18. Notwithstanding the foregoing, if any Party hereto, any Highland Released Party, or any HMIT Released Party brings an Action to enforce or interpret the terms and provisions of this Agreement, the prevailing Person in that Action shall be entitled to have and recover from the non-prevailing Person all such fees, costs and expenses (including all court costs and reasonable attorneys' fees) as the prevailing Person may suffer or incur in the pursuit or defense of such action or proceeding.

20. Entire Agreement; No Other Representations. **THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN THE PARTIES, AND NO RIGHTS ARE CREATED IN FAVOR OF ANY PERSON OTHER THAN AS SPECIFIED OR EXPRESSLY SET FORTH IN THIS AGREEMENT. THERE ARE NO REPRESENTATIONS, CONDITIONS, WARRANTIES, STATEMENTS, OR UNDERSTANDINGS (COLLECTIVELY, "REPRESENTATIONS"), EITHER ORAL OR WRITTEN, BETWEEN THE PARTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. THE PARTIES EXPRESSLY AGREE THAT THEY HAVE NOT BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY ANY REPRESENTATIONS NOT SET FORTH IN THIS AGREEMENT; AND THE PARTIES EXPRESSLY AGREE THAT THEY HAVE NOT RELIED ON ANY REPRESENTATIONS NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. THE PARTIES EXPRESSLY AGREE THAT THEY ARE ENTERING INTO THIS AGREEMENT RELYING SOLELY ON THEIR OWN JUDGMENT AND NOT ON ANY REPRESENTATIONS BY ANY PARTY, EXCEPT FOR THOSE REPRESENTATIONS EXPRESSLY SET FORTH IN THIS AGREEMENT. THE PARTIES AGREE THAT REPRESENTATIONS NOT EXPRESSLY SET FORTH IN THIS AGREEMENT SHALL NOT BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT, AND NEITHER THE HMIT RELEASED PARTIES NOR THE HIGHLAND RELEASED PARTIES SHALL HAVE ANY LIABILITY FOR ANY CONSEQUENCES ARISING AS A RESULT OF ANY REPRESENTATIONS NOT SET FORTH IN THIS AGREEMENT**.

21. Agreement and Release Knowing and Voluntary. The Parties acknowledge that they have considered this Agreement with their respective attorneys and have carefully read this Agreement, that it has been fully explained by their attorneys, and that they have had a reasonable opportunity to consider this Agreement. The Parties further represent that they know and fully understand the contents of this Agreement, that they intend to be legally bound by this Agreement and the releases and covenants contained herein, and that they are signing this Agreement, including the release provisions herein, voluntarily and of their own free will and without coercion, and with the benefit of advice of counsel.

22. Cooperation. The Parties agree to perform any services or actions reasonably necessary to carry out the terms and conditions of this Agreement or the transactions contemplated hereby, including the execution and delivery of reasonable additional documents, instruments, conveyances and/or assurances, in good faith, and to reasonably communicate and cooperate with one another in this regard. For the avoidance of doubt, nothing in this Section shall obligate the Highland Entities to assist the HMIT Entities in any way with respect to the Kirschner Claims, including the prosecution thereof.

23. Governing Law. This Agreement shall be construed pursuant to and governed by the laws of the State of Delaware (substantive and procedural) without reference to principles of conflicts of law that would result in the application of any other State's laws.

24. Jurisdiction/Venue. The Parties hereby irrevocably submit to the jurisdiction and venue of the Bankruptcy Court with respect to any Action arising out of or related to this Agreement or the subject matter hereof; if (and only if) the Bankruptcy Court lacks personal or

subject matter jurisdiction to adjudicate an Action arising out of or related to this Agreement or the subject matter hereof, then the Parties irrevocably submit to the jurisdiction and venue of the United States District Court for the Northern District of Texas.

25. No Admissions. All Parties acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed Claims and that this Agreement shall not constitute the admission of any fact or liability by any of them regarding any Claim, including the Claims released hereunder, and neither the terms hereof, nor the fact of this Agreement itself, shall be evidence of any kind in any Action, other than an Action to enforce the terms of the Agreement or any instrument executed in connection herewith or any claim for damages or other relief for breach of any representation or warranty contained herein or in any instrument executed in connection herewith.

26. Other Provisions.

(a) No representation, inducement, agreement, promise or understandings altering, modifying, amending, taking from or adding to, the terms and conditions hereof shall have any force or effect unless the same is in writing and validly executed by each of the Parties hereto.

(b) The waiver by any Party of any breach of, or default under, any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or default; provided, however, that for any such waiver to be enforceable, it shall be in writing and executed by the non-breaching Party.

(c) The headings contained in this Agreement are for convenience only and shall in no way restrict or otherwise affect the construction of the provisions hereof.

(d) The Parties shall each execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement.

27. Notices. All notices required or permitted to be provided hereunder shall be afforded to the respective parties to and through their counsel, and shall be transmitted simultaneously by electronic mail (with PDF attachments, as necessary) and by telefax, addressed as follows:

To the Highland Entities:

PACHULSKI STANG ZIEHL AND JONES LLP
Jeffrey N. Pomerantz
John A. Morris
10100 Santa Monica Boulevard
Los Angeles, California 90067-4003
310.277.6910
jpomerantz@pszjlaw.com
jmorris@pszjlaw.com

To the HMIT Entities:

KELLY HART PITRE
Louis M. Phillips
Amelia Hurt
301 Main Street, Suite 1600
225.381.9643
Louis.Phillips@Kellyhart.com
Amelia.Hurt@Kellyhart.com

28. Severability. Should any term, provision or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of the Agreement shall survive. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity and enforceability of any other provision of this Agreement.

29. Interpretive Provisions. Unless the express context otherwise requires: (a) the words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (b) words defined in the singular shall have a comparable meaning when used in the plural, and vice versa; (c) the words "Dollars" and "$" mean U.S. dollars; (d) references herein to a specific Section, Subsection, Recital, Schedule or Exhibit shall refer, respectively, to Sections, Subsections, Recitals, Schedules or Exhibits of this Agreement; (e) wherever the word "include," "includes" or "including" is used in this Agreement, it shall be deemed to be followed by the words ",without limitation,"; (f) references herein to any gender shall include each other gender; (g) references herein to any Person shall include such Person's heirs, executors, personal representatives, administrators, successors and assigns; provided, however, that nothing contained in this clause (g) is intended to authorize any assignment or transfer not otherwise permitted by this Agreement; (h) with respect to the determination of any period of time, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding"; (i) the word "or" shall be disjunctive but not exclusive; (j) the headings contained in this Agreement are intended solely for convenience and shall not affect the rights of the Parties; and (k) if the last day for the giving of any notice or the performance of any act required or permitted under this Agreement is a day that is not a Business Day, then the time for the giving of such notice or the performance of such action shall be extended to the next succeeding Business Day.

[*Signature page follows*]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

HUNTER MOUNTAIN INVESTMENT TRUST

By /s/ Mark Patrick
Name: Mark Patrick
Title: Administrator
Date: May 19, 2025

BEACON MOUNTAIN LLC

By /s/ Mark Patrick
Name: Mark Patrick
Title: President
Date: May 19, 2025

RAND ADVISORS, LLC

By /s/ Mark Patrick
Name: Mark Patrick
Title: President
Date: May 19, 2025

RAND PE FUND I, LP
By: Rand PE Fund Management, LLC, its General Partner

By /s/ Mark Patrick
Name: Mark Patrick
Title: President
Date: May 19, 2025

RAND PE FUND MANAGEMENT, LLC

By /s/ Mark Patrick
Name: Mark Patrick
Title: President
Date: May 19, 2025

ATLAS IDF, LP
By: Atlas IDF GP, LLC, its General Partner

By /s/ Mark Patrick
Name: Mark Patrick
Title: President
Date: May 19, 2025

ATLAS IDF GP, LLC

By /s/ Mark Patrick
Name: Mark Patrick
Title: President
Date: May 19, 2025

HIGHLAND CAPITAL MANAGEMENT, L.P.

By /s/ James P. Seery, Jr.
Name: James. P. Seery, Jr.
Title: Chief Executive Officer
Date: May 19, 2025

HIGHLAND CLAIMANT TRUST

By /s/ James P. Seery, Jr.
Name: James P. Seery, Jr.
Title: Claimant Trustee
Date: May 19, 2025

HIGHLAND LITIGATION SUB-TRUST

By /s/ Marc S. Kirschner
Name: Marc S. Kirschner
Title: Litigation Trustee
Date: May 19, 2025

HIGHLAND INDEMNITY TRUST

By /s/ James P. Seery, Jr.
Name: James P. Seery, Jr.
Title: Indemnity Trust Administrator
Date: May 19, 2025

Docket #4297 Date Filed: 06/30/2025

EXHIBIT

QQ

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 30, 2025

United States Bankruptcy Judge

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

ORDER PURSUANT TO BANKRUPTCY RULE 9019 AND 11 U.S.C. § 363 APPROVING SETTLEMENT BETWEEN THE HIGHLAND ENTITIES AND THE HMIT ENTITIES AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

This matter having come before the Court on the *Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith* [Docket No. 4216] (the "Motion")[2] filed by Highland Capital Management, L.P., the reorganized debtor (the "Debtor" or "Highland") in the above-captioned chapter 11 case (the "Bankruptcy Case"), the Highland Claimant Trust (the "Claimant

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are 8357. The headquarters and service address for the Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

[2] Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Motion or the Settlement Agreement, as applicable.

LA:4938-1326-1904.9 36027.002

Trust"), and the Highland Litigation Sub-Trust (the "Litigation Sub-Trust," and together with Highland and the Claimant Trust, the "Movants"); and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 as well as the retention of jurisdiction provisions of the Plan; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having considered (a) the Motion, (b) *Patrick Daugherty's Objection to Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith* [Docket No. 4229] (the "Daugherty Objection") filed by Patrick Daugherty, (c) the *Preliminary Objection of the Dugaboy Investment Trust to the Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities* [Docket No. 4230] (the "Dugaboy Objection," and together with the Daugherty Objection, the "Objections"), filed by The Dugaboy Investment Trust, (d) the *Objection of the Dallas Foundation and Crown Global Life Insurance Ltd. to Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith* [Docket No. 4231] (the "Charitable Foundation Objection"), filed by The Dallas Foundation (the "Dallas Foundation") (on behalf of Empower Dallas Foundation ("EDF") and The Okada Family Foundation ("Okada Family"), and Crown Global Life Insurance, Ltd., not individually, but solely in respect of Segregated Accounts 30218 and 30219 ("Crown"), (e) the evidence admitted into the record during the hearing on the Motion on June 25, 2025 (the "Hearing") in support of, and in opposition to, the Motion, including the Court's assessment of the witnesses' credibility, and (f) all arguments heard at the Hearing in connection therewith; and the Court having found that the legal and factual bases set forth in the Motion establish sufficient

cause for the relief granted herein; and adequate notice of the Motion having been given; and after due deliberation and good cause appearing therefor,

THE COURT HEREBY FINDS THAT:

1. The Court's findings of fact and conclusions of law set forth on the record at the conclusion of the Hearing are incorporated by reference except as supplemented in this Order, and as may be further supplemented by the Court.

2. Entry into the Settlement Agreement is an appropriate exercise of the Movants' business judgment.

3. The Settlement Agreement is fair, reasonable, and in the best interests of each of the Highland Entities and their creditors and constituents.

4. The Settlement Agreement was negotiated and entered into by the Highland Entities and the HMIT Entities without collusion or fraud, in good faith, and was the product of arm's- length negotiations.

5. The HMIT Entities are not "insiders" or "affiliates" of Highland as those terms are defined in Bankruptcy Code sections 101(31) and 101(2).

6. The HMIT Entities entered into the Settlement Agreement, are acquiring the Transferred Claims and Dugaboy Note in good faith, and have proceeded with all aspects of the Settlement Agreement in good faith, and have received fair value in consideration of their entry into the Settlement Agreement.

7. The Transferred Claims and Dugaboy Note are property of the estate, and the Highland Entities' sale of those assets free and clear of all liens and encumbrances but otherwise subject to the Settlement Agreement is a proper exercise of their business judgment.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

8. The Motion is **GRANTED**.

9. As stated on the record during the Hearing, The Charitable Foundation Objection is withdrawn with prejudice.

10. All other Objections to the Motion are overruled.

11. The Settlement Agreement attached as **Exhibit 1** to the Demo Declaration is approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and section 363(b) of the Bankruptcy Code.

12. HMIT's Class 10 Interest is Allowed in the amount of $336,940,230.58.

13. The HMIT Entities, as good faith purchasers of Estate assets in the Settlement, are entitled to the protections contained in section 363(m) of the Bankruptcy Code.

14. The Highland Entities and their agents are authorized to take any and all actions necessary or desirable to implement the Settlement Agreement without further notice or further Court approval.

15. Notwithstanding anything in the Settlement Agreement to the contrary, none of the Dallas Foundation, EDF, Okada Family, or Crown (collectively, the "Foundation Parties") are or will be included in the definitions of "HMIT Releasors" or "Highland Releasors." For the avoidance of doubt, however, any attempt by the Foundation Parties to assert a Claim against a HMIT Released Party by, through, or under, including derivatively, a Highland Entity, or against a Highland Released Party by, through, or under, including derivatively, a HMIT Entity is barred by this Order and the Settlement Agreement.

16. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

END OF ORDER

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.	Chapter 11 Case No. 19-34054-sgj11
MARK S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE LITIGATION SUB-TRUST **Plaintiff,** **v.** **JAMES D. DONDERO; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; 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; 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.; AND SAS ASSET RECOVERY, LTD.** **Defendants.**	**Adv. Pro. No. 21-03076-sgj**

MOTION TO SUBSTITUTE

EXHIBIT

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Mark S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust ("Litigation Trustee") and Hunter Mountain Investment Trust ("HMIT") (collectively "Movants") move the Court substitute HMIT as the Plaintiff of record in place of the Litigation Trustee pursuant to Federal Rule of Civil Procedure 25(c), and respectfully state as follows:

1. Pursuant to a settlement agreement recently approved by the Court [Doc. 4297] ("Settlement Agreement"), the Litigation Trustee's claims in this case have been transferred, conveyed, and assigned to HMIT. Rule 25(c) permits an action "to continue unabated when an interest in the lawsuit changes hands." *Christiana Tr. v. Riddle*, 819 F. App'x 255, 256 (5th Cir. 2020) (citation omitted); *see also Wilmington Sav. Fund Soc'y v. Barr*, No. 3:22-cv-735-S-BN, 2023 U.S. Dist. LEXIS 16653, at *2 (N.D. Tex. 2023); *IDQ Operating, Inc. v. Aero. Communs. Holdings Co.*, No. 6:15-CV-781, 2016 U.S. Dist. LEXIS 178210 (E.D. Tex. 2016).

2. "In deciding a motion to substitute, [the] primary considerations are whether substitution would simplify and expedite the case." *Huddleston v. FBI*, Civil Action No. 4:20-cv-447, 2025 U.S. Dist. LEXIS 111504, at *3 (E.D. Tex. 2025). "Courts have granted Rule 25(c) motions to substitute when the subject matter of the dispute dealt with a business acquisition or merger, a change in ownership of a promissory note or other financial instrument, or breach of contract." *Id.* (citations omitted). "In the bankruptcy context, Rule 25(c) has been used … to allow a trustee in bankruptcy to be substituted for

the trustee of an inter-vivos trust created on behalf of the debtor in an action to set aside a voidable preference." *In re Covington Grain Co.*, 638 F.2d 1357, 1361 n.3 (5th Cir. 1981).

3. This matter involves the transfer of claims from one trust to another trust. These claims originally accrued to the debtor, Highland Capital Management, L.P. ("Debtor"), and were transferred to the Highland Litigation Sub-Trust ("Litigation Sub-Trust"), which was created specifically for purposes of prosecuting this lawsuit and other claims held by the Debtor. HMIT is a trust that formerly held more than 99% of the equity interest in the Debtor, which was accounted for in the Settlement Agreement by allowing HMIT's class 10 claim in excess of $330 million. Pursuant to the Settlement Agreement, the claims in this lawsuit have been transferred to HMIT, and thus any recovery in this lawsuit will now flow directly to HMIT. Therefore, HMIT is now the true party-in-interest.

4. Substitution of HMIT in place of the Litigation Trustee will also simplify the litigation. The Litigation Sub-Trust is a trust of limited duration that requires this Court's approval on a period basis in order to remain active. *See Order Extending Duration of the Trusts* [Doc 4298]. This lawsuit may take years to resolve, during which time the Litigation Sub-Trust may have completed its remaining tasks and be ready for wind up but for the pendency of this lawsuit. *See Motion for an Order Further Extending Duration of Trusts* [Doc. 4213], ¶¶ 2-3, 8, 12-13. Substitution of HMIT for the Litigation Trustee would

remove any need to seek continued extensions of the Litigation Sub-Trust just to prosecute this matter.

5. HMIT will be represented in this matter by Sawnie A. McEntire and Ian B. Salzer with Parsons McEntire McCleary PLLC, and requests all notices and filings addressed to HMIT in this matter be served on PMM as follows:

Sawnie A. McEntire
State Bar No. 13590100
smcentire@pmmlaw.com
Ian B. Salzer
State Bar No. 24110325
isalzer@pmmlaw.com
PARSONS MCENTIRE MCCLEARY PLLC
1700 Pacific Ave., Suite 4400
Dallas, Texas 75201
(214) 237-4300 (Telephone)
(214) 237-4340 (Facsimile)

6. Substitution of the Litigation Trustee for HMIT will not delay this matter in any way, and is sought solely so that justice may be done.

Respectfully Submitted,

/s/ Robert S. Loigman

Paige Holden Montgomery
SIDLEY AUSTIN LLP
2021 McKinney Avenue, Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300
Facsimile: (214) 981-3400

Deboarh J. Newman (admitted *pro hac vice*)
Robert S. Loigman (admitted *pro hac vice*)
QUINN EMANUEL URQUHART & SULLIVAN LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000

ATTORNEYS FOR MARK S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE HIGHLAND LITIGATION SUB-TRUST

/s/ Sawnie A. McEntire

Sawnie A. McEntire
Texas Bar No. 13590100
smcentire@pmmlaw.com
Ian B. Salzer
Texas Bar No. 24110325
isalzer@pmmlaw.com
PARSONS MCENTIRE MCCLEARY PLLC
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201
Tel. (214) 237-4300
Fax (214) 237-4340

ATTORNEYS FOR HUNTER MOUNTAIN INVESTMENT TRUST

CERTIFICATE OF CONFERENCE

I hereby certify that on July 23, 2025, I attempted to confer with counsel of record for all of the defendants via email. To date, none of defendants' counsel have responded. Therefore, Movants assume that all defendants oppose this Motion.

/s/ Ian B. Salzer
Ian B. Salzer

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2025, a true and correct copy of the foregoing document was served on all parties of record via the Court's ECF system.

/s/ Ian B. Salzer
Ian B. Salzer

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.	Chapter 11 Case No. 19-34054-sgj11
MARK S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE LITIGATION SUB-TRUST **Plaintiff,** **v.** **JAMES D. DONDERO; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; STRAND ADVISORS, INC.; NEXPOINT ADVISORS, L.P.;**	Adv. Pro. No. 21-03076-sgj

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; 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.; AND SAS ASSET RECOVERY, LTD. **Defendants.**	

ORDER GRANTING MOTION TO SUBSTITUTE

On this day, the Court considered Mark S. Kirschner's, as Litigation Trustee of the Highland Litigation Sub-Trust's ("Litigation Trustee") and Hunter Mountain Investment Trust's ("HMIT") (collectively "Movants") Motion to Substitute, requesting the Court permit HMIT to substitute as plaintiff in place of the Litigation Trustee. The Court, having considered the Motion, any response, reply, or arguments of counsel, finds that the Motion is well taken and should be **GRANTED**. It is, therefore, **ORDERED** as follows:

1. HMIT is hereby substituted in place of the Litigation Trustee for all purposes of this litigation, including as named plaintiff.
2. The Court Clerk shall amend the Court's docket identify Sawnie A. McEntire and Ian B. Salzer as counsel of record for HMIT. All parties are to make all

future notices to and service upon Sawnie A. McEntire and Ian B. Salzer as follows:

Sawnie A. McEntire
State Bar No. 13590100
smcentire@pmmlaw.com
Ian B. Salzer
State Bar No. 24110325
isalzer@pmmlaw.com
PARSONS MCENTIRE MCCLEARY PLLC
1700 Pacific Ave., Suite 4400
Dallas, Texas 75201
(214) 237-4300 (Telephone)
(214) 237-4340 (Facsimile)

END OF ORDER

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 4, 2025

United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.	Chapter 11 Case No. 19-34054-sgj11
MARK S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE LITIGATION SUB-TRUST **Plaintiff,** **v.** **JAMES D. DONDERO; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; STRAND ADVISORS, INC.; NEXPOINT ADVISORS, L.P.;**	Adv. Pro. No. 21-03076-sgj

EXHIBIT

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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; 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.; AND SAS ASSET RECOVERY, LTD. **Defendants.**	

ORDER GRANTING MOTION TO SUBSTITUTE

On this day, the Court considered Mark S. Kirschner's, as Litigation Trustee of the Highland Litigation Sub-Trust's ("Litigation Trustee") and Hunter Mountain Investment Trust's ("HMIT") (collectively "Movants") Motion to Substitute, requesting the Court permit HMIT to substitute as plaintiff in place of the Litigation Trustee. The Court, having considered the Motion, any objection, reply, and arguments of counsel, finds that the Motion is well taken and should be **GRANTED**.

It is, therefore, **ORDERED** that HMIT is hereby substituted as plaintiff in place of the Litigation Trustee.

END OF ORDER

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 18, 2025

United States Bankruptcy Judge

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

IN RE:	§	
	§	**CASE NO. 19-34054-SGJ-11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**(CHAPTER 11)**
	§	
REORGANIZED DEBTOR.	§	
	§	
HUNTER MOUNTAIN INVESTMENT TRUST, *in substitution for* MARC S. KIRSCHNER, AS TRUSTEE OF THE LITIGATION SUB-TRUST,	§	
	§	**CIVIL ACTION NO. 3:22-CV-203-S**
PLAINTIFF,	§	
	§	
v.	§	**ADVERSARY NO. 21-03076**
	§	
JAMES D. DONDERO, *et al.*	§	
	§	
DEFENDANTS.	§	

EXHIBIT

TT

STATUS REPORT TO DISTRICT COURT

(UPDATE SINCE THE BANKRUPTCY COURT'S REPORT AND RECOMMENDATION DATED APRIL 6, 2022)

On April 6, 2022, the bankruptcy court submitted a 21-page Report and Recommendation to the District Court in the above-referenced action ("Action"). That Report and Recommendation pertained to six motions to withdraw the reference of the Action, from the bankruptcy court to the District Court, which motions were filed by several defendants. The Action was filed on October 15, 2021, by plaintiff Marc S. Kirschner, who is a post-confirmation plan trustee ("Plan Trustee") appointed under the confirmed Chapter 11 plan for Highland Capital Management, L.P. ("Highland").[1] The Plan Trustee stated in his more than 140-page complaint initiating the Action that he had brought this Action to recover hundreds of millions of dollars in damages that Highland "suffered at the hands of its founder, James Dondero, acting in concert with other entities that he owned and/or controlled (collectively, the 'Dondero Entities'), and with the aid of other [Highland] officers and attorneys who disregarded their fiduciary duties to [Highland] in favor of Dondero and their own self-interests." There were initially 23 defendants in the Action and 36 causes of action. Almost all (22 out of 23) of the defendants were entitled to a jury trial and desired to have the reference withdrawn from the bankruptcy court, so that a jury trial may ultimately occur in the District Court. All parties agreed (even the plaintiff) that the reference ***must*** ultimately be withdrawn for final adjudication to occur in the District Court since: (a) jury trial rights undoubtedly exist, and (b) the defendants have not consented to a jury trial occurring in the

[1] A Chapter 11 plan was confirmed in the Highland bankruptcy case in February 2021 and went effective in August 2021.

bankruptcy court.[2] The only question (back on April 6, 2022) was what was the appropriate timing for withdrawal of the reference. The bankruptcy court recommended in its April 6, 2022 Report and Recommendation that the District Court withdraw the reference of this Action ***at such time as the bankruptcy court certifies that the Action is trial-ready and defer to the bankruptcy court the handling of all pre-trial matters (as is most often the custom in this District—i.e., using the bankruptcy court as a magistrate)***. The bankruptcy court described the Action at the time as a "typical post-confirmation lawsuit being waged by a Liquidating Trustee, who was appointed pursuant to a Chapter 11 bankruptcy plan to pursue pre-confirmation causes of action that were owned by the bankruptcy estate, for the benefit of creditors." All claims pertained to pre-confirmation conduct. The bankruptcy court further stated, that despite the "post-confirmation" timing of the ***filing*** of the lawsuit, there was still "related to" bankruptcy subject matter jurisdiction since it was part of implementation and execution of the confirmed Highland plan.

Certain material things have happened since the submission of the April 6, 2022 Report and Recommendation that this bankruptcy court now reports.

A. First, the Plan Trustee requested, on March 24, 2023, that the bankruptcy court stay this Action, since it appeared that it would be very costly, and there appeared to be the possibility that creditors of Highland would be paid in full without pursuit of the Action. The bankruptcy court, on April 4, 2023, granted this motion (which was ultimately unopposed by the defendants), with language stating that such stay would remain in effect until any party to the Action provided 30 days' written notice to all

[2] Of the 23 defendants, only one had a pending, unresolved proof of claim on file in the bankruptcy case at the time the Action was filed: CLO Holdco. The rest of the defendants either never filed proofs of claim, or later withdrew their proofs of claim, or had them disallowed during the pendency of the bankruptcy case. Thus, 22 of the 23 defendants clearly had jury trial rights. Further, none of the defendants consented to the bankruptcy court presiding over a jury trial or issuing final orders for that matter.

other parties and the court of their intent to resume the Action (the "Stay Period"). Thereafter, upon receiving notice of this Stay Period, on August 15, 2023, the District Court abated and administratively closed its file in the Action (without prejudice to reopening it)—never having ruled on the bankruptcy court's Report and Recommendation of April 6, 2022.

B. In the months that followed, dismissals or settlements with certain defendants occurred.

C. Then, in the summer of 2025, the Plan Trustee, having resolved and paid all the prepetition creditor claims in the Highland case (except for one belonging to Mr. Patrick Daugherty, for which a reserve fund had been established pursuant to a March 8, 2022 settlement agreement between Daugherty and Highland), entered into a compromise with the 99.5% equity owner of Highland—a party named Hunter Mountain Investment Trust ("Hunter Mountain"). As part of that settlement, the Reorganized Highland and Plan Trustee assigned the claims in this Action to Hunter Mountain (who had previously been a defendant in this Action), such that Hunter Mountain would substitute in as plaintiff in this Action to pursue the claims for its own benefit—as the 99.5% equity owner who is now essentially the fulcrum stakeholder in this Action. ***In other words, any recovery in the Action will now go to Hunter Mountain as 99.5% equity holder of Highland since all the creditors have been paid in full or reserved for under the Highland Plan***.

Hunter Mountain thereafter on July 25, 2025, moved to substitute in as plaintiff in this Action (which was granted by the bankruptcy court in an order entered on September 5, 2025) and gave notice on September 3, 2025 of its intent to end the Stay Period in accordance with the

bankruptcy court's April 2023 Stay Order. Thus, the Stay Period as to this Action expired on October 3, 2025. Therefore, this Action is no longer abated.

The bankruptcy court held a status conference on October 17, 2025. The parties had different views about the impact of Hunter Mountain (again, Highland's former 99.5% equity owner) now being plaintiff and the impact that might have on bankruptcy subject matter jurisdiction, pursuant to 28 U.S.C. § 1334. Did it destroy bankruptcy subject matter jurisdiction since there will be no impact on creditor recovery? Does the time-of-filing rule govern (in other words, since there was bankruptcy subject matter jurisdiction at the time the Action was filed in October 2021, will there be subject matter jurisdiction in the Action forever (although merely "related to jurisdiction"))? Are there other issues impacting jurisdiction?

The bankruptcy court gave the parties until November 18, 2025 to submit post-hearing briefing on this matter. That briefing has now been filed. The District Court should review that briefing in conjunction with the bankruptcy court's April 6, 2022 Report and Recommendation, which the bankruptcy court now incorporates herein by reference.

The bankruptcy court believes one thing is clear. There is no good reason for this bankruptcy court to be involved even in handling pre-trial matters in this Action (essentially as a magistrate), with there being no impact on creditor recovery from the Action. The prepetition creditors of Highland have been paid, in accordance with the confirmed Chapter 11 plan, notwithstanding whatever happens in this Action. ***While equity is certainly a stakeholder with rights that may be adjudicated in a bankruptcy case (and the Highland plan does, indeed, contemplate a scenario where former equity holders may be entitled to the residual portion of the Highland bankruptcy estate)***, there would seem to be no real utility in bankruptcy court

involvement at this juncture. ***The Action involves pre-petition conduct—not activity during the bankruptcy case***.

In any event, the bankruptcy judge is recusing herself in this Action. The Bankruptcy Clerk of Court can reassign a bankruptcy judge to it, in coordination with the District Clerk, should the District Court chooses to have a bankruptcy judge act as a magistrate to handle pre-trial matters in the Action.

*****END OF STATUS REPORT *****

Execution Version

CLAIMS ASSIGNMENT AGREEMENT

This CLAIMS ASSIGNMENT AGREEMENT (this "**Agreement**") is entered into as of July 7, 2025 (the "**Effective Date**") by and between the Highland Litigation Sub-Trust, a Delaware statutory trust (the "**Litigation Sub-Trust**"), and Hunter Mountain Investment Trust, a Delaware statutory trust ("**HMIT**"). Each of the Litigation Sub-Trust and HMIT are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, reference is made to that certain Settlement Agreement & General Release dated as of May 19, 2025, by and among Highland Capital Management, L.P., a Delaware limited partnership, the Highland Claimant Trust, a Delaware statutory trust, the Highland Indemnity Trust, a Delaware statutory trust, and the Litigation Sub-Trust, on the one hand, and HMIT, Beacon Mountain LLC, a Delaware limited liability company, Rand Advisors, LLC, a Delaware limited liability company, Rand PE Fund I, LP, a Delaware limited partnership, Rand PE Fund Management, LLC, a Delaware limited liability company, Atlas IDF, LP, a Delaware limited partnership, and Atlas IDF GP, LLC, a Delaware limited liability company, on the other hand (the "**Settlement Agreement**");

WHEREAS, pursuant to the Settlement Agreement, "**Kirschner Claims**" means all Claims and causes of action that were asserted or could have been asserted by the Litigation Trustee of the Litigation Sub-Trust, in the Amended Complaint;

WHEREAS, capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed to such terms in the Settlement Agreement;

WHEREAS, on June 30, 2025 (the "**Bankruptcy Court Approval Date**"), the Bankruptcy Court issued an order approving the allowance of HMIT's Class 10 Interest as provided in the Settlement Agreement pursuant to the 9019 Motion; and

WHEREAS, pursuant to Section 8(a) of the Settlement Agreement, within five (5) Business Days after the Bankruptcy Court Approval Date, the Litigation Sub-Trust shall transfer the Kirschner Claims to HMIT on the terms and conditions set forth in the Settlement Agreement.

NOW, THEREFORE, for good and valuable consideration, including as set forth in the Settlement Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Assignment of Kirschner Claims.

(a) The Litigation Sub-Trust hereby transfers, sells, grants, conveys and assigns to HMIT all of the Litigation Sub-Trust's right, title and interest in and to the Kirschner Claims.

EXHIBIT
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(b) HMIT hereby accepts all such right, title and interest in and to the Kirschner Claims and assumes all obligations and liabilities of the Litigation Sub-Trust with respect to, or in connection with, such right, title and interest in and to the Kirschner Claims arising or occurring on or after the Effective Date; excluding, however, all obligations and liabilities of the Litigation Sub-Trust relating to the Kirschner Claims (i) arising or occurring prior to the Effective Date, (ii) that result from the Litigation Sub-Trust's breach of its representations, warranties, covenants, or agreement under this Agreement, (iii) that result from the Litigation Sub-Trust's bad faith, gross negligence, or willful misconduct or (iv) that are attributable to the Litigation Sub-Trus's actions or obligations in any capacity other than as the holder of the Kirschner Claims.

(c) HMIT acknowledges and agrees that none of the Highland Entities will have any duty or obligation to assist any HMIT Entity in any way with respect to the Kirschner Claims, including the prosecution thereof, except as provided in this Agreement, including the terms of Section 1(e) below.

(d) HMIT SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE LITIGATION SUB-TRUST IS TRANSFERRING THE KIRSCHNER CLAIMS ON AN "AS IS AND WITH ALL FAULTS" BASIS AND THAT HMIT IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE HIGHLAND ENTITIES OR THEIR REPRESENTATIVES AS TO ANY MATTERS CONCERNING THE KIRSCHNER CLAIMS AND AMENDED COMPLAINT, INCLUDING WITH RESPECT TO THE ENFORCEABILITY, TRANSFERABILITY, VIABILITY, STRENGTH, OR VALUE OF ANY OF THE KIRSCHNER CLAIMS OR THE AMENDED COMPLAINT. HMIT hereby specifically acknowledges it has carefully reviewed this Section and have had the opportunity to discuss its import with legal counsel and that the provisions of this Section are a material part of this Agreement. Thus, if for any reason HMIT is precluded from or is otherwise unable to prosecute all or any of the Kirschner Claims, (i) the HMIT Releasors shall have no recourse against any Highland Released Parties whatsoever and shall not be entitled to compensation of any kind, it being agreed that the HMIT Entities are otherwise receiving adequate consideration for the duties and obligations they are undertaking pursuant to this Agreement and the Settlement Agreement and (ii) there will be no effect whatsoever on the validity and enforceability of the Settlement Agreement or any of the other transactions contemplated thereby.

(e) Each Party acknowledges and agrees that if (i) the assignment of the Kirschner Claims pursuant to Section 1(a) is found or deemed to be impermissible or invalid, for any reason, or (ii) any HMIT Entity materially breaches this Agreement or the Settlement Agreement, the Kirschner Claims and Amended Complaint will revert to, and remain an asset of, the Litigation Sub-Trust.

2. Representations and Warranties. Each Party severally represents and warrants as to itself only that: (i) it has taken all necessary action to authorize and approve the execution, delivery and performance of this Agreement; (ii) such Party has full power and authority to execute and deliver this Agreement; and (iii) this Agreement constitutes a valid, legal and binding obligation of such Party, and is enforceable subject to its terms. Each individual signatory hereto individually warrants and represents to all Parties hereto that such individual has full power and

authority to act on behalf of and bind the Party for which he or she has executed this Agreement; provided, however that no signatory shall otherwise provide any warranty or representation or otherwise be a party to this Agreement on an individual basis.

3. Execution. This Agreement may be executed by the exchange of signatures by facsimile or by PDF attachment to an email transmittal and in counterparts, and if so executed, shall be fully executed when a counterpart has been executed and delivered by all Parties hereto through counsel. All counterparts taken together shall constitute one and the same agreement and shall be fully enforceable as such.

4. Fees and Expenses. Each Party will bear its respective fees, costs and expenses (including legal, accounting and other professional fees) incurred in connection with the preparation, negotiation, execution and performance of this Agreement or the transactions contemplated hereby. Notwithstanding the foregoing, if any Party hereto, any Highland Released Party, or any HMIT Released Party brings an Action to enforce or interpret the terms and provisions of this Agreement, the prevailing Person in that Action shall be entitled to have and recover from the non-prevailing Person all such fees, costs and expenses (including all court costs and reasonable attorneys' fees) as the prevailing Person may suffer or incur in the pursuit or defense of such action or proceeding.

5. Entire Agreement; No Other Representations. **THIS AGREEMENT AND THE SETTLEMENT AGREEMENT CONTAIN THE ENTIRE AGREEMENT BETWEEN THE PARTIES, AND NO RIGHTS ARE CREATED IN FAVOR OF ANY PERSON OTHER THAN AS SPECIFIED OR EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE SETTLEMENT AGREEMENT. THERE ARE NO REPRESENTATIONS, CONDITIONS, WARRANTIES, STATEMENTS, OR UNDERSTANDINGS (COLLECTIVELY, "REPRESENTATIONS"), EITHER ORAL OR WRITTEN, BETWEEN THE PARTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE SETTLEMENT AGREEMENT. THE PARTIES EXPRESSLY AGREE THAT THEY HAVE NOT BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY ANY REPRESENTATIONS NOT SET FORTH IN THIS AGREEMENT OR THE SETTLEMENT AGREEMENT; AND THE PARTIES EXPRESSLY AGREE THAT THEY HAVE NOT RELIED ON ANY REPRESENTATIONS NOT EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE SETTLEMENT AGREEMENT. THE PARTIES EXPRESSLY AGREE THAT THEY ARE ENTERING INTO THIS AGREEMENT RELYING SOLELY ON THEIR OWN JUDGMENT AND NOT ON ANY REPRESENTATIONS BY ANY PARTY, EXCEPT FOR THOSE REPRESENTATIONS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE SETTLEMENT AGREEMENT. THE PARTIES AGREE THAT REPRESENTATIONS NOT EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE SETTLEMENT AGREEMENT SHALL NOT BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT, AND NEITHER THE HMIT RELEASED PARTIES NOR THE HIGHLAND RELEASED PARTIES SHALL HAVE ANY LIABILITY FOR ANY CONSEQUENCES ARISING AS A RESULT OF ANY REPRESENTATIONS NOT SET FORTH IN THIS AGREEMENT OR THE SETTLEMENT AGREEMENT**.

6. No Further Cooperation. In accordance with Section 8(c) of the Settlement Agreement, following the Bankruptcy Court Approval Date and prior to the Effective Date, the Litigation Sub-Trust provided the HMIT Entities with electronic copies of all written discovery requests and responses thereto, and documents produced in discovery in respect of the Kirschner Claims and the Amended Complaint. Accordingly, the Parties acknowledge and agree that except as expressly set forth herein, the Highland Entities shall have no obligation to perform any services or actions in connection with this Agreement or the transactions contemplated hereby, nor do the Highland Entities have any obligation to execute or deliver additional documents, instruments, conveyances and/or assurances or communicate or cooperate with the HMIT Entities or any other Person with respect to the Kirschner Claims, including the prosecution thereof.

7. Governing Law. This Agreement shall be construed pursuant to and governed by the laws of the State of Delaware without reference to principles of conflicts of law that would result in the application of any other State's laws.

8. Jurisdiction/Venue. The Parties hereby irrevocably submit to the jurisdiction and venue of the Bankruptcy Court with respect to any Action arising out of or related to this Agreement or the subject matter hereof; if (and only if) the Bankruptcy Court lacks personal or subject matter jurisdiction to adjudicate an Action arising out of or related to this Agreement or the subject matter hereof, then the Parties irrevocably submit to the jurisdiction and venue of the United States District Court for the Northern District of Texas.

9. Notices. All notices required or permitted to be provided hereunder shall be afforded to the respective parties to and through their counsel, and shall be transmitted simultaneously by electronic mail (with PDF attachments, as necessary) and by telefax, addressed as follows:

To the Litigation Sub-Trust:

QUINN EMANUEL URQUHART & SULLIVAN LLP
Deborah J. Newman
Robert S. Loigman
295 5th Avenue, 9th Floor
New York, New York 10016
212.849.7000
deborahnewman@quinnemanuel.com
robertloigman@quinnemanuel.com

To HMIT:

KELLY HART PITRE
Louis M. Phillips
Amelia Hurt
301 Main Street, Suite 1600
Baton Rouge, Louisiana 70801
225.381.9643
Louis.Phillips@Kellyhart.com

Amelia.Hurt@Kellyhart.com

10. Other Provisions.

(a) No representation, inducement, agreement, promise or understandings altering, modifying, amending, taking from or adding to, the terms and conditions hereof shall have any force or effect unless the same is in writing and validly executed by each of the Parties hereto.

(b) The waiver by any Party of any breach of, or default under, any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or default; provided, however, that for any such waiver to be enforceable, it shall be in writing and executed by the non-breaching Party.

(c) The headings contained in this Agreement are for convenience only and shall in no way restrict or otherwise affect the construction of the provisions hereof.

(d) Should any term, provision or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of the Agreement shall survive. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity and enforceability of any other provision of this Agreement.

(e) Unless the express context otherwise requires: (a) the words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (b) words defined in the singular shall have a comparable meaning when used in the plural, and vice versa; (c) the words "Dollars" and "$" mean U.S. dollars; (d) references herein to a specific Section, Subsection, Recital, Schedule or Exhibit shall refer, respectively, to Sections, Subsections, Recitals, Schedules or Exhibits of this Agreement; (e) wherever the word "include," "includes" or "including" is used in this Agreement, it shall be deemed to be followed by the words ",without limitation,"; (f) references herein to any gender shall include each other gender; (g) references herein to any Person shall include such Person's heirs, executors, personal representatives, administrators, successors and assigns; provided, however, that nothing contained in this clause (g) is intended to authorize any assignment or transfer not otherwise permitted by this Agreement; (h) with respect to the determination of any period of time, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding"; (i) the word "or" shall be disjunctive but not exclusive; (j) the headings contained in this Agreement are intended solely for convenience and shall not affect the rights of the Parties; and (k) if the last day for the giving of any notice or the performance of any act required or permitted under this Agreement is a day that is not a Business Day, then the time for the giving of such notice or the performance of such action shall be extended to the next succeeding Business Day.

[*Signature Page Follows*.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

HIGHLAND LITIGATION SUB-TRUST

By: _____
Name: Marc S. Kirschner
Title: Litigation Trustee

HUNTER MOUNTAIN INVESTMENT TRUST

By: _____
Name: Mark Patrick
Title: Administrator

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

HIGHLAND LITIGATION SUB-TRUST

By: _____
Name: Marc S. Kirschner
Title: Litigation Trustee

HUNTER MOUNTAIN INVESTMENT TRUST

By: _____
Name: Mark Patrick
Title: Administrator

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP § Case No. 19-34054
§
§
Debtor(s) §

☐ Jointly Administered

Post-confirmation Report

Chapter 11

Quarter Ending Date: 06/30/2026 Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021 Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to:
○ Reorganized Debtor
◉ Other Authorized Party or Entity: Highland Claimant Trust
Name of Authorized Party or Entity

/s/ Zachery Z. Annable
Signature of Responsible Party

07/20/2026
Date

Zachery Z. Annable, Hayward PLLC
Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106
Dallas TX 75231
Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

EXHIBIT
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Debtor's Name Highland Capital Management, LP Case No. 19-34054

Part 1: Summary of Post-confirmation Transfers

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	$756,475	$469,146,017
b. Non-cash securities transferred	$0	$0
c. Other non-cash property transferred	$0	$3,321,685
d. Total transferred (a+b+c)	$756,475	$472,467,702

Part 2: Preconfirmation Professional Fees and Expenses

				Approved Current	Approved Cumulative	Paid Current Quarter	Paid Cumulative
a.	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor *Aggregate Total*						
	Itemized Breakdown by Firm						
		Firm Name	Role				
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Debtor's Name Highland Capital Management, LP Case No. 19-34054

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Debtor's Name Highland Capital Management, LP Case No. 19-34054

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b.			Approved Current	Approved Cumulative	Paid Current Quarter	Paid Cumulative
	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor *Aggregate Total*					
	Itemized Breakdown by Firm					
	Firm Name	Role				
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Debtor's Name Highland Capital Management, LP Case No. 19-34054

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Debtor's Name Highland Capital Management, LP Case No. 19-34054

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Debtor's Name Highland Capital Management, LP Case No. 19-34054

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c.	All professional fees and expenses (debtor & committees)				$0		

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	$0	$0	$15,750	$15,750	100%
b. Secured claims	$5,843,261	$0	$5,274,477	$5,274,477	100%
c. Priority claims	$16,498	$0	$1,213,832	$1,213,832	100%
d. General unsecured claims	$205,144,544	$0	$387,308,940	$397,485,568	97%
e. Equity interests	$0	$0	$19,100,071		

Part 4: Questionnaire

a. Is this a final report? Yes ○ No ◉

If yes, give date Final Decree was entered: _____

If no, give date when the application for Final Decree is anticipated: _____

b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes ◉ No ○

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Privacy Act Statement

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.

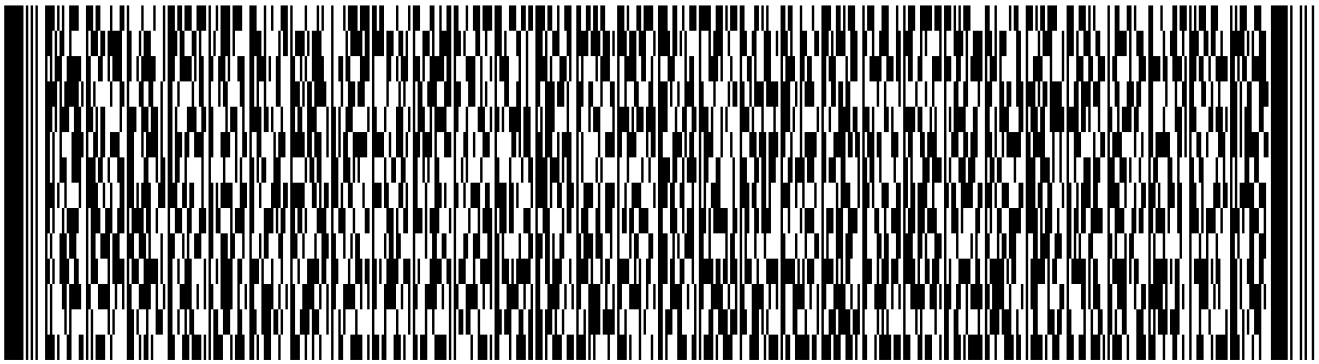
/s/ James Seery
Signature of Responsible Party

James Seery
Printed Name of Responsible Party

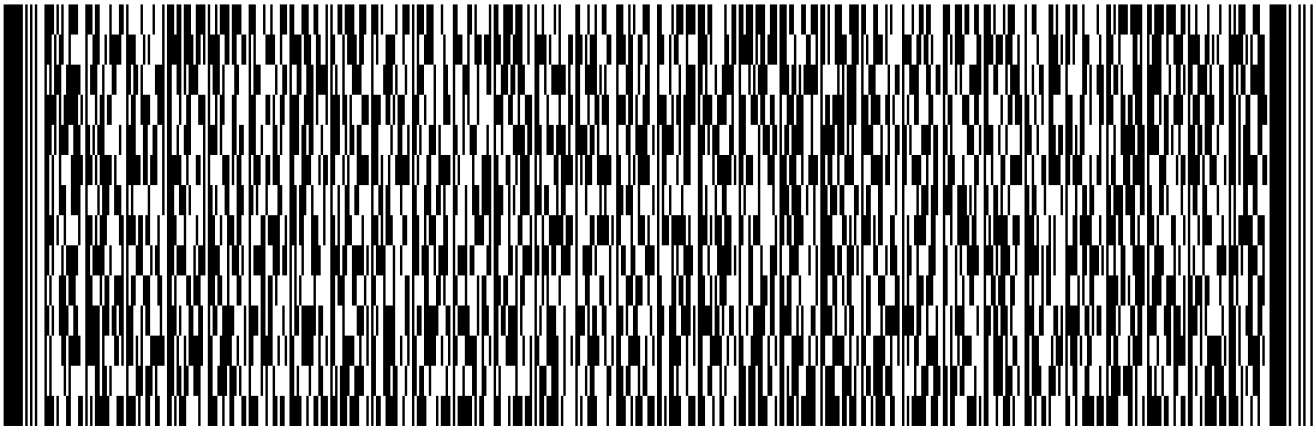
Claimant Trustee
Title

07/20/2026
Date

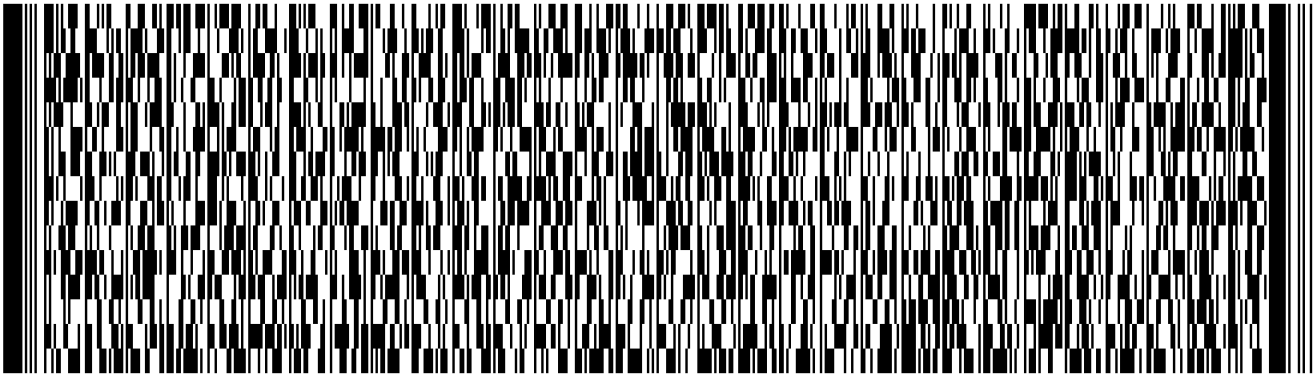
Debtor's Name Highland Capital Management, LP Case No. 19-34054



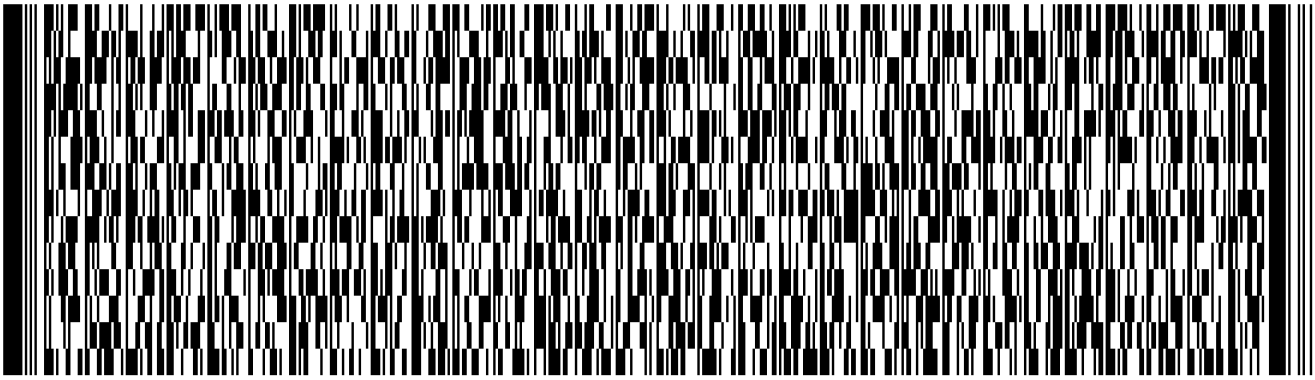
Page 1



Other Page 1

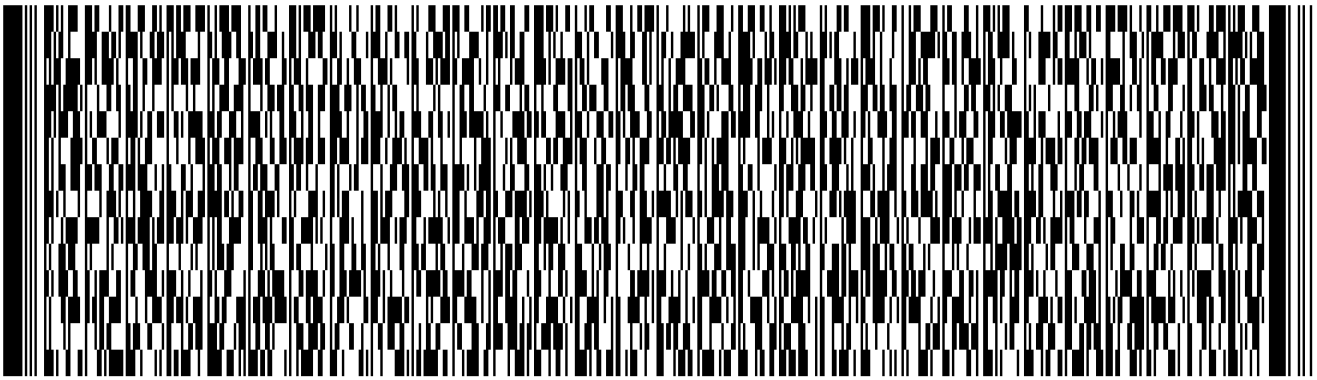


Page 2 Minus Tables

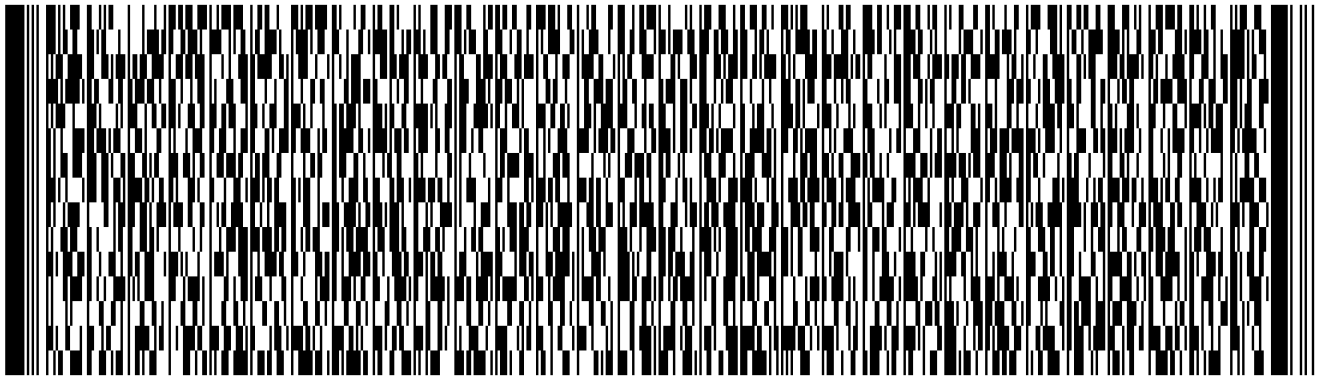


Bankruptcy Table 1-50

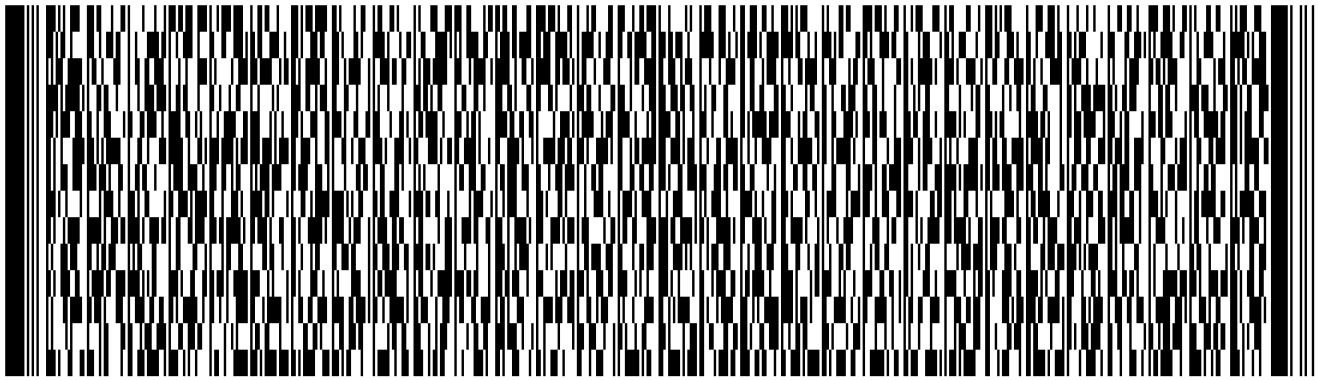
Debtor's Name Highland Capital Management, LP Case No. 19-34054



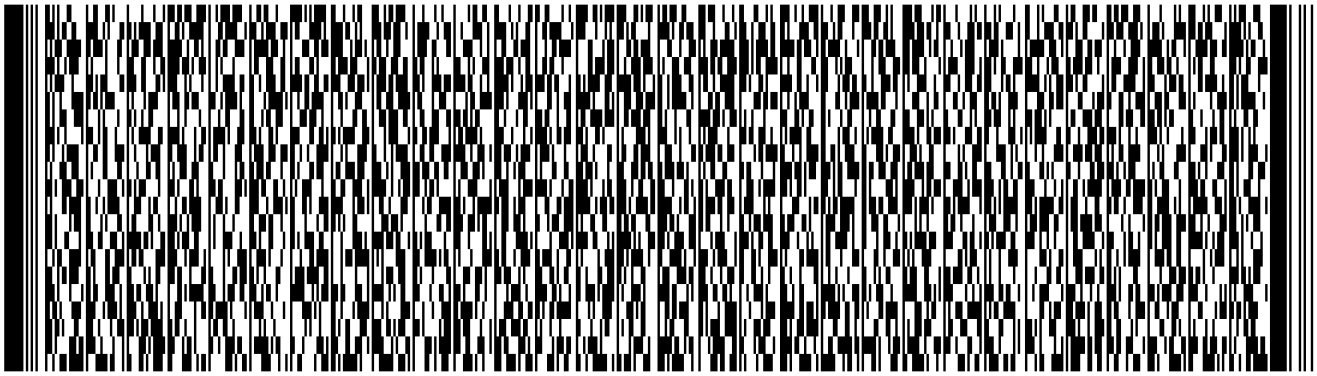
Bankruptcy Table 51-100



Non-Bankruptcy Table 1-50



Non-Bankruptcy Table 51-100



Part 3, Part 4, Last Page

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

GLOBAL NOTES TO POST-CONFIRMATION REPORT

The Highland Claimant Trust has filed the attached post-confirmation report (the "PCR") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), with respect to the case of Reorganized Debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the "Bankruptcy Case"). The Highland Claimant Trust prepared the PCR with the assistance of the Reorganized Debtor's employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* https://www.justice.gov/ust/chapter-11-operating-reports). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Highland Claimant Trust, the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Highland Claimant Trust relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Highland Claimant Trust made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Highland Claimant Trust reserves the right to amend and supplement the PCR as may be necessary or appropriate.

Part 2: Preconfirmation Professional Fees and Expenses

The Highland Claimant Trust did not make any payment of professional fees prior to Confirmation of the Plan.

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The service address for the above-captioned Reorganized Debtor is PO Box 820173, Dallas, TX 75382.

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

For presentation purposes, the chart showing claims anticipated under the plan, paid claims and allowed claims are reflected in both the Reorganized Debtor and Claimant Trust post-confirmation report under Part 3: Recoveries of the Holders of Claims and Interests under the Confirmed Plan.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with the Claimant Trust's governing documents and the Plan.

The General unsecured claims line item (Part 3. d.) encapsulates the claims of Classes 6, 7, 8, and 9 under the Plan.

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (admitted *pro hac vice*)
John A. Morris (admitted *pro hac vice*)
Gregory V. Demo (admitted *pro hac vice*)
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Dallas, TX 75231
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Fax: (972) 755-7110

Counsel for Highland Claimant Trust

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

NOTICE OF DISSOLUTION OF HIGHLAND CLAIMANT TRUST

PLEASE TAKE NOTICE that the Highland Claimant Trust, a Delaware statutory trust, has dissolved and commenced winding up its affairs in accordance with the *Fifth Amended Plan*

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 6333 E. Mockingbird Lane, Suite 147 #5045, Dallas, TX 75214.

EXHIBIT
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of Reorganization of Highland Capital Management, L.P. (as Modified) [Docket No. 1808] (the "Plan"), the Claimant Trust Agreement (as defined in the Plan), the *Order Extending Duration of the Trusts* [Docket No. 4298], and the Delaware Statutory Trust Act.

[Remainder of Page Intentionally Blank]

Dated: August 11, 2026

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (admitted *pro hac vice*)
John A. Morris (admitted *pro hac vice*)
Gregory V. Demo (admitted *pro hac vice*)
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Telephone: (310) 277-6910
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Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
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Counsel for Highland Claimant Trust

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Dallas, TX 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Litigation Trustee, LLC, as Litigation Trustee of the Highland Litigation Sub-Trust

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

NOTICE OF DISSOLUTION OF HIGHLAND LITIGATION SUB-TRUST

PLEASE TAKE NOTICE that the Highland Litigation Sub-Trust, a Delaware statutory

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 6333 E. Mockingbird Lane, Suite 147 #5045, Dallas, TX 75214.

EXHIBIT
XX

trust (the "Litigation Sub-Trust"), has dissolved and Highland Litigation Trustee, LLC, a Delaware limited liability company, as the successor Litigation Trustee of the Litigation Sub-Trust, has commenced winding up the Litigation Sub-Trust's affairs in accordance with the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (the "Plan"), the Litigation Sub-Trust Agreement (as defined in the Plan), the *Order Extending Duration of the Trusts* [Docket No. 4298], and the Delaware Statutory Trust Act.

[Remainder of Page Intentionally Blank]

Dated: August 11, 2026

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (admitted *pro hac vice*)
John A. Morris (admitted *pro hac vice*)
Gregory V. Demo (admitted *pro hac vice*)
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Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
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 Litigation Trustee, LLC, as Litigation Trustee of the Highland Litigation Sub-Trust

Claim #138 Date Filed: 4/8/2020

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

James D. Dondero
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
James D. Dondero 300 Crescent Court, Ste. 700 Dallas, TX 75201	
Contact phone	Contact phone
Contact email bryan.assink@bondsellis.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

EXHIBIT
YY



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**

☑ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See attached Exhibit "A"

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

		Amount entitled to priority
☑	No	
☐	Yes. *Check all that apply:*	
☐	Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐	Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐	Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐	Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐	Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐	Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/James D. Dondero
Signature

Print the name of the person who is completing and signing this claim:

Name: James D. Dondero
First name Middle name Last name

Title: _____

Company: _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: D. Michael Lynn, 420 Throckmorton Street, Suite 1000, Fort Worth, Texas, 76102

Contact phone 8174056900 Email michael.lynn@bondsellis.com

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
James D. Dondero
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
Phone 2:
Fax:
Email:
bryan.assink@bondsellis.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Creditor

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
James D. Dondero on 08-Apr-2020 4:29:06 p.m. Eastern Time
Title:
Company:

Optional Signature Address:
James D. Dondero
D. Michael Lynn
420 Throckmorton Street, Suite 1000
Fort Worth, Texas, 76102
Telephone Number:
8174056900
Email:
michael.lynn@bondsellis.com

VN: A70893C668A17E6B39B27C424F4F2E5C

Exhibit A

James Dondero ("Claimant") has paid a number of miscellaneous expenses for the benefit of the Debtor and/or its various related entities in an amount totaling not less than $100,000.00 as shown in the chart below. There are potentially additional payments, details of which may be provided after the Debtor completes its examination of its accounting records. Claimant has requested this information from the Debtor to ascertain the exact amount of his claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant will ascertain the exact amount of his claim in the next ninety days.

POC	Type of pmt	FBO Highland affiliate	Vendor	Amount	Description
James Dondero	Retainer	Neutra Ltd.	Levinger PC	$50,000.00	Neutra Ltd is 100% owned by HCMLP (as trustee for and on behalf of Acis CMOA Trust), which is owned 100% by Highland CLO Asset Holdings Limited, which is owned 75% by Dugaboy. Pmt was made by Jim for Dugaboy, via revolving loan agreement with the trust. Payment was made for a retainer for the law firm engaged for Acis appeals.
James Dondero	Expenses	HCMLP New York, Inc	Landlord for HCMLP NY	$30,000.00	HCMLP New York, Inc is owned 99% by Jim Dondero. Jim contributed funds so HCMLP NY could make its monthly rent payments.
James Dondero	Expenses	Brave Holdings III Inc.	CT Corp	$354.77	Jim Dondero is the President of Brave Holdings and paid for the entities DE annual filing.
James Dondero	Expenses	HCM Services, Inc.	CT Corp	$225.00	Highland Capital Management Services, Inc. is 75% owned by Jim Dondero. Mr. Dondero paid for Services DE annual filing.
James Dondero	Expenses	NREA Estates Inc.	CT Corp	$225.00	Jim Dondero is the President of NREA and paid for the entities annual DE filing.
James Dondero	Expenses	NREA Meritage Inc	CT Corp	$225.00	Jim Dondero is the President of NREA Meritage Inc. and paid for the entities annual DE filing.
James Dondero	Expenses	HCM AG	Stefan Pellar	$10,247.11	Highland Capital AG, a Swiss entity, is owned 100% by Dugaboy, pmt was made by JD. The expenses were for director fees.
James Dondero	Expenses	HCMLP	Crescent Research Svcs, Inc.	$5,333.40	Background check research re Bankruptcy
James Dondero	Expenses	HCMLP	Crescent Research Svcs, Inc.	$3,399.90	Background check research re Bankruptcy
James Dondero	Expenses	HCMLP	Crescent Research Svcs, Inc.	$3,240.00	Background check research re Bankruptcy

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Scott B. Ellington
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Scott B. Ellington c/o David Neier, Winston Strawn LLP 200 Park Avenue New York, NY 10166	Scott B. Ellington 2525 No. Pearl Street #1202 Dallas, TX 75201
Contact phone 21229467005391	Contact phone
Contact email dneier@winston.com	Contact email SEllington@HighlandCapital.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

EXHIBIT
ZZ

19340542005260000000000015

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ not less than 6,666,226.00 . **Does this amount include interest or other charges?**

☑ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

Employment - see attached

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

		Amount entitled to priority
☐	No	
☑	Yes. *Check all that apply:*	
☐	Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐	Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☑	Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$ 13,650.00
☐	Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐	Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐	Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 05/26/2020
MM / DD / YYYY

/s/Scott B. Ellington
Signature

Print the name of the person who is completing and signing this claim:

Name: Scott B. Ellington
First name Middle name Last name

Title

Company
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone Email

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Scott B. Ellington
c/o David Neier, Winston Strawn LLP
200 Park Avenue

New York, NY, 10166

Phone:
21229467005391
Phone 2:

Fax:
2122944700
Email:
dneier@winston.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Creditor

Disbursement/Notice Parties:
Scott B. Ellington

2525 No. Pearl Street
#1202

Dallas, TX, 75201

Phone:

Phone 2:

Fax:

E-mail:
SEllington@HighlandCapital.com
DISBURSEMENT ADDRESS

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
Employment - see attached

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
not less than 6,666,226.00

Includes Interest or Charges:
No

Has Priority Claim:
Yes

Priority Under:
11 U.S.C. §507(a)(4): 13,650.00

Has Secured Claim:
No

Amount of 503(b)(9):
No

Based on Lease:
No

Subject to Right of Setoff:
No

Nature of Secured Amount:

Value of Property:

Annual Interest Rate:

Arrearage Amount:

Basis for Perfection:

Amount Unsecured:

Submitted By:
Scott B. Ellington on 26-May-2020 3:36:02 p.m. Eastern Time
Title:

Company:

VN: C56BE0F0885FBFA9BDA6A9403B0ACF5B

Fill in this information to identify the case:

Debtor 1: Highland Capital Management, L.P.

Debtor 2 (Spouse, if filing):

United States Bankruptcy Court for the: Northern District of Texas

Case number: 19-34054-SGJ-11

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Scott B. Ellington
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
David Neier, Winston & Strawn LLP Name	Scott B. Ellington Name
200 Park Avenue, 40th Floor Number Street	2525 N. Pearl Street, #1202 Number Street
New York NY 10166 City State ZIP Code	Dallas TX 75201 City State ZIP Code
Contact phone 212-294-5318	Contact phone 214-649-5475
Contact email dneier@winston.com	Contact email sellington@highlandcapital.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
☑ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $ 6,666,226.00 . **Does this amount include interest or other charges?**
NOT LESS THAN THE ABOVE AMOUNT, SEE ATTACHED
☑ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Employment (see attached)

9. **Is all or part of the claim secured?**
☑ No Except for setoff/reimbursement. See attached.
☐ Yes. The claim is secured by a lien on property.

Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
☐ Motor vehicle
☐ Other. Describe: **SEE ATTACHED**

Basis for perfection: **SEE ATTACHED**
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $____
Amount of the claim that is secured: $____
Amount of the claim that is unsecured: $____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $____

Annual Interest Rate (when case was filed)____%
☐ Fixed
☐ Variable

10. **Is this claim based on a lease?**
☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $____

11. **Is this claim subject to a right of setoff?**
☑ No
☐ Yes. Identify the property: ____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ No

☑ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☑ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$ 13,650.00
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

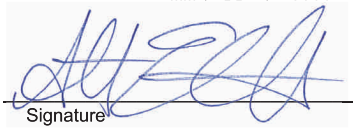
☑ I am the creditor.
☐ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 05/26/2020
MM / DD / YYYY



Signature

Print the name of the person who is completing and signing this claim:

Name: Scott B. Ellington
First name Middle name Last name

Title:

Company:
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 2525 N. Pearl Street, #1202
Number Street

Dallas TX 75201
City State ZIP Code

Contact phone 214-649-5475 Email sellington@highlandcapital.com

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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	
	§	Case No. 19-34054-SGJ-11
	§	
Debtor.	§	

ATTACHMENT TO PROOF OF CLAIM

1. Scott Ellington ("Claimant") submits this attachment to his proof of claim (the "Claim") against Debtor Highland Capital Management, L.P. ("Highland" or the "Debtor") in the above-captioned Chapter 11 case (the "Case").

2. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware, commencing the Case, which was subsequently transferred to the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"). On April 3, 2020, the Bankruptcy Court entered an order establishing May 26, 2020 at 5:00 p.m. (prevailing Central Time) as the deadline for the Debtor's employees to file claims against the Debtor that arose before the Petition Date. *See* ECF No. 560.

Compensation.

3. Claimant is an employee of the Debtor. Claimant is owed compensation for his services, including, without limitation, (i) all salaries and wages; benefits; (ii) bonuses (including performance bonuses, retention bonuses, and similar awards), (iii) vacation and paid time off, and (iv) retirement contributions, pensions and deferred compensation. The amount of the Claim for

[1] The Debtor's last four digits of its taxpayer identification code are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

such compensation includes both liquidated and unliquidated amounts. Furthermore, such claims may be in the form of stock, including stock of entities other than the Debtor, or the cash equivalent thereof to be paid or caused to be paid by the Debtor to Claimant, including dividends that continue to accrue on such stock. Specifically, Claimant's Form 410, Part 2, Question 7 amount does not include the value of 5% equity in HCRE Partners, LLC n/k/a NexPoint Real Estate Partners, LLC ("HCRE") or the cash equivalent of the distributions payable therefrom, as awarded to Claimant by the Debtor in compensation. Documents supporting this Claim contain personal confidential information of Claimant and, as more fully set forth below, shall be provided by counsel to Claimant under separate cover to counsel for the Debtor upon written request therefor.

4. In addition to the foregoing, Claimant is entitled to reimbursement for travel and other business related expenses incurred in connection with performing any services to which the Claimant is entitled. Claimant has previously provided or will provide to the Debtor details with respect to the amount of reimbursement that is owed.

5. Finally, Claimant is party to that certain Employment Agreement dated June 1, 2008 by and between the Debtor and Claimant ("Employment Agreement"). Claimant is entitled to any and all amounts under the Employment Agreement, including, but not limited to, any amounts payable under Employment Agreement Article IV.

Indemnification.

6. Claimant is an employee of the Debtor. Claimant is entitled to indemnification, including, without limitation, for all acts performed or omitted to be performed on behalf of or in connection with the Debtor's business. As part of the Claim for indemnification, Claimant is entitled to, among other things, contribution, reimbursement, advancement, or other payments, including for damages, costs, and expenses, related thereto. The Claim for indemnification

includes both liquidated and unliquidated amounts, including, without limitation, attorneys' fees and expenses that continue to accrue. Among other things, the Claim for indemnification includes, but is not limited to, indemnification for all claims, liabilities, damages, losses, fees, expenses, and costs related to the following matters (the "Indemnified Matters"):

a. *Acis Capital Management, L.P., Acis Capital Management, GP, LLC, Reorganized Debtors v. James Dondero, Frank Waterhouse, Scott Ellington, Hunter Covitz, Isaac Leventon, Jean Paul Sevilla, Thomas Surgent, Grant Scott, Heather Bestwick, William Scott, and CLO Holdco, Ltd.*, Case No. 20-03060, pending in the Bankruptcy Court;

b. *Acis Capital Management, L.P., Acis Capital Management, GP, LLC v. Highland Capital Management, L.P. Highland CLO Funding, Ltd., William Scott, Heather Bestwick, J.P. Sevilla, Scott Ellington, and James Dondero*, Case Nos. 18-302624 and 18-30265, which have been administratively consolidated and are pending in the Bankruptcy Court;

c. *Acis Capital Management, L.P., Acis Capital Management, GP, LLC v. Gary T. Cruciani, Jamie R. Welton, Paul B. Lackey, Jean Paul Sevilla, Isaac D. Leventon, Thomas J. Surgent, Scott B. Ellington, McKool Smith, a professional corporation, and Lackey Hershman, L.L.P.*, Case No. DC-20-05534 pending in the 14th District Court of Dallas County, Texas; and

d. *Patrick Daugherty v. James Dondero, Highland ERA Management, LLC et al.,* C.A. No. 2019-0956 pending in the Court of Chancery of the State of Delaware.

7. The Claim Amount in Part 2, Question 7 of Form 410 attached hereto does not include any amount of alleged damages claimed in the Indemnified Matters. Claimant reserves the right to amend, supplement, or modify the Claim to include alleged damages amounts.

8. In addition to the foregoing, Claimant is entitled to the benefits of the Debtor's directors' and officers' insurance programs and any other insurance policies that provide coverage for Claimant.

9. The Claim for indemnification is based on applicable law, the Debtor's organizational documents, contracts, agreements, arrangements, and corporate employee policies, including, without limitation, that certain Fourth Amended and Restated Agreement of Limited

Partnership of Highland Capital Management, L.P. dated as of December 14, 2015 ("LPA") and to the Resolution of the Board of Directors of Strand Advisor, Inc. as General Partner of the Debtor, dated May 12, 2020 ("Resolution"). Pursuant to LPA §4.1(h) and the Resolution, Claimant is entitled to indemnification from the Debtor for all acts performed or omitted to be performed on behalf of or in connection with the Debtor's business.

10. Documents supporting this Claim (i) are in the possession of the Debtor; (ii) are too voluminous attach hereto; and (iii) contain personal confidential information of the Claimant. The supporting documentation is available (subject to entry of appropriate confidentiality agreements and redaction of personal identification information to the extent necessary) upon written request to counsel for Claimant as set forth below.

11. Claimant reserves the right to amend, supplement or modify the Claim at any time. The Claim include amounts that continue to accrue, including interest as permitted by contract or law.

12. Claimant reserves its rights to pursue claims (including but not limited to the claims described herein) against the Debtor based upon additional or alternative legal theories and reserves the right to file additional or other pleadings to assert any of the amounts set forth in this Claim or any amendments thereto, including, without limitation, any postpetition administrative expenses pursuant to the Bankruptcy Code, including sections 503 and 507 thereof, or other applicable non-bankruptcy law.

13. This Claim is filed to preserve any and all claims, rights, and entitlements, including contingent claims, that the Claimant may have against the Debtor, and nothing herein should be construed as an admission that any valid claims or causes of action exist against Claimant.

14. To the extent that the Debtor asserts claims against Claimant, Claimant reserves the right to assert that such claims are subject to rights of setoff and/or recoupment, whether or not arising under the transactions set forth in this Claim, which rights are treated as secured claims under the Bankruptcy Code, and state and federal laws of similar import as well as in equity.

15. Claimant does not waive any of its rights to claim specific assets or any other rights or rights of action that Claimant has or may have against the Debtor, and Claimant expressly reserves such rights. Claimant reserves all rights accruing to it against the Debtor, and the filing of this Claim is not intended to be, and shall not be construed as, an election of remedy or a waiver or limitation of any rights of any Claimant.

16. The filing of this Claim is not and shall not be deemed or construed as: (i) a waiver, release or limitation of Claimant's rights against any person, entity, or property; (ii) a waiver, release or limitation of Claimant's right to have any and all final orders in any and all non-core matters or proceedings entered only after de novo review by a United States District Court; (iii) a waiver of Claimant's right to move to withdraw the reference with respect to the subject matter of this Claim, any objection thereto and/or other proceeding which may be commenced in this case against or otherwise involving Claimant; or (iv) a consent by Claimant to the final determination or adjudication of any claim or right pursuant to 28 U.S.C. § 157(c).

17. All matters concerning this Claim, including any request for supporting documentation or additional information regarding this Claim should be made in writing directed to the following counsel for Claimant:

WINSTON & STRAWN LLP
David Neier
dneier@winston.com
200 Park Avenue, 40th Floor
New York, NY 10166-4193
Telephone: (212) 294-6700

Facsimile: (212) 294-4700

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Isaac Leventon
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Isaac Leventon See Rider 2 See Rider 2, See Rider See Rider	
Contact phone	Contact phone
Contact email See Rider 2	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☐ No
   ☑ Yes. Claim number on court claims registry (if known) See Rider 1 Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

EXHIBIT
AAA

1934054210226000000000006

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See Rider 3 . **Does this amount include interest or other charges?**

☐ No

☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See Rider 3

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

		Amount entitled to priority
☐	No	
☑	Yes. *Check all that apply:*	
☐	Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐	Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐	Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐	Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐	Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☑	Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$ See Rider 4

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 02/26/2021
MM / DD / YYYY

/s/Isaac Leventon
Signature

Print the name of the person who is completing and signing this claim:

Name Isaac Leventon
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Isaac Leventon
See Rider 2
See Rider 2, See Rider , See Rider
Phone:
Phone 2:
Fax:
Email:
See Rider 2

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Creditor

Other Names Used with Debtor:

Amends Claim:
Yes - See Rider 1
Acquired Claim:
No

Basis of Claim:
See Rider 3

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See Rider 3

Includes Interest or Charges:
Yes

Has Priority Claim:
Yes

Priority Under:
11 U.S.C. §507(a)( ): See Rider 4

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Isaac Leventon on 26-Feb-2021 6:48:55 p.m. Eastern Time
Title:
Company:

VN: 48F87F4D7D427DFF68F8768DD8B8671F

In re Highland Capital Management, L.P.
Chapter 11 Case No. 19-34054
(Bankr. N.D. Tex.)

Rider 1

This Rider relates to the proof of claim filed by Isaac Leventon (the "***Senior Employee***") against the estate of Highland Capital Management, L.P. (the "***Debtor***"), the debtor in the chapter 11 case now pending in the United States Bankruptcy Court for the Northern District of Texas (the "***Bankruptcy Court***") as Case No. 19-34054 (the "***Chapter 11 Case***"). This Rider constitutes a part of such proof of claim as if set forth in full on the face of such amended proof of claim.

On May 26, 2020, the Senior Employee timely filed a proof of claim against the Debtor, which was assigned claim number 184 (the "***Original Claim***"). Pursuant to the Original Claim, the Senior Employee asserted claims for compensation owed to the Senior Employee (collectively, the "***Compensation Claims***"). In the Original Claim, the Senior Employee also asserted claims for indemnification, including, without limitation, for all acts performed or omitted to be performed on behalf of or in connection with the Debtor's business, and claims under the Debtor's directors' and officers' insurance programs and policies (collectively, the "***Other Claims***").

By this proof of claim, the Senior Employee is amending the Original Claim to assert that portion of the Senior Employee's claim against the Debtor regarding indemnification for all acts performed or omitted to be performed on behalf of or in connection with the Debtor's business, benefits under directors and officers insurance programs and other insurance policies, and other claims under any theory of law not otherwise asserted in the Employment Compensation Proof of Claim. The Senior Employee is simultaneously herewith filing a proof of claim to amend the Original Claim solely to address the amounts owed in connection with the Compensation Claims (the "***Employment Compensation Proof of Claim***").

In re Highland Capital Management, L.P.
Chapter 11 Case No. 19-34054
(Bankr. N.D. Tex.)

Rider 2

This Rider relates to the proof of claim filed by the Senior Employee against the estate of the Debtor in the Chapter 11 Case. This Rider constitutes a part of such proof of claim as if set forth in full on the face of such proof of claim.

The Senior Employee's address is being withheld to protect the Senior Employee from harm associated with identifying private information or other unlawful injury. The Senior Employee will provide an address to the Debtor or any other party in interest entitled to such information upon a reasonable request.

A copy of any notices to be sent to the Senior Employee with respect to this proof of claim also should be sent to the Senior Employee's counsel at the following addresses:

Michelle Hartmann
Baker & McKenzie LLP
1900 North Pearl, Suite 1500
Dallas, TX 75201
Telephone: (214) 978 3000
Email: michelle.hartmann@bakermckenzie.com

and

Debra A. Dandeneau
Baker & McKenzie LLP
452 Fifth Avenue
New York, NY 10018
Telephone: (212) 626-4100
Email: debra.dandeneau@bakermckenzie.com

In re Highland Capital Management, L.P.
Chapter 11 Case No. 19-34054
(Bankr. N.D. Tex.)

Rider 3

This Rider relates to the proof of claim filed by the Senior Employee against the estate of the Debtor in the Chapter 11 Case. This Rider constitutes a part of such proof of claim as if set forth in full on the face of such proof of claim.

The claims of the Senior Employee set forth in this proof of claim arise out of claims for indemnification for all acts performed or omitted to be performed on behalf of or in connection with the Debtor's business, benefits under directors and officers insurance programs and other insurance policies, and other claims under any theory of law that are not included in the Compensation Claims. The Senior Employee is entitled to indemnification, including, without limitation, for all acts performed or omitted to be performed on behalf of or in connection with the Debtor's business. As part of this claim for indemnification, the Senior Employee is entitled to, among other things, contribution, reimbursement, advancement, or other payments, including for damages, costs, and expenses, related thereto. Among other things, this proof of claim for indemnification includes, but is not limited to, indemnification for all claims, liabilities, damages, losses, fees, expenses, and costs related to the following matter (the "***Indemnified Matter***"):

- *Patrick Daugherty v. James Dondero, Highland ERA Management, LLC et al.,* C.A. No. 2019-0956 pending in the Court of Chancery of the State of Delaware.

The Senior Employee's claims for indemnification are based on applicable law, the Debtor's organizational documents, contracts, agreements, arrangements, and corporate employee policies, including, without limitation, that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated as of December 14, 2015 ("***LPA***"), and the Resolution of the Board of Directors of Strand Advisor, Inc., as General Partner of the Debtor, dated May 12, 2020 ("***Resolution***"). Pursuant to LPA §4.1(h) and the Resolution, the Senior Employee is entitled to indemnification from the Debtor for all acts performed or omitted to be performed on behalf of or in connection with the Debtor's business.

The Senior Employee also asserts claims for wrongful termination in connection with the notice of termination delivered to the Senior Employee on January 5, 2021. The Senior Employee's claims for wrongful termination arise out of applicable law. As a result of the wrongful termination, the Senior Employee is entitled to back and future pay, compensatory damages, punitive damages, and attorney's fees, expert witness fees, or court costs that may flow from the wrongful termination. The Senior Employee reserves the right to amend this claim to assert other and further claims arising from the Debtor's wrongful termination of the Senior Employee.

As of the date hereof, the Senior Employee's claims covered by this proof of claim are unliquidated. Notwithstanding anything stated herein to the contrary, this proof of claim does not apply to the Compensation Claims.

Supporting Documentation

The Debtor should have copies of all the documents relating to the claims covered by this proof of claim, including the LPA and the Resolution. Due to the voluminous, confidential, and/or commercially sensitive nature of these documents, such documents are not attached hereto. Copies of any such documents will be made available to any party in interest upon reasonable request and subject to any additional protections as may be needed to preserve the confidentiality of such documents.

In re Highland Capital Management, L.P.
Chapter 11 Case No. 19-34054
(Bankr. N.D. Tex.)

Rider 4

This Rider relates to the proof of claim filed by the Senior Employee against the estate of the Debtor in the Chapter 11 Case. This Rider constitutes a part of such proof of claim as if set forth in full on the face of such proof of claim.

The Senior Employee believes that the claims set forth in this proof of claim are entitled to be paid as administrative expenses under sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code, and the Senior Employee reserves the right to file with the Bankruptcy Court a request for payment of the claims set forth in this proof of claim as administrative expenses. Such claims also may be entitled to priority under section 507(a)(4) or section 507(a)(5) of the Bankruptcy Code, and the Senior Employee reserves the right to seek priority treatment under such sections.

This proof of claim also is without prejudice to any other claims that the Senior Employee may assert constitute administrative expenses under section 503(b)(1) of the Bankruptcy Code.

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   NexPoint Advisors, L.P.
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   NexPoint Advisors, L.P.
   300 Crescent Court, Ste. 700
   Dallas, TX 75201

   Contact phone 9726284100
   Contact email See summary page

   Where should payments to the creditor be sent? (if different)
   Contact phone
   Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

EXHIBIT
BBB

19340542004080000000000024

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**

☑ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See attached Exhibit "A"

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: NexPoint Advisors, L.P.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____ Email _____

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
NexPoint Advisors, L.P.
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
9726284100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:10:15 p.m. Eastern Time
Title:
Authorized Agent
Company:
NexPoint Advisors, L.P.

VN: 6C8395AA0824240A25281D3F44E9D6CB

Exhibit A

This Exhibit "A" is being filed by NexPoint Advisors, L.P. ("Claimant") pursuant to a Payroll Reimbursement Agreement dated to be effective as of January 1, 2018 and Amendment Number One to the Payroll Reimbursement Agreement entered into on December 14, 2018. Pursuant to these agreements, Claimant has previously made payments for the Debtor and under the Expense Reimbursement Agreement is entitled to reimbursement from the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of the claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days. A true and correct copy of these reimbursement agreements is attached hereto.

PAYROLL REIMBURSEMENT AGREEMENT

THIS PAYROLL REIMBURSEMENT AGREEMENT (this "***Agreement***") entered into on this 1st day of May, 2018 by and among Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***"), and NexPoint Advisors, L.P., a Delaware limited partnership ("***NexPoint***"), and any affiliate of NexPoint that becomes a party hereto, is effective as of January 1, 2018 (the "***Effective Date***"). Each of the signatories hereto is individually a "***Party***" and collectively the "***Parties***".

RECITALS

A. During the Term, HCMLP will seek reimbursement from NexPoint for the cost of certain employees who are dual employees of HCMLP and NexPoint and who provide advice to registered investment companies advised by NexPoint under the direction and supervision of NexPoint as more fully described in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

ARTICLE I
DEFINITIONS

"***Actual Cost***" means, with respect to any period hereunder, the actual costs and expenses caused by, incurred or otherwise arising from or relating to each Dual Employee, in each case during such period. Absent any changes to employee reimbursement, as set forth in Section 2.02, such costs and expenses are equal to $252,000 per month.

"***Affiliate***" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term "***control***" (including, with correlative meanings, the terms "***controlled by***" and "***under common control with***") means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

"***Agreement***" has the meaning set forth in the preamble.

"***Allocation Percentage***" has the meaning set forth in Section 3.01.

"***Dual Employee***" has the meaning set forth in Section 2.01.

"***Effective Date***" has the meaning set forth in the preamble.

"***Party***" or "***Parties***" has the meaning set forth in the preamble.

"***Person***" means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization.

"***Tax***" or "***Taxes***" means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services

and the Shared Assets identified and authorized by applicable tariffs.

ARTICLE II
EMPLOYEE REIMBURSEMENT

Section 2.01 Employee Reimbursement. During the Term, NexPoint shall reimburse HCMLP for the Actual Cost to HCMLP of certain employees who (i) are dual employees of HCMLP and NexPoint and (ii) provide advice to any investment company registered under the Investment Company Act of 1940, as amended (the "***1940 Act***") pursuant to an investment advisory agreement between NexPoint and such investment company (each, a "***Fund***") under the direction and supervision of NexPoint (each, a "***Dual Employee***").

Section 2.02 Changes to Employee Reimbursement. During the Term, the Parties may agree to modify the terms and conditions of NexPoint's reimbursement in order to reflect new procedures or processes, including modifying the Allocation Percentage (defined below) applicable to such Dual Employee to reflect the then current fair market value of such Dual Employee's employment. The Parties will negotiate in good faith the terms of such modification.

ARTICLE III
COST ALLOCATION

Section 3.01 Actual Cost Allocation Formula. The Actual Cost of any Dual Employee relating to the investment advisory services provided to a Fund shall be allocated based on the Allocation Percentage. For purposes of this Agreement, "***Allocation Percentage***" means the Parties' good faith determination of the percentage of each Dual Employee's aggregate hours worked during a quarter that were spent on NexPoint matters, as listed on Exhibit A.

ARTICLE IV
PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 4.01 Settlement Payments. At any time during the Term, NexPoint may make payment of the amounts that are allocable to it.

Section 4.02 Determination and Payment of Cost. NexPoint shall promptly make payment of the Actual Cost within ten (10) days of the end of each calendar month. Should either Party determine that a change to employee reimbursement is appropriate, as set forth in Section 2.02, the Party requesting the modification shall notify the other Party on or before the last business day of the calendar month.

Section 4.03 Taxes.

(a) NexPoint is responsible for and will pay all Taxes applicable to it, provided, that such payments by NexPoint to HCMLP will be made in the most tax-efficient manner and provided further, that HCMLP will not be subject to any liability for Taxes applicable to the cost of a Dual Employee of NexPointas a result of such payment by NexPoint. HCMLP will collect such Tax from NexPoint in the same manner it collects such Taxes from other customers in the ordinary course of its business, but in no event prior to the time it invoices NexPoint for costs for which such Taxes are levied. NexPoint may provide HCMLP with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) NexPoint will reimburse HCMLP for any Taxes collected from HCMLP and refunded to NexPoint. In the event a Tax is assessed against NexPoint that is solely the responsibility of HCMLP and HCMLP desires to protest such assessment, HCMLP will submit to NexPoint a statement of

the issues and arguments requesting that NexPoint grant HCMLP the authority to prosecute the protest in NexPoint's name. NexPoint's authorization will not be unreasonably withheld. HCMLP will finance, manage, control and determine the strategy for such protest while keeping NexPoint reasonably informed of the proceedings. However, the authorization will be periodically reviewed by NexPoint to determine any adverse impact on NexPoint, and NexPoint will have the right to reasonably withdraw such authority at any time. Upon notice by NexPoint that it is so withdrawing such authority, HCMLP will expeditiously terminate all proceedings. Any adverse consequences suffered by HCMLP as a result of the withdrawal will be submitted to litigation pursuant to Section 6.14. Any contest for Taxes brought by HCMLP may not result in any lien attaching to any property or rights of NexPoint or otherwise jeopardize NexPoint's interests or rights in any of its property.

(c) The provisions of this Section 4.03 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE V
TERM AND TERMINATION

Section 5.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the "***Term***"), unless terminated earlier in accordance with Section 5.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 5.02.

Section 5.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VI
MISCELLANEOUS

Section 6.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or NexPoint or their respective successors or assigns. The Parties understand and agree that this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. Neither Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever.

Section 6.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 6.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 6.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 6.05 Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 6.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 6.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 6.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 6.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 6.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i)immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

If to NexPoint, addressed to:

NexPoint Advisors, L.P.
200 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

Section 6.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 6.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 6.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 6.14 Dispute Resolution; Jurisdiction. The Parties hereby agree that any action, claim, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement, including, but not limited to, claims sounding in contract, equity, tort, fraud and statute ("Dispute") shall be submitted exclusively to the the courts located in Dallas County, Texas, and any appellate court thereof ("Enforcement Court"). Each party irrevocably and unconditionally submits to the exclusive personal and subject matter jurisdiction of the Enforcement Court for any Dispute and agrees to bring any Dispute only in the Enforcement Court. Each Party further agrees it shall not commence any Dispute in any forum, including, but not limited to, administrative, arbitration, or litigation, other than the Enforcement Court.

Section 6.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to, "respectively; (viii) any definition of or reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: _____
Name: _____
Title: _____

NEXPOINT ADVISORS, L.P.

By: NexPoint Advisors GP, LLC, its general partner

By:_____
Name:_____
Title:_____

EXHIBIT A

EMPLOYEE ALLOCATIONS
(AS OF JANUARY 1, 2018)

EMPLOYEE NAME	PERCENTAGE (%) ALLOCATION TO NEXPOINT ADVISORS, L.P.
Abayarathna, Sahan	9%
Baynard, Cameron	9%
Burns, Nathan	70%
Covitz, Hunter	25%
Desai, Neil	25%
Fedoryshyn, Eric	9%
Gray, Matthew	9%
Hayes, Christopher	9%
Hill, Robert	5%
McFarling, Brandon	9%
Moore, Carl	10%
Nikolayev, Yegor	9%
Okada, Mark	20%
Owens, David	9%
Parker, Trey	15%
Parmentier, Andrew	40%
Phillips, Michael	9%
Poglitsch, Jon	10%
Ryder, Phillip	5%
Sachdev, Kunal	9%
Smallwood, Allan	9%
Staltari, Mauro	9%
Tomlin, Jake	9%
Vira, Sagar	9%
Wilson, Scott	5%

AMENDMENT NUMBER ONE
TO
PAYROLL REIMBURSEMENT AGREEMENT

This Amendment Number One (this "***Amendment***") to the Payroll Reimbursement Agreement (the "***Agreement***") is entered into on December 14, 2018 by and among Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***") and NexPoint Advisors, L.P., a Delaware limited partnership ("***NexPoint***"). Each of the signatories hereto is individually a "***Party***" and collectively the "***Parties***". Capitalized terms not defined herein shall have the meaning seet forth in the Agreement.

WHEREAS, HCMLP and NexPoint entered into the Agreement on May 1, 2018 to facilitate NexPoint's reimbursement to HCMLP for the cost of certain employees who are dual employees of HCMLP and NexPoint; and

WHEREAS, HCMLP and NexPoint now desire to amend the Agreement to capture a one time payment of estimated additional Actual Costs owed to HCMLP for additional resources used by NexPoint during the Term of the Agreement.

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

1. Payment of Additional Cost. In accordance with Section 2.02 of the Agreement (Changes to Employee Reimbursement), NexPoint hereby agrees to pay $1,300,000.00 to HCMLP, representing an estimate of additional Actual Costs owed under the Agreement for additional resources used by NexPoint (the "***Additional Actual Cost***"). NexPoint shall make payment of the Additional Actual Cost within ten (10) days of the date of this Agreement.

2. Ratification of Agreement. Except as expressly amended and provided herein, all of the terms, conditions and provisions of the Agreement are hereby ratified and confirmed to be of full force and effect, and shall continue in full force and effect.

3. Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

4. Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS HEREOF, each of the Parties has caused this Amendment to be executed by its duly authorized officers as of the day and year first above written.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:_____
Name:_____
Title:_____

NEXPOINT ADVISORS, L.P.

By: NexPoint Advisors GP, LLC, its general partner

By:_____
Name:_____
Title:_____

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland Capital Management Fund Advisors, L.P.
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone 972-628-4100	Contact phone
Contact email bryan.assink@bondsellis.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

EXHIBIT
CCC

19340542004080000000008

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**

☑ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See attached Exhibit "A"

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

		Amount entitled to priority
☑	No	
☐	Yes. *Check all that apply:*	
☐	Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐	Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐	Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐	Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐	Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐	Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland Capital Management Fund Advisors, L.P.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 300 Crescent Court, Ste. 700, Dallas, TX, 75201

Contact phone 9726284100 Email fwaterhouse@highlandcapital

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Capital Management Fund Advisors, L.P.
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
972-628-4100
Phone 2:
Fax:
Email:
bryan.assink@bondsellis.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 1:48:40 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Capital Management Fund Advisors, L.P.

Optional Signature Address:
Frank George Waterhouse
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Telephone Number:
9726284100
Email:
fwaterhouse@highlandcapital.com

VN: B504D3A6395DEC846A691C34933264F1

Exhibit A

Highland Capital Management Fund Advisors ("Claimant") is the beneficiary of a Shared Services Agreement with the Debtor. It has previously made payments for the Debtor and under the Shared Services Agreement is entitled to reimbursement from the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days. A true and correct copy of the agreement is attached hereto.

SECOND AMENDED AND RESTATED
SHARED SERVICES AGREEMENT

THIS SECOND AMENDED AND RESTATED SHARED SERVICES AGREEMENT (this "***Agreement***") is entered into to be effective as of 8th day of February, 2013 (the "***Effective Date***") by and among Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***"), and Highland Capital Management Fund Advisors, L.P., formerly known as Pyxis Capital, L.P., a Delaware limited partnership ("***HCMFA***"), and any affiliate of HCMFA that becomes a party hereto. Each of the signatories hereto is individually a "***Party***" and collectively the "***Parties***".

RECITALS

A. During the Term, HCMLP will provide to HCMFA certain services as more fully described herein and the Parties desire to allocate the costs incurred for such services and assets among them in accordance with the terms and conditions in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

ARTICLE I
DEFINITIONS

"***Actual Cost***" means, with respect to any period hereunder, one hundred percent (100%) of the actual costs and expenses caused by, incurred or otherwise arising from or relating to (i) the Shared Services and (ii) the Shared Assets, in each case during such period.

"***Affiliate***" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term "***control***" (including, with correlative meanings, the terms "***controlled by***" and "***under common control with***") means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

"***Agreement***" has the meaning set forth in the preamble.

"***Allocation Percentage***" has the meaning set forth in Section 4.01.

"***Applicable Margin***" shall mean an additional amount equal to 5% of all costs allocated by Service Provider to the other parties hereto under Article IV; provided that the parties may agree on a different margin percentage as to any item or items to the extent the above margin percentage, together with the allocated cost of such item or service, would not reflect an arm's length value of the particular service or item allocated.

"***Change***" has the meaning set forth in Section 2.02(a).

"***Change Request***" has the meaning set forth in Section 2.02(b).

"***Code***" means the Internal Revenue Code of 1986, as amended, and the related regulations and published interpretations.

"***Effective Date***" has the meaning set forth in the preamble.

"***Governmental Entity***" means any government or any regulatory agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

"***Liabilities***" means any cost, liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any nature (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

"***Loss***" means any cost, damage, disbursement, expense, liability, loss, obligation, penalty or settlement, including interest or other carrying costs, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the referenced Person; provided, however, that the term "***Loss***" will not be deemed to include any special, exemplary or punitive damages, except to the extent such damages are incurred as a result of third party claims.

"***New Shared Service***" has the meaning set forth in Section 2.03.

"***Party***" or "***Parties***" has the meaning set forth in the preamble.

"***Person***" means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

"***Quarterly Report***" has the meaning set forth in Section 5.01.

"***Recipient***" means HCMFA and any of HCMFA's direct or indirect Subsidiaries or managed funds or accounts in their capacity as a recipient of the Shared Services and/or Shared Assets.

"***Service Provider***" means any of HCMLP and its direct or indirect Subsidiaries in its capacity as a provider of Shared Services or Shared Assets.

"***Service Standards***" has the meaning set forth in Section 6.01.

"***Shared Assets***" shall have the meaning set forth in Section 3.02.

"***Shared Services***" shall have the meaning set forth in Section 2.01.

"***Subsidiary***" means, with respect to any Person, any Person in which such Person has a direct or indirect equity ownership interest in excess of 50%.

"***Tax***" or "***Taxes***" means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services and the Shared Assets identified and authorized by applicable tariffs.

"***Term***" has the meaning set forth in Section 7.01.

ARTICLE II
SHARED SERVICES

Section 2.01 Services. During the Term, Service Provider will provide Recipient with Shared Services, including without limitation, all of the (i) finance and accounting services, (ii) human resources services, (iii) marketing services, (iv) legal services, (v) corporate services, (vi) information technology services, and (vii) operations services; each as requested by HCMFA and as described more fully on **Annex A** attached hereto, the "***Shared Services***"), it being understood that personnel providing Shared Services may be deemed to be employees of HCMFA to the extent necessary for purposes of the Investment Advisers Act of 1940, as amended.

Section 2.02 Changes to the Shared Services.

(a) During the Term, the Parties may agree to modify the terms and conditions of a Service Provider's performance of any Shared Service in order to reflect new procedures, processes or other methods of providing such Shared Service, including modifying the applicable fees for such Shared Service to reflect the then current fair market value of such service (a "***Change***"). The Parties will negotiate in good faith the terms upon which a Service Provider would be willing to provide such New Shared Service to Recipient.

(b) The Party requesting a Change will deliver a description of the Change requested (a "***Change Request***") and no Party receiving a Change Request may unreasonably withhold, condition or delay its consent to the proposed Change.

(c) Notwithstanding any provision of this Agreement to the contrary, a Service Provider may make: (i) Changes to the process of performing a particular Shared Service that do not adversely affect the benefits to Recipient of Service Provider's provision or quality of such Shared Service in any material respect or increase Recipient's cost for such Shared Service; (ii) emergency Changes on a temporary and short-term basis; and/or (iii) Changes to a particular Shared Service in order to comply with applicable law or regulatory requirements, in each case without obtaining the prior consent of Recipient. A Service Provider will notify Recipient in writing of any such Change as follows: in the case of clauses (i) and (iii) above, prior to the implementation of such Change, and, in the case of clause (ii) above, as soon as reasonably practicable thereafter.

Section 2.03 New Shared Services. The Parties may, from time to time during the Term of this Agreement, negotiate in good faith for Shared Services not otherwise specifically listed in Section 2.01 (a "***New Shared Service***"). Any agreement between the Parties on the terms for a New Shared Service must be in accordance with the provisions of Article IV and Article V hereof, will be deemed to be an amendment to this Agreement and such New Shared Service will then be a "***Shared Service***" for all purposes of this Agreement.

Section 2.04 Subcontractors. Nothing in this Agreement will prevent Service Provider from, with the consent of Recipient, using subcontractors, hired with due care, to perform all or any part of a Shared Service hereunder. A Service Provider will remain fully responsible for the performance of its obligations under this Agreement in accordance with its terms, including any obligations it performs through subcontractors, and a Service Provider will be solely responsible for payments due to its subcontractors.

ARTICLE III
SHARED ASSETS

Section 3.01 Shared IP Rights. Each Service Provider hereby grants to Recipient a non-exclusive right and license to use the intellectual property and other rights granted or licensed, directly or indirectly, to such Service Provider (the "***Shared IP Rights***") pursuant to third party intellectual property Agreements ("***Third Party IP Agreements***"), provided that the rights granted to Recipient hereunder are subject to the terms and conditions of the applicable Third Party IP Agreement, and that such rights shall terminate, as applicable, upon the expiration or termination of the applicable Third Party IP Agreement. Recipient shall be licensed to use the Shared IP Rights only for so long as it remains an Affiliate of HCMLP. In consideration of the foregoing licenses, Recipient agrees to take such further reasonable actions as a Service Provider deems to be necessary or desirable to comply with its obligations under the Third Party IP Agreements.

Section 3.02 Other Shared Assets. Subject to Section 3.01, each Service Provider hereby grants Recipient the right, license or permission, as applicable, to use and access the benefits under the agreements, contracts and licenses that such Service Provider will purchase, acquire, become a party or beneficiary to or license on behalf of Recipient (the "***Future Shared Assets***" and collectively with the Shared IP Rights, the "***Shared Assets***").

ARTICLE IV
COST ALLOCATION

Section 4.01 Actual Cost Allocation Formula. The Actual Cost of any item relating to any Shared Services or Shared Assets shall be allocated based on the Allocation Percentage. For purposes of this Agreement, "***Allocation Percentage***" means:

(a) To the extent 100% of such item is demonstrably attributable to HCMFA, 100% of the Actual Cost of such item shall be allocated to HCMFA as agreed by HCMFA;

(b) To the extent a specific percentage of use of such item can be determined (e.g., 70% for HCMLP and 30% for HCMFA), that specific percentage of the Actual Cost of such item will be allocated to HCMLP or HCMFA, as applicable and as agreed by HCMFA; and

(c) All other portions of the Actual Cost of any item that cannot be allocated pursuant to clause (a) or (b) above shall be allocated between HCMLP and HCMFA in such proportion as is agreed in good faith between the parties.

Section 4.02 Non-Cash Cost Allocation. The actual, fully burdened cost of any item relating to any Shared Services or Shared Assets that does not result in a direct, out of pocket cash expense may be allocated to HCMLP and HCMFA for financial statement purposes only, as agreed by HCMFA, without any corresponding cash reimbursement required, in accordance with generally accepted accounting principles, based on the Allocation Percentage principles described in Section 4.01 hereof.

ARTICLE V
PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 5.01 Quarterly Statements. Within thirty (30) days following the end of each calendar qaurter during the Term (or at such time as may be otherwise agreed by the parties), each Service Provider shall furnish the other Parties hereto with a written statement with respect to the Actual Cost paid by it in respect of Shared Services and Shared Assets provided by it, in each case, during such

period, setting forth (i) the cost allocation in accordance with Article IV hereof together with the Applicable Margin on such allocated amounts, and (ii) any amounts paid pursuant to Section 5.02 hereof, together with such other data and information necessary to complete the items described in Section 5.03 hereof (hereinafter referred to as the "***Quarterly Report***").

Section 5.02 Settlement Payments. At any time during the Term, any Party may make payment of the amounts that are allocable to such Party together with the Applicable Margin related thereto, regardless of whether an invoice pursuant to Section 5.03 hereof has been issued with respect to such amounts.

Section 5.03 Determination and Payment of Cost and Revenue Share.

(a) Within ten (10) days of the submission of the Quarterly Report described in Section 5.02 hereof (or at such other time as may be agreed by the parties), the Parties shall (i) agree on the cost share of each of the Parties and Applicable Margin as calculated pursuant to the provisions of this Agreement; and (ii) prepare and issue invoices for the cost share and Applicable Margin payments that are payable by any of the Parties.

(b) Within ten (10) days of preparation of the agreement and the issuance of the invoice described in Section 5.03(a) (or at such other time as may be agreed by the parties), the Parties shall promptly make payment of the amounts that are set forth on such cost allocation invoice. Notwithstanding anything in this Agreement to the contrary, provision of the Shared Services shall commence from the Effective Date, but no fees shall be payable from Recipient or otherwise accrue with respect to such services provided during the month of December 2011.

Section 5.04 Taxes.

(a) Recipient is responsible for and will pay all Taxes applicable to the Shared Services and the Shared Assets provided to Recipient, provided, that such payments by Recipient to Service Provider will be made in the most tax-efficient manner and provided further, that Service Provider will not be subject to any liability for Taxes applicable to the Shared Services and the Shared Assets as a result of such payment by Recipient. Service Provider will collect such Tax from Recipient in the same manner it collects such Taxes from other customers in the ordinary course of Service Provider's business, but in no event prior to the time it invoices Recipient for the Shared Services and Shared Assets, costs for which such Taxes are levied. Recipient may provide Service Provider with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) Service Provider will reimburse Recipient for any Taxes collected from Recipient and refunded to Service Provider. In the event a Tax is assessed against Service Provider that is solely the responsibility of Recipient and Recipient desires to protest such assessment, Recipient will submit to Service Provider a statement of the issues and arguments requesting that Service Provider grant Recipient the authority to prosecute the protest in Service Provider's name. Service Provider's authorization will not be unreasonably withheld. Recipient will finance, manage, control and determine the strategy for such protest while keeping Service Provider reasonably informed of the proceedings. However, the authorization will be periodically reviewed by Service Provider to determine any adverse impact on Service Provider, and Service Provider will have the right to reasonably withdraw such authority at any time. Upon notice by Service Provider that it is so withdrawing such authority, Recipient will expeditiously terminate all proceedings. Any adverse consequences suffered by Recipient as a result of the withdrawal will be submitted to arbitration pursuant to Section 9.14. Any contest for Taxes brought by Recipient may not result in any lien attaching to any property or rights of Service Provider or otherwise jeopardize Service Provider's interests or rights in any of its property. Recipient agrees to

indemnify Service Provider for all Losses that Service Provider incurs as a result of any such contest by Recipient.

(c) The provisions of this Section 5.04 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE VI
SERVICE PROVIDER RESPONSIBILITIES

Section 6.01 Service Provider General Obligations. Service Provider will provide the Shared Services and the Shared Assets to Recipient on a non-discriminatory basis and will provide the Shared Services and the Shared Assets in the same manner as if it were providing such services and assets on its own account (the "***Service Standards***"). Service Provider will conduct its duties hereunder in a lawful manner in compliance with applicable laws, statutes, rules and regulations and in accordance with the Service Standards, including, for avoidance of doubt, laws and regulations relating to privacy of customer information.

Section 6.02 Books and Records; Access to Information. Service Provider will keep and maintain books and records on behalf of Recipient in accordance with past practices and internal control procedures. Recipient will have the right, at any time and from time to time upon reasonable prior notice to Service Provider, to inspect and copy (at its expense) during normal business hours at the offices of Service Provider the books and records relating to the Shared Services and Shared Assets, with respect to Service Provider's performance of its obligations hereunder. This inspection right will include the ability of Recipient's financial auditors to review such books and records in the ordinary course of performing standard financial auditing services for Recipient (but subject to Service Provider imposing reasonable access restrictions to Service Provider's and its Affiliates' proprietary information and such financial auditors executing appropriate confidentiality agreements reasonably acceptable to Service Provider). Service Provider will promptly respond to any reasonable requests for information or access. For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any of such books or records upon Recipient's request (provided that Service Provider may retain a copy of such books or records) and shall make all such books and records available for inspection and use by the Securities and Exchange Commission or any person retained by Recipient at all reasonable times. Such records shall be maintained by Service Provider for the periods and in the places required by laws and regulations applicable to Recipient.

Section 6.03 Return of Property and Equipment. Upon expiration or termination of this Agreement, Service Provider will be obligated to return to Recipient, as soon as is reasonably practicable, any equipment or other property or materials of Recipient that is in Service Provider's control or possession.

ARTICLE VII
TERM AND TERMINATION

Section 7.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the "***Term***"), unless terminated earlier in accordance with Section 9.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 7.02.

Section 7.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VIII
LIMITED WARRANTY

Section 8.01 Limited Warranty. Service Provider will perform the Shared Services hereunder in accordance with the Service Standards. Except as specifically provided in this Agreement, Service Provider makes no express or implied representations, warranties or guarantees relating to its performance of the Shared Services and the granting of the Shared Assets under this Agreement, including any warranty of merchantability, fitness, quality, non-infringement of third party rights, suitability or adequacy of the Shared Services and the Shared Assets for any purpose or use or purpose. Service Provider will (to the extent possible and subject to Service Provider's contractual obligations) pass through the benefits of any express warranties received from third parties relating to any Shared Service and Shared Asset, and will (at Recipient's expense) assist Recipient with any warranty claims related thereto.

ARTICLE IX
MISCELLANEOUS

Section 9.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or HCMFA or their respective successors or assigns. The Parties understand and agree that, with the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. With the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, no Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever. The Parties expressly acknowledge that Service Provider is an independent contractor with respect to Recipient in all respects, including with respect to the provision of the Shared Services.

Section 9.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 9.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 9.05 Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 9.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 9.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 9.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 9.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i)immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

If to HCMFA, addressed to:

Highland Capital Management Fund Advisors, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

Section 9.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 9.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 9.14 Arbitration; Jurisdiction. Notwithstanding anything contained in this Agreement or the Annexes hereto to the contrary, in the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that either party or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable, arbitration service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

Section 9.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein,""hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to, "respectively; (viii) any definition of or

reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: _____
Name: James Dondero
Title: President

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

By: Strand Advisors XVI, Inc., its general partner

By: _____
Name: Brian Mitts
Title: Assistant Secretary

Annex A

Shared Services

Compliance
- General compliance
- Compliance systems

Facilities
- Equipment
- General Overhead
- Office Supplies
- Rent & Parking

Finance & Accounting
- Book keeping
- Cash management
- Cash forecasting
- Credit facility reporting
- Financial reporting
- Accounts payable
- Accounts receivable
- Expense reimbursement
- Vendor management

HR
- Drinks/snacks
- Lunches
- Recruiting

IT
- General support & maintenance (OMS, development, support)
- Telecom (cell, phones, broadband)
- WSO

Legal
- Corporate secretarial services
- Document review and preparation
- Litigation support
- Management of outside counsel

Marketing and PR
- Public relations

Tax
- Tax audit support
- Tax planning
- Tax prep and filing

Investments
- Investment research on an ad hoc basis as requested by HCMFA

	Valuation Committee
Trading	
	Trading desk services
Operations	
	Trade settlement

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   See summary page
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone 9726284100	Contact phone
Contact email gscott@myersbigel.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

EXHIBIT

DDD

19340542004080000000000036

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**

☑ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See attached Exhibit "A"

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Grant Scott
Signature

Print the name of the person who is completing and signing this claim:

Name: Grant Scott
First name Middle name Last name

Title: Trustee

Company: The Dugaboy Investment Trust, as successor-in-interest to the Canis Maj
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____ Email _____

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.

District:
Northern District of Texas, Dallas Division

Creditor:
The Dugaboy Investment Trust, as successor-in-interest to the Canis Major Trust

300 Crescent Court, Ste. 700

Dallas, TX, 75201

Phone:
9726284100

Phone 2:

Fax:

Email:
gscott@myersbigel.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded

Related Document Statement:

Has Related Claim:
No

Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No

Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Amount of 503(b)(9):
No

Based on Lease:
No

Subject to Right of Setoff:
No

Nature of Secured Amount:

Value of Property:

Annual Interest Rate:

Arrearage Amount:

Basis for Perfection:

Amount Unsecured:

Submitted By:
Grant Scott on 08-Apr-2020 3:30:08 p.m. Eastern Time

Title:
Trustee

Company:
The Dugaboy Investment Trust, as successor-in-interest to the Canis Major Trust

VN: FBB33338EF4660051FAD68A4EA09DB18

Exhibit A

The Dugaboy Investment Trust, as successor-in-interest to The Canis Major Trust ("Claimant"), is a limited partner in the Debtor. Debtor's tax return for 2008 is being audited and as a result the partnership and/or general partner may be liable to the limited partners. In addition, for certain years during the period from 2004 through 2018, the Debtor did not make tax distributions to the limited partners. Accordingly, Claimant may have a claim(s) against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim(s). This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   The Get Good Trust
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   The Get Good Trust
   300 Crescent Court, Ste. 700
   Dallas, TX 75201

   Contact phone
   Contact email gscott@myersbigel.com

   Where should payments to the creditor be sent? (if different)
   Contact phone
   Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

EXHIBIT
EEE

19340542004080000000000039

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**

☑ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See attached Exhibit "A"

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

		Amount entitled to priority
☑	No	
☐	Yes. *Check all that apply:*	
☐	Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐	Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐	Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐	Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐	Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐	Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Grant Scott
Signature

Print the name of the person who is completing and signing this claim:

Name: Grant Scott
First name Middle name Last name

Title: Trustee

Company: The Get Good Trust
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____ Email _____

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
The Get Good Trust
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
Phone 2:
Fax:
Email:
gscott@myersbigel.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Grant Scott on 08-Apr-2020 3:37:43 p.m. Eastern Time
Title:
Trustee
Company:
The Get Good Trust

VN: 42E214BB0E01488F0C4C0D4029F41B10

Exhibit A

The Get Good Trust ("Claimant") is a limited partner in the Debtor. Debtor's tax return for 2008 is being audited and as a result the partnership and/or general partner may be liable to the limited partners. In addition, for certain years during the period from 2004 through 2018, the Debtor did not make tax distributions to the limited partners. Accordingly, Claimant may have a claim(s) against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim(s). This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

Fill in this information to identify the case:

Debtor name **Highland Capital Management, L.P.**

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) **19-34054-SGJ**

☐ Check if this is an amended filing

Official Form 207

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

04/19

The debtor must answer every question. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and case number (if known).

Part 1: Income

1. **Gross revenue from business**

☐ None.

Identify the beginning and ending dates of the debtor's fiscal year, which may be a calendar year	**Sources of revenue** Check all that apply	**Gross revenue** (before deductions and exclusions)
From the beginning of the fiscal year to filing date: From **1/01/2019** to **Filing Date**	☑ Operating a business ☑ Other **Exhibit A**	**$28,431,156.97**
From the beginning of the fiscal year to filing date: From **1/01/2019** to **Filing Date**	☐ Operating a business ☑ Other **Exhibit A - Other Gain/(Loss)**	**$125,310,540.63**
For prior year: From **1/01/2018** to **12/31/2018**	☑ Operating a business ☑ Other **Exhibit A**	**$50,365,069.40**
For prior year: From **1/01/2018** to **12/31/2018**	☐ Operating a business ☑ Other **Exhibit A - Other Gain/(Loss)**	**$-52,929,268.33**
For year before that: From **1/01/2017** to **12/31/2017**	☑ Operating a business ☑ Other **Exhibit A**	**$67,911,079.00**
For year before that: From **1/01/2017** to **12/31/2017**	☐ Operating a business ☑ Other **Exhibit A - Other Gain/(Loss)**	**$47,701,590.21**

EXHIBIT

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

2. **Non-business revenue**
Include revenue regardless of whether that revenue is taxable. *Non-business income* may include interest, dividends, money collected from lawsuits, and royalties. List each source and the gross revenue for each separately. Do not include revenue listed in line 1.

☑ None.

Description of sources of revenue	Gross revenue from each source (before deductions and exclusions)

Part 2: List Certain Transfers Made Before Filing for Bankruptcy

3. **Certain payments or transfers to creditors within 90 days before filing this case**
List payments or transfers--including expense reimbursements--to any creditor, other than regular employee compensation, within 90 days before filing this case unless the aggregate value of all property transferred to that creditor is less than $6,825. (This amount may be adjusted on 4/01/22 and every 3 years after that with respect to cases filed on or after the date of adjustment.)

☐ None.

Creditor's Name and Address	Dates	Total amount of value	Reasons for payment or transfer *Check all that apply*
3.1. **Exhibit B**		**$23,255,006.86**	☐ Secured debt ☐ Unsecured loan repayments ☐ Suppliers or vendors ☐ Services ☐ Other__

4. **Payments or other transfers of property made within 1 year before filing this case that benefited any insider**
List payments or transfers, including expense reimbursements, made within 1 year before filing this case on debts owed to an insider or guaranteed or cosigned by an insider unless the aggregate value of all property transferred to or for the benefit of the insider is less than $6,825. (This amount may be adjusted on 4/01/22 and every 3 years after that with respect to cases filed on or after the date of adjustment.) Do not include any payments listed in line 3. *Insiders* include officers, directors, and anyone in control of a corporate debtor and their relatives; general partners of a partnership debtor and their relatives; affiliates of the debtor and insiders of such affiliates; and any managing agent of the debtor. 11 U.S.C. § 101(31).

☐ None.

Insider's name and address Relationship to debtor	Dates	Total amount of value	Reasons for payment or transfer
4.1. **Exhibit C**		**$36,608,252.91**	

5. **Repossessions, foreclosures, and returns**
List all property of the debtor that was obtained by a creditor within 1 year before filing this case, including property repossessed by a creditor, sold at a foreclosure sale, transferred by a deed in lieu of foreclosure, or returned to the seller. Do not include property listed in line 6.

☑ None

Creditor's name and address	Describe of the Property	Date	Value of property

6. **Setoffs**
List any creditor, including a bank or financial institution, that within 90 days before filing this case set off or otherwise took anything from an account of the debtor without permission or refused to make a payment at the debtor's direction from an account of the debtor because the debtor owed a debt.

☑ None

Creditor's name and address	Description of the action creditor took	Date action was taken	Amount

Part 3: Legal Actions or Assignments

7. **Legal actions, administrative proceedings, court actions, executions, attachments, or governmental audits**
List the legal actions, proceedings, investigations, arbitrations, mediations, and audits by federal or state agencies in which the debtor was involved in any capacity—within 1 year before filing this case.

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

☐ None.

	Case title Case number	Nature of case	Court or agency's name and address	Status of case
7.1.	**Exhibit D**			☐ Pending ☐ On appeal ☐ Concluded
7.2.	**Internal dispute resolution department within the IRS**	**IRS Appeal**	**Department of the Treasury 4050 Alpha Road Suite 517, MC: 8000NDAL Dallas, TX 75201-7849**	☐ Pending ☑ On appeal ☐ Concluded

8. Assignments and receivership

List any property in the hands of an assignee for the benefit of creditors during the 120 days before filing this case and any property in the hands of a receiver, custodian, or other court-appointed officer within 1 year before filing this case.

☑ None

Part 4: Certain Gifts and Charitable Contributions

9. **List all gifts or charitable contributions the debtor gave to a recipient within 2 years before filing this case unless the aggregate value of the gifts to that recipient is less than $1,000**

☐ None

	Recipient's name and address	Description of the gifts or contributions	Dates given	Value
9.1.	**Exhibit E** **Recipients relationship to debtor**	**Debtor does not track recipient of gift or contribution.**		**$445,725.61**

Part 5: Certain Losses

10. **All losses from fire, theft, or other casualty within 1 year before filing this case.**

☑ None

Description of the property lost and how the loss occurred	Amount of payments received for the loss If you have received payments to cover the loss, for example, from insurance, government compensation, or tort liability, list the total received. List unpaid claims on Official Form 106A/B *(Schedule A/B: Assets – Real and Personal Property)*.	Dates of loss	Value of property lost

Part 6: Certain Payments or Transfers

11. **Payments related to bankruptcy**

List any payments of money or other transfers of property made by the debtor or person acting on behalf of the debtor within 1 year before the filing of this case to another person or entity, including attorneys, that the debtor consulted about debt consolidation or restructuring, seeking bankruptcy relief, or filing a bankruptcy case.

☐ None.

Who was paid or who received the transfer? Address	If not money, describe any property transferred	Dates	Total amount or value

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

	Who was paid or who received the transfer? Address	If not money, describe any property transferred	Dates	Total amount or value
11.1.	**Development Specialists, Inc. 10 South LaSalle Suite 3300 Chicago, IL 60603** Email or website address: **dsiconsulting.com** Who made the payment, if not debtor?		**10/07/2019**	**$250,000.00**
11.2.	**Pachulski Stang Ziehl & Jones LLP 10100 Santa Monica Blvd. 13th Floor Los Angeles, CA 90067** Email or website address: **http://www.pszjlaw.com/** Who made the payment, if not debtor?		**10/02/2019**	**$500,000.00**
11.3.	**Kurtzman Carson Consultants LLC Dept CH 16639 Palatine, IL 60055** Email or website address: **https://www.kccllc.com/** Who made the payment, if not debtor?		**10/07/2019**	**$50,000.00**

12. **Self-settled trusts of which the debtor is a beneficiary**
List any payments or transfers of property made by the debtor or a person acting on behalf of the debtor within 10 years before the filing of this case to a self-settled trust or similar device.
Do not include transfers already listed on this statement.

☑ None.

Name of trust or device	Describe any property transferred	Dates transfers were made	Total amount or value

13. **Transfers not already listed on this statement**
List any transfers of money or other property by sale, trade, or any other means made by the debtor or a person acting on behalf of the debtor within 2 years before the filing of this case to another person, other than property transferred in the ordinary course of business or financial affairs. Include both outright transfers and transfers made as security. Do not include gifts or transfers previously listed on this statement.

☐ None.

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

	Who received transfer? Address	Description of property transferred or payments received or debts paid in exchange	Date transfer was made	Total amount or value
13.1.	**Highland Select Equity Fund, L.P.** **300 Crescent Ct.** **Dallas, TX 75201** **Relationship to debtor** **Fund managed by the debtor.**	**Transfer of 888,731 shares of public security in exchange for LP interest.**	**12/26/2018**	**$19,632,067.79**
13.2.	**Highland Select Equity Fund, L.P.** **300 Crescent Ct.** **Dallas, TX 75201** **Relationship to debtor** **Fund managed by the debtor**	**Transfer of 214,000 shares of public security in exchange for LP interest.**	**3/12/2018**	**$6,385,760.00**
13.3.	**Highland Select Equity Fund, L.P.** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201** **Relationship to debtor** **Fund managed by the debtor**	**Transfer of 250,000 shares of public security for LP interest**	**7/23/2019**	**$10,297,500.00**

Part 7: Previous Locations

14. **Previous addresses**
List all previous addresses used by the debtor within 3 years before filing this case and the dates the addresses were used.

☐ Does not apply

	Address	Dates of occupancy From-To
14.1.	**Parkway Bent Tree** **17130 Dallas Parkway** **Suite 230** **Dallas, TX 75248**	**10/16/2016 – 8/30/2018**
14.2.	**2200 Ross Avenue** **Suite 4700E** **Storage Site** **Dallas, TX 75201**	**10/16/2016 – 12/31/2018**

Part 8: Health Care Bankruptcies

15. **Health Care bankruptcies**
Is the debtor primarily engaged in offering services and facilities for:
- diagnosing or treating injury, deformity, or disease, or
- providing any surgical, psychiatric, drug treatment, or obstetric care?

☑ No. Go to Part 9.
☐ Yes. Fill in the information below.

Facility name and address	Nature of the business operation, including type of services the debtor provides	If debtor provides meals and housing, number of patients in debtor's care

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

Part 9: Personally Identifiable Information

16. **Does the debtor collect and retain personally identifiable information of customers?**

☐ No.
☑ Yes. State the nature of the information collected and retained.

Debtor has information including SS#, tax ID, mailing address, email address, and limited KYC for fund investors.

Does the debtor have a privacy policy about that information?
☐ No
☑ Yes

17. **Within 6 years before filing this case, have any employees of the debtor been participants in any ERISA, 401(k), 403(b), or other pension or profit-sharing plan made available by the debtor as an employee benefit?**

☐ No. Go to Part 10.
☑ Yes. Does the debtor serve as plan administrator?

☐ No Go to Part 10.
☑ Yes. Fill in below:

Name of plan	Employer identification number of the plan
Highland 401(K) Plan	EIN: **75-2716725**

Has the plan been terminated?
☑ No
☐ Yes

☐ No Go to Part 10.
☑ Yes. Fill in below:

Name of plan	Employer identification number of the plan
Highland Capital Management, L.P. Retirement Plan and Trust (Defined Benefit Plan)	EIN: **75-2716725**

Has the plan been terminated?
☑ No
☐ Yes

Part 10: Certain Financial Accounts, Safe Deposit Boxes, and Storage Units

18. **Closed financial accounts**
Within 1 year before filing this case, were any financial accounts or instruments held in the debtor's name, or for the debtor's benefit, closed, sold, moved, or transferred?
Include checking, savings, money market, or other financial accounts; certificates of deposit; and shares in banks, credit unions, brokerage houses, cooperatives, associations, and other financial institutions.

☑ None

Financial Institution name and Address	Last 4 digits of account number	Type of account or instrument	Date account was closed, sold, moved, or transferred	Last balance before closing or transfer

19. **Safe deposit boxes**
List any safe deposit box or other depository for securities, cash, or other valuables the debtor now has or did have within 1 year before filing this case.

☑ None

Depository institution name and address	Names of anyone with access to it Address	Description of the contents	Do you still have it?

20. **Off-premises storage**
List any property kept in storage units or warehouses within 1 year before filing this case. Do not include facilities that are in a part of a building in which the debtor does business.

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

☐ None

Facility name and address	Names of anyone with access to it	Description of the contents	Do you still have it?
Iron Mountain PO BOX 915004 Dallas, TX 75391	**Employee has login access to request documents.**	**Firm-wide documents sent off-site to retain documents per the firm's retention policy.**	☐ No ☑ Yes
Natural Disasters Site 900 Venture Dr. Allen, TX 75013	**Highland Capital Management IT Department**	**Primary Data Center - Storage**	☐ No ☑ Yes
Natural Disasters Site 3010 Waterview Parkway Richardson, TX 75080	**Highland Capital Management IT Department**	**Natural Disasters Site - Storage**	☐ No ☑ Yes

Part 11: Property the Debtor Holds or Controls That the Debtor Does Not Own

21. **Property held for another**
List any property that the debtor holds or controls that another entity owns. Include any property borrowed from, being stored for, or held in trust. Do not list leased or rented property.

☐ None

Owner's name and address	Location of the property	Describe the property	Value
James Dondero	**300 Crescent Court Suite 700 Dallas, TX 75201**	**Artwork**	**Unknown**

Part 12: Details About Environment Information

For the purpose of Part 12, the following definitions apply:
Environmental law means any statute or governmental regulation that concerns pollution, contamination, or hazardous material, regardless of the medium affected (air, land, water, or any other medium).

Site means any location, facility, or property, including disposal sites, that the debtor now owns, operates, or utilizes or that the debtor formerly owned, operated, or utilized.

Hazardous material means anything that an environmental law defines as hazardous or toxic, or describes as a pollutant, contaminant, or a similarly harmful substance.

Report all notices, releases, and proceedings known, regardless of when they occurred.

22. **Has the debtor been a party in any judicial or administrative proceeding under any environmental law? Include settlements and orders.**

☑ No.
☐ Yes. Provide details below.

Case title Case number	Court or agency name and address	Nature of the case	Status of case

23. **Has any governmental unit otherwise notified the debtor that the debtor may be liable or potentially liable under or in violation of an environmental law?**

☑ No.
☐ Yes. Provide details below.

Site name and address	Governmental unit name and address	Environmental law, if known	Date of notice

24. **Has the debtor notified any governmental unit of any release of hazardous material?**

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

☑ No.
☐ Yes. Provide details below.

Site name and address	Governmental unit name and address	Environmental law, if known	Date of notice

Part 13: Details About the Debtor's Business or Connections to Any Business

25. **Other businesses in which the debtor has or has had an interest**
List any business for which the debtor was an owner, partner, member, or otherwise a person in control within 6 years before filing this case. Include this information even if already listed in the Schedules.

☐ None

	Business name address	Describe the nature of the business	Employer Identification number Do not include Social Security number or ITIN. Dates business existed
25.1.	**Exhibit F**		**EIN:** **From-To**

26. **Books, records, and financial statements**
26a. List all accountants and bookkeepers who maintained the debtor's books and records within 2 years before filing this case.
☐ None

	Name and address	Date of service From-To
26a.1.	**Frank Waterhouse 300 Crescent Court Suite 700 Dallas, TX 75201**	**10/23/06 - Current**
26a.2.	**David Klos 300 Crescent Court Suite 700 Dallas, TX 75201**	**03/30/09 - Current**
26a.3.	**Kristin Hendrix 300 Crescent Court Suite 700 Dallas, TX 75201**	**12/16/04 - Current**
26a.4.	**Sean Fox 300 Crescent Court Suite 700 Dallas, TX 75201**	**06/25/13 - Current**
26a.5.	**Drew Wilson 300 Crescent Court Suite 700 Dallas, TX 75201**	**02/06/12 - 09/14/18**
26a.6.	**Hayley Eliason 300 Crescent Court Suite 700 Dallas, TX 75201**	**11/26/18 - Current**
26a.7.	**Blair Roeber 300 Crescent Court Suite 700 Dallas, TX 75201**	**09/01/15 - Current**

26b. List all firms or individuals who have audited, compiled, or reviewed debtor's books of account and records or prepared a financial statement within 2 years before filing this case.

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

☐ None

	Name and address	Date of service From-To
26b.1.	**PricewaterhouseCoopers LLP** **2121 N Pearl St** **Dallas, TX 75201**	**2003 - Current**

26c. List all firms or individuals who were in possession of the debtor's books of account and records when this case is filed.

☐ None

	Name and address	If any books of account and records are unavailable, explain why
26c.1.	**Boyd Gosserand** **300 Crescent Ct.** **St 700** **Dallas, TX 75201**	
26c.2.	**Deloitte - Tax** **PO Box 844736** **Dallas, TX 75284**	
26c.3.	**Centroid -Accounting Software Consultant** **6860 Dallas Pkwy Suite 560** **Dallas, TX 75204**	
26c.4.	**Oracle - Accounting Software** **PO Box 203448** **Dallas, TX 75320**	
26c.5.	**Wolters Kluwer - Tax** **PO Box 71882** **Chicago, IL 60694**	

26d. List all financial institutions, creditors, and other parties, including mercantile and trade agencies, to whom the debtor issued a financial statement within 2 years before filing this case.

☐ None

	Name and address
26d.1.	**AgeeFisherBarrett, LLC** **750 Hammond Dr BLDG 17** **Atlanta, GA 30328**
26d.2.	**Bowman Law LLC** **840 Tom Wheeler Lane** **Mc Ewen, TN 37101**
26d.3.	**CBIZ Valuation Group, Inc.** **3030 LBJ Freeway, Ste 1650** **Dallas, TX 75234**
26d.4.	**Cole Schotz** **Court Plaza North** **25 Main Street, PO Box 800** **Hackensack, NJ 07602**
26d.5.	**Colorado FSC** **188 Inverness Drive West** **Ste. 100** **Centennial, CO 80112**

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	Name and address
26d.6.	**Concordeis** **1120 East Long Lake Road** **Ste 207** **Troy, MI 48085**
26d.7.	**Courtland T Group** **PO Box 11929** **Newport Beach, CA 92658**
26d.8.	**Crown Capital Securities** **725 Town & Country Rd** **Ste 530** **Orange, CA 92868**
26d.9.	**Deloitte Tax LLP** **PO Box 844736** **Dallas, TX 75284**
26d.10.	**DFPG Investments, Inc.** **9017 S. Riverside Dr.** **Ste 210** **Sandy, UT 84070**
26d.11.	**Discipline Advisors** **14135 G-100 Midway Rd.** **Dallas, TX 75244**
26d.12.	**Development Specialists, Inc.** **10 S. LaSalle St.** **Chicago, IL 60603**
26d.13.	**Emerson Equity** **155 Bovet Rd. #725** **San Mateo, CA 94402**
26d.14.	**Frontier Bank** **5100 S I-35 Service Rd.** **Oklahoma City, OK 73129**
26d.15.	**Grant Thornton LLP** **33570 Treasury Center** **Chicago, IL 60694**
26d.16.	**Great Southern Bank** **8201 Preston Road** **Suite 305** **Dallas, TX 75225**
26d.17.	**Key Bank** **ATTN: KREC Loan Services** **4910 Tiedman Road** **3rd Floor** **Cleveland, OH 44144**
26d.18.	**KPMG** **3 Chesnut Ridge Rd** **Montvale, NJ 07645**
26d.19.	**Maples & Calder** **Ugland House PO Box 309** **S. Church Street George Town** **Grand Cayman, Cayman Island**

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Name and address	
26d.20.	**Payne and Smith** **5952 Royal Lane** **Suite 158** **Dallas, TX 75230**
26d.21.	**PWC** **PO Box 952282** **Dallas, TX 75395**
26d.22.	**Squire Patton Boggs** **PO Box 643051** **Cincinnati, OH 45264**
26d.23.	**WC Capital Partners**
26d.24.	**Western International Securities, Inc.** **70 S. Lake Ave** **Ste 700** **Pasadena, CA 91101**
26d.25.	**Jean Francois Lemay** **52 Harold Street** **Etobicoke M8Z 3R3**

27. **Inventories**
Have any inventories of the debtor's property been taken within 2 years before filing this case?

- [x] No
- [ ] Yes. Give the details about the two most recent inventories.

Name of the person who supervised the taking of the inventory	Date of inventory	The dollar amount and basis (cost, market, or other basis) of each inventory

28. **List the debtor's officers, directors, managing members, general partners, members in control, controlling shareholders, or other people in control of the debtor at the time of the filing of this case.**

Name	Address	Position and nature of any interest	% of interest, if any
Strand Advisors, Inc.	**300 Crescent Ct, Ste 700** **Dallas, TX 75201**	**General Partner**	**0.2508%**
Name	**Address**	**Position and nature of any interest**	**% of interest, if any**
The Dugaboy Investment Trust	**300 Crescent Ct, Ste 700** **Dallas, TX 75201**	**Voting Limited Partner**	**0.1866%**
Name	**Address**	**Position and nature of any interest**	**% of interest, if any**
Mark Okada	**300 Crescent Ct, Ste 700** **Dallas, TX 75201**	**Voting Limited Partner**	**0.0487%**
Name	**Address**	**Position and nature of any interest**	**% of interest, if any**
Mark and Pamela Okada Family Trust	**300 Crescent Ct, Ste 700** **Dallas, TX 75201**	**Voting Limited Partner**	**0.0098%**
Name	**Address**	**Position and nature of any interest**	**% of interest, if any**
Mark and Pamela Okada Family Trust - #2	**300 Crescent Ct, Ste 700** **Dallas, TX 75201**	**Voting Limited Partner**	**0.0042%**

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

Name	Address	Position and nature of any interest	% of interest, if any
Hunter Mountain Investment Trust	**1100 N Market St Wilmington, DE 19890**	**Non-voting Limited Partner**	**99.50%**

Name	Address	Position and nature of any interest	% of interest, if any
James Dondero	**300 Crescent Ct, Ste 700 Dallas, TX 75201**	**Sole Shareholder of General Partner**	**100%**

Name	Address	Position and nature of any interest	% of interest, if any
James Dondero	**300 Crescent Ct, Ste 700 Dallas, TX 75201**	**President of General Partner**	**100% of the General Partner**

Name	Address	Position and nature of any interest	% of interest, if any
Scott Ellington	**300 Crescent Ct, Ste 700 Dallas, TX 75201**	**Secretary of General Partner**	**0.00%**

Name	Address	Position and nature of any interest	% of interest, if any
Frank Waterhouse	**300 Crescent Ct, Ste 700 Dallas, TX 75201**	**Treasurer of General Partner**	**0.00%**

29. **Within 1 year before the filing of this case, did the debtor have officers, directors, managing members, general partners, members in control of the debtor, or shareholders in control of the debtor who no longer hold these positions?**

☐ No
☑ Yes. Identify below.

Name	Address	Position and nature of any interest	Period during which position or interest was held
Mark Okada	**300 Crescent Ct, Ste 700 Dallas, TX 75201**	**Executive Vice President**	**Since inception to 9/30/2019**

Name	Address	Position and nature of any interest	Period during which position or interest was held
Trey Parker	**300 Crescent Ct, Ste 700 Dallas, TX 75201**	**Assistant Secretary**	**8/21/2015 - 4/15/2019**

30. **Payments, distributions, or withdrawals credited or given to insiders**
Within 1 year before filing this case, did the debtor provide an insider with value in any form, including salary, other compensation, draws, bonuses, loans, credits on loans, stock redemptions, and options exercised?

☐ No
☑ Yes. Identify below.

	Name and address of recipient	Amount of money or description and value of property	Dates	Reason for providing the value
30.1.	**Exhibit G** **Relationship to debtor**	**8,722,414.86**		

31. **Within 6 years before filing this case, has the debtor been a member of any consolidated group for tax purposes?**

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

☑ No
☐ Yes. Identify below.

Name of the parent corporation | **Employer Identification number of the parent corporation**

32. **Within 6 years before filing this case, has the debtor as an employer been responsible for contributing to a pension fund?**

☑ No
☐ Yes. Identify below.

Name of the pension fund | **Employer Identification number of the parent corporation**

Part 14: Signature and Declaration

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

I have examined the information in this *Statement of Financial Affairs* and any attachments and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on **December 13, 2019**

Signature of individual signing on behalf of the debtor

Bradley Sharp
Printed name

Position or relationship to debtor Chief Restructuring Officer

Are additional pages to *Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy* (Official Form 207) attached?

☐ No
☑ Yes

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Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit A - SOFA 1

Revenue Account	Year 2019 [1]	Year 2018	Year 2017
Operating Revenue			
Management fees	$ 18,776,701.38	$ 35,264,426.88	$ 37,098,010.50
Shared services fees	6,002,769.24	9,187,200.55	9,445,221.98
Incentive fees	150,925.36	18,465.92	10,042,499.76
Interest and Investment Income	2,625,221.26	4,857,157.03	4,478,946.34
Miscellaneous Income	875,539.73	1,037,819.02	6,846,400.42
Total Operating Revenue	**$ 28,431,156.97**	**$ 50,365,069.40**	**$ 67,911,079.00**
Other Gain/(Loss)			
Interest income	$ 5,765,215.32	$ 7,503,164.74	$ 7,049,038.53
Other income/expense	838,191.46	658,514.02	3,723,833.60
Net realized gains on sales of investment transactions	3,959,534.93	13,396,884.40	6,494,555.20
Net change in unrealized gains/(losses) of investments	(6,692,741.56)	(56,529,224.39)	27,322,977.50
Net earnings/(losses) from equity method investees	121,440,340.48	(17,958,607.10)	3,111,185.38
Total Other Gain/(Loss)	**$ 125,310,540.63**	**$ (52,929,268.33)**	**$ 47,701,590.21**

[1] Date ranges from 12/31/2018 to end of business 10/15/2019.

Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit B - SOFA 3 [1]

Trading Partner Name	Trading Partner Address	Payment Date	Payment Amount	Reason for Transfer
Wilmer Cutler Pickering Hale and Dorr LLP	PO Box 7247-8760 Philadelphia PA 19170-8760	7/18/2019	$ 20,275.50	Professional Services
Canteen Vending Services	PO Box 417632 Boston MA 02241-7632	7/18/2019	1,285.16	Suppliers/Vendors
Platinum Parking	300 Crescent Court Level G1, LB#102 Dallas TX 75201	7/18/2019	990.00	Professional Services
AT&T MOBILITY	PO BOX 6463 CAROL STREAM IL 60197-6463	7/19/2019	8,789.14	Professional Services
Highland Capital Management Korea Limited	(Seoul Finance Center, Taepyeongro-1-ga) 21F, 136, Sejong-daero, Jung-gu, Seoul, Korea	7/19/2019	630,000.00	Intercompany Funding
American Airlines	4255 Amon Carter Blvd MD 4106 Fort Worth TX 76155	7/22/2019	30,000.00	Professional Services
TRICOR BUSINESS OUTSOURCING	80 Robinson Rd, Singapore 068898	7/22/2019	28,122.16	Intercompany Funding
Meister Seelig & Fein LLP	125 Park Avenue 7th Floor New York NY 10017	7/22/2019	24,228.30	Professional Services
Flagship Cruises & Events	PO Box 120751 San Diego CA 92112	7/22/2019	16,103.26	Suppliers/Vendors
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	7/23/2019	146,190.02	Employee Benefits
Abrams & Bayliss LLP	20 Montchanin Road, Suite 200 Wilmington DE 19807	7/24/2019	53,237.45	Professional Services
Pricewaterhouse Coopers, LLP	8 Cross St. #17-00 PWC Singapore Building Singapore 048424	7/24/2019	14,461.66	Professional Services
Siepe Software, LLC	5440 Harvest Hill Rd Suite 100, Dallas, TX 75230	7/25/2019	36,084.06	Professional Services
Consultant	2620 White Rock Rd. Dallas TX 75214	7/25/2019	6,754.00	Professional Services
Reid Collins & Tsai LLP	4301 Westbank Drive Building B Suite 230 Austin TX 78746	7/30/2019	82,831.45	Professional Services
Paxstone Capital LLP	483 Green Lanes, London, Greater London, N13 4BS	7/30/2019	46,063.81	Professional Services
Charles Schwab	PO Box 1270 Tulsa, OK 74101-1270	7/31/2019	41,053.47	Employee Benefits
HIGHLAND CREDIT OPPORTUNITIES FUND	300 Crescent Court, Suite 700 Dallas, TX 75201	7/31/2019	628,000.00	Intercompany Funding
Arris Western Corp.	718 N Buckner #316 Dallas TX 75218	7/31/2019	11,000.00	Professional Services
Professional Speaker	Koa Kai, LLC PO Box 232307 Leucadia CA 92023	7/31/2019	15,000.00	Suppliers/Vendors
Pershing LLC	One Pershing Plaza Attn: IBD - 15th Floor Jersey City NJ 07399	8/1/2019	500,000.00	Investing
Consultant	300 Crescent Court, Suite 700 Dallas, TX 75201	8/1/2019	39,586.07	Professional Services
Crescent TC Investors LP	200 Crescent Ct Suite 250 Dallas TX 75201	8/1/2019	155,361.38	Rent Payment
Brasilinvest Empreendimentos e Participac?es S/A	Brazil	8/1/2019	10,000.00	Intercompany Funding
Frontier State Bank	5100 S I-35 Service Rd, Oklahoma City, OK 73129	8/1/2019	68,002.70	Secured Loan Payment
Massand Capital, LLC	8140 Walnut Hill Lane, Suite 310 Dallas, TX 75231	8/1/2019	54,979.21	Professional Services
Pershing LLC	One Pershing Plaza Attn: IBD - 15th Floor Jersey City NJ 07399	8/2/2019	11,959.71	Investing
Bloomberg Finance LP	PO Box 416604 Boston MA 02241-6604	8/2/2019	252,041.98	Professional Services
AT&T	PO BOX 5019 CAROL STREAM IL 60197	8/2/2019	259.05	Professional Services
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	8/2/2019	86,126.71	Employee Benefits
Abrams & Bayliss LLP	20 Montchanin Road, Suite 200 Wilmington DE 19807	8/7/2019	17,133.03	Professional Services
HIGHLAND CREDIT OPPORTUNITIES FUND	300 Crescent Court, Suite 700 Dallas, TX 75201	8/7/2019	441,000.00	Intercompany Funding
Status Labs.com	151 South 1st Suite 100 Austin TX 78704	8/7/2019	9,500.00	Professional Services
PetroCap Partners III, L.P.	3333 Lee Parkway Suite 750 Dallas TX 75219	8/7/2019	510,350.41	Investing
HIGHLAND CAPITAL MANAGEMENT, LP	300 Crescent Court, Suite 700 Dallas, TX 75201	8/8/2019	115,843.80	Employee Benefits
AT&T	PO BOX 5019 CAROL STREAM IL 60197	8/8/2019	3,573.58	Professional Services
Flexential Colorado Corp.	PO Box 732368 Dallas TX 75373-2368	8/8/2019	12,056.49	Professional Services
Canteen Vending Services	PO Box 417632 Boston MA 02241-7632	8/8/2019	3,267.49	Suppliers/Vendors
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	8/9/2019	157,850.27	Employee Benefits
Liberty Life Assurance Company of Boston - Group Benefits	PO Box 2658 Carol Stream IL 60132-2658	8/9/2019	5,283.26	Employee Benefits
ICBI	London	8/13/2019	12,420.78	Professional Services
Eagle Equity Advisors, LLC	300 Crescent Court, Suite 700 Dallas, TX 75201	8/13/2019	155,000.00	Intercompany Funding
Connolly Gallagher LLP	1201 North Market Street 20th Floor Wilmington DE 19801	8/13/2019	18,295.70	Professional Services
Charles Schwab	PO Box 1270 Tulsa, OK 74101-1270	8/14/2019	41,300.58	Employee Benefits
CBIZ Valuation Group, Inc.	3030 LBJ Freeway, Ste 1650 Dallas TX 75234	8/14/2019	15,000.00	Professional Services
Consultant	2620 White Rock Rd. Dallas TX 75214	8/14/2019	5,357.00	Professional Services
Siepe Services, LLC	5440 Harvest Hill Road Suite 100 Dallas TX 75230	8/14/2019	174,256.34	Professional Services
Intex Solutions, Inc.	Accounts Receivable 110 A St Needham MA 02494-2807	8/15/2019	35,200.00	Professional Services
AT&T	PO Box 9005 Carol Stream IL 60197-9005	8/15/2019	927.16	Professional Services
ABM	PO Box 419860 Boston MA 02241-9860	8/15/2019	5,884.76	Suppliers/Vendors
LinkedIn Corporation	62228 Collections Center Drive Chicago IL 60693-0622	8/15/2019	19,719.93	Professional Services
PetroCap Partners II, LP	300 Crescent Court, Suite 700 Dallas, TX 75201	8/15/2019	1,244,586.77	Investing
Houlihan Lokey	10250 Constellation Blvd, 5th Floor Attn: Accounts Receivable Los Angeles CA 90067-6802	8/15/2019	55,601.49	Professional Services
Deloitte Tax LLP	PO Box 844736 Dallas TX 75284-4736	8/15/2019	137,396.00	Professional Services
MacroMavens, LLC	180 W. 20th Street Suite 1700 New York NY 10011	8/15/2019	18,816.84	Professional Services
GRUBHUB for Work	PO Box 748570 Los Angeles CA 90074-8570	8/15/2019	13,823.98	Suppliers/Vendors
Arris Western Corp.	718 N Buckner #316 Dallas TX 75218	8/15/2019	1,420.63	Professional Services
TRICOR BUSINESS OUTSOURCING	80 Robinson Rd, Singapore 068898	8/16/2019	36,135.64	Intercompany Funding
ROWLETT HILL, LLP	25 Highland Park Village, Suite 100-448 Dallas TX 75205	8/16/2019	30,187.50	Professional Services
CDW Direct	PO BOX 75723 CHICAGO IL 60675-5723	8/16/2019	634.00	Suppliers/Vendors
Bloomberg Finance LP	PO Box 416604 Boston MA 02241-6604	8/16/2019	6,750.00	Professional Services
BCA Research Inc	1002 Sherbrooke St. W Suite 1600 Montreal Quebec H3A 3L6	8/16/2019	19,996.94	Professional Services
Willis of Texas, Inc.	PO Box 731739 Dallas TX 75373-1739	8/16/2019	5,754.18	Insurance
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	8/16/2019	89,965.15	Employee Benefits
Thomson West	PO Box 6292 Carol Stream IL 60197-6292	8/22/2019	21,339.33	Suppliers/Vendors
Duff & Phelps, LLC	DUFF & PHELPS, LLC 12595 Collection Center Drive Chicago IL 60693	8/23/2019	100,000.00	Professional Services
TRICOR BUSINESS OUTSOURCING	80 Robinson Rd, Singapore 068898	8/23/2019	50,934.56	Intercompany Funding
CDW Direct	PO BOX 75723 CHICAGO IL 60675-5723	8/23/2019	97.96	Suppliers/Vendors
Concur Technologies, Inc.	62157 Collections Center Drive Chicago IL 60693	8/23/2019	4,104.85	Professional Services
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	8/23/2019	91,020.22	Employee Benefits
Thomson West	PO Box 6292 Carol Stream IL 60197-6292	8/23/2019	3,153.32	Suppliers/Vendors
GRUBHUB for Work	PO Box 748570 Los Angeles CA 90074-8570	8/23/2019	2,150.47	Suppliers/Vendors
Highland Capital Management New York	300 Crescent Court, Suite 700 Dallas, TX 75201	8/26/2019	150,000.00	Intercompany Funding
TW Telecom Holdings, llc	PO Box 910182 Denver CO 80291-0182	8/26/2019	8,657.28	Professional Services

Highland Capital Management LP
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Trading Partner Name	Trading Partner Address	Payment Date	Payment Amount	Reason for Transfer
TW Telecom Holdings, llc	PO Box 910182 Denver CO 80291-0182	8/26/2019	9,065.13	Professional Services
HIGHLAND CREDIT OPPORTUNITIES FUND	300 Crescent Court, Suite 700 Dallas, TX 75201	8/27/2019	300,000.00	Intercompany Funding
Acis Capital Management	Attn: Rakhee V. Patel, Winstead PC 500 Winstead Building Dallas TX 75201	8/27/2019	12,249.65	Professional Services
Canteen Vending Services	PO Box 417632 Boston MA 02241-7632	8/27/2019	2,608.49	Suppliers/Vendors
Greenwood Office Outfitters	2951 Suffolk Drive Suite 640 Fort Worth TX 76133-1149	8/28/2019	12,877.82	Suppliers/Vendors
Charles Schwab	PO Box 1270 Tulsa, OK 74101-1270	8/29/2019	95,443.51	Employee Benefits
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	8/29/2019	118,192.57	Employee Benefits
Eagle Equity Advisors, LLC	300 Crescent Court, Suite 700 Dallas, TX 75201	8/29/2019	75,000.00	Intercompany Funding
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	8/29/2019	55,000.00	Intercompany Funding
Canteen Vending Services	PO Box 417632 Boston MA 02241-7632	8/29/2019	697.89	Suppliers/Vendors
Platinum Parking	300 Crescent Court Level G1, LB#102 Dallas TX 75201	8/29/2019	14,857.95	Professional Services
Consultant	300 Crescent Court, Suite 700 Dallas, TX 75201	8/30/2019	111,212.19	Professional Services
Arris Western Corp.	718 N Buckner #316 Dallas TX 75218	8/30/2019	11,000.00	Professional Services
Brasilinvest Empreendimentos e Participac?es S/A	Brazil	9/3/2019	10,000.00	Intercompany Funding
Crescent TC Investors LP	PO Box 841772 Dallas TX 75284-1772	9/3/2019	156,958.51	Rent Payment
AT&T	PO Box 9005 Carol Stream IL 60197-9005	9/3/2019	5,690.12	Professional Services
Frontier State Bank	5100 S I-35 Service Rd, Oklahoma City, OK 73129	9/3/2019	404,238.30	Secured Loan Payment
AT&T	PO BOX 5019 CAROL STREAM IL 60197	9/3/2019	259.77	Professional Services
AT&T	PO BOX 5019 CAROL STREAM IL 60197	9/3/2019	295.76	Professional Services
Willis of Texas, Inc.	Dallas/Ft. Worth Division PO Box 730310 Dallas TX 75373-0310	9/3/2019	21,133.38	Insurance
Pershing LLC	One Pershing Plaza Attn: IBD - 15th Floor Jersey City NJ 07399	9/4/2019	500,000.00	Investing
HIGHLAND CREDIT OPPORTUNITIES FUND	300 Crescent Court, Suite 700 Dallas, TX 75201	9/4/2019	500,000.00	Intercompany Funding
Consultant	2620 White Rock Rd. Dallas TX 75214	9/4/2019	6,451.50	Professional Services
Siepe Software, LLC	5440 Harvest Hill Rd Suite 100, Dallas, TX 75230	9/5/2019	18,042.03	Professional Services
HIGHLAND CAPITAL MANAGEMENT, LP	300 Crescent Court, Suite 700 Dallas, TX 75201	9/5/2019	113,788.36	Employee Benefits
Pershing LLC	One Pershing Plaza Attn: IBD - 15th Floor Jersey City NJ 07399	9/5/2019	11,286.83	Investing
Charles Schwab	PO Box 1270 Tulsa, OK 74101-1270	9/5/2019	858,220.29	Employee Benefits
Charles Schwab	PO Box 1270 Tulsa, OK 74101-1270	9/5/2019	854,278.60	Employee Benefits
Dow Jones & Company, Inc.	WALL ST JRNL OR BARRONS PO Box 4137 New York NY 10261-4137	9/5/2019	16,621.23	Professional Services
CDW Direct	PO BOX 75723 CHICAGO IL 60675-5723	9/5/2019	3,374.19	Suppliers/Vendors
Intex Solutions, Inc.	Accounts Receivable 110 A St Needham MA 02494-2807	9/5/2019	35,200.00	Professional Services
Las Vegas Flamingo Holdco, LLC	Collections Account TEXAS	9/5/2019	46,536.83	Intercompany Funding
GRUBHUB for Work	PO Box 748570 Los Angeles CA 90074-8570	9/5/2019	15,518.67	Suppliers/Vendors
AT&T	PO BOX 5019 CAROL STREAM IL 60197	9/6/2019	3,573.58	Professional Services
TW Telecom Holdings, llc	PO Box 910182 Denver CO 80291-0182	9/9/2019	9,138.32	Professional Services
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	9/9/2019	142,884.07	Employee Benefits
Eagle Equity Advisors, LLC	300 Crescent Court, Suite 700 Dallas, TX 75201	9/11/2019	40,000.00	Intercompany Funding
Charles Schwab	PO Box 1270 Tulsa, OK 74101-1270	9/12/2019	37,839.05	Employee Benefits
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	9/12/2019	59,111.49	Employee Benefits
Loews Coronado Bay Resort	4000 Coronado Bay Road Coronado CA 92118	9/12/2019	77,340.18	Suppliers/Vendors
Harbor Yacht Clubs, LLC	1880 Harbor Island Drive San Diego CA 92101	9/12/2019	6,440.00	Suppliers/Vendors
NYSE MARKET, INC	Box #223695 Pittsburgh PA 15251-2695	9/13/2019	8,857.74	Professional Services
TRICOR BUSINESS OUTSOURCING	80 Robinson Rd, Singapore 068898	9/13/2019	35,221.80	Intercompany Funding
Markit North America Inc.	620 8th Ave 35th floor New York NY 10018	9/13/2019	91,676.00	Professional Services
CDW Direct	PO BOX 75723 CHICAGO IL 60675-5723	9/13/2019	7,387.23	Suppliers/Vendors
BDO USA, LLP	700 North Pearl Suite 2000 Dallas TX 75201	9/13/2019	8,700.00	Professional Services
ABM	PO Box 419860 Boston MA 02241-9860	9/13/2019	5,884.76	Suppliers/Vendors
Concur Technologies, Inc.	62157 Collections Center Drive Chicago IL 60693	9/13/2019	8,187.05	Professional Services
Willis of Texas, Inc.	PO Box 731739 Dallas TX 75373-1739	9/13/2019	5,754.18	Insurance
Reorg Research, Inc.	1140 Broadway Ste 201 New York NY 10001	9/13/2019	93,123.35	Professional Services
Sage Search Partners	3811 Turtle Creek Blvd Suite 850 Dallas TX 75219	9/13/2019	20,000.00	Professional Services
AT&T	PO BOX 5019 CAROL STREAM IL 60197	9/16/2019	927.16	Professional Services
DLA Piper LLP US	6225 Smith Avenue Baltimore MD 21209	9/16/2019	200,000.00	Professional Services
Lynn Pinker Cox & Hurst, L.L.P.	2100 Ross Ave Suite 2700 Dallas TX 75201	9/17/2019	185,576.00	Professional Services
Flexential Colorado Corp.	PO Box 732368 Dallas TX 75373-2368	9/17/2019	12,056.49	Professional Services
Canteen Vending Services	PO Box 417632 Boston MA 02241-7632	9/17/2019	327.61	Suppliers/Vendors
Platinum Parking	300 Crescent Court, Suite 700 Dallas, TX 75201	9/17/2019	15,210.80	Professional Services
AT&T MOBILITY	PO BOX 6463 CAROL STREAM IL 60197-6463	9/19/2019	1,769.17	Professional Services
ROWLETT HILL, LLP	25 HIGHLAND PARK VILLAGE STE 100-448 DALLAS TX 75205	9/19/2019	23,718.75	Professional Services
Affiliate Loan	300 Crescent Court, Suite 700 Dallas, TX 75201	9/19/2019	500,000.00	Affiliate Loan
Siepe Services, LLC	5440 Harvest Hill Road Suite 100 Dallas TX 75230	9/19/2019	185,063.83	Professional Services
Greyline Partners, LLC	P.O. Box 733976 Dallas TX 75373-3976	9/19/2019	11,250.00	Professional Services
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	9/20/2019	77,274.56	Employee Benefits
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	9/20/2019	67,658.40	Employee Benefits
Affiliate Loan	300 Crescent Court, Suite 700 Dallas, TX 75201	9/23/2019	1,000,000.00	Affiliate Loan
Attia Medical, PC	5820 Oberlin Dr. Suite 205 San Diego CA 92121	9/23/2019	12,500.00	Professional Services
DLA Piper LLP US	6225 Smith Avenue Baltimore MD 21209	9/23/2019	200,000.00	Professional Services
CDW Direct	PO BOX 75723 CHICAGO IL 60675-5723	9/24/2019	3,059.50	Suppliers/Vendors
HIGHLAND CREDIT OPPORTUNITIES FUND	300 Crescent Court, Suite 700 Dallas, TX 75201	9/25/2019	300,000.00	Intercompany Funding
Consultant	2620 White Rock Rd. Dallas TX 75214	9/25/2019	8,109.75	Professional Services
Cole Schotz	Court Plaza North 25 Main Street Hackensack NJ 07602-0800	9/25/2019	100,000.00	Professional Services
Affiliate Loan	300 Crescent Court, Suite 700 Dallas, TX 75201	9/25/2019	900,000.00	Affiliate Loan
S&P Global Market Intelligence	33356 Collection Center Drive Chicago IL 60693-0333	9/25/2019	368,894.61	Professional Services

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Trading Partner Name	Trading Partner Address	Payment Date	Payment Amount	Reason for Transfer
Arris Western Corp.	718 N Buckner #316 Dallas TX 75218	9/25/2019	1,325.29	Professional Services
Harbor Yacht Clubs, LLC	1880 Harbor Island Drive San Diego CA 92101	9/25/2019	538.75	Suppliers/Vendors
ICE Data Pricing & Reference Data, LLC	PO Box 98616 Chicago IL 60693	9/25/2019	8,819.61	Professional Services
Charles Schwab	PO Box 1270 Tulsa, OK 74101-1270	9/26/2019	35,354.55	Employee Benefits
Duff & Phelps, LLC	2397 Paysphere Circle Chicago IL 60674	9/30/2019	100,000.00	Professional Services
HIGHLAND CREDIT OPPORTUNITIES FUND	300 Crescent Court, Suite 700 Dallas, TX 75201	9/30/2019	200,000.00	Intercompany Funding
Frontier State Bank	5100 S I-35 Service Rd, Oklahoma City, OK 73129	9/30/2019	98,707.96	Secured Loan Payment
Arris Western Corp.	718 N Buckner #316 Dallas TX 75218	9/30/2019	11,000.00	Professional Services
Professional Speaker	Koa Kai, LLC PO Box 232307 Leucadia CA 92023	9/30/2019	15,000.00	Suppliers/Vendors
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	9/30/2019	105,000.00	Intercompany Funding
Attia Medical, PC	5820 Oberlin Dr. Suite 205 San Diego CA 92121	9/30/2019	12,500.00	Professional Services
DLA Piper LLP US	6225 Smith Avenue Baltimore MD 21209	9/30/2019	200,000.00	Professional Services
AT&T MOBILITY	PO BOX 6463 CAROL STREAM IL 60197-6463	10/1/2019	-	Professional Services
Employee	300 Crescent Court, Suite 700 Dallas, TX 75201	10/1/2019	13,059.43	Bonus
Crescent TC Investors LP	200 Crescent Ct Suite 250 Dallas TX 75201	10/1/2019	192,588.09	Rent Payment
Frontier State Bank	5100 S I-35 Service Rd, Oklahoma City, OK 73129	10/1/2019	128,793.00	Secured Loan Payment
Bloomberg Finance LP	PO Box 416604 Boston MA 02241-6604	10/2/2019	113,095.54	Professional Services
Consultant	300 Crescent Court, Suite 700 Dallas, TX 75201	10/2/2019	28,821.81	Professional Services
Pachulski Stang Ziehl & Jones LLP	10100 Santa Monica Blvd. 13th Floor Los Angeles CA 90067	10/2/2019	500,000.00	Professional Services
HIGHLAND CAPITAL MANAGEMENT, LP	300 Crescent Court, Suite 700 Dallas, TX 75201	10/3/2019	114,381.18	Employee Benefits
OKADA INSURANCE RABBI TRUST	300 Crescent Court, Suite 700 Dallas, TX 75201	10/3/2019	14,875.00	Insurance
AT&T	PO BOX 5019 CAROL STREAM IL 60197	10/3/2019	309.51	Professional Services
Employee	300 Crescent Court, Suite 700 Dallas, TX 75201	10/4/2019	113,104.52	Employee Reimbursement
Siepe Software, LLC	5440 Harvest Hill Rd Suite 100, Dallas, TX 75230	10/4/2019	18,042.03	Professional Services
Siepe Software, LLC	5440 Harvest Hill Rd Suite 100, Dallas, TX 75230	10/4/2019	18,042.03	Professional Services
TW Telecom Holdings, llc	PO Box 910182 Denver CO 80291-0182	10/4/2019	7,710.33	Professional Services
CDW Direct	PO BOX 75723 CHICAGO IL 60675-5723	10/4/2019	23,277.86	Suppliers/Vendors
CDW Direct	PO BOX 75723 CHICAGO IL 60675-5723	10/4/2019	23,788.47	Suppliers/Vendors
HIGHLAND CREDIT OPPORTUNITIES FUND	300 Crescent Court, Suite 700 Dallas, TX 75201	10/4/2019	500,000.00	Intercompany Funding
AT&T	PO Box 9005 Carol Stream IL 60197-9005	10/4/2019	2,845.06	Professional Services
AT&T	PO BOX 5019 CAROL STREAM IL 60197	10/4/2019	3,573.58	Professional Services
AT&T	PO BOX 5019 CAROL STREAM IL 60197	10/4/2019	146.78	Professional Services
Willis of Texas, Inc.	Dallas/Ft. Worth Division PO Box 730310 Dallas TX 75373-0310	10/4/2019	5,754.18	Insurance
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	10/4/2019	109,241.27	Employee Benefits
Houlihan Lokey	10250 Constellation Blvd, 5th Floor Attn: Accounts Receivable Los Angeles CA 90067-6802	10/4/2019	55,667.91	Professional Services
Ipreo Data Inc.	421 Fayetteville Street Suite 900 Raleigh NC 27601	10/4/2019	9,500.00	Professional Services
Siepe Services, LLC	5440 Harvest Hill Road Suite 100 Dallas TX 75230	10/4/2019	182,790.68	Professional Services
Hedgeye Risk Mgmt, LLC	1 High Ridge Park 3rd Floor Stamford CT 06905	10/4/2019	25,265.10	Professional Services
Spin-Off Advisors, LLC	1327 W. Washington Blvd Ste 4-G Chicago IL 60607	10/4/2019	15,000.00	Professional Services
GRUBHUB for Work	PO Box 748570 Los Angeles CA 90074-8570	10/4/2019	14,343.81	Suppliers/Vendors
Flexential Colorado Corp.	PO Box 732368 Dallas TX 75373-2368	10/4/2019	24,031.79	Professional Services
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	10/4/2019	75,000.00	Intercompany Funding
DLA Piper LLP US	6225 Smith Avenue Baltimore MD 21209	10/4/2019	200,000.00	Professional Services
Siepe Software, LLC	5440 Harvest Hill Rd Suite 100, Dallas, TX 75230	10/7/2019	18,042.03	Professional Services
Pricewaterhouse Coopers, LLP	PO BOX 952282 DALLAS TX 75395-2282	10/7/2019	24,000.00	Professional Services
LAFFER ASSOCIATES	103 Murphy Court NASHVILLE TN 37203	10/7/2019	28,188.37	Professional Services
MARKIT WSO CORPORATION	Three Lincoln Centre 5430 LBJ Frwy; STe 800 DALLAS TX 75240	10/7/2019	27,213.92	Professional Services
Strategas Securities LLC	52 Vanderbilt Ave 8th Fl New York NY 10017	10/7/2019	27,195.87	Professional Services
Bloomberg Finance LP	PO Box 416604 Boston MA 02241-6604	10/7/2019	100,000.00	Professional Services
Intex Solutions, Inc.	Accounts Receivable 110 A St Needham MA 02494-2807	10/7/2019	35,200.00	Professional Services
BCA Research Inc	1002 Sherbrooke St. W Suite 1600 Montreal Quebec H3A 3L6	10/7/2019	18,294.21	Professional Services
Consultant	2620 White Rock Rd. Dallas TX 75214	10/7/2019	5,274.50	Professional Services
Employee	300 Crescent Court, Suite 700 Dallas, TX 75201	10/7/2019	43,910.97	Employee Reimbursement
Verity Group	PO Box 940361 Plano TX 75094-0361	10/7/2019	8,940.84	Suppliers/Vendors
Canteen Vending Services	PO Box 417632 Boston MA 02241-7632	10/7/2019	30,017.35	Suppliers/Vendors
ABM	PO Box 419860 Boston MA 02241-9860	10/7/2019	5,884.76	Suppliers/Vendors
Greenwood Office Outfitters	2951 Suffolk Drive Suite 640 Fort Worth TX 76133-1149	10/7/2019	4,628.62	Suppliers/Vendors
Houlihan Lokey	10250 Constellation Blvd, 5th Floor Attn: Accounts Receivable Los Angeles CA 90067-6802	10/7/2019	113,092.79	Professional Services
Houlihan Lokey	10250 Constellation Blvd, 5th Floor Attn: Accounts Receivable Los Angeles CA 90067-6802	10/7/2019	112,000.00	Professional Services
Deloitte Tax LLP	PO Box 844736 Dallas TX 75284-4736	10/7/2019	142,205.00	Professional Services
Deloitte Tax LLP	PO Box 844736 Dallas TX 75284-4736	10/7/2019	104,905.00	Professional Services
Siepe Services, LLC	5440 Harvest Hill Road Suite 100 Dallas TX 75230	10/7/2019	185,000.00	Professional Services
GRUBHUB for Work	PO Box 748570 Los Angeles CA 90074-8570	10/7/2019	5,556.50	Suppliers/Vendors
ValueScope, Inc.	1400 Thetford Ct. Southlake TX 76092	10/7/2019	25,000.00	Professional Services
Development Specialists, Inc.	333 South Grand Avenue Suite 4070 Los Angeles CA 90071-1544	10/7/2019	250,000.00	Professional Services
Bragalone Conroy PC	Chase Tower 2200 Ross Avenue Dallas TX 75201-7924	10/7/2019	10,000.00	Professional Services
Kurtzman Carson Consultants LLC	Dept CH 16639 Palatine IL 60055-6639	10/7/2019	50,000.00	Professional Services
Hunton Andrews Kurth, LLP	1445 Ross Avenue Suite 3700 Dallas TX 75202-2799	10/7/2019	156,996.86	Professional Services
Liberty Life Assurance Company of Boston - Group Benefits	PO Box 2658 Carol Stream IL 60132-2658	10/7/2019	15,928.25	Employee Benefits
ICE Data Pricing & Reference Data, LLC	PO Box 98616 Chicago IL 60693	10/7/2019	5,879.74	Professional Services
Refinitiv US LLC	3 Times Square New York NY 10036	10/7/2019	12,823.98	Professional Services
Deloitte Tax LLP	PO Box 844736 Dallas TX 75284-4736	10/8/2019	128,557.00	Professional Services
AT&T	PO BOX 5019 CAROL STREAM IL 60197	10/10/2019	3,573.58	Professional Services

Highland Capital Management LP
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Exhibit B - SOFA 3 [1]

Trading Partner Name	Trading Partner Address	Payment Date	Payment Amount	Reason for Transfer
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	10/10/2019	161,497.04	Employee Benefits
Cole Schotz	Court Plaza North 25 Main Street Hackensack NJ 07602-0800	10/10/2019	34,894.42	Professional Services
Houlihan Lokey	10250 Constellation Blvd, 5th Floor Attn: Accounts Receivable Los Angeles CA 90067-6802	10/10/2019	1,092.79	Professional Services
Snell & Wilmer LLP	One Arizona Center 400 E. Van Buren, Suite 1900 Phoenix AZ 85004-2202	10/10/2019	19,119.65	Professional Services
DLA Piper LLP US	6225 Smith Avenue Baltimore MD 21209	10/10/2019	1,115,000.00	Professional Services
ASW Law Limited	Crawford House 50 Cedar Avenue Hamilton HM11	10/10/2019	10,845.00	Professional Services
Carey Olsen	PO Box 10008 Willow House Grand Cayman KY1-1001	10/10/2019	48,595.00	Professional Services
Canteen Vending Services	PO Box 417632 Boston MA 02241-7632	10/10/2019	8,656.51	Suppliers/Vendors
Platinum Parking	300 Crescent Court Level G1, LB#102 Dallas TX 75201	10/10/2019	33,007.19	Professional Services
Charles Schwab	PO Box 1270 Tulsa, OK 74101-1270	10/11/2019	34,454.43	Employee Benefits
Cole Schotz	Court Plaza North 25 Main Street, PO Box 800 Hackensack NJ 07602-0800	10/11/2019	25,000.00	Professional Services
Pershing LLC	One Pershing Plaza Attn: IBD - 15th Floor Jersey City NJ 07399	10/15/2019	17,745.66	Investing
CBIZ Valuation Group, Inc.	3030 LBJ Freeway, Ste 1650 Dallas TX 75234	10/15/2019	12,400.00	Professional Services
Status Labs.com	151 South 1st Suite 100 Austin TX 78704	10/15/2019	18,000.00	Professional Services
Discovery Benefits [2]	4321 20th Ave. S. Fargo, ND 58103	Various	36,473.83	FSA Transfers
Expense Reimbursements [3]	300 Crescent Court, Suite 700 Dallas, TX 75201	Various	557,471.14	Expense reimbursements
Total			**$ 23,255,006.86**	

[1] Does not include activity in Jefferies Prime Broker account.
[2] Discovery benefits are the daily FSA amounts paid for healthcare related charges
[3] Expense reimbursements are not tracked in The Debtor's accounting software at detail requested

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Trading Partner	Trading Partner Address	Payment Date	Payment Amount
Acis Capital Management	Attn: Rakhee V. Patel, Winstead PC 500 Winstead Building Dallas TX 75201	8/27/2019	12,249.65
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	10/26/2018	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	11/1/2018	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	12/3/2018	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	1/2/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	1/25/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	2/1/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	3/1/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	4/3/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	5/1/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	6/3/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	7/1/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	8/1/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	9/3/2019	10,000.00
Dondero Insurance Rabbi Trust	300 Crescent Court, Suite 700 Dallas, TX 75201	1/2/2019	36,580.00
Dugaboy Investment Trust	300 Crescent Court, Suite 700 Dallas, TX 75201	12/19/2018	9,246.96
Dugaboy Investment Trust	300 Crescent Court, Suite 700 Dallas, TX 75201	3/28/2019	6,960.38
Eagle Equity Advisors, LLC	300 Crescent Court, Suite 700 Dallas, TX 75201	8/13/2019	155,000.00
Eagle Equity Advisors, LLC	300 Crescent Court, Suite 700 Dallas, TX 75201	8/29/2019	75,000.00
Eagle Equity Advisors, LLC	300 Crescent Court, Suite 700 Dallas, TX 75201	9/11/2019	40,000.00
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/31/2018	41.76
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	11/15/2018	70.73
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	11/30/2018	13.96
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	12/14/2018	50.74
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	12/31/2018	26.84
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	1/15/2019	56.68
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	1/31/2019	58.06
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	2/15/2019	183.46
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	2/28/2019	18.89
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/15/2019	28.88
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/29/2019	105.11
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/15/2019	23.70
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/30/2019	34.79
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/15/2019	110.76
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/31/2019	31.76
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/14/2019	43.23
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/28/2019	20.56
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/15/2019	87.13
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/31/2019	38.96
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	8/15/2019	19.48
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	8/30/2019	45.08
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	9/13/2019	66.22
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	9/30/2019	10.82
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/15/2019	115.75
Governance Re Ltd	Wellesley House; 2nd Floor 90 Pitts Bay Road Pembroke HM 08	6/14/2019	300,000.00
HCRE Partners, LLC	300 Crescent Court, Suite 700 Dallas, TX 75201	9/25/2019	900,000.00
Highland Capital Management Fund Advisors	300 Crescent Court, Suite 700 Dallas, TX 75201	5/2/2019	2,400,000.00
Highland Capital Management Fund Advisors	300 Crescent Court, Suite 700 Dallas, TX 75201	5/3/2019	5,000,000.00
Highland Capital Management Korea	300 Crescent Court, Suite 700 Dallas, TX 75201	12/6/2018	1,200,000.00
Highland Capital Management Korea	300 Crescent Court, Suite 700 Dallas, TX 75201	4/17/2019	1,100,000.00
Highland Capital Management Korea	300 Crescent Court, Suite 700 Dallas, TX 75201	7/8/2019	630,000.00
Highland Capital Management Korea	300 Crescent Court, Suite 700 Dallas, TX 75201	7/19/2019	630,000.00
Highland Capital Management Latin America	300 Crescent Court, Suite 700 Dallas, TX 75201	5/3/2019	1,350,000.00
Highland Capital Management Latin America	300 Crescent Court, Suite 700 Dallas, TX 75201	6/28/2019	10,000.00

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Trading Partner	Trading Partner Address	Payment Date	Payment Amount
Highland Capital Management Services	300 Crescent Court, Suite 700 Dallas, TX 75201	5/29/2019	400,000.00
Highland Capital Management Services	300 Crescent Court, Suite 700 Dallas, TX 75201	6/26/2019	150,000.00
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	10/26/2018	65,000.00
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	10/30/2018	5,864.10
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	11/13/2018	3,942.72
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	11/28/2018	3,848.70
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	12/12/2018	3,744.31
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	12/27/2018	4,176.47
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	1/11/2019	3,954.93
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	1/29/2019	4,703.71
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	2/5/2019	50,000.00
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	3/5/2019	150,000.00
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	3/26/2019	50,000.00
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	6/11/2019	55,000.00
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	7/1/2019	25,000.00
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	8/26/2019	150,000.00
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	2/27/2019	100,000.00
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	3/29/2019	25,000.00
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	4/3/2019	15,000.00
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	4/15/2019	50,000.00
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	6/28/2019	90,000.00
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	8/29/2019	55,000.00
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	9/30/2019	105,000.00
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	10/4/2019	75,000.00
Highland Select Equity Fund	300 Crescent Court, Suite 700 Dallas, TX 75201	12/5/2018	171,000.00
Highland Select Equity Fund	300 Crescent Court, Suite 700 Dallas, TX 75201	4/18/2019	3,000,000.00
Highland Select Equity Fund	300 Crescent Court, Suite 700 Dallas, TX 75201	5/2/2019	100,000.00
Highland Select Equity Fund	300 Crescent Court, Suite 700 Dallas, TX 75201	5/14/2019	255,000.00
Highland Select Equity Fund	300 Crescent Court, Suite 700 Dallas, TX 75201	5/22/2019	1,500,000.00
Highland Select Equity Fund	300 Crescent Court, Suite 700 Dallas, TX 75201	5/30/2019	350,000.00
Hunter Mountain Investment Trust	300 Crescent Court, Suite 700 Dallas, TX 75201	12/19/2018	4,930,722.50
Hunter Mountain Investment Trust	300 Crescent Court, Suite 700 Dallas, TX 75201	3/28/2019	3,711,456.47
James Dondero	300 Crescent Court, Suite 700 Dallas, TX 75201	3/28/2019	3,750,000.00
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/31/2018	8,986.25
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	11/15/2018	65,078.25
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	12/14/2018	115,481.36
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	12/31/2018	548.19
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	1/15/2019	96,786.37
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	1/31/2019	38,628.04
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	2/15/2019	42,434.77
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	2/28/2019	19,062.59
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/15/2019	50,771.13
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/29/2019	21,934.60
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/15/2019	60,190.72
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/30/2019	7,164.24
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/15/2019	89,256.54
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/31/2019	38,804.42
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/14/2019	82,710.42
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/28/2019	7,604.98
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/15/2019	47,005.97
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/31/2019	748.07
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	8/15/2019	85,058.51
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	8/30/2019	12,713.97
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	9/13/2019	56,762.57

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Trading Partner	Trading Partner Address	Payment Date	Payment Amount
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	9/30/2019	24,497.96
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/15/2019	32,977.48
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/31/2018	1,341.26
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	11/15/2018	164.01
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	11/30/2018	61.54
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	12/31/2018	2,378.81
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	1/31/2019	285.54
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	2/28/2019	876.87
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/15/2019	267.99
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/29/2019	112.22
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/30/2019	160.50
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/15/2019	144.02
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/14/2019	688.48
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/28/2019	48.54
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/15/2019	74.95
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/31/2019	153.81
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	8/30/2019	217.72
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	9/30/2019	3,615.11
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/15/2019	5,644.08
Maples & Calder	Ugland House Po Box 309Gt; S Church St George Town Grand Cayman	12/7/2018	6,780.65
Maples & Calder	Ugland House Po Box 309Gt; S Church St George Town Grand Cayman	12/12/2018	17,215.19
Maples & Calder	Ugland House Po Box 309Gt; S Church St George Town Grand Cayman	1/4/2019	95,798.38
Maples & Calder	Ugland House Po Box 309Gt; S Church St George Town Grand Cayman	1/10/2019	2,600.00
Maples & Calder	Ugland House Po Box 309Gt; S Church St George Town Grand Cayman	3/7/2019	2,453.66
Maples & Calder	Ugland House Po Box 309Gt; S Church St George Town Grand Cayman	9/16/2019	5,218.40
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,600.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,500.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,500.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,600.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,600.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,500.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,500.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,500.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,500.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	8,876.22

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Trading Partner	Trading Partner Address	Payment Date	Payment Amount
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	8,876.22
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/01	1,300.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/04	3,450.68
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/04	3,450.68
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/05	1,777.77
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/05	1,777.77
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/05	1,777.77
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/05	1,777.77
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/05	1,777.77
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/05	1,777.77
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/31/2018	68.12
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	12/31/2018	2,793.63
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	1/15/2019	28,862.62
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	2/15/2019	1,174.32
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/15/2019	740.40
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/29/2019	10,809.37
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/15/2019	4,485.01
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/15/2019	3,584.31
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/14/2019	6,121.00
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/15/2019	2,008.15
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	8/15/2019	139.27
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	8/30/2019	675.80
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	9/13/2019	10,961.53
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/15/2019	7,312.69
NexPoint Advisors, LP	300 Crescent Court, Suite 700 Dallas, TX 75201	9/19/2019	500,000.00
NexPoint Advisors, LP	300 Crescent Court, Suite 700 Dallas, TX 75201	9/23/2019	1,000,000.00
Okada Insurance Rabbi Trust	300 Crescent Court, Suite 700 Dallas, TX 75201	10/3/2019	14,875.00
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	11/15/2018	1,295.64
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	12/31/2018	5,149.90
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	1/15/2019	59.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	2/15/2019	102.32
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/29/2019	59.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/30/2019	59.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/15/2019	364.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/28/2019	59.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/15/2019	59.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	8/30/2019	205,787.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	9/30/2019	59.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/15/2019	59.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/15/2019	113,104.52
Strand Advisors	300 Crescent Court, Suite 700 Dallas, TX 75201	12/19/2018	12,423.44
Strand Advisors	300 Crescent Court, Suite 700 Dallas, TX 75201	3/28/2019	9,351.38
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/31/2018	419.21
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	12/14/2018	5,024.00
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	1/31/2019	355.30
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/15/2019	529.77
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/30/2019	4,185.33
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/15/2019	589.52
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/31/2019	480.00
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/28/2019	1,591.54

Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit C - SOFA #4

Trading Partner	Trading Partner Address	Payment Date	Payment Amount
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/15/2019	125.00
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	9/30/2019	28.00
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/15/2019	2,232.89
Total			**36,608,252.91**

Refer to SOFA 30 and Exhibit G for other transfers.

Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit D - SOFA 7

Case Title	Case Number	Nature of Case	Court Name	Court Address	Status of case
Duff & Phelps, LLC v. Highland Capital Management, L.P.	Index No. 653813/2019	Claim for breach of contract and unjust enrichment for failure to pay pursuant to a Letter of Engagement and accompanying Terms and Conditions.	Supreme Court of the State of New York, County of New York	60 Centre St, New York, NY 10007	Concluded
Hamilton Partners, L.P. v. Highland Capital Management, L.P. and Joseph Furlong	Cause No. 6547	Allegedly improper restructuring of American Home Patient	Court of Chancery of the State of Delaware	34 The Circle Georgetown, DE 19947	Concluded
In re: Acis Capital Management, L.P. (Case No. 18-30264-SGJ-11), Acis Capital Management GP, LLC (Case No. 18-30265-SGJ-11) as Debtors. Robin Phelan, Chapter 11 Trustee v. Highland Capital Management, L.P., Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd., CLO Holdco, Ltd., Neutra, Ltd., Acis CLO 2014-3 Ltd., Acis CLO 2014-4 Ltd., Acis CLO 2014-5 Ltd., Acis CLO 2015-6 Ltd., Acis CLO 2014-3 LLC, Acis CLO 2014-4 LLC, Acis CLO 2014-5 LLC, and Acis CLO 2015-6 LLC	Case No. 18-03212-SGJ	Chapter 11 Trustee, on behalf of Debtors, claimed violation of TRO, preliminary injunction, and fraudulent conveyance.	United State Bankruptcy Court for the Northern District of Texas, Dallas Division	George Mahon Federal Building 1205 Texas Ave., Rm 306 Lubbock, TX 79401-4002	Pending
McKool Smith P.C. vs. Highland Capital Management, L.P.	JAMS No.: 1310024517	Claim for breach of contract pursuant to Crusader Retention Agreement, Terry Retention Agreement, UBS Retention Agreement, and payment plan.	N/A	N/A	Pending
NWCC, LLC v. Highland CLO Management, LLC; Highland Capital Management, L.P.; Acis CLO 2014-3 Ltd.; Highland CLO 2014-3R Ltd.; Highland CLO 2014-3R LLC; Highland HCF Advisor, Ltd., as Trustee for Highland CLO Trust; Highland CLO Management Holdings, L.P.; Highland CLO Management GP, LLC; and Highland HCF Advisor, Ltd.	Case No. 654195/2018	Claim for breach of contract for failure to pay pursuant to Master Repurchase Agreement.	Supreme Court of the State of New York, County of New York	60 Centre St, New York, NY 10007	Pending
Patrick Daugherty v. Highland Capital Management, L.P., Highland Employee Retention Assets, LLC, Highland ERA Management, LLC, and James Dondero	No. 2017-0488-SG	Claim for collection of judgment against Highland Employee Retention Assets, LLC ("HERA")and allegation of improper transfer of assets from HERA to other Defendants	Court of Chancery of the State of Delaware	34 The Circle Georgetown, DE 19947	Pending
Redeemer Committee of the Highland Crusader Fund (acting through its members, (1) Grosvenor Capital Management, L.P., (2) FRM Investment Management Limited, (3) Concord Management, LLC, (4) Baylor University, (5) FIX Asset Management, (6) The United States Army Air Force Exchange Services) vs. Highland Capital Management, L.P.	Cause 2019 No. 332	Motion to enforce Crusader Arbitration Award	Supreme Court of Bermuda	2nd floor, Government Administration Building 30 Parliament Street Hamilton HM12 Bermuda	Pending
Redeemer Committee of the Highland Crusader Fund (acting through its members, (1) Grosvenor Capital Management, L.P., (2) FRM Investment Management Limited, (3) Concord Management, LLC, (4) Baylor University, (5) FIX Asset Management, (6) The United States Army Air Force Exchange Services) vs. Highland Capital Management, L.P.	Cause 153 of 2019	Motion to enforce Crusader Arbitration Award	Grant Court of the Cayman Islands Financial Services Division	P.O. Box 495 Grand Cayman KY1-1106 Cayman Islands	Pending
Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P.	No. 01-16-002-6927	Injunctive relief and damages sought related to wind down of legacy hedge fund from the 2008 financial crisis.	N/A	N/A	Concluded
Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P.	No. 12533-VCG	Injunctive relief and declaratory judgment related to wind down c legacy hedge fund from the 2008 financial crisis.	Court of Chancery of the State of Delaware	34 The Circle Georgetown, DE 19947	Pending
UBS Securities LLC and UBS AG, London Branch v. Highland Capital Management, L.P., Highland Special Opportunities Holding Company, Highland CDO Opportunity Master Fund, L.P. Highland Financial Partners, L.P., Highland Credit Strategies Fund, Highland Crusader Offshore Partners, L.P., Highland Credit Opportunities CDO, L.P. and Strand Advisors, Inc.	Case No. 650097/2009	Plaintiff alleges that HCMLP engaged in fraudulent transfers and breached its duty of good faith in fair dealing in managing the obligations of its funds.	Supreme Court of the State of New York, County of New York	60 Centre St, New York, NY 10007	Pending
Highland Capital Management, L.P. v. Joshua Terry	Case No. DC-16-11396	Employee Terry was terminated for cause. Highland filed suit for return of Highland's confidential information and other counterclaims. Terry has filed counterclaims for conversion and defamation.	162nd District Court of Dallas County, Texas	00 Commerce Street, 7th Floor New Tower, Dallas, TX 75202	Pending

Highland Capital Management LP
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Exhibit E - SOFA #9

Vendor	Amount	Expense Type	Date
B&H Photo	$ 7,000.00	Business Gifts	Feb 22, 2019
Competitive Cyclist	5,000.00	Business Gifts	Feb 22, 2019
REI	3,009.95	Business Gifts	Feb 22, 2019
The Family Place	4,500.00	Business Gifts	Jan 11, 2019
Neiman Marcus	10,000.00	Business Gifts	Jan 29, 2019
Nordstrom	9,000.00	Business Gifts	Jan 29, 2019
Neiman Marcus	2,800.00	Business Gifts	Aug 10, 2018
Barney's New York	3,015.00	Business Gifts	Dec 27, 2017
Etro Store	1,710.35	Business Gifts	Dec 27, 2017
Sutterfly	1,627.64	Business Gifts	Jun 26, 2019
B&H Video	5,015.00	Business Gifts	Oct 25, 2017
Competitive Cyclist	5,000.00	Business Gifts	Oct 25, 2017
Nordstrom	5,000.00	Business Gifts	Oct 25, 2017
REI	5,000.00	Business Gifts	Oct 25, 2017
JD	5,000.00	Business Gifts	Jan 29, 2019
AMEXGIFTCARD.COM-BOLATLANTA GA XXXXXXXX XXX-XXX-86	7,508.95	Business Gifts	Dec 12, 2018
Dallas Childrens Advocacy	17,500.00	Charitable Contributions	Jan 11, 2019
Political Contribution	20,000.00	Charitable Contributions	May 13, 2019
Political Contribution	30,000.00	Charitable Contributions	May 29, 2019
NORTHPARK CENTER	1,230.00	Gift/Awards	Apr 26, 2019
Kroger	1,483.30	Gift/Awards	Apr 26, 2018
Total Wine	1,125.76	Gift/Awards	Feb 13, 2018
Costco	2,168.86	Gift/Awards	Feb 13, 2019
Apple	4,000.00	Gift/Awards	Feb 26, 2018
B&H Photo	3,000.00	Gift/Awards	Feb 26, 2018
Competetive Cyclist	5,000.00	Gift/Awards	Feb 26, 2018
Nordstrom	1,350.00	Gift/Awards	Feb 26, 2018
Nordstrom	4,650.00	Gift/Awards	Feb 26, 2018
Nordstrom	1,250.00	Gift/Awards	Feb 26, 2018
Nordstrom	3,750.00	Gift/Awards	Mar 13, 2019
Nordstrom	7,010.00	Gift/Awards	Mar 13, 2019
REI	4,009.95	Gift/Awards	Mar 13, 2019
Neiman Marcus	2,075.00	Gift/Awards	Mar 27, 2018
AMAZON.COM*MB5OG1ZC1AMZN.COM/BI 1T5SDTP0V6I MERCHA	1,000.00	Gift/Awards	Feb 13, 2019
AMERICAN AIRLINES XXXXX-XXX-XXX XXXX0103 AA.COM	1,000.00	Gift/Awards	Feb 13, 2019
BABY.COM EGIFT CRD XXX-XXX-1977 9XXX9375PRC GIFT C	1,000.00	Gift/Awards	Feb 13, 2019
WALMART.COM XXX-XXX-6546 AR WMZVYLNO0YU RETAIL	1,000.00	Gift/Awards	Feb 13, 2019
AMAZON.COM*M01N33JX2AMZN.COM/BI 43WY9S9CUK8 MERCHA	1,000.00	Gift/Awards	Dec 12, 2018
AMAZON.COM*MX1474TL1AMZN.COM/BI 594WNOFOQ54 MERCHA	1,000.00	Gift/Awards	Dec 12, 2018
AMEXGIFTCARD.COM-BOLATLANTA GA XXXXXXXX XXX-XXX-86	68,280.95	Gift/Awards	Dec 12, 2018
WLLMS-SONMA CSTR GFTXXX-XXX-197 9XXX3699QOK GIFT C	1,000.00	Gift/Awards	Dec 12, 2018
AAA INNOVATIONS AAA NORWOOD NJ XXXXXXX8353 NON-DUR	4,558.75	Gift/Awards	Jan 11, 2019
AMEXGIFTCARD.COM-BOLATLANTA GA XXXXXXXX XXX-XXX-86	3,508.95	Gift/Awards	Jan 11, 2019
HOTELS.COM GIFT CARDXXX-XXX-197 9XXX8780BOK GIFT C	1,000.00	Gift/Awards	Jan 11, 2019
WLLMS-SONMA CSTR GFTXXX-XXX-197 9XXX6040GOK GIFT C	1,000.00	Gift/Awards	Jan 11, 2019
AMEX HILTON GIFT CARXXX-XXX-058 XXXX4162 BOL X0285	5,008.95	Gift/Awards	Feb 13, 2018
WLLMS-SONMA CSTR GFTXXX-XXX-197 4XXX2954P90 GIFT C	1,000.00	Gift/Awards	Nov 10, 2017
CS_*BABIESRUSGIFTCARXXX-XXX-197 4XXX6083G9J GIFT C	1,000.00	Gift/Awards	Dec 13, 2017
Four Seasons 8XX7828WILMINGTON XXXXXXXXXX XXXXXX3	5,014.19	Gift/Awards	Dec 13, 2017
RITZ CARLTON GIFT CAMIDVALE UT XXXXXXXX XXX-XXX-8	1,001.00	Gift/Awards	Dec 13, 2017
AMAZON.COM AMZN.COM/BILL WA 4HQ4J0AKNMQ MERCHANDIS	1,000.00	Gift/Awards	Jan 10, 2018
AMEX GIFT CARDS XXX-XXX-0582 NY OPWBXXX0386BOL XX2	7,008.95	Gift/Awards	Mar 13, 2018
Four Seasons 8XX7828WILMINGTON XXXXXXXXXX XXXXXX3	1,014.93	Gift/Awards	Mar 13, 2018

Highland Capital Management LP
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Exhibit E - SOFA #9

Vendor	Amount	Expense Type	Date
AMEX GIFT CARDS XXX-XXX-0582 NY OPWBXXX3116BOL XX2	3,520.80	Gift/Awards	Apr 11, 2018
Four Seasons 8XX7828WILMINGTON XXXXXXXXXX XXXXXX3	1,014.93	Gift/Awards	Apr 11, 2018
MARRIOTT GIFT CARDS MIDVALE UT XXXXXXXXX XXX-XXX-4	5,010.95	Gift/Awards	May 10, 2018
AMAZON.COM AMZN.COM/BILL WA 16B3JYYTOHX MERCHANDIS	1,000.00	Gift/Awards	Jun 12, 2018
Four Seasons 8XX7828WILMINGTON XXXXXXXXXX XXXXXX3	1,014.93	Gift/Awards	Jun 12, 2018
Four Seasons 8XX7828WILMINGTON XXXXXXXXXX XXXXXX3	5,014.93	Gift/Awards	Jun 12, 2018
Four Seasons 8XX7828WILMINGTON XXXXXXXXXX XXXXXX3	1,000.00	Gift/Awards	Jun 12, 2018
HOTELS.COM GIFT CARDXXX-XXX-197 4XXX5955KHG GIFT C	1,000.00	Gift/Awards	Jun 12, 2018
AMAZON.COM AMZN.COM/BILL WA 4C5DKHDW6TK MERCHANDIS	1,000.00	Gift/Awards	Jul 11, 2018
AMAZON.COM AMZN.COM/BILL WA 5AK74J5T9LC MERCHANDIS	1,000.00	Gift/Awards	Jul 11, 2018
HOTELS.COM GIFT CARDXXX-XXX-197 4XXX5284CIM GIFT C	1,000.00	Gift/Awards	Jul 11, 2018
MARRIOTT GIFT CARDS MIDVALE UT XXXXXXXXX XXX-XXX-4	1,001.00	Gift/Awards	Jul 11, 2018
WLLMS-SONMA CSTR GFTXXX-XXX-197 4XXX6255NHS GIFT C	1,000.00	Gift/Awards	Jul 11, 2018
AMAZON.COM AMZN.COM/BILL WA 3NRIPESL5H2 MERCHANDIS	1,000.00	Gift/Awards	Aug 10, 2018
AMEXGIFTCARD.COM-BOLATLANTA GA XXXXXXXX XXX-XXX-86	3,522.85	Gift/Awards	Aug 10, 2018
HOTELS.COM GIFT CARDXXX-XXX-197 4XXXX8611J4 GIFT C	1,000.00	Gift/Awards	Aug 10, 2018
HOTELS.COM GIFT CARDXXX-XXX-197 8XXX5959YIW GIFT C	1,000.00	Gift/Awards	Aug 10, 2018
MARRIOTT GIFT CARDS MIDVALE UT XXXXXXXXX XXX-XXX-4	5,001.00	Gift/Awards	Aug 10, 2018
AMAZON.COM*MT7OW87B1AMZN.COM/BI 1XJ571A2WYA MERCHA	1,000.00	Gift/Awards	Nov 13, 2018
WLLMS-SONMA CSTR GFTXXX-XXX-197 9XXX5657XMX GIFT C	1,000.00	Gift/Awards	Nov 13, 2018
CS *HOTELS.COM GC XXX-XXX-1977 4XXX3604JRQ GIFT CA	1,000.00	Gift/Awards	Mar 13, 2019
HILTON GC XXX XXX-XXXXX-XXX-XXX XX0847 GIFTCARDS F	1,008.95	Gift/Awards	Mar 13, 2019
HOTELS.COM GIFT CARDXXX-XXX-197 4XXX1517JRH GIFT C	1,000.00	Gift/Awards	Mar 13, 2019
AMAZON.COM*MW2NP75Y2AMZN.COM/BI 1ZRLAH1KV0Q MERCHA	1,000.00	Gift/Awards	May 13, 2019
AMEXGIFTCARD.COM-BOLATLANTA GA XXXXXXXX XXX-XXX-86	3,515.95	Gift/Awards	May 13, 2019
AMEXGIFTCARD.COM-BOLATLANTA GA XXXXXXXX XXX-XXX-86	3,520.85	Gift/Awards	Jun 12, 2019
AMEXGIFTCARD.COM-BOLATLANTA GA XXXXXXXX XXX-XXX-86	3,515.95	Gift/Awards	Jul 11, 2019
ANSE CHASTANET - RESSOUFRIERE LC XXXXXXXXXX XXX-XX	5,000.00	Gift/Awards	Sep 11, 2018
Four Seasons 8XX7828WILMINGTON XXXXXXXXXX XXXXXX3	5,014.93	Gift/Awards	Sep 11, 2018
MARRIOTT GIFT CARDS MIDVALE UT XXXXXXXXX XXX-XXX-4	1,010.95	Gift/Awards	Sep 11, 2018
RITZ CARLTON GIFT CAMIDVALE UT XXXXXXXXX XXX-XXX-8	1,010.95	Gift/Awards	Sep 11, 2018
WLLMS-SONMA CSTR GFTXXX-XXX-197 4XXXX6218KG GIFT C	1,000.00	Gift/Awards	Sep 11, 2018
AMAZON.COM*MT5FG6LG0AMZN.COM/BI 2CWA16B0JP6 MERCHA	2,000.00	Gift/Awards	Oct 11, 2018
AMEXGIFTCARD.COM-BOLATLANTA GA XXXXXXXX XXX-XXX-86	7,529.80	Gift/Awards	Oct 11, 2018
MARRIOTT GIFT CARDS MIDVALE UT XXXXXXXXX XXX-XXX-4	5,000.00	Gift/Awards	Oct 4, 2019
Hotels.com	1,000.00	Gift/Awards	Jul 11, 2019
Buy Buy Baby	1,000.00	Gift/Awards	Aug 13, 2019
William Sonoma	1,000.00	Gift/Awards	Aug 13, 2019
Amazon.com	1,000.00	Gift/Awards	Sep 10, 2019
AMAZON.COM*MA02T1UW2AMZN.COM/BI 59I475TIIR3 MERCHA	1,000.00	Gift/Awards	Sep 10, 2019
CS *BUYBUYBABY EGTFCXXX-XXX-197 4XXX9435NZ1 GIFT C	1,000.00	Gift/Awards	Sep 10, 2019
CS *HOTELS.COM GC XXX-XXX-1977 4XXX4055UYZ GIFT CA	1,000.00	Gift/Awards	Sep 10, 2019
MARRIOTT GIFT CARDS MIDVALE UT XXXXXXXXX XXX-XXX-4	1,000.00	Gift/Awards	Sep 10, 2019
MARRIOTT GIFT CARDS MIDVALE UT XXXXXXXXX XXX-XXX-4	1,000.00	Gift/Awards	Sep 10, 2019
CS *HOTELS.COM GC XXX-XXX-1977 9XXX0073VU5 GIFT CA	2,000.00	Gift/Awards	May 13, 2019
CS *HOTELS.COM GC XXX-XXX-1977 9XXX9190AU5 GIFT CA	1,000.00	Gift/Awards	May 13, 2019
CS *HOTELS.COM GC XXX-XXX-1977 9XXXX7723U5 GIFT CA	2,000.00	Gift/Awards	May 13, 2019
CS *HOTELS.COM GC XXX-XXX-1977 4XXXX2756TI GIFT CA	1,000.00	Gift/Awards	Apr 11, 2019
Beard Supply	1,623.75	Gift/Awards	Jan 10, 2018
Patagonia	2,685.71	Gift/Awards	Jan 26, 2018
Political Contribution	25,000.00	Gift/Charity	Jun 30, 2018
Political Contribution	25,000.00	Gift/Charity	Jun 30, 2019
Total	**$ 445,725.61**		

Highland Capital Management LP
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Exhibit F - SOFA 25

Name	Relationship	Address	EIN	Description of Business	Date of Creation	Date of Termination (if applicable)
Aberdeen Loan Funding, Ltd.	IMA	Intertrust Corporate Services (Cayman) Limited , 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	N/A	CLO Fund	12/14/2006	
Brentwood CLO, Ltd.	IMA	MaplesFS - PO Box 1093, Grand Cayman, KY1-1102, Cayman Islands	98-0524481	CLO Fund	5/21/2006	
Bristol Bay Funding Ltd.	IMA	Intertrust Corporate Services (Cayman) Limited , 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0418113	CLO Fund	11/18/2003	
Eastland CLO, Ltd.	IMA	Elian Fiduciary Services (Cayman) Limted - 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0550088	CLO Fund	3/31/2006	
Gleneagles CLO, Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	N/A	CLO Fund	2/25/2005	
Grayson CLO, Ltd.	IMA	Elian Fiduciary Services (Cayman) Limted - 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0522566	CLO Fund	2/7/2006	
Greenbriar CLO, Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	N/A	CLO Fund	10/24/2007	
Highland CDO Holding Company	IMA	Intertrust Corporate Services (Cayman) Limited , 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0527935	HFP sub	1/24/2006	
Highland CDO Opportunity Fund, L.P.	IMA	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-3899941	Hedge fund	11/3/2005	Terminated
Highland CDO Opportunity Fund, Ltd.	IMA	MQ Services Ltd, Victoria House, 31 Victoria Street, Hamilton HM10, Bermuda	N/A	Hedge fund	5/8/2002	Terminated
Highland CDO Opportunity Master Fund, L.P.	IMA	MQ Services Ltd, Victoria House, 31 Victoria Street, Hamilton HM10, Bermuda	98-0520689	Hedge fund	10/31/2005	Terminated
Highland Credit Opportunities CDO, Ltd.	IMA	Intertrust Corporate Services (Cayman) Limited , 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0512429	Hedge fund	11/1/2005	
Highland Credit Opportunities Japanese Feeder Sub-Trust	IMA	Intertrust Corporate Services (Cayman) Limited , 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	N/A	Hedge fund	8/22/2007	
Highland Credit Strategies Fund, L.P.	IMA	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	86-1147211	Hedge fund	8/2/2005	
Highland Credit Strategies Fund, Ltd.	IMA	MQ Services Ltd, Victoria House, 31 Victoria Street, Hamilton HM10, Bermuda	98-0466202	Hedge fund	8/8/2005	
Highland Credit Strategies Master Fund, L.P.	IMA	MQ Services Ltd, Victoria House, 31 Victoria Street, Hamilton HM10, Bermuda	98-0466203	Hedge fund	8/19/2005	
Highland Dynamic Income Fund, L.P. (fka Highland Capital Loan Fund, L.P.)	IMA	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	46-2123634	Hedge fund	2/25/2013	
Highland Dynamic Income Fund, Ltd. (fka Highland Loan Fund, Ltd.)	IMA	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	N/A	Hedge fund	2/26/2013	
Highland Dynamic Income Master Fund, L.P. (fka Highland Loan Master Fund, L.P.)	IMA	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1169838	Hedge fund	2/26/2013	
Highland Financial Corp.	IMA - terminated	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-4392555	HFP sub	2/28/2006	
Highland Flexible Income UCITS Fund	IMA	23 St. Stephen's Green, Dblin 2, Ireland	N/A	Separate account	6/7/2018	
Highland Legacy Limited	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	N/A	CLO Fund	7/6/1999	
Highland Loan Funding V, Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	N/A	CLO Fund	2/5/2001	
Highland Multi Strategy Credit Fund, L.P. (fka Highland Credit Opportunities Fund, L.P., fka Highland Credit Opportunities CDO, L.P.)	IMA	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-3874256	Hedge fund	12/1/2005	
Highland Multi Strategy Credit Fund, Ltd. (fka Highland Credit Opportunities Fund, Ltd.)	IMA	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-0587370	Hedge fund	12/29/2005	
Highland Park CDO 1, Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	98-0515982	CLO Fund	7/12/2006	
Highland Prometheus Feeder Fund I, L.P.	IMA	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1334547	Hedge fund	11/7/2016	
Highland Prometheus Feeder Fund II, L.P.	IMA	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1353013	Hedge fund	2/17/2017	
Highland Prometheus Master Fund, L.P.	IMA	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1334763	Hedge fund	11/7/2016	
Highland Restoration Capital Partners Master, L.P.	IMA	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-1458205	Private equity fund	11/14/2007	
Highland Restoration Capital Partners Offshore, L.P.	IMA	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-0558962	Private equity fund	11/13/2007	
Highland Restoration Capital Partners, L.P.	IMA	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-1456033	Private equity fund	11/14/2007	
Highland Select Equity Fund, L.P.	IMA	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	75-2970177	Hedge fund	12/5/2001	
Highland Select Equity Master Fund, L.P.	IMA	MQ Services Ltd, Victoria House, 31 Victoria Street, Hamilton HM10, Bermuda	98-0520466	Hedge fund	4/12/2007	
Highland Special Opportunities Holding Company	IMA	Intertrust Corporate Services (Cayman) Limited , 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0532735	HFP sub	1/24/2006	Terminated
Jasper CLO, Ltd.	IMA	Elian Fiduciary Services (Cayman) Limted - 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0595492	CLO Fund	3/9/2005	
Liberty CLO, Ltd.	IMA	Intertrust Corporate Services (Cayman) Limited , 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0595490	CLO Fund	6/30/2005	
Longhorn Credit Funding, LLC	IMA	United Corporate Services, Inc., 874 Walker Rd, Ste C, Dover, DE 19904	N/A	Separate account	10/15/2007	
ML CLO XIX Sterling (Cayman), Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	N/A	CLO Fund	4/27/1998	
Pam Capital Funding, L.P.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	20-3010953	CLO Fund	5/8/1998	
PamCo Cayman Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	N/A	CLO Fund	1/18/1997	
PensionDanmark Pensionsforsikringsaktieselskab	IMA	Langelinie Allé 43, DK-2100 Copenhagen Ø	N/A	Separate account	6/24/1992	
Red River CLO, Ltd.	IMA	Elian Fiduciary Services (Cayman) Limted - 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0527219	CLO Fund	1/24/2006	
Rockwall CDO II Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	N/A	CLO Fund	4/12/2006	
Rockwall CDO, Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	98-0461407	CLO Fund	6/7/2005	
Southfork CLO, Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	N/A	CLO Fund	10/21/2004	
Stratford CLO, Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	98-0540945	CLO Fund	10/17/2006	
Valhalla CLO, Ltd.	IMA	Intertrust Corporate Services (Cayman) Limited , 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0595491	CLO Fund	6/9/2004	
Westchester CLO, Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	98-0546784	CLO Fund	11/10/2006	
Highland Latin America GP, Ltd.	Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominiee for and on behalf of Highland Latin America LP, Ltd.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1362190	GP of the relying advisor to the Argentina fund	3/6/2017	

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Name	Relationship	Address	EIN	Description of Business	Date of Creation	Date of Termination (if applicable)
Highland Capital Management Latin America, L.P.	Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominee for and on behalf of Highland Latin America LP, Ltd.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1362202	Relying advisor to the Argentina fund	4/13/2017	
Neutra, Ltd.	Highland Capital Management, L.P., as trustee of Acis CMOA Trust and nominiee for and on behalf of Highland CLO Assets Holdings Limited	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1090422		12/12/2012	
Asbury Holdings, LLC (fka HCSLR Camelback Investors (Delaware), LLC)	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	N/A	Holds HCMLP's Haygood interest	2/14/2017	
De Kooning, Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1090348	Formed to hold Select's interest in Barclays' assignment	12/12/2012	
HCREF-I Holding Corp.	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	46-1998057	Holds HCMLP interest in HCREF	12/13/2012	
HCREF-XI Holding Corp.	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	46-2030348	Holds HCMLP's interest in HE Mezz KR, LLC	12/13/2012	
HCREF-XII Holding Corp.	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	46-2032401	Holds HCMLP's interest in 2006 Milam East Partners LP	12/13/2012	
HFP GP, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	16-1746972	HFP GP	1/20/2006	
Highland Brasil, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	46-4691319	Managing member of BB Votorantim Highland In	1/28/2014	
Highland Capital Management (Singapore) Pte Ltd	Highland Capital Management, L.P.	Tricor, 80 Robinson Road #02-00, Singapore 068898	98-0580590	HCMLP's wholly owned sub in Singapore	4/2/2008	
Highland Capital Management Korea Limited	Highland Capital Management, L.P.	(Seoul Finance Center, Taepyeongro-1-ga) 21F, 136, Sejong-daero, Jung-gu, Seoul, Korea	98-1120007	Relying advisor to the Korea PEF	8/2/2012	
Highland Capital Multi-Strategy Fund, LP	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-5237025	Private fund	7/6/2006	
Highland Capital Special Allocation, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-1175318	Entity received the incentive allocation from HFP.	12/21/2006	
Highland CDO Opportunity Fund GP, L.P.	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-3899907	Hedge fund	10/20/2005	
Highland CDO Opportunity GP, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-3899870	Hedge fund GP	10/20/2005	
Highland CLO Assets Holdings Limited	Highland Capital Management, L.P.	Maples Corporate Services (BVI) Limited Kingston Chambers, PO Box 173, Road Town Tortola, British Virgin Islands	98-1417806		12/19/2017	
Highland CLO Management Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1432973		10/27/2017	
Highland Dynamic Income Fund GP, LLC (fka Highland Capital Loan GP, LLC)	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	80-0898281	Hedge fund GP	2/25/2013	
Highland Employee Retention Assets LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	27-1596366	HERA	6/23/2009	
Highland ERA Management, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	N/A	HERA manager	2/1/2013	
Highland Financial Partners, L.P.	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	83-0446391	HFP	1/20/2006	Terminated
Highland Fund Holdings, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	N/A		5/24/2016	
Highland General Partner, LP	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	86-1147210	Hedge fund GP	7/26/2005	
Highland GP Holdings, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	86-1147208	Hedge fund GP	7/26/2005	
Highland HCF Advisor Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1401127	Advisor to Highland CLO Funding, Ltd.	10/27/2017	
Highland Latin America LP, Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1362186	Argentina fund structure	3/6/2017	
Highland Multi Strategy Credit Fund GP, L.P. (fka Highland Credit Opportunities CDO GP, L.P.)	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	N/A	Hedge fund GP	12/29/2005	
Highland Multi Strategy Credit GP, LLC (fka Highland Credit Opportunities CDO GP, LLC)	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	N/A	Hedge fund GP	12/29/2005	
Highland Multi-Strategy Fund GP, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-5236824	Private fund GP	7/6/2006	
Highland Multi-Strategy Fund GP, LP	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-5236931	Private fund GP	7/6/2006	
Highland Receivables Finance I, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-8123634	Entity created in 2006 that purchased all of HCMLP's receivables 100% owned by HCMLP.	12/28/2006	
Highland Restoration Capital Partners GP, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-1455912	Private equity fund GP	11/6/2007	
Highland Select Equity Fund GP, L.P.	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-3899917	Hedge fund GP	10/20/2005	
Highland Select Equity GP, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-3899886	Hedge fund GP	10/20/2005	
Highland SunBridge GP, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	N/A	Hedge fund GP	12/15/2015	
Hirst, Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1090361	Formed to hold CDO Ltd's interest in Barclays assignment	12/12/2012	
Hockney, Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1090388	Formed to hold Crusader's interest in Barclays assignment	12/12/2012	
Maple Avenue Holdings, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	81-3600687	Holds Uchi loan	8/17/2016	
NexPoint Hospitality Trust	Highland Capital Management, L.P.	333 Bay Street, Suite 3400, Toronto, Ontario M5H 2S7, Canada	83-6637675	Hospitality REIT	12/12/2018	
NexPoint Insurance Distributors, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	84-2921534	Insurance broker	7/25/2019	
NexPoint Insurance Solutions GP, LLC (fka Highland Capital Insurance Solutions GP, LLC)	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	84-2571487	Insurance advisor GP	4/4/2019	
NexPoint Insurance Solutions, L.P. (fka Highland Capital Insurance Solutions, L.P.)	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	84-2584142	Insurance advisor	4/4/2019	
NexPoint Multifamily Capital Trust, Inc.	Highland Capital Management, L.P.	The Corporation Trust, 2405 York Rd, Ste 201, Lutherville Timonium, MD 21093	46-4106316	NMCT REIT	11/12/2013	
NexPoint Real Estate Strategies Fund	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	81-1061590	Retail fund	3/10/2006	
NexPoint Residential Trust Inc.	Highland Capital Management, L.P.	The Corporation Trust, 2405 York Rd, Ste 201, Lutherville Timonium, MD 21093	47-1881359	NXRT REIT	9/19/2014	
NexPoint Strategic Opportunities Fund (fka NexPoint Credit Strategies Fund)	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	80-0139099	Retail fund	3/10/2006	
NHT Holdco, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	83-3011801	Hospitality REIT structure	1/2/2019	
Oldenburg, Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1090453	Formed to hold CDO LP's interest in Barclays assignment	12/12/2012	
Penant Management LP	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	46-1614710	Holds HCREF's interest in Barclays assignment	12/12/2012	
PetroCap Incentive Partners III, LP	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	?	Petrocap fund	11/16/2017	
PetroCap Partners II, L.P.	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	46-4691213	Petrocap fund	10/7/2013	
PetroCap Partners III, L.P.	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	?	Petrocap fund	11/16/2017	
Pollack, Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1090519		12/12/2012	
SE Multifamily Holdings LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	32-0576655	RE investment holding	8/23/2018	

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Name	Relationship	Address	EIN	Description of Business	Date of Creation	Date of Termination (if applicable)
The Dondero Insurance Rabbi Trust	Highland Capital Management, L.P.	300 Crescent Ct, Ste 700, Dallas, TX 75201	75-2716725	Holds Dondero's life insurance policies and the proceeds to be used to fund HCM's obligation to purchase Dondero Interests from the Trust Beneficiearies per Buy-Sell Agreement	5/27/2004	
The Okada Insurance Rabbi Trust	Highland Capital Management, L.P.	300 Crescent Ct, Ste 700, Dallas, TX 75201	75-2716725	Holds Okada's life insurance policies and the proceeds to be used to fund HCM's obligation to purchase Okada Interests from the Trust Beneficiaries per Buy-Sell Agreement	5/27/2004	
US Gaming SPV, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	84-1769285	SPV of eSports investment in Korea	5/14/2019	
Warhol, Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1090362	Formed to hold Ops' interest in Barclays assignment	12/12/2012	
HE Capital 232 Phase I, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-1616599	Underlying property is a 71.73 acre site consisting of 232 finished single family lots in the NW Phoenix development of Asante.	12/20/2007	
HE Capital Asante, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-0525645	Underlying project is a 843 acre multi-phase residential development in NW Phoenix, AZ	7/5/2007	
HE Capital Fox Trails, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	N/A	Underlying project is a 889.58 acre vacant parcel in NW Phoenix with PAD approval for 2,320 single family units.	3/10/2008	
HE Capital KR, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	N/A	Underlying project is a 1,829.67 acre vacant parcel in SW Phoenix proposed for 4,250 single family lots of which 1,431 have final plat approval (Phase I) and 50.94 acres of commercial land.	7/5/2007	
HE Capital, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-8711786	Parent entity for joint venture between Ellman and Highland.	3/22/2007	
HE CLO Holdco, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	37-1666849	Blockers that used to hold Ellman interest	2/3/2011	
HE Mezz Fox Trails, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-2151278	Underlying project is a 889.58 acre vacant parcel in NW Phoenix with PAD approval for 2,320 single family units.	3/10/2008	
HE Mezz KR, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-0611280	Underlying project is a 1,829.67 acre vacant parcel in SW Phoenix proposed for 4,250 single family lots of which 1,431 have final plat approval (Phase I) and 50.94 acres of commercial land.	7/27/2007	
HE Peoria Place Property, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-1600012	Underlying project is a 127.39 acre vacant parcel in NW Phoenix being improved with interior roadways for ultimate development or sale under the PAD approving 11 acres of office, 23 acres of retail, 50 acres of single family an d43 acres of multi family.	12/10/2007	
HE Peoria Place, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-1599959	Underlying project is a 127.39 acre vacant parcel in NW Phoenix being improved with interior roadways for ultimate development or sale under the PAD approving 11 acres of office, 23 acres of retail, 50 acres of single family an d43 acres of multi family.	11/14/2007	
Hibiscus HoldCo, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	27-1824370	Blocker to hold Turtle Bay assets	2/2/2010	
Highland CLO Gaming Holdings, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	27-3995018	CLO blocker that used to hold Affility Gaming inte	11/18/2010	
Highland TCI Holding Company, LLC	HCMLP-Manager	CT Corporation, 1999 Bryan St, Ste 900, Dallas, TX 75201	45-2620554	CLO blocker to hold TCI/Park West assets	6/21/2011	
Highland's Roads Land Holding Company, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-4572095	CLO blocker to hold LLV reorg equity	3/30/2009	
Kuilima Montalban Holdings, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	27-1942638	CLO blocker to hold Turtle Bay equity	2/19/2010	
Kuilima Resort Holdco, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-4572180	CLO blocker to hold Turtle Bay equity	3/18/2009	
Park West Holdco, LLC	HCMLP-Manager	CT Corporation, 1999 Bryan St, Ste 900, Dallas, TX 75201	37-1641409	Holds TCI assets	4/4/2011	
Park West Portfolio Holdco, LLC	HCMLP-Manager	CT Corporation, 1999 Bryan St, Ste 900, Dallas, TX 75201	90-0737248	Holds TCI assets	4/14/2011	
PDK Toys Holdco, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	83-3591646	PDK blocker to hold Toys R'Us loan	2/14/2019	
Acis CMOA Trust	HCMLP - Trustee	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	N/A		3/30/2018	
Highland Latin America Trust	HCMLP - Trustee	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	N/A		3/30/2018	

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Name	Amounts	Date	Reason
Dondero, James	161.25	01/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	01/15/2019	Regular Base Pay
Dondero, James	161.25	01/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	01/31/2019	Regular Base Pay
Dondero, James	161.25	02/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	02/15/2019	Regular Base Pay
Dondero, James	161.25	02/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	02/28/2019	Regular Base Pay
Dondero, James	161.25	03/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	03/15/2019	Regular Base Pay
Dondero, James	161.25	03/29/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	03/29/2019	Regular Base Pay
Dondero, James	161.25	04/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	04/15/2019	Regular Base Pay
Dondero, James	161.25	04/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	04/30/2019	Regular Base Pay
Dondero, James	161.25	05/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	05/15/2019	Regular Base Pay
Dondero, James	161.25	05/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	05/31/2019	Regular Base Pay
Dondero, James	161.25	06/14/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	06/14/2019	Regular Base Pay
Dondero, James	161.25	06/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	06/28/2019	Regular Base Pay
Dondero, James	161.25	07/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	07/15/2019	Regular Base Pay
Dondero, James	161.25	07/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	07/31/2019	Regular Base Pay
Dondero, James	161.25	08/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	08/15/2019	Regular Base Pay
Dondero, James	161.25	08/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	08/30/2019	Regular Base Pay
Dondero, James	161.25	09/13/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	09/13/2019	Regular Base Pay
Dondero, James	161.25	09/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	09/30/2019	Regular Base Pay
Dondero, James	161.25	10/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	10/15/2019	Regular Base Pay
Dondero, James	161.25	10/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	10/31/2018	Regular Base Pay
Dondero, James	161.25	11/15/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	11/15/2018	Regular Base Pay
Dondero, James	161.25	11/30/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	11/30/2018	Regular Base Pay
Dondero, James	161.25	12/14/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	12/14/2018	Regular Base Pay
Dondero, James	161.25	12/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	12/31/2018	Regular Base Pay
Ellington, Scott	71.25	01/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	01/15/2019	Regular Base Pay
Ellington, Scott	71.25	01/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	01/31/2019	Regular Base Pay
Ellington, Scott	71.25	02/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	02/15/2019	Regular Base Pay
Ellington, Scott	300,000.00	02/28/2019	Bonus
Ellington, Scott	71.25	02/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	02/28/2019	Regular Base Pay
Ellington, Scott	350,000.00	03/15/2019	Bonus
Ellington, Scott	71.25	03/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	03/15/2019	Regular Base Pay
Ellington, Scott	71.25	03/29/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	03/29/2019	Regular Base Pay

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Name	Amounts	Date	Reason
Ellington, Scott	71.25	04/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	04/15/2019	Regular Base Pay
Ellington, Scott	71.25	04/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	04/30/2019	Regular Base Pay
Ellington, Scott	71.25	05/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	05/15/2019	Regular Base Pay
Ellington, Scott	71.25	05/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	05/31/2019	Regular Base Pay
Ellington, Scott	71.25	06/14/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	06/14/2019	Regular Base Pay
Ellington, Scott	350,629.00	06/28/2019	Bonus and/or Deferred Compensation
Ellington, Scott	71.25	06/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	06/28/2019	Regular Base Pay
Ellington, Scott	71.25	07/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	07/15/2019	Regular Base Pay
Ellington, Scott	71.25	07/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	07/31/2019	Regular Base Pay
Ellington, Scott	71.25	08/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	08/15/2019	Regular Base Pay
Ellington, Scott	650,000.00	08/30/2019	Bonus
Ellington, Scott	71.25	08/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	08/30/2019	Regular Base Pay
Ellington, Scott	71.25	09/13/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	09/13/2019	Regular Base Pay
Ellington, Scott	71.25	09/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	09/30/2019	Regular Base Pay
Ellington, Scott	71.25	10/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	10/15/2019	Regular Base Pay
Ellington, Scott	71.25	10/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	10/31/2018	Regular Base Pay
Ellington, Scott	71.25	11/15/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	11/15/2018	Regular Base Pay
Ellington, Scott	71.25	11/30/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	11/30/2018	Regular Base Pay
Ellington, Scott	71.25	12/14/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	12/14/2018	Regular Base Pay
Ellington, Scott	604.78	12/31/2018	Gross up value from Dividend Reinvestment Plan
Ellington, Scott	71.25	12/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	12/31/2018	Regular Base Pay
Okada, Mark	204.25	01/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	01/15/2019	Regular Base Pay
Okada, Mark	204.25	01/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	01/31/2019	Regular Base Pay
Okada, Mark	204.25	02/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	02/15/2019	Regular Base Pay
Okada, Mark	204.25	02/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	02/28/2019	Regular Base Pay
Okada, Mark	204.25	03/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	03/15/2019	Regular Base Pay
Okada, Mark	204.25	03/29/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	03/29/2019	Regular Base Pay
Okada, Mark	204.25	04/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	04/15/2019	Regular Base Pay
Okada, Mark	204.25	04/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	04/30/2019	Regular Base Pay
Okada, Mark	204.25	05/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	05/15/2019	Regular Base Pay
Okada, Mark	204.25	05/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	05/31/2019	Regular Base Pay
Okada, Mark	204.25	06/14/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	06/14/2019	Regular Base Pay
Okada, Mark	204.25	06/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)

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Name	Amounts	Date	Reason
Okada, Mark	32,552.09	06/28/2019	Regular Base Pay
Okada, Mark	204.25	07/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	07/15/2019	Regular Base Pay
Okada, Mark	204.25	07/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	07/31/2019	Regular Base Pay
Okada, Mark	204.25	08/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	08/15/2019	Regular Base Pay
Okada, Mark	204.25	08/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	08/30/2019	Regular Base Pay
Okada, Mark	204.25	09/13/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	09/13/2019	Regular Base Pay
Okada, Mark	204.25	09/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	09/30/2019	Regular Base Pay
Okada, Mark	204.25	10/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	10/31/2018	Regular Base Pay
Okada, Mark	204.25	11/15/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	11/15/2018	Regular Base Pay
Okada, Mark	204.25	11/30/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	11/30/2018	Regular Base Pay
Okada, Mark	204.25	12/14/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	12/14/2018	Regular Base Pay
Okada, Mark	272.64	12/31/2018	Gross up value from Dividend Reinvestment Plan
Okada, Mark	204.25	12/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	12/31/2018	Regular Base Pay
Parker, Lee	47.50	01/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	01/15/2019	Regular Base Pay
Parker, Lee	47.50	01/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	01/31/2019	Regular Base Pay
Parker, Lee	47.50	02/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	02/15/2019	Regular Base Pay
Parker, Lee	231,250.00	02/28/2019	Bonus
Parker, Lee	47.50	02/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	02/28/2019	Regular Base Pay
Parker, Lee	47.50	03/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	03/15/2019	Regular Base Pay
Parker, Lee	150,000.00	03/29/2019	Bonus
Parker, Lee	47.50	03/29/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	03/29/2019	Regular Base Pay
Parker, Lee	47.50	04/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	04/15/2019	Regular Base Pay
Parker, Lee	47.50	04/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	04/30/2019	Regular Base Pay
Parker, Lee	47.50	05/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	05/15/2019	Regular Base Pay
Parker, Lee	47.50	05/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	05/31/2019	Regular Base Pay
Parker, Lee	47.50	06/14/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	06/14/2019	Regular Base Pay
Parker, Lee	362,935.00	06/28/2019	Bonus and/or Deferred Compensation
Parker, Lee	47.50	06/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	06/28/2019	Regular Base Pay
Parker, Lee	47.50	07/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	07/15/2019	Regular Base Pay
Parker, Lee	47.50	07/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	07/31/2019	Regular Base Pay
Parker, Lee	47.50	08/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	08/15/2019	Regular Base Pay
Parker, Lee	381,250.00	08/30/2019	Bonus
Parker, Lee	47.50	08/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	08/30/2019	Regular Base Pay
Parker, Lee	47.50	09/13/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	09/13/2019	Regular Base Pay

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Name	Amounts	Date	Reason
Parker, Lee	47.50	09/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	09/30/2019	Regular Base Pay
Parker, Lee	47.50	10/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	10/15/2019	Regular Base Pay
Parker, Lee	47.50	10/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	10/31/2018	Regular Base Pay
Parker, Lee	47.50	11/15/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	11/15/2018	Regular Base Pay
Parker, Lee	47.50	11/30/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	11/30/2018	Regular Base Pay
Parker, Lee	47.50	12/14/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	12/14/2018	Regular Base Pay
Parker, Lee	483.56	12/31/2018	Gross up value from Dividend Reinvestment Plan
Parker, Lee	47.50	12/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	12/31/2018	Regular Base Pay
Surgent, Thomas	56.25	01/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	01/15/2019	Regular Base Pay
Surgent, Thomas	56.25	01/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	01/31/2019	Regular Base Pay
Surgent, Thomas	56.25	02/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	02/15/2019	Regular Base Pay
Surgent, Thomas	300,000.00	02/28/2019	Bonus
Surgent, Thomas	56.25	02/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	02/28/2019	Regular Base Pay
Surgent, Thomas	325,000.00	03/15/2019	Bonus
Surgent, Thomas	56.25	03/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	03/15/2019	Regular Base Pay
Surgent, Thomas	56.25	03/29/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	03/29/2019	Regular Base Pay
Surgent, Thomas	56.25	04/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	04/15/2019	Regular Base Pay
Surgent, Thomas	56.25	04/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	04/30/2019	Regular Base Pay
Surgent, Thomas	56.25	05/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	05/15/2019	Regular Base Pay
Surgent, Thomas	100,000.00	05/31/2019	Bonus and/or Deferred Compensation
Surgent, Thomas	56.25	05/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	05/31/2019	Regular Base Pay
Surgent, Thomas	56.25	06/14/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	06/14/2019	Regular Base Pay
Surgent, Thomas	482,115.00	06/28/2019	Bonus and/or Deferred Compensation
Surgent, Thomas	56.25	06/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	06/28/2019	Regular Base Pay
Surgent, Thomas	56.25	07/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	07/15/2019	Regular Base Pay
Surgent, Thomas	56.25	07/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	07/31/2019	Regular Base Pay
Surgent, Thomas	56.25	08/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	08/15/2019	Regular Base Pay
Surgent, Thomas	625,000.00	08/30/2019	Bonus
Surgent, Thomas	56.25	08/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	08/30/2019	Regular Base Pay
Surgent, Thomas	56.25	09/13/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	09/13/2019	Regular Base Pay
Surgent, Thomas	56.25	09/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	09/30/2019	Regular Base Pay
Surgent, Thomas	56.25	10/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	10/15/2019	Regular Base Pay
Surgent, Thomas	56.25	10/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	10/31/2018	Regular Base Pay
Surgent, Thomas	56.25	11/15/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	11/15/2018	Regular Base Pay

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Name	Amounts	Date	Reason
Surgent, Thomas	56.25	11/30/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	11/30/2018	Regular Base Pay
Surgent, Thomas	56.25	12/14/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	12/14/2018	Regular Base Pay
Surgent, Thomas	2,344.18	12/31/2018	Gross up value from Dividend Reinvestment Plan
Surgent, Thomas	56.25	12/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	12/31/2018	Regular Base Pay
Waterhouse, Frank	71.25	01/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	01/15/2019	Regular Base Pay
Waterhouse, Frank	71.25	01/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	01/31/2019	Regular Base Pay
Waterhouse, Frank	71.25	02/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	02/15/2019	Regular Base Pay
Waterhouse, Frank	206,250.00	02/28/2019	Bonus
Waterhouse, Frank	71.25	02/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	02/28/2019	Regular Base Pay
Waterhouse, Frank	71.25	03/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	03/15/2019	Regular Base Pay
Waterhouse, Frank	71.25	03/29/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	03/29/2019	Regular Base Pay
Waterhouse, Frank	212,500.00	04/15/2019	Bonus
Waterhouse, Frank	71.25	04/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	04/15/2019	Regular Base Pay
Waterhouse, Frank	71.25	04/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	04/30/2019	Regular Base Pay
Waterhouse, Frank	71.25	05/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	05/15/2019	Regular Base Pay
Waterhouse, Frank	100,000.00	05/31/2019	Bonus and/or Deferred Compensation
Waterhouse, Frank	71.25	05/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	05/31/2019	Regular Base Pay
Waterhouse, Frank	71.25	06/14/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	06/14/2019	Regular Base Pay
Waterhouse, Frank	306,801.00	06/28/2019	Bonus and/or Deferred Compensation
Waterhouse, Frank	71.25	06/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	06/28/2019	Regular Base Pay
Waterhouse, Frank	71.25	07/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	07/15/2019	Regular Base Pay
Waterhouse, Frank	71.25	07/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	07/31/2019	Regular Base Pay
Waterhouse, Frank	71.25	08/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	08/15/2019	Regular Base Pay
Waterhouse, Frank	418,750.00	08/30/2019	Bonus
Waterhouse, Frank	14,583.33	08/30/2019	Regular Base Pay
Waterhouse, Frank	71.25	09/13/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	09/13/2019	Regular Base Pay
Waterhouse, Frank	71.25	09/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	09/30/2019	Regular Base Pay
Waterhouse, Frank	71.25	10/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	10/15/2019	Regular Base Pay
Waterhouse, Frank	71.25	10/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	10/31/2018	Regular Base Pay
Waterhouse, Frank	71.25	11/15/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	11/15/2018	Regular Base Pay
Waterhouse, Frank	71.25	11/30/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	11/30/2018	Regular Base Pay
Waterhouse, Frank	71.25	12/14/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	12/14/2018	Regular Base Pay
Waterhouse, Frank	71.25	12/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	12/31/2018	Regular Base Pay

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	

GLOBAL NOTES AND STATEMENT OF LIMITATIONS, METHODS, AND DISCLAIMER REGARDING DEBTOR'S SCHEDULES OF ASSETS AND LIABILITIES AND STATEMENT OF FINANCIAL AFFAIRS

Highland Capital Management, L.P. (the "Debtor") submits its Schedules of Assets and Liabilities (the "Schedules") and Statement of Financial Affairs (the "SoFA") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court"). The Debtor, with the assistance of its advisors and management, prepared the Schedules and SoFA in accordance with section 521 title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") and Rule 1007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

These Global Notes and Statement of Limitations, Methods, and Disclaimer Regarding the Debtor's Schedules and SoFA (collectively, the "Global Notes") pertain to, are incorporated by reference in, and comprise an integral part of the Schedules and SoFA. These Global Notes should be referred to, and reviewed in connection with any review of the Schedules and SoFA.[2]

The Schedules and SoFA have been prepared by the Debtor with the assistance and under the direction of the Debtor's proposed Chief Restructuring Officer and additional personnel at Development Specialists, Inc. (collectively, the "CRO") and are unaudited and subject to further review and potential adjustment and amendment. In preparing the Schedules and SoFA, the CRO relied on financial data derived from the Debtor's books and records that was available at the time of preparation. The CRO has made reasonable efforts to ensure the accuracy and completeness of such financial information, however, subsequent information or discovery of other relevant facts may result in material changes to the Schedules and SoFA and inadvertent errors, omissions, or inaccuracies may exist. The Debtor reserves all rights to amend or supplement its Schedules and SoFA.

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] These Global Notes are in addition to any specific notes contained in the Debtor's Schedules or SoFA. The fact that the Debtor has prepared a "general note" with respect to any of the Schedules and SoFA and not to others should not be interpreted as a decision by the Debtor to exclude the applicability of such general note to any of the Debtor's remaining Schedules and SoFA, as appropriate.

Reservation of Rights. The Debtor reserves all rights to amend the SoFA and Schedules in all respects, as may be necessary or appropriate, including, but not limited to, the right to dispute or to assert offsets or defenses to any claim reflected on the SoFA and Schedules as to amount, liability or classification of the claim, or to otherwise subsequently designate any claim as "disputed," "contingent" or "unliquidated." Furthermore, nothing contained in the SoFA and Schedules shall constitute a waiver of rights by the Debtor involving any present or future causes of action, contested matters or other issues under the provisions of the Bankruptcy Code or other applicable non-bankruptcy laws.

Description of the Case and "As Is" Information Date. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief with the United States Bankruptcy Court for the District of Delaware (the "Delaware Bankruptcy Court") under Chapter 11 of the Bankruptcy Code. The Debtor is managing its assets as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On December 4, 2019, the Delaware Bankruptcy Court entered an Order transferring this case to the Bankruptcy Court [Docket No. 1].

Asset information in the Schedules reflects the Debtor's best estimate of asset values as of the Petition Date, unless otherwise noted. No independent valuation has been obtained.

Basis of Presentation. The Schedules and SoFA do not purport to represent financial statements prepared in accordance with Generally Accepted Accounting Principles ("GAAP"), nor are they intended to fully reconcile to any financial statements otherwise prepared and/or distributed by the Debtor.

Although these Schedules and SoFA may, at times, incorporate information prepared in accordance with GAAP, the Schedules and SoFA neither purport to represent nor reconcile to financial statements prepared and/or distributed by the Debtor in accordance with GAAP or otherwise. Moreover, given, among other things, the valuation and nature of certain liabilities, to the extent that the Debtor shows more assets than liabilities, this is not a conclusion that the Debtor was solvent at the Petition Date. Likewise, to the extent that the Debtor shows more liabilities than assets, this is not a conclusion that the Debtor was insolvent at the Petition Date or any time prior to the Petition Date.

Estimates. To timely close the books and records of the Debtor, the CRO must make certain estimates and assumptions that affect the reported amounts of assets and liabilities and reported revenue and expenses. The Debtor reserves all rights to amend the reported amounts of assets, liabilities, revenue, and expenses to reflect changes in those estimates and assumptions.

Confidentiality. There may be instances within the Schedules and SoFA where names, addresses, or amounts have been left blank. Due to the nature of an agreement between the Debtor and the third party, concerns of confidentiality, or concerns for the privacy of an individual, the Debtor may have deemed it appropriate and necessary to avoid listing such names, addresses, and amounts.

Intercompany Claims. Any receivables and payables between the Debtor and affiliated or related entities in this case (each an "Intercompany Receivable" or "Intercompany Payable" and, collectively, the "Intercompany Claims") are reported as assets on Schedule B or liabilities on Schedule E and Schedule F. These Intercompany Claims include the following components, among others: 1) loans to affiliates or related entities, 2) accounts payable and payroll disbursements made out of an affiliate's or related entity's bank accounts on behalf of the Debtor, 3) centrally billed expenses, 4) corporate expense allocations, and 5) accounting for trade and other intercompany transactions. These Intercompany Claims may or may not result in allowed or enforceable claims by or against the Debtor, and by listing these claims the Debtor is not indicating a conclusion that the Intercompany Claims are enforceable. Intercompany Claims may also be subject to set off, recoupment, and netting not reflected in the Schedules. In situations where there is not an enforceable claim, the assets and/or liabilities of the Debtor may be greater or lesser than the amounts stated herein. All rights to amend intercompany Claims in the Schedules and SoFA are reserved.

The Debtor has listed the intercompany payables as unsecured claims on Schedule F. The Debtor reserves its rights to later change the characterization, classification, categorization, or designation of such items.

Insiders. For purposes of the Schedules and SoFA, the Debtor defines "insider" pursuant to section 101(31) of the Bankruptcy Code. Payments to insiders are set forth on Question 3.c. of the SoFA.

Persons listed as "insiders" have been included for informational purposes only. The Debtor did not take any position with respect to whether such individual could successfully argue that he or she is not an "insider" under applicable law, including without limitation, the federal securities laws, or with respect to any theories of liability or for any other purpose. Inclusion of any party in the Schedules and SoFA as an insider does not constitute an admission that such party is an insider or a waiver of such party's right to dispute insider status.

Excluded Accruals and GAAP Entries. The Debtor's balance sheet reflects liabilities recognized in accordance with GAAP; however, not all such liabilities would result in a claim against the Debtor. Certain liabilities (including but not limited to certain reserves, deferred charges, and future contractual obligations) have not been included in the Debtor's Schedules. Other immaterial assets and liabilities may also have been excluded.

Classification and Claim Descriptions. Any failure to designate a claim on the Schedules as "disputed," "contingent" or "unliquidated" does not constitute an admission by the Debtor that such amount is not "disputed," "contingent" or "unliquidated." The Debtor reserves the right to dispute, or to assert offsets or defenses to, any claim reflected on its Schedules as to amount, liability or classification or to otherwise subsequently designate any claim as "disputed," "contingent" or "unliquidated."

Listing a claim (i) in Schedule D as "secured," (ii) in Schedule E as "priority" or (iii) in Schedule F as "unsecured nonpriority," or listing a contract in Schedule G as "executory" or "unexpired," does not constitute an admission by the Debtor of the legal rights of the claimant or a waiver of the Debtor's right to recharacterize or reclassify such claim or contract.

Moreover, the Debtor reserves all rights to amend the SoFA and Schedules, in all respects, as may be necessary or appropriate, including, but not limited to, the right to dispute or to assert offsets or defenses to any claim reflected on the SoFA and Schedules as to amount, liability or classification of the claim, or to otherwise subsequently designate any claim as "disputed," "contingent" or "unliquidated." Furthermore, nothing contained in the SoFA and Schedules shall constitute a waiver of rights by the Debtor involving any present or future causes of action, contested matters or other issues under the provisions of the Bankruptcy Code or other relevant non-bankruptcy laws.

Credits and Adjustments. The claims of individual creditors for, among other things, goods, products, services or taxes are listed as the amounts entered on the Debtor's books and records and may not reflect credits, allowances or other adjustments due from such creditors to the Debtor. The Debtor reserves all of its rights respecting such credits, allowances or other adjustments.

Setoffs. The Debtor may incur setoffs from third parties in its business. Setoffs in the ordinary course can result from various routine transactions, including intercompany transactions, pricing discrepancies, warranty claims and other disputes between the Debtor and third parties. Certain of these constitute normal setoffs consistent with the ordinary course of business in the Debtor's industry. In such instances, such ordinary course setoffs are excluded from the Debtor's responses to Question 13 of the SoFA. The Debtor reserves all rights to enforce or challenge, as the case may be, any setoffs that have been or may be asserted.

Specific Notes. These general notes are in addition to the specific notes set forth below or in the related Statement and Schedules hereinafter.

General Disclaimer

The Debtor has prepared the Schedules and the SoFA based on the information reflected in the Debtor's books and records. However, inasmuch as the Debtor's books and records have not been audited or formally closed and evaluated for proper cut-off on the Petition Date, the Debtor cannot warrant the absolute accuracy of these documents. The Debtor has made a diligent effort to complete these documents accurately and completely. To the extent additional information becomes available, the Debtor will amend and supplement the Schedules and SoFA.

Specific Schedules Disclosures

a. **Schedule A/B, Part 4 - Investments; Non-Publicly Traded Stock and Interests in Incorporated and Unincorporated Businesses, including any Interest in an LLC, Partnership, or Joint Venture.** Certain ownership interests in subsidiaries have been listed in Schedule A/B, Part 4, at their book value on account of the fact that the fair market value of such ownership is dependent on numerous variables and factors. Fair value of such interests may differ significantly from their net book value. Further, for investments listed at fair value, many of the Debtor's assets are not exchange traded and are fair valued utilizing unobservable

inputs, historical information, and significant and/or subjective estimates. As a result the liquidity and ultimately realized value of such investments may differ materially from the fair value listed on the schedule.

b. **Schedule A/B, Part 7 - Office Furniture, Fixtures, and Equipment; and Collectibles**. Dollar amounts are presented net of accumulated depreciation and other adjustments.

c. **Schedule A/B, Part 11 - All Other Assets**. Dollar amounts are presented net of impairments and other adjustments. Debtor has reflected "unknown" for value of its interests in various other assets. While the face value of the notes receivable is included, the current value of these as well as the other assets has not been determined and may differ materially.

Additionally, the Debtor may receive refunds, income tax refunds or other sales tax refunds at various times throughout its fiscal year. As of the Petition Date, however, certain of these amounts are unknown to the Debtor, and accordingly, may not be listed in Schedule A/B.

Other Contingent and Unliquidated Claims or Causes of Action of Every Nature, including Counterclaims of the Debtor and Rights to Setoff Claims. In the ordinary course of its business, the Debtor may have accrued, or may subsequently accrue, certain rights to counter-claims, cross-claims, setoffs, or refunds with its customers and suppliers. Additionally, the Debtor may be party to pending litigation in which the Debtor has asserted, or may assert, claims as a plaintiff or counter-claims and/or cross-claims as a defendant. Because certain of these claims are unknown to the Debtor and not quantifiable as of the Petition Date, they may not be listed on Schedule A/B, Part 11.

d. **Schedule D - Creditors Who Have Claims Secured by Property**. The Debtor reserves its rights to dispute or challenge the validity, perfection, or immunity from avoidance of any lien purported to be granted or perfected in any specific asset to a secured creditor listed on Schedule D. Moreover, although the Debtor has scheduled claims of various creditors as secured claims, the Debtor reserves all rights to dispute or challenge the secured nature of any such creditor's claim or the characterization of the structure of any such transaction or any document or instrument related to such creditor's claim.

The descriptions provided in Schedule D are intended only to be a summary. Reference to the applicable agreements and other related relevant documents is necessary for a complete description of the collateral and the nature, extent, and priority of any liens.

The Debtor has not included on Schedule D parties that may believe their claims are secured through setoff rights or inchoate statutory lien rights. Although there are multiple parties that hold a portion of the debt included in the secured

facilities, only the administrative agents have been listed for purposes of Schedule D.

e. **Schedule E/F - Creditors Who Have Unsecured Claims.**

Part 1 - Creditors with Priority Unsecured Claims. Pursuant to the *Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (11) Granting Related Relief* [Docket No. 39] (the "Wage Order"), the Debtor received authority to pay certain prepetition obligations, including to pay employee wages and other employee benefits, in the ordinary course of business. The Debtor believes that any non-insider employee claims for prepetition amounts related to ongoing payroll and benefits, whether allowable as a priority or nonpriority claim, which were due and payable at the time of the Petition Date have been or will be satisfied as permitted pursuant to the Wage Order. The Debtor filed the *Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations under Employee Bonus Plans and Granting Related Relief* [Docket No. 177] pursuant to which the Debtor seeks authority to pay and honor certain prepetition bonus programs. Employee claims related to these programs are shown in the aggregate amounts in Schedule E/F for privacy reasons. Additional information is available by appropriate request to the Debtor. The listing of a claim on Schedule E/F, Part 1, does not constitute an admission by the Debtor that such claim or any portion thereof is entitled to priority status.

Part 2 - Creditors with Nonpriority Unsecured Claims. The liabilities identified in Schedule E/F, Part 2, are derived from the Debtor's books and records. The Debtor made a reasonable attempt to set forth its unsecured obligations, although the actual amount of claims against the Debtor may vary from those liabilities represented on Schedule E/F, Part 2. The listed liabilities may not reflect the correct amount of any unsecured creditor's allowed claims or the correct amount of all unsecured claims.

Schedule E/F, Part 2 reflects liabilities based on the Debtor's books and records.

Schedule E/F, Part 2, contains information regarding threatened or pending litigation involving the Debtor. The amounts for these potential claims are listed as "unknown" and are marked as contingent, unliquidated, and disputed in the Schedules and Statements. Additionally, the amounts of certain litigation claims may be estimates based on the allegations asserted by the litigation counterparty, and do not constitute an admission by the Debtor with respect to either liability for, or the amount of, such claims.

Schedule E/F, Part 2, reflects certain prepetition amounts owing to counterparties to executory contracts and unexpired leases. Such prepetition amounts, however,

may be paid in connection with the assumption or assumption and assignment of an executory contract or unexpired lease. In addition, Schedule E/F, Part 2, does not include claims that may arise in connection with the rejection of any executory contracts and unexpired leases, if any, that may be or have been rejected.

As of the time of filing of the Schedules and Statements, the Debtor had not received all invoices for payables, expenses, and other liabilities that may have accrued prior to the Petition Date. Accordingly, the information contained in Schedules D and E/F may be incomplete. The Debtor reserves its rights to amend Schedules D and E/F if and as it receive such invoices.

f. **Schedule G - Executory Contracts and Unexpired Leases**. While reasonable efforts have been made to ensure the accuracy of Schedule G, inadvertent errors or omissions may have occurred.

Listing a contract or agreement on Schedule G does not constitute an admission that such contract or agreement is an executory contract or unexpired lease or that such contract or agreement was in effect on the Petition Date or is valid or enforceable. The Debtor hereby reserves all of its rights to dispute the validity, status, or enforceability of any contracts, agreements, or leases set forth in Schedule G and to amend or supplement such Schedule as necessary. Certain of the leases and contracts listed on Schedule G may contain renewal options, guarantees of payment, indemnifications, options to purchase, rights of first refusal and other miscellaneous rights. Such rights, powers, duties and obligations are not set forth separately on Schedule G. In addition, the Debtor may have entered into various other types of agreements in the ordinary course of its business, such as supplemental agreements, amendments, and letter agreement, which documents may not be set forth in Schedule G.

Certain of the agreements listed on Schedule G may have expired or terminated pursuant to their terms, but are listed on Schedule G in an abundance of caution.

The Debtor reserves all rights to dispute or challenge the characterization of any transaction or any document or instrument related to a creditor's claim.

In some cases, the same supplier or provider may appear multiple times in Schedule G. Multiple listings, if any, reflect distinct agreements between the Debtor and such supplier or provider.

The listing of any contract on Schedule G does not constitute an admission by the Debtor as to the validity of any such contract. The Debtor reserves the right to dispute the effectiveness of any such contract listed on Schedule G or to amend Schedule G at any time to remove any contract.

Omission of a contract or agreement from Schedule G does not constitute an admission that such omitted contract or agreement is not an executory contract or

unexpired lease. The Debtor's rights under the Bankruptcy Code with respect to any such omitted contracts or agreements are not impaired by the omission.