Docket #3977 Date Filed: 11/30/2023

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*)
Hayley R. Winograd (admitted *pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Tel: (310) 277-6910
Fax: (310) 201-0760

WILLKIE FARR & GALLAGHER LLP
Mark T. Stancil (admitted *pro hac vice*)
Joshua S. Levy (admitted *pro hac vice*)
1875 K Street, N.W.
Washington, D.C. 20006
(202) 303-1000
mstancil@willkie.com
jlevy@willkie.com

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

Counsel for Highland Capital Management, L.P., and the Highland Claimant Trust

REED SMITH LLP
Omar J. Alaniz
Texas Bar No. 24040402
Lindsey L. Robin
Texas Bar No. 24091422
2850 N. Harwood St., Ste. 1500
Dallas, Texas 75201
(469) 680-4292

Counsel for James P. Seery, Jr.

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.	§	
	§	

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLAIMANT TRUST, AND JAMES P. SEERY, JR.'S WITNESS AND EXHIBIT LIST WITH RESPECT TO HEARING TO BE HELD ON DECEMBER 4, 2023

Highland Capital Management, L.P. ("HCMLP," or, as applicable, the "Debtor"), the reorganized debtor in the above-styled bankruptcy case (the "Bankruptcy Case"), the Highland

[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.

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Claimant Trust (the "Trust"; together with HCMLP, "Highland"), and James P. Seery, Jr., HCMLP's Chief Executive Officer and the Claimant Trustee of the Trust ("Seery"), by and through their undersigned counsel, submit the following witness and exhibit list with respect to *Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Motion for an Order Requiring Scott Byron Ellington and His Counsel to Show Cause Why They Should Not Be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders* [Docket No. 3910] (the "Motion"), which the Court has set for hearing at 1:30 p.m. (Central Time) on December 4, 2023 (the "Hearing") in the Bankruptcy Case.

A. Witnesses:

1. Scott Byron Ellington;
2. Deborah R. Deitsch-Perez;
3. Any witness identified by or called by any other party; and
4. Any witness necessary for rebuttal.

B. Exhibits:

Number	Exhibit	Offered	Admitted
1.	Plaintiff's Fourth Motion to Compel filed in the District Court of Dallas County, Texas in the action captioned Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (the "Stalking Action") [Docket No. 3912-1]		
2.	Plaintiff's Original Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction in the Stalking Action [Docket No. 3912-2]		
3.	Scott Ellington's Reply in Support of Motion to Abstain and to Remand Filed in the United States Bankruptcy Court for the Northern District of Texas in the adversary proceeding captioned Scott Byron Ellington v. Patrick Daugherty, Adversary Proceeding No. 22-03003-sgj (N.D. Tex. Bankr.) (the "Stalking Action Adversary Proceeding" [Docket No. 3912-3]		

Number	Exhibit	Offered	Admitted
4.	Transcript of the hearing conducted before this Court for the Stalking Action Adversary Proceeding on March 29, 2022 [Docket No. 3912-4]		
5.	Subpoena Duces Tecum Pursuant to the Uniform Interstate Deposition and Discovery Act and CPLR § 3119 in the Stalking Action, dated November 3, 2022 [Docket No. 3912-5]		
6.	Excerpted copy of the transcript of the hearing conducted before this Court on June 8, 2023 [Docket No. 3912-6]		
7.	Subpoena Ad Testificandum Pursuant to the Uniform Interstate Deposition and Discovery Act and CPLR § 3119 in the Stalking Action, dated June 19, 2023 [Docket No. 3912-7]		
8.	Subpoena Ad Testificandum Pursuant to the Uniform Interstate Deposition and Discovery Act and CPLR § 3119 in the Stalking Action, dated July 13, 2023 [Docket No. 3912-8]		
9.	Email thread dated from June 22, 2023 to June 30, 2023, between counsel for James P. Seery, Jr., counsel for Highland Capital Management, L.P., counsel for Judge Russell Nelms, and counsel for the plaintiff in the Stalking Action [Docket No. 3912-9]		
10.	Email string dated from June 19, 2023 to July 27, 2023, between counsel for James P. Seery, Jr., counsel for Highland Capital Management, L.P., and counsel for the plaintiff in the Stalking Action [Docket No. 3912-10]		
11.	Production cover letter from counsel to James P. Seery Jr. responsive to the Subpoena Duces Tecum Pursuant to the Uniform Interstate Deposition and Discovery Act and CPLR § 3119 in the Stalking Action, dated July 14, 2023 [Docket No. 3912-11]		
12.	Email string dated from July 14, 2023 to July 25, 2023, between counsel for James P. Seery, Jr., counsel for Highland Capital Management, L.P., counsel for Judge Russell Nelms, counsel for the plaintiff in the Stalking Action, and counsel for defendant in the Stalking Action [Docket No. 3912-12]		
13.	Order Granting Plaintiff's Fourth Motion to Compel issued by the District Court of Dallas County, Texas in the Stalking Action, dated August 29, 2023 [Docket No. 3912-13]		
14.	Order Granting Plaintiff's Fourth Motion to Compel issued by the District Court of Dallas County, Texas in the Stalking Action, dated September 1, 2023 [Docket No. 3912-14]		

Number	Exhibit	Offered	Admitted
15.	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]		
16.	Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020 [Docket No. 854]		
17.	Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified) and (II) Granting Related Relief [Docket No. 1943]		
18.	Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified) [Docket No. 1808]		
19.	Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith [Docket No. 3088]		
20.	Reorganized Debtor's Reply in Further Support of Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) [Docket No. 3257]		
21.	Scott Ellington's Objection to the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Daugherty [Docket No. 3242]		
22.	Notice of Removal [Docket No. 3185]		
23.	Scott Ellington's Emergency Motion to Abstain and to Remand [AP No. 22-03003-sgj] [Docket No. 3]		
24.	The Dugaboy Investment Trust's Motion to Preserve Evidence and Compel Forensic Imaging of James P. Seery, Jr.'s iPhone [Docket No. 3802]		
25.	Declaration of Michelle Hartmann in Support of The Dugaboy Investment Trust's Motion to Compel Forensic Imaging of James P. Seery, Jr.'s iPhone [Docket No. 3803]		
26.	Lynn Pinker Hurst & Schwegmann, LLP and The Pettit Law Firm's Motion to Strike and Response Subject Thereto Opposing the Movants' Motion Requesting an Order Requiring Lynn Pinker and Pettit to Show Cause Why They Should Not be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders [Docket No. 3957]		

Number	Exhibit	Offered	Admitted
27.	Declaration of Julie Pettit [Docket No. 3957-2]		
28.	Declaration of Michael K. Hurst [Docket No. 3957-3]		
29.	Memorandum Opinion Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3903]		
30.	Declaration of Richard L. Wynne in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Motion for an Order Requiring Scott Byron Ellington and His Counsel to Show Cause Why They Should Not be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders [Docket No. 3914]		
31.	Document subpoena served on Judge Nelms in the Stalking Action on or around November 12, 2022 [Docket No. 3914-1]		
32.	Email correspondence from November and December 2022 from (i) John Dubel to Michael Hurst and (ii) Judge Nelms, Michael Hurst and Julie Pettit [Docket No. 3914-2]		
33.	Deposition subpoena served on Judge Nelms in the Stalking Action on June 14, 2023 [Docket No. 3914-3]		
34.	Chain of correspondence between Hogan Lovells and Ms. Pettit from June and July 2023 (excluding attachments). [Docket No. 3914-4]		
35.	Deposition subpoena served on Judge Nelms in the Stalking Action on August 22, 2023 [Docket No. 3914-5]		
36.	Email from Julie Pettit to Hogan Lovells dated September 5, 2023, including the list of deposition topics attached to the email [Docket No. 3914-6]		
37.	Certification of John Dubel filed on February 20, 2023, in the New Jersey contempt action [Docket No. 3914-7]		
38.	Order to Show Cause and accompanying documents served on John Dubel on February 8, 2023 [Docket No. 3914-8]		
39.	Chain of correspondence between Hogan Lovells and Ms. Pettit between September 5, 2023 and September 13, 2023 [Docket No. 3914-9]		

Number	Exhibit	Offered	Admitted
40.	Any document entered or filed in the Debtor's chapter 11 bankruptcy case, including any exhibits thereto		
41.	All exhibits necessary for impeachment and/or rebuttal purposes		
42.	All exhibits identified by or offered by any other party at the Hearing		

Dated: November 30, 2023

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*)
Hayley R. Winograd (admitted *pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Tel: (310) 277-6910
Fax: (310) 201-0760

HAYWARD PLLC

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

Counsel for Highland Capital Management, L.P., and the Highland Claimant Trust

WILLKIE FARR & GALLAGHER LLP

Mark T. Stancil (admitted *pro hac vice*)
Joshua S. Levy (admitted *pro hac vice*)
1875 K Street, N.W.
Washington, D.C. 20006
(202) 303-1000
mstancil@willkie.com
jlevy@willkie.com

REED SMITH LLP

Omar J. Alaniz
Texas Bar No. 24040402
Lindsey L. Robin
Texas Bar No. 24091422
2850 N. Harwood St., Ste. 1500
Dallas, Texas 75201
(469) 680-4292

Counsel for James P. Seery, Jr.

CAUSE NO. DC-22-00304

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
V.	§	**101st JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

PLAINTIFF'S FOURTH MOTION TO COMPEL

Comes Now, Scott Byron Ellington, Plaintiff herein, and files this fourth motion to compel against Defendant Patrick Daugherty, and, in support thereof, would respectfully show the Court the following:

I. INTRODUCTION

On August 25, 2022, the Court ordered Defendant to produce any communications he had with third parties regarding his "investigation" of Plaintiff. Despite that clear directive, Defendant continued to play "hide and seek" with relevant documents. Accordingly, even though the Court had already ordered all communications produced, Plaintiff served additional requests for production that specified his communications with specific individuals that should be produced. Among those individuals was James Seery, the current CEO of Highland Capital Management. To cover his bases, Plaintiff then also served a non-party discovery subpoena on Seery for those same communications. Perhaps unsurprisingly, Defendant and Seery produced different sets of documents in response to essentially the same requests. While Plaintiff advised the Court of that asymmetry in a previous motion that remains pending, Plaintiff is now forced to seek court intervention yet again because in advance of Seery's deposition that was set for July 31, 2023, he

produced for the first-time text messages with Defendant, many of which were redacted despite no privilege being asserted. Of course, Defendant produced none of these messages, redacted or otherwise. Because Plaintiff was not going to depose an out-of-state, non-party witness without full document production, Plaintiff postponed Seery's deposition until this issue is resolved.

Enough is enough. Plaintiff is not asking for production of obscure metadata in exotic file formats, or hard copy documents from decades ago now scattered across the country in various warehouses, or the review of millions of documents to identify only a handful of marginally relevant ones. In other words, Plaintiff is not asking for much. *Plaintiff is asking for basic document production, the type of which is accomplished every day in this county without incident*. And yet Plaintiff still does not have the documents.

Despite the multiple rounds of requests for production, each one more specific than the last. Despite this Court's order compelling production. Despite the non-party subpoenas. Despite the multiple motions to compel and conferences relating thereto. Despite such extreme effort, the result is only more wasted time, more delay, and more money spent so that Defendant can play games hiding maybe thirty-eight (38) pages of relevant and non-privileged text messages. The Court should put an end to these games once and for all and order Defendant to produce these text messages along with any other responsive communications he has been hiding.

II. RELEVANT BACKGROUND

1. As the Court is aware, Plaintiff sued Defendant for stalking and otherwise harassing him and his family. In response, Defendant does not deny surveilling Plaintiff and his family. Instead, Defendant's primary defense seems to be his assertion that his surveillance was part of an in-depth asset investigation of Plaintiff that Defendant was *personally* conducting in connection with a judgment he obtained against an affiliate of Plaintiff's former employer, Highland Capital Management ("Highland").

2. Defendant's supposed motivations in stalking Plaintiff are irrelevant, and do not constitute a legal defense to the causes of action asserted.

3. One of those individuals is James Seery, who is the current CEO of Highland and a New York resident. On or about November 9, 2022, Plaintiff served Seery with a New York subpoena requesting production of his communications with Defendant that were regarding Plaintiff, among other things. On December 9, 2022, Seery served formal responses and objections to the subpoena and then produced responsive documents shortly thereafter.

4. While Plaintiff sought to obtain these communications from Seery, he also sought these communications from Defendant. For example, on May 15, 2022, Plaintiff served on Defendant his first requests for production, which included the following requests:

- "All documents and communications containing or referencing any Ellington Recording sent to or received from any other person or entity." *See* Exhibit A at RFP No. 2, APP 5.

- "All documents and communications with any other person or entity regarding the Ellington Recordings and/or the observation, surveillance, recordation, or investigation of any Ellington Party or Location." *See* Ex. A at RFP No. 3, APP 5.

- "All documents and communications sufficient to show the reasoning behind Your decision to record, observe, surveil, and investigate the Ellington Parties and Locations." *See* Ex. A at RFP No. 7, APP 6.

- "All Documents and communications sufficient to show any person or entity other that You that knew of and/or was involved in Your observation, recordation, surveillance, and investigation of the Ellington Parties." *See* Ex. A at RFP No. 8, APP 7.

5. On August 25, 2022, the Court granted Plaintiff's motion to compel relating to his first requests for production and ordered any responsive documents produced.

6. After Defendant's deposition was taken on July 14, 2022, Plaintiff learned that Defendant had communications with Seery that were relevant to the subject matter of this case.

Accordingly, on September 8, 2022, Plaintiff served his third request for production on Defendant, wherein Plaintiff specifically requested that all communications with Seery regarding Plaintiff be produced.

7. On October 10, 2022, Defendant served responses to Plaintiff's third requests. *See* Exhibit B, APP 10-25. Defendant made numerous objections to producing his communications with Seery, but then stated that subject to those objections he was producing documents. *See* Ex. B at RFP No. 15, APP 12.

8. However, once Plaintiff started receiving documents from Seery, it became clear that Defendant's production was greatly deficient.

9. On May 19, 2023, Plaintiff filed his second motion to compel a forensic review and collection of Plaintiff's electronic devices and accounts. As detailed in that motion, Seery's production included at least three important emails not produced by Defendant. That point along with many others made it clear that Defendant was (and is) withholding relevant documents that he must now perceive as harmful to his case. A hearing on that motion was held on June 26, 2023. After the hearing, the Court took the matter under advisement.

10. What precipitated this motion was that on or about July 17, 2023, Seery supplemented his production to include thirty-eight (38) pages of text messages with Defendant that Plaintiff had never seen before. *See* Exhibit C, APP 26-63. Worse, many of the text messages were redacted. *See id.* The supplementation was not made by chance either. Seery was set to give a deposition on July 31, 2023, where the extent of his communications with Defendant was going to be heavily discussed.

11. When counsel for Plaintiff asked for Seery to explain his reason for withholding text messages that appeared to be clearly relevant, counsel for Seery took several days to think

about his response, and then stated without further detail that despite all appearances the messages were actually *not* relevant, and he then threatened to seek sanctions against Plaintiff if he refused to drop the issue. *See* Exhibit D, APP 64-68.

12. While Plaintiff intends to also seek full production from Seery, that does not absolve Defendant's duty to likewise produce these messages. Accordingly, Plaintiff has brought this motion.

III. ARGUMENT & AUTHORITIES

Clearly relevant and responsive text messages between Defendant and Seery exist as Seery has now produced dozens of pages, albeit heavily redacted. As for those text messages that Seery withheld as irrelevant, they were sent during the relevant time, were by and between Seery and Defendant, and are surrounded by messages referencing Plaintiff and Defendant's investigation of him. Given the circumstances and context, the text messages are relevant to Daugherty's investigation. The Court has already ordered Daugherty to produce all documents in connection with his investigation, and therefore, they must be produced by Daugherty here.

IV. CONCLUSION & PRAYER

For the foregoing reasons, the Court should grant this motion and order Defendant to produce to Plaintiff within seven (7) days all text messages he has had with Seery that are regarding Plaintiff, which should include, at the least, unredacted versions of the text messages already produced by Seery.

Respectfully submitted,

/s/ Julie Pettit

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

Michael K. Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Michele Naudin
mnaudin@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

ATTORNEYS FOR SCOTT B. ELLINGTON

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon all counsel of record ***via E-Service*** on August 21, 2023.

/s/ Julie Pettit
Julie Pettit

CERTIFICATE OF CONFERENCE

Counsel for movant has attempted to resolve the issues in this motion with respondent. However, despite best efforts the counsel have not been able to resolve those matters presented.

Certified on August 21, 2023 by:

/s/ Julie Pettit
Julie Pettit

CAUSE NO. DC-22-00304

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
V.	§	**101st JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

APPENDIX IN SUPPORT OF PLAINTIFF'S FOURTH MOTION TO COMPEL

Exhibit	Document	APP
A	Defendant's Responses to Plaintiff's First Requests for Production	2 - 9
B	Defendant's Responses to Plaintiff's Third Requests for Production	10 - 25
C	38 pages of non-privileged text messages	26 - 63
D	Email correspondence with Mark Stancil	64 - 68

Respectfully submitted,

/s/ Julie Pettit

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

Michael K. Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Michele Naudin
mnaudin@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

ATTORNEYS FOR SCOTT B. ELLINGTON

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon all counsel of record ***via E-Service*** on August 21, 2023.

/s/ Julie Pettit
Julie Pettit

EXHIBIT
A

CAUSE NO. DC-22-00304

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	**DALLAS COUNTY, TEXAS**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**101ST JUDICIAL DISTRICT**

DEFENDANT'S RESPONSES TO
PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION

TO: Plaintiff, Scott Byron Ellington, by and through his attorneys of record, Michael K. Hurst, Mary Goodrich Nix and Michele Naudin of LYNN PINKER HURST & SCHWEGMANN, LLP 2100 Ross Avenue, Suite 2700 Dallas, Texas 75201 and Julie Pettit and David Urteago of THE PETTIT LAW FIRM 2101 Cedar Springs, Suite 1540, Dallas, Texas 75201.

Pursuant to the Texas Rules of Procedure, Defendant, Patrick Daugherty ("Daugherty"), hereby makes and serves these Responses to Plaintiffs' First Requests for Production to Patrick Daugherty.

OBJECTIONS AND ASSERTIONS TO INSTRUCTIONS

To the extent that these discovery requests can be interpreted as seeking production of documents subject to the attorney-client privilege, work-product doctrine, the allied-litigant privilege, the consulting-expert privilege, and other trial preparation exemptions or privileges, Daugherty intends to assert the appropriate privilege(s) as applicable. Furthermore, Daugherty intends to withhold documents from production that are subject to any of those privileges.

Daugherty objects to this discovery to the extent that the instructions contained therein deviate from or create a greater burden on Daugherty than that imposed by the Texas Rules of Civil Procedure.

Daugherty objects to instruction number six (6) concerning responsive documents that no longer exist or cannot be located because it directs Daugherty to create a document.

Daugherty further objects to the time and place of production requested by Plaintiff. Daugherty will produce any responsive, non-privileged and discoverable documents on a rolling basis to Plaintiff's counsel.

OBJECTIONS TO DEFINITIONS

Daugherty objects to the definition of "Ellington Party" as vague, ambiguous, and overly broad. Plaintiff's definition of "Ellington Party" encompasses people beyond those relevant to any claim or defense asserted in this litigation and requires Daugherty to speculate as to what additional persons may fall within the term. In responding to Plaintiff's First Requests for Production to Patrick Daugherty, Daugherty will construe "Ellington Party" to include only those individuals identified in Plaintiff's Original Petition: Scott Byron Ellington, Byron Ellington, Stephanie Archer, and Marcia Maslow.

Daugherty further objects to the definition of "Ellington Location" as vague, ambiguous, and overly broad. Plaintiff's definition of "Ellington Location" encompasses locations beyond those relevant to any claim or defense asserted in this litigation and requires Daugherty to speculate as to what additional locations may fall within the term. In responding to Plaintiff's First Requests for Production to Patrick Daugherty, Daugherty will construe "Ellington Location" to include only those addresses identified in Plaintiff's Original Petition: 120 Cole Street, Dallas, Texas 75207, 3825 Potomac Ave., Dallas, Texas 75205, 4432 Potomac, Dallas, Texas 75025, 430 Glenbrook Dr., Murphy, Texas 75094, and 5101 Creekside Ct., Parker, Texas 75094.

Daugherty also objects to the definition of "Ellington Recordings" as vague, ambiguous, and overly broad. In responding to Plaintiff's First Requests for Production to Patrick Daugherty, Daugherty will construe "Ellington Recordings" in accordance with the above asserted objections to the terms "Ellington Party" and "Ellington Location" as the term "Ellington Recordings" relies upon both of those vague, ambiguous, and overly broad terms.

Subject to the foregoing objections and without waiving or limiting the same, Daugherty responds to Plaintiff's First Requests for Production as follows:

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: All Ellington Recordings, with metadata sufficient to identify (a) the time and date the Ellington Recording was made, and (b) devices used to make each such Ellington Recording.

> **RESPONSE:** Daugherty adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," "Ellington Location," and "Ellington Recordings." Daugherty also objects to this request to the extent it may be construed to require Daugherty to create or develop information, specifically metadata, that is not contained in the native or near-native format of the items requested in the regular course of business.
>
> Daugherty further objects to the time and place for production. Daugherty will produce copies of responsive documents, if any, within his possession, custody, or control on a rolling basis to Plaintiff's counsel.

REQUEST FOR PRODUCTION NO. 2: All documents and communications containing or referencing any Ellington Recording sent to or received from any other person or entity.

RESPONSE: Daugherty adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," "Ellington Location," and "Ellington Recordings."

Furthermore, Daugherty asserts that the discovery requested seeks information or documents governed by the attorney-client and work product privileges. Such privileged responsive information or documents are being withheld from production.

Daugherty objects to the time and place for production. Daugherty will produce copies of responsive non-privileged documents, if any, within his possession, custody or control on a rolling basis.

REQUEST FOR PRODUCTION NO. 3: All documents and communications with any other person or entity regarding the Ellington Recordings and/or the observation, surveillance, recordation, or investigation of any Ellington Party or Location.

RESPONSE: Daugherty adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," "Ellington Location," and "Ellington Recordings."

Furthermore, Daugherty asserts that the discovery requested seeks information or documents governed by the attorney-client and work product privileges. Such privileged responsive information or documents are being withheld from production.

Daugherty objects to the time and place for production. Daugherty will produce copies of responsive non-privileged documents, if any, within his possession, custody or control on a rolling basis.

REQUEST FOR PRODUCTION NO. 4: All electronic or hand-written notes, memoranda, or other documents related to or evidencing Your recordation, observation, surveillance, or investigation of any Ellington Party or Ellington Location.

RESPONSE: Daugherty adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," and "Ellington Location."

Furthermore, Daugherty asserts that the discovery requested seeks information or documents governed by the attorney-client and work product privileges. Such privileged responsive information or documents are being withheld from production.

Daugherty objects to the time and place for production. Daugherty will produce copies of responsive non-privileged documents, if any, within his possession, custody or control on a rolling basis.

REQUEST FOR PRODUCTION NO. 5: The make, model, year, and identity of the owner of all vehicles driven by You while observing, surveilling, recording, or investigating any Ellington Party or Location, especially on the dates and times referenced in Petition paragraphs 11–13 as well as throughout Petition **Exhibits A**, **A-11**, and **B**.

RESPONSE: Daugherty objects to this request on the basis that it is more properly characterized as an interrogatory. An interrogatory seeking the same or similar information is included in Plaintiff's First Interrogatories as Interrogatory No. 5, Daugherty will respond to that Interrogatory in accordance with the Texas Rules of Civil Procedure.

REQUEST FOR PRODUCTION NO. 6: All documents and communications sufficient to show Your location while observing, surveilling, recording, or investigating any Ellington Party or Location, especially on the dates and times referenced in Petition paragraphs 11–13 as well as throughout Petition **Exhibits A**, **A-11**, and **B**.

RESPONSE: Daugherty adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," and "Ellington Location."

Daugherty objects to the time and place for production. Daugherty will produce copies of responsive documents, if any, within his possession, custody or control on a rolling basis.

REQUEST FOR PRODUCTION NO. 7: All documents and communications sufficient to show the reasoning behind Your decision to record, observe, surveil, and investigate the Ellington Parties and Locations.

RESPONSE: Daugherty adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," and "Ellington Location."

Furthermore, Daugherty asserts that the discovery requested seeks information or documents governed by the attorney-client and work product privileges. Such privileged responsive information or documents are being withheld from production.

Daugherty objects to the time and place for production. Daugherty will produce copies of responsive non-privileged documents, if any, within his possession, custody or control on a rolling basis.

REQUEST FOR PRODUCTION NO. 8: All documents and communications sufficient to show any person or entity other than You that knew of and/or was involved in Your observation, recordation, surveillance, and investigation of the Ellington Parties.

RESPONSE: Daugherty adopts and incorporates by reference, as if fully set forth herein, his objection to the definition of the term "Ellington Party."

Daugherty objects to this request on the basis that it is vague and ambiguous, Daugherty cannot make an informed response to the request or provide complete answers without clarification of the meanings of "knew of" and "involved in."

Daugherty also objects to this request on the basis that it seeks information that is not relevant and material to the claims or defenses in this litigation, nor reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,

GRAY REED

By: */s/ Andrew K. York*

ANDREW K. YORK
State Bar No. 24051554
dyork@grayreed.com
DRAKE M. RAYSHELL
State Bar No. 24118507
drayshell@grayreed.com
RUTH ANN DANIELS
State Bar No. 15109200
rdaniels@grayreed.com

1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332

ATTORNEYS FOR DEFENDANT,
PATRICK DAUGHERTY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was duly furnished to the following counsel of record (1) electronically through the electronic filing manager (www.efiletexas.gov), and/or (2) via e-mail on this 14th day of June, 2022:

Michael K. Hurst
Mary Goodrich Nix
Michele Naudin
LYNN PINKER HURST & SCHWEGMANN, LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201

Julie Pettit
David B. Urteago
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite1540
Dallas, Texas 75201

/s/ Andrew K. York
ANDREW K. YORK

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Suzy Langley on behalf of Andrew York
Bar No. 24051554
slangley@grayreed.com
Envelope ID: 65425838
Status as of 6/14/2022 1:35 PM CST

Associated Case Party: PATRICK DAUGHERTY

Name	BarNumber	Email	TimestampSubmitted	Status
Andrew K.York		dyork@grayreed.com	6/14/2022 1:34:47 PM	SENT
RUTH ANN DANIELS		RDANIELS@GRAYREED.COM	6/14/2022 1:34:47 PM	SENT
Drake M.Rayshell		drayshell@grayreed.com	6/14/2022 1:34:47 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Susan Langley		slangley@grayreed.com	6/14/2022 1:34:47 PM	SENT
Gina Flores		gflores@lynnllp.com	6/14/2022 1:34:47 PM	SENT
Julie Pettit		jpettit@pettitfirm.com	6/14/2022 1:34:47 PM	SENT
Beverly Congdon		bcongdon@lynnllp.com	6/14/2022 1:34:47 PM	SENT
Patricia Perkins Mayes		pperkins@pettitfirm.com	6/14/2022 1:34:47 PM	SENT
Michael K.Hurst		mhurst@lynnllp.com	6/14/2022 1:34:47 PM	SENT
Mary GoodrichNix		mnix@lynnllp.com	6/14/2022 1:34:47 PM	SENT
Nathaniel A.Plemons		nplemons@lynnllp.com	6/14/2022 1:34:47 PM	SENT
Natalie Clark		nclark@lynnllp.com	6/14/2022 1:34:47 PM	SENT
Michele Naudin		mnaudin@lynnllp.com	6/14/2022 1:34:47 PM	SENT

EXHIBIT
B

CAUSE NO. DC-22-00304

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	**DALLAS COUNTY, TEXAS**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**101ST JUDICIAL DISTRICT**

DEFENDANT'S RESPONSES TO
PLAINTIFF'S THIRD REQUESTS FOR PRODUCTION

TO: Plaintiff, SCOTT BYRON ELLINGTON, by and through his attorneys of record, Michael K. Hurst, Mary Goodrich Nix and Michele Naudin, LYNN PINKER HURST & SCHWEGMANN, LLP, 2100 Ross Avenue, Suite 2700 Dallas, Texas 75201 and Julie Pettit and David Urteago, THE PETTIT LAW FIRM, 2101 Cedar Springs, Suite 1540, Dallas, Texas 75201.

Pursuant to the Texas Rules of Procedure, Defendant, PATRICK DAUGHERTY ("Daugherty"), hereby makes and serves these Responses to Plaintiff's Third Requests for Production to Patrick Daugherty.

OBJECTIONS AND ASSERTIONS TO INSTRUCTIONS

To the extent that these discovery requests can be interpreted as seeking production of documents subject to the attorney-client privilege, work-product doctrine, the allied-litigant privilege, the consulting-expert privilege, and other trial preparation exemptions or privileges, Daugherty intends to assert the appropriate privilege(s) as applicable. Furthermore, Daugherty intends to withhold documents from production that are subject to any of those privileges.

Daugherty objects to this discovery to the extent that the instructions contained therein deviate from or create a greater burden on Daugherty than that imposed by the Texas Rules of Civil Procedure.

Daugherty objects to instruction number six (6) concerning responsive documents that no longer exist or cannot be located because it directs Daugherty to create a document.

Daugherty further objects to the time and place of production requested by Plaintiff. Daugherty will produce any responsive, non-privileged and discoverable documents on a rolling basis to Plaintiff's counsel.

OBJECTIONS TO DEFINITIONS

Daugherty objects to the definition of "Ellington Party" as vague, ambiguous, and overly broad. Plaintiff's definition of "Ellington Party" encompasses people and terms (i.e., "Apple Dumpling Gang, Cabal, Buffoonery, and Pink Shrek") beyond those relevant to any claim or defense asserted in this litigation and requires Daugherty to speculate as to what additional persons may fall within the term. In responding to Plaintiff's Third Requests for Production to Patrick Daugherty, Daugherty will construe "Ellington Party" to include only those individuals identified in Plaintiff's Original Petition: Scott Byron Ellington, Byron Ellington, Stephanie Archer, and Marcia Maslow including any aliases or nicknames assigned to them by Daugherty, if any.

Daugherty further objects to the definition of "Ellington Location" as vague, ambiguous, and overly broad. Plaintiff's definition of "Ellington Location" encompasses locations beyond those relevant to any claim or defense asserted in this litigation and requires Daugherty to speculate as to what additional locations may fall within the term. In responding to Plaintiff's Third Requests for Production to Patrick Daugherty, Daugherty will construe "Ellington Location" to include only those addresses identified in Plaintiff's Original Petition: 120 Cole Street, Dallas, Texas 75207, 3825 Potomac Ave., Dallas, Texas 75205, 4432 Potomac, Dallas, Texas 75025, 430 Glenbrook Dr., Murphy, Texas 75094, and 5101 Creekside Ct., Parker, Texas 75094.

Daugherty also objects to the definition of "Ellington Recordings" as vague, ambiguous, and overly broad. In responding to Plaintiff's Third Requests for Production to Patrick Daugherty, Daugherty will construe "Ellington Recordings" in accordance with the above asserted objections to the terms "Ellington Party" and "Ellington Location" as the term "Ellington Recordings" relies upon both of those vague, ambiguous, and overly broad terms.

Subject to the foregoing objections and without waiving or limiting the same, Daugherty responds to Plaintiff's Third Requests for Production as follows:

RESPONSES TO THIRD REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 14: All documents and communications referencing any Ellington Party, Ellington Location, or Ellington Recording sent to and received from with Matthew Clemente, Paige Montgomery, or any other attorney, employee, or person at Sidley Austin LLP.

> **RESPONSE:** Daugherty objects to this Request on the basis that it seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence, as the Request seeks "[a]ll documents and communications referencing any Ellington Party, Ellington Location," regardless of whether such documents and communications (1) relate to Ellington's claims asserted in this litigation, (2) were communicated in connection with one or more other wholly-unrelated cases proceeding concurrently in other Federal and State

courts where Ellington and/or his associates are named-parties, or (3) something else entirely.

Daugherty further objects to this Request on the basis that it is overly broad and constitutes an impermissible fishing expedition as it seeks information completely unrelated to Ellington's claims asserted in this litigation.

Daugherty also adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," "Ellington Location," and "Ellington Recordings."

Subject to the foregoing objection(s) and without waiving the same, please see Daugherty's previous productions which contain documents responsive to this request.

REQUEST FOR PRODUCTION NO. 15: All documents and communications referencing any Ellington Party, Ellington Location, or Ellington Recording sent to and received from with Jim Seery.

RESPONSE: Daugherty objects to this Request on the basis that it seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence, as the Request seeks "[a]ll documents and communications referencing any Ellington Party, Ellington Location," regardless of whether such documents and communications (1) relate to Ellington's claims asserted in this litigation, (2) were communicated in connection with one or more other wholly-unrelated cases proceeding concurrently in other Federal and State courts where Ellington and/or his associates are named-parties, or (3) something else entirely.

Daugherty further objects to this Request on the basis that it is overly broad and constitutes an impermissible fishing expedition as it seeks information completely unrelated to Ellington's claims asserted in this litigation.

Daugherty also adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," "Ellington Location," and "Ellington Recordings."

Daugherty objects to the time and place for production. Subject to the foregoing objection(s) and without waiving the same, Daugherty will produce copies of responsive documents, if any, within his possession, custody, or control on a rolling basis.

Additionally, please see Daugherty's previous productions which contain documents responsive to this request.

REQUEST FOR PRODUCTION NO. 16: All documents and communications referencing any Ellington Party, Ellington Location, or Ellington Recording sent to and received from with Marc Kirschner, Karthik Bhavaraju, or any other person or employee at Teneo or Teneo Global Advisory.

RESPONSE: Daugherty objects to this Request on the basis that it seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence, as the Request seeks "[a]ll documents and communications referencing any Ellington Party, Ellington Location," regardless of whether such documents and communications (1) relate to Ellington's claims asserted in this litigation, (2) were communicated in connection with one or more other wholly-unrelated cases proceeding concurrently in other Federal and State courts where Ellington and/or his associates are named-parties, or (3) something else entirely.

Daugherty further objects to this Request on the basis that it is overly broad and constitutes an impermissible fishing expedition as it seeks information completely unrelated to Ellington's claims asserted in this litigation.

Daugherty also adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," "Ellington Location," and "Ellington Recordings."

Subject to the foregoing objection(s) and without waiving the same, please see Daugherty's previous productions which contain documents responsive to this request.

REQUEST FOR PRODUCTION NO. 17: All documents and communications referencing any Ellington Party, Ellington Location, or Ellington Recording sent to and received from with Deborah Newman, or any other attorney, employee, or person at Quinn Emanuel Urquhart & Sullivan, LLP.

RESPONSE: Daugherty objects to this Request on the basis that it seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence, as the Request seeks "[a]ll documents and communications referencing any Ellington Party, Ellington Location," regardless of whether such documents and communications (1) relate to Ellington's claims asserted in this litigation, (2) were communicated in connection with one or more other wholly-unrelated cases proceeding concurrently in other Federal and State courts where Ellington and/or his associates are named-parties, or (3) something else entirely.

Daugherty further objects to this Request on the basis that it is overly broad and constitutes an impermissible fishing expedition as it seeks information completely unrelated to Ellington's claims asserted in this litigation.

Daugherty also adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," "Ellington Location," and "Ellington Recordings."

Subject to the foregoing objection(s) and without waiving the same, please see Daugherty's previous productions which contain documents responsive to this request.

REQUEST FOR PRODUCTION NO. 18: All documents and communications referencing any Ellington Party, Ellington Location, or Ellington Recording sent to and received from with Andrew Clubok, Sarah Tomkowiak, Kathryn George, Kim Posin, or any other attorney, employee, or person at Latham & Watkins LLP.

RESPONSE: Daugherty objects to this Request on the basis that it seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence, as the Request seeks "[a]ll documents and communications referencing any Ellington Party, Ellington Location," regardless of whether such documents and communications (1) relate to Ellington's claims asserted in this litigation, (2) were communicated in connection with one or more other wholly-unrelated cases proceeding concurrently in other Federal and State courts where Ellington and/or his associates are named-parties, or (3) something else entirely.

Daugherty further objects to this Request on the basis that it is overly broad and constitutes an impermissible fishing expedition as it seeks information completely unrelated to Ellington's claims asserted in this litigation.

Daugherty also adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," "Ellington Location," and "Ellington Recordings."

Subject to the foregoing objection(s) and without waiving the same, please see Daugherty's previous productions which contain documents responsive to this request.

REQUEST FOR PRODUCTION NO. 19: All documents and communications referencing any Ellington Party, Ellington Location, or Ellington Recording sent to and received from with John Morris, Greg Demo, La Asia Canty, or any other attorney, employee, or person at Pachulski Stang Ziehl & Jones LLP.

RESPONSE: Daugherty objects to this Request on the basis that it seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence, as the Request seeks "[a]ll documents and communications referencing any Ellington Party, Ellington Location," regardless of whether such documents and communications (1) relate to Ellington's claims asserted in this litigation, (2) were communicated in connection with one or more other wholly-unrelated cases proceeding concurrently in other Federal and State courts where Ellington and/or his associates are named-parties, or (3) something else entirely.

Daugherty further objects to this Request on the basis that it is overly broad and constitutes an impermissible fishing expedition as it seeks information completely unrelated to Ellington's claims asserted in this litigation.

Daugherty also adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," "Ellington Location," and "Ellington Recordings."

Subject to the foregoing objection(s) and without waiving the same, please see Daugherty's previous productions which contain documents responsive to this request.

REQUEST FOR PRODUCTION NO. 20: All documents and communications referencing any Ellington Party, Ellington Location, or Ellington Recording sent to and received from Kurt Plumer.

RESPONSE: Daugherty objects to this Request on the basis that it seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence, as the Request seeks "[a]ll documents and communications referencing any Ellington Party, Ellington Location," regardless of whether such documents and (1) relate to Ellington's claims asserted in this litigation, (2) were communicated in connection with one or more other wholly-unrelated cases proceeding concurrently in other Federal and State courts where Ellington and/or his associates are named-parties, or (3) something else entirely.

Daugherty further objects to this Request on the basis that it is overly broad and constitutes an impermissible fishing expedition as it seeks information completely unrelated to Ellington's claims asserted in this litigation.

Daugherty also adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," "Ellington Location," and "Ellington Recordings."

Subject to the foregoing objection(s) and without waiving the same, please see Daugherty's previous productions which contain documents responsive to this request.

REQUEST FOR PRODUCTION NO. 21: All documents and communications referencing any Ellington Party, Ellington Location, or Ellington Recording sent to and received from Michael Colvin.

RESPONSE: Daugherty objects to this Request on the basis that it seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence, as the Request seeks "[a]ll documents and communications referencing any Ellington Party, Ellington Location," regardless of whether such documents and communications (1) relate to Ellington's claims asserted in this litigation, (2) were communicated in connection with one or more other wholly-unrelated cases proceeding concurrently in other Federal and State courts where Ellington and/or his associates are named-parties, or (3) something else entirely.

Daugherty further objects to this Request on the basis that it is overly broad and constitutes an impermissible fishing expedition as it seeks information completely unrelated to Ellington's claims asserted in this litigation.

Daugherty also adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," "Ellington Location," and "Ellington Recordings."

Subject to the foregoing objection(s) and without waiving the same, please see Daugherty's previous productions which contain documents responsive to this request.

REQUEST FOR PRODUCTION NO. 22: All documents and communications referencing any Ellington Party, Ellington Location, or Ellington Recording sent to and received from John Honis.

RESPONSE: Daugherty objects to this Request on the basis that it seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence, as the Request seeks "[a]ll documents and communications referencing any Ellington Party, Ellington Location," regardless of whether such documents and communications (1) relate to Ellington's claims asserted in this litigation, (2) were communicated in connection with one or more other wholly-unrelated cases proceeding concurrently in other Federal and State

courts where Ellington and/or his associates are named-parties, or (3) something else entirely.

Daugherty further objects to this Request on the basis that it is overly broad and constitutes an impermissible fishing expedition as it seeks information completely unrelated to Ellington's claims asserted in this litigation.

Daugherty also adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," "Ellington Location," and "Ellington Recordings."

Daugherty objects to the time and place for production. Subject to the foregoing objection(s) and without waiving the same, Daugherty will produce copies of responsive documents, if any, within his possession, custody, or control on a rolling basis.

Additionally, please see Daugherty's previous productions which contain documents responsive to this request.

REQUEST FOR PRODUCTION NO. 23: All documents and communications in which any party expressed any "appreciation" for your investigation of Ellington, as referenced in Daugherty Depo Trans. July 14, 2022 at 104:11 – 105:19.

RESPONSE: Daugherty objects to this Request on the basis that it is duplicative of Request No. 27 below for which objections and responses are contemporaneously being made and incorporated herein.

REQUEST FOR PRODUCTION NO. 24: Responses by any party to any of the email communications produced by Defendant.

RESPONSE: Daugherty objects to this Request on the basis that it is duplicative of Request No. 25 below for which objections and responses are contemporaneously being made and incorporated herein.

REQUEST FOR PRODUCTION NO. 25: The complete email chain, including all responses and attachments, for all email communications produced by Defendant.

RESPONSE: Daugherty objects to this Request on the basis that it seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence, as the Request seeks "The complete email chain, including all responses and attachments" without any limitation regarding the subject matter of those responses and attachments. For example, Ellington's

request improperly seeks all "responses and attachments" regardless of whether such communications (1) relate to Ellington's claims asserted in this litigation, (2) were communicated in connection with one or more other wholly-unrelated cases proceeding concurrently in other Federal and State courts where Ellington and/or his associates are named-parties, or (3) something else entirely.

Daugherty further objects to this Request on the basis that it is overly broad and constitutes an impermissible fishing expedition as it seeks information completely unrelated to Ellington's claims asserted in this litigation.

Subject to the foregoing objection(s) and without waiving the same, please see Daugherty's previous productions which contain documents responsive to this request.

REQUEST FOR PRODUCTION NO. 26: All documents and communications referencing any Ellington Party, Ellington Location, or Ellington Recording sent to and received from any person or entity.

RESPONSE: Daugherty objects to this Request on the basis that it it seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence, as the Request seeks "[a]ll documents and communications referencing any Ellington Party, Ellington Location," regardless of whether such documents and communications (1) relate to the claims and defenses asserted in this litigation, (2) were communicated in connection with one or more other wholly-unrelated cases proceeding concurrently in other Federal and State courts where Ellington and/or his associates are named-parties, or (3) something else entirely.

Daugherty further objects to this Request on the basis that it is overly broad and constitutes an impermissible fishing expedition as it seeks information completely unrelated to the claims and defenses asserted in this litigation.

Daugherty also adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," "Ellington Location," and "Ellington Recordings."

Furthermore, out of an abundance of caution, due to the overly broad nature of this request, Daugherty asserts that the discovery requested seeks information or documents governed by the attorney-client and work product privileges. Such privileged responsive information or documents, if any, are being withheld from production.

Daugherty objects to the time and place for production. Subject to the foregoing objection(s) and without waiving the same, Daugherty will produce copies of

responsive documents, if any, within his possession, custody, or control on a rolling basis.

Additionally, please see Daugherty's previous productions which contain documents responsive to this request.

REQUEST FOR PRODUCTION NO. 27: All documents or communication whereby You received appreciation by a person or entity for investigating, monitoring, observing, surveilling, or recording any Ellington Party or Ellington Location.

RESPONSE: To the extent that Ellington construes "investigating, monitoring, observing, surveilling, or recording any Ellington Party or Ellington Location" to mean anything beyond the physical act of observing and photographing vehicles, assets, and allegedly the Ellington Parties located at the Ellington Locations in connection with his investigation of Ellington's transfer of assets out of the reach of Ellington's creditors, Daugherty objects to this Request on the basis that it seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence.

Daugherty also adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," and "Ellington Location."

Subject to the foregoing objection(s) and without waiving the same, please see Daugherty's previous productions which contain documents responsive to this request.

REQUEST FOR PRODUCTION NO. 28: Recipient list of persons or entities that received any and all electronic or hand- written notes, memoranda, transmittal, commentary, or other documents related to or evidencing Your recordation, observation, surveillance, or investigation of any Ellington Party or Ellington Location.

RESPONSE: Daugherty objects to this request on the basis that it directs Daugherty to create a document that does not exist. After a diligent search, Daugherty has not identified any responsive documents in his possession, custody, or control.

REQUEST FOR PRODUCTION NO. 29: Any and all documents and communications from third party recipients of electronic or hand-written notes, memoranda, transmittal, commentary, or other documents related to or evidencing Your recordation, observation, surveillance, or investigation of any Ellington Party or Ellington Location.

RESPONSE: To the extent that Ellington construes "recordation, observation, surveillance, or investigation of any Ellington Party or Ellington Location" to mean anything beyond the physical act of observing and photographing vehicles, assets, and allegedly the Ellington Parties located at the Ellington Locations in connection with his investigation of Ellington's transfer of assets out of the reach of Ellington's creditors, Daugherty objects to this Request on the basis that it seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence.

Moreover, Daugherty objects to this Request on the basis that that it is overly broad, unduly burdensome, and seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence, though the request defines the category of third parties as recipients "of electronic or hand-written notes, memoranda, transmittal, commentary, or other documents related to or evidencing Your recordation, observation, surveillance or investigation of any Ellington Party or Ellington Location," as written this request seeks every single document and communication, if any, that Daugherty received from those "third party recipients" without any limitation to the subject matter of those documents and communications.

Daugherty further objects to this Request on the basis that it is overly broad and constitutes an impermissible fishing expedition as it seeks information completely unrelated to the claims and defenses asserted in this litigation.

Daugherty adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," and "Ellington Location."

Furthermore, out of an abundance of caution, due to the vague, ambiguous, and overly broad nature of this request, Daugherty asserts that the discovery requested seeks information or documents governed by the attorney-client and work product privileges. Such privileged responsive information or documents, if any, are being withheld from production.

Subject to the foregoing objection(s) and without waiving the same, please see Daugherty's previous productions which contain documents responsive to this request.

REQUEST FOR PRODUCTION NO. 30: Any and all documents or communications related to or evidencing allegations that Scott Ellington had an agreement or "deal" with the Federal Government or Officials.

RESPONSE: Daugherty objects to this Request on the basis that it seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence, as the Request seeks "[a]ll documents and communications related to or evidencing allegations that Scott Ellington had an agreement or "deal" with the Federal Government or Officials," regardless of whether such documents and communications (1) relate to Ellington's claims asserted in this litigation, (2) were communicated in connection with one or more other wholly-unrelated cases proceeding concurrently in other Federal and State courts where Ellington and/or his associates are named-parties, or (3) something else entirely.

Daugherty further objects to this Request on the basis that it is overly broad and constitutes an impermissible fishing expedition as it seeks information completely unrelated to Ellington's claims asserted in this litigation.

Subject to the foregoing objection(s) and without waiving the same, please see Daugherty's previous productions which contain documents responsive to this request.

REQUEST FOR PRODUCTION NO. 31: Any and all communications providing you with any Ellington Party's warehouse locations.

RESPONSE: After a diligent search, Daugherty has not identified any responsive documents.

REQUEST FOR PRODUCTION NO. 32: Any and all Ellington Recordings with burst loop feature.

RESPONSE: Daugherty objects to this request on the basis that it is duplicative of Request for Production No. 1 included in Plaintiff's First Requests for Production directed to Daugherty to which a response has already been made.

Subject to and without waiving the foregoing objection, please see Daugherty's previous productions which contain documents responsive to this request.

REQUEST FOR PRODUCTION NO. 33: Any and all Ellington Recording with live mode feature.

RESPONSE: Daugherty objects to this request on the basis that it is duplicative of Request for Production No. 1 included in Plaintiff's First Requests for Production directed to Daugherty to which a response has already been made.

Subject to and without waiving the foregoing objection, please see Daugherty's previous productions which contain documents responsive to this request.

REQUEST FOR PRODUCTION NO. 34: Any and all documents or communication sufficient to identify any person or entity other than You that was involved in Your observation, recordation, surveillance, and investigation of the Ellington Parties or Ellington Locations.

RESPONSE: Daugherty objects to this Request on the basis that the term "involved" is vague and ambiguous. For example, it is unclear whether Ellington (1) intends the term to mean any individuals who allegedly knowingly participated in the physical act of observing and photographing vehicles, assets, and allegedly the Ellington Parties located at the Ellington Locations; (2) intends the term to mean individuals that were simply aware of Daugherty's observing and photographing vehicles, assets, and allegedly the Ellington Parties located at the Ellington Locations in conjunction with Ellington's transfer of assets out of the reach of Ellington's creditors; or (3) intends the term to mean something else entirely. For the purpose of responding to this Request, Daugherty will construe "involved" to mean individuals who knowingly and actively participated in the physical act of his observation and photography of vehicles, assets, and allegedly the Ellington Parties located at the Ellington Locations in connection with his investigation of Ellington's transfer of assets out of the reach of Ellington's creditors.

Additionally, to the extent that Ellington construes "observation, recordation, surveillance, and investigation of the Ellington Parties or Ellington Locations" to mean anything beyond the physical act of observing and photographing vehicles, assets, and allegedly the Ellington Parties located at the Ellington Locations in connection with his investigation of Ellington's transfer of assets out of the reach of Ellington's creditors, Daugherty objects to this Request on the basis that it seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence.

Daugherty also adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," "Ellington Location," and "Ellington Recordings."

Subject to the foregoing objection(s) and without waiving the same, after a diligent search, Daugherty has not identified any responsive documents.

REQUEST FOR PRODUCTION NO. 35: The text messages with Jim Seery and Matt Clemente that You referenced on page 83-84 of your deposition on July 14, 2022.

RESPONSE: Daugherty objects to this request on the basis that it is duplicative of Requests No. 14 and 15 seeking documents and communications from Jim Seery and Matt Clemente above for which objections and responses are contemporaneously being made and are respectively incorporated herein.

Respectfully submitted,

GRAY REED

By: */s/ Andrew K. York*

ANDREW K. YORK
State Bar No. 24051554
dyork@grayreed.com
DRAKE M. RAYSHELL
State Bar No. 24118507
drayshell@grayreed.com
RUTH ANN DANIELS
State Bar No. 15109200
rdaniels@grayreed.com

1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was duly furnished to the following counsel of record via e-mail on this 10th day of October 2022:

Julie Pettit
jpettit@pettitfirm.com
David B. Urteago
durteago@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201

Michael K. Hurst
mhurst@lynnllp.com
Mary Goodrich Nix
mnix@lynnllp.com
Nathaniel A. Plemons
nplemons@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN, LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201

/s/ Andrew K. York
ANDREW K. YORK

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Monica Flores-Moreno on behalf of Andrew York
Bar No. 24051554
mmoreno@grayreed.com
Envelope ID: 69075289
Status as of 10/10/2022 4:55 PM CST
Associated Case Party: PATRICK DAUGHERTY

Name	BarNumber	Email	TimestampSubmitted	Status
Andrew K.York		dyork@grayreed.com	10/10/2022 4:54:44 PM	SENT
RUTH ANN DANIELS		RDANIELS@GRAYREED.COM	10/10/2022 4:54:44 PM	SENT
Drake M.Rayshell		drayshell@grayreed.com	10/10/2022 4:54:44 PM	SENT

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Monica Flores-Moreno on behalf of Andrew York
Bar No. 24051554
mmoreno@grayreed.com
Envelope ID: 69075289
Status as of 10/10/2022 4:55 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Susan Langley		slangley@grayreed.com	10/10/2022 4:54:44 PM	SENT
Nancy Ward		nward@grayreed.com	10/10/2022 4:54:44 PM	SENT
Julie Pettit		jpettit@pettitfirm.com	10/10/2022 4:54:44 PM	SENT
Beverly Congdon		bcongdon@lynnllp.com	10/10/2022 4:54:44 PM	SENT
Patricia Perkins Mayes		pperkins@pettitfirm.com	10/10/2022 4:54:44 PM	SENT
Michael K.Hurst		mhurst@lynnllp.com	10/10/2022 4:54:44 PM	SENT
Mary GoodrichNix		mnix@lynnllp.com	10/10/2022 4:54:44 PM	SENT
Nathaniel A.Plemons		nplemons@lynnllp.com	10/10/2022 4:54:44 PM	SENT
Natalie Clark		nclark@lynnllp.com	10/10/2022 4:54:44 PM	SENT
Michele Naudin		mnaudin@lynnllp.com	10/10/2022 4:54:44 PM	SENT
Gina Flores		gflores@lynnllp.com	10/10/2022 4:54:44 PM	SENT

Short Message Report

Conversations: 1	Participants: 3
Total Messages: 2	Date Range: 1/28/2021

Outline of Conversations

US2307_365427_0001 • 2 messages on 1/28/2021 • +19726797487 • James • Seery

EXHIBIT
C

Messages in chronological order (times are shown in GMT -05:00)

US2307_365427_0001

\# +19726797487 1/28/2021, 10:52 AM

Do you realize that the Debtor is releasing Reid Collins & Tsai as professionals even though they created a side litigation finance business with Ellington?

\# +19726797487 1/28/2021, 10:58 AM

Also, Matt Diorio is the corporate rep and/or manager of Ellington's other businesses. It sure would be helpful to seek his cooperation in return for releases.

Short Message Report

Conversations: 1	Participants: 4
Total Messages: 8	Date Range: 2/20/2021

Outline of Conversations

US2307_365427_0002 • 8 messages on 2/20/2021 • +19726797487 • James • Seery • Seery, James (0000000000)

Messages in chronological order (times are shown in GMT -05:00)

US2307_365427_0002

\# **+19726797487** 2/20/2021, 12:25 PM

Other people on the SAS team with @sasmgt.com emails:

Sbell@sasmgt.com
Svitiello@sasmgt.com
Lthedford@sasmgt.com
Egirard@sasmgt.com

\# **+19726797487** 2/20/2021, 1:34 PM

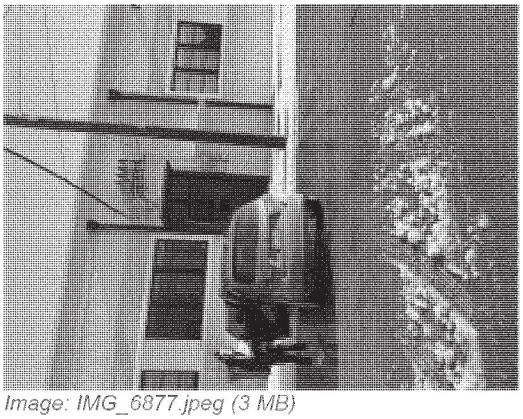


Image: IMG_6877.jpeg (3 MB)

\# **+19726797487** 2/20/2021, 1:34 PM

Image: IMG_6876.jpeg (3 MB)

\# **+19726797487** 2/20/2021, 1:34 PM

These are photos of Sarah Bell Goldsmith delivering boxes of document to 120 Cole St - Ellington's bat cave

\# **+19726797487** 2/20/2021, 1:35 PM

Yesterday at 4:21p CST

JS **Seery, James (0000000000)** 2/20/2021, 2:34 PM

Pat she is now a former employee as is he. I suggest leaving her alone but assume she just came across your view by accident.

+19726797487 2/20/2021, 2:46 PM

I am maintaining an inventory of assets re parties that I am adverse to in Delaware. She visited a location and delivered documents to a property where Ellington has been storing assets.

Ellington disposed of his phone and admitted he did not retain evidence via An ESI discovery demand regarding my case in Delaware. His assets and the people that assist him in moving those assets or evidence thereof are relevant to my Delaware claims. We will eventually subpoena her and others in that regard.

JS **Seery, James (0000000000)** 2/20/2021, 2:50 PM

Understood.

CONFIDENTIAL

JPS/Ell-018086

CONFIDENTIAL

JPS/EII-018087

Short Message Report

Conversations: 1	Participants: 4
Total Messages: 1	Date Range: 3/15/2021

Outline of Conversations

6d7b8bbe-b757-413d-babd-4751f7dc5667 • 1 message on 3/15/2021 • +19726797487 • James • Seery • Seery, James (0000000000)

Messages in chronological order (times are shown in GMT -04:00)

6d7b8bbe-b757-413d-babd-4751f7dc5667

\# +19726797487 3/15/2021, 2:26 PM

FYI
Someone just informed me that Bonner McDermott and Paul Richards of the Highland/NexPoint and now apparently NXRT complex are spreading Dondero's spin that the bankruptcy was all part of their strategy to "cut the pinky to save the hand" in order to rid themselves of the high debt. They are now pursuing their plan to acquire HC at a discount from the creditors - "Everything is back to normal".

Meanwhile, counsel for Dondero, Ellington, And Leventon in Delaware assured the court that creditors will receive a "MINIMUM of 70 cents on the dollar and likely much more".....that was certainly news to me and my counsel considering that Dondero et al said the opposite in trying to push their POT plan.

Short Message Report

Conversations: 1	Participants: 4
Total Messages: 6	Date Range: 3/24/2021

Outline of Conversations

6d7b8bbe-b757-413d-babd-4751f7dc5667 • 6 messages on 3/24/2021 • +19726797487 • James • Seery • Seery, James (0000000000)

Messages in chronological order (times are shown in GMT -04:00)

6d7b8bbe-b757-413d-babd-4751f7dc5667

\# +19726797487 3/24/2021, 11:04 AM

If Rothstein makes it to the stand ask him the following questions:

Redacted

Re Ellington:

1) Did Scott Ellington approach you regarding his or Dondero's cellphones?

2) Did he tell you "the plan"?

3) Did he tell you that Dondero and Ellington need to get rid of the cell phones?

4) Did he tell you the phones should have been disposed of weeks ago?

Redacted

\# +19726797487 3/24/2021, 3:41 PM

Ellington, Leventon, Waterhouse and Sevilla just assigned their claims to their shell entity CPCM which is managed by their new shell entity - Highgate Consulting Group Inc aka SkyView Group

This appears to be an attempt to bring claims against you by circumventing the gatekeeper limitations under the plan.

JS Seery, James (0000000000) 3/24/2021, 3:45 PM

Oy vey

Short Message Report

Conversations: 1	Participants: 4
Total Messages: 3	Date Range: 4/24/2021

Outline of Conversations

6a1bff0c-aaff-4577-8376-006e14bbbea4 • 3 messages on 4/24/2021 • +19726797487 • James • Seery • Seery, James (0000000000)

Messages in chronological order (times are shown in GMT -04:00)

6a1bff0c-aaff-4577-8376-006e14bbbea4

\# +19726797487 4/24/2021, 4:31 PM

Africa - Tanzania cash/asset transfers of $22mm discussed prior to Ellington going on hunting trip (last week November to first week December 2017). Guide apparently contact for those looking to hide assets.

JS Seery, James (0000000000) 4/24/2021, 4:40 PM

Thanks.

\# +19726797487 4/24/2021, 6:44 PM

Lorne Ramoni - Tanzania Hunting & Photographic Safaris was the contact - had an office at the Crescent

Sarah Goldsmith (Bell) coordinated the trip and probably interfaced thru email.

Short Message Report

Conversations: 1	Participants: 4
Total Messages: 2	Date Range: 4/27/2021

Outline of Conversations

6d7b8bbe-b757-413d-babd-4751f7dc5667 • 2 messages on 4/27/2021 • +19726797487 • James • Seery • Seery, James (0000000000)

Messages in chronological order (times are shown in GMT -04:00)

6d7b8bbe-b757-413d-babd-4751f7dc5667

Redacted

\# +19726797487 4/27/2021, 3:51 PM

Redacted

BTW - Kati Irving is ur point person on most of the Cayman Islands entities and SX is related to SAS. I also understand she accompanied Ellington on many trips to the Caymans since about 2014

Short Message Report

Conversations: 1	Participants: 4
Total Messages: 5	Date Range: 8/17/2021

Outline of Conversations

6a1bff0c-aaff-4577-8376-006e14bbbea4 • 5 messages on 8/17/2021 • +19726797487 • James • Seery • Seery, James (0000000000)

Messages in chronological order (times are shown in GMT -04:00)

6a1bff0c-aaff-4577-8376-006e14bbbea4

JS **Seery, James (0000000000)** 8/17/2021, 8:14 PM
Did Ellington post?

\# **+19726797487** 8/17/2021, 8:14 PM
Nope

JS **Seery, James (0000000000)** 8/17/2021, 8:16 PM
Must sense the causes coming

\# **+19726797487** 8/17/2021, 8:16 PM
Also, I have seen him at his new home as he conducts whatever side-biz he has. Numerous cars, secretary, etc

\# **+19726797487** 8/17/2021, 8:17 PM
…many of the same cars that I noticed at the warehouse

Short Message Report

Conversations: 1	Participants: 4
Total Messages: 2	Date Range: 8/20/2021

Outline of Conversations

6a1bff0c-aaff-4577-8376-006e14bbbea4 • 2 messages on 8/20/2021 • +19726797487 • James • Seery • Seery, James (0000000000)

Messages in chronological order (times are shown in GMT -04:00)

6a1bff0c-aaff-4577-8376-006e14bbbea4

\# **+19726797487** 8/20/2021, 1:03 PM

Image: IMG_7916.jpeg (154 KB)

\# **+19726797487** 8/20/2021, 1:03 PM

I'm hearing that do to Pink Shrek's "retirement to spend more time with family", DC has now assumed the top role at Highgate/SkyView.

Short Message Report

Conversations: 1	Participants: 4
Total Messages: 4	Date Range: 8/31/2021

Outline of Conversations

US2307_365427_0003 • 4 messages on 8/31/2021 • +19726797487 • James • Seery • Seery, James (0000000000)

Messages in chronological order (times are shown in GMT -04:00)

US2307_365427_0003

#	+19726797487 Hearing Ellington is back in the fold as of today	8/31/2021, 5:03 PM
#	+19726797487 Plz keep it to yourself for a few days and DO NOT tell anyone at the Debtor until then	8/31/2021, 5:14 PM
JS	Seery, James (0000000000) Check	8/31/2021, 5:14 PM
#	+19726797487 …people in the Dallas office. You can tell counsel and litigation trustee	8/31/2021, 5:15 PM

Short Message Report

Conversations: 1	Participants: 4
Total Messages: 1	Date Range: 9/3/2021

Outline of Conversations

6a1bff0c-aaff-4577-8376-006e14bbbea4 • 1 message on 9/3/2021 • +19726797487 • James • Seery • Seery, James (0000000000)

Messages in chronological order (times are shown in GMT -04:00)

6a1bff0c-aaff-4577-8376-006e14bbbea4

\# +19726797487 9/3/2021, 5:09 PM

Sent you the Settlement Comments with attached support - direct testimony from Dondero, Ellington, Leventon - so there is no doubt of what they said and did to thwart discovery in Delaware. The “catch me if you can strategy” is failing them.

Short Message Report

Conversations: 1	Participants: 4
Total Messages: 3	Date Range: 11/2/2021

Outline of Conversations

6a1bff0c-aaff-4577-8376-006e14bbbea4 • 3 messages on 11/2/2021 • +19726797487 • James • Seery • Seery, James (0000000000)

Messages in chronological order (times are shown in GMT -04:00)

6a1bff0c-aaff-4577-8376-006e14bbbea4

\# +19726797487 11/2/2021, 11:19 PM

We need to talk tomorrow. I just learned from Dave Smith, former CEO at Cornerstone Health, that Cornerstone (at the direction of its Chairman Dondero in December 2016) revised its legal representation with Katz at Andrew's Kurt (now at DLA Piper) and Michael Hurst at Gruber Hurst (now at Lynn Pinker and Hurst) to change its compensation arrangement on the eve of the settlement with Nautical - Cornerstone had already incurred $6mm put to that point and apparently needlessly converted to a contingency fee that paid the firms $25 million after the settlement was imminent - this was apparently done to redirect $25 million of the $80 million settlement to the lawyers and possibly a skim to Dondero/Ellington on the back end.

Redacted

REDACTED

Short Message Report

Conversations: 1	Participants: 4
Total Messages: 1	Date Range: 11/9/2021

Outline of Conversations

6a1bff0c-aaff-4577-8376-006e14bbbea4 • 1 message on 11/9/2021 • +19726797487 • James • Seery • Seery, James (0000000000)

Messages in chronological order (times are shown in GMT -05:00)

6a1bff0c-aaff-4577-8376-006e14bbbea4

\# +19726797487 11/9/2021, 5:55 PM

So it is your fault as the shared service provider. The cabal just keeps making my case against them and Highland stronger and stronger when they were in charge of the service provider re HERA. Aces!!!

Short Message Report

Conversations: 1	Participants: 4
Total Messages: 4	Date Range: 1/15/2022

Outline of Conversations

6a1bff0c-aaff-4577-8376-006e14bbbea4 • 4 messages on 1/15/2022 • +19726797487 • James • Seery • Seery, James (0000000000)

Messages in chronological order (times are shown in GMT -05:00)

6a1bff0c-aaff-4577-8376-006e14bbbea4

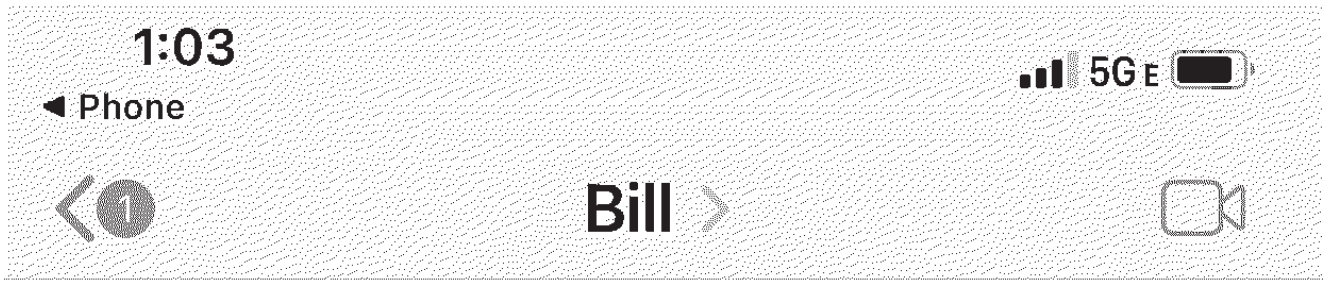
Redacted

\# **+19726797487** 1/15/2022, 2:07 PM

File "A0001_56d2708b40204e7baa4a15e8659c1595.heic" is missing.
Attachment: IMG_8712.heic (112 KB)

\# **+19726797487** 1/15/2022, 2:07 PM

Bill has been chatting with me about the Byzantine empire since the before the Acis debacle and he has never thought too highly of Dondero and the cabal. Sad to see him grabbing at little green bags.



Apr 12, 2020, 7:00 PM

Did the petition come though?

Apr 13, 2020, 11:30 AM

Yes. Thanks. Very interesting.

No love lost there either.

Definitely not. His problem is that Acis was just a scheme to divert assets from Highland's creditors in the first place – the investor and creditors awards took 10

Short Message Report

Conversations: 1	Participants: 4
Total Messages: 3	Date Range: 2/16/2022

Outline of Conversations

6a1bff0c-aaff-4577-8376-006e14bbbea4 • 3 messages on 2/16/2022 • +19726797487 • James • Seery • Seery, James (0000000000)

Messages in chronological order (times are shown in GMT -05:00)

6a1bff0c-aaff-4577-8376-006e14bbbea4

Redacted

\# **+19726797487** 2/16/2022, 2:38 PM

If Ellington settled his claim, then how does he have standing to object the settlement of my claim?

Short Message Report

Conversations: 1	Participants: 4
Total Messages: 3	Date Range: 3/1/2022

Outline of Conversations

6a1bff0c-aaff-4577-8376-006e14bbbea4 • 3 messages on 3/1/2022 • +19726797487 • James • Seery • Seery, James (0000000000)

Messages in chronological order (times are shown in GMT -05:00)

6a1bff0c-aaff-4577-8376-006e14bbbea4

\# **+19726797487** 3/1/2022, 6:08 PM

Great job to You and Morris. Glad I don't have to deal with him on the other side.

Also Interesting how Ellington really doesn't want me to help the estate in recovering its assets - that should tell you something.

JS **Seery, James (0000000000)** 3/1/2022, 6:15 PM

Yes. Went well. Been jammed this aft. We can touch base tomorrow. Thx

\# **+19726797487** 3/1/2022, 6:29 PM

Liked "Yes. Went well. Been jammed this aft. We can touch base tomorrow. Thx"

Short Message Report

Conversations: 1	Participants: 5
Total Messages: 4	Date Range: 7/12/2022

Outline of Conversations

0f3b5940-2edd-4d34-8868-0a51af1c423e • 4 messages on 7/12/2022 • +16318042049 • +16318042049 <+16318042049> • +19726797487 • +19726797487 <+19726797487> • Unknow Participant

Messages in chronological order (times are shown in GMT -04:00)

0f3b5940-2edd-4d34-8868-0a51af1c423e

Redacted

\# **+19726797487 <+19726797487>** 7/12/2022, 3:18 PM

Ellington and Highland lawyers told Greg Brandstatter to bill them through entities they created on his behalf: Criterion Holdings LLC - out of Arizon XPSTI LLC - out of Arizona Ellington/ lawyers at Highland directed him to use Kevin Vela at the law firm of Vela Wood

[redacted] [redacted]

Gmail [redacted]

Fwd: Ellington v. Daugherty, No. DC-22-00304

[redacted] [redacted]

[redacted]

[redacted]

EXHIBIT
D

THE PETTIT LAW FIRM

---------- Forwarded message ---------
From **Julie Pettit** jpettit@pettitfirm com
Date: Mon, Jul 24, 2023 at 7:22 PM
Subject: Re: Ellington v. Daugherty, No. DC-22-00304
To: Stancil, Mark <MStancil@willkie.com>
Cc Levy, Jo hua S JLevy@willkie com , Michael K Hur t MHur t@lynnllp com , Laura M Garcia <lgarcia@weinsteinklein.com>, Damien H. Weinstein <dweinstein@weinsteinklein.com>, sxu@lynnllp.com <sxu@lynnllp.com>, BCongdon@lynnllp.com <BCongdon@lynnllp.com>, mnaudin@lynnllp.com <mnaudin@lynnllp.com>, blayne.thompson@hoganlovells.com <blayne.thompson@hoganlovells.com>, Hefter, Michael C michael hefter@hoganlovell com , Wynne, Rick richard wynne@hoganlovell com , McNeilly, Edward <edward.mcneilly@hoganlovells.com>, rdaniels@grayreed.com <rdaniels@grayreed.com>, dyork@grayreed.com <dyork@grayreed.com>, drayshell@grayreed.com <drayshell@grayreed.com>, Burr, Lori <LBurr@willkie.com>, Brennan, John L. <JBrennan@willkie.com>

Mark,

The production provided by Mr Daugherty, Mr Seery, and others in this matter suggests the factual conclusion that the Highland Estate provided Mr. Daugherty with additional settlement consideration in exchange for information on Mr Ellington

We believe that Mr Daugherty and Mr Seery's communications regarding settlement of Mr Daugherty's proof of claim in the Highland bankruptcy are relevant to the factual issues that will be tried in this matter. To the extent that the redacted communications relate in any way to the negotiations between Mr Daugherty and Mr Seery, as a representative of the Highland Estate, please produce those communications.

While we do not believe it necessary, we can always amend our live petition as needed to give you comfort that that you are producing relevant and responsive materials

Best Regards,

Julie Pettit Gree on
The Pettit Law Firm
2101 Cedar Springs, Suite 1540

[redacted]

Dallas, Texas 75201
Direct: 214-329-1846
Fax: 214-329-4076
jpettit@pettitfirm.com
THE PETTIT LAW FIRM

On Mon, Jul 24, 2023 at 5:59 PM Stancil, Mark <MStancil@willkie.com> wrote:

> The redacted material is not responsive to any request and is unrelated to Mr. Ellington or the allegations in your complaint. As such, the redacted material is beyond the scope of any legitimate inquiry directed to Mr. Seery. If you nonetheless intend to serve an additional subpoena, please note that we reserve the right to seek relief including but not limited to sanctions under the Gatekeeping Order. In our view, seeking materials beyond those related to "stalking" would exceed the scope of reasonable discovery directed to Mr. Seery as a third-party and would constitute the "pursuit" of claims against Mr. Seery or other covered parties without leave of the Bankruptcy Court.
>
> Mark
>
> **Mark T. Stancil**
> **Willkie Farr & Gallagher LLP**
> 1875 K Street, N.W. | Washington, DC 20006-1238
> Direct: +1 202 303 1133 | Fax: +1 202 303 2000
> mstancil@willkie.com | vCard | www.willkie.com bio
>
> ---
>
> **From:** Stancil, Mark <MStancil@willkie.com>
> **Sent:** Monday, July 24, 2023 11:42 AM
> **To:** 'Julie Pettit' <jpettit@pettitfirm.com>; Levy, Joshua S. <JLevy@willkie.com>
> **Cc:** Michael K. Hurst <MHurst@lynnllp.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; sxu@lynnllp.com; BCongdon@lynnllp.com; mnaudin@lynnllp.com; blayne.thompson@hoganlovells.com; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; rdaniels@grayreed.com; dyork@grayreed.com; drayshell@grayreed.com; Burr, Lori <LBurr@willkie.com>; Brennan, John L. <JBrennan@willkie.com>
> **Subject:** RE: Ellington v. Daugherty, No. DC-22-00304
>
> We will try to get back to you by EOD today, or tomorrow morning latest.
>
> **Mark T. Stancil**
> **Willkie Farr & Gallagher LLP**
> 1875 K Street, N.W. | Washington, DC 20006-1238
> Direct: +1 202 303 1133 | Fax: +1 202 303 2000
> mstancil@willkie.com | vCard | www.willkie.com bio
>
> **From:** Julie Pettit <jpettit@pettitfirm.com>
> **Sent:** Monday, July 24, 2023 11:40 AM
> **To:** Levy, Joshua S. <JLevy@willkie.com>
> **Cc:** Michael K. Hurst <MHurst@lynnllp.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; sxu@lynnllp.com; BCongdon@lynnllp.com;

mnaudin@lynnllp com; blayne thomp on@hoganlovell com; Hefter, Michael C <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward edward mcneilly@hoganlovell com ; Stancil, Mark MStancil@willkie com ; rdaniel @grayreed com; dyork@grayreed.com; drayshell@grayreed.com; Burr, Lori <LBurr@willkie.com>; Brennan, John L. JBrennan@willkie com

Subject: Re: Ellington v. Daugherty, No. DC-22-00304

***** EXTERNAL EMAIL *****

Hi Josh,

Do you have an update on this?

Thank you.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

THE PETTIT LAW FIRM

On Thu, Jul 20, 2023 at 2 41 PM Levy, Jo hua S JLevy@willkie com wrote

> Hi Julie,
>
> We disagree that any of the redacted material is relevant or responsive, but we're reviewing and will discuss with our client to see whether we will voluntarily produce this material.
>
> Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Wednesday, July 19, 2023 2:15 PM
To: Levy, Joshua S. <JLevy@willkie.com>
Cc: Michael K. Hurst <MHurst@lynnllp.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; sxu@lynnllp.com; BCongdon@lynnllp.com; mnaudin@lynnllp.com; blayne.thompson@hoganlovells.com; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; Stancil, Mark <MStancil@willkie.com>; rdaniels@grayreed.com; dyork@grayreed.com; drayshell@grayreed.com; Burr, Lori <LBurr@willkie.com>; Brennan, John L. <JBrennan@willkie.com>
Subject: Re: Ellington v. Daugherty, No. DC-22-00304

***** EXTERNAL EMAIL *****

Hi Josh,

We are in receipt of the text messages you produced. Given the context and scope of the communications between Mr. Seery and Mr. Daugherty that you did produce, we do not see how the redacted texts could truly be nonresponsive.

In any event, if you stand by your assertion that the redacted texts are nonresponsive, we intend to serve a new subpoena that would include any and all of the redacted texts.

For the sake of efficiency, can you confirm that you will either (1) simply produce the redacted text messages so we can avoid this exercise; or (2) accept service of a revised document subpoena.

Please advise.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

[redacted] [redacted]

On Fri, Jul 14, 2023 at 4:22 PM Brennan, John L. <JBrennan@willkie.com> wrote:

> Counsel:
>
> Please see the attached correspondence.
>
> Regards,
>
> **John L. Brennan**
> **Willkie Farr & Gallagher LLP**
> 787 Seventh Avenue | New York, NY 10019-6099
> Direct: +1 212 728 8187 | Fax: +1 212 728 8111
> jbrennan@willkie.com | vCard | www.willkie.com bio
>
>

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[redacted]

DC-22-00304

NO. _____

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
	§	101st
v.	§	**_____ JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

Comes Now, Scott Byron Ellington, Plaintiff herein, and files this *Plaintiff's Original Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction* against Defendant Patrick Daugherty, and in support thereof, would respectfully show the Court the following:

Dallas County LR 1.08 Disclosure

> Dallas County Local Rule 1.08 provides that the attorneys of record for the parties in any case within the categories of Local Rule 1.07 must notify the judges of the respective courts in which the earlier and later cases are assigned of the pendency of the latter case. The attorney filing a case that is so related to another previously filed case shall disclose in the original pleading or in a separate simultaneous filing that the case is so related and identify by style, cause number, and court of the related case. Accordingly, and pursuant to L.R. 1.08, the undersigned hereby notifies the Court that this case, in part, arises out of the same transaction or occurrence which is the subject of *Highland Capital Management, L.P. v. Patrick Daugherty*, Cause No. 12-04005, in the 68th Judicial District Court of Dallas County, Texas. Hence, the undersigned believes that this case is subject to transfer under L.R. 1.07(a) or otherwise pursuant to L.R. 106 because the transfer would "facilitate orderly and efficient disposition of the litigation."

I. Discovery Control Plan

1. Pursuant to TEXAS RULE OF CIVIL PROCEDURE 190.3, Plaintiff requests a Level 2 discovery control plan.

II. Parties & Service

2. Plaintiff Scott Byron Ellington, an individual, is a resident of the state of Texas.

3. Defendant Patrick Daugherty is an individual and resident of Dallas County, Texas. Defendant may be served at his residence located at 3621 Cornell Ave, Dallas, Texas 75205, or wherever he may be found.

III. Rule 47(c) Disclosure

4. Plaintiff seeks damages within the jurisdictional limits of the Court. Specifically, Plaintiff seeks monetary relief over $1,000,000 and non-monetary relief.

IV. Jurisdiction & Venue

5. The Court has jurisdiction over Defendant because he resides in Texas, has done business in Texas, committed torts, in whole or in part, in Texas, has continuing contacts with Texas, and is amenable to service by a Texas Court.

6. Venue in Dallas County is proper in this case under Sections 15.002(a)(1) and (a)(3) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE because this is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred and it is the county where Defendant resides.

V. Facts

7. Plaintiff Scott Ellington ("Plaintiff" or "Ellington") was, until January of 2021, the general counsel of Highland Capital Management ("Highland").

8. Defendant Daugherty ("Defendant" or "Daugherty") previously worked for Highland.

9. In 2012, Highland sued Daugherty. In response, Daugherty filed counterclaims against Highland then sued its affiliate, Highland Employee Retention Assets LLC ("HERA"), and three Highland executives. A jury ultimately determined that Daugherty breached his employment agreement and fiduciary duties. It also found that HERA breached the implied duty of good faith and fair dealing, but also found that the executives subject to the counter-claim were not liable to Daugherty. The jury awarded Highland $2,800,000 in attorney's fees and injunctive relief; and awarded Daugherty $2,600,000 in damages against HERA.

10. Since the 2012 lawsuit's filing, Daugherty and Highland—or Highland related entities and individuals—engaged in protracted litigation in several different forums across the country. Daugherty's expressed goal is to "get" the founder and former CEO of Highland, Jim Dondero, and its former general counsel, Ellington. As part of this campaign, Daugherty personally sued Ellington in December 2019 in Delaware Chancery Court. Ellington's motion to dismiss currently pends in that matter.

11. While Daugherty's previously limited his vendetta to the courtroom, he began a campaign of harassment against Ellington and his family starting in January 2021 that continues to this day. *See* **Exhibit A** (Declaration of Gregory Allen Brandstatter, the personal security guard of Scott Ellington) (detailing Daugherty's harassment and stalking of Ellington, his family, and loved ones); **Exhibit B** (Declaration of Scott Byron Ellington).

12. Specifically, Daugherty has been observed outside Ellington's office, his residence, the residence of his long-time girlfriend, Stephanie Archer, his sister's residence, and his father's residence no less than **143 times**, often taking photographs and video recordings while either

parked or driving slowly by. Indeed, on April 21, 2021, Daugherty was observed driving by Ellington's office nine (9) times that day alone.

13. Daugherty most recently was confirmed taking video or photo recordings outside of Ellington's residence on December 11, 2021. For reasons set forth in the Brandstatter Declaration, attached herein at **Exhibit A**, Daugherty likely stalked Ellington and his loved ones more recently than the latest confirmed date.

14. Daugherty's harassing conduct is "textbook" behavior that precedes a physical attack that a reasonable person would consider a threat to their safety as well as that of their family and property. Indeed, Ellington has been forced to hire personal security, and his family are in fear for their personal and physical safety.

15. As evidenced by the over 143 times Daugherty has been observed stalking Ellington and his family, he has the apparent ability to carry out this threat of continued harassment and violence.

16. Both Mr. Ellington's sister and girlfriend have both demanded to Mr. Daugherty that he stop his harassment. Despite this clear demand for Daugherty to stop engaging in this harassing behavior, he refuses to stop and continues to harass Ellington and his family.

17. Daugherty's constant stalking and harassment of Ellington and his family reasonably cause them to fear for their safety.

18. Ellington reported Daugherty's harassing and disturbing behavior to the police.

VI. Causes of Action

A. Count One: Stalking.

19. All facts alleged above, herein, and below are hereby incorporated by reference.

20. Pursuant to TEXAS CIVIL PRACTICE & REMEDIES CODE § 85.002, a defendant is liable to a claimant for damages arising from stalking of the claimant by the defendant.

21. A claimant proves stalking against a defendant by showing:

> (1) on more than one occasion the defendant engaged in harassing behavior;
> (2) as a result of the harassing behavior, the claimant reasonably feared for the claimant's safety or the safety of a member of the claimant's family; and
> (3) the defendant violated a restraining order prohibiting harassing behavior or:
>
> (A) the defendant, while engaged in harassing behavior, by acts or words threatened to inflict bodily injury on the claimant or to commit an offense against the claimant, a member of the claimant's family, or the claimant's property;
>
> (B) the defendant had the apparent ability to carry out the threat;
>
> (C) the defendant's apparent ability to carry out the threat caused the claimant to reasonably fear for the claimant's safety or the safety of a family member;
>
> (D) the claimant at least once clearly demanded that the defendant stop the defendant's harassing behavior;
>
> (E) after the demand to stop by the claimant, the defendant continued the harassing behavior; and
>
> (F) the harassing behavior has been reported to the police as a stalking offense.

22. "Harassing behavior" is defined by the statute as "conduct by the defendant directed specifically toward the claimant, including following the claimant, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the claimant." TEX. CIV. PRAC. & REM. CODE § 85.001(4).

23. First, Defendant has engaged in harassing behavior toward the Plaintiff and his family in the above-described manner. Second, because of the harassing behavior, Plaintiff reasonably feared for his safety and the safety of his family. Third, Defendant, while engaging in the harassing behavior, by acts or words threatened to inflict bodily injury on the Plaintiff or to commit an offense against the Plaintiff, his family, or his property. Specifically, Defendant's

conduct is consistent with behavior leading up to a physical attack and is, therefore, an inherent threat of physical violence. Defendant had the apparent ability to carry out the threat, the Defendant's apparent ability to carry out the threat caused Plaintiff to reasonably fear for his safety or the safety of a family member, the Plaintiff (or his representative) at least once clearly demanded that the Defendant stop his harassing behavior, after the demand to stop by the Plaintiff, the Defendant continued the harassing behavior, and the harassing behavior has been reported to the police as a stalking offense.

24. Plaintiff seeks recovery of his actual damages caused by Defendant's stalking, exemplary damages, and injunctive relief.

B. Count Two: Invasion of Privacy by Intrusion.

25. All facts alleged above, herein, and below are hereby incorporated by reference.

26. A claim of invasion of privacy by intrusion has the following elements: (1) an intentional intrusion, (2) upon the seclusion, solitude, or private affairs of another, (3) that would be highly offensive to a reasonable person.

27. Here, Defendant has intentionally intruded upon the seclusion, solitude, and private affairs of Plaintiff by regularly appearing at his office, his residence, his girlfriend's residence, his father's residence, and his sister's residence, and taking photographs and other recordings of Ellington and his loved ones at these residences. The appearances are unsolicited, uninvited, and constant. These unwanted "visits" by Defendant are highly offensive to a reasonable person.

28. Plaintiff seeks recovery of his actual damages caused by Defendant's conduct alleged herein, exemplary damages, and injunctive relief.

VII. Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction

A. Elements for Injunctive Relief.

29. All facts alleged above, herein, and below are hereby incorporated by reference.

30. In light of the above-described facts, Plaintiff seeks recovery from Defendant.

31. Plaintiff is likely to succeed on the merits of this lawsuit because Defendant has been stalking Plaintiff and his family and has been engaged in otherwise harassing conduct.

32. Unless this Honorable Court immediately restrains the Defendant and his agents the Plaintiff and his family will suffer immediate and irreparable injury, for which there is no adequate remedy at law to give Plaintiff complete, final and equal relief. More specifically, Plaintiff will show the court the following:

a. The harm to Plaintiff and his family is imminent and ongoing as Defendant has harassed and stalked Plaintiff and his family, including his father, his sister, and girlfriend, almost constantly this entire year.

b. The imminent harm will cause Plaintiff irreparable injury as the harassment will continue if not restrained. Further, Plaintiff reasonably fears that Defendant may cause him or his family bodily harm, and the accompanying anxiety interferes with his ability to conduct his normal, daily activities. *See, e.g., Quinn v. Harris*, 03-98-00117-CV, 1999 WL 125470, at *11 (Tex. App.—Austin Mar. 11, 1999, pet. denied) ("[I]njunctions designed to prevent harassment are permissible."); *Kramer v. Downey*, 680 S.W.2d 524, 525 (Tex. App.—Dallas 1984, writ ref'd n.r.e.) ("Further, this right to be left alone from unwanted attention may be protected, in a proper case, by injunctive relief."); and

c. There is no adequate remedy at law which will give Plaintiff complete, final and equal relief because the imminent harm is irreparable. *See e.g., Wright v. Sport Supply Group, Inc.*, 137 S.W.3d 289, 294 (Tex. App.—Beaumont 2004, no pet.) ("Issues one (no evidence of inadequate remedy at law) and two (no evidence of irreparable injury) are intertwined under Texas case law.").

B. Bond.

33. Plaintiff is willing to post a reasonable temporary restraining order and temporary injunction bond and requests the Court to set such bond.

C. Remedy.

34. Plaintiff met his burden by establishing each element which must be present before injunctive relief can be granted by this Court. Thus, Plaintiff is entitled to the requested temporary injunction, and upon a successful trial on the merits, for the temporary injunction to be made permanent.

35. Plaintiff requests that, while the temporary injunction is in effect, the Court to restrain Defendant and his agents from:

a. Being within 500 feet of Ellington;

b. Being within 500 feet of Ellington's office located at 120 Cole Street, Dallas, Texas 75207;

c. Being within 500 feet of Ellington's residence located at 3825 Potomac Ave, Dallas, Texas 75205;

d. Being within 500 feet of Stephanie Archer;

e. Being within 500 feet of Stephanie Archer's residence located at 4432 Potomac, Dallas, Texas 75025;

f. Being within 500 feet of Marcia Maslow;

g. Being within 500 feet of Marcia's residence located at 430 Glenbrook Dr., Murphy, Texas 75094;

h. Being within 500 feet of Byron Ellington;

i. Being within 500 feet of Byron Ellington's residence located at 5101 Creekside Ct., Parker, Texas 75094;

j. Photographing, videorecording, or audio recording Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington;

k. Photographing or videorecording the residences or places of business of Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington; and

l. Directing any communications toward Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington.

VIII. Exemplary Damages

36. The conduct of Defendant described above constitutes malice and, therefore, Plaintiff is entitled to, and hereby seeks, an award of exemplary damages. *See* TEX. CIV. PRAC. & REM. CODE § 41.003(1).

IX. Conditions Precedent

37. All conditions precedent to Plaintiff's suit have occurred or have been performed.

X. Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that:

a. Defendant be cited to appear and answer;

b. The Court determine any issue of fact and, upon final hearing of this cause, the Court award to Plaintiff:

i. Actual damages;

ii. Exemplary damages;

iii. A temporary restraining order;

iv. A temporary injunction;

v. A permanent injunction; and

vi. Court costs;

c. The Court grant any other relief to which Plaintiff may be entitled.

Respectfully submitted,

/s/ Julie Pettit

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
David B. Urteago
State Bar No. 24079493
durteago@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

Michael K. Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Nathaniel A. Plemons
State Bar No. 24121059
nplemons@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN, LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

ATTORNEYS FOR PLAINTIFF

Frances A. Smith
State Bar No. 24033084
Eric Soderlund
State Bar No. 24037525
ROSS & SMITH, PC
700 North Pearl Street, Suite 1610
Dallas, Texas 75201
Telephone: 214-377-7879
Facsimile: 214-377-9409
Email: frances.smith@judithwross.com
eric.soderlund@judithwross.com

Co-Counsel for Scott Ellington

Michelle Hartmann
State Bar No. 24032402
BAKER & McKENZIE LLP
1900 North Pearl, Suite 1500
Dallas, TX 75201
Telephone: 214-978-3000
Facsimile: 214-978-3099
Email: michelle.hartmann@bakermckenzie.com

Debra A. Dandeneau (admitted *pro hac vice*)
Frank Grese (admitted *pro hac vice*)
BAKER & McKENZIE LLP
452 Fifth Avenue
New York, NY 10018
Tel: 212-626-4100
Fax: 212 310-1600
Email: debra.dandeneau@bakermckenzie.com
frank.grese@bakermckenzie.com

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
SCOTT BYRON ELLINGTON, Petitioner, v. PATRICK DAUGHERTY, Respondent.	Adv. Pro. No. 22-03003-sgj *Removed from the 101st Judicial District Court of Dallas County, Texas Cause No. DC-22-0304*

SCOTT ELLINGTON'S REPLY IN SUPPORT OF MOTION TO ABSTAIN AND TO REMAND

Scott Ellington ("***Ellington***") hereby files this Reply (the "***Reply***") in Support of the Motion to Abstain and to Remand (the "***Motion***") [Adv. Proc. Dkt. 3], and respectfully states as follows:

I. PRELIMINARY STATEMENT[1]

1. Daugherty's *Brief in Support of Response to Scott Ellington's Motion to Abstain and to Remand*, [Adv. Proc. Dkt. 15] ("***Daugherty's Response***") does nothing to rebut the valid reasons for mandatory abstention here. Far from it, more than half of the Daugherty Response is devoted to casting untrue aspersions at Ellington and reciting allegations in unrelated matters. Not a single factually similar case is provided for the Court's review, with all case authority being offered for general principles of law.

2. The only substantive argument made in the Daugherty Response concerning the State Court Action being a core matter is that Ellington's limited objection to the Daugherty Settlement should serve as a basis to transform the State Court Action into a "core" proceeding for which this Court should exercise its jurisdiction. The argument is of no moment because (a) the State Court Action can be adjudicated independently without impact on the administration of the estate, and (b) the Court already fully adjudicated the Daugherty Settlement without impact on the entirely unrelated state court claims, finding that Ellington did not have standing to object to the Daugherty Settlement. Because Daugherty's only real argument for jurisdiction rests on his perceived connection between Ellington's stalking claims and the already adjudicated Daugherty Settlement, the argument is moot and Daugherty has effectively conceded the mandatory abstention point.

3. Even in the event the Court finds that abstention is permissive (which it should not), this Court should also abstain from adjudicating the state law claims, because all of the factors identified in *In re Senior Care Ctrs.* support permissive abstention and remand in this case. Daugherty's Response on the permissive abstention point, again, relies almost exclusively on

[1] Capitalized terms used but not otherwise defined in this Preliminary Statement shall have the meaning ascribed to them in the Motion.

Ellington's limited objection to the Daugherty Settlement, which, as stated above, has been resolved without involvement of this Court in the State Court Action.

II. ARGUMENT

A. The State Court Action does not implicate the Daugherty Settlement; even if it did, the Daugherty Settlement is resolved and its relevance is moot.

4. Daugherty takes the position that "*Ellington is using the State Court Action in an attempt to alter the Proposed Settlement between Daugherty and Highland …*" Daugherty's Response ¶ 40. By its reference, Daugherty is referring to the Daugherty Settlement between HCMLP and Daugherty for which the Reorganized Debtor sought approval by this Court and Ellington filed a limited objection against in the Bankruptcy Case. Dkt. 3088; *see also* Dkt. 3242.[2] But, on March 8, 2022, this Court entered an Order approving the Daugherty Settlement. Dkt. 3298. The Court also found that Ellington "does not have standing to object to the Motion," and that even if he did, the Reorganized Debtor satisfied its burden that the settlement terms were "fair, reasonable, and in the best interests of the Debtor." *Id.* The Court fully resolved the Daugherty Settlement, and did so without resolution of any issue raised in the State Court Action. Additionally, the State Court Action does not even mention the Daugherty Settlement. The omission in the State Court Action of any mention of the Daugherty Settlement is not surprising, as the Daugherty Settlement has no bearing on the merits of Ellington's stalking and invasion of privacy claims.

B. This Court must abstain from hearing Ellington's non-Core State Court Action which can be timely adjudicated by the State Court.

5. Federal abstention is mandatory under 28 U.S.C. § 1334(c)(2) where "(1) [t]he claim has no independent basis for federal jurisdiction, other than § 1334(b); (2) **the claim is a**

[2] Unless otherwise stated herein, docket number identifications refer to Case No. 19-34054-sgj11 (the "***Bankruptcy Case***").

non-core proceeding," *i.e.*, it is related to a case under title 11; "(3) an action has been commenced in state court; and (4) **the action could be adjudicated timely in state court**." *Edge Petroleum Operating Co. v. GPR Holdings, L.L.C. (In re TXNB Internal Case)*, 483 F.3d 292, 300 (5th Cir. 2007). The first and third factors exist here and are not challenged by Daugherty's Response.

i. The catch-all language of section 157 must be construed narrowly and cannot support the characterization of the State Court Action as "core."

6. Daugherty's Response advances two arguments as to why the State Court Action should be considered "core": (1) the State Court Action involves claims brought against a creditor of HCMLP, Daugherty, and (2) the Daugherty Settlement affects the administration of the bankruptcy estate and the adjustment of the debtor-creditor relationship. Both arguments, if accepted, would expand impermissibly the definition of a core proceeding.

7. The fact that an individual has a dispute with a creditor of a debtor does not give rise to a "core" proceeding under 28 USC § 157(2)(A) and (O), as Daugherty alleges, because "it is the relation of dispute to estate, and not of party to estate, that establishes jurisdiction." *See Bass v. Denney (In re Bass)*, 171 F.3d 1016, 1023 (5th Cir. 1999); *see also Dynamic Tools, Inc. v. Atlas Copco Tools & Assembly Sys., LLC (In re Rapid-Torc, Inc.)*, No. H-15-377, 2016 U.S. Dist. LEXIS 136582, at *20 (S.D. Tex. 2016) ("A financial impact on [a creditor] is not an impact on [the Debtor] or on its bankruptcy estate.")

8. And, as stated above, the Daugherty Settlement has been approved without adjudication of any of the issues raised in the State Court Action. The State Court Action claims for stalking, invasion of privacy, and injunctive relief, all arise under state law, were asserted in the State Court and could have proceeded in the State Court had the matter not been removed, and do not invoke any substantive rights in bankruptcy. As such, it is non-core. "Numerous courts have noted the necessity of defining core proceedings narrowly ..." *See Wood v. Wood (In re Wood)*,

825 F.2d 90, 95 n.25 (5th Cir. 1987). In so doing, the Fifth Circuit "warns against a broad interpretation of § 157(b)(2)(O) and prefers to deem a proceeding as core under the more specific examples rather than fitting a particular proceeding into the catch-all language of subsections (b)(2)(A) and (b)(2)(O)." *See In re Doctors Hosp. 1997, L.P.*, 351 B.R. 813, 844 (Bankr. S.D. Tex. 2006). The broad interpretation of § 157 advanced by Daugherty is repeatedly rejected in the Fifth Circuit because "otherwise, the entire range of proceedings under bankruptcy jurisdiction would fall within the scope of core proceedings, a result contrary to the ostensible purpose of the 1984 Act." *In re Wood*, 825 F.2d 90 at 95. This Court should follow Fifth Circuit precedent, narrowly construe § 157(b)(2)(A) and (O), and reject Daugherty's attempt to characterize the State Court Action as "core," because to do otherwise would be contrary to the purpose of the statutory scheme.[3]

ii. The State Court's timely adjudication of the TRO satisfies the low threshold to demonstrate timely adjudication, and in turn, mandatory abstention.

9. In the Motion, Ellington has already satisfied his burden to demonstrate that the State Court would timely adjudicate the State Court Action. "The party moving for mandatory abstention need not show that the action can be *more timely* adjudicated in state court, but only that the matter can be timely adjudicated in state court." *J.T. Thorpe Co. v. Am. Motorists*, No. H-02-4598, 2003 U.S. Dist. LEXIS 26016, at *12 (S.D. Tex. 2003) (emphasis in original) (finding mandatory abstention appropriate when "the state court had entered several of the necessary orders to keep a case moving forward ... and there is no evidence that it will continue in anything other than a timely fashion."). The State Court Action was filed on January 11, 2022. Adv. Proc. Dkt. 1-1 at 5. The State Court entered the TRO on January 12, 2022 and scheduled the Application for

[3] This court has no jurisdiction under 28 U.S.C. § 1334, but, for purposes of triggering mandatory abstention, the court need only conclude that it has nothing more than "related to" jurisdiction.

Temporary Injunction for hearing on January 26, 2022. *Id.* at 58 (State Court ordered "that Plaintiff's Application for Temporary Injunction be heard on Jan. 26th at 9:30 AM. Defendant is commanded to appear at that time and show cause, if any exist, why a temporary injunction should not be issued against said Defendant.") Had Daugherty not removed the action prior to the January 26 hearing date, the State Court would have timely heard Ellington's application.

10. Daugherty attempts to demonstrate that the State Court faces a backlog of cases as a result of COVID-19 by focusing entirely on jury trials, which, of course, were stalled during the pandemic. The State Court Action is not jury-trial ready, and none of the metrics presented by Daugherty relate to non-jury trial administration of the State Court's docket. Besides, "[w]hile the issues presented by Defendant can slow litigation, it is difficult to see how removal to federal court would alter the discovery timeline or the COVID-19-related trial backlogs experienced by state and federal courts across the country." *See L.C. v. Roman Catholic Diocese of Brownsville*, Civ. No. 1:21-cv-025, 2021 U.S. Dist. LEXIS 103438, at *8 (S.D. Tex. 2021) (finding the standard for timely adjudication "a relatively low hurdle" and granting abstention and remand even when the state court faced COVID-19 backlogs).[4] There is no evidence to suggest that the State Court would not continue its timely adjudication of this matter, as it did with the TRO, if this case were remanded.

11. Because each of the requirements for mandatory abstention exist in this case, the Bankruptcy Court *must* abstain. *See Lain v. Watt* (*In re Dune Energy, Inc.*), 575 B.R. 716, 726 (Bankr. W.D. Tex. 2017).

[4] Daugherty's Response recognizes that the Dallas COVID-19 risk level as of February 21, 2022 was reduced from red to orange. Thus, any complaint about timely adjudication due to a "red" threat level is moot. The risk level was reduced further to yellow on March 17, 2022. https://www.fox4news.com/news/dallas-county-lowers-covid-19-risk-level-again-to-yellow.

C. In the alternative, none of Daugherty's arguments tip the scale against permissive abstention or remand because all of the factors weigh in favor of abstention.

12. Daugherty, in addressing each of the 14 factors considered in determining whether to abstain or equitably remand, repeatedly refers to the Daugherty Settlement as the primary basis against permissive abstention. At the risk of belaboring the point, the State Court Action is independent of the administration of the bankruptcy and has no impact on the already resolved Daugherty Settlement.

13. Daugherty attempts to use the Daugherty Settlement to contravene *half* of the 14 permissive abstention factors. *See* Daugherty's Response ¶ 53(a-b), (e-g), (j), and (m), including allegations that "*Ellington brought the State Court Action merely to gain a tactical advantage in front of this Court*" and that "*this suit is intended to directly affect the administration of Highland's bankruptcy estate*." This Court should reject the Daugherty Settlement as a basis for hearing the Removed Action, and in doing so, tip 7 factors in favor of abstention. Daugherty also concedes two additional factors as neutral (*Id.* ¶ 53(k) and (l)), and another as not applicable "because all claims are state law claims." (*Id.* at ¶ 53(h)) This means that, once the Court rejects the Daugherty Settlement as a basis for abstention, at least 10 of the 14 factors weigh in favor or, per Daugherty, are neutral towards abstention. Daugherty's improper focus on the Daugherty Settlement in analyzing each of the factors fails to shift the balance against abstention. Instead, and as addressed factor-by-factor in the Motion, all of the factors in the *Senior Care Ctrs.* analysis favor abstention.

14. Once this Court finds that the State Court Action is not core, it should immediately abstain and remand this case. Even if this Court had doubts concerning remand, it should favor remand. *In re Senior Care Ctrs., LLC*, 611 B.R. at 800 ("doubts concerning removal must be resolved against removal and in favor of remanding"). Nothing on the face of the State Court Action implicates the jurisdiction of the Bankruptcy Court, and Daugherty fails to articulate a

compelling reason this Court should adjudicate issues prime for mandatory, or at the least permissive, abstention.

15. For the reasons set forth above and in Ellington's Motion, the Court should abstain from hearing the Removed Action entirely and immediately remand the Removed Action to the State Court. *See* 28 U.S.C. § 1452(b).

Dated: March 25, 2022

By: */s/ Frances A. Smith*

Frances A. Smith
State Bar No. 24033084
Eric Soderlund
State Bar No. 24037525
ROSS & SMITH, PC
700 N. Pearl Street, Suite 1610
Dallas, Texas 75201
Telephone: 214-377-7879
Facsimile: 214-377-9409
Email: frances.smith@judithwross.com
eric.soderlund@judithwross.com

Michelle Hartmann
State Bar No. 24032402
BAKER & MCKENZIE LLP
1900 North Pearl, Suite 1500
Dallas, Texas 75201
Telephone: 214-978-3000
Facsimile: 214-978-3099
Email: michelle.hartmann@bakermckenzie.com

Debra A. Dandeneau (admitted *pro hac vice*)
Frank Grese (admitted *pro hac vice*)
BAKER & MCKENZIE LLP
452 Fifth Ave
New York, NY 10018
Telephone: 212-626-4875
Email: debra.dandeneau@bakermckenzie.com
Email: frank.grese@bakermckenzie.com
(*Admitted pro hac vice*)

Co-Counsel for Scott Ellington

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of March 2022, a true and correct copy of the above and foregoing document was served on all known counsel via email as set forth below and by the Court's ECF filing system on those parties who have registered for receipt of electronic notice in this case.

/s/ Frances A. Smith
Frances A. Smith

Drew K. York <dyork@grayreed.com>, Counsel for Patrick Daugherty;

Drake Rayshell <drayshell@grayreed.com>, Counsel for Patrick Daugherty;

Ruth Ann Daniels <rdaniels@grayreed.com>; Counsel for Patrick Daugherty;

John Morris jmorris@pszjlaw.com, Counsel for the Debtor;

Jeffrey N. Pomerantz jpomerantz@pszjlaw.com, Counsel for the Debtor;

Jason S. Brookner jbrookner@grayreed.com, Counsel for Patrick Daugherty.

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Tuesday, March 29, 2022
	1:30 p.m. Docket
Reorganized Debtor.	
ELLINGTON,	**Adversary Proceeding 22-3003-sgj**
Plaintiff,	
v.	SCOTT ELLINGTON'S MOTION TO ABSTAIN AND REMAND [3]
DAUGHERTY,	
Defendant.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For Scott Byron Ellington, Plaintiff:	Frances Anne Smith ROSS & SMITH, PC Plaza of the Americas 700 N. Pearl Street, Suite 1610 Dallas, TX 75201 (214) 377-7879
For Scott Byron Ellington, Plaintiff:	Michelle Hartmann BAKER & MCKENZIE, LLP 1900 North Pearl Street, Suite 1500 Dallas, TX 75201 (214) 978-3421
For Patrick Daugherty, Defendant:	Drew York Jason S. Brookner GRAY REED & MCGRAW, LLP 1601 Main Street, Suite 4600 Dallas, TX 75201 (469) 320-6132

APPEARANCES, cont'd.:

For Highland Capital Management and Highland Claimant Trust:	Gregory V. Demo PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062
Transcribed by:	Kathy Rehling 311 Paradise Cove Shady Shores, TX 76208 (972) 786-3063

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

HCMLP was aware of the alleged activities of Daugherty or the allegations raised in the Ellington action at the time that HCMLP entered into the settlement agreement. So we specifically state in this objection that Ellington didn't have reason to believe that the Debtor had anything to do with this.

Turning to the next slide, Ellington's objection -- and Your Honor knows this because you presided over the hearing -- was limited to really challenging two provisions, the observer status and then the assignment of any HERA or ERA claims.

One thing that Daugherty focuses on is a letter that was sent to the Debtor in an effort to confer on the objection before the objection was filed. In these discussions and the conferral process, it became clear that the Debtor's counsel lacked knowledge of Daugherty's conduct but also didn't believe the two provisions would contribute to any further stalking.

Conferring with the Debtor on a limited objection to two noneconomic terms before filing an objection does not transform the state court action involving nondebtor parties into a core proceeding.

On this point -- and again, Mr. Demo is here -- but neither the Debtor nor the Litigation Trustee had filed anything with this Court, notwithstanding that the responsive deadline for taking a position had passed. There may be

something that is said today, but thus far no claims have been brought against the Debtor, nor does Mr. Ellington intend to, and there hasn't been a position that has been lodged with regard to either the Debtor or the Litigation Trustee.

And finally on the settlement point -- there you go -- on the settlement point, a hearing was held on the Daugherty settlement, including Ellington's objection, March 1, 2022. The appeals are exhausted on May 23, 2022. This was not appealed. And as the Court is aware, the Court denied Ellington's objection, finding a lack of standing, without needing to resort to any issues related to the state court action.

So, on this main argument, then, that Mr. Daugherty has as to the objection to the Daugherty settlement, we see it as fully resolved and really moot to the motion before the Court on mandatory abstention.

The second bucket or argument that Mr. Daugherty makes is that a litigation hold that was sent by counsel in the state court action, Michael Hurst, to preserve communication somehow makes the state court action core. And they point to No. 6 on the litigation hold for documents and communications with any other party, person, or entity (audio gap) is requested to be preserved.

Nowhere does this litigation hold seek documents from the Debtor. And even if it had, it didn't bring claims against

the Debtor. This is merely asking to preserve communications related to the -- what we call the stalking actions.

Again, a mere litigation hold notice doesn't transform the dispute into a core proceeding.

And then the last argument that Mr. Daugherty makes as a basis for the state court proceeding being core is that Daugherty is a creditor. Again, creditor status, without more, doesn't make a dispute core. If Ellington -- Mr. Ellington were to succeed in the state court action, it wouldn't make and shouldn't make a difference to the Debtor's estate. And if somehow Mr. Daugherty would be found not liable, again, there shouldn't be a difference made to the Debtor's estate.

So there should not be any kind of financial impact, and creditor status alone should not be enough.

The next element that is challenged, Your Honor, is the timely adjudication element. Mr. Ellington put forth the pace at which Judge Williams in the 101st had already been moving, and also pled that, had they not removed the action on January 18, the state court would have continued its timely adjudication, and had already set deadlines for the preliminary injunction.

What Mr. Daugherty argues is that the impact of COVID-19 on the timely adjudication analysis makes a difference. And in particular, he cites to and focuses exclusively on jury

court. Mr. York's anecdotal recitation of the delay in the state court on a few cases being a couple of years behind, those -- those could be for any reason, including discovery disputes between the parties or other reasons besides the state court's ability to timely adjudicate.

The party moving for mandatory abstention need not show that the action can be more timely adjudicated in state court, only that the matter can be timely adjudicated in state court. The state court moved quickly on a TRO. It moved quickly to set a hearing on the preliminary injunction. And we believe that that meets the standard for the low bar that we need to show that the case can be timely adjudicated.

The action was filed January 11, 2022, the TRO was entered January 12, '22, and the application for temporary injunction was set for hearing on January 26th. So that state court was moving very quickly.

We are not jury trial ready. None of the metrics presented by Mr. Daugherty relate to non-jury trial administration of the case. So the case can go ahead and proceed under state court.

In the alternative, Your Honor, the Court should also abstain under permissive abstention. All of the factors in *Senior Care*, the *Senior Care* analysis, favor abstention, as Ms. Hartmann went through and told the Court.

The Court should reject the Daugherty settlement as a

basis for hearing the removed action, and in doing so, that tips seven of the fourteen favors in favor of abstention. Daugherty already conceded that two of the favors -- factors were neutral and, in other words, not applicable because all the claims were state law claims.

Your Honor, once this Court finds that the state court action is not core, it should immediately abstain and remand the case. Even if Your Honor has any small doubts concerning remand, it should favor remand, as doubts concerning removal must be resolved against removal and in favor of remand.

Nothing on the face of the state court action implicates the jurisdiction of the bankruptcy court. Mr. Daugherty has failed to give you a compelling reason why this Court should adjudicate issues that are prime for mandatory or at least permissive abstention.

For these reasons, we request that the Court abstain from hearing the removed action entirely and immediately remand the removed action to state court.

Thank you, Your Honor.

THE COURT: All right. Thank you. Mr. Demo, anything you wanted to add?

MR. DEMO: Nothing to add, Your Honor.

THE COURT: All right. The Court concludes it must grant the motion to abstain and to remand. I do think that the underlying action is, at most, a noncore related-to

proceeding, and frankly, probably not even noncore related-to. So I find that mandatory abstention is appropriate pursuant to 1334(c)(2).

There's no independent basis in federal law for this action other than maybe 28 U.S.C. 1334(b). It's, at most, noncore, but that's even questionable. We have an action that was already commenced in state court, and I have reason to conclude the action could be adjudicated timely in state court.

But even if mandatory abstention is not appropriate, I believe it's appropriate to abstain under 28 U.S.C. 1334(c)(1), or even equitably remand under 28 U.S.C. 1452(b) in the interests of comity with state courts and out of respect for state law. I believe state law issues do predominate here. There is a remoteness, extreme remoteness to the bankruptcy case, and there would appear to be jury trial rights, and Ellington says he would not consent to the bankruptcy court having a jury trial.

In coming into today's hearing, the only possible hook, if you will, if you want to call it a hook, for the bankruptcy court or federal court jurisdiction was if this somehow implicated the gatekeeping order -- that was dangled out in the pleadings -- or if it involved interpretation, implementation, or execution of the confirmed plan or confirmation order, or if the estate was somehow going to be

impacted. And I just didn't find, based on the evidence or argument, any of those things implicated.

So the motion is granted. If Ms. Smith or Ms. Hartmann could please upload an order to that effect electronically.

(Proceedings concluded at 2:27 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **03/30/2022**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

INDEX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SCOTT BRYON ELLINGTON Plaintiff, v. PATRICK DAUGHERTY, Defendant.	***SUBPOENA DUCES TECUM PURSUANT TO THE UNIFORM INTERSTATE DEPOSITION AND DISCOVERY ACT AND CPLR § 3119*** **Originating State: Texas** **Originating County: Dallas** **Originating Court: 101st Judicial District Court** **Originating Case No.: DC-22-00304**

THE PEOPLE OF THE STATE OF NEW YORK

TO: James Serry
c/o John Morris
Pachulski, Stang, Ziehl & Jones
780 Third Avenue, 34th Floor
New York, New York 10017-2024

WE COMMAND YOU, that all business excuses be laid aside, to appear November 28, 2022, at 10:00 a.m., at the law offices of Weinstein & Klein P.C., 1 High Street Court, Suite 5, Morristown, New Jersey 07940, in the above-entitled action and produce any and all books, papers, documents, and other tangible things demanded in "Exhibit A" and "Exhibit B" to the Subpoena *Duces Tecum*, issued in the above- referenced matter pending in the 101st Judicial District Court of Dallas County, Texas, captioned as *Scott Bryon Ellington v. Patrick Daugherty*, Cause No. DC-22-00304, annexed hereto as Exhibit 1.

PLEASE BE ADVISED that certified records in response to this subpoena will be accepted in lieu of an appearance on November 28, 2022.

PLEASE BE FURTHER ADVISED that you may not produce or release any of the documents requested by this subpoena before November 28, 2022. Furthermore, if you are notified that a motion to quash the subpoena has been filed, you shall not produce or release the subpoenaed evidence until ordered to do so by the court or the release is consented to by the parties.

PLEASE BE FURTHER ADVISED that you have the right to move to quash or modify this subpoena or otherwise move under CPLR § 2304 or any other rule governing the courts of the State of New York that are applicable to discovery.

PLEASE BE FURTHER ADVISED that this matter is pending in the State of Texas, County of Dallas, 101st Judicial District, captioned as *Scott Bryon Ellington v. Patrick Daugherty*, Cause No. DC-22-00304.

PLEASE BE FURTHER ADVISED that counsel of record in this matter, and their contact information, are:

Michael K. Hurst, Esq.
Michele Naudin, Esq.
LYNN PINKER HURST & SCHWEGMANN
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
(214) 292-3636
Attorneys for Plaintiff Scott Bryon Ellington

Ruth Ann Daniels, Esq.
Andrew K. York, Esq.
Drake M. Rayshell, Esq.
GRAY REED
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Attorneys for Defendant Patrick Daugherty

PLEASE BE FURTHER ADVISED that the terms of the Subpoena *Duces Tecum* in Exhibit 1 are also incorporated herein to the extent that those terms do not conflict with the rules governing the courts of the State of New York that are applicable to discovery.

FAILURE TO APPEAR OR COMPLY with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed one hundred and fifty dollars ($150.00) and all damages sustained by reason of your failure to comply.

Dated: November 3, 2022

/s/ Damien H. Weinstein
Damien H. Weinstein
Laura M. Garcia
WEINSTEIN & KLEIN P.C.
1 High Street Court, Suite 5
Morristown, New Jersey 07960
(347) 502-6464

cc (via email): Michael K. Hurst (mhurst@lynnllp.com)
Michele Naudin (mnaudin@lynnllp.com)
Ruth Ann Daniels (rdaniels@grayreed.com)
Andrew K. York (dyork@grayreed.com)
Drake M. Rayshell (drayshell@grayreed.com)

EXHIBIT 1

ORIGINAL

For the Issuance of a New York Subpoena Under CPLR § 3119

CAUSE NO. DC-22-00304

SCOTT BRYON ELLINGTON,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**DALLAS COUNTY, TEXAS**
PATRICK DAUGHERTY	§	
	§	
Defendant.	§	
	§	**101st JUDICIAL DISTRICT**
	§	

SUBPOENA DUCES TECUM TO NON-PARTY
JAMES SEERY

THE STATE OF TEXAS

TO: ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS OR OTHER PERSON AUTHORIZED TO SERVE AND EXECUTE SUBPOENAS, PURSUANT TO RULES 176 and 205 OF THE TEXAS RULES OF CIVIL PROCEDURE, GREETINGS:

YOU ARE HEREBY COMMANDED TO SUMMON:

James Serry*
by and through his counsel of record, John Morris
Pachulski, Stang, Ziehl & Jones
780 Third Avenue, 34th Floor
New York, New York 10017-2024
(* or wherever he may be found)

to produce and permit inspection and copying of documents or tangible things shown on the attached Exhibit A and to provide the executed and notarized business records affidavit shown on the attached Exhibit B by 10:00 a.m. on or before November 18, 2022, by sending them to the undersigned counsel by email; or by mail to the following address: Michael K. Hurst, Lynn Pinker Hurst & Schwegmann, LLP, 2100 Ross Avenue, Suite 2700, Dallas, Texas 75201; or as otherwise agreed by counsel.

CONTEMPT: **Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. TEX. R. CIV. P. 176.8(a).**

DO NOT FAIL to return this writ to the issuing attorney with either the attached officer's return showing the manner of execution or the witness's signed memorandum showing that the witness accepted the subpoena.

Issued by counsel for Scott Byron Ellington:

/s/ Michael Hurst

Michael Hurst

Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Michele Naudin
State Bar No. 24118898
mnaudin@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

ATTORNEYS FOR SCOTT B. ELLINGTON

OFFICER'S RETURN

Came to hand the _____ day of _____, 2022, at _____ o'clock ___.M., and executed by delivering a copy of this subpoena to the within named witness at the following time and place, to wit:

Delivered: _____, 2022

at _____ o'clock ___.M.

or not executed as to the witness for the following reason:

I actually and necessarily traveled _____ miles in the service of this Subpoena, in addition to any this mileage I may have traveled in the service of this process in this cause during the same trip.

Summoning Witness: $_____

Mileage: $_____ _____ County, Texas

By:_____

_____
(Print Name)

_____
(Print Address)

_____

_____
(Telephone Number)

EXHIBIT A

A. INSTRUCTIONS

1. Your responses should be complete and based on all information reasonably available to you at the time the response is made. Your responses must be preceded by the request to which they apply. These requests are ongoing in nature and you are requested to make timely amendments or supplements as new information becomes available during this case.

2. Any objections to these Requests must state the legal or factual basis for the objection and indicate the extent to which you are refusing to comply with the request. Please note that objections that are not made within the time required or which are obscured by numerous, unfounded objections, are waived unless the Court excuses the waiver for good cause. In addition, you should not object that any of the Requests calls for the production of information that is privileged. Instead, you should state that the information responsive to the request has been withheld and the privileges asserted justifying withholding that information.

3. Your responses to these Requests must be served at the agreed upon time and date, 09:00 CST on November 18, 2022, at the law offices of LYNN PINKER HURST & SCHWEGMANN, LLP, 2100 Ross Ave., Suite 2700, Dallas, Texas 75201.

4. With respect to any objection or assertion of privilege, you are state: (1) that production, inspection, or other requested action will be permitted as requested; (2) that the requested items are being served with the response; (3) that production, inspection, or other requested action will take place at a specified time and place (if you are objecting to the time and place of production); or (4) that no responsive items have been identified after a diligent search.

5. These Requests seek the production of electronic or magnetic data. Information that exists in electronic form is requested in its native or near-native format and should not be converted to imaged formats. Native format requires production in the same format in which the information was customarily created, used, and stored by you, with all metadata intact. The following are examples of the native or near-native forms in which specific types of electronically-stored information ("ESI") should be produced.

Microsoft Word documents	.doc, .docx
Microsoft Excel spreadsheets	.xls, .xlsx
Microsoft PowerPoint presentations	.ppt, .pptx
Microsoft Access databases	.mdb, .accdb
WordPerfect documents	.wpd
Adobe Acrobat documents	.pdf
Images	.jpg, .jpeg, .png, .tiff, .gif

Videos	.avi, .mpg, .mpeg, .mp4, .flv, .mov
Audio	.mp3
Email	Messages should be produced in a form that readily supports import into standard email client programs, such as those outlined in RFC 5322 (the internet email standard). For Microsoft Exchange or Outlook, that means .pst format. Single message production formats like .msg or .eml may be furnished, if source foldering data is preserved and produced. If your workflow requires that attachments be extracted and produced separately, those attachments should be produced in their native forms with parent/child relationships to the messages and containers preserved and produced in a delimited text file.
Databases	Unless the entire contents of a database are responsive, extract responsive content to a fielded and electronically searchable format preserving metadata values, keys and filed relationships. If doing so is not feasible, please identify and supply information concerning the schemae and query language of its export capabilities, so as to facilitate crafting a query to extract and export responsive data

Information that does not exist in native electronic formats or which require redaction of privileged content should be produced as single page .tiff images with OCR text furnished and logical unitization and family relationships preserved. Production of ESI should be made using a thumb/flash drive or, preferably, an FTP client.

6. For any documents you that you claim no longer exist or cannot be located, provide all of the following

a. A statement identifying the documents;
b. A statement of how and when the document ceased to exist or when it could no longer be located;

c. The reasons for the document's nonexistence or loss;
d. The identity, address, and job title of each person having knowledge about the nonexistence or loss of the document; and
e. The identity of any other document evidencing the nonexistence or loss of the document or any fact concerning the nonexistence or loss.

7. For any documents that you claim are protected by privileged, pleas produce a log of any such privileged documents.

8. The date range for these Requests is from November 15, 2020 through the entry of a final, unappealable judgment or other disposition of this action.

B. DEFINITIONS

1. "You," "Your," or "James Seery" means James Seery, and your agents, attorneys, employees, or representatives.

2. "Defendant," or "Daugherty" means Defendant Patrick Daugherty, his agents, attorneys, accountants, employees, partners or other persons occupying similar positions or performing similar functions, and their predecessors, successors or affiliates, and their respective agents, attorneys, accountants, employees, partners or other persons occupying similar positions or performing similar functions.

3. "Plaintiff" means Plaintiff Scott Byron Ellington.

4. "Ellington Party" means Scott Byron Ellington (including any nicknames he may have been called, including but not limited to any references to "Apple Dumping Gang," "Cabal," "Buffoonery," and "Pink Shrek"), Byron Ellington, Marcia Maslow, Adam Maslow, the two minor children of Marcia and Adam Maslow, Stephanie Archer and her minor child, and any person who was then accompanying any of the aforementioned individuals.

5. "Ellington Location" means 120 Cole Street, Dallas, Texas 75207, 3825 Potomac Ave, Dallas, Texas 75205, 4432 Potomac, Dallas, Texas 75025, 430 Glenbrook Dr., Murphy, Texas 75094, 5101 Creekside Ct., Parker, Texas 75094, any other residence or place of business of any Ellington Party, and any other location You believed to be associated with any Ellington Party.

6. "Ellington Recordings" means all electronic recordings of any Ellington Party or Ellington Location, including any persons or vehicles at such Ellington Locations.

7. "Petition" means the Plaintiff's Original Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction.

8. "Documents" should be afforded the broadest possible definition and includes (by way of example, only, and not as an exclusive list) any written, recorded, or graphic material of any kind or description, whether sent or received or neither, including originals, non-identical copies (whether different from the original because of marginal notes or other material inserted therein or attached thereto, or otherwise), drafts (and both sides thereof), and including, but not limited to, papers, letters, memoranda, journals, notes, telephone messages or memos, minutes, opinions, reports, contracts, agreements, correspondence, telegraphs, cables, e-mails, telex messages, text messages (SMS), multimedia messages (MMS), online access data (including GPS data and internet browser search history), social media posts and messages on platforms including but not limited to Facebook, Snapchat, Instagram, LinkedIn, and the like, messages and message attachments on messaging platforms including but not limited to Telegram, Signal, Kik, WhatsApp, Facebook Messenger and the like, reports and recordings of telephone and other conversations, or other interviews, or conferences or other meetings, photographs, negatives, Photostats, layouts, drawings, sketches, specifications, blueprints, brochures, fliers, advertisements, data sheets, data processing cards, magnetic discs, tapes and chips, usb drives, computer printouts, recordings and tapes, video recordings and tapes, purchase orders, invoices, diaries, desk calendars, appointment books, logs and things similar to any of the foregoing that are in your possessions, custody, control, agency, or known by you to exist, or that possession, custody, control, agency of your attorney.

C. REQUESTS FOR PRODUCTION

Please produce the following:

1. Any and all communications and documents from or between You and Daugherty relating to Scott Byron Ellington.

2. Any and all communications and documents from or between You and Daugherty relating to any Ellington Party, Ellington Location, or Ellington Recording.

3. Any and all communications and documents relating to any investigation conducted by Daugherty relating to Scott Byron Ellington.

4. Any and all communications and documents relating to any compilation of data by Daugherty regarding Scott Byron Ellington.

5. Any assets or list(s) of assets of Scott Byron Ellington provided to you by Daugherty.

6. Any and all communications and documents relating to any Ellington Location.

7. Any photos or videos you have received from Daugherty relating to any Ellington Location.

8. Any photos or videos you have received from Daugherty relating to any Ellington Party.

9. Any photos or videos you have received from Daugherty relating to Greg Brandstatter at any Ellington Location.

10. Any photos or videos you have received from Daugherty relating to Sarah Bell (formerly Goldsmith) at any Ellington Location.

11. Any and all communications in which any party acknowledges receipt of, asks questions regarding, expressed "appreciation" for, requests additional information related to, or otherwise discusses any information Daugherty provided regarding Scott Byron Ellington, any Ellington Party, Ellington Location, or any Ellington Recording.

CAUSE NO. DC-22-00304

SCOTT BRYON ELLINGTON,	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
v.	§	**DALLAS COUNTY, TEXAS**
PATRICK DAUGHERTY	§	
Defendant.	§	**101st JUDICIAL DISTRICT**

EXHIBIT B

AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF _____ §
§
COUNTY OF _____ §

I, _____, being first duly sworn, do hereby depose and state as follows:

1. My name is _____, I am of sound mind, capable of making this affidavit, am personally acquainted with the facts stated herein and such facts are true and correct.

2. I hold the position of _____ with _____ and am the duly authorized custodian of records. Exhibit 1 attached hereto is a true copy of all the records of _____ responsive to SCOTT BYRON ELLINGTON's subpoena duces tecum noticed and served on _____, 2022. These records are kept by _____ in the regular course of business, and it was the

regular course of business of _____, with knowledge of the act, event, condition, opinion, or diagnoses, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the originals or exact duplicates of the originals.

3. I affirm under penalty of perjury that, to the best of my knowledge and belief, the above is true and correct.

AFFIANT STATES NOTHING FURTHER.

Signature:_____

Printed Name: _____

_____, known to me to be the person whose name is subscribed to the foregoing instrument and, after being by me first duly sworn, declared that the statements therein contained are true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this _____ day of, _____, 2022.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF _____

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

	)	**Case No. 19-34054-sgj-11**
In Re:	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas June 8, 2023
	)	9:30 a.m. Docket
Reorganized Debtor.	)	
	)	HMIT'S MOTION FOR LEAVE TO
	)	FILE VERIFIED ADVERSARY
	)	PROCEEDING (3699)
	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Reorganized Debtor:	John A. Morris Gregory V. Demo Hayley R. Winograd PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Reorganized Debtor:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 (310) 277-6910
For Hunter Mountain Investment Trust:	Sawnie A. McEntire Timothy J. Miller PARSONS MCENTIRE MCCLEARY, PLLC 1700 Pacific Avenue, Suite 4400 Dallas, TX 75201 (214) 237-4303
For Hunter Mountain Investment Trust:	Roger L. McCleary PARSONS MCENTIRE MCCLEARY, PLLC One Riverway, Suite 1800 Houston, TX 77056 (713) 960-7305

APPEARANCES, cont'd.:

For Hunter Mountain Investment Trust:	Deborah Deitsch-Perez STINSON 2200 Ross Avenue, Suite 2900 Dallas, TX 75201 (214) 560-2218
For Muck Holdings, et al.:	Brent Ryan McIlwain HOLLAND & KNIGHT, LLP 300 Crescent Court, Suite 1100 Dallas, TX 75201 (214) 964-9481
For James P. Seery, Jr.:	Mark Stancil Joshua Seth Levy WILLKIE FARR & GALLAGHER, LLP 1875 K Street, NW Washington, DC 20006 (202) 303-1133
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062
Transcribed by:	Kathy Rehling 311 Paradise Cove Shady Shores, TX 76208 (972) 786-3063

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

on our motion, which I assume we could file in support of -- I mean, we filed our motion. They filed an opposition. I assume we would be entitled under the Rules to file a short reply on the actual exclusion issue.

THE COURT: That is fair, but let's talk about timing. You said someone is back at the office working on it. Could you get it on file by Monday?

MR. STANCIL: Yes, ma'am.

THE COURT: Okay. Then that'll be allowed if it's filed by the end of the day Monday.

MR. MCCLEARY: Your Honor, I'm providing a copy of Exhibit 43 to opposing counsel, which is the substitute exhibit.

And obviously, we'd like to have an opportunity to respond to what their filing is on Monday.

THE COURT: No. I mean, motion, response, reply. That's all our Rules permit. Okay? Motion, response, reply. Okay.

MR. MCCLEARY: Yes, Your Honor.

THE COURT: All right. Well, with that, do the parties want to make opening statements? If so, Mr. McEntire, you go first.

MR. MCENTIRE: Yes, Your Honor. We have a PowerPoint I would like to utilize, if I could.

THE COURT: You may.

MR. MORRIS: Your Honor, before we get to that, the Plaintiff has objected to virtually every single exhibit that we have. Should we deal with the evidence first, because I don't want to refer to documents or evidence in my opening that they're objecting to. They've literally objected to every single exhibit except one, although I think they're withdrawing certain of those objections.

I don't -- I don't know if the Court has had an opportunity to see the objection that was filed to the exhibits.

THE COURT: That was what was filed like at 11:00 last night or so?

MR. MORRIS: That's right.

THE COURT: Okay.

MR. MORRIS: And so at 2:00, 3:00, 4:00, 5:00 o'clock this morning, I actually typed out a response that I'd like to hand up to the Court. But we've got to resolve the evidentiary issues before we get to this.

THE COURT: Okay. Well, --

MR. MORRIS: And I don't know what their position is going to be --

THE COURT: -- as a housekeeping matter, let's do that first. And let's start with the Movants' exhibits. Do we have any stipulations on admissibility of Movants' exhibits?

MR. MORRIS: So, if I understand correctly, Your Honor, you'd like to know if we object to any of their exhibits first?

THE COURT: Yes. And --

MR. MORRIS: Okay.

THE COURT: -- we'll hold --

MR. MORRIS: Because we have very limited objections.

THE COURT: Yes. We're going to keep on hold for now your exhibits to the expert-related, --

MR. MORRIS: Yes.

THE COURT: -- your objections to the expert-related ones.

MR. MORRIS: Right. I think -- I think --

THE COURT: So let's not talk about, for this moment, --

MR. MORRIS: 39 --

THE COURT: -- 39 through 52.

MR. MORRIS: Okay.

THE COURT: But as for 1 through 38 or 53 through 80, do the Respondents have objections?

MR. LEVY: Yes, Your Honor. We have very limited objections.

THE COURT: Okay.

MR. LEVY: So, the three to which we object in their entirety are Exhibits 24, 25, and 76, all of which we object

to on relevance grounds.

Exhibits 24 and 25 are email correspondence between counsel in an unrelated state court matter where Mr. Seery is responding to a third-party subpoena regarding the preservation of his text messages on his iPhone. This has absolutely nothing to do with whether or not the Movants have stated a colorable claim for breach of fiduciary duties.

What this appears to be is related to an entirely separate motion raised by Dugaboy regarding the preservation of Mr. Seery's iPhone. So we object to Exhibits 24 and 25 because they have simply nothing to do with the issues in this hearing.

We also object to Exhibit 76, which is a filing from two years ago in a different bankruptcy matter, from *Acis*, regarding an injunction in place in that -- in that plan about issues that -- that occurred before the bankruptcy was in place. So this is just an entirely different case from issues that arose many, many years ago that, again, has nothing to do with this case.

THE COURT: This was whether the *Acis* plan injunction barred some lawsuit?

MR. LEVY: Exactly.

THE COURT: Okay. Okay. Is that all?

MR. LEVY: We also have limited objections to certain exhibits that we think are admissible for the -- for the fact

they're said, but not the truth of the matter asserted.

For example, Exhibits 1 and 2 are complaints filed in those actions. We have no objection to those coming in, but not for the truth of the matter asserted. These are advocacy pieces and pleadings. They're not actually substantive evidence.

And we would have similar -- similar objections to Exhibits 4, 6, 11, --

THE COURT: Wait. 4 is James Dondero Handwritten Notes, May 2021.

MR. LEVY: Yes.

THE COURT: Okay.

MR. LEVY: So, we have no objection to that coming into evidence.

THE COURT: Uh-huh.

MR. LEVY: But there are -- those are hearsay. They're not admissible standing by themselves for the truth of the matter asserted.

THE COURT: Okay.

MR. LEVY: And Exhibit 6 are news articles. Similarly, they're hearsay, but we have no objection to them coming in. They're admissible for the fact that they're published, but not the truth of the matter asserted.

THE COURT: Okay.

MR. LEVY: Exhibit 11, which is a motion filed by the

Debtor. Similarly, it's for -- we have no objection to anything on the docket coming in, but anything that's an advocacy piece, like a motion as opposed to an order, we think is not admissible for the truth of the matter asserted.

And that would be a similar objection, then, for Exhibit 58, which is a complaint.

Exhibits 59, 60, and 61 are -- are letters by counsel for Mr. Dondero to the U.S. Trustee's Office. We similarly have no objection to that coming in, but not for the truth of the matter asserted.

And Exhibits 62 and 63, Exhibit 62 is an attorney declaration attaching, similarly, documents that are -- that are advocacy pieces.

And Exhibit 63 appears to be an asset chart prepared by counsel. So it would be a similar objection.

And Exhibit 66 also is a declaration attaching documents.

No objections to those coming in, but not for the truth of the matter asserted.

Exhibits 72, 73, and 74 are all -- well, 72 are press articles. 73 and 74 are briefs. We don't object to that coming in, but we object to it being admitted for the truth of the matter asserted.

And similarly, Exhibit 80 is a pleading in an SDNY bankruptcy. We have no objection to that coming in, but not for the truth of the matter asserted.

And finally, Exhibits 81, 82, 83 don't specify particular documents. They appear to largely be reservations of rights. And so we would likewise reserve our right to object once we see any specific documents --

THE COURT: Okay.

MR. LEVY: -- admitted under these exhibits.

THE COURT: Okay. Mr. --

MR. LEVY: And I understand my colleague has an objection to Exhibit 5.

MR. MORRIS: Exhibit 5, which is the subject, I believe, of an unopposed sealing motion. That document has to do with purported restrictions on certain securities. Since it's subject to a sealing motion, I don't want to say too much more than that, other than that -- we don't think it should be admitted, because you can just see from the information on the document that it was created after the termination of a shared services agreement.

However, I'm hopeful that we can resolve the issue by simply stipulating that in December 2020 MGM was on a restricted list. What that means, what the consequences of it, the rest of it can be the subject of discussion. But if they're trying to get that document in for that particular fact, we would stipulate to it in order to resolve that dispute.

THE COURT: All right. Well, that's lots to respond

to, Mr. McCleary. Why don't we start with the outright objections: 24, 25. It's apparently text messages related to Mr. Seery's iPhone. I know we've got another motion pending out there that's not set today regarding Mr. Seery's iPhone.

MR. MCCLEARY: Yes, Your Honor. Well, as the Court is aware, we've attempted to get discovery from Mr. Seery in relation to the allegations in this lawsuit. And by the way, all of our exhibits that we're tendering are subject to our objections that this should not be an evidentiary hearing. I just want to make that clear.

THE COURT: Understood.

MR. MCCLEARY: Okay. Thank you. So, we're not waiving that.

The Exhibits 24 and 25 are relevant to the fact that he's -- he's not preserving information that is relevant to the claims in this lawsuit. And that also is something that is a factor in the colorability of our claims in this case.

THE COURT: How?

MR. MCCLEARY: Well, there is an effort, we believe, underway to not have information available for us to discover. And it reflects that they have been involved in providing -- we think supports -- providing material nonpublic information to other people that would be in his phone. And we want him to preserve it. And we think the fact that he is not is evidence that supports the colorability of our claims.

THE COURT: So, --

MR. MCENTIRE: Your Honor, this --

THE COURT: No. No. I'm processing that. You're wanting the Court to receive into evidence a text that may say something like, I delete messages periodically on my phone, to support your claim that you have a colorable claim that some sort of improper insider disclosure of information and insider trading is going on? He said he had an automatic delete feature on his phone; therefore, he -- that must be evidence of a colorable claim for insider trading. That's the argument?

MR. MCENTIRE: May I add to it, supplement, Your Honor? Mr. Seery, in his deposition, indicated that he did receive a text message that he had recently reviewed from Stonehill in February of 2021. To the extent, however, that is inconsistent with the fact that he has an automatic delete button, suggesting to me that certain text messages have been selectively saved and some other messages have been not selectively saved.

THE COURT: We don't have that motion set today.

MR. MCENTIRE: This is not -- that has nothing to do with the motion. It has to do with the fact that what is being presented to the Court in response, the Respondents' argument, is a selected window, a selected picture, that is -- distorts the reality of what we think has been destroyed

evidence.

Mr. Seery can't save one message that may be helpful to them and not save others that may not be. And it is inconsistent with the notion that this automatic delete button was already in effect, so why does he have one favorable message? That's why it's relevant.

THE COURT: Maybe he stopped using the automatic delete after --

MR. MCENTIRE: No, he didn't at this time, Your Honor.

THE COURT: Well, --

MR. MCENTIRE: That's the relevance.

THE COURT: So, --

MR. MCCLEARY: And he should never have used it, Your Honor, given his role and responsibilities.

THE COURT: We don't have that motion set today. What is the content of these emails? February 16th, March 10th, 2023? What is the content, for me to really zero in --

MR. LEVY: I have --

THE COURT: -- on relevance or not.

MR. LEVY: -- copies of the emails, if that would be helpful --

THE COURT: Okay.

MR. LEVY: -- to Your Honor.

THE COURT: Well, you know, now I'm seeing them, so I

don't know what the big deal is if --

MR. LEVY: As Your Honor can see, these are emails between counsel regarding preservation, which has nothing to do with whether there are colorable claims for fiduciary duties.

I'll add that -- and to show that this has nothing to do with this case and it is an attempt to generate a fishing expedition for documents in an entirely unrelated motion, we had a meet-and-confer where we represented to the counsel bringing that motion that we have been able to recover the text messages from the iCloud.

And so this is really just a sideshow. It has nothing to do with the issues of the colorability of claims for breach of fiduciary duties. It should not be introduced into evidence in this hearing.

THE COURT: All right. I'm going to sustain the objection, but this is without prejudice to you re-urging admission of these messages at the hearing on the motion regarding Mr. Seery's phone. Okay? Now, --

MR. MCCLEARY: That's as to 24 and 25, Your Honor?

THE COURT: Correct. And let's go now to the other one, the Exhibit 76, the *Acis*-related document, the relevance of that. Statement of Interested Party in Response to Motion of NexPoint to Confirm Discharge or Plan Injunction Does Not Bar Suit, or Alternatively, for Relief from All Applicable

Injunctions.

What is the relevance for today's matter?

MR. MCCLEARY: Your Honor, this is background of pleadings and just background information generally to support the allegations made in the case and the background.

THE COURT: What do you mean, background?

MR. MCCLEARY: Kind of the history relative to the claims trading and relative to the claims of the use of insider information.

THE COURT: Okay. Be more specific, because I certainly have a background education on *Acis* litigation.

(Pause.)

MR. MCCLEARY: Yeah. Your Honor, this is a data point that is referred to in one of our experts' data charts, I believe, so --

THE COURT: All right. So let's just carry that to --

MR. MCCLEARY: Yes.

THE COURT: I'm just going to mark it as carried along with 39 through 62, related to the experts.

(HMIT's Exhibits 39 through 62 and Exhibit 76 carried.)

THE COURT: Okay. What about all of these objections that we don't object *per se* but we want it clear that the documents are not being offered for the truth of the matter asserted because there's hearsay?

Q That's fine.
A Well, it's not an executive committee. It doesn't necessarily include just the largest. Some large holders won't be on it. The largest holders here by a long shot were Icahn, who --
Q I'm not talking about --
A -- unloaded, as I say, over 30 percent. Monarch, Owl Creek, and I just don't recall Stonehill being a part of it.
Q I'm not really interested in Carl Icahn. I just want to establish this is a steering group in which you were the lead counsel and Blockbuster was on it. Is that correct?
A Yes.
Q Excuse me. Not Blockbuster.
A I'm sorry.
Q Stonehill.
A No, it's the Blockbuster case in 2010, and Stonehill was apparently on it, but I just don't have a recollection of their involvement.
Q All right. So when Mr. -- who sent you the text message in February of 2021 from Stonehill?
A Michael Stern.
Q And had you actually met him before?
A I think I had, but we didn't know each --
Q All right.
A You know, we certainly didn't know each other, we'd never

worked on anything together, but I --

Q Do you have all your text messages from that period of time, that first quarter of 2021?

A I believe I do, yes.

Q They're saved?

A Yes.

Q Okay. When did the automatic delete button on your cell phone start?

MR. STANCIL: Your Honor, objection. We've covered this this morning. I believe this is a motion coming down the pike, and I thought we had -- thought we had had tabled this preservation issue.

MR. MCENTIRE: This has a direct bearing on his communications with Farallon and Stonehill in this period of time, Your Honor. We have one text message that he's identified, and I have a right to examine whether there are others. Or if not, why not.

MR. STANCIL: Your Honor, he's --

MR. MCENTIRE: That's a legitimate -- I'm not finished. That's a legitimate area of inquiry in this examination.

MR. STANCIL: He's testified he has them all. Your Honor did not order document discovery. I think that's it for purposes of today's hearing, Your Honor.

THE COURT: Okay. I sustain the objection.

BY MR. MCENTIRE:

Q After this text message that you received from Stonehill in February 2021, did you have any follow-up?

A Well, his text message, I don't recall what it said other than I was -- I do recall that he gave me his email address, because I didn't have it. And we just didn't know each other well enough. But we definitely had follow -up. He wanted to talk to me, and at some point we talked.

Q And when did you talk?

A I'm sorry?

Q When did you talk?

A When? I -- it was at the, initially, end of February, beginning of March. So it would have been somewhere in that -- in that time period.

Q End of February, beginning of March? And we also know that you next talked to Farallon, according to your testimony, and they advised you they had already purchased all their claims as of March 15, correct?

A On March 15th, they sent me an email that said they had purchased an interest in claims, and --

Q So -- go ahead.

A I'm not finished. And then at some point after that, we arranged a quick discussion, because that was a curious --

Q I want to assure you I will always let you finish.

A Thank you very much.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SCOTT BRYON ELLINGTON Plaintiff, v. PATRICK DAUGHERTY, Defendant.	***SUBPOENA AD TESTIFICANDUM PURSUANT TO THE UNIFORM INTERSTATE DEPOSITION AND DISCOVERY ACT AND CPLR § 3119*** **Originating State: Texas** **Originating County: Dallas** **Originating Court: 101st Judicial District Court** **Originating Case No.: DC-22-00304**

THE PEOPLE OF THE STATE OF NEW YORK

TO: James Seery
c/o John Morris
Pachulski, Stang, Ziehl & Jones
780 Third Avenue, 34th Floor
New York, New York 10017-2024

WE COMMAND YOU, that all business and excuses being laid aside, to appear virtually, via a Zoom or Teams meeting, at the offices of Pachulski, Stang, Ziehl & Jones, LLP, 780 Third Avenue 34th Floor, New York, New York 10017-2024 on the 10th day of July 2023, at 9:30 a.m., or at a date and time mutually agreed to between the parties, but no less than twenty (20) days from the date of service of this Subpoena, or as ordered by the Court, to be examined and give deposition testimony on the topics set forth in Schedule A.

PLEASE BE FURTHER ADVISED that the meeting link and/or login credentials will be provided to you in advance of the deposition.

PLEASE BE FURTHER ADVISED that the deposition will be videotaped by Cindy Afanador Court Reporting, Inc., with a business address at P.O. Box 984, Suite 1120, Kings Park, New York 11754.

PLEASE BE FURTHER ADVISED that you have the right to move to quash or modify this subpoena or otherwise move under CPLR § 2304 or any other rule governing the courts of the State of New York that are applicable to discovery.

PLEASE BE FURTHER ADVISED that this matter is pending in the State of Texas, County of Dallas, 101st Judicial District, captioned as *Scott Byron Ellington v. Patrick Daugherty*, Cause No. DC-22-00304 (the "Action"), the Original Petition of which, dated January 11, 2022, is attached hereto as Exhibit 1.

PLEASE BE FURTHER ADVISED that counsel of record in this matter, and their contact information, are:

Julie Pettit, Esq.
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
(214) 329-0151

Michael K. Hurst, Esq.
Mary Goodrich Nix, Esq.
Michele Naudin, Esq.
LYNN PINKER HURST & SCHWEGMANN
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
(214) 292-3636
Attorneys for Plaintiff Scott Byron Ellington

Ruth Ann Daniels, Esq.
Andrew K. York, Esq.
Drake M. Rayshell, Esq.
GRAY REED
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Attorneys for Defendant Patrick Daugherty

PLEASE BE FURTHER ADVISED that the terms of the Texas Subpoena *Ad Testificandum* attached hereto as Exhibit 2 are also incorporated herein to the extent that those terms do not conflict with the rules governing the courts of the State of New York that are applicable to discovery.

FAILURE TO APPEAR OR COMPLY with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed one hundred and fifty dollars ($150.00) and all damages sustained by reason of your failure to comply.

Dated: June 19, 2023

/s/ Damien H. Weinstein
Damien H. Weinstein
Laura M. Garcia
WEINSTEIN & KLEIN P.C.
1 High Street Court, Suite 5
Morristown, New Jersey 07960
(347) 502-6464

cc (via email): Julie Pettit (jpettit@pettitfirm.com)
Mary Goodrich Nix (mnix@lynnllp.com)
Michael K. Hurst (mhurst@lynnllp.com)
Michele Naudin (mnaudin@lynnllp.com)
Ruth Ann Daniels (rdaniels@grayreed.com)
Andrew K. York (dyork@grayreed.com)
Drake M. Rayshell (drayshell@grayreed.com)

SCHEDULE A

DEPOSITION TOPICS

1. Any documents and/or communications produced by James Seery in response to the Subpoena *Duces Tecum* served on Mr. Seery c/o John Morris, Esq., in or around November 2022.

2. Mr. Seery's personal knowledge of the allegations asserted in the Action.

3. Mr. Seery's personal knowledge of the relationship between the Defendant in the Action, Patrick Daugherty ("Daugherty"), and the Plaintiff, Scott Byron Ellington ("Ellington").

4. Mr. Seery's receipt of photos, videos, data, or other information from Daugherty relating to Greg Brandstatter.

5. Mr. Seery's receipt of photos, videos, data, or other information from Daugherty relating to Sarah Bell (formerly Goldsmith).

6. Mr. Seery's receipt of communications, emails, photos, videos, data, or other information from Daugherty relating to Ellington or entities affiliated with Ellington.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SCOTT BRYON ELLINGTON Plaintiff, v. PATRICK DAUGHERTY, Defendant.	***AMENDED SUBPOENA AD TESTIFICANDUM PURSUANT TO THE UNIFORM INTERSTATE DEPOSITION AND DISCOVERY ACT AND CPLR § 3119*** **Originating State: Texas** **Originating County: Dallas** **Originating Court: 101st Judicial District Court** **Originating Case No.: DC-22-00304**

THE PEOPLE OF THE STATE OF NEW YORK

TO: James Seery
c/o Joshua S. Levy
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019

WE COMMAND YOU, that all business and excuses being laid aside, to appear virtually, via a Zoom or Teams meeting, at the offices of Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 on the 31st day of July 2023, at 9:30 a.m., or at a date and time mutually agreed to between the parties, but no less than twenty (20) days from the date of service of this Amended Subpoena, or as ordered by the Court, to be examined and give deposition testimony on the topics set forth in Schedule A.

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2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
(214) 292-3636
Attorneys for Plaintiff Scott Byron Ellington

Ruth Ann Daniels, Esq.
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Drake M. Rayshell, Esq.
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1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Attorneys for Defendant Patrick Daugherty

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FAILURE TO APPEAR OR COMPLY with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed one hundred and fifty dollars ($150.00) and all damages sustained by reason of your failure to comply.

Dated: July 13, 2023

/s/ Damien H. Weinstein
Damien H. Weinstein
Laura M. Garcia
WEINSTEIN & KLEIN P.C.
1 High Street Court, Suite 5
Morristown, New Jersey 07960
(347) 502-6464

cc (via email): Julie Pettit (jpettit@pettitfirm.com)
Mary Goodrich Nix (mnix@lynnllp.com)
Michael K. Hurst (mhurst@lynnllp.com)
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Andrew K. York (dyork@grayreed.com)
Drake M. Rayshell (drayshell@grayreed.com)

SCHEDULE A

DEPOSITION TOPICS

1. Any documents and/or communications produced by James Seery in response to the Subpoena *Duces Tecum* served on Mr. Seery c/o Joshua S. Levy, Esq., in or around November 2022.

2. Mr. Seery's personal knowledge of the allegations asserted in the Action.

3. Mr. Seery's personal knowledge of the relationship between the Defendant in the Action, Patrick Daugherty ("Daugherty"), and the Plaintiff, Scott Byron Ellington ("Ellington").

4. Mr. Seery's receipt of photos, videos, data, or other information from Daugherty relating to Greg Brandstatter.

5. Mr. Seery's receipt of photos, videos, data, or other information from Daugherty relating to Sarah Bell (formerly Goldsmith).

6. Mr. Seery's receipt of communications, emails, photos, videos, data, or other information from Daugherty relating to Ellington or entities affiliated with Ellington.

7. Any meetings or communications between any representative of the Highland Bankruptcy estate and Mr. Daugherty and/or his representatives related in any way to Ellington.

8. Any instructions or approval, whether explicit or tacit, provided to Mr. Daugherty with respect to Mr. Daugherty's so-called "investigation" of Mr. Ellington or the stalking allegations in this case.

9. Any consideration provided to Daugherty with respect to Mr. Daugherty's so-called "investigation" of Mr. Ellington or the stalking in this case, including, but not limited to, the treatment of Mr. Daugherty's Proof of Claim in the Highland bankruptcy.

From: Levy, Joshua S. <JLevy@willkie.com>
Sent: Friday, June 30, 2023 5:03 PM
To: 'Julie Pettit'; Stancil, Mark
Cc: John A. Morris; Laura M. Garcia; Shirley Xu; Beverly Congdon; Michael K. Hurst; Patricia Perkins; Michele Naudin; Damien H. Weinstein; Alexis C. Wyckoff; Brennan, John L.; 'Thompson, Blayne R.'; Hefter, Michael C.; John A. Morris; Wynne, Rick; McNeilly, Edward
Subject: RE: J. Seery - Deposition Subpoena
Attachments: Highland - Confirmation Order.pdf; Highland - Seery Retention Order.pdf; Highland - January Settlement Order.pdf; Highland - Confirmation Order (5th Cir).pdf

Julie,

We'd like to schedule a call next Wednesday to discuss Jim Seery's upcoming deposition. Specifically, we'd like to discuss:

1. **Scope of Deposition.** We appreciate that you appended a list of deposition topics to the subpoena to Mr. Seery. We'd like to discuss the topics, how they affect the scope of the deposition, and the procedure for raising objections to questions that exceed that scope.
2. **Time Limits.** Because Mr. Seery is a third-party witness, we'd like to discuss the appropriate length of his deposition.
3. **Deposition Attendance.** We understand that John Morris, counsel for Highland (copied here), wants to attend the deposition and potentially raise objections under the Gatekeeper Orders entered by the Bankruptcy Court (which I've attached) to ensure discovery in the *Ellington* litigation is not used in connection with the *Highland* bankruptcy in violation of the Gatekeeper Orders.

Please let us know your availability on Wednesday for a call. I've copied counsel for Russell Nelms who plans to participate in our call because many of these same issues are relevant for Mr. Nelms' depositions.

Regards,
Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Levy, Joshua S. <JLevy@willkie.com>
Sent: Tuesday, June 27, 2023 12:53 PM
To: 'Julie Pettit' <jpettit@pettitfirm.com>; Stancil, Mark <MStancil@willkie.com>
Cc: John A. Morris <jmorris@pszjlaw.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>
Subject: RE: J. Seery - Deposition Subpoena

Thanks Julie. We're aiming to make a supplemental production next week and will let you know if that timing changes.

Regards,
Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Tuesday, June 27, 2023 12:44 PM
To: Stancil, Mark <MStancil@willkie.com>
Cc: John A. Morris <jmorris@pszjlaw.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Levy, Joshua S. <JLevy@willkie.com>; Brennan, John L. <JBrennan@willkie.com>
Subject: Re: J. Seery - Deposition Subpoena

***** EXTERNAL EMAIL *****

Hi Mark,

I will be back in touch with you to confirm for sure, but it looks like July 17 will work.

Also, is there any update on the supplemental production?

Thank you.

Best Regards,

Julie Pettit Greeson
The Pettit Law Firm
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Direct: 214-329-1846
Fax: 214-329-4076
jpettit@pettitfirm.com

On Fri, Jun 23, 2023 at 11:44 AM Julie Pettit <jpettit@pettitfirm.com> wrote:

> Hi Mark,
>
> Thank you for your email. We are working to coordinate dates with counsel with Daugherty. I will be in touch shortly, but I'm hopeful that week will work.

Best Regards,

Julie Pettit Greeson
The Pettit Law Firm
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Direct: 214-329-1846
Fax: 214-329-4076
jpettit@pettitfirm.com

On Thu, Jun 22, 2023 at 5:39 PM Stancil, Mark <MStancil@willkie.com> wrote:

> Ms. Garcia,
>
> I am authorized to accept service on behalf of Mr. Seery, on the understanding that we can figure out a mutually agreeable date. Mr. Seery has some international travel scheduled, but the week of July 17 is probably workable. Also, I expect we will make a small supplemental production to you shortly -- I should know by the end of next week whether/when that will be available, but I'm confident it will be modest.
>
> I'm also copying my colleagues, Josh Levy and John Brennan, who are working with me on this matter.
>
> Best,
>
> Mark
>
> **Mark T. Stancil**
> **Willkie Farr & Gallagher LLP**
> 1875 K Street, N.W. | Washington, DC 20006-1238
> Direct: +1 202 303 1133 | Fax: +1 202 303 2000
> mstancil@willkie.com | vCard | www.willkie.com bio
>
> -----Original Message-----
> From: John A. Morris <jmorris@pszjlaw.com>
> Sent: Monday, June 19, 2023 7:52 PM
> To: Laura M. Garcia <lgarcia@weinsteinklein.com>
> Cc: Julie Pettit <jpettit@pettitfirm.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Stancil, Mark <MStancil@willkie.com>
> Subject: Re: J. Seery - Deposition Subpoena
>
> *** EXTERNAL EMAIL ***
>
> Adding Mark Stancil, Mr. Seery's personal counsel.
>
> We'll be in touch shortly.
>
> Regards,
>
> John
>
> Sent from my iPhone

On Jun 19, 2023, at 3:36 PM, Laura M. Garcia <lgarcia@weinsteinklein.com> wrote:

John,

Please see the attached subpoena ad testificandum. Let us know if you'll accept electronic service of the attached on behalf of your client. We will send you a hard copy of the attached, as well as the witness fee for Mr. Seery, under separate cover.

Thank you,
Laura

Laura M. Garcia

D: 347.919.8422
M: 732.850.2201
lgarcia@weinsteinklein.com<mailto:lgarcia@weinsteinklein.com>
https://urldefense.com/v3/__http://www.weinsteinklein.com__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw90-x6sTw$
<https://urldefense.com/v3/__http://www.weinsteinklein.com__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw90-x6sTw$ >

<https://urldefense.com/v3/__https://www.facebook.com/WeinsteinKlein__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw_5DM4TqQ$ >

<https://urldefense.com/v3/__https://www.facebook.com/WeinsteinKlein__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw_5DM4TqQ$
><https://urldefense.com/v3/__https://twitter.com/weinstein_klein__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw8HCNXS3A$ >

<https://urldefense.com/v3/__https://twitter.com/weinstein_klein__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw8HCNXS3A$
> <https://urldefense.com/v3/__https://www.instagram.com/lg_onthelaw__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw-eNnHJHQ$ >

<https://urldefense.com/v3/__https://www.instagram.com/lg_onthelaw__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw-eNnHJHQ$
> <https://urldefense.com/v3/__https://www.linkedin.com/in/lauramgarciaesq__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw_Zse2vqQ$ >

<https://urldefense.com/v3/__https://www.linkedin.com/in/lauramgarciaesq__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw_Zse2vqQ$ >

presumptively contain information that is confidential and legally privileged; email messages to non-clients are normally confidential and may also be legally privileged. Please do not read, copy, forward or store this message unless you are an intended recipient of it. If you have received this message in error, please forward it back. Willkie Farr & Gallagher LLP is a limited liability partnership organized in the United States under the laws of the State of Delaware, which laws limit the personal liability of partners.

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Thursday, July 27, 2023 4:41 PM
To: Levy, Joshua S.
Cc: Laura M. Garcia; Stancil, Mark; John A. Morris; Shirley Xu; Beverly Congdon; Michael K. Hurst; Patricia Perkins; Michele Naudin; Damien H. Weinstein; Alexis C. Wyckoff; Brennan, John L.; Thompson, Blayne R.; Hefter, Michael C.; Wynne, Rick; McNeilly, Edward
Subject: Re: J. Seery - Deposition Subpoena

***** EXTERNAL EMAIL *****

Josh,

We are going to file a Motion to Compel the redacted text messages. We will postpone Mr. Seery's deposition and take it after the issue of the redactions is resolved by the Court.

For purposes of our certificate of conference, we will assume you are opposed to our motion. If that is not the case, please let us know.

Thank you.

Best Regards,

Julie Pettit Greeson
The Pettit Law Firm
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Direct: 214-329-1846
Fax: 214-329-4076
jpettit@pettitfirm.com
THE PETTIT LAW FIRM

On Thu, Jul 27, 2023 at 11:27 AM Levy, Joshua S. <JLevy@willkie.com> wrote:

> Hi Julie,
>
> Please send links for Mr. Seery's deposition on Monday, including for Zoom, exhibit share, and real time. Apologies if you already sent this and I missed it.
>
> Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Levy, Joshua S. <JLevy@willkie.com>
Sent: Friday, July 14, 2023 3:30 PM
To: Julie Pettit <jpettit@pettitfirm.com>
Cc: Laura M. Garcia <lgarcia@weinsteinklein.com>; Stancil, Mark <MStancil@willkie.com>; John A. Morris <jmorris@pszjlaw.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Subject: RE: J. Seery - Deposition Subpoena

Hi Julie. July 31 at 9:30 AM ET works for us.

Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Levy, Joshua S. <JLevy@willkie.com>
Sent: Thursday, July 13, 2023 8:13 PM
To: Julie Pettit <jpettit@pettitfirm.com>
Cc: Laura M. Garcia <lgarcia@weinsteinklein.com>; Stancil, Mark <MStancil@willkie.com>; John A. Morris <jmorris@pszjlaw.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Subject: Re: J. Seery - Deposition Subpoena

Thanks Julie, we'll check that date. I'm sure all counsel will be able to raise objections and instructions in a professional manner.

Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

On Jul 13, 2023, at 7:55 PM, Julie Pettit <jpettit@pettitfirm.com> wrote:

***** EXTERNAL EMAIL *****

Sorry, my email below should have said **July 31** as the date of the deposition.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

THE PETTIT LAW FIRM

On Thu, Jul 13, 2023 at 6:49 PM Julie Pettit <jpettit@pettitfirm.com> wrote:

> Hi Josh,
>
> The amended subpoena you were served with indicates a deposition date of May 31. If that does not work for your side, please promptly let us know, as we were under the impression that day worked for you.
>
> Also note that as we discussed, if anyone is disruptive during the deposition, we reserve all rights to seek court intervention, including but not limited to seeking court intervention during the deposition.
>
> Thank you.
>
> Best Regards,
>
> Julie Pettit Greeson
>
> The Pettit Law Firm
>
> 2101 Cedar Springs, Suite 1540
>
> Dallas, Texas 75201
>
> Direct: 214-329-1846
>
> Fax: 214-329-4076
>
> jpettit@pettitfirm.com
>
> THE PETTIT LAW FIRM

On Thu, Jul 13, 2023 at 9:52 AM Levy, Joshua S. <JLevy@willkie.com> wrote:

Thanks Laura, we agree to accept service. Thanks also to Michael and Julie for the productive call on Jim Seery's deposition. To summarize where we landed:

- **Time Limits.** We agreed to limit the deposition to 4 hours and you'll endeavor to keep it keep it shorter if possible.

- **Attendance.** John Morris can attend the deposition and can instruct the witness not to answer questions on privilege grounds or as he deems appropriate under the Bankruptcy Court's Gatekeeper Orders. You reserved your right to challenge those instruction in a motion after the deposition.

- **Topics.** We agreed to limit the deposition to the topics noticed. We also agreed to exchange objections to the topics by email and you reserved the right to challenge those objections in a motion after the deposition. Here are our objections:

    - **Topic No. 6.** We object to Topic No. 6 to the extent it seeks testimony regarding "entities affiliated with Ellington" on the grounds that it is overly broad, not relevant to the claims and defenses at issue, and violates the Bankruptcy Court's Gatekeeper Orders.

    - **Topic No. 7.** We object to Topic No. 7 on the grounds that it is overly broad, not relevant to the claims and defenses at issue, and violates the Bankruptcy Court's Gatekeeper Orders.

    - **Topic No. 9.** We object to Topic No. 9 to the extent it seeks testimony regarding "Mr. Daugherty's Proof of Claim in the Highland bankruptcy" on the grounds that it is overly broad, not relevant to the claims and defenses at issue, and violates the Bankruptcy Court's Gatekeeper Orders.

- **Logistics.** We agreed to reschedule the deposition for the week of August 1 and to conduct the deposition remotely. We are checking with our client about specific days and times. Once we have the deposition scheduled, please send us links for joining the deposition, exhibit sharing, and realtime feeds.

In addition, our e-discovery vendor has run into technical issues with our supplemental production. We are pressing them to make the production this week. It's a small production, but we want to be upfront about the timing. We'll let you know if this timing changes.

Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Laura M. Garcia <lgarcia@weinsteinklein.com>
Sent: Thursday, July 13, 2023 10:15 AM
To: Levy, Joshua S. <JLevy@willkie.com>
Cc: Stancil, Mark <MStancil@willkie.com>; John A. Morris <jmorris@pszjlaw.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>; 'Julie Pettit' <jpettit@pettitfirm.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Subject: RE: J. Seery - Deposition Subpoena

***** EXTERNAL EMAIL *****

Good morning Josh,

Please see the attached amended subpoena, reflecting the new deposition date and revised topics. Please confirm that you'll accept service via email.

Thank you,

Laura

<image002.jpg>

Laura M. Garcia
D: 347.919.8422

M: 732.850.2201

<image004.jpg>

 lgarcia@weinsteinklein.com

www.weinsteinklein.com

From: Levy, Joshua S. <JLevy@willkie.com>
Sent: Monday, July 10, 2023 3:36 PM
To: 'Julie Pettit' <jpettit@pettitfirm.com>
Cc: Stancil, Mark <MStancil@willkie.com>; John A. Morris <jmorris@pszjlaw.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Subject: RE: J. Seery - Deposition Subpoena

External Email

Thanks Julie. As I've noted, the whole group would like to participate so we'll keep the call scheduled for 4:30 PM ET. As to the three issues:

1. **Scope of Deposition.** We have concerns about the scope of the revised topics, particularly "entities affiliated with Ellington" in Topic 6, Topic 7, and "Mr. Daugherty's Proof of Claim in the Highland bankruptcy" in Topic 9. We'd like to discuss the topics in light of the Bankruptcy Court's Gatekeeper Orders and procedures for raising objections.

2. **Time Limits.** We're disappointed that you are insisting on a six-hour deposition for a third-party witness and will not agree to any reasonable time limits. As a professional courtesy and out of respect for the burden on Mr. Seery's time, we hope you'll reconsider.
3. **Deposition Attendance.** We are agreed that Mr. Morris will attend Mr. Seery's deposition.

Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Monday, July 10, 2023 3:07 PM
To: Levy, Joshua S. <JLevy@willkie.com>
Cc: Stancil, Mark <MStancil@willkie.com>; John A. Morris <jmorris@pszjlaw.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Subject: Re: J. Seery - Deposition Subpoena

***** EXTERNAL EMAIL *****

Josh,

Michael and I just left you a voicemail about 30 minutes ago.

Regarding your three issues below:

1. We have sent you the revised topics. Please let me know if you have any questions.

2. With respect to time limits, we will certainly be sensitive to the witness' time, but without knowing how the witness will answer, we cannot agree to a particular time limit other than what is permitted by the Texas rules.

3. With respect to Mr. Morris' attendance, we do not see any legitimate reason why he would have a right to attend the deposition. We do not agree with your interpretation of the bankruptcy order. That said, if we can agree on everything else, then as a courtesy, we will agree to allow him to attend so long as he is silent and non obstructive. We reserve the right to seek immediate relief from the Court and/or have Mr. Morris removed from the deposition if he obstructs the deposition in any way.

Please confirm if these terms are agreeable.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

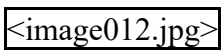
2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com



On Mon, Jul 10, 2023 at 10:06 AM Levy, Joshua S. <JLevy@willkie.com> wrote:

Thanks Julie. We want to make sure everyone is able to participate in the call today, so we'll push it back to 4:30 PM ET.

Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Sunday, July 9, 2023 11:31 PM
To: Levy, Joshua S. <JLevy@willkie.com>
Cc: Stancil, Mark <MStancil@willkie.com>; John A. Morris <jmorris@pszjlaw.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Subject: Re: J. Seery - Deposition Subpoena

***** EXTERNAL EMAIL *****

Hi Josh,

Daugherty's counsel is taking a deposition of one of our witnesses tomorrow. We are unsure what time that will conclude, but Michael and I can call you once it is over.

In the meantime, attached is a slightly revised list of topics.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

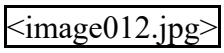
2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com



On Fri, Jul 7, 2023 at 3:44 PM Levy, Joshua S. <JLevy@willkie.com> wrote:

> Thanks Julie. Just to get a time on the calendar, I'm going to send a dial in for 12 PM ET on Monday.
>
> As an update, we expect to make the supplemental production on Monday. We'll let you know if that timing changes.
>
> Have a good weekend,
>
> Josh
>
> **Joshua S. Levy**
> **Willkie Farr & Gallagher LLP**
> 1875 K Street, N.W. | Washington, DC 20006-1238
> Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
> jlevy@willkie.com | vCard | www.willkie.com bio
>
> **From:** Julie Pettit <jpettit@pettitfirm.com>
> **Sent:** Wednesday, July 5, 2023 3:55 PM
> **To:** Levy, Joshua S. <JLevy@willkie.com>

Cc: Stancil, Mark <MStancil@willkie.com>; John A. Morris <jmorris@pszjlaw.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Subject: Re: J. Seery - Deposition Subpoena

***** EXTERNAL EMAIL *****

Hi Josh,

Lots of folks on our side are traveling, but we will get back with you by early next week.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

<image012.jpg>

On Wed, Jul 5, 2023 at 10:14 AM Levy, Joshua S. <JLevy@willkie.com> wrote:

Hi Julie. Following up about this.

Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

On Jun 30, 2023, at 5:02 PM, Levy, Joshua S. <JLevy@willkie.com> wrote:

Julie,

We'd like to schedule a call next Wednesday to discuss Jim Seery's upcoming deposition. Specifically, we'd like to discuss:

1. **Scope of Deposition.** We appreciate that you appended a list of deposition topics to the subpoena to Mr. Seery. We'd like to discuss the topics, how they affect the scope of the deposition, and the procedure for raising objections to questions that exceed that scope.
2. **Time Limits.** Because Mr. Seery is a third-party witness, we'd like to discuss the appropriate length of his deposition.
3. **Deposition Attendance.** We understand that John Morris, counsel for Highland (copied here), wants to attend the deposition and potentially raise objections under the Gatekeeper Orders entered by the Bankruptcy Court (which I've attached) to ensure discovery in the *Ellington* litigation is not used in connection with the *Highland* bankruptcy in violation of the Gatekeeper Orders.

Please let us know your availability on Wednesday for a call. I've copied counsel for Russell Nelms who plans to participate in our call because many of these same issues are relevant for Mr. Nelms' depositions.

Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Levy, Joshua S. <JLevy@willkie.com>
Sent: Tuesday, June 27, 2023 12:53 PM
To: 'Julie Pettit' <jpettit@pettitfirm.com>; Stancil, Mark <MStancil@willkie.com>
Cc: John A. Morris <jmorris@pszjlaw.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>
Subject: RE: J. Seery - Deposition Subpoena

Thanks Julie. We're aiming to make a supplemental production next week and will let you know if that timing changes.

Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Tuesday, June 27, 2023 12:44 PM
To: Stancil, Mark <MStancil@willkie.com>
Cc: John A. Morris <jmorris@pszjlaw.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Levy, Joshua S. <JLevy@willkie.com>; Brennan,

John L. <JBrennan@willkie.com>
Subject: Re: J. Seery - Deposition Subpoena

***** EXTERNAL EMAIL *****

Hi Mark,

I will be back in touch with you to confirm for sure, but it looks like July 17 will work.

Also, is there any update on the supplemental production?

Thank you.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

<image001.jpg>

On Fri, Jun 23, 2023 at 11:44 AM Julie Pettit <jpettit@pettitfirm.com> wrote:

> Hi Mark,
>
> Thank you for your email. We are working to coordinate dates with counsel with Daugherty. I will be in touch shortly, but I'm hopeful that week will work.
>
> Best Regards,
>
> Julie Pettit Greeson
>
> The Pettit Law Firm
>
> 2101 Cedar Springs, Suite 1540
>
> Dallas, Texas 75201
>
> Direct: 214-329-1846
>
> Fax: 214-329-4076
>
> jpettit@pettitfirm.com
>
> <image001.jpg>

On Thu, Jun 22, 2023 at 5:39 PM Stancil, Mark <MStancil@willkie.com> wrote:

> Ms. Garcia,
>
> I am authorized to accept service on behalf of Mr. Seery, on the understanding that we can figure out a mutually agreeable date. Mr. Seery has some international travel scheduled, but the week of July 17 is probably workable. Also, I expect we will make a small supplemental production to you shortly -- I should know by the end of next week whether/when that will be available, but I'm

confident it will be modest.

I'm also copying my colleagues, Josh Levy and John Brennan, who are working with me on this matter.

Best,

Mark

Mark T. Stancil
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1133 | Fax: +1 202 303 2000
mstancil@willkie.com | vCard | www.willkie.com bio

-----Original Message-----
From: John A. Morris <jmorris@pszjlaw.com>
Sent: Monday, June 19, 2023 7:52 PM
To: Laura M. Garcia <lgarcia@weinsteinklein.com>
Cc: Julie Pettit <jpettit@pettitfirm.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Stancil, Mark <MStancil@willkie.com>
Subject: Re: J. Seery - Deposition Subpoena

*** EXTERNAL EMAIL ***

Adding Mark Stancil, Mr. Seery's personal counsel.

We'll be in touch shortly.

Regards,

John

Sent from my iPhone

On Jun 19, 2023, at 3:36 PM, Laura M. Garcia <lgarcia@weinsteinklein.com> wrote:

John,

Please see the attached subpoena ad testificandum. Let us know if you'll accept electronic service of the attached on behalf of your client. We will send you a hard copy of the attached, as well as the witness fee for Mr. Seery, under separate cover.

Thank you,
Laura

Laura M. Garcia

D: 347.919.8422
M: 732.850.2201
lgarcia@weinsteinklein.com<mailto:lgarcia@weinsteinklein.com>

https://urldefense.com/v3/__http://www.weinsteinklein.com__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw90-x6sTw$
<https://urldefense.com/v3/__http://www.weinsteinklein.com__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw90-x6sTw$ >

<https://urldefense.com/v3/__https://www.facebook.com/WeinsteinKlein__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw_5DM4TqQ$ >

<https://urldefense.com/v3/__https://www.facebook.com/WeinsteinKlein__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw_5DM4TqQ$
><https://urldefense.com/v3/__https://twitter.com/weinstein_klein__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw8HCNXS3A$ >

<https://urldefense.com/v3/__https://twitter.com/weinstein_klein__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw8HCNXS3A$
> <https://urldefense.com/v3/__https://www.instagram.com/lg_onthelaw__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw-eNnHJHQ$ >

<https://urldefense.com/v3/__https://www.instagram.com/lg_onthelaw__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw-eNnHJHQ$
> <https://urldefense.com/v3/__https://www.linkedin.com/in/lauramgarciaesq__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw_Zse2vqQ$ >

<https://urldefense.com/v3/__https://www.linkedin.com/in/lauramgarciaesq__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw_Zse2vqQ$ >

error, please forward it back. Willkie Farr & Gallagher LLP is a limited liability partnership organized in the United States under the laws of the State of Delaware, which laws limit the personal liability of partners.

<Highland - Confirmation Order.pdf>

<Highland - Seery Retention Order.pdf>

<Highland - January Settlement Order.pdf>

<Highland - Confirmation Order (5th Cir).pdf>

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presumptively contain information that is confidential and legally privileged; email messages to non-clients are normally confidential and may also be legally privileged. Please do not read, copy, forward or store this message unless you are an intended recipient of it. If you have received this message in error, please forward it back. Willkie Farr & Gallagher LLP is a limited liability partnership organized in the United States under the laws of the State of Delaware, which laws limit the personal liability of partners.

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WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W.
Washington, DC 20006-1238

Tel: 202 303 1000
Fax: 202 303 2000

VIA EMAIL

July 14, 2023

Julie Pettit, Esq.
The Pettit Law Firm
2101 Cedar Springs, Suite 1540
Dallas, TX 75201
jpettit@pettitfirm.com

Michael K. Hurst, Esq.
Lynn Pinker Hurst & Schwegmann
2100 Ross Avenue, Suite 2700
Dallas, TX 75201
MHurst@lynnllp.com

Re: *Ellington v. Daugherty*, No. DC-22-00304 (Tex. 101st Civ. Dist. Ct.)

Dear Julie and Michael:

On behalf of non-party James P. Seery, Jr., you will soon receive an FTP link to a supplemental document production containing 21 documents bearing Bates numbers JPS/Ell-018081 through JPS/Ell-018118. This production contains documents responsive to Plaintiff Scott Ellington's *Subpoena Duces Tecum*, dated November 3, 2022 (the "Subpoena"), in the above-captioned action (the "Action"), as modified by Mr. Seery's objections and the parties' conferrals.

The enclosed supplemental production contains responsive, nonprivileged text messages between Mr. Seery and Defendant Patrick Daugherty that were collected by an e-discovery firm based on a forensic examination of Mr. Seery's Apple devices, including his iPhone, iPad, and Macbook computers, and iCloud storage. Certain documents in this production are being produced with redactions to the extent they contain information that is not responsive to the Subpoena.

All documents in this production are stamped "CONFIDENTIAL" and should be treated as such. Specifically, these documents may be used only in connection with this Action, may not be shared with anyone other than the attorneys in this Action, and may not be filed with any court without prior approval.

The password for accessing the production will be sent under separate cover. If you have questions concerning this production, please call me at (202) 303-1147.

Regards,

/s/ Joshua S. Levy

Joshua S. Levy

cc (via email): Mark T. Stancil
John L. Brennan
Willkie Farr & Gallagher LLP
1875 K Street, N.W.
Washington, DC 20006-1238
mstancil@willkie.com
jbrennan@willkie.com

Damien H. Weinstein
Laura M. Garcia
Weinstein & Klein P.C.
1 High Street Court, Suite 5
Morristown, NJ 07960
dweinstein@weinsteinklein.com
lgarcia@weinsteinklein.com

Ruth Ann Daniels, Esq.
Andrew K. York, Esq.
Drake M. Rayshell, Esq.
Gray Reed
1601 Elm Street, Suite 4600
Dallas, TX 75201
rdaniels@grayreed.com
dyork@grayreed.com
drayshell@grayreed.com

Rick Wynne
Michael C. Hefter
Hogan Lovells US LLP
1999 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
rick.wynne@hoganlovells.com
michael.hefter@hoganlovells.com

From: Levy, Joshua S.
Sent: Tuesday, July 25, 2023 3:17 PM
To: 'Julie Pettit'; Stancil, Mark
Cc: Michael K. Hurst; Laura M. Garcia; Damien H. Weinstein; sxu@lynnllp.com; BCongdon@lynnllp.com; mnaudin@lynnllp.com; blayne.thompson@hoganlovells.com; Hefter, Michael C.; Wynne, Rick; McNeilly, Edward; rdaniels@grayreed.com; dyork@grayreed.com; drayshell@grayreed.com; Burr, Lori; Brennan, John L.; 'John A. Morris'
Subject: RE: Ellington v. Daugherty, No. DC-22-00304

Julie,

Thanks for getting back to us and explaining your theory of relevance. We do not agree with your theory, nor, in any event, are we aware of any "evidence" suggesting that the Highland Estate, restructured Highland, or Jim Seery provided Patrick Daugherty with any additional settlement consideration in exchange for information regarding Scott Ellington.

To the contrary, the Bankruptcy Court record sets forth the precise reasons for the "additional settlement consideration" above the amounts announced in court on February 2, 2021. Specifically, the 9019 Motion specified that additional consideration was added to the final settlement amount to address "the increased risk to the Debtor arising from the post-confirmation discovery and disclosures related to Sentinel," with which your client is intimately familiar. Indeed, in his objections to the Daugherty settlement, Mr. Ellington represented to the Bankruptcy Court that "Ellington has no reason to believe that HCMLP was aware of the alleged activities of Daugherty or the allegations raised in the Ellington Action at the time HCMLP entered into the Settlement Agreement."

Moreover, these allegations regarding settlement with Mr. Daugherty are not legitimately related to the "stalking" claims alleged in Texas state court. In briefing in support of his motion to remand, Mr. Ellington represented to the Bankruptcy Court that "the Daugherty Settlement has no bearing on the merits of Ellington's stalking and invasion of privacy claims," and "the State Court Action does not even mention the Daugherty Settlement." To the extent Mr. Ellington is now seeking discovery regarding the settlement, this constitutes "pursuit" of claims against Highland and/or Mr. Seery without leave of the Bankruptcy Court in violation of the Bankruptcy Court's Gatekeeping Orders.

Be advised that Mr. Ellington is bound by the Plan, the Plan Injunction, and the Gatekeeping Orders. Be further advised that Mr. Seery, Highland, and the Claimant Trust take these matters seriously and will enforce all rights and seek appropriate sanctions.

In any event, the redacted information does not relate to any allegations in your stalking lawsuit or even any settlement negotiations between Mr. Daugherty and Mr. Seery, so we appear to agree that it is irrelevant and therefore appropriately redacted. In light of your latest (albeit erroneous) theory concerning the Daugherty settlement, please copy John Morris on all communications since his clients have now been indisputably implicated in this matter.

Regards,
Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Monday, July 24, 2023 8:22 PM
To: Stancil, Mark <MStancil@willkie.com>
Cc: Levy, Joshua S. <JLevy@willkie.com>; Michael K. Hurst <MHurst@lynnllp.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; sxu@lynnllp.com; BCongdon@lynnllp.com; mnaudin@lynnllp.com; blayne.thompson@hoganlovells.com; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; rdaniels@grayreed.com; dyork@grayreed.com; drayshell@grayreed.com; Burr, Lori <LBurr@willkie.com>; Brennan, John L. <JBrennan@willkie.com>
Subject: Re: Ellington v. Daugherty, No. DC-22-00304

***** EXTERNAL EMAIL *****

Mark,

The production provided by Mr. Daugherty, Mr. Seery, and others in this matter suggests the factual conclusion that the Highland Estate provided Mr. Daugherty with additional settlement consideration in exchange for information on Mr. Ellington.

We believe that Mr. Daugherty and Mr. Seery's communications regarding settlement of Mr. Daugherty's proof of claim in the Highland bankruptcy are relevant to the factual issues that will be tried in this matter. To the extent that the redacted communications relate in any way to the negotiations between Mr. Daugherty and Mr. Seery, as a representative of the Highland Estate, please produce those communications.

While we do not believe it necessary, we can always amend our live petition as needed to give you comfort that that you are producing relevant and responsive materials.

Best Regards,

Julie Pettit Greeson
The Pettit Law Firm
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Direct: 214-329-1846
Fax: 214-329-4076
jpettit@pettitfirm.com

On Mon, Jul 24, 2023 at 5:59 PM Stancil, Mark <MStancil@willkie.com> wrote:

> The redacted material is not responsive to any request and is unrelated to Mr. Ellington or the allegations in your complaint. As such, the redacted material is beyond the scope of any legitimate inquiry directed to Mr. Seery. If you nonetheless intend to serve an additional subpoena, please note that we reserve the right to seek relief including but not limited to sanctions under the Gatekeeping Order. In our view, seeking materials beyond those related to "stalking" would exceed the scope of reasonable discovery directed to Mr. Seery as a third-party and would constitute the "pursuit" of claims against Mr. Seery or other covered parties without leave of the Bankruptcy Court.

Mark

Mark T. Stancil
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1133 | Fax: +1 202 303 2000
mstancil@willkie.com | vCard | www.willkie.com bio

From: Stancil, Mark <MStancil@willkie.com>
Sent: Monday, July 24, 2023 11:42 AM
To: 'Julie Pettit' <jpettit@pettitfirm.com>; Levy, Joshua S. <JLevy@willkie.com>
Cc: Michael K. Hurst <MHurst@lynnllp.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; sxu@lynnllp.com; BCongdon@lynnllp.com; mnaudin@lynnllp.com; blayne.thompson@hoganlovells.com; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; rdaniels@grayreed.com; dyork@grayreed.com; drayshell@grayreed.com; Burr, Lori <LBurr@willkie.com>; Brennan, John L. <JBrennan@willkie.com>
Subject: RE: Ellington v. Daugherty, No. DC-22-00304

We will try to get back to you by EOD today, or tomorrow morning latest.

Mark T. Stancil
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1133 | Fax: +1 202 303 2000
mstancil@willkie.com | vCard | www.willkie.com bio

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Monday, July 24, 2023 11:40 AM
To: Levy, Joshua S. <JLevy@willkie.com>
Cc: Michael K. Hurst <MHurst@lynnllp.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; sxu@lynnllp.com; BCongdon@lynnllp.com; mnaudin@lynnllp.com; blayne.thompson@hoganlovells.com; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; Stancil, Mark <MStancil@willkie.com>; rdaniels@grayreed.com; dyork@grayreed.com; drayshell@grayreed.com; Burr, Lori <LBurr@willkie.com>; Brennan, John L. <JBrennan@willkie.com>
Subject: Re: Ellington v. Daugherty, No. DC-22-00304

Hi Josh,

Do you have an update on this?

Thank you.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Thu, Jul 20, 2023 at 2:41 PM Levy, Joshua S. <JLevy@willkie.com> wrote:

> Hi Julie,
>
> We disagree that any of the redacted material is relevant or responsive, but we're reviewing and will discuss with our client to see whether we will voluntarily produce this material.

Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Wednesday, July 19, 2023 2:15 PM
To: Levy, Joshua S. <JLevy@willkie.com>
Cc: Michael K. Hurst <MHurst@lynnllp.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; sxu@lynnllp.com; BCongdon@lynnllp.com; mnaudin@lynnllp.com; blayne.thompson@hoganlovells.com; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; Stancil, Mark <MStancil@willkie.com>; rdaniels@grayreed.com; dyork@grayreed.com; drayshell@grayreed.com; Burr, Lori <LBurr@willkie.com>; Brennan, John L. <JBrennan@willkie.com>
Subject: Re: Ellington v. Daugherty, No. DC-22-00304

***** EXTERNAL EMAIL *****

Hi Josh,

We are in receipt of the text messages you produced. Given the context and scope of the communications between Mr. Seery and Mr. Daugherty that you did produce, we do not see how the redacted texts could truly be nonresponsive.

In any event, if you stand by your assertion that the redacted texts are nonresponsive, we intend to serve a new subpoena that would include any and all of the redacted texts.

For the sake of efficiency, can you confirm that you will either (1) simply produce the redacted text messages so we can avoid this exercise; or (2) accept service of a revised document subpoena.

Please advise.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Fri, Jul 14, 2023 at 4:22 PM Brennan, John L. <JBrennan@willkie.com> wrote:

> Counsel:
>
> Please see the attached correspondence.
>
> Regards,
>
> **John L. Brennan**
> **Willkie Farr & Gallagher LLP**
> 787 Seventh Avenue | New York, NY 10019-6099
> Direct: +1 212 728 8187 | Fax: +1 212 728 8111
> jbrennan@willkie.com | vCard | www.willkie.com bio
>
> ---
>
>

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CAUSE NO. DC 22-00304

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	**101st JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

DEFENDANT'S RESPONSE TO PLAINTIFF'S FOURTH MOTION TO COMPEL

TO THE HONORABLE STACI WILLIAMS:

Defendant Patrick Daugherty ("Daugherty") files this Response ("Response") to Plaintiff Scott Byron Ellington's ("Ellington") Fourth Motion to Compel ("Ellington's Fourth MTC").

I. INTRODUCTION

1. Ellington's Fourth MTC is simply another shameless gambit to gather otherwise impermissible discovery for use in concurrent bankruptcy proceedings. This case has never been about Ellington's specious allegations of (1) Stalking under Tex. Civ. Prac. & Rem. Code § 85.003, or (2) Invasion of Privacy by Intrusion. Rather, Ellington is openly pursuing backdoor discovery for use in the bankruptcy proceeding and in the process has made a mockery of the Texas Rules of Civil Procedure—Ellington's Fourth MTC seeks discovery far beyond this litigation's scope of relevance.

2. The Court need not look further than James Seery's ("Seery") role in the concurrent bankruptcy proceedings and Daugherty and Ellington's opposed interests there and in other forums to see through Ellington's ruse. Even Seery's counsel challenges Ellington's improper tactics and threatened sanctions for Ellington's improper discovery tactics. *See* Pl's Fourth MTC at ¶ 11 ("counsel for Seery took several days to think about his response, and then stated… the messages

were actually *not* relevant, and he then threatened to seek sanctions against Plaintiff if he refused to drop the issue."). Ellington incorrectly alleges he is entitled to every communication or document merely referencing "Ellington" regardless of its connection to the claims Ellington has pled in this litigation. The scope of permissible discovery in this litigation is limited by relevance to the claims and defenses asserted herein.

3. Daugherty has repeatedly argued since the outset that this litigation is an unjust charade brought for the inappropriate purpose of drawing out information otherwise subject to gatekeeping orders in the bankruptcy court.[1] Ellington's Fourth MTC is a textbook illustration of this point. Daugherty, therefore, respectfully requests this Court deny Ellington's motion in its entirety.

II. FACTUAL BACKGROUND

4. On May 15, 2022, Ellington served his First Requests for Production ("First RFPs"), Requests Nos. 1 to 8. *See* Ex. A. In good-faith compliance with the Texas Rules of Civil Procedure, Daugherty responded on June 14, 2022, with written and responses and objections. *See* Tex. R. Civ. P. 193.2; Ex B. By July 11, 2022, Daugherty produced hundreds of relevant and responsive documents and communications, including text messages with Seery. Exs. C, D. On August 29, 2022, in compliance with this Court's August 25 Order, Daugherty produced roughly 18,000 pages of additional responsive documents to Ellington's First RFPs. Ex. E.

5. On September 8, 2022, Ellington served his Third Requests for Production ("Third RFPs"). Daugherty timely served his objections and responses to the same on October 10, 2022. *See* Ex. F. Daugherty lodged proper objections to Ellington's requests for documents and

[1] *See e.g.*, Non-Party Hon. Russell F. Nelms (Ret.) Motion to Quash Subpoena for the Deposition of Non-Party Honorable Russell Nelms (filed June 20, 2023); *see also e.g.*, Non-Party Honorable Russell E. Nelms's (Ret.) Motion to Quash (filed August 25, 2023).

communications exchanged with Seery on mulitple grounds, including relevance and overbreadth. *Id.* Daugherty further directed Ellington to Daugherty's prior productions, which (subject to Daugherty's good-faith objections) ultimately contained all the relevant and responsive documents Daugherty identified. *Id.*

6. In November of 2022, Ellington served Seery with a subpoena duces tecum seeking, *inter alia*, every document and communication exchanged with Daugherty merely referencing Scott Byron Ellington:

> **C. REQUESTS FOR PRODUCTION**
>
> **Please produce the following:**
>
> 1. **Any and all communications and documents from or between You and Daugherty relating to Scott Byron Ellington.**

See Ex. G; *see also* Pl's Fourth MTC at ¶ 3. Ellington now argues that Seery's and Daugherty's productions are insufficient. Pl's Fourth MTC at ¶¶ 8, 12. Ellington's argument fails. The documents and communications produced by Daugherty and Seery already far exceed the bounds of relevance to the claims in this litigation. Ellington simply seeks more information he can use to further his agenda in other forums.[2] This Court should rebuff Ellington's improper pursuit by denying Ellington's Fourth MTC in its entirety.

III. STANDARD

7. Though the scope of discovery is broad, it has boundaries. It is limited by legitimate interests in avoiding overly broad requests. *In re Nat'l Lloyds Life Ins. Co.*, 449 S.W.3d 486, 488

[2]This fact is evidenced by the use of Seery's responses to Ellington's Subpoena Duces Tecum issued in this Litigation as the basis, in part, for a Motion to Preserve Evidence and Compel the Forensic Imaging of James P. Seery's Phone in an adversary proceeding before the United States Bankruptcy Court for the Northern District of Texas Dallas Division. *See e.g.*, Ex. H (Dkt. #3802, Case No. 19-34054-sgj); Ex. I (Dkt. #3807, Case No. 19-34054-sgj).

(Tex. 2014) (orig. proceeding) (per curiam); *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 553 (Tex. 1990) (orig. proceeding).

8. Irrelevant information is not discoverable. *See* Tex. Rule of Civ. P. 192.3(a); *see also In re Nat'l Lloyds Life Ins. Co.*, 532 S.W.3d 794, 816 (Tex. 2017) (orig. proceeding) (per curiam) (holding documents that are "irrelevant … [are] not discoverable"); *In re Union Pac. Res. Co.*, 22 S.W3d 338, 341 (Tex. 1999) (orig. proceeding) (per curiam) (holding that information was irrelevant, and therefore not discoverable); *In re Sun Coast Resources, Inc.*, 562 S.W.3d 138, 150 (Tex. App.—Houston [14th Dist.] 2018, no pet.) (overturning portion of trial court's order for production of documents that were irrelevant).

9. As such, discovery requests "must be reasonably tailored to include only matters relevant to the case." *In re Jay Mgmt. Co., LLC*, Cause No. 09-19000159-CV, 2019 WL 3720102, at *4 (Tex. App.—Beaumont Aug. 8, 2019, no pet. h.) (quoting *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 180 (Tex. 1999) (orig. proceeding)); *see also In re Nat'l Lloyds*, 449 S.W.3d at 488 (same). A discovery request or order is "overbroad if it could have been more narrowly tailored to avoid including superfluous information." *In re Toyota Motor Sales, U.S.A., Inc.*, Cause No. 05-18-007340-CV, 2018 WL 3484280, at *2 (Tex. App.—Dallas July 19, 2018, no pet.) (quoting *In re CSX Corp.*, 124 S.W.3d 149, 153 (Tex. 2003) (orig. proceeding) (per curiam)).

10. "Overbroad requests for irrelevant information are improper whether they are burdensome or not[.]" *In re Jay*, 2019 WL 3720102, at *4 (quoting *In re Allstate Cty. Mut. Ins. Co.*, 227 S.W.3d 667, 670 (Tex. 2007) (orig. proceeding)); *In re Nat'l Lloyds*, 449 S.W.3d at 488. And a "discovery order that compels production beyond the rules of procedure is an abuse of discretion for which mandamus is the proper remedy." *Id.* (citing *In re Deere & Co.*, 299 S.W.3d 819, 820 (Tex. 2009) (orig. proceeding) (per curiam)).

11. Crucially, "[l]imits on time and location will not render irrelevant information discoverable." *In re Jay*, 2019 WL 3720102, at *4 (citing *In re Nat'l Lloyds Ins. Co.*, 449 S.W.3d at 488-89).

IV. ARGUMENT AND AUTHORITIES

A. DAUGHERTY STANDS ON HIS SUSTAINED GOOD-FAITH OBJECTIONS TO ELLINGTON'S DISCOVERY REQUESTS.

12. Daugherty lodged proper relevance and overbreadth objections to Ellington's Request for Production No. 15 seeking documents and communications Daugherty exchanged with Seery. Ex. F. Daugherty also directed Ellington to Daugherty's prior productions for relevant and responsive documents to the same. *Id.* Tellingly, in his brief, Ellington does not articulate a reason why Daugherty's objections and responses to Ellington's request are unfounded or incorrect. Instead, referencing the Court's August 25 Order, Ellington relies on a blanket characterization of this Court's order as requiring "Daugherty to produce all documents in connection with his investigation." Pl's Fourth MTC at p. 5. Daugherty complied when he identified and produced over 18,000 pages of documents that were responsive to those requests despite many of the documents' tangential relationship, if any, to the relevant matters in this dispute. Exs. E, J.

13. As relevant here, Daugherty's objections to Ellington's Third RFPs were sustained by this Court's November 7, 2022 Order denying Ellington's Second Amended Motion to Compel requested relief on his Third Requests for Production. Ex. K.

REQUEST FOR PRODUCTION NO. 15: All documents and communications referencing any Ellington Party, Ellington Location, or Ellington Recording sent to and received from with Jim Seery.

RESPONSE: Daugherty objects to this Request on the basis that it seeks information not relevant and material to Ellington's allegations and claims of Stalking and Invasion of Privacy, nor reasonably calculated to lead to the discovery of admissible evidence, as the Request seeks "[a]ll documents and communications referencing any Ellington Party, Ellington Location," regardless of whether such documents and communications (1) relate to Ellington's claims asserted in this litigation, (2) were communicated in connection with one or more other wholly-unrelated cases proceeding concurrently in other Federal and State courts where Ellington and/or his associates are named-parties, or (3) something else entirely.

Daugherty further objects to this Request on the basis that it is overly broad and constitutes an impermissible fishing expedition as it seeks information completely unrelated to Ellington's claims asserted in this litigation.

Daugherty also adopts and incorporates by reference, as if fully set forth herein, his objections to the definitions of the terms "Ellington Party," "Ellington Location," and "Ellington Recordings."

Daugherty objects to the time and place for production. Subject to the foregoing objection(s) and without waiving the same, Daugherty will produce copies of responsive documents, if any, within his possession, custody, or control on a rolling basis.

Additionally, please see Daugherty's previous productions which contain documents responsive to this request.

Ex. F. Accordingly, Daugherty continues to stand on those objections in good faith. [3]

14. Ellington wants to have his cake and eat it too. Despite asserting throughout this litigation that Daugherty's "supposed motivations" for conducting the investigation are somehow irrelevant,[4] Ellington then wants to discover information beyond the activities Daugherty engaged

[3]The November 7, 2022 Order denied Plaintiff's requested relief on his First Three Sets of Requests for Production (Requests Nos. 1-35) and Interrogatories Nos. 1 – 12. *Compare* Plaintiff's Second Amended Motion to Compel Production and Independent Forensic Review and Collection of Defendant Patrick Daugherty's Documents (Filed November 1, 2022) at 2 ("Plaintiff requests that the Court overrule all of Defendant's objections for all three sets of Requests for Production… Plaintiff requests that the Court overrule all of Defendant's objections for two sets of Interrogatories [(encompassing Interrogatories 1 through 12)]") *with* Ex. K (This Court's November 7, 2022 Order denying Ellington's requested relief on his Requests for Production and Interrogatories).

[4]Ellington's statement is a mischaracterization of Daugherty's defense. In order for Ellington to establish the elements of his claims, Ellington must objectively and subjectively show that a reasonable person in his situation would have perceived Daugherty's behavior as "harassing" or as an "intrusion." Daugherty is therefore entitled to establish the

in during his investigation, he wants to know the results of Daugherty's investigation. Ellington's position defies logic. Stated another way, Ellington argues that the scope of discovery in this matter somehow excludes anything that may be exculpatory for Daugherty in this litigation (to date, Ellington has only produced *six* documents), and then argues relevant discovery somehow includes anything and everything Ellington believes will further his interests in other forums regardless of relevance to his claims in this dispute.

B. DAUGHERTY PRODUCED THE *ACTUALLY* RELEVANT AND RESPONSIVE DOCUMENTS TO ELLINGTON'S REQUESTS.

15. Ellington continually misrepresents to the Court the state of discovery in this matter. In his motion, Ellington states that "[Daugherty] and Seery produced different sets of documents in response to essentially the same requests." Pl's Fourth MTC at p. 1. Ellington then states "[Seery] produced for the first-time text messages with [Daugherty] . . . [o]f course, [Daugherty] produced *none of these messages*, redacted or otherwise." Ellington's statements are patently false. *Id. at 1-2.*

16. More than a year ago, on July 11, 2022,[5] Daugherty produced the relevant and responsive text messages exchanged with Seery that he identified as responsive to Ellington's First RFPs. *See* Exs. C, D. Those text messages were produced at Daugherty's bates labels DEF 236 – DEF 240, DEF 243, DEF 246, DEF 247. *Id.* Daugherty's produced texts overlap with Seery's production. *Compare id. with* Pl's Fourth MTC at Ex. D. Ellington's statements to the contrary are false. The truth is, in good-faith compliance with his discovery obligations, Daugherty

reasoning for his investigation as a defense to Ellington's claims. Ellington acknowledges the same with his Request for Production No. 7 "All documents and communications sufficient to show the reasoning behind Your decision to record, observe, surveil, and investigate the Ellington Parties and Locations." Ex. A.

[5]As further evidence of Daugherty's good-faith compliance with his discovery obligations throughout this litigation, Daugherty produced these texts over a month before this Court's August 25, 2022 order compelling production.

produced the text messages he identified that were *actually* relevant and responsive to Ellington's requests based on the allegations in this litigation, those texts simply did not satisfy Ellington's desire for backdoor discovery. *See e.g.*, Exs. C, D, and E.

17. Any supposed "asymmetry" Ellington relies upon between Daugherty and Seery's production to support Ellington's Fourth MTC is misplaced. Ellington argues that he "specifically requested all communications with Seery regarding *Plaintiff*[6] be produced." Pl's Fourth MTC at ¶ 6 (emphasis added). Nearly all of the text messages that Seery produced and Ellington points to in support of his arguments have nothing to do with the allegations in this litigation. In fact, to the extent Daugherty identified any communications between Seery and Daugherty that were *actually* relevant to Ellington's claims, Daugherty has produced them. *See e.g.*, Ex. D.

C. RELEVANCE CONTROLS — ELLINGTON OPENLY SEEKS DOCUMENTS OUTSIDE THE SCOPE OF RELEVANT DISCOVERY.

18. The object of Ellington's Fourth MTC is documents and communications exchanged between Daugherty and Seery, who is the current CEO of Highland Capital Management (the debtor-entity in concurrent bankruptcy proceedings). *See generally* Pl's Fourth MTC. This time, Ellington goes so far as to admit the discovery he seeks is outside his pled causes of action. In communications with Seery's counsel, Ellington's counsel tacitly admits the discovery sought falls outside of Ellington's claims in this litigation stating, "[w]hile we do not believe it necessary, *we can always amend our live petition as needed to give you comfort that that*

[6]Interestingly, the first sentence of Ellington's brief states "Plaintiff sued Defendant for stalking and otherwise harassing him and *his family*." Pl's Fourth MTC at ¶ 1 (emphasis added). Yet, tellingly, in both his brief and proposed order, the only communications Ellington seeks between Seery and Daugherty are those referencing himself. Why? Because this case is about gathering discovery for use in the bankruptcy proceedings, not an effort to support his baseless claims for stalking or invasion of privacy.

[sic] *you are producing relevant and responsive materials*." Pl's Fourth MTC at Ex. D (emphasis added).

19. In the same email, Ellington's counsel further confessed the true purpose behind seeking discovery of communications exchanged between Seery and Daugherty by lodging a veiled threat at Seery, "[t]he production provided by Mr. Daugherty, Mr. Seery, and others in this matter *suggests* the factual conclusion that the Highland Estate provided Mr. Daugherty with additional settlement consideration in exchange for information on Mr. Ellington." *Id.* (emphasis added). Though patently false, assuming *arguendo* that any basis for Ellington's "suggested" factual conclusion existed, it would have nothing to do with Ellington's pled allegations of stalking and invasion of privacy by intrusion. Put plainly, Ellington seeks to have this Court bless an impermissible fishing expedition.

20. To the extent Ellington argues communications with third parties, Seery or otherwise, are relevant simply because of the names included therein, his arguments fail. The scope of relevant discovery in this dispute cannot reasonably be determined to include every mention of "Ellington" or another name found in this dispute regardless of connection to the claims herein, particularly given (1) the context of stalking and invasion of privacy by intrusion claims in this lawsuit; (2) concurrent proceedings in the Northern District Bankruptcy Court; and (3) the multiple lawsuits across multiple forums between Daugherty and Ellington or his cohorts. Ellington should not be permitted to utilize this case as leverage to gain impermissible backdoor discovery in bankruptcy proceedings or elsewhere.

21. Therefore, based on the foregoing, Daugherty respectfully requests the Court deny Ellington's Fourth MTC in its entirety.

PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant Patrick Daugherty prays the Court denies Plaintiff's Fourth Motion to Compel in its entirety, and for all further relief, at law or in equity, the Court deems necessary.

Respectfully submitted,

GRAY REED

By: */s/ Andrew K. York*

RUTH ANN DANIELS
State Bar No. 15109200
rdaniels@grayreed.com
ANDREW K. YORK
State Bar No. 24051554
dyork@grayreed.com
DRAKE M. RAYSHELL
State Bar No. 24118507
drayshell@grayreed.com

1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332

ATTORNEYS FOR PATRICK DAUGHERTY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was duly furnished to the following counsel of record (1) through the electronic filing manager (www.efiletexas.gov), and/or (2) via e-mail on this 29th day of August 2023:

Julie Pettit
jpettit@pettitfirm.com
David B. Urteago
durteago@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201

Michael K. Hurst
mhurst@lynnllp.com
Mary Goodrich Nix
mnix@lynnllp.com
Michele Naudin
mnaudin@lynnllp.com
Nathaniel Plemons
nplemons@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN, LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201

ATTORNEYS FOR PLAINTIFF

/s/ Andrew K. York
ANDREW K. YORK

CAUSE NO. DC-22-00304

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
	§	
v.	§	**101ST JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

ORDER GRANTING PLAINTIFF'S FOURTH MOTION TO COMPEL

Before the Court is "Plaintiff's Fourth Motion to Compel" filed on August 21, 2023 (the "Motion"). After considering the Motion, the Response, the arguments of counsel, and all evidence properly before the Court, the Court finds that the Motion should be GRANTED.

IT IS THEREFORE ORDERED that the Motion is GRANTED.

IT IS FURTHER ORDERRED THAT Defendant shall produce all text messages with James Seery regarding Plaintiff, including the unredacted versions of the text messages already produced by James Seery within ~~7~~ 15 (fifteen) days of the date of this Order.

SIGNED this 1st day of September, 2023.

JUDGE STACI WILLIAMS

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

Signed January 9, 2020

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
Debtor.	§	Related to Docket Nos. 7 & 259

ORDER APPROVING SETTLEMENT WITH OFFICIAL COMMITTEE OF UNSECURED CREDITORS REGARDING GOVERNANCE OF THE DEBTOR AND PROCEDURES FOR OPERATIONS IN THE ORDINARY COURSE

Upon the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* (the "Motion"),[2] filed by the above-captioned debtor and debtor in possession

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

(the "Debtor"); the Court having reviewed the Motion, and finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), and (c) notice of this Motion having been sufficient under the circumstances and no other or further notice is required; and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and having determined that the relief sought in the Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on the terms and conditions set forth herein, and the United States Trustee's objection to the Motion is OVERRULED.

2. The Term Sheet is approved and the Debtor is authorized to take such steps as may be necessary to effectuate the settlement contained in the Term Sheet, including, but not limited to: (i) implementing the Document Production Protocol; and (ii) implementing the Protocols.

3. The Debtor is authorized (A) to compensate the Independent Directors for their services by paying each Independent Director a monthly retainer of (i) $60,000 for each of the first three months, (ii) $50,000 for each of the next three months, and (iii) $30,000 for each of the following six months, provided that the parties will re-visit the director compensation after the sixth month and (B) to reimburse each Independent Director for all reasonable travel or other expenses, including expenses of counsel, incurred by such Independent Director in connection with its service as an Independent Director in accordance with the Debtor's expense reimbursement policy as in effect from time to time.

4. The Debtor is authorized to guarantee Strand's obligations to indemnify each Independent Director pursuant to the terms of the Indemnification Agreements entered into by Strand with each Independent Director on the date hereof.

5. The Debtor is authorized to purchase an insurance policy to cover the Independent Directors.

6. All of the rights and obligations of the Debtor referred to in paragraphs 3 and 4 hereof shall be afforded administrative expense priority under 11 U.S.C. § 503(b).

7. Subject to the Protocols and the Term Sheet, the Debtor is authorized to continue operations in the ordinary course of its business.

8. Pursuant to the Term Sheet, Mr. James Dondero will remain as an employee of the Debtor, including maintaining his title as portfolio manager for all funds and investment vehicles for which he currently holds that title; provided, however, that Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors and Mr. Dondero shall receive no compensation for serving in such capacities. Mr. Dondero's role as an employee of the Debtor will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero shall resign immediately upon such determination.

9. Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor.

10. No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent

Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

11. Nothing in the Protocols, the Term Sheet or this Order shall affect or impair Jefferies LLC's rights under its Prime Brokerage Customer Agreements with the Debtor and non-debtor Highland Select Equity Master Fund, L.P., or any of their affiliates, including, but not limited to, Jefferies LLC's rights of termination, liquidation and netting in accordance with the terms of the Prime Brokerage Customer Agreements or, to the extent applicable, under the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code. The Debtor shall not conduct any transactions or cause any transactions to be conducted in or relating to the Jefferies LLC accounts without the express consent and cooperation of Jefferies LLC or, in the event that Jefferies withholds consent, as otherwise ordered by the Court. For the avoidance of doubt, Jefferies LLC shall not be deemed to have waived any rights under the Prime Brokerage Customer Agreements or, to the extent applicable, the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code, and shall be entitled to take all actions authorized therein without further order of the Court

12. Notwithstanding any stay under applicable Bankruptcy Rules, this Order shall be effective immediately upon entry.

13. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order, including matters related to the Committee's approval rights over the appointment and removal of the Independent Directors.

END OF ORDER

Docket #0854 Date Filed: 07/16/2020

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 July 16, 2020

United States Bankruptcy Judge

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

In re:	§	
	§	**Case No. 19-34054**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Chapter 11**
	§	**Re: Docket No. 774**
Debtor.	§	

ORDER APPROVING DEBTOR'S MOTION UNDER BANKRUPTCY CODE SECTIONS 105(a) AND 363(b) AUTHORIZING RETENTION OF JAMES P. SEERY, JR., AS CHIEF EXECUTIVE OFFICER, CHIEF RESTRUCTURING OFFICER, AND FOREIGN REPRESENTATIVE NUNC PRO TUNC TO MARCH 15, 2020

Upon the *Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc To March 15, 2020* (the "Motion"),[1] and the

[1] All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.

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Court finding that: (i) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iv) due and sufficient notice of the Motion has been given; (v) entry into the Agreement was an exercise of the Debtor's sound business judgment; and (vi) it appearing that the relief requested in the Motion is necessary and in the best interests of the Debtor's estate and creditors; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, and DECREED that:

1. The Motion is **GRANTED**.

2. Pursuant to sections 363(b) and 105(a) of the Bankruptcy Code, the Agreement attached hereto as **Exhibit 1** and all terms and conditions thereof are approved, *nunc pro tunc* to March 15, 2020.

3. The Debtor is hereby authorized to enter into and perform under the Agreement.

4. The Debtor is authorized to indemnify Mr. Seery pursuant to the terms of the Agreement. Mr. Seery is also entitled to any indemnification or other similar provisions under the Debtor's existing or future insurance policies, including any policy tails obtained (or which may be obtained in the future), by the Debtor. The Debtor and Strand are authorized to enter into any agreements necessary to execute or implement the transactions described in this paragraph. For avoidance of doubt and notwithstanding anything to the contrary in this Order, Mr. Seery shall be entitled to any state law indemnity protections to which he may be entitled under applicable law.

5. No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

6. Notwithstanding anything in the Motion, the Agreement or the Order to the contrary, the Agreement shall be deemed terminated upon the effective date of a confirmed plan of reorganization unless such plan provides otherwise.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation and/or implementation of this Order.

9. The Foreign Representative Order is hereby amended to substitute James P. Seery, Jr., as the chief executive officer, in place of Bradley S. Sharp, as the Debtor's Foreign Representative, Bermuda Foreign Representative and Cayman Foreign Representative. All other provisions of the Foreign Representative Order shall remain in full force and effect.

###END OF ORDER###

EXHIBIT 1

Engagement Agreement

[redacted]

June 23, 2020

CONFIDENTIAL

The Board of Directors of Strand Advisors, Inc.
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Highland Capital Management L.P. (the "Company")

Dear Fellow Board Members:

This letter agreement ("Agreement") sets forth the terms and conditions of the engagement of the undersigned James P. Seery, Jr. ("I", "me" or "my"), as Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO"), effective as of March 15, 2020 (the "Commencement Date "), by the Company and its affiliates to perform financial advisory services as detailed below.

I appreciate the trust you have placed in me by asking me to assume these roles and thank you for the opportunity to continue to work with you to restructure the Company.

Roles:

I will serve as the CEO and CRO of the Company during its Chapter 11 bankruptcy case (the " Bankruptcy Case") currently pending in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court").

In those roles, I will be responsible for overall management of the business of the Company in Chapter 11 including, directing the reorganization and restructuring of the Company, monetization of assets, resolution of claims, development and negotiation of a plan of reorganization or liquidation, and implementation of such a plan.

My direct reports will include the individuals at the Company that currently report to the Board of Directors of Strand Advisors, Inc. (the "Board") or such other individuals employed by the Company as I determine should report to directly to me. In the event that the Board determines to restructure the reporting lines or functions of the Company, my direct reports will be amended in accordance with the Board approved restructuring.

At all times, I will remain a full member of the Board entitled to vote on all matters other than those on which I am conflicted.

I will devote as much time to this engagement as I determine is required to execute my responsibilities as CEO and CRO. I will have no specific on-site requirements in Dallas, but will be on site as much as I determine is necessary to execute my responsibilities as CEO and CRO, consistent with Covid-19 orders applicable to Dallas and New York City.

Limitations on Services

My services under this engagement are limited to those specifically noted in this Agreement and do not include legal, accounting, or tax-related assistance or advisory services. For the avoidance of doubt, I am not providing any legal services in connection with this engagement and will have not any duties as a lawyer to the Company, the Board, or any of the Company's employees. The accuracy and completeness of all information submitted to me by the Company are the sole responsibility of the Company, and I will be entitled to rely on such information without independent investigation or verification.

In my role as CEO and CRO, I will act as an independent professional contractor to the Company and will not be an employee of the Company. I will provide and pay for my own benefits, including medical benefits, by J.P Seery & Co. LLC or otherwise.

Fees and Expenses:

In consideration of my acceptance of this engagement and performance of the services pursuant to this Agreement, the Company shall pay the following:

1. Compensation for Services:
    a. Base Compensation: As compensation for my services as CEO and CRO of the Company, the Company shall pay me $150,000.00 per calendar month ("Base Compensation"). Base Compensation shall be due and payable at the start of each calendar month. Consistent with current Board compensation practice, invoices rendered by me to the Company are due and payable by the Company on receipt. Payment of the Base Compensation will be retroactive to March 15, 2020.
    b. Bonus Compensation/Restructuring Fee:
        i. The Company has agreed to pay me a restructuring fee upon confirmation of either a Case Resolution Plan or a Monetization Vehicle Plan in each case as defined below (the "Restructuring Fee").
        ii. Case Resolution Restructuring Plan
            1. On confirmation of any plan or reorganization or liquidation based on resolution of a material amount of the outstanding claims and their respective treatment, even if such plan includes (x) a debtor/creditor trust or similar monetization and claims resolution vehicle, (y) post-confirmation litigation of certain of the claims, and (z) post-confirmation monetization of debtor assets (a "Case Resolution Plan"):
                a. $1,000,000 on confirmation of the Case Resolution Plan;
                b. $500,000 on the effective date of the Case Resolution Plan; and
                c. $750,000 on completion of cash or property distributions to creditors as contemplated by the Case Resolution Plan.

iii. Debtor/Creditor Monetization Vehicle Restructuring Fee:

1. On confirmation of any plan or reorganization or liquidation based on a debtor/creditor trust or similar asset monetization and claims resolution vehicle that does not include agreement among the debtor and creditors on a material amount of the outstanding claims and their respective treatment at confirmation (a "Monetization Vehicle Plan"):
    a. $500,000 on confirmation of the Monetization Vehicle Plan;
    b. $250,000 on the effective date of the Monetization Vehicle Plan; and
    c. A contingent restructuring fee to be determined by the board or oversight committee installed to oversee the implementation of any Monetization Vehicle Plan based on the CEO/CRO (or acting as trustee) based upon performance under the plan after all material distributions under the Monetization Vehicle Plan are made.

2. Out-of-Pocket Expenses: In addition to the Base and Bonus Compensation, I shall be entitled to reimbursement for actual and reasonable out-of-pocket expenses ("Expenses") incurred in connection with the provision of services hereunder. Expenses will be billed along with Base Compensation and shall be paid by the Company at the same time. Expenses will be generally consistent with expenses incurred to date as a member of the Board.

Bankruptcy Court Approval

Notwithstanding anything herein to the contrary, I understand that this Agreement is contingent, in all respects, on the approval of the Bankruptcy Court. I also understand that the Company will seek approval of this Agreement in stages and that the Company will first seek approval of my retention as CEO and CRO and the payment of the Base Compensation and will defer seeking Bankruptcy Court approval of the Restructuring Fee until there have been further developments in the Bankruptcy Case.

Conflicts and Other Engagements

I am not aware of any potential conflicts of interest based on my understanding of the various parties involved in this matter to date.

The Company is aware that this engagement is not an exclusive engagement of my time, and that I have and will continue to have other business engagements and investments unrelated to the Company. Nothing in this Agreement or otherwise precludes me from representing or working with or for any other person or entity in matters not directly related to the services being provided to the Company under this Agreement. However, I will not take on any engagements directly adverse to the Company during the term of this engagement.

Privilege

I understand that in the course of this engagement, I may become party to or my services may become part of work product of legal counsel to the Company (the Company's in-house and outside counsel are collectively referred to as "Counsel"), and all communications between Counsel and me relating to this engagement shall be protected from disclosure to third parties under the attorney work product doctrine and/or the attorney-client privilege, and, therefore, shall be treated by me as privileged and confidential. I further understand that the Company has the exclusive right to waive the attorney-client privilege, and Counsel has the exclusive right to waive the protections afforded under the attorney work-product doctrine.

Termination of Engagement

This Agreement may be terminated at any time by either the Company or by me upon two weeks advance written notice given to the other party. The termination of this Agreement shall not affect my right to receive, and the Company's obligation to pay, any and all Base Compensation and Expenses incurred (even if not billed) prior to the giving of the termination notice; provided, however, that (i) if this Agreement is terminated by me, the amount of Base Compensation owed shall be calculated based on the actual number of days worked during the applicable month and I will return any Base Compensation received in excess of such amount and (ii) if this Agreement is terminated by the Company, Base Compensation shall be deemed fully earned as of the first day of any month. Bonus Compensation shall be earned by me immediately upon termination of me by the Company; provided, however, I shall not be entitled to Bonus Compensation if (a) the Bankruptcy Case is converted to chapter 7 or dismissed; (b) a chapter 11 trustee is appointed in the Bankruptcy Case; (c) I am terminated by the Company for Cause; or (d) I resign prior to confirmation of a plan or court approval of a sale as described in the Fees and Expense/Compensation for Services section hereof. For purposes of this Agreement, "Cause" means any of the following grounds for termination of my engagement, in each case as reasonably determined by the Board within 60 days of the Board becoming aware of the existence of the event or circumstance: (A) fraud, embezzlement, or any act of moral turpitude or willful misconduct on my part; (B) conviction of or the entry of a plea of nolo contendere by me for any felony; (C) the willful breach by me of any material term of this Agreement; or (D) the willful failure or refusal by me to perform my duties to the Company, which, if capable of being cured, is not cured on or before fifteen (15) days after my receipt of written notice from the Company.

Conditional Requirement to Seek Further Bankruptcy Court Approval of Agreement

The official committee of unsecured creditors in the Bankruptcy Case (the "Committee") may, upon two weeks advance written notice to the Company, require the Company to file a motion with the Bankruptcy Court on normal notice seeking a continuation of this Agreement and if such motion is not filed, this Agreement will terminate at the expiration of such two week period. If the Company files such motion, I will be entitled to my Base Compensation through and including the date on which a final order is entered on such motion by the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Committee may not deliver such notice to the Company until a date which is more than ninety days following the date the Bankruptcy Court enters an order approving this Agreement.

Indemnification

As a material part of the consideration to me under this Agreement, the Company agrees (i) to indemnify and hold harmless me and any of my affiliates (the "Indemnified Party"), to the fullest extent lawful, from and against any and all losses, claims, costs, damages or liabilities (or actions in respect thereof), joint or several, arising out of or related to this Agreement, my engagement under this Agreement, or any actions taken or omitted to be taken by me or the Company in connection with this Agreement and (ii) to reimburse the Indemnified Party for all expenses (including, without limitation, the reasonable fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing, defending, settling or compromising any action, suit, dispute, inquiry, investigation or proceeding, pending or threatened, brought by or against any person (including, without limitation, any shareholder or derivative action, or any fee dispute), arising out of or relating to this Agreement, or such engagement, or actions. However, the Company shall not be liable under the foregoing indemnity and reimbursement agreement for any loss, claim, damage or liability which is finally judicially determined by a court of competent jurisdiction to have resulted primarily from the willful misconduct or gross negligence of the Indemnified Party.

The indemnification and insurance currently covering my role as a director shall be extended to me and fully cover me as provided therein in my roles as CEO and CRO.

Miscellaneous

This Agreement (a) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any other communications, understandings or agreements among the parties with respect to the subject matter hereof, and (b) may be modified, amended or supplemented only by written agreement among all the parties hereto.

This Agreement is subject to approval by the Bankruptcy Court. As part of such approval the Company shall request that any such order approving this Agreement contain a provision extending the protections afforded to me as a Board Member pursuant to Paragraph 10 of the Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] to my role as CEO and CRO, which Order prohibits the commencement of any action against me without first obtaining Bankruptcy Court approval to initiate such action.

This Agreement and all controversies arising from or related to performance hereunder shall be governed by and construed in accordance with the laws of the State of New York. The parties hereby submit to the jurisdiction of and venue in the federal and state courts located in New York City and waive any right to trial by jury in connection with any dispute related to this Agreement.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

Notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective address set forth above in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith.

This Agreement and my rights and duties hereunder shall not be assignable or delegable by me.

The Company may withhold from any amounts payable under this Agreement such Federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

This Agreement may be executed (including by electronic execution) in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by electronic mail shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

Very truly yours,

James. P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

_____	_____
John Dubel Director Strand Advisors, Inc.	Russell Nelms Director Strand Advisors, Inc.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

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Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

Very truly yours,

James. P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel Director Strand Advisors, Inc.	Russell Nelms Director Strand Advisors, Inc.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

Notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective address set forth above in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith.

This Agreement and my rights and duties hereunder shall not be assignable or delegable by me.

The Company may withhold from any amounts payable under this Agreement such Federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

This Agreement may be executed (including by electronic execution) in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by electronic mail shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

Very truly yours,

James. P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel Director Strand Advisors, Inc.	Russell Nelms Director Strand Advisors, Inc.

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

Signed February 22, 2021

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
Debtor.	)	

ORDER (I) CONFIRMING THE FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF

The Bankruptcy Court[2] having:

a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the "Disclosure Statement Order"), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

[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] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.

Amended Plan of Reorganization of Highland Capital Management, L.P. [Docket No. 1473] (the "Disclosure Statement") under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the "Objection Deadline"), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (*As Modified*) [Docket No. 1808] (as amended, supplemented or modified, the "Plan");

c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the "Voting Deadline") in accordance with the Disclosure Statement Order;

d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;

e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the "Confirmation Hearing Notice"), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;

f. reviewed: (i) the *Debtor's Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)t* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the "Plan Supplements");

g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as "List of Assumed Contracts");

h. reviewed: (i) the *Debtor's Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the "Confirmation Brief"); (ii) the *Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the "Voting Certifications").

i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

Certificate of Service dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021[Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the "Affidavits of Service and Publication");

j. reviewed all filed[3] pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;

k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the "Confirmation Hearing);

l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and

m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;[4] (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. ("Strand"), the Debtor's general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the "Witnesses"); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

[3] Unless otherwise indicated, use of the term "filed" herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

[4] The Court admitted the following exhibits into evidence: (a) all of the Debtor's exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor's exhibits lodged at Docket No. 1866; (c) all of the Debtor's exhibits lodged at Docket No. 1877; (d) all of the Debtor's exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor's Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an "asset monetization plan" because it involves 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, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor's economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under $1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor**. The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the "Petition Date"). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor**. The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor's general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles ("CLOs"), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor's affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee**. The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a "serial litigator." The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

a. **The Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee").** This Committee member obtained an arbitration award against the Debtor in the amount of $190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor's claim was settled during this Chapter 11 Case in the amount of approximately $137,696,610 (subject to other adjustments and details not relevant for this purpose).

b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC ("Acis").** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately $8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland's alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately $23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

c. **UBS Securities LLC and UBS AG London Branch ("UBS").** UBS is a Committee member that filed a proof of claim in the amount of $1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.

d. **Meta-E Discovery ("Meta-E").** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than $779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for $40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive $750,000 in cash on the Effective Date of the Plan, an $8.25 million general unsecured claim, and a $2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than $70 million with an entity in the Highland complex and asserted a $300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a $45 million general unsecured claim and a $35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure**. Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.[5] As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,[6] and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as "gatekeeper" prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor's restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the "gatekeeper" provision to those alleging willful misconduct and gross negligence.

[5] This order is hereinafter referred to as the "January 9 Order" and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the "Settlement Motion").

[6] *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the "Stipulation").

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court's order authorizing the appointment of Mr. Seery as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.[7] The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called "Barton Doctrine" (first articulated in an old Supreme Court case captioned *Barton v. Barbour,* 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

[7] *See Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the "July 16 Order")

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a $300 million claim) and Patrick Daugherty (who asserted a $40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain)**. Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase "not your garden variety", which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];

b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund)* [Docket No. 1670];

c. A *Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];

d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC)* [Docket No. 1673]; and

e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank)* [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

17. **Questionability of Good Faith as to Outstanding Confirmation Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;

b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;

c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;

d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;

e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and

f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the "Plan Supplement Documents").

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the $13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an "opt out" mechanism to allow holders of liquidated Class 8 Claims at or below a $1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm's-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.

b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

c. **The Reorganized Debtor**. The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trustee Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of $250,000 for his first year of service, and $150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid $150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid $40,000 per month for the first three months and $20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

46. **Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).** Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

47. **Debtor's Solicitation Complied with Bankruptcy Code and Disclosure Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the "Liquidation Analysis") to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.

c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.

d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.

e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].

f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of* Reorganization *of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.

g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.

h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.

i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).** Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The "best interests" test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery's deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor's projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as "HCLOF" that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at $22.5 million; (2) an increase in the value of certain of the Debtor's assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor's continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.

b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.

c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced "fire sale" of assets; and

e. The Debtor's employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors' argument that the Claimant Trust Agreement's disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee's liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides "retiree benefits" and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the "Contingent Interests"), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapuetics* 429 B.R 570 (Bankr. W.D. Tex. 2010).

b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)**). The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the "Assumed Contracts"). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.[8] Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

[8] *See Notice of Withdrawal of James Dondero's Objection Debtor's Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith* [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the "Release Conditions"). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery's testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor's efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties' significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately $200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the "Exculpation Provision"). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co*., 584 F.3d 229 (5th Cir. 2009), for several reasons:

a. First, the statutory basis for *Pacific Lumber*'s denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties…. [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, Collier on Bankruptcy, ¶ 1103.05[4][b] (15th Ed. 2008]). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor's enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors' committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber's* policy of exculpating creditors' committees and their members from "being sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case" is applicable to the Independent Directors in this Chapter 11 Case.[9]

b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that "costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization." *Pacific Lumbe*r, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero's pot plan does not get approved, that Mr. Dondero will "burn the place down." The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

[9] The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan inunction to implement and enforce the Plan's release, discharge and release provisions (the "Injunction Provision"). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor's assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor's assets and those assets could be monetized for less money to the detriment of the Debtor's creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a "third-party release." The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms "implementation" and "consummation" are neither vague nor ambiguous

76. **Gatekeeper Provision**. Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the "Gatekeeper Provision"). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court's time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor's settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court's order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero's affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the "Dondero Post-Petition Litigation").

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would "burn down the place." The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery's testimony, that the threat of continued litigation by Mr, Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll*) 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour,* 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5th Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P'Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5th Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court's jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall.* The Bankruptcy Court's determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon**. Each of Scott Ellington ("Mr. Ellington") and Isaac Leventon ("Mr. Leventon") (each, a "Senior Employee Claimant") has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1669] (the "Senior Employees' Objection") (for each of Mr. Ellington and Mr. Leventon, the "Liquidated Bonus Claims").

a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of $1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of $598,198.00. Mr. Ellington received two Ballots[10] – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees' Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be $1,000,000.

b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.

c. The Senior Employees' Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon's entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

[10] As defined in the Plan, "Ballot" means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").

e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive $701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive $413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.

f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be $600,000 and in Mr. Leventon's case, would be $358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.

h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.

i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.

j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).

k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

A. Confirmation of the Plan. The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.[11]

B. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

C. Objections. Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

D. Plan Supplements and Plan Modifications. The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

[11] The Plan is attached hereto as **Exhibit A**.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

E. Deemed Acceptance of Plan. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

F. Vesting of Assets in the Reorganized Debtor. Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

G. Effectiveness of All Actions. All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

H. Restructuring Transactions. The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

I. Preservation of Causes of Action. Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

J. Independent Board of Directors of Strand. The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

K. Cancellation of Equity Interests and Issuance of New Partnership Interests. On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

L. Transfer of Assets to Claimant Trust. On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

M. Transfer of Estate Claims to Litigation Sub-Trust. On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

N. Compromise of Controversies. In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

O. Objections to Claims. The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

P. Assumption of Contracts and Leases. Effective as of the date of this Confirmation Order, each of the Assumed Contacts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

Q. Rejection of Contracts and Leases. Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

R. Assumption of Issuer Executory Contracts. On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the "Issuer Executory Contracts") pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the "Portfolio Manager") will pay to the Issuers[12] a cumulative amount of $525,000 (the "Cure Amount") as follows:

a. $200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP ("SRZ") in the amount of $85,714.29, Jones Walker LLP ("JW") in the amount of $72,380.95, and Maples Group ("Maples" and collectively with SRZ and JW, the "Issuers' Counsel") in the amount of $41,904.76 as reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case; and

b. $325,000 in four equal quarterly payments of $81,250.00 (each, a "Payment"), which amounts shall be paid to SRZ in the amount of $34,821.43, JW in the amount of $29,404.76, and Maples in the amount of $17,023.81 as additional reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the "Management Fees"), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the "Payment Dates"), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers' Counsel, allocated in the proportion set forth in such agreement; *provided, however,* that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor's liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers' Counsel to the Debtor, in the event of any failure to make any Payment.

S. Release of Issuer Claims. Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

[12] The "Issuers" are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

T. Release of Debtor Claims against Issuer Released Parties. Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Ferona Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the "Issuer Released Parties"),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however,* that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

U. Authorization to Consummate. The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

V. Professional Compensation. All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

W. Release, Exculpation, Discharge, and Injunction Provisions. The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

X. Discharge of Claims and Termination of Interests. To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

Y. Exculpation. Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

provided, however, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

Z. Releases by the Debtor. On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

AA. Injunction. Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in

Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

BB. Duration of Injunction and Stays. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

CC. Continuance of January 9 Order and July 16 Order. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, entered by the Bankruptcy Court on January 9, 2020* [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

DD. No Governmental Releases. Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

EE. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

FF. Cancellation of Notes, Certificates and Instruments. Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

GG. Documents, Mortgages, and Instruments. Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

HH. Post-Confirmation Modifications. Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

II. Applicable Nonbankruptcy Law. The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

JJ. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

KK. Notice of Effective Date. As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked "undeliverable as addressed," "moved, left no forwarding address" or "forwarding order expired," or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity's new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

LL. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

MM. Waiver of Stay. For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

NN. References to and Omissions of Plan Provisions. References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

OO. Headings. Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

PP. Effect of Conflict. This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

QQ. Resolution of Objection of Texas Taxing Authorities. Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the "Tax Authorities") assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.

b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

RR. Resolution of Objections of Scott Ellington and Isaac Leventon. Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.

b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.

c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.

d. The Senior Employees' Objection is deemed withdrawn.

SS. No Release of Claims Against Senior Employee Claimants. For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a "Released Party" under the Plan.

TT. Resolution of Objection of Internal Revenue Service. Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service ("IRS") and all of its claims, including any administrative claim (the "IRS Claim"):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor's, the Reorganized Debtor's and/ or any successor- in-interest's obligations under the Plan, then entire prepetition liability of an IRS' Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term "any payment required to be made on federal taxes," as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term "any required tax return," as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

UU. IRS Proof of Claim. Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS's proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS' assessment of the Debtor's unpaid priority and general unsecured taxes, penalties and interest.

VV. CLO Holdco, Ltd. Settlement Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25,2021* [Docket No. 1838-1] (the "CLOH Settlement Agreement"). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

WW. Retention of Jurisdiction. The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

XX. Payment of Statutory Fees; Filing of Quarterly Reports. All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

YY. Dissolution of the Committee. On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

ZZ. Miscellaneous. After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided*, *however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

###END OF ORDER###

Exhibit A

Fifth Amended Plan (as Modified)

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.	)	

FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED)

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com:

Counsel for the Debtor and Debtor-in-Possession

[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.

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however,* that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however,* that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. "*Allowed Claim or Equity Interest*" means a Claim or an Equity Interest of the type that has been Allowed.

8. "*Assets*" means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor's books and records, and the Causes of Action.

9. "*Available Cash*" means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. "*Avoidance Actions*" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. "*Ballot*" means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. "*Bar Date*" means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. "*Bar Date Order*" means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. "*Business Day*" means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

18. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

19. "*Causes of Action*" means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor's Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. "*CEO/CRO*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer.

21. "*Chapter 11 Case*" means the Debtor's case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. "*Claim*" means any "claim" against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. "*Claims Objection Deadline*" means the date that is 180 days after the Confirmation Date; *provided, however,* the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. "*Claimant Trust*" means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. "*Claimant Trust Agreement*" means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. "*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 being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. "*Claimant Trust Beneficiaries*" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. "*Claimant Trustee*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate's investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor's business operations.

29. "*Claimant Trust Expenses*" means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys' fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. "*Claimant Trust Interests*" means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided*, *however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. "*Claimant Trust Oversight Committee*" means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee's performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. "*Class*" means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. "*Class A Limited Partnership Interest*" means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants' Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. "*Class B Limited Partnership Interest*" means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. "*Class B/C Limited Partnership Interests*" means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. "*Class C Limited Partnership Interest*" means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. "*Committee*" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. "*Confirmation Date*" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. "*Confirmation Order*" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. *"Convenience Claim"* means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. "*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. "*Convenience Class Election*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

44. "*Contingent Claimant Trust Interests"* means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. "*Debtor*" means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. *"Delaware Bankruptcy Court"* means the United States Bankruptcy Court for the District of Delaware.

47. "*Disclosure Statement*" means that certain *Disclosure Statement for Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. "*Disputed*" means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. "*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. "*Distribution Agent*" means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. "*Distribution Date*" means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. "*Distribution Record Date*" means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. "*Effective Date*" means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. "*Employees*" means the employees of the Debtor set forth in the Plan Supplement.

56. "*Enjoined Parties*" means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero ("Dondero"), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. "*Entity*" means any "entity" as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. "*Equity Interest*" means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. "*Equity Security*" means an "equity security" as defined in section 101(16) of the Bankruptcy Code.

60. "*Estate*" means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. "*Estate Claims*" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

63. "*Executory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. "*Exhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. "*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 Debtor, the Reorganized Debtor, or the Claimant Trustee, 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.

68. "*Frontier Secured Claim*" means the loan from Frontier State Bank to the Debtor in the principal amount of $7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. "*General Partner Interest*" means the Class A Limited Partnership Interest held by Strand, as the Debtor's general partner.

70. "*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. "*Governmental Unit*" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

72. "*GUC Election*" means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. "*Holder*" means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. "*Impaired*" means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. "*Independent Directors*" means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. "*Initial Distribution Date*" means, subject to the "Treatment" sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. "*Insurance Policies*" means all insurance policies maintained by the Debtor as of the Petition Date.

78. "*Jefferies Secured Claim*" means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. "*Lien*" means a "lien" as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. "*Limited Partnership Agreement*" means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. "*Litigation Sub-Trust*" means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. "*Litigation Sub-Trust Agreement*" means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. "*Litigation Trustee*" means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. "*Managed Funds*" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. "*New Frontier Note*" means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. "*New GP LLC*" means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. "*New GP LLC Documents*" means the charter, operating agreement, and other formational documents of New GP LLC.

88. "*Ordinary Course Professionals Order*" means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. "*Other Unsecured Claim*" means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. *"Person*" means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. "Petition *Date*" means October 16, 2019.

92. "*Plan*" means this *Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. "*Plan Distribution*" means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. "*Plan Documents*" means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. "*Plan Supplement*" means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. "*Priority Non-Tax Claim*" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. "*Professional Fee Claims Bar Date*" means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. "*Professional Fee Claims Objection Deadline*" means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. "*Professional Fee Reserve*" means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. "*Proof of Claim*" means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

106. "*PTO Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. "*Reduced Employee Claims*" has the meaning set forth in ARTICLE IX.D.

108. "*Reinstated*" means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. "*Rejection Claim*" means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. "*Related Entity*" means, without duplication, (a) Dondero, (b) Mark Okada ("Okada"), (c) Grant Scott ("Scott"), (d) Hunter Covitz ("Covitz"), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. "*Related Entity List*" means that list of Entities filed with the Plan Supplement.

112. "*Related Persons*" means, with respect to any Person, such Person's predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. "*Reorganized Debtor*" means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. "*Reorganized Debtor Assets*" means 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. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. "*Reorganized Limited Partnership Agreement*" means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. "*Restructuring*" means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. "*Retained Employee Claim*" means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. "*Schedules*" means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. "*Secured*" means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor's Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

123. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

126. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

127. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. "*Subordinated Claim*" means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

133. "*UBS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

134. "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. "*Voting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. "*Voting Record Date*" means November 23, 2020.

ARTICLE II.
ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however,* that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. *Class 1 – Jefferies Secured Claim*

- *Classification*: Class 1 consists of the Jefferies Secured Claim.
- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification*: Class 2 consists of the Frontier Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification*: Class 3 consists of the Other Secured Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

- *Impairment and Voting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

- *Classification*: Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

- *Classification*: Class 5 consists of the Retained Employee Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class 6 – PTO Claims*

- *Classification*: Class 6 consists of the PTO Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

- *Impairment and Voting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class 7 – Convenience Claims*

- *Classification*: Class 7 consists of the Convenience Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. *Class 8 – General Unsecured Claims*

- *Classification*: Class 8 consists of the General Unsecured Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. *Class 9 – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

  Treatment: On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. *Class 11 – Class A Limited Partnership Interests*

- *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust[2]

1. *Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

[2] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

(i) the payment of the Claimant Trust Expenses;

(ii) the payment of other reasonable expenses of the Claimant Trust;

(iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;

(iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;

(v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however,* that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. *Tax Reporting.*

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. *Claimant Trust Assets.*

The 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) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, 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 without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. *Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. *Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. *Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. *De Minimis* Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. *Allowance of Claims*

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. *Estimation*

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. *Disallowance of Claims*

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,

ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.

- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

C. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided*, *however,* the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. *Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. *Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however,* the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

G. Duration of Injunctions and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

ARTICLE X.
BINDING NATURE OF PLAN

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;

- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided*, *however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;

- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;

- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof*; provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- resolve any issues related to any matters adjudicated in the Chapter 11 Case;

- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;

- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;

- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;

- enforce the terms and conditions of this Plan and the Confirmation Order;

- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and

- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700

Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however,* that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring Officer

Prepared by:

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

and

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

Exhibit B

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.

20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.

21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.

22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.

23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al

24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd

25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd

26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association

27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.

28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company

29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company

30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd

31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company

32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association

33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.

34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company

35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association

37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company

38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.

44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association

45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust

46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.

47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.

48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.

49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association

50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.

53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association

54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company

55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association

56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street

57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank

58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.

59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company

60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

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.	)	

FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED)

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com:

Counsel for the Debtor and Debtor-in-Possession

[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.

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however,* that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the

Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however,* that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. "*Allowed Claim or Equity Interest*" means a Claim or an Equity Interest of the type that has been Allowed.

8. "*Assets*" means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor's books and records, and the Causes of Action.

9. "*Available Cash*" means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. "*Avoidance Actions*" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. "*Ballot*" means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. "*Bar Date*" means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. "*Bar Date Order*" means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. "*Business Day*" means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

18. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

19. "*Causes of Action*" means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor's Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. "*CEO/CRO*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer.

21. "*Chapter 11 Case*" means the Debtor's case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. "*Claim*" means any "claim" against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. "*Claims Objection Deadline*" means the date that is 180 days after the Confirmation Date; *provided, however,* the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. "*Claimant Trust*" means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. "*Claimant Trust Agreement*" means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. "*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 being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. "*Claimant Trust Beneficiaries*" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. "*Claimant Trustee*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate's investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor's business operations.

29. "*Claimant Trust Expenses*" means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys' fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. "*Claimant Trust Interests*" means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided*, *however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold

Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. "*Claimant Trust Oversight Committee*" means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee's performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. "*Class*" means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. "*Class A Limited Partnership Interest*" means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants' Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. "*Class B Limited Partnership Interest*" means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. "*Class B/C Limited Partnership Interests*" means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. "*Class C Limited Partnership Interest*" means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. "*Committee*" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. "*Confirmation Date*" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. "*Confirmation Order*" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. "*Convenience Claim*" means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. "*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. "*Convenience Class Election*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

44. "*Contingent Claimant Trust Interests"* means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. "*Debtor*" means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. "*Delaware Bankruptcy Court"* means the United States Bankruptcy Court for the District of Delaware.

47. "*Disclosure Statement*" means that certain *Disclosure Statement for Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. "*Disputed*" means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. "*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or

Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. "*Distribution Agent*" means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. "*Distribution Date*" means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. "*Distribution Record Date*" means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. "*Effective Date*" means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. "*Employees*" means the employees of the Debtor set forth in the Plan Supplement.

56. "*Enjoined Parties*" means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero ("Dondero"), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. "*Entity*" means any "entity" as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. "*Equity Interest*" means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. "*Equity Security*" means an "equity security" as defined in section 101(16) of the Bankruptcy Code.

60. "*Estate*" means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. "*Estate Claims*" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

63. "*Executory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. "*Exhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. "*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 Debtor, the Reorganized Debtor, or the Claimant Trustee, 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.

68. "*Frontier Secured Claim*" means the loan from Frontier State Bank to the Debtor in the principal amount of $7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. "*General Partner Interest*" means the Class A Limited Partnership Interest held by Strand, as the Debtor's general partner.

70. "*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. "*Governmental Unit*" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

72. "*GUC Election*" means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. "*Holder*" means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. "*Impaired*" means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. "*Independent Directors*" means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. "*Initial Distribution Date*" means, subject to the "Treatment" sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. "*Insurance Policies*" means all insurance policies maintained by the Debtor as of the Petition Date.

78. "*Jefferies Secured Claim*" means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. "*Lien*" means a "lien" as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. "*Limited Partnership Agreement*" means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. "*Litigation Sub-Trust*" means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. "*Litigation Sub-Trust Agreement*" means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. "*Litigation Trustee*" means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. "*Managed Funds*" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. "*New Frontier Note*" means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. "*New GP LLC*" means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. "*New GP LLC Documents*" means the charter, operating agreement, and other formational documents of New GP LLC.

88. "*Ordinary Course Professionals Order*" means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. "*Other Unsecured Claim*" means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. "*Person*" means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. "*Petition Date*" means October 16, 2019.

92. "*Plan*" means this *Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. "*Plan Distribution*" means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. "*Plan Documents*" means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. "*Plan Supplement*" means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. "*Priority Non-Tax Claim*" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. "*Professional Fee Claims Bar Date*" means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. "*Professional Fee Claims Objection Deadline*" means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. "*Professional Fee Reserve*" means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. "*Proof of Claim*" means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

106. "*PTO Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. "*Reduced Employee Claims*" has the meaning set forth in ARTICLE IX.D.

108. "*Reinstated*" means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any

damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. "*Rejection Claim*" means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. "*Related Entity*" means, without duplication, (a) Dondero, (b) Mark Okada ("Okada"), (c) Grant Scott ("Scott"), (d) Hunter Covitz ("Covitz"), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. "*Related Entity List*" means that list of Entities filed with the Plan Supplement.

112. "*Related Persons*" means, with respect to any Person, such Person's predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. "*Reorganized Debtor*" means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. "*Reorganized Debtor Assets*" means 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. For the avoidance of doubt, "Reorganized

Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. "*Reorganized Limited Partnership Agreement*" means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. "*Restructuring*" means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. "*Retained Employee Claim*" means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. "*Schedules*" means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. "*Secured*" means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor's Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

123. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

126. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

127. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. "*Subordinated Claim*" means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or order entered by the Bankruptcy Court.

130. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

133. "*UBS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

134. "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. "*Voting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. "*Voting Record Date*" means November 23, 2020.

ARTICLE II.
ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized

Debtor, as applicable, and such Holder; *provided*, *however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee

Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, (b) payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the

Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. Class 1 – Jefferies Secured Claim

- *Classification*: Class 1 consists of the Jefferies Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification*: Class 2 consists of the Frontier Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification*: Class 3 consists of the Other Secured Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

- *Impairment and Voting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

- *Classification*: Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

- *Classification*: Class 5 consists of the Retained Employee Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class 6 – PTO Claims*

- *Classification*: Class 6 consists of the PTO Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

- *Impairment and Voting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class 7 – Convenience Claims*

- *Classification*: Class 7 consists of the Convenience Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. *Class 8 – General Unsecured Claims*

- *Classification*: Class 8 consists of the General Unsecured Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. *Class 9 – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

  Treatment: On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. *Class 11 – Class A Limited Partnership Interests*

- *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be

cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust[2]

1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve

[2] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and

monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

(i) the payment of the Claimant Trust Expenses;

(ii) the payment of other reasonable expenses of the Claimant Trust;

(iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;

(iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;

(v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust

Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. *Tax Reporting.*

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. *Claimant Trust Assets.*

The 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) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, 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 without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are

investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. *Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. *Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. *Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in

the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of

doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a

contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed

and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity

Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the

Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. *De Minimis* Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall

revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any

damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH

LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding

upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.

- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) and any applicable parties in Section VII.A of this Plan, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

C. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's

Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided*, *however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross

negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. Maintenance of Causes of Action

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final

Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or

arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however,* the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

G. Duration of Injunctions and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

ARTICLE X.
BINDING NATURE OF PLAN

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state,

Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;

- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided*, *however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;

- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;

- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or

expense reimbursement that may be requested by a purchaser thereof*; provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- resolve any issues related to any matters adjudicated in the Chapter 11 Case;

- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;

- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;

- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;

- enforce the terms and conditions of this Plan and the Confirmation Order;

- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such

orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and

- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement

executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this

Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego

the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

[Remainder of Page Intentionally Blank]

Dated: January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring Officer

Prepared by:

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

and

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717)
John A. Morris (NY Bar No. 266326)
Gregory V. Demo (NY Bar No. 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

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

Counsel for Highland Capital Management, L.P.

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.	§	

REORGANIZED DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH PATRICK HAGAMAN DAUGHERTY (CLAIM NO. 205) AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

[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.

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TABLE OF AUTHORITIES

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TO THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:

Highland Capital Management, L.P., the above-captioned reorganized debtor (the "Reorganized Debtor" or "Debtor," as applicable), files this motion (the "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving a settlement agreement (the "Settlement Agreement"),[2] a copy of which is attached as Exhibit 1 to the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith* being filed simultaneously with this Motion ("Morris Dec."), that, among other things, fully and finally resolves the proof of claim filed by Patrick Hagaman Daugherty ("Mr. Daugherty"). In support of this Motion, the Reorganized Debtor represents as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019 of the Bankruptcy Rules.

[2] All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement.

RELEVANT BACKGROUND

A. Procedural Background

3. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

4. On October 29, 2019, the official committee of unsecured creditors (the "Committee") was appointed by the U.S. Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's case to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"). [Docket No. 186].[3]

6. On February 22, 2021, the Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the "Confirmation Order") with respect to the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1808] (as subsequently modified, the "Plan").

7. The Plan went effective on August 11, 2021 (the "Effective Date") and, on that same date, the Reorganized Debtor filed the *Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 2700]. The Reorganized Debtor has commenced making distributions on certain allowed claims in accordance with the terms of the Plan.

B. Procedural Overview of Mr. Daugherty's Claim

8. Mr. Daugherty is a former employee and limited partner of the Debtor and previously served in other positions with affiliates and former affiliates of the Debtor.

[3] All docket numbers refer to the docket maintained by this Court.

9. At the time of his resignation, Mr. Daugherty owned 19.1% of the preferred units of Highland Employee Retention Assets LLC ("HERA"), an employee deferred-compensation vehicle managed by the Debtor and Highland ERA Management, LLC ("ERA Management"). Mr. Daugherty contends that he owned or had the right to own all of the preferred units of HERA.

10. In April 2012, following Mr. Daugherty's resignation and while under the control of James Dondero ("Mr. Dondero"), the Debtor commenced an action against Mr. Daugherty in Texas state court (the "Texas Action"), and Mr. Daugherty subsequently asserted (i) counterclaims for breach of contract and defamation, and (ii) third-party claims against HERA and others.

11. After a three-week trial, (a) the Debtor obtained a verdict on its claims against Mr. Daugherty for breach of contract and breach of fiduciary duty and obtained an award of $2.8 million in attorney's fees; and (b) Mr. Daugherty obtained a verdict on his claims against the Debtor and Mr. Dondero for defamation with malice and a third-party claim against HERA and obtained an award of $2.6 million against HERA (the "HERA Judgment"). The HERA Judgment was affirmed on appeal on December 1, 2016.

12. In July 2017, after being unable to collect on the HERA Judgment, Mr. Daugherty commenced an action against the Debtor, Mr. Dondero, HERA, and ERA Management in the Delaware Chancery Court (the "Chancery Court") in a case captioned *Daugherty v. Highland Capital Management, L.P., et al.*, C.A. No. 2017-0488-MTZ, for, among other claims, fraudulent transfer, promissory estoppel, unjust enrichment, indemnification, and "fees on fees" (the "Highland Chancery Case").

13. In the spring of 2019, the Chancery Court in the Highland Chancery Case (i) found that the Dondero-related defendants improperly withheld dozens of documents in discovery on privilege grounds, and (ii) ruled that there was "a reasonable basis to believe that a fraud has been perpetrated" such that the Chancery Court applied the "crime-fraud exception" to

the attorney-client privilege. Mr. Daugherty asserts that the defendants' failure to provide required discovery injured him by undermining his attempts to build an evidentiary record to support his claims against the Debtor and the other defendants in the Highland Chancery Case.

14. On October 14, 2019, the Highland Chancery Case proceeded to trial, but on October 16, 2019, before the trial was completed and before the Chancery Court ruled on Mr. Daugherty's and the Debtor's cross-motions for summary judgment regarding indemnification and fees on fees, the Debtor filed for bankruptcy.

15. On December 1, 2019, Mr. Daugherty filed a separate lawsuit in the Chancery Court captioned *Daugherty v. Dondero, et al.*, C.A. No. 2019-0956-MTZ, against Mr. Dondero, HERA, ERA Management, Hunton Andrews Kurth LLP, Marc Katz, Michael Hurst, the Debtor's then-chief compliance officer, and the Debtor's then in-house counsel, Isaac Leventon and Scott Ellington, for conspiracy to commit fraud among other claims (the "HERA Chancery Case" and together with the Highland Chancery Case, the "Chancery Cases").

16. On April 1, 2020, Mr. Daugherty filed a general, unsecured, non-priority claim against the Debtor in the amount of at "least $37,483,876.59," and such claim was denoted by the Debtor's claims agent as Proof of Claim No. 67 ("Proof of Claim No. 67").

17. On April 6, 2020, Mr. Daugherty filed a general, unsecured, non-priority claim against the Debtor in the amount of at "least $37,483,876.59" that superseded Proof of Claim No. 67 and that was denoted by the Debtor's claims agent as Proof of Claim No. 77 ("Proof of Claim No. 77").

18. On August 31, 2020, the Debtor commenced an adversary proceeding against Mr. Daugherty by filing a complaint (the "Complaint") in which the Debtor: (1) objected to Proof of Claim No. 77 on various grounds (the "Claim Objection"), and (2) asserted a cause of action for the subordination of part of Mr. Daugherty's Claim pursuant to section 510(b) of the

Bankruptcy Code. *See* Adv. Proc. No. 20-03107 (the "Adv. Proc.") [Adv. Docket No. 1] (the "Adversary Proceeding").

19. On September 29, 2020, Mr. Daugherty filed his answer to the Complaint [Adv. Docket No. 8] (the "Answer").

20. On September 24, 2020, Mr. Daugherty filed his *Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay* [Docket No. 1099] (the "Comfort Motion") pursuant to which he sought to sever the Debtor from the Highland Chancery Case and then consolidate the remaining claims in the Highland Chancery Case into the HERA Chancery Case and proceed with one case against the non-debtors.[4]

21. On October 23, 2020, Mr. Daugherty filed a motion seeking leave to amend his Proof of Claim [Docket No. 1280] (the "POC Amendment Motion"). The amended proof of claim attached to the POC Amendment Motion increased Mr. Daugherty's general, unsecured, non-priority claim against the Debtor to the amount of at "least $40,710,819.42" and sought to supersede Proof of Claim No. 67 and Claim No. 77.

22. On October 23, 2020, Mr. Daugherty filed his *Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Motion* seeking for his Claim to be temporarily allowed for voting purposes in the amount of $40,710,819.42 [Docket No. 1281] (the "3018 Motion").

23. On November 9, 2020, the Debtor filed its *Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Motion* [Docket No. 1349] (the "3018 Objection").

[4] On October 8, 2020, the Debtor commenced a second adversary proceeding against Mr. Daugherty (the "Second Adversary Proceeding"), seeking to enjoin him from prosecuting the Chancery Cases. Adv. Proc. 20-03128 ("2d Adv. Proc.") [2d Adv. Proc. Docket No. 1]. On January 29, 2021, the parties filed a Settlement that resolved the Second Adversary Proceeding, and the Second Adversary Proceeding was subsequently dismissed with prejudice. [2d Adv. Proc. Docket No. 12].

24. After conducting an evidentiary hearing with respect to the 3018 Motion, the Court entered an order temporarily allowing Mr. Daugherty's Claim for voting purposes in the amount of $9,134,019 [Docket No. 1474] (the "Rule 3018 Order").

25. On November 3, 2020, the Court granted the Comfort Motion [Docket No. 1327].

26. On December 10, 2020, the Court entered an order [Docket No. 1533] granting the POC Amendment Motion permitting Mr. Daugherty to amend his proof of claim. On December 23, 2020, Mr. Daugherty filed an amended proof of claim, designated by the Debtor's claim agent as Proof of Claim No. 205 ("Proof of Claim No. 205" or the "Daugherty Claim"). Proof of Claim No. 205 increased the amount of the Daugherty Claim to $40,710,819.42.

27. On November 30, 2020, Mr. Daugherty filed his *Motion to Lift the Automatic Stay* (the "Lift Stay Motion") [Docket No. 1491] seeking to lift the automatic stay to allow him to finish his trial in the Chancery Court and liquidate his claims. The Debtor opposed the Lift Stay Motion, and after a hearing was held on December 17, 2020, the Court denied the relief requested in the Lift Stay Motion [Docket No. 1612].

28. Except with respect to the Reserved Claim (as defined in the Settlement Agreement), the Parties have agreed to settle and resolve all claims and disputes between them, including the Daugherty Claim, on the terms set forth in the Settlement Agreement.

C. Summary of Mr. Daugherty's Claim

29. As generally described above, prior to the Petition Date, Mr. Daugherty on the one hand, and the Debtor, Mr. Dondero, other entities controlled by Mr. Dondero, and individuals then employed by the Debtor or otherwise associated with Mr. Dondero on the other hand, were embroiled in more than nine (9) years of highly contentious litigation involving a multitude of claims and counterclaims (the "Pre-Petition Litigation").

30. The Pre-Petition Litigation played out in front of a jury in Texas state court and wound its way through the state appellate courts. Thereafter, Mr. Daugherty opened a new front by commencing the Highland Chancery Case in the Chancery Court where he sought to hold the defendants to account for leaving HERA "judgment proof" and unable to satisfy the HERA Judgment that Mr. Daugherty had obtained.

31. While Mr. Dondero's decision to sue Mr. Daugherty in the Texas Action was questionable, his decisions to (a) continue fighting the HERA Judgment rather than accepting the net economic benefits awarded, and (b) fraudulently transfer HERA's assets leaving it "judgment proof" proved to be a disaster because it cost millions of dollars in legal fees and left the Debtor and related entities exposed to claims and liability for substantial wrongdoing.

32. The Daugherty Claim attaches and incorporates his operative complaint in the Highland Chancery Case and other voluminous documentation. The Daugherty Claim has the following components:

- Enforcement of the HERA Judgment against the Debtor, pursuant to unjust enrichment, promissory estoppel and fraudulent transfer claims, in the amount of $2.6 million plus prepetition interest of $1.22 million. (Mr. Daugherty contends that interest has continued to accrue post-petition);

- The estimated value of the HERA assets transferred to the Debtor on the theory that Daugherty owns 100% of HERA because the Debtor was not permitted to acquire the interests that it purchased from the former members and Daugherty was the last remaining interest holder. This allegedly leaves Mr. Daugherty by default as the 100% owner of the HERA Assets, which Mr. Daugherty asserts are worth at least $26.2 million as a whole;

- Indemnification for attorneys' fees, expenses, and interest of approximately $5.4 million incurred in the Texas Action under the Debtor's partnership agreement for actions Daugherty contends were taken in furtherance of his obligations to investors and funds under the Investment Advisors Act of 1940;

- Compensation as a former employee of the Debtor that Daugherty contends is contingent on the outcome of an audit of the Debtor's 2008/2009 tax returns and related expenses. Mr. Daugherty estimates this claim at approximately $2.7 million;

- Fee shifting and fees on fees that Daugherty contends are due to the bad faith actions of the Debtor, its officers, and agents in the Chancery Court. Daugherty estimates this claim at approximately $2.5 million; and

- Other related claims described in the Daugherty Claim for approximately $0.2 million.

33. The Debtor previously informed the Court that it does not object to Mr. Daugherty's claims related to the HERA Judgment ($2.6 Million, plus interest calculated at approximately $1.22 million as of about a year ago).

34. For a recitation of the Debtor's defenses to Daugherty's Claim, the Debtor incorporates by reference its 3018 Objection.

D. The Parties Engage in Arm's-Length Settlement Discussions

35. Although counsel for the Parties argued over the merits of, and the defenses to, the Daugherty Claim throughout the fall, they began discussing a possible resolution of Daugherty's Claim after the Court entered the 3018 Order.

36. In the days leading up to the Confirmation Hearing, those discussions evolved into substantive negotiations, and counsel for the parties exchanged various proposals and counterproposals in an effort to reach an agreement.

37. With the advice of counsel, James P. Seery, Jr., the Debtor's Chief Executive Officer, took the lead in the negotiations (directly and through counsel) and briefed the Independent Board on the progress.

38. The negotiations bore fruit. On February 2, 2021, at the commencement of the Confirmation Hearing, and with the unanimous approval of the Independent Board, Debtor's counsel announced that it had reached an agreement with Mr. Daugherty (subject to the execution of definitive documentation and Court approval) and read the principal terms into the record.

39. For a variety of reasons, documenting the agreement took more time than expected. For example, in the weeks and months that followed, (1) the principals and their counsel

addressed the implications of the Sentinel Disclosures (as that term is defined below); (2) the tasks related to getting to the Effective Date took a higher priority; (3) the Reorganized Debtor had to educate the newly appointed Oversight Board on the background and litigation concerning, and the proposed resolution of, the Daugherty Claim; (4) the parties exchanged numerous iterations of the Settlement Agreement and ancillary documents; and (5) frankly, it was difficult to get Mr. Daugherty to say "yes" as he sought very hard to improve the economic and non-economic terms of the deal based on certain revelations in the ensuing months (which, of course, was his right).

E. Summary of Settlement Terms

40. The Settlement Agreement contains the following material terms, among others:

- Mr. Daugherty shall receive an allowed general unsecured, non-priority Class 8 claim in the amount of $8.25 million;
- Mr. Daugherty shall receive an allowed subordinated general unsecured, non-priority Class 9 claim in the amount of $3.75 million;
- Mr. Daugherty shall receive a one-time lump sum payment in the amount of $750,000 to be paid within five business days of Bankruptcy Court approval of this Settlement Agreement;
- Releases shall be exchanged as provided for in paragraphs 3 through 6 of the Settlement Agreement;
- The Reorganized Debtor shall transfer its interests in HERA and ERA to Mr. Daugherty in accordance with paragraph 6 of the Settlement Agreement;
- The Parties shall cooperate to terminate all litigation in accordance with paragraphs 9 and 10 of the Settlement Agreement; and
- The Parties shall adhere to certain other non-economic matters agreed to by them as specifically set forth in the Settlement Agreement.

See generally Morris Dec. Exhibit 1.[5]

[5] With two exceptions, these settlement terms are materially the same as those announced on the record on February 2, 2021 in connection with the confirmation hearing on the Debtor's Plan. The two exceptions are that (a) the Class 9 claim was increased by $1 million, and (b) the Reorganized Debtor agreed to transfer its interests in HERA and ERA to Mr. Daugherty. The former change was intended to take into account the increased risk to the Debtor arising from

BASIS FOR RELIEF REQUESTED

41. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement, providing that:

> On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

42. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, "approval of a compromise is within the sound discretion of the bankruptcy court." *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

43. In making this determination, the United States Court of Appeals for the Fifth Circuit applies a three-part test "with a focus on comparing 'the terms of the compromise with the rewards of litigation.'" *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *Jackson Brewing*,

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the post-confirmation discovery and disclosures related to Sentinel (the "Sentinel Disclosures"). *See UBS Secs. LLC v. Highland Capital Mgmt., L.P.*, Adv. Pro. No. 21-03020. The latter concerned Mr. Daugherty's final demand that the Debtor agreed to because (i) Mr. Daugherty continues to retain his claims against HERA and ERA and their respective officers, directors, and agents; (ii) HERA and ERA no longer have any tangible assets; (iii) the HERA Releasing Parties are confirming that they have no claims against and are releasing the HCMLP Released Parties pursuant to the HERA and ERA Release; and (iv) Mr. Daugherty insisted on this final term which, in the overall package, was not material under the Debtor's Plan or otherwise.

624 F.2d at 602). The Fifth Circuit has instructed courts to consider the following factors: "(1) The probability of success in the litigation, with due consideration for the uncertainty of law and fact, (2) The complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (3) All other factors bearing on the wisdom of the compromise." *Id.* Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider "the paramount interest of creditors with proper deference to their reasonable views." *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the "extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion." *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortgage Corp.*, 68 F.3d at 918 (citations omitted).

44. There is ample basis to approve the proposed Settlement Agreement based on the Rule 9019 factors set forth by the Fifth Circuit.

45. First, although the Reorganized Debtor believes that it has valid defenses to the Daugherty Claim, there is no guarantee that the Reorganized Debtor would succeed in its litigation with Daugherty. Indeed, to establish its defenses, the Reorganized Debtor would be required to rely, at least in part, on the credibility of witnesses whose veracity has already been called into question by this Court. Moreover, the events giving rise to Mr. Daugherty's claims arose over five years ago, raising considerable questions about the reliability of those witnesses' recollection.

46. The second factor—the complexity, duration, and costs of litigation—also weighs heavily in favor of approving the Settlement Agreement. As this Court is aware, the events forming the basis of the Daugherty Claim—including the Texas Action and the Highland Chancery Case—proceeded *for years* and have already cost the Debtor's estate millions of dollars in legal

fees. If the Settlement Agreement is not approved, then the parties will expend significant resources litigating a host of fact-intensive issues including, among other things, the conduct of Mr. Dondero and the other defendants in the pending Chancery Actions.

47. Third, approval of the Settlement Agreement is justified by the paramount interest of creditors. Specifically, the settlement will enable the Reorganized Debtor to: (a) avoid incurring substantial litigation costs; and (b) avoid the litigation risk associated with Daugherty's $40 million claim. Notably, as set forth in its 3018 Objection, and regardless of whether this settlement is approved, the Debtor has already conceded liability of almost $4 million in connection with the HERA Judgment, making the risk/reward analysis compelling.

48. Finally, the Settlement Agreement was unquestionably negotiated at arm's-length. The terms of the settlement are the result of numerous, ongoing discussions and negotiations between the parties and represent neither party's "best case scenario." Indeed, the Settlement Agreement should be approved as a rational exercise of the Reorganized Debtor's business judgment made after due deliberation of the facts and circumstances concerning Daugherty's Claim.

NO PRIOR REQUEST

49. No previous request for the relief sought herein has been made to this, or any other, Court.

NOTICE

50. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for Mr. Daugherty; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; and (d) parties requesting notice pursuant to Bankruptcy Rule 2002. The Reorganized Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Reorganized Debtor respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: December 8, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
Ira D. Kharasch (CA Bar No. 109084)
John A. Morris (NY Bar No. 266326)
Gregory V. Demo (NY Bar No. 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

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

Counsel for Highland Capital Management, L.P.

EXHIBIT A

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 GRANTING REORGANIZED DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH PATRICK HAGAMAN DAUGHERTY (CLAIM NO. 205) AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

This matter having come before the Court on the *Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith* [Docket No. ____] (the "Motion")[2] filed by Highland Capital Management, L.P., the above-captioned reorganized debtor (the "Reorganized Debtor" or "Debtor", as applicable); and this Court having considered (a) the Motion; (b) the *Declaration of*

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

[2] Capitalized terms not otherwise defined in this order shall have the meanings ascribed to them in the Motion.

John A. Morris in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith [Docket No. ____] (the "Morris Declaration") and the exhibits annexed thereto, including the Settlement Agreement attached as Exhibit 1 (the "Settlement Agreement"); and (c) the arguments and law cited in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found the Settlement Agreement fair and equitable; and this Court having analyzed (1) the probability of success in litigating the claims subject to the Settlement Agreement, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise, including: (i) the best interests of the creditors, with proper deference to their reasonable views; and (ii) the extent to which the settlement is truly the product of arm's-length bargaining, and not of fraud or collusion; and this Court having found that the Reorganized Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and all other documents filed in support of the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

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

2. The Settlement Agreement attached hereto as **Exhibit 1** is approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

3. The Reorganized Debtor, Mr. Daugherty, and all other parties are authorized to take any and all actions necessary and desirable to implement the Settlement Agreement.

4. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

###End of Order###

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

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

Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES 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.	)	**Re: Docket Nos. 3088, 3242**

REORGANIZED DEBTOR'S REPLY IN FURTHER SUPPORT OF MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH PATRICK HAGAMAN DAUGHERTY (CLAIM NO. 205)

[1] The Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

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Highland Capital Management, L.P., the reorganized debtor in the above-captioned bankruptcy case (the "Reorganized Debtor" or "Debtor," as applicable), hereby submits this reply (the "Reply") in further support of its *Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205)* [Docket No. 3088] (the "Motion")[2] and in opposition to *Scott Ellington's Objection to the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Daugherty* [Docket No. 3242] (the "Objection"). In further support of the Motion, the Reorganized Debtor respectfully states as follows:

REPLY

1. The settlement proposed in the Motion resolves the nearly decade long dispute between Mr. Daugherty and the Debtor on terms that are favorable to the estate. No prepetition creditors have objected to the Motion. The only objecting party is Scott Ellington,[3] the Debtor's former General Counsel, who objects to two provisions in the Settlement Agreement which he believes may have potentially affect him personally. Mr. Ellington's objection has no merit.

2. Mr. Ellington first contends the Settlement Agreement "require[s] HCMLP to give Daugherty observer status on the Claimant Trust's Oversight Board" (the "Oversight Board"). Objection ¶ 3. Mr. Ellington is mistaken. By its plain terms, the Settlement Agreement does ***not*** grant Mr. Daugherty ***any*** rights to observe or gain access to Oversight Board meetings or deliberations. Instead, the Reorganized Debtor merely agreed to use reasonable efforts to petition

[2] All capitalized terms used but not defined herein have the meanings given to them in the Motion.

[3] Mr. Ellington has no prepetition claims against the Debtor, and his standing to object to the Motion is tenuous at best. Mr. Ellington filed five claims against the Debtor's estate [Claim Nos. 187, 192, 244, 245, 251]. All Mr. Ellington's claims have been withdrawn with prejudice and expunged [Docket Nos. 3164, 3244].

the Oversight Board[4] to grant Mr. Daugherty observer access. Settlement Agreement ¶ 3. If the Settlement Agreement is approved, the Oversight Board – not the Reorganized Debtor – will determine "in its sole discretion" whether to permit Mr. Daugherty to observe its meetings. The Reorganized Debtor expects the Oversight Board to consider all available facts, including Mr. Daugherty's ability to act in the interest of the Claimant Trust Beneficiaries, when determining whether to allow Mr. Daugherty to observe Oversight Board meetings.[5]

3. Mr. Ellington next contends that the Settlement Agreement requires the Reorganized Debtor to transfer HERA and ERA to Mr. Daugherty for "no additional consideration" and for the "sole apparent purpose" of harassing and pursing claims against Mr. Ellington and others. Objection ¶¶ 7, 11. Again, Mr. Ellington is mistaken. While the Reorganized Debtor does not believe HERA or ERA have any value, Mr. Daugherty believes they do, and he thus conditioned completion of the settlement on the transfer of these entities. The Settlement Agreement was hard fought and took nearly ten months to complete. The Reorganized Debtor saw no reason not to accede to Mr. Daugherty's final demand rather than incur the cost and risk of a failed settlement and the resulting litigation. In other words, the Reorganized Debtor traded something it believes has *de minimis* value (at best) for something it believes has actual value (a full and final settlement). This is exactly what the Reorganized Debtor should be doing. Mr. Ellington cannot line item veto any provision of the Settlement Agreement, and his theoretical

[4] Mr. Ellington mistakenly states that the form of Claimant Trust Agreement was filed on November 30, 2020, with the *Debtor's Notice of Filing of Supplement to the Third Amended Plan of Reorganization* [Docket No. 1389]. Objection ¶ 6 n.2. The final form of the Claimant Trust Agreement was actually filed on January 22, 2021, with the *Notice of Fling Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* [Docket No. 1811, as amended by Docket No. 1875].

[5] Without citing any provision in the Claimant Trust Agreement, Mr. Ellington alleges that allowing Mr. Daugherty to observe meetings of the Oversight Board is an impermissible plan amendment as no provision permits the Oversight Board to grant observer status. This distorts the Claimant Trust Agreement and overstates any observer rights that may be granted. The Oversight Board is permitted to conduct meetings; there is no prohibition on who they can or cannot invite to their meetings; and they are well within their rights to invite Mr. Daugherty to observe their meetings if they see fit.

concerns over what Mr. Daugherty may or may not do after HERA and ERA are transferred is not a basis to deny approval of the Settlement Agreement.

4. For the reasons set forth herein and in the Motion, the Settlement Agreement is "fair and equitable and in ***the best interest of the estate***" and should be approved. *Official Comm. of Unsecured Creditors v. Moeller (In re Age Ref., Inc.)*, 801 F.3d 530, 540 (5th Cir. 2015) (emphasis added). Whether Mr. Ellington believes the Settlement Agreement is in his best interests is irrelevant.

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WHEREFORE, for the reasons set forth above and in the Motion, the Debtor respectfully requests that the Court grant the Motion.

Dated: February 24, 2022

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*)
John A. Morris (NY Bar No. 266326) (*pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

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

Counsel for Highland Capital Management, L.P.

Frances A. Smith
State Bar No. 24033084
Eric Soderlund
State Bar No. 24037525
ROSS & SMITH, PC
700 North Pearl Street, Suite 1610
Dallas, Texas 75201
Telephone: 214-377-7879
Facsimile: 214-377-9409
Email: frances.smith@judithwross.com
eric.soderlund@judithwross.com

Co-Counsel for Scott Ellington

Michelle Hartmann
State Bar No. 24032402
BAKER & McKENZIE LLP
1900 North Pearl, Suite 1500
Dallas, TX 75201
Telephone: 214-978-3000
Facsimile: 214-978-3099
Email: michelle.hartmann@bakermckenzie.com

Debra A. Dandeneau (admitted *pro hac vice*)
Frank Grese (admitted *pro hac vice*)
BAKER & McKENZIE LLP
452 Fifth Avenue
New York, NY 10018
Tel: 212-626-4100
Fax: 212 310-1600
Email: debra.dandeneau@bakermckenzie.com
frank.grese@bakermckenzie.com

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.[1]	Chapter 11 Case No. 19-34054-sgj11

SCOTT ELLINGTON'S OBJECTION TO THE REORGANIZED DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH PATRICK DAUGHERTY

Scott Ellington ("***Ellington***") files this objection to the *Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith*, dated December 8, 2021 (Doc. 3088, the "***Motion***"), and the proposed *Settlement Agreement* related thereto (Doc. 3089-1, the "***Settlement Agreement***"). In support of this objection, Ellington respectfully states as follows:

[1] On August 11, 2021 (the "***Effective Date***"), the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., (As Modified)* [Dkt. No. 1808] (the "***Plan***"), filed by Highland Capital Management, L.P. ("***HCMLP***"), became effective. Therefore, all references made herein to HCMLP are to the "Debtor" as debtor in possession prior to the Effective Date or to the debtor as reorganized from and after the Effective Date.

BACKGROUND

1. On February 2, 2021, prior to confirmation of the Plan, counsel for HCMLP announced they had reached an agreement to settle the claims of Patrick Daugherty ("***Daugherty***"). Counsel for HCMLP then read into the record the following terms of the settlement:

> I am also pleased to let the Court know — breaking news — that this morning we reached an agreement to settle Patrick Daugherty's claims. I would now like to, at the request of Mr. Kathman [counsel to Daugherty], read into the record the Patrick Daugherty settlement.
>
> Under the Patrick Daugherty settlement, Mr. Daugherty will receive a $750,000 cash payment on the effective date. He will receive an $8.25 million general unsecured claim, and he will receive a $2.75 million Class 9 subordinated claim.
>
> The settlement of all claims against the Debtor and its affiliates — and affiliates will be defined in the documents — with the exception of the tax claim against the Debtor, Mr. Dondero, and Mr. Okada — and for the avoidance of doubt, except as I describe below, nothing in the settlement is intended to affect any pending litigation Mr. Daugherty has against Mr. Dondero, Scott Ellington, Isaac Leventon, Marc Katz, Michael Hurst, and Hunton Andrews Kurth.
>
> Mr. Daugherty will release the Debtor and its affiliates and current employees for all claims and causes of action, except for the agreements I identify below, and dismiss all current employees as to pending actions. We believe this only applies to Thomas Surgent and no other employee is implicated.
>
> Mr. Surgent and other employees, including but not limited to David Klos, Frank Waterhouse, Brian Collins, Lucy Bannon, and Matt Diorio, will receive releases similar to the covenant in Paragraph 1D of the Acis settlement agreement, which essentially provided the release would go away if they assisted anyone in pursuing claims against Mr. Daugherty.
>
> Highland will also use material — will use reasonable efforts at no material cost to assist Daugherty in vacating a Texas judgment that was issued against him. We've also looked at a form of the motion and believe we have agreed on the form of the motion.
>
> Highland, its affiliates, and current employees will covenant and agree they will not pursue or seek to enforce the injunction and the Texas judgment against Daugherty.
>
> And lastly, Daugherty will not be able to settle any claims for negligence or other claims that might be subject to indemnification by the Debtor or any successor.

February 2, 2021 Confirmation Hearing Tr. at 15:23-16:25; 17:7-17. Counsel to HCMLP further

stated that the settlement would be subject to a 9019 motion. *Id.* at 15-30.

2. On December 8, 2021 HCMLP filed the Motion with the Settlement Agreement annexed. Although the Settlement Agreement includes the terms announced at the Confirmation Hearing, it also includes two substantive provisions not previously disclosed at the Confirmation Hearing. As discussed below, these two provisions provide no additional benefit to HCMLP, but do directly affect and prejudice Ellington. As such, this objection to approval of the Settlement Agreement is limited to these two new provisions of the Settlement Agreement.

3. Subsequent to the Confirmation Hearing, Ellington learned that Daugherty had been stalking Ellington and other people closely associated with Ellington, including Ellington's girlfriend and elderly father, as well as three minor children. As part of Daugherty's activities, it appeared that Daugherty was parking his vehicle outside of the homes of Ellington and other people and photographing their activities. These activities, which are believed to have started as early as January 2021, are detailed in a complaint filed by Ellington in Texas state court on January 11, 2022 in which Ellington asserts claims against Daugherty for stalking and seeks damages and injunctive relief. Daugherty removed the Texas state court action to this Court, and the adversary proceeding is pending as *Scott Byron Ellington v. Patrick Daugherty,* Adv. Proc. No. 22-03003-sgj (the "***Ellington Action***"). Ellington has filed a motion requesting the Court to abstain and remand such adversary proceeding to the Texas state court.

4. Ellington has no reason to believe that HCMLP was aware of the alleged activities of Daugherty or the allegations raised in the Ellington Action at the time HCMLP entered into the Settlement Agreement and agreed to include the two new provisions discussed below. Given the concerns over these provisions, as well as Daugherty's apparent lack of good faith and candor in dealing with HCMLP in requesting these provisions, this Court should not grant the Motion so

long as the two provisions are included and afford HCMLP the opportunity to reconsider the inclusion of these provisions in the Settlement Agreement.

OBJECTION

5. Ellington does not object to any of the economic terms of the Settlement Agreement. Ellington also acknowledges that the Settlement Agreement, in accordance with the terms announced on the record at the Confirmation Hearing, allows Daugherty to continue to pursue his existing litigation against Ellington and others, and Ellington does not object to that provision. Ellington does object, however, to two newly added provisions that provide no additional benefit to HCMLP, but give Daugherty a platform to obtain confidential information about Ellington and others and a mechanism to find new ways to harass Ellington.

6. The first such provision requires HCMLP to give Daugherty observer status on the Claimant Trust's Oversight Board. Article V of the Claimant Trust Agreement[2] gives the Oversight Board broad authority and responsibilities to oversee the activities of both the Claimant Trust and the Litigation Sub-Trust. This would include the action that Marc Kirschner, as the trustee of the Litigation Sub-Trust, has commenced against Ellington and others and that is pending as *Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust, Plaintiff, v. James D. Dondero*, Adv. Pro. No. 21-03076-sgj. The relevant provision of the Settlement Agreement reads as follows:

> Observation Access: As soon as practicable following entry of an order of the Bankruptcy Court approving this settlement, ***HCMLP shall use reasonable efforts to petition the Claimant Trust Oversight Board to permit Daugherty to have access as an observer to meetings of the Claimant Trust Oversight Board***, subject to policies, procedures, and agreements applicable to other observers of the Claimant Trust Oversight Board, including policies, procedures, and agreements related to confidentiality and common interest.

[2] The form of Claimant Trust Agreement is included as Exhibit "A" to the *Debtor's Notice of Filing of Supplement to the Third Amended Plan of Reorganization of Highland Capital Management, L.P.*, dated November 30, 2020 [Doc. No. 1389]. HCMLP has never filed with the Court an executed, final version of the Claimant Trust Agreement or related documents.

> Whether Daugherty will be granted observer access and any continuing observer access is and will remain at the sole discretion of the Claimant Trust Oversight Board.

Settlement Agreement, ¶ 3 (emphasis added).

7. The second provision requires HCMLP to transfer to Daugherty, for no additional consideration, HCMLP's equity interests in Highland Employee Retention Assets LLC ("***HERA***") and Highland ERA Management, LLC ("***ERA***"):

> HERA and ERA: The Parties acknowledge and agree that as of the date hereof, HERA and ERA have no material assets other than potential claims that may exist against persons or entities not released at or prior to the date hereof, and no claims against the HCMLP Released Parties. . . . To facilitate recovery of such potential claims – which expressly excludes any and all claims by or in the name of HERA and ERA against any of the HCMLP Released Parties – ***HCMLP will transfer its interests in HERA and ERA to Daugherty*** …

Settlement Agreement ¶ 8 (emphasis added). The Settlement Agreement should not be approved by this Court if it contains these two added provisions.

8. The Fifth Circuit has stated that a bankruptcy court may approve a compromise or settlement "only when the settlement is fair and equitable and in the best interest of the estate." *See Official Comm. of Unsecured Creditors v. Moeller (In re Age Ref., Inc.)*, 801 F.3d 530, 540 (5th Cir. 2015). At the Confirmation Hearing, counsel to HCMLP read into the record the terms of the proposed settlement with Daugherty, and counsel to Daugherty agreed that the record reflected the terms of the settlement. No one, however, mentioned either of the provisions that are now included in paragraphs 3 and 8 of the Settlement Agreement. Moreover, HCMLP has not stated in the Motion why such provisions are necessary or beneficial to HCMLP, and it does not appear that HCMLP was aware of Daugherty's alleged activities or the allegations raised in the Ellington Action when HCMLP agreed to include these provisions. In light of what has come to light about Daugherty's alleged activities, HCMLP should have an opportunity to reconsider

whether it wishes to include these added provisions, especially as it appears that their sole purpose is to allow an alleged stalker to have further access to his victims and to create more opportunities for Daugherty to pursue his victims through litigation.

9. The Claimant Trust Agreement provides great detail about who will be the members of the Oversight Board, their powers, tenure, and removal, and how successor members are appointed. *See* ¶¶ 1.1(kk) and 4.1-4.2 of the Claimant Trust Agreement. The members of the Oversight Board act as fiduciaries and have a duty to the Claimant Trust Beneficiaries (as defined therein), including a duty of confidentiality. *Id.* at ¶¶ 4.3 and 4.12. As an observer, Daugherty will not be bound by any provision allowing his replacement or removal, and Daugherty will not be a fiduciary. Instead, he would be free to advise the Claimant Trustee, Litigation Sub-Trustee, and the Oversight Board members based upon his own self-interest, and not the interests of the Claimant Trust Beneficiaries. Of course, these sophisticated parties may choose to ignore any such self-serving statements. The Claimant Trust and the Oversight Board, however, have no apparent reason to need a non-fiduciary to weigh in on their deliberations. At a minimum, the Claimant Trust should consider the allegations relating to Daugherty's activities in determining whether it should provide such extraordinary access to Daugherty.

10. In addition, by agreeing to use best efforts to have the Claimant Trust grant Daugherty observer status on the Oversight Board, HCMLP is seeking to modify the Claimant Trust Agreement, which is considered to be part of the Plan. Nothing in the form of the Claimant Trust Agreement filed with the Court purported to allow the Claimant Trust to grant observer status to any party. As such, through paragraph 3 of the Settlement Agreement, HCMLP is attempting to modify the Plan, which is prohibited by section 1127(b) of the Bankruptcy Code.

11. With respect to paragraph 8 of the Settlement Agreement, the sole apparent purpose of the proposed assignment of HCMLP's shares in HERA and ERA to Daugherty is to give Daugherty further means to harass and pursue Ellington and the other victims of Daugherty's actions. HERA and ERA are defunct entities and have no economic value. Indeed, the Settlement Agreement acknowledges that "HERA and ERA have no material assets other than potential claims that may exist against persons or entities not released." The Motion does not articulate why such terms were added to the settlement and why such terms should be approved. Seemingly, the only purpose of paragraph 8 of the Settlement Agreement is to permit Daugherty to bring additional causes of action against Ellington and other former employees of the Debtor.

CONCLUSION

12. Since the inception of the Ellington Action, Daugherty has had numerous opportunities to deny that he has been "observing" Ellington and other people closely associated with him, but he has not done so. In light of the allegations that have come to light subsequent to HCMLP agreeing to include the provisions discussed above, HCMLP should be afforded the opportunity to determine the impact of these allegations on its decision to include them in the Settlement Agreement and revisit inclusion of these provisions in the Daugherty Settlement.

13. Accordingly, for the foregoing reasons, the Court should deny the Motion to the extent that it includes paragraphs 3 and 8 of the Settlement Agreement.

Dated: February 16, 2022

By: */s/ Frances A. Smith*

Frances A. Smith
State Bar No. 24033084
Eric Soderlund
State Bar No. 24037525
ROSS & SMITH, PC
700 N. Pearl Street, Suite 1610
Dallas, Texas 75201
Telephone: 214-377-7879
Facsimile: 214-377-9409
Email: frances.smith@judithwross.com
eric.soderlund@judithwross.com

Michelle Hartmann
State Bar No. 24032402
BAKER & MCKENZIE LLP
1900 North Pearl, Suite 1500
Dallas, Texas 75201
Telephone: 214-978-3000
Facsimile: 214-978-3099
Email: michelle.hartmann@bakermckenzie.com

Debra A. Dandeneau (admitted *pro hac vice*)
Frank Grese (admitted *pro hac vice*)
BAKER & MCKENZIE LLP
452 Fifth Ave
New York, NY 10018
Telephone: 212-626-4875
Email: debra.dandeneau@bakermckenzie.com
Email: frank.grese@bakermckenzie.com
(*Admitted pro hac vice*)

Co-Counsel for Scott Ellington

JASON S. BROOKNER
Texas Bar No. 24033684
ANDREW K. YORK
Texas Bar No. 24051554
DRAKE M. RAYSHELL
Texas Bar No. 24118507
GRAY REED
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
dyork@grayreed.com
drayshell@grayreed.com

ATTORNEYS FOR PATRICK DAUGHERTY

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)
Reorganized Debtor.	
SCOTT BYRON ELLINGTON.	Adv. No. _____ *Removed from the 101st Judicial District Court of Dallas County, Texas Cause No. DC-22-00304*
Petitioner,	
v.	
PATRICK DAUGHERTY,	
Respondent.	

[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.

NOTICE OF REMOVAL

Patrick Daugherty ("Daugherty") files this Notice of Removal ("Notice") of Cause No. DC-22-00304 ("State Court Action") from the 101st Judicial District Court of Dallas County, Texas to the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division.

As the Court is well aware, Daugherty is a creditor of the Debtor, asserting the fourth largest claim of all creditors in this bankruptcy proceeding. The dispute between Daugherty and the Debtor began a decade ago when the Debtor filed suit against Daugherty in Texas state court (the "Texas Action"). After a three-week trial, the jury in the Texas Action found for Daugherty against Debtor and James Dondero ("Dondero") for defamation with malice, and on Daugherty's claim for breach of good faith and fair dealing against Debtor's affiliate Highland Employee Retention Assets LLC ("HERA") for $2.6 million plus interest that has been accruing since May 2012.

After being unable to collect on the HERA judgment, Daugherty commenced an action against Debtor, Dondero, HERA and ERA Management, LLC ("ERA") in Delaware Chancery Court. The Delaware court found that the Dondero-related defendants wrongfully withheld dozens of documents in discovery based on improper assertions of privilege and that there was a reasonable basis to believe that a fraud had been perpetrated such that the crime-fraud exception applied to any attorney-client privilege assertion.

Two days into trial in the Delaware case, Debtor filed its chapter 11 petition. Daugherty subsequently filed a second lawsuit in Delaware Chancery Court against Dondero, HERA, ERA, Debtor's former general counsel Scott Byron Ellington ("Ellington"), the Debtor's former in-house counsel Isaac Leventon ("Leventon") and the Debtor's outside counsel, Hunton Andrews Kurth LLP ("HAK"), Marc Katz ("Katz"), and Michael Hurst ("Hurst") for conspiracy to commit fraud, among other claims.

Daugherty and the Reorganized Debtor have entered into a settlement agreement that is awaiting Court approval, and a hearing is set with respect to the same on March 1, 2022. The settlement agreement contains releases of claims against certain parties, but notably, it expressly excludes Dondero, Ellington, Leventon, HAK, Katz and Hurst from the definition of the "HCMLP Released Parties," meaning Daugherty will retain his claims against those parties in the Delaware litigation.

On January 12, 2022, a month after the proposed settlement was filed with the Court, Ellington initiated the State Court Action against Daugherty. Hurst is listed as one of Ellington's attorneys in the State Court Action. The petition in the State Court Action asserts that the State Court Action "arises out of the same transaction or occurrence which is the subject of" the Texas Action, and requests transfer of the State Court Action to the 68th Judicial District Court of Dallas County, Texas that is presiding over the Texas Action. Ellington's counsel also informed the undersigned that Ellington intends to file such a transfer motion.

Ellington and Daugherty are both interested parties in Debtor's bankruptcy. Removal is appropriate, and this Court has jurisdiction, pursuant to 28 U.S.C. § 1452(a) and Rule 9027 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), because the State Court Action relates to Debtor's bankruptcy in several respects: (i) Daugherty is a creditor; (ii) Ellington is a Defendant to claims asserted by the Trustee in the bankruptcy; (iii) Daugherty and the Reorganized Debtor have entered into, and requested Court approval of, a proposed settlement that disfavors Ellington; and (iv) the State Court Action offends this Court's gatekeeper orders, which essentially forbid pursuing legal action involving parties related to the bankruptcy—specifically Debtor's principals—without this Court's approval, requiring any such action to be adjudicated in this Court. *See* Docket No. 2660 at 12-13, 26-27. The State Court Action is an attempt to: (1)

improperly evade this Court's clear gatekeeping orders; (2) derail this Court's pending consideration of a proposed settlement; and (3) pursue the Reorganized Debtor through otherwise impermissible discovery in the State Court Action.

BACKGROUND

1. The Debtor filed for bankruptcy on October 16, 2019 in the U.S. Bankruptcy Court for the District of Delaware. The Debtor's chapter 11 case was transferred to this Court on December 4, 2019, and is pending as captioned above, under Case No. 19-34054. Docket No. 1.

2. Ellington is a named defendant in action filed by the Litigation Trustee on October 15, 2021. *See generally* Adversary No. 21-03076. He is also a former principal of the Debtor, having served as the Debtor's Chief Legal Officer and General Counsel until his termination for cause in January 2021. Docket No. 2934 at 8, ¶ 19.

3. Daugherty is a former employee and limited partner of the Debtor and previously served in other positions with current and former affiliates of the Debtor. At the time of his resignation from the Debtor, Daugherty owned 19.1% of the preferred units of HERA. Since that time, his ownership interest in HERA increased to 100%.

4. Shortly after Daugherty's resignation, Debtor commenced the Texas Action against Daugherty. Daugherty obtained a $2.6 million award plus interest which continues to accrue against HERA (the "HERA Judgment"), which was upheld on appeal in December 2016.

5. In July 2017, unable to collect on the HERA Judgment, Daugherty commenced an action against the Debtor and several of its principals, in their individual capacities, in the Delaware Chancery Court in the case captioned *Daugherty v. Highland Capital Management, L.P., et al.*, C.A. No. 2017-0488-MTZ, for, *inter alia*, fraudulent transfer, promissory estoppel, unjust enrichment, indemnification, and "fees on fees" (the "Highland Chancery Case").

6. Prior to trial, the Delaware Chancery Court ruled that the defendants wrongfully withheld dozens of documents in discovery based on improper assertions of privilege. Specifically, the Delaware Chancery Court ruled there was a reasonable basis to believe that a fraud had been perpetrated on Daugherty, resulting in the crime-fraud exception precluding any attorney-client privilege to the withheld documents.

7. The Highland Chancery Case, however, was automatically stayed when the Debtor filed its chapter 11 petition in the middle of trial on October 16, 2019.

8. On December 1, 2019, Daugherty filed a separate lawsuit in the Delaware Chancery court captioned *Daugherty v. Dondero, et al.*, C.A. No. 2019-0956-MTZ, against various principals, agents, and attorneys affiliated with Debtor—including Ellington—for conspiracy to commit fraud, along with other claims (the "Ellington Chancery Case," and together with the Highland Chancery Case, the "Chancery Cases").

9. Daugherty and the Reorganized Debtor engaged in settlement negotiations in an attempt to resolve Daugherty's claim in the chapter 11 case. The parties' negotiations ultimately resulted in the filing of the Reorganized Debtor's *Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith* on December 8, 2021, at Docket No. 3088 ("Settlement Approval Motion").

10. The Settlement Approval Motion requests approval of a proposed settlement agreement ("Proposed Settlement"), executed in late November 2021. Pursuant to the Proposed Settlement, Daugherty will release his claims against the Reorganized Debtor's estate and many of the Reorganized Debtor's agents, representatives, and subsidiaries. Exhibit 6, ¶ 6. However, the Proposed Settlement expressly and specifically retains Daugherty's claims against Ellington and select other individuals and entities. Exhibit 6, ¶ 7.

11. On January 12, 2022, a little over a month after submission of the Settlement Approval Motion, Ellington filed the State Court Action against Daugherty.

12. On the first page of the petition, Ellington's counsel asserts that "this case, in part, arises out of the same transaction or occurrence which is the subject of *Highland Capital Management, L.P. v. Patrick Daugherty*, Cause No. 12-04005, in the 68th Judicial District Court of Dallas County, Texas. Hence, the undersigned believes that this case is subject to transfer . . ." Exhibit 1 at 1.

13. On January 14, 2022, Ellington's lead counsel doubled down on the relationship between the State Court Action and the Texas Action in an email to the undersigned:

> We believe this case is a related case and should be transferred to Judge Hoffman's court. We do not know yet if the transfer will be automatic. If it is not automatically transferred, we intend to file a Motion to Transfer. Please let us know today if we can mark you as unopposed on our motion to transfer.

Exhibit 5.

BASIS FOR REMOVAL

14. "A party may remove any claim or cause of action in a civil action… to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under 1334[.]" 28 U.S.C. § 1452(a). According to 28 U.S.C. § 1334(b), "the district courts shall have original but not exclusive jurisdiction of all civil proceedings… related to cases under title 11." A matter is "related to" a bankruptcy if its outcome "could 'conceivably have an effect on the estate being administered in the bankruptcy.'" *In re Brooks Mays Music Co.*, 363 B.R. 801, 808 (Bankr. N.D. Tex. 2007) (Jernigan, J.) (quoting *In re Wood*, 825 F.2d 90, 93 (5th Cir. 1987)). "Conceivably" is the watchword—neither certainty, nor even probability, is required. *See Randall & Blake, Inc. v. Evans (In re Canion)*, 196 F.3d 579, 587 (5th Cir. 1999); *In re Marcus Hook Dev. Park, Inc.*, 943 F.2d 261, 264 (3d Cir. 1991). Thus,

bankruptcy jurisdiction exists and a matter is "'related to' bankruptcy if the outcome could alter, positively or negatively, the debtor's rights, liabilities, options, or freedom of action or could influence the administration of the bankrupt estate." *In re TXNB Internal Case*, 483 F.3d 292, 298 (5th Cir. 2007).

15. Removal directly to this Court is appropriate pursuant to the Northern District of Texas's Standing Order of Reference of Bankruptcy Cases and Proceedings. Misc. Order No. 33 (Aug. 3, 1984). This Standing Order provides that "any or all cases … related to a case under Title 11 … are referred to the Bankruptcy Judges of this district for consideration and resolution consistent with law." *Id.* Removal directly to the Bankruptcy Court is a regular and accepted practice. *See, e.g.,* Local Bankr. R. 9027-1(a); *TNT Quadrangle Partners, LP v. SPRF B/Quadrangle Prop., LLC*, No. 3:20-AP-03103, Dkt. 1, 59 (Bankr. N.D. Tex. Feb. 26, 2021) (Jernigan, J.) (granting summary judgment in adversary proceeding removed directly from Texas state court); *Lycoming Engines v. Superior Air Parts, Inc.*, No. 3:12-AP-03035, Dkt. 1, 38 (Bankr. N.D. Tex. July 6, 2012) (Houser, J.) (denying motion to remand in action removed directly from Texas state court).

16. This Notice is filed within (30) days of the date the State Court Action was commenced and is therefore timely pursuant to 28 U.S.C. § 1446(b) and Bankruptcy Rule 9027(a)(2). A copy of this Notice is also being filed with the Court Clerk in the State Court Action. Moreover, Daugherty consents to entry of final orders and judgments by this Court. *See* Fed. R. Bankr. P. 9027.

17. As discussed above, the State Court Action is "related to" the Debtor's bankruptcy, and Ellington admits as much on the face of the state court petition. The Proposed Settlement between Daugherty and the Reorganized Debtor addresses both the Texas Action and portions of

the Chancery Cases, and expressly excludes Ellington as a released party. This is more than sufficient to vest this Court with jurisdiction over Ellington's new lawsuit.

18. Moreover, Ellington appears to seek discovery in the State Court Action to use in defending against the Litigation Trustee's action. On January 13, 2022, Ellington's counsel sent the undersigned counsel a litigation hold letter. *See* Exhibit 7. Among the categories of documents and materials that Ellington requested be retained were "[a]ll documents and communications with any other party, person, or entity regarding . . . the observation, surveillance, or investigation of any Ellington Party or Ellington Location." *Id.* at 2. Combined with the fact that Ellington wants to immediately seek written discovery in the State Court Action, *see* Exhibit 5, it is clear that Ellington's lawsuit attempts to circumvent this Court's gate-keeping orders by seeking information concerning Daugherty's communications with the Official Committee of Unsecured Creditors, the Reorganized Debtor, and Jim Seery concerning Ellington's attempts to conceal his assets to keep them out of the reach of his creditors. The timing of the State Court Action is indicative of its retaliatory nature because Daugherty expressly retained his claims against Ellington in the Proposed Settlement.

19. Ellington's State Court Petition is attached as Exhibit "1." Attached hereto as Exhibit "2" is a copy of the docket sheet for the State Court Action (last visited January 17, 2022). Attached hereto as Exhibit "3" are all process and other pleadings regarding the State Court Action. Additionally, attached hereto as Exhibit "4" is a listing of counsel involved in the State Court Action, along with their contact information.

NOTICE

20. Pursuant to Bankruptcy Rule 9027, Daugherty will file a copy of this Notice of Removal with the Clerk of the Court for the 101st Judicial District Court in Dallas County, and will serve a copy on all parties to the removed action.

Respectfully submitted this 18th day of January, 2022.

GRAY REED

By: /s/ *Jason S. Brookner*
JASON S. BROOKNER
Texas Bar No. 24033684
ANDREW K. YORK
Texas Bar No. 24051554
DRAKE M. RAYSHELL
Texas Bar No. 24118507

1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
dyork@grayreed.com
drayshell@grayreed.com

ATTORNEYS FOR PATRICK DAUGHERTY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of January, 2022, he caused a true and correct copy of the foregoing pleading to be served via the Court's electronic case filing system (ECF) on all parties to this proceeding who have so-subscribed.

/s/ Jason S. Brookner
JASON S. BROOKNER

JASON S. BROOKNER
Texas Bar No. 24033684
ANDREW K. YORK
Texas Bar No. 24051554
DRAKE M. RAYSHELL
Texas Bar No. 24118507
GRAY REED
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
dyork@grayreed.com
drayshell@grayreed.com

ATTORNEYS FOR PATRICK DAUGHERTY

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)
Reorganized Debtor.	
SCOTT BYRON ELLINGTON.	
Petitioner,	Adv. No. _____ *Removed from the 101st Judicial District Court of Dallas County, Texas Cause No. DC-22-00304*
v.	
PATRICK DAUGHERTY,	
Respondent.	

[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.

APPENDIX TO NOTICE OF REMOVAL

Pursuant to N.D. Tex. Local Bankruptcy Rule 9027-1(c), Respondent Patrick Daugherty submits this appendix of the docket sheet and all pleadings from the court from which this action is being removed.

- **Exhibit 1** is the Petition filed to initiate Cause No. DC-22-00304 in the 101st Judicial District of Dallas County, Texas ("State Court Action").
- **Exhibit 2** is a copy of the docket sheet for the State Court Action (last visited January 17, 2022).
- **Exhibit 3** contains copies of the remaining documents filed on the docket in the State Court Action.
- **Exhibit 4** is a listing of counsel involved in the State Court Action along with their contact information.
- **Exhibit 5** is a true and correct copy of January 14, 2022, email correspondence from Julie Pettit, The Pettit Law Firm, to Drew York and Ruth Ann Daniels, Gray Reed.
- **Exhibit 6** is a true and correct copy of the Proposed Settlement Agreement between Reorganized Debtor and Daugherty.
- **Exhibit 7** is a true and correct copy of the January 13, 2022, Litigation Hold letter from Ellington's counsel to Daugherty.

Respectfully submitted this 18th day of January, 2022.

GRAY REED

By: /s/ *Jason S. Brookner*
JASON S. BROOKNER
Texas Bar No. 24033684
ANDREW K. YORK
Texas Bar No. 24051554
DRAKE M. RAYSHELL
Texas Bar No. 24118507

1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
dyork@grayreed.com
drayshell@grayreed.com

ATTORNEYS FOR PATRICK DAUGHERTY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of January, 2022, he caused a true and correct copy of the foregoing pleading to be served via the Court's electronic case filing system (ECF) on all parties to this proceeding who have so-subscribed.

/s/ Jason S. Brookner
JASON S. BROOKNER

EXHIBIT 1

DC-22-00304

NO. _____

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
	§	101st
v.	§	**_____ JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

Comes Now, Scott Byron Ellington, Plaintiff herein, and files this *Plaintiff's Original Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction* against Defendant Patrick Daugherty, and in support thereof, would respectfully show the Court the following:

Dallas County LR 1.08 Disclosure

> Dallas County Local Rule 1.08 provides that the attorneys of record for the parties in any case within the categories of Local Rule 1.07 must notify the judges of the respective courts in which the earlier and later cases are assigned of the pendency of the latter case. The attorney filing a case that is so related to another previously filed case shall disclose in the original pleading or in a separate simultaneous filing that the case is so related and identify by style, cause number, and court of the related case. Accordingly, and pursuant to L.R. 1.08, the undersigned hereby notifies the Court that this case, in part, arises out of the same transaction or occurrence which is the subject of *Highland Capital Management, L.P. v. Patrick Daugherty*, Cause No. 12-04005, in the 68th Judicial District Court of Dallas County, Texas. Hence, the undersigned believes that this case is subject to transfer under L.R. 1.07(a) or otherwise pursuant to L.R. 106 because the transfer would "facilitate orderly and efficient disposition of the litigation."

I. Discovery Control Plan

1. Pursuant to TEXAS RULE OF CIVIL PROCEDURE 190.3, Plaintiff requests a Level 2 discovery control plan.

II. Parties & Service

2. Plaintiff Scott Byron Ellington, an individual, is a resident of the state of Texas.

3. Defendant Patrick Daugherty is an individual and resident of Dallas County, Texas. Defendant may be served at his residence located at 3621 Cornell Ave, Dallas, Texas 75205, or wherever he may be found.

III. Rule 47(c) Disclosure

4. Plaintiff seeks damages within the jurisdictional limits of the Court. Specifically, Plaintiff seeks monetary relief over $1,000,000 and non-monetary relief.

IV. Jurisdiction & Venue

5. The Court has jurisdiction over Defendant because he resides in Texas, has done business in Texas, committed torts, in whole or in part, in Texas, has continuing contacts with Texas, and is amenable to service by a Texas Court.

6. Venue in Dallas County is proper in this case under Sections 15.002(a)(1) and (a)(3) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE because this is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred and it is the county where Defendant resides.

V. Facts

7. Plaintiff Scott Ellington ("Plaintiff" or "Ellington") was, until January of 2021, the general counsel of Highland Capital Management ("Highland").

8. Defendant Daugherty ("Defendant" or "Daugherty") previously worked for Highland.

9. In 2012, Highland sued Daugherty. In response, Daugherty filed counterclaims against Highland then sued its affiliate, Highland Employee Retention Assets LLC ("HERA"), and three Highland executives. A jury ultimately determined that Daugherty breached his employment agreement and fiduciary duties. It also found that HERA breached the implied duty of good faith and fair dealing, but also found that the executives subject to the counter-claim were not liable to Daugherty. The jury awarded Highland $2,800,000 in attorney's fees and injunctive relief; and awarded Daugherty $2,600,000 in damages against HERA.

10. Since the 2012 lawsuit's filing, Daugherty and Highland—or Highland related entities and individuals—engaged in protracted litigation in several different forums across the country. Daugherty's expressed goal is to "get" the founder and former CEO of Highland, Jim Dondero, and its former general counsel, Ellington. As part of this campaign, Daugherty personally sued Ellington in December 2019 in Delaware Chancery Court. Ellington's motion to dismiss currently pends in that matter.

11. While Daugherty's previously limited his vendetta to the courtroom, he began a campaign of harassment against Ellington and his family starting in January 2021 that continues to this day. *See* **Exhibit A** (Declaration of Gregory Allen Brandstatter, the personal security guard of Scott Ellington) (detailing Daugherty's harassment and stalking of Ellington, his family, and loved ones); **Exhibit B** (Declaration of Scott Byron Ellington).

12. Specifically, Daugherty has been observed outside Ellington's office, his residence, the residence of his long-time girlfriend, Stephanie Archer, his sister's residence, and his father's residence no less than **143 times**, often taking photographs and video recordings while either

parked or driving slowly by. Indeed, on April 21, 2021, Daugherty was observed driving by Ellington's office nine (9) times that day alone.

13. Daugherty most recently was confirmed taking video or photo recordings outside of Ellington's residence on December 11, 2021. For reasons set forth in the Brandstatter Declaration, attached herein at **Exhibit A**, Daugherty likely stalked Ellington and his loved ones more recently than the latest confirmed date.

14. Daugherty's harassing conduct is "textbook" behavior that precedes a physical attack that a reasonable person would consider a threat to their safety as well as that of their family and property. Indeed, Ellington has been forced to hire personal security, and his family are in fear for their personal and physical safety.

15. As evidenced by the over 143 times Daugherty has been observed stalking Ellington and his family, he has the apparent ability to carry out this threat of continued harassment and violence.

16. Both Mr. Ellington's sister and girlfriend have both demanded to Mr. Daugherty that he stop his harassment. Despite this clear demand for Daugherty to stop engaging in this harassing behavior, he refuses to stop and continues to harass Ellington and his family.

17. Daugherty's constant stalking and harassment of Ellington and his family reasonably cause them to fear for their safety.

18. Ellington reported Daugherty's harassing and disturbing behavior to the police.

VI. Causes of Action

A. Count One: Stalking.

19. All facts alleged above, herein, and below are hereby incorporated by reference.

20. Pursuant to TEXAS CIVIL PRACTICE & REMEDIES CODE § 85.002, a defendant is liable to a claimant for damages arising from stalking of the claimant by the defendant.

21. A claimant proves stalking against a defendant by showing:

> (1) on more than one occasion the defendant engaged in harassing behavior;
> (2) as a result of the harassing behavior, the claimant reasonably feared for the claimant's safety or the safety of a member of the claimant's family; and
> (3) the defendant violated a restraining order prohibiting harassing behavior or:
>
> (A) the defendant, while engaged in harassing behavior, by acts or words threatened to inflict bodily injury on the claimant or to commit an offense against the claimant, a member of the claimant's family, or the claimant's property;
>
> (B) the defendant had the apparent ability to carry out the threat;
>
> (C) the defendant's apparent ability to carry out the threat caused the claimant to reasonably fear for the claimant's safety or the safety of a family member;
>
> (D) the claimant at least once clearly demanded that the defendant stop the defendant's harassing behavior;
>
> (E) after the demand to stop by the claimant, the defendant continued the harassing behavior; and
>
> (F) the harassing behavior has been reported to the police as a stalking offense.

22. "Harassing behavior" is defined by the statute as "conduct by the defendant directed specifically toward the claimant, including following the claimant, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the claimant." TEX. CIV. PRAC. & REM. CODE § 85.001(4).

23. First, Defendant has engaged in harassing behavior toward the Plaintiff and his family in the above-described manner. Second, because of the harassing behavior, Plaintiff reasonably feared for his safety and the safety of his family. Third, Defendant, while engaging in the harassing behavior, by acts or words threatened to inflict bodily injury on the Plaintiff or to commit an offense against the Plaintiff, his family, or his property. Specifically, Defendant's

conduct is consistent with behavior leading up to a physical attack and is, therefore, an inherent threat of physical violence. Defendant had the apparent ability to carry out the threat, the Defendant's apparent ability to carry out the threat caused Plaintiff to reasonably fear for his safety or the safety of a family member, the Plaintiff (or his representative) at least once clearly demanded that the Defendant stop his harassing behavior, after the demand to stop by the Plaintiff, the Defendant continued the harassing behavior, and the harassing behavior has been reported to the police as a stalking offense.

24. Plaintiff seeks recovery of his actual damages caused by Defendant's stalking, exemplary damages, and injunctive relief.

B. Count Two: Invasion of Privacy by Intrusion.

25. All facts alleged above, herein, and below are hereby incorporated by reference.

26. A claim of invasion of privacy by intrusion has the following elements: (1) an intentional intrusion, (2) upon the seclusion, solitude, or private affairs of another, (3) that would be highly offensive to a reasonable person.

27. Here, Defendant has intentionally intruded upon the seclusion, solitude, and private affairs of Plaintiff by regularly appearing at his office, his residence, his girlfriend's residence, his father's residence, and his sister's residence, and taking photographs and other recordings of Ellington and his loved ones at these residences. The appearances are unsolicited, uninvited, and constant. These unwanted "visits" by Defendant are highly offensive to a reasonable person.

28. Plaintiff seeks recovery of his actual damages caused by Defendant's conduct alleged herein, exemplary damages, and injunctive relief.

VII. Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction

A. Elements for Injunctive Relief.

29. All facts alleged above, herein, and below are hereby incorporated by reference.

30. In light of the above-described facts, Plaintiff seeks recovery from Defendant.

31. Plaintiff is likely to succeed on the merits of this lawsuit because Defendant has been stalking Plaintiff and his family and has been engaged in otherwise harassing conduct.

32. Unless this Honorable Court immediately restrains the Defendant and his agents the Plaintiff and his family will suffer immediate and irreparable injury, for which there is no adequate remedy at law to give Plaintiff complete, final and equal relief. More specifically, Plaintiff will show the court the following:

a. The harm to Plaintiff and his family is imminent and ongoing as Defendant has harassed and stalked Plaintiff and his family, including his father, his sister, and girlfriend, almost constantly this entire year.

b. The imminent harm will cause Plaintiff irreparable injury as the harassment will continue if not restrained. Further, Plaintiff reasonably fears that Defendant may cause him or his family bodily harm, and the accompanying anxiety interferes with his ability to conduct his normal, daily activities. *See, e.g., Quinn v. Harris*, 03-98-00117-CV, 1999 WL 125470, at *11 (Tex. App.—Austin Mar. 11, 1999, pet. denied) ("[I]njunctions designed to prevent harassment are permissible."); *Kramer v. Downey*, 680 S.W.2d 524, 525 (Tex. App.—Dallas 1984, writ ref'd n.r.e.) ("Further, this right to be left alone from unwanted attention may be protected, in a proper case, by injunctive relief."); and

c. There is no adequate remedy at law which will give Plaintiff complete, final and equal relief because the imminent harm is irreparable. *See e.g., Wright v. Sport Supply Group, Inc.*, 137 S.W.3d 289, 294 (Tex. App.—Beaumont 2004, no pet.) ("Issues one (no evidence of inadequate remedy at law) and two (no evidence of irreparable injury) are intertwined under Texas case law.").

B. Bond.

33. Plaintiff is willing to post a reasonable temporary restraining order and temporary injunction bond and requests the Court to set such bond.

C. Remedy.

34. Plaintiff met his burden by establishing each element which must be present before injunctive relief can be granted by this Court. Thus, Plaintiff is entitled to the requested temporary injunction, and upon a successful trial on the merits, for the temporary injunction to be made permanent.

35. Plaintiff requests that, while the temporary injunction is in effect, the Court to restrain Defendant and his agents from:

a. Being within 500 feet of Ellington;

b. Being within 500 feet of Ellington's office located at 120 Cole Street, Dallas, Texas 75207;

c. Being within 500 feet of Ellington's residence located at 3825 Potomac Ave, Dallas, Texas 75205;

d. Being within 500 feet of Stephanie Archer;

e. Being within 500 feet of Stephanie Archer's residence located at 4432 Potomac, Dallas, Texas 75025;

f. Being within 500 feet of Marcia Maslow;

g. Being within 500 feet of Marcia's residence located at 430 Glenbrook Dr., Murphy, Texas 75094;

h. Being within 500 feet of Byron Ellington;

i. Being within 500 feet of Byron Ellington's residence located at 5101 Creekside Ct., Parker, Texas 75094;

j. Photographing, videorecording, or audio recording Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington;

k. Photographing or videorecording the residences or places of business of Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington; and

l. Directing any communications toward Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington.

VIII. Exemplary Damages

36. The conduct of Defendant described above constitutes malice and, therefore, Plaintiff is entitled to, and hereby seeks, an award of exemplary damages. *See* TEX. CIV. PRAC. & REM. CODE § 41.003(1).

IX. Conditions Precedent

37. All conditions precedent to Plaintiff's suit have occurred or have been performed.

X. Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that:

a. Defendant be cited to appear and answer;

b. The Court determine any issue of fact and, upon final hearing of this cause, the Court award to Plaintiff:

i. Actual damages;

ii. Exemplary damages;

iii. A temporary restraining order;

iv. A temporary injunction;

v. A permanent injunction; and

vi. Court costs;

c. The Court grant any other relief to which Plaintiff may be entitled.

Respectfully submitted,

/s/ Julie Pettit

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
David B. Urteago
State Bar No. 24079493
durteago@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

Michael K. Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Nathaniel A. Plemons
State Bar No. 24121059
nplemons@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN, LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

ATTORNEYS FOR PLAINTIFF

EXHIBIT
A

DECLARATION OF GREGORY ALLEN BRANDSTATTER

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Gregory Allen Brandstatter declares as follows:

1. My name is Gregory Allen Brandstatter. I am over 21 years of age, have never been convicted of a felony or other crime involving moral turpitude, and suffer from no mental or physical disability that would render me incompetent to make this declaration.

2. I am able to swear, and hereby do swear under penalty of perjury, that the facts stated in this declaration are true and correct and within my personal knowledge.

3. I am a Licensed Texas Master Peace Officer with fifteen (15) years of experience, a U.S. Government Contractor with over twelve (12) years of experience in the areas of high threat protection, counterterrorism, and counternarcotics, and I am also a licensed private investigator and security consultant.

4. On Feb 3, 2021, Scott Ellington ("Scott") called, advising me that he believed someone was stalking himself and his girlfriend Stephanie Archer ("Stephanie"). The day prior to his calling me (Feb 2, 2021), Stephanie had been followed to 120 Cole Street, Dallas, Texas, where Scott has an office. Stephanie stated that for the past month or so she had noticed a large Black SUV possibly following her. On Feb 2, 2021, she noticed that the person in the Black SUV was actively taking pictures of her, and she attempted to confront the individual while she simultaneously took pictures of the Black SUV and its driver. Her picture shows the vehicle Make and License Number, BX9K764. In Stephanie's photo you can also see the person driving holding

up a cell phone as if taking pictures. A true and correct copy of this photograph is attached hereto as **Exhibit A-1**.

5. The following day Scott was in his office on Cole Street, when he noticed a vehicle resembling a "Toyota 4 Runner, Tan in color, stop in front of his office. He observed the driver of the taking pictures and or video of his officer and the vehicles parked in front. Scott was able to obtain the License Number of the Vehicle, GPF9512, he also noted that vehicle had a "WMR sticker on the rear window. Scott stated the driver of the vehicle looked like Pat Daugherty ("Daugherty"). Scott and Daugherty both previously worked at an investment firm in Dallas and are currently opponents in financial litigation. Scott believes that Daugherty is attempting to harass him, his friends and coworkers due to the litigation. It should be noted that Daugherty has a history of anger issues and he believes Daugherty may be trying to intimidate him.

6. Scott asked if I could assist him in determining who the person(s) were taking the photos/videos. I advised Scott that I could check some open sources intelligence ("OSINT") sites and see what I could come up with in reference to the vehicle registrations. I also suggested that we set up a counter surveillance program to determine if these were random acts or an organized surveillance effort.

7. On Feb 4, 2021, an investigation was opened along with a counter surveillance operation. OSINT sources showed Daugherty to be the registered owner of the Black SUV BX9K764 and that Daugherty currently is listed on the vehicle registration of the Infiniti QX4 GPF9512. The Infiniti QX4 closely resembles a Toyota 4 Runner (as observed by Scott above). We believe that Daugherty sold the Infiniti to one of his domestic employees and "borrowed" the vehicle to avoid detection.

8. On February 4, 2021, at approximately 11:20 A.M., I observed the Infiniti GPF9512 driven by a while male with sandy blonde hair drive by west bound on Cole slow when passing Scott's office (120 Cole St.) and then proceed west on Cole, south on Levee, east on Alley (rear of 120 Cole), U-turn, south on Levee and east on Leslie. I viewed the driver of this vehicle as he was exiting Alley and can verify, after comparing photos, that Daugherty was the driver of the Infiniti.

9. At approximately 1:22 P.M. on Feb 4, 2021, Scott advised that Daugherty had followed him to 120 Cole, I was parked on Cole and Levee. As Scott parked, I observed the Infiniti driving west on Cole towards me. I observed Daugherty driving Infiniti GPF9512. Daugherty turned south on Levee, U-turn, north on Levee then east on Cole. I kept my distance as the Infiniti slowed and then stopped in front of Scott's office. While stopped in front of Scott's office, Daugherty verbally engaged Stephanie and Joe (friend of Scott). Daugherty proceeds east on Cole, I followed, Daugherty turned left on Rivers Edge, I am unable to follow due to traffic conditions. Stephanie and Joe identified the driver as Daugherty after comparing to photos. A true and correct copy of a photograph of the back of the Infiniti taken on February 4, 2021, on Cole St. is attached hereto as **Exhibit A-2**.

10. At approximately 5:15 P.M. on February 4, 2021, Reese Morgan ("Reese"), a private investigator with whom I regularly work, drove by Daugherty's residence and confirmed two vehicles parked in the carport. One is a white Lincoln Navigator LPG9001 and the other is a Black GMC Yukon BX9K764, which is the same vehicle that followed Stephanie on February 3, 2021. The Infiniti GPF9512 (with a "WMR" sticker on the back window) is parked on the street across the street from Daugherty's carport. Attached as **Exhibit A-3** is a true and correct copy of a photograph of the Yukon parked at Daugherty's residence, attached as **Exhibit A-4** is a true and

correct copy of a photograph of the Navigator parked at Daugherty's residence, and attached as **Exhibit A-5** is a true and correct coy of a photograph of the Infiniti parked across the street from Daugherty's residence.

11. February 5, 2021, approximately 1:40 P.M., Reese drove by Daugherty's Residence and verified the Infiniti GPF9512 parked across street from carport.

12. February 8, 2021, at approximately 10:10 A.M., I drove by Daugherty's Residence and verified that the Infiniti GPF9512 was parked across street from carport.

13. Additional screen captures clearly identify Daugherty as the driver videoing and/or photographing Scott's office. *See* **Exhibit A-6** (March 29, 21, three passes by Daugherty in the Infiniti), **Exhibit A-7** (April 16, 2021, Daugherty in the Yukon); **Exhibit A-8** (April 23, 2021, Daugherty in the Yukon). Daugherty also is clearly identifiable outside of Scott's sister's home. *See* **Exhibit A-9** (April 25, 2021, Daugherty in the Infiniti). It is clear that he is recording Scott, his family, and friends. *See* **Exhibit A-10** (May 3, 2021, Daugherty in the Navigator).

14. Attached hereto as **Exhibit A-11** is a true and correct copy of a report that I wrote that contains my counter-surveillance log. As documented by the report, following verification that Daugherty was the individual in the Black Yukon with license plate BX9K764 and the Infiniti QX4 with license plate GPF9512, Daugherty was observed an additional 143 times outside Scott's office or the homes of his family or girlfriend between February 19, 2021, and November 23, 2021. In fact, there were many instances where Daugherty would drive by Scott's office several times in a single day. For example, Daugherty was observed driving by Scott's office at least nine (9) times on April 21, 2021. During many of these visits, Daugherty was observed taking photographs or video recordings from the inside of his vehicle.

15. Additionally, Daugherty was observed at least eight (8) times outside of the home of Marcia Maslow, Scott's sister. Mrs. Maslow resides with her husband and two minor daughters. Mrs. Maslow resides in Murphy, Texas, approximately a thirty minute drive (without traffic) from the residences of both Scott and Daugherty. Mrs. Maslow sent me a written message after she observed Daugherty at her residence in which she describes the emotional trauma experienced by both her and her family.

16. Finally, Daugherty has been observed at least seven (7) times outside the home of Scott's widower father Byron Ellington. Mr. Byron Ellington lives in Parker, Texas, approximately a thirty-five minute drive (without traffic) from the residences of both Scott and Daugherty.

17. While the verified instances whereby Daugherty was visited Scott's office or the home of his friends and family are extensive, Daugherty's harassment is almost certainly more extensive. The following factors lead to this conclusion:

a. Daugherty was only first spotted because of Stephanie's lay person observations, so the stalking likely started earlier;

b. Each photograph and video clip must be manually extracted from manual review of hours of raw video taken during daytime hours, so there is likely to be more encounters unidentified or unrecorded;

c. It is difficult to record Daugherty when his vehicle is following Scott's or those of his family;

d. There may be other locations associated with Scott that Daugherty stalked where I did not conduct counter-surveillance.

18. In my experience on the United States Department of State High Threat Protection Team, the sort of conduct exhibited by Daugherty is a precursor to a physical attack. I therefore called the Dallas Police Department to report the stalking, but could not find anyone to take the report. I was told that Scott needed to call 911 instead and report situation.

[*Remainder of Page Intentionally Left Blank; Signature Page Follows*]

FURTHER DECLARANT SAYETH NOT.

My name is Gregory Allen Brandstatter. My date of birth is [redacted]1954. My address is 1001 County Road 26100, Roxton, Texas 75477. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas, on the 28th day of December, 2021.

Gregory Allen Brandstatter

EXHIBIT

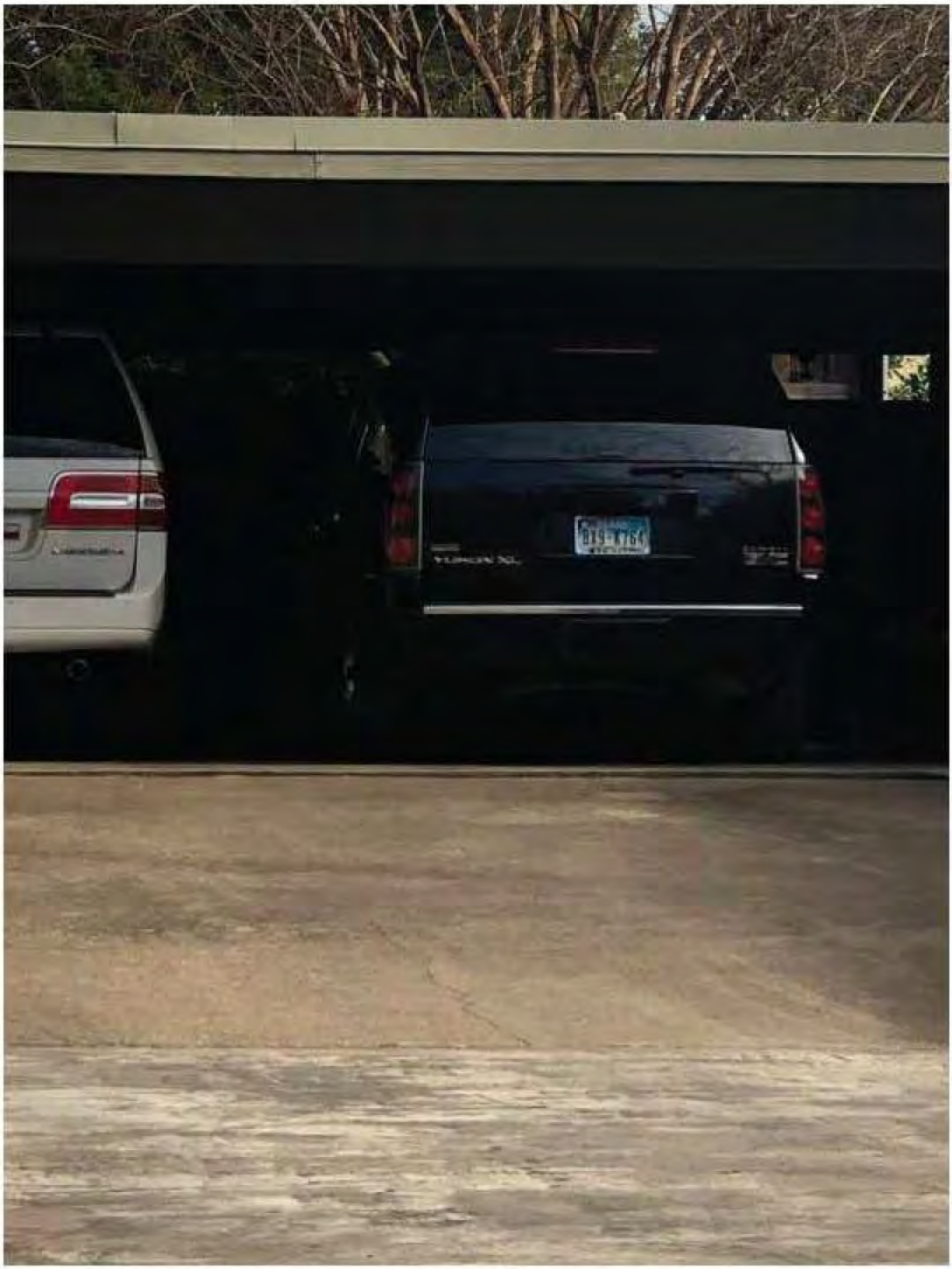
A-1

exhibitsticker.com

EXHIBIT

A-2

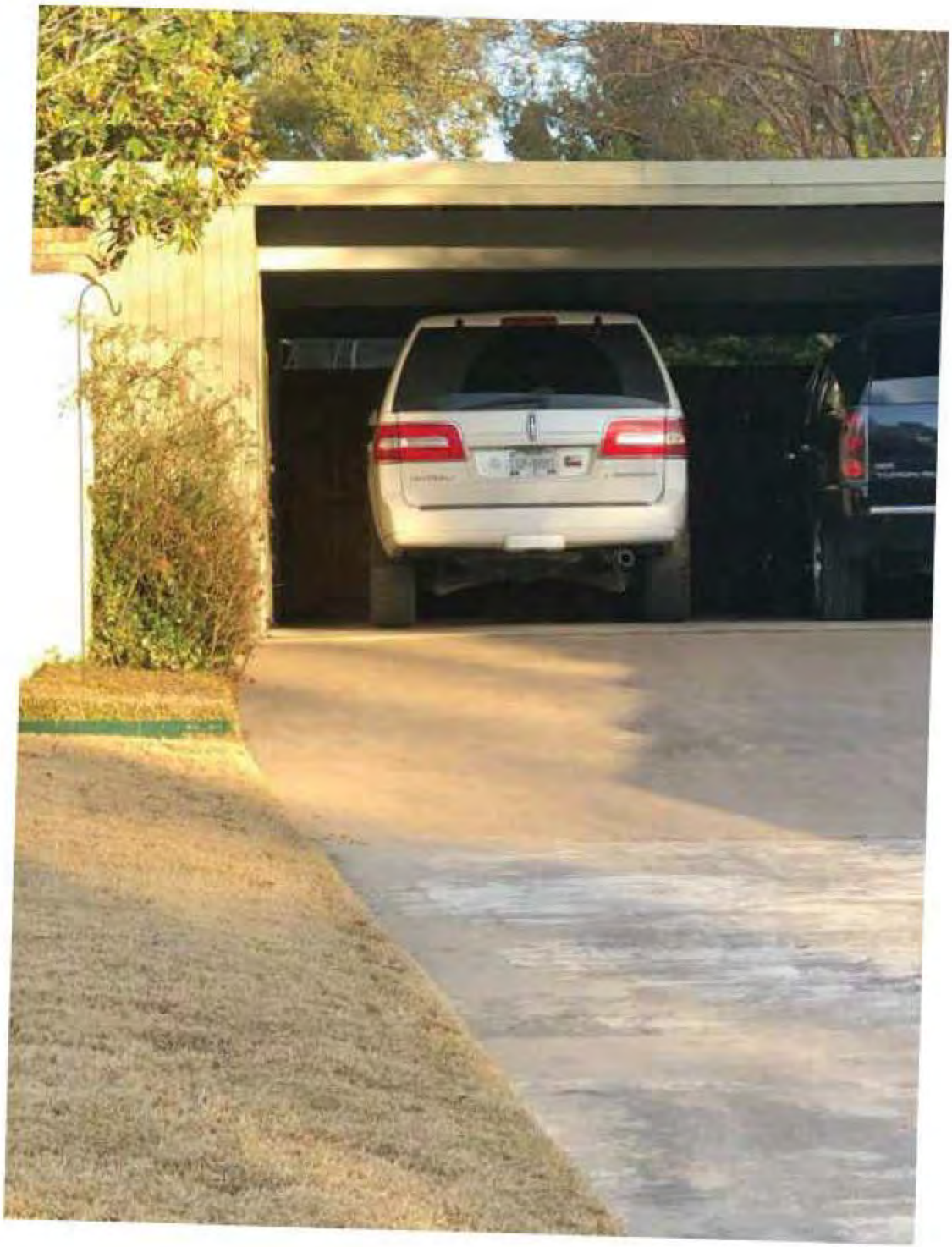
exhibitsticker.com



EXHIBIT

A-3

exhibitsticker.com



EXHIBIT

A-4

exhibitsticker.com

EXHIBIT

A-5

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EXHIBIT

A-6

exhibitsticker.com

STEALTHCAM
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EXHIBIT A-10

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111521

Greg Brandstatter, Pat D Investigation / Counter Surveillance log

On Feb 3 2021, Scott Ellington (Scott) called, advising me that he believed someone was stalking himself and his girlfriend Stephanie Archer (Stephanie). The day prior, Feb 2 2021 to his calling me Stephanie had been followed to 120 Cole Street, Dallas, Texas, where Scott has an office. Stephanie stated that she had noticed that for the past month or so she had noticed a large Black SUV possibly following her. On Feb 2 2021 she noticed that the person in a Black SUV actively taking pictures, she had, had enough and attempted to confront the individual while taking a picture of the vehicle. Her picture shows the vehicle Make and License Number, BX9K764. In Stephanie's photo you can also see the person driving holding up a cell phone as if taking pictures. See Stephanie's photo.

The following day Scott was in his office on Cole Street, when he noticed a vehicle resembling a "Toyota 4 Runner, Tan in color, stop in front of his office. He observed the driver of the taking pictures and or video of his officer and the vehicles parked in front. Scott was able to obtain the License Number of the Vehicle, GPF9512, he also noted that vehicle had a "WMR sticker on the rear window. Scott stated the driver of the vehicle looked like Pat Daugherty (Pat). Scott and Pat both previously worked at an investment firm in Dallas, and are currently opponents in financial litigation. Scott believes that Pat is attempting to harass him, his friends and coworkers due to the litigation. It should be noted that Pat has a history of anger issues and he believes Pat may be trying to intimidate him.

Scott asked if I could assist him in determining who the person(s) were taking the photos/videos. I advised Scott that I could check some Open Sources Intelligence sites and see what I could come up with in reference to the vehicle registrations. I also suggested that we set up a counter surveillance program to determine if these were random acts of an organized surveillance effort.

On Feb 4 2021 an investigation was opened along with a counter surveillance operation. OSINT sources showed Pat to be the registered owner of the Black SUV BX9K764 and that Pat was the previous owner of the Infinity QX4 GPF9512. The Infinity QX4 closely resembles a Toyota 4 Runner (as observed by Scott above). We believe that Pat sold the Infinity to one of his domestic employees and "borrowed" the vehicle to avoid detection.

At approx. 1120 on Feb 4th the Infinity GPF9512 driven by a W/M Sandy Blonde hair drives by WB on Cole slows when passing 120 proceeds W on Cole, S on Levee, E on Alley (rear of 120 Cole), U-turn, S on Levee and E on Leslie. I viewed the driver of this vehicle as he was exiting alley and can verify after comparing Photos, that Pat was the driver of the infinity.

At approx 1322 on Feb 4th Scott advises that the Pat had followed him to 120 Cole, I was parked on at Cole and Levee as Scott parked I observe the Infinity drives W on Cole towards me, I observe Pat driving infinity GPF9512. Pat turns south on Levee, U-turn, N on Levee then E on Cole. I keep my distance as Infinity slows and then stops in front of 120, While stopped in front of 120, Pat verbally engages Stephanie and Joe (friend of Scott). Pat proceeds E on Cole, I follow, Pat turns left on Rivers Edge, I am

unable to follow due to traffic conditions. Stephanie and Joe are able to Identify the Driver as Pat after comparing to photos. See photos for rear of Infinity, on Cole Street, Note Sticker (WMR).

At Approx 1715 on Feb 4, Reese Morgan (Reese) PI drives by Pat's residence and is able to confirm two vehicles parked in carport, White Lincoln Navigator LPG9001 and Black GMC Yukon BX9L764, same vehicle that followed Stephanie on Feb 3, The Infinity GPF9512 is parked on the street across the street from Pat's carport, see photos

Feb 5 2021, approx 1340, Reese drive by Pat's Residence verify Infinity GPF9512 parked across street from carport.

Feb 8 2021, approx. 1010, Drive by Pats Residence verify Infinity GPF9512 parked across street from carport

Feb 19 2021 approx 1700 Sarah Goldsmith, moving files to 120 Cole St, confronted my W/M Sandy Blonde, Graying hair, driving a "Silver Toyota 4 Runner" (Infinity). Driver ask "Do you know if Scott is back in town?" She ignored him and went into office space until he left. She did not feel safe, she departed and had her husband accompany her back to Cole St. After viewing a picture of Pat, Sarah was able to verify the driver who confronted her was Pat.

Feb 23 2021 approx 1707 Black GMC Yukon BX9K764, Driven by Pat (visual), business attire blue shirt, E-W on Cole, slows at 120, proceeds N on Levee, E on Oaklawn. (Day in Court)

March 4 2021 approx 1113, Black GMC Yukon BX9K764, drives by E-W on Cole slows when passing 120, S on Levee, pulls over appears to be taking notes, continues S on Levee, turns E on Leslie at.

March 9 2021 approx 1110, Black GMC Yukon BX9K764, drives by E-W on Cole, slows, then N on Levee.

approx 1340, Black GMC Yukon BX9K764, drives by E-W on Cole, slows, then N on Levee.

March 23 2021 approx 1450, Black GMC Yukon BX9K764, driven by Pat, drives by E-W on Cole, Stops in front of 120, (note Scott's Vic out front with door open), S on Levee, U-turn, N on Levee. Visually confirm Pat driving.

approx 1700, Black GMC Yukon BX9K764, driven by Pat, drives by E-W on Cole, Stops in front of 120, Scott is in office and observes Pat taking pictures or video of building and vehicles, Pat proceeds W on Cole , N on Levee

March 25 2021 approx 1414, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole Stops short of 120, I observed Pat, dressed in business attire, exit vehicle and put trash in trash container, then proceed W on Cole where he stopped in front of 120 for an extend period of time, before proceeding W on Cole

Approx. 1417, Black GMC Yukon BX9K764, driven by Pat, drives by E-W on Cole, Stops in front of 120, another extended stop at 120 before proceeding W on Cole.

March 26 2021, approx 1414, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole. I pass in opposite direction. Pat is wearing business attire, talking on cell phone

March 29 2021, approx 1430, Infinity QX4 GPF9512, with "WMR sticker on the rear window, driven by Pat, drives by E-W Stops front of 120, peers into building.

Approx 1433, Infinity QX4 GPF9512, driven by Pat, drives by E-W Stops front of 120, appears to be taking pictures of building and vehicles.

Approx 1450, Infinity QX4 GPF9512, driven by Pat, drives by E-W Slows front of 120

March 31 2021, approx 1508, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole, opens door slightly

Approx 1511, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole stops front of 120, takes pictures

Approx 1518, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole stops front of 120, takes video

Approx 1522, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole stops front of 120, takes extensive video of inside garage door and vehicles out front

April 13 2021, approx 1428, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole

Approx 1430, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole, slows at 120, takes video of building and vehicles

Approx 1433, Black GMC Yukon BX9K764, driven by Pat, driving W-E on Cole

April 14 2021 Scott's Sister Marcia Reports, Black GMC Yukon Denali, stopped in front of her house and was taking pictures of her home, family and vehicles, she reports this is the second instance. First instance was 3 25 2021, She provides Video of second instance, See Marcia's report. Stealthcam deployed.

April 16 2021, approx 1453, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole, slows takes pics/video of vehicles

Approx 1455, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole,I nterested in Scott' new assistant Charleigh.

Approx 1456, Black GMC Yukon BX9K764, driven by Pat, driving W-E on Cole, Passenger in vehicle, New Player

April 19 2021, approx 1423, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole, Stops takes Video

Approx 1426, Black GMC Yukon BX9K764, driven by Pat, driving W-E on Cole

April 20 2021, approx 1335, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1338, Black GMC Yukon BX9K764, driven by Pat drives by, E-W on Cole slows takes pictures

Approx 1340, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

April 21 2021, approx 1028, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1038, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1040, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1043, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, stops for extended period looking inside garage door, car behind him honks

Approx 1055, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, fast

Approx 1058, Black GMC Yukon BX9K764, driven by Pat drives by W-E on Cole

Approx 1215, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, stops and takes pictures of vehicles

Approx 1217, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, slows at 120 and takes video

Approx 1448, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, Stops and takes video of vehicles, Scott confirms he saw, Black GMC Yukon

April 22 2021, approx 1010, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, talking on phone or into voice recorder

Approx 1013, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, talking on phone or into voice recorder

Approx 1220, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, takes picture of Charleigh Vehicle

Approx 1325, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1547, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

April 23 2021, approx 1027, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1321, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, Pics of Ryan's and Trevor Vehicles

Approx 1324, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1457, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, Good Facial Picture

Approx 1500, Black GMC Yukon BX9K764, driven by Pat drives by W-E on Cole

Infinity QX4 GPF9512, driven by Pat, drives by E-W, E-W on Cole

Approx 1432, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

April 24 2021, (Sat) approx 1158, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

approx 1432, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

approx 1605 Black GMC Yukon, driven by Pat drives by Marcia's House

April 25 2021, (Sun) approx 1608, Infinity QX4 GPF9512, driven by Pat drives by Marcia's House

April 26 2021, approx 1533, Infinity QX4 GPF9512, driven by Pat drives by Byron's House

approx 1534, Infinity QX4 GPF9512, driven by Pat drives by Byron's House

April 27 2021 Infinity QX4 GPF9512, drives by E-W on Cole, Video only, Not typical behavior, cannot confirm.

April 28 2021, approx 1030, Infinity QX4 GPF9512, driven by Pat, drives by E-W, slows takes Video, Faster than normal, visual only

approx 1510, Infinity QX4 GPF9512, driven by Pat, drives by E-W, slows but behavior atypical

approx. 1650, Infinity QX4 GPF9512, driven by Pat, drives by E-W, Video confirmation

approx 1745, Black Yukon drives by, Cam Only no Confirmation, (note change vehicle)

April 30 2021, approx. 1634 Infinity QX4 GPF9512, driven by Pat, drives by E-W, Cam only **Atypical**

May 3 2021, approx. 1506 Lincoln Navigator XXXXXX, driven by Pat, drives by E-W, note vehicle change

approx. 1546 Lincoln Navigator XXXXXX, driven by Pat, drives by W-E

May 4 20212 approx 1642 Infinity QX4 GPF9512, driven by Pat, drives by E-W

approx 1651 Infinity QX4 GPF9512, driven by Pat, drives by W-E, License Plate

approx 1652 Infinity QX4 GPF9512, driven by Pat, drives by E-W

May 5 2021 approx 1123 Infinity QX4 GPF9512, driven by Pat, drives by E-W, Video on site

approx 1254 Infinity QX4 GPF9512, driven by Pat, drives by E-W

approx 1040 Infinity QX4 GPF9512, driven by Pat, drives by Marcia's house

May 12 2021 Approx 0955 Infinity QX4 GPF9512, drives by E-W, License Plate

approx 1308 Infinity QX4 GPF9512, driven by Pat, drives by E-W, takes video, sticker

approx 1311 Infinity QX4 GPF9512, drives by E-W, License Plate, sticker

May 13 2021 approx 1055 Infinity QX4, drives by, E-W

approx 1213 Infinity QX4, drives by, E-W, License Plate

May 14 2021 approx 1523 Infinity QX4, drives by, E-W

May 18 2021 approx 1416 Infinity QW4, drives by E-W

May 19 2021	approx	1411 Infinity QW4, drives by E-W, License Plate
May 18 2021	approx	1436 Infinity QW4, drives by 4432 Potomac
May 21 2021	approx	1147 Infinity QW4, drives by E-W, License Plate
May 22 2021	approx	1345 Infinity QW4, drives by E-W, License plate
May 24 2021	approx	1132 Infinity QW4, drives by E-W
	approx	1436 Infinity QW4, drives by W-E, License Plate
	approx	1526 Infinity QW4, drives by Marcia's house
May 26 2021	approx	1035 Infinity QW4, drives by E-W
	approx	1329 Infinity QW4, drives by E-W
	approx	1330 Infinity QW4, drives by W-E
	approx	1333 Infinity QW4, drives by E-W, License Plate
	approx	1334 Infinity QW4, drives by W-E, License Plate, Sticker
	approx	1428 Infinity QW4, drives by Byron's house
	approx	1430 Infinity QW4, drives by Byron's house, Sticker
May 27 2021	approx	1336 Infinity QW4, drives by E-W
May 28 2021	approx	1043 Black GMC Yukon, drives by E-W, reverts to GMC, Baseball cap
May 29 2021	approx	1126 Black GMC Yukon, drives by E-W, License Plate
	approx	1430 Black GMC Yukon, drives by E-W, License Plate
	approx	1432 Black GMC Yukon, drives by W-E
	approx	1432 Black GMC Yukon, drives by E-W, License Plate
	approx	1433 Black GMC Yukon, drives by W-E, License Plate
	approx	1506 Black GMC Yukon, drives by W-E, License Plate
June 1 2021	approx	1325 Black GMC Yukon, drives by W-E, License Plate
June 2 2021	approx	1012 Black GMC Yukon, drives by W-E, License Plate, Stop
	approx	1012 Black GMC Yukon, drives by W-E, License Plate, Stop
June 4 2021	approx	1406 Black GMC Yukon, drives by E-W, License Plate
	approx	1411 Black GMC Yukon, drives by W-E, License Plate
June 5 2021	approx	0959 Black GMC Yukon, drives by E-W, driven by Pat Blue Shirt
	approx	1007 Black GMC Yukon, drives by E-W, License Plate

June 7 2021	approx 1504 Black GMC Yukon, drives by E-W gb Visual from office BX9
June 9 2021	approx 1022 Black GMC Yukon, drives by E-W taking Pics, Trevor
	approx 1023 Black GMC Yukon, drives by W-E, stopped
	approx 1023 Black GMC Yukon, drives by W-E, stopped
	approx 1024 Black GMC Yukon, drives by E-W, License Plate, Video
	approx 1423 Black GMC Yukon, drives by E-W License Plate Red Shirt
	approx 1524 Black GMC Yukon, drives by E-W, License Plate + Visual Red Shirt
July 7 2021	approx 1037 Black GMC Yukon, drives by E-W, License Plate, visual id
Aug 9 2021	approx 1017 Black GMC Yukon, drives by E-W, License Plate
Aug 11 2021	approx 1141 Black GMC Yukon, drives by E-W, License Plate
Aug 21 2021	approx 1658 Black GMC Yukon, drives by Byron house in
Aug 21 2021	approx 1500 Black GMC Yukon , drives by Byron house out
Aug 21 2021	approx 1509 Black GMC Yukon, drives by Byron house out
Aug 22 2021	approx 1230 Black GMC Yukon, drives by Cole E-W
Aug 22 2021	approx 1316 Black GMC Yukon, drives by Marcia house L-R
Aug 24 2021	approx 1331 Infinity, drives by Cole E-W
Aug 26 2021	approx 1458 Black GMC Yukon, drives by Cole W-E
Sept 18 2021	approx 1720 Black GMC Yukon, drives by Cole E-W
Sept 21 2021	approx 1419 Black GMC Yukon, drives by Cole E-W
Oct 16 2021	approx 1235 Black GMC Yukon, drives by Cole E-W ?? enhance LP
Oct 23 2021	approx 1245 Black GMC Yukon, drives by 3825 Potomac W-E, ID by LP
	approx 1635 Black GMC Yukon, drives by 3825 Potomac W-E, ?? enhance LP
	approx 1635 Black GMC Yukon, drives by 3825 Potomac E-W, ?? enhance LP
Oct 30 2021	approx 0953 Black GMC Yukon, drives by 3825 Potomac E-W
	approx 0956 Black GMC Yukon, drives by 3825 Potomac E-W
Nov 3 2021	approx 1555 Black GMC Yukon, drives by 3825 Marcia' house W-E Profile ID
	approx 1557 Black GMC Yukon, drives by 3825 Marcia' house W-E Profile ID, either stopped for 2 mins or returned after 2 mins

Nov 6 2021	approx 1004 Black GMC Yukon, drives by Cole E-W, D clearly visible – driver
Nov 8 2021	approx 1027 Black GMC Yukon, drives by Cole E-W, got in behind PI visual on LP and Driver, Nest Cam Confirm
Nov 10 2021	approx 0747 Black GMC Yukon, drives by Cole W-E, lengthy stop Nest cam confirm
Nov 20 2021	approx 1128 Black GMC Yukon, drives by Cole W-E, Driver Visual
Nov 21 2021	approx 1410 Black GMC Yukon, drives by 3825 W-E, Passenger female? LP
Nov 22 2021	approx 1109 Black GMC Yukon, drives by Cole E-W, Driver visual
Nov 23 2021	approx 1803 Black GMC Yukon, drives by Cole E-W, Driver visual, taking pictures
	Note SE on Cole earlier
	approx 1806 Black GMC Yukon, drives by Cole W-E
	approx 1810 Black GMC Yukon, drives by Cole E-W, Driver visual, taking pictures

EXHIBIT
B

DECLARATION OF SCOTT BYRON ELLINGTON

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Scott Byron Ellington declares as follows:

1. My name is Scott Byron Ellington. I am over 21 years of age, have never been convicted of a felony or other crime involving moral turpitude, and suffer from no mental or physical disability that would render me incompetent to make this declaration.

2. I am able to swear, and hereby do swear under penalty of perjury, that the facts stated in this declaration are true and correct and within my personal knowledge.

3. Starting in January of 2021, my longtime girlfriend, Stephanie Archer ("Stephanie"), noticed a large, Black SUV possibly following her. On February 2, 2021, she was followed by the SUV to my office located at 120 Cole Street, Dallas, Texas. She noticed that the driver in the SUV was taking pictures from inside the vehicle. She confronted the individual while simultaneously taking pictures of the SUV and the driver. The license plate number of the black SUV was BX9K764.

4. The next day, on February 3, 2021, I was at my office when I noticed a vehicle resembling a tan Toyota 4 Runner stopped in front of my office with the driver either taking photographs or making a videorecording, or both. The license plate number of the vehicle was GPF9512. The driver of the vehicle appeared to be Patrick Daugherty ("Daugherty").

5. Until January of 2021, I was the general counsel for Highland Capital Management, L.P. ("Highland"). Daugherty is a former employee of Highland. In 2012, Highland sued Daugherty and Daugherty counterclaimed. The lawsuit was ultimately resolved by a jury trial, with

a jury determining that Daugherty breached his employment agreement and his fiduciary duties and awarding Highland $2,800,000 in attorney's fees and injunctive relief. The jury likewise found that a Highland affiliate, Highland Employee Retention Assets LLC ("HERA") breached the implied duty of good faith and fair dealing and awarded Daugherty $2,600,000 in damages.

6. Since the filing of the original lawsuit in 2012, Daugherty and Highland—or Highland related entities and individuals—have engaged in protracted litigation in several different forums across the country. Daugherty's expressed goal in his campaign is to "get" me and the founder and former CEO of Highland, Jim Dondero.

7. Daugherty has a history of anger issues and I believed that his "drive by" of my office and following Stephanie was his attempt to intimidate me.

8. I hired a private investigator, Greg Brandstatter ("Brandstatter"), to assist in confirming the identity of the driver of the black SUV with license plate BX9K764 and the tan SUV with the license plate GPF9512.

9. Brandstatter's investigation found that Daugherty was the individual following Stephanie and driving by my office. Further, I have reviewed photographs and video recordings of Daugherty outside my home located at 3825 Potomac Ave, Dallas, Texas 75205, my office, the house of my sister, Marcia, and the house of my father, Byron Ellington.

10. Daugherty has been documented outside my office, my home, and the homes of my family 143 times since January of 2021. Both Marcia and Stephanie have confronted Daugherty at times and demanded that he stop his harassment, but he has continued to visit my office and home, and the homes of my family members, despite these demands.

11. I have moved residences three times from January 2021 to today. Daugherty has been recorded outside of the second and third residences to which I moved. The second residence

was Stephanie's house and was not under my name. For the third residence, my address was not searchable under my name on the Dallas County Central Appraisal District website. Nonetheless, Daugherty was recorded outside of that address within two months of me moving. On information and belief, Daugherty could not have located me at either residence without physically following me or others to those locations.

12. I believe that Daugherty's actions are leading up to a physical attack by him on either myself, Stephanie, or members of my family. I understand that Brandstatter has reported Daugherty's harassment and stalking to the Dallas Police Department. I also called the Dallas Police Department to report the harassment and stalking. The harassment has caused me fear and anxiety and will continue to cause me fear and anxiety.

13. Daugherty's harassment further interferes with my daily activities. I am constantly looking out for him when I am at my home or at my office. I had to hire Brandstatter to confirm that Daugherty was the individual stalking me and my family and then document the extent of the harassment. I have had security devices, such as cameras, installed at my personal home and office in response to the harassment. I have had to hire personal security. I have also had to change my daily routine to try and avoid being followed by Daugherty.

[*Remainder of Page Intentionally Left Blank; Signature Page Follows*]

FURTHER DECLARANT SAYETH NOT.

My name is Scott Byron Ellington. My date of birth is [redacted]1971. My address is 3825 Potomac Ave., Dallas, Texas 75205. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas, on the 11th Day of January, 2022.

Scott Ellington

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Patricia Perkins Mayes on behalf of Julie Pettit
Bar No. 24065971
pperkins@pettitfirm.com
Envelope ID: 60728974
Status as of 1/12/2022 8:55 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Julie Pettit		jpettit@pettitfirm.com	1/11/2022 6:09:57 PM	SENT
Beverly Congdon		bcongdon@lynnllp.com	1/11/2022 6:09:57 PM	SENT
Patricia Perkins Mayes		pperkins@pettitfirm.com	1/11/2022 6:09:57 PM	SENT
Michael K.Hurst		mhurst@lynnllp.com	1/11/2022 6:09:57 PM	SENT
Mary GoodrichNix		mnix@lynnllp.com	1/11/2022 6:09:57 PM	SENT
Nathaniel A.Plemons		nplemons@lynnllp.com	1/11/2022 6:09:57 PM	SENT

EXHIBIT 2

Case Information

DC-22-00304 | SCOTT BYRON ELLINGTON vs. PATRICK DAUGHERTY

Case Number	Court	Judicial Officer
DC-22-00304	101st District Court	WILLIAMS, STACI
File Date	Case Type	Case Status
01/11/2022	OTHER (CIVIL)	OPEN

Party

PLAINTIFF
ELLINGTON, SCOTT BYRON

Active Attorneys
Lead Attorney
PETTIT, JULIE A
Retained

DEFENDANT
DAUGHERTY, PATRICK

Address
3621 CORNELL AVE.
DALLAS TX 75205

Bond

Bond Type	Bond Number	Bond Amount	Current Bond Status

TRO CASH BOND	$2,500.00	POSTED

Events and Hearings

01/11/2022 NEW CASE FILED (OCA) - CIVIL

01/11/2022 ORIGINAL PETITION

ORIGINAL PETITION

01/11/2022 ISSUE CITATION

01/11/2022 ISSUE TRO AND NOTICE

01/12/2022 TRO HEARING

ORIGINAL PETITION

Judicial Officer
WILLIAMS, STACI

Hearing Time
3:30 PM

Comment
JULIE PETTIT * AD HOC PER JUDGE WILLIAMS

01/12/2022 ORDER - TEMPORARY RESTRAINING ORDER

ORDER - TEMPORARY RESTRAINING ORDER

01/12/2022 NON-SIGNED PROPOSED ORDER/JUDGMENT

(PROPOSED) TEMPORARY RESTRAINING ORDER

Comment
(PROPOSED) TEMPORARY RESTRAINING ORDER

01/14/2022 BOND FILED

01/14/2022 CORRESPONDENCE - LETTER TO FILE

CORRESONDENCE LETTER

01/26/2022 Temporary Injunction

Judicial Officer
WILLIAMS, STACI

Hearing Time
9:30 AM

Financial

ELLINGTON, SCOTT BYRON

Total Financial Assessment	$379.00
Total Payments and Credits	$379.00

1/12/2022	Transaction Assessment			$366.00
1/12/2022	CREDIT CARD - TEXFILE (DC)	Receipt # 1565-2022-DCLK	ELLINGTON, SCOTT BYRON	($229.00)
1/12/2022	STATE CREDIT			($137.00)
1/14/2022	Transaction Assessment			$5.00
1/14/2022	PAYMENT (CASE FEES)	Receipt # 2349-2022-DCLK	ELLINGTON, SCOTT BYRON	($5.00)
1/14/2022	Transaction Assessment			$8.00
1/14/2022	CREDIT CARD - TEXFILE (DC)	Receipt # 2553-2022-DCLK	ELLINGTON, SCOTT BYRON	($8.00)

Documents

ORIGINAL PETITION

ORDER - TEMPORARY RESTRAINING ORDER

(PROPOSED) TEMPORARY RESTRAINING ORDER

CORRESONDENCE LETTER

EXHIBIT 3

CAUSE NO. DC 22-00304

SCOTT ELLINGTON	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
	§	101 ST
v.	§	**JUDICIAL DISTRICT**
PATRICK DAUGHERTY,	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

TEMPORARY RESTRAINING ORDER

On this day, the Application for a Temporary Restraining Order of Scott Ellington, Plaintiff herein, was heard before this Court.

Based upon the pleadings, records, documents filed by counsel, and the arguments of counsel at the hearing, IT CLEARLY APPEARS:

1. That unless restrained Defendant Patrick Daugherty ("Defendant") will continue to harass Plaintiff Scott Ellington, his girlfriend (Stephanie Archer), his sister (Marcia Maslow), and his father (Byron Ellington) before notice and a hearing on Plaintiff's Application for Temporary Injunction, including committing the following acts:

   a. Traveling, on a near daily basis, to the personal residences of Scott Ellington, Stephanie Archer, Marcia Maslow, and Byron Ellington without invitation and parking outside or drivingly slowly past the residences;

   b. Taking pictures and video recordings of the personal residences of Scott Ellington, Stephanie Archer, Marcia Maslow, and Byron Ellington;

   c. Traveling, on a near daily basis, to Scott Ellington's office without invitation and parking outside or drivingly slowly past the building where the office is located;

and

d. Taking pictures and video recordings of the office of Scott Ellington.

2. Plaintiff will suffer irreparable harm if Defendant is not restrained immediately from continuing to harass Plaintiff and his family. Specifically, Plaintiff reasonably fears that Defendant may cause him or his family bodily harm, and the accompanying anxiety interferes with his ability to conduct his normal, daily activities.

3. Given the foregoing, there is no adequate remedy at law to grant Plaintiff complete, final and equal relief.

4. IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Patrick Daugherty and his agents, servants, and employees are ORDERED to immediately cease and desist from the following acts from the date of this Order until fourteen (14) days thereafter, or until further order of this Court:

a. Being within 500 feet of Ellington;

b. Being within 500 feet of Ellington's office located at 120 Cole Street, Dallas, Texas 75207;

c. Being within 500 feet of Ellington's residence located at 3825 Potomac Ave, Dallas, Texas 75205;

d. Being within 500 feet of Stephanie Archer;

e. Being within 500 feet of Stephanie Archer's residence located at 4432 Potomac, Dallas, Texas 75025;

f. Being within 500 feet of Marcia Maslow;

g. Being within 500 feet of Marcia's residence located at 430 Glenbrook Dr., Murphy, Texas 75094;

h. Being within 500 feet of Byron Ellington;

i. Being within 500 feet of Byron Ellington's residence located at 5101 Creekside Ct., Parker, Texas 75094;

j. Photographing, videorecording, or audio recording Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington;

k. Photographing or videorecording the residences or places of business of Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington; and

l. Directing any communications toward Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington.

5. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Application for Temporary Injunction be heard on Jan. 26th at 9:00 A M. Defendant is commanded to appear at that time and show cause, if any exist, why a temporary injunction should not be issued against said Defendant.

6. The clerk of the above-entitled court shall issue a temporary restraining order in conformity with the law and the terms of this order upon the filing by Plaintiff of the bond hereinafter set.

7. This order shall not be effective until Plaintiff deposits with the Clerk, a bond in the amount of $ 2,500.00 in conformity with the law.

SIGNED and ENTERED on 4:10 at 5:00 M. January 12, 2022

PRESIDING JUDGE

PAID TRO

THE PETTIT LAW FIRM

2101 Cedar Springs, Suite 1540 | Dallas, Texas 75201
Phone: 214-329-0151 | Fax: 214-329-4076

January 14, 2022

Via Email
Chief Clerk
101st Civil District Court
600 Commerce Street
6th Floor West
Dallas, TX 75202

RE: Cause Number DC-22-00304; *Scott Byron Ellington v. Dr. Patrick Daugherty*; in the 101st Civil District Court, Dallas County, Texas.

Dear Clerk:

Plaintiff hereby pays the fee of $8.00 for the Temporary Restraining Order along with this filing. Thank you for your attention to this matter.

Sincerely,

/s/ Julie Pettit

Julie Pettit

JP/ppm

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Patricia Perkins Mayes on behalf of Julie Pettit
Bar No. 24065971
pperkins@pettitfirm.com
Envelope ID: 60838852
Status as of 1/14/2022 4:21 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Julie Pettit		jpettit@pettitfirm.com	1/14/2022 2:00:21 PM	SENT
Beverly Congdon		bcongdon@lynnllp.com	1/14/2022 2:00:21 PM	SENT
Patricia Perkins Mayes		pperkins@pettitfirm.com	1/14/2022 2:00:21 PM	SENT
Michael K.Hurst		mhurst@lynnllp.com	1/14/2022 2:00:21 PM	SENT
Mary GoodrichNix		mnix@lynnllp.com	1/14/2022 2:00:21 PM	SENT
Nathaniel A.Plemons		nplemons@lynnllp.com	1/14/2022 2:00:21 PM	SENT

CAUSE NO. DC 22-00304

SCOTT ELLINGTON *Plaintiff,* **v.** **PATRICK DAUGHERTY,** *Defendant.*	§ § § § § § § § § §	**IN THE DISTRICT COURT** **_____ JUDICIAL DISTRICT** **DALLAS COUNTY, TEXAS**

TEMPORARY RESTRAINING ORDER

On this day, the Application for a Temporary Restraining Order of Scott Ellington, Plaintiff herein, was heard before this Court.

Based upon the pleadings, records, documents filed by counsel, and the arguments of counsel at the hearing, IT CLEARLY APPEARS:

1. That unless restrained Defendant Patrick Daugherty ("Defendant") will continue to harass Plaintiff Scott Ellington, his girlfriend (Stephanie Archer), his sister (Marcia Maslow), and his father (Byron Ellington) before notice and a hearing on Plaintiff's Application for Temporary Injunction, including committing the following acts:

   a. Traveling, on a near daily basis, to the personal residences of Scott Ellington, Stephanie Archer, Marcia Maslow, and Byron Ellington without invitation and parking outside or drivingly slowly past the residences;

   b. Taking pictures and video recordings of the personal residences of Scott Ellington, Stephanie Archer, Marcia Maslow, and Byron Ellington;

   c. Traveling, on a near daily basis, to Scott Ellington's office without invitation and parking outside or drivingly slowly past the building where the office is located;

and

d. Taking pictures and video recordings of the office of Scott Ellington.

2. Plaintiff will suffer irreparable harm if Defendant is not restrained immediately from continuing to harass Plaintiff and his family. Specifically, Plaintiff reasonably fears that Defendant may cause him or his family bodily harm, and the accompanying anxiety interferes with his ability to conduct his normal, daily activities.

3. Given the foregoing, there is no adequate remedy at law to grant Plaintiff complete, final and equal relief.

4. IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Patrick Daugherty and his agents, servants, and employees are ORDERED to immediately cease and desist from the following acts from the date of this Order until fourteen (14) days thereafter, or until further order of this Court:

a. Being within 500 feet of Ellington;

b. Being within 500 feet of Ellington's office located at 120 Cole Street, Dallas, Texas 75207;

c. Being within 500 feet of Ellington's residence located at 3825 Potomac Ave, Dallas, Texas 75205;

d. Being within 500 feet of Stephanie Archer;

e. Being within 500 feet of Stephanie Archer's residence located at 4432 Potomac, Dallas, Texas 75025;

f. Being within 500 feet of Marcia Maslow;

g. Being within 500 feet of Marcia's residence located at 430 Glenbrook Dr., Murphy, Texas 75094;

h. Being within 500 feet of Byron Ellington;

i. Being within 500 feet of Byron Ellington's residence located at 5101 Creekside Ct., Parker, Texas 75094;

j. Photographing, videorecording, or audio recording Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington;

k. Photographing or videorecording the residences or places of business of Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington; and

l. Directing any communications toward Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington.

5. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Application for Temporary Injunction be heard on _____ at _____M. Defendant is commanded to appear at that time and show cause, if any exist, why a temporary injunction should not be issued against said Defendant.

6. The clerk of the above-entitled court shall issue a temporary restraining order in conformity with the law and the terms of this order upon the filing by Plaintiff of the bond hereinafter set.

7. This order shall not be effective until Plaintiff deposits with the Clerk, a bond in the amount of $_____ in conformity with the law.

SIGNED and ENTERED on _____ at _____ M.

_____
PRESIDING JUDGE

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Beverly Congdon on behalf of Michael K. Hurst
Bar No. 10316310
bcongdon@lynnllp.com
Envelope ID: 60766800
Status as of 1/13/2022 8:43 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Julie Pettit		jpettit@pettitfirm.com	1/12/2022 4:06:06 PM	SENT
Beverly Congdon		bcongdon@lynnllp.com	1/12/2022 4:06:06 PM	SENT
Patricia Perkins Mayes		pperkins@pettitfirm.com	1/12/2022 4:06:06 PM	SENT
Michael K.Hurst		mhurst@lynnllp.com	1/12/2022 4:06:06 PM	SENT
Mary GoodrichNix		mnix@lynnllp.com	1/12/2022 4:06:06 PM	SENT
Nathaniel A.Plemons		nplemons@lynnllp.com	1/12/2022 4:06:06 PM	SENT

EXHIBIT 4

Exhibit 4: Counsel of Record in the State Court Action

GRAY REED

Ruth Ann Daniels
State Bar No. 15109200
rdaniels@grayreed.com
Andrew K. York
State Bar No. 24051554
dyork@grayreed.com
Drake M. Rayshell
State Bar No. 24118507
drayshell@grayreed.com
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332

ATTORNEYS FOR PATRICK DAUGHERTY

THE PETTIT LAW FIRM

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
David B. Urteago
State Bar No. 24079493
durteago@pettitfirm.com
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

LYNN PINKER HURST & SCHWEGMANN, LLP

Michael K. Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Nathaniel A. Plemons
State Bar No. 24121059
nplemons@lynnllp.com
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

ATTORNEYS FOR SCOTT BYRON ELLINGTON

EXHIBIT 5

Drew K. York

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Friday, January 14, 2022 11:21 AM
To: Drew K. York; Ruth Ann Daniels
Cc: Michael K. Hurst; Mary Nix; Nathaniel Plemons
Subject: [EXTERNAL] DC-22-00304 Ellington v. Daugherty
Attachments: 2022-01-11 Plaintiff's Original Petition and Appl for TRO.pdf; 2022-01-12 Temporary Restraining Order.pdf

Ruth Ann and Drew,

We have several pressing issues we would like to address with you regarding the upcoming injunction hearing.

1. Attached is the TRO signed by Judge Williams and the file-stamped petition. You all have already made an appearance in the case, so please let this email serve as service of the petition on you. Will you likewise accept service of the TRO, or would you like us to serve Mr. Daugherty?

2. We believe this case is a related case and should be transferred to Judge Hoffman's court. We do not yet know if the transfer will be automatic. If it is not automatically transferred, we intend to file a Motion to Transfer. Please let us know today if we can mark you as unopposed on our motion to transfer.

3. We would like to exchange written discovery on an expedited basis prior to the injunction hearing. Would you all agree that the parties will exchange a maximum of 8 RFPs with responses and documents to be produced at least 4 days prior to the hearing? Please let us know today, as we will be filing a motion for expedited discovery if we do not have an agreement on this.

4. We will agree to accept a subpoena for Mr. Ellington's appearance at the injunction. Are you authorized to do the same for Mr. Daugherty?

Please let us know your position on these issues. If you would prefer to talk by phone, let me know a time today that works for you and I will give you a call.

Best Regards,

Julie Pettit Greeson
The Pettit Law Firm
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Direct: 214-329-1846
Fax: 214-329-4076
jpettit@pettitfirm.com

EXHIBIT 6

EXHIBIT 1

Final Execution Copy

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement") is made and entered into by and between (i) Highland Capital Management, L.P., as reorganized debtor ("HCMLP" or the "Debtor"), and (ii) Patrick Hagaman Daugherty ("Daugherty" and together with HCMLP, the "Parties," and individually as a "Party"). This Settlement provides for the treatment of certain claims asserted by Daugherty against the Debtor, and for the Parties to take certain other specified actions in settlement thereof.

RECITALS

WHEREAS, 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");

WHEREAS, the Debtor's chapter 11 case (the "Bankruptcy") is pending in the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court");

WHEREAS, on February 2 and 3, 2021, the Court conducted a confirmation hearing with respect to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Docket No. 1808] (the "Plan");

WHEREAS, on February 8, 2021, the Court rendered an opinion from the bench in which it confirmed the Plan [Docket No. 1924];

WHEREAS, on February 22, 2021, the Court issued an order confirming the Plan [Docket No. 1943];

WHEREAS, on August 11, 2021, the Effective Date (as defined in the Plan) occurred [Docket No. 2700];

WHEREAS, Daugherty is a former employee and limited partner of the Debtor and has

served in other positions with affiliates and former affiliates of the Debtor;

WHEREAS, at the time of his resignation, Daugherty owned 19.1% of the preferred units of Highland Employee Retention Assets LLC ("HERA"), an employee deferred compensation vehicle managed by the Debtor and Highland ERA Management, LLC ("ERA") and contends that he owned or had the right to own all of the preferred units of HERA;

WHEREAS, prior to his resignation from HCMLP, Daugherty was awarded units of HERA, which vehicle owned interests in Restoration Capital Partners, LP ("RCP"), an HCMLP managed private equity fund, and other investments;

WHEREAS, in April 2012, the Debtor commenced an action against Daugherty in Texas state court (the "Texas Action"), and Daugherty subsequently asserted counterclaims for breach of contract and defamation, and third-party claims against HERA and others;

WHEREAS, after a three-week trial, the jury returned a verdict partially in favor of the Debtor, but Daugherty prevailed on his claims against the Debtor and James Dondero ("Dondero") for defamation with malice and a third-party claim against HERA and was awarded damages of $2.6 million against HERA, plus prejudgment and post-judgment interest at 5% (the "HERA Judgment");[1]

WHEREAS, in July 2017, after being unable to collect on the HERA Judgment, Daugherty commenced an action against the Debtor, Dondero, HERA, and ERA Management in the Delaware Chancery Court (the "Delaware Court"), in a case captioned *Daugherty v. Highland Capital Management, L.P., et al.*, C.A. No. 2017-0488-MTZ, for fraudulent transfer, promissory estoppel, unjust enrichment, indemnification, and fees on fees (the "Highland Delaware Case");

[1] The Debtor prevailed on its claims against Mr. Daugherty for breach of contract and breach of fiduciary duty for non-monetary damages and obtained an award of $2.8 million in attorney's fees. The HERA Judgment was affirmed on appeal on December 1, 2016.

WHEREAS, the Delaware Court in the Highland Delaware Case (i) found that the Dondero-related defendants improperly withheld dozens of documents in discovery on privilege grounds, and (ii) ruled that there was "a reasonable basis to believe that a fraud has been perpetrated" such that the Delaware Court applied the "crime-fraud exception" to the attorney-client privilege assertion, and such rulings have not been overturned;

WHEREAS, Daugherty asserts that such withholding of documents and the failure to search defendants' and their employees personal electronic devices for stored documents and texts as well as other emails and domain names such as sasmgt.com and gmail.com which were in their possession and control and to provide required discovery injured him by undermining his attempts to build an evidentiary record to support his claims against the Debtor and the other defendants in the Highland Delaware Case;

WHEREAS, on October 14, 2019, the Highland Delaware Case proceeded to trial and two days later, on October 16, 2019, before the completion of the trial and before the Delaware Court ruled on Daugherty's and the Debtor's cross-motions for summary judgment regarding indemnification and fees on fees, the Debtor filed for bankruptcy;

WHEREAS, on December 1, 2019, Daugherty filed a separate lawsuit in the Delaware Court, captioned *Daugherty v. Dondero, et al.*, C.A. No. 2019-0956-MTZ, against Dondero, HERA, ERA, Hunton Andrews Kurth LLP ("Andrews Kurth"), Marc Katz ("Katz"), Michael Hurst ("Hurst"), the Debtor's Chief Compliance Officer, the Debtor's then in-house counsel (Isaac Leventon ("Leventon")), and the Debtor's then general counsel (Scott Ellington ("Ellington")), for conspiracy to commit fraud, among other claims (the "HERA Delaware Case" and together with the Highland Delaware Case, the "Delaware Cases");

WHEREAS, on April 1, 2020, Daugherty filed a general, unsecured, non-priority claim

against the Debtor in the amount of at "least $37,483,876.59," and such claim was denoted by the Debtor's claims agent as Proof of Claim No. 67 ("Proof of Claim No. 67");

WHEREAS, on April 6, 2020, Daugherty filed a general, unsecured, non-priority claim against the Debtor in the amount of at "least $37,482,876.62" that superseded Proof of Claim No. 67 and that was denoted by the Debtor's claims agent as Proof of Claim No. 77 ("Proof of Claim No. 77");

WHEREAS, on August 31, 2020, the Debtor commenced an adversary proceeding against Daugherty by filing a complaint (the "Complaint") in which the Debtor: (1) objected to Proof of Claim No. 77 on various grounds (the "Claim Objection"), and (2) asserted a cause of action for the subordination of part of Daugherty's claim pursuant to section 510(b) of the Bankruptcy Code. Adv. Proc. No. 20-03107 (the "Adv. Proc.") [Adv. Docket No. 1] (the "Adversary Proceeding");

WHEREAS, on September 29, 2020, Daugherty filed his answer to the Complaint [Adv. Docket No. 8] (the "Answer");

WHEREAS, on September 24, 2020, Daugherty filed his *Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay* [Docket No. 1099] (the "Stay Motion") pursuant to which he sought to sever the Debtor from the Highland Delaware Case and then consolidate the remaining claims in the Highland Delaware Case into the HERA Delaware Case and proceed with one case against the non-Debtor parties;[2]

WHEREAS, on October 23, 2020, Daugherty filed a motion seeking leave to amend his Proof of Claim No. 77 [Docket No. 1280] (the "POC Amendment Motion"). The amended proof

[2] On October 8, 2020, the Debtor commenced a second adversary proceeding against Daugherty (the "Second Adversary Proceeding"), seeking to enjoin him from prosecuting the Delaware Cases. Adv. Proc. 20-03128 ("2d Adv. Proc.") [2d Adv. Proc. Docket No. 1]. On January 29, 2021, the parties filed a Settlement that resolved the Second Adversary Proceeding, and the Second Adversary Proceeding was subsequently dismissed with prejudice. [2d Adv. Proc. Docket No. 12].

of claim attached to the POC Amendment Motion increased Daugherty's general, unsecured, non-priority claim against the Debtor to the amount of at "least $40,410,819.42" and sought to supersede Proof of Claim No. 67 and Proof of Claim No. 77;

WHEREAS, on October 23, 2020, Daugherty filed his *Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Motion*, seeking for his Claim to be temporarily allowed for voting purposes in this amount of $40,410,819.42 [Docket No. 1281] (the "3018 Motion");

WHEREAS, on November 3, 2020, the Court granted the Stay Motion [Docket No. 1327];

WHEREAS, the Debtor opposed the 3018 Motion, and after conducting an evidentiary hearing for the limited purpose of determining the 3018 Motion, the Court entered an order temporarily allowing Daugherty's Claim only for voting purposes in the amount of $9,134,019 [Docket No. 1474];

WHEREAS, on December 10, 2020, the Court entered an order [Docket No. 1533] granting the POC Amendment Motion, and Daugherty was permitted to file an amendment to his proof of claim. On December 23, 2020, Daugherty filed an amended proof of claim, designated by the Debtor's claim agent as Proof of Claim No. 205 ("Proof of Claim No. 205" or the "Daugherty Claim"). Proof of Claim No. 205 superseded Proof of Claim No. 77 and increased the amount of the Daugherty's Claim to $40,710,819.42;

WHEREAS, on November 30, 2020, Daugherty filed his Motion to Lift the Automatic Stay (the "Lift Stay Motion") [Docket No. 1491] seeking to lift the automatic stay to allow him to finish his trial in the Delaware Court and liquidate his claims. The Debtor opposed the Lift Stay Motion, and after a hearing was held on December 17, 2020, the Court denied the relief requested in the Lift Stay Motion [Docket No. 1612];

WHEREAS, except with respect to the Reserved Claim (as defined below), the Parties have agreed to settle and resolve all claims and disputes between them and their respective current affiliates, managed entities, and employees, including the Daugherty Claim, on the terms set forth in this Settlement:

AGREEMENT

NOW, THEREFORE, after good-faith, arms-length negotiations, and in consideration of the foregoing, it is hereby stipulated and agreed that:

1. Allowed Claims: In full satisfaction of the entirety of the Daugherty Claim against the Debtor and HCMLP Released Parties (defined below), excluding the Reserved Claim, Daugherty shall receive (a) an allowed general unsecured Class 8 claim in the amount of $8,250,000; (b) an allowed subordinated general unsecured Class 9 claim in the amount of $3,750,000; and (c) a one-time lump sum cash payment in the amount of $750,000 to be paid within 5 business days of Bankruptcy Court approval of this Settlement Agreement.

2. Recovery: The Debtor makes no representation or warranty as to the recovery on Class 8 or Class 9 claims under the Plan.

3. Observation Access: As soon as practicable following entry of an order of the Bankruptcy Court approving this Settlement, HCMLP shall use reasonable efforts to petition the Claimant Trust Oversight Board[3] to permit Daugherty to have access as an observer to meetings of the Claimant Trust Oversight Board, subject to policies, procedures, and agreements applicable to other observers of the Claimant Trust Oversight Board, including policies, procedures, and agreements related to confidentiality and common interest. Whether Daugherty will be granted observer access and any continuing observer access is and will remain at the sole discretion of the

[3] The Claimant Trust Oversight Board refers to the Oversight Board as defined in the August 11, 2021 Highland Claimant Trust Agreement establishing the Claimant Trust, as defined therein.

Claimant Trust Oversight Board.

4. RCP Track Record: HCMLP shall use reasonable efforts to provide Daugherty with data constituting the investment performance track record of RCP during Daugherty's tenure at HCMLP. Daugherty shall not be entitled to any compensation with respect to the performance of RCP. HCMLP makes no representations or warranties regarding such data and takes no responsibility with respect to the use of such data for any purposes.

5. Daugherty Releases: Except as specifically provided in this paragraph 5, and to the maximum extent permitted by applicable law, the Debtor, on behalf of itself and each of the HCMLP Entities and HCMLP Parties (as those terms are defined in paragraph 6 below), hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue Daugherty, his successors, affiliates, and assigns, (and in each such category to include their respective advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, and designees) (collectively, the "Daugherty Additional Release Parties" and together with Daugherty, the "Daugherty Released Parties"), in each case acting in such capacity, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation those which were or could have been asserted in the Bankruptcy, including the Adversary Proceeding, the Texas Action, or the Delaware Cases, all existing as of the date hereof (collectively, the "HCMLP Released Claims"); provided, however, that such release shall not

apply with respect to any and all defenses that HCMLP or the HCMLP Entities may have to the Reserved Claim or the Reserve Motion (as those terms are defined herein) or Daugherty's obligations under this Settlement. For the avoidance of doubt, the HCMLP Released Claims include all claims or causes of action and facts, known or unknown, that exist as of the date hereof but do not include or apply to claims or causes of action based on facts occurring after the date hereof.

6. HCMLP Releases: Except as specifically provided in this paragraph 6, and to the maximum extent permitted by law, Daugherty, on behalf of himself and each of the Daugherty Released Parties, hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (a)(i) HCMLP; (ii) Strand Advisors Inc.; (iii) the Claimant Trust; (iv) the Claimant Trust Oversight Board; (v) the Highland Litigation Sub-Trust; (vi) the Highland Indemnity Trust; (vii) any entity of which greater than fifty percent of the voting ownership is held directly or indirectly by HCMLP as of the date hereof and any entity otherwise directly or indirectly controlled by HCMLP as of the date hereof,; and (viii) any entity managed by either HCMLP or a direct or indirect subsidiary of HCMLP, including Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Restoration Capital Master, L.P. (and all of their respective general partners, feeder funds, managers, and affiliates) (the foregoing (a)(i) through (a)(viii) the "HCMLP Entities"), and (b) with respect to each such HCMLP Entity, such HCMLP Entity's respective current (meaning employed in their respective roles as of the date hereof) advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders (but not the shareholders of Strand Advisors Inc.), agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (the "HCMLP Parties," and together with the

HCMLP Entities, the "HCMLP Released Parties"),[4] in each case acting in such capacity, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including without limitation those which were or could have been asserted in the Bankruptcy, including the Adversary Proceeding, the Texas Action, the Daugherty Claim, or the Highland Delaware Case (collectively, the "Daugherty Released Claims"); provided, however, that such release shall not apply with respect to the Reserved Claim or the Reserve Motion (as those terms are defined in paragraph 9 below) or HCMLP's obligations under this Settlement. This release expressly applies to all current employees of HCMLP as the Reorganized Debtor (as defined in the Plan), in their capacities as such. For the avoidance of doubt, the Daugherty Released Claims includes all claims or causes of action and facts, known or unknown, that exist as of the date hereof but do not include or apply to claims or causes of action based on facts occurring after the date hereof.

7. Reservation of Daugherty Rights: Notwithstanding anything contained herein to the contrary, the term HCMLP Released Parties shall not include (a) NexPoint Advisors, L.P. (or any of its subsidiaries and employees, advisors, or agents), (b) the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and any of their respective employees, advisors, or agents), (c) NexBank, SSB (or any of its subsidiaries, employees, advisors, or agents), (d) James Dondero or any trust in which Dondero or any of his family members are a trustee or beneficiary (or any trustee acting for such trust), including but not limited to Hunter

[4] The Daugherty Additional Released Parties and the HCMLP Released Parties are collectively referred to as the "Additional Released Parties."

Mountain Investment Trust, The Get Good Trust, Dugaboy Investment Trust, SLHC Investment Trust, (e) HERA (subject to paragraph 8 below), (f) ERA (subject to paragraph 8 below), (g) Grant Scott, (h) Mark Okada and any trust in which Mark Okada or any of his family members are a beneficiary (or any trustee acting for such trust in their respective capacities), (i) Ellington, (j) Leventon, (k) Katz, (l) Hurst, (m) Andrews Kurth, or (m) any other former employee (as of the date hereof) of the HCMLP Released Parties.

8. HERA and ERA: The Parties acknowledge and agree that as of the date hereof, HERA and ERA have no material assets other than potential claims that may exist against persons or entities not released at or prior to the date hereof, and no claims against the HCMLP Released Parties. The allowed claims provided in paragraph 1 hereof are expressly agreed to in order to satisfy any liability the Debtor may have in connection with the HERA Judgment. To facilitate recovery of such potential claims – which expressly excludes any and all claims by or in the name of HERA and ERA against any of the HCMLP Released Parties -- HCMLP will transfer its interests in HERA and ERA to Daugherty. Such transfer will include the HERA and ERA books and records (spreadsheet) maintained on HCMLP's system. Such transfer will be without representation or warranty of any type; including, for the avoidance of doubt, without any representation or warranty as to the merits of the potential claims or the efficacy of the transfer of the potential claims. Such transfer will be without any liability or material cost to HCMLP or its affiliates or the other HCMLP Released Parties, including any liability in respect of any assets that HERA or ERA ever actually or allegedly owned, possessed, or controlled and that were actually or allegedly transferred, conveyed, sold, written off or otherwise disposed of (in any such case, a "Disposition"). In connection with the transfer, HERA and ERA have expressly released the HCMLP Released Parties from any and all claims, including any claims actions or remedies related

to any Disposition, either of them may have against any HCMLP Released Party now or in the future (the "HERA and ERA Release"). Daugherty on behalf of himself and each of the Daugherty Released Parties acknowledges, accepts, and agrees not to challenge the HERA and ERA Release or support any challenge thereto. A copy of the HERA and ERA Release is annexed hereto as **Exhibit A**. Daugherty acknowledges and agrees that even though HERA and ERA are not HCMLP Released Parties under this Agreement, Daugherty and all Daugherty Released Parties shall (a) not seek to hold any HCMLP Released Party liable for any action or inaction taken by or on behalf of HERA or ERA, including through any derivative, veil-piercing or similar cause of action or remedy; and (b) not seek to recover damages or obtain any form of relief against any HCMLP Released Party on account of any action or inaction taken by or on behalf of HERA or ERA, including through any veil piercing or similar cause of action or remedy. If, for any reason, HERA or ERA, or any person or entity acting on their behalf, recovers anything from any HCMLP Released Party, Daugherty shall promptly turnover to HCMLP or its successors and assigns any amounts actually recovered by Daugherty or any Daugherty Released Party, from HERA or ERA arising from, related to, or derived from any claim that HERA or ERA or any person or entity acting on their behalf has or may have against any HCMLP Released Party. HCMLP will provide reasonable assistance to Daugherty to assist with the preparation of any required HERA K-1s for 2021, but any requirement to provide such K-1s will be the obligation, if any, of HERA.

9. IRS Compensation Claim: In section 4(ii) of the Addendum to Proof of Claim No. 205, Daugherty contends that he has a contingent, unliquidated claim against the Debtor arising out of a 2008/2009 compensation letter (the "Reserved Claim"), which claim is also related to an audit/dispute between the Debtor and the Internal Revenue Service (the "IRS") (the dispute between the Debtor and IRS being referred to herein as the "IRS Audit Dispute"). The Debtor

disputes the validity and amount of the Reserved Claim. Daugherty shall retain the Reserved Claim solely against the Debtor and not against any other HCMLP Released Party, and the Debtor reserves the right to assert any and all defenses thereto. Any litigation by and between the Debtor and Daugherty concerning the validity and amount of the Reserved Claim shall be stayed until the IRS makes a final determination with respect to the IRS Audit Dispute; provided, however, that Daugherty may file a motion with the Bankruptcy Court to have the Reserved Claim estimated for purposes of establishing a reserve as a "Disputed Claim" under the Debtor's Plan (the "Reserve Motion"), and the Debtor (and any successor) reserves the right to assert any and all defenses thereto. Notwithstanding the foregoing, Daugherty may address any personal claim or personal liability to the IRS as a result of the IRS Audit Dispute, including settlement of any such claims; provided, however, Daugherty agrees to forego settling or addressing any claims with the IRS without the written consent of the Debtor until March 31, 2022.

10. Current HCMLP Employees: The HCMLP Parties set forth on **Appendix A** hereto are currently employed by the Debtor are HCMLP Released Parties. By executing a copy of this Settlement and delivering it to Daugherty, each of the persons on Appendix A agrees not to sue, attempt to sue, or threaten or work with or assist any entity or person to sue, attempt to sue, or threaten any Daugherty Released Party on or in connection with any claim or cause of action arising prior to the date of this Settlement.

11. Dismissal and Motions in Other Actions. Within ten business days after approval of this Settlement by the Bankruptcy Court, the Parties shall take all steps necessary (a) to dismiss with prejudice (i) the Highland Delaware Case, as against the Debtor and any HCMLP Released Party, and (ii) the HERA Delaware Case, as against every HCMLP Released Party, (b) to file an agreed motion and proposed order to partially vacate the final judgment entered against Daugherty

in the Texas Action, (c) withdraw HCMLP's objection to the Daugherty motion to recuse in the Texas Action, and (d) to dismiss the Adversary Proceeding with prejudice. The parties shall file the foregoing motions and withdrawals substantially in the form of the documents annexed hereto as **Exhibit B**.

12. Additional Third Party Claims Discovery: The Debtor (a) shall accept service of any subpoenas via email served by Daugherty in connection with the Delaware Cases on behalf of itself, the HCMLP Entities, the HCMLP Parties (but only in their capacity as employees of HCMLP); and (b) acknowledge and consent to the jurisdiction of the Delaware Chancery Court for purposes of enforcing any such subpoenas, subject in all respects to the rights that the HCMLP Entities and HCMLP Parties to defend the requested production, if any.

13. Settlement of Third Party Claims: Daugherty shall not settle any claims or causes of action against any current or former director, officer, employee, agent or representative of HCMLP or Strand Advisors Inc. (collectively, the "Potentially Indemnified Parties") to the extent such claims have been brought or could have been brought against any Potentially Indemnified Parties, if any such settlement designates, defines or describes the settled claims as arising out of or relating to simple negligence or as having otherwise been within the scope of employment of the Potentially Indemnified Party.

14. Claims Register: As soon as practicable after the Settlement Effective Date, HCMLP shall instruct the claims agent in the Debtor's chapter 11 case to adjust the claims register in accordance with this Settlement.

15. Daugherty Representations: Daugherty represents and warrants to each of the HCMLP Released Parties that (a) he has full authority to release the Daugherty Released Claims and has not sold, transferred, or assigned any Daugherty Released Claim to any other person or

entity and that (b) no person or entity other than Daugherty has been, is, or will be authorized to bring, pursue, or enforce any Daugherty Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) Daugherty.

16. HCMLP Representations: Each of HCMLP and each HCMLP Released Party who has signed this Settlement represents and warrants to Daugherty that (a) he, she or it has not sold, transferred, pledged, assigned or hypothecated any HCMLP Released Claim to any other person or entity and (b) he, she, or it has full authority to release any HCMLP Released Claims that such HCMLP Released Party personally has against Daugherty.

17. Additional HCMLP Representations: HCMLP represents and warrants that it is releasing the HCMLP Released Claims on behalf of the HCMLP Entities to the maximum extent permitted by any contractual or other legal rights HCMLP possesses. To the extent any of the HCMLP Entities dispute HCMLP's right to release the HCMLP Released Claims on behalf of any of the HCMLP Entities, HCMLP shall use commercially reasonable efforts to support Daugherty's position, if any, that such claims were released herein. For the avoidance of doubt, HCMLP will have no obligations to assist Daugherty under this paragraph if HCMLP has been advised by external counsel that such assistance could subject HCMLP to liability to any third party or if such assistance would require HCMLP to expend material amounts of time or money. HCMLP shall not argue in any forum that the non-signatory status of any of the HCMLP Entities to this Settlement shall in any way affect the enforceability of this Settlement vis-à-vis any of the HCMLP Entities. The Parties agree that all of the HCMLP Entities are intended third-party beneficiaries of this Release.

18. HCMLP Covenant: HCMLP and the HCMLP Entities covenant and agree that they will not pursue or seek to enforce any injunctions entered in the Texas Action against

Daugherty.

19. Entire Agreement; Modification: This Settlement contains the entire agreement between the Parties as to its subject matter and supersedes and replaces any and all prior agreements and undertakings between the Parties. This Settlement may not be modified other than by a signed writing executed by the Parties.

20. Bankruptcy Court Approval: Notwithstanding anything to the contrary contained herein, the effectiveness of HCMLP and the Claimant Trust's execution of this Settlement shall be subject to entry of an order of the Bankruptcy Court approving this Settlement. HCMLP shall take all steps necessary to file with the Bankruptcy Court a motion for an order approving this Settlement pursuant to Federal Rule of Bankruptcy Procedure 9019 and section 363 of the Bankruptcy Code (the "Motion"). The parties agree to cooperate in the preparation and prosecution of the Motion which shall be filed no later than 5 business day after execution of this Settlement, unless such time is extended by mutual agreement.

21. Counterparts: This Settlement may be executed in counterparts (including facsimile and electronic transmission counterparts), each of which will be deemed an original but all of which together constitute one and the same instrument and shall be effective against a Party or Additional Released Party upon approval of the Settlement by the Bankruptcy Court.

22. Governing Law; Jurisdiction: This Settlement will be exclusively governed by and construed and enforced in accordance with the laws of the State of Delaware, without regard to its conflicts of law principles, and all claims relating to or arising out of this Settlement, or the breach thereof, whether sounding in contract, tort, or otherwise, will likewise be governed by the laws of the State of Delaware, excluding Delaware's conflicts of law principles. The Bankruptcy Court will retain exclusive jurisdiction over all disputes relating to this Settlement.

23. Headings: Paragraph headings included herein are for convenience and shall have no impact whatsoever on the meaning or interpretation of any part of this Settlement.

[Remainder of page intentionally left blank]

In witness whereof, the parties hereto, intending to be legally bound, have executed this Settlement as of the day and year set forth below:

Dated: 11-21-21

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____

Name: James P. Seery, Jr.
Title: Chief Executive Officer

HIGHLAND CLAIMANT TRUST

By: _____

Name: James P. Seery, Jr.
Title: Claimant Trustee

Dated: 11/22/21

PATRICK HAGAMAN DAUGHERTY

By: _____

Name: Patrick Hagaman Daugherty

EXHIBIT A

HERA RELEASE AGREEMENT

This HERA Release Agreement ("HERA Release Agreement") is entered into as of November 21, 2021 by and among Highland Capital Management, L.P., as reorganized debtor ("HCMLP" or the "Debtor"), Patrick Hagaman Daugherty ("Daugherty"), Highland Employee Retention Assets, LLC ("HERA") and Highland ERA Management, LLC ("ERA" and together with HCMLP, and HERA, the "Parties," and individually as a "Party").

WHEREAS, reference is hereby made to the Settlement Agreement (the "Settlement") of even date herewith and attached hereto made and entered into by and between the Debtor, the Highland Claimant Trust, and Daugherty.

WHEREAS, the Settlement settles all of Daugherty's claims against the HCMLP Released Parties, including all claims against the HCMLP Released Parties relating to transfers of assets from HERA.

WHEREAS, the Settlement includes, among other things, the transfer by HCMLP to Daugherty of HCMLP's interests in HERA and ERA.

WHEREAS, under the Settlement such transfer is being made without any liability to any of the HCMLP Released Parties of any type and is conditional on the full release of, and covenant not to sue, each of the HCMLP Released Parties, by and from HERA, ERA, Daugherty and the Daugherty Released Parties.

WHEREAS, neither HERA nor ERA filed proofs of claim in the Bankrupty and have no claims against HCMLP.

WHEREAS, out of an abundance of caution to confirm that HERA, ERA, Daugherty, and the Daugherty Released Parties have no claims against the HCMLP Released Parties, this HERA Release Agreement is being entered into contemporaneously with the Settlement and constitutes an

essential part thereof.

WHEREAS, capitalized terms used herein but not otherwise defined herein have the respective meanings set forth in the Settlement.

NOW, THEREFORE, in consideration of the entry into of the Settlement, the transfer of the equity interests in HERA and ERA to Daugherty in accordance with the Settlement, and for other good and valuable consideration, including the provisions set forth herein, the parties hereto further agree as follows:

1. Upon entry of an order of the Bankruptcy Court approving this Settlement and to the maximum extent permitted by law, Daugherty, on behalf of himself and each of the Daugherty Additional Release Parties, together with each of HERA and ERA (Daugherty, the Daugherty Additional Release Parties, HERA and ERA shall be collectively referred to herein as the "HERA Releasing Parties"), each hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, any of the HCMLP Released Parties for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including without limitation those which were or could have been asserted in the Bankruptcy, including the Adversary Proceeding, the Texas Action, the Daugherty Claim, Highland Delaware Case, or the HERA Delaware Case (collectively, "Claims"), in each case that in any way arise from or otherwise in any way relate to HERA or ERA, including, without limitation, any actual or potential claims, whether known or unknown, in any way related to or

arising out of the formation, management, operation or assets of HERA, ERA or any of their respective predecessors or successors, including the transfer of any assets to or from HERA or ERA, it being understood that all remaining assets of HERA have been transferred to HCMLP prior to the date hereof, and in addition to the releases set forth above, each of the HERA Releasing Parties irrevocably waives and releases and covenants not to sue with respect to any Claims against any of the HCMLP Released Parties in any way related to any such transfers or assets, whether *in personam* with respect to the HCMLP Released Parties or *in rem* with respect to any of their assets (collectively, the "HERA Released Claims") or any other Disposition.

2. This Release constitutes a part of, and is supplemental to, the provisions of the Settlement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

In witness whereof, the parties hereto, intending to be legally bound, have executed this HERA Release Agreement as of the date set forth above.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: James P. Seery, Jr.
Title: Chief Executive Officer

PATRICK HAGAMAN DAUGHERTY

By: _____
Name: Patrick Hagaman Daugherty

HIGHLAND EMPLOYEE RETENTION ASSETS, LLC

By: Highland ERA Management, LLC, its manager

By: Highland Capital Management, LP

By: _____
Name: James P. Seery, Jr.
Title: Chief Executive Officer

HIGHLAND ERA MANAGEMENT, LLC

By: _____
Name: James P. Seery, Jr.
Title: Authorized Signatory

EXHIBIT B

CAUSE NO. 12-04005

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**IN THE DISTRICT COURT OF**
Plaintiffs,	§	
v.	§	
PATRICK DAUGHERTY,	§	
Defendant and Counter-Plaintiff,	§	**DALLAS COUNTY, TEXAS**
v.	§	
SIERRA VERDE, LLC, HIGHLAND EMPLOYEE RETENTION ASSETS LLC, JAMES DONDERO, PATRICK BOYCE, AND WILLIAM L. BRITAIN,	§	
Third-Party Defendants.	§	
	§	**68th JUDICIAL DISTRICT**

AGREED MOTION TO PARTIALLY VACATE THE FINAL JUDGMENT DATED JULY 14, 2014

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Highland Capital Management, LP ("Highland") and Defendant Patrick Daugherty ("Daugherty" and together with Highland, the "Parties") file this *Agreed Motion to Partially Vacate the Final Judgment dated July 14, 2014* (the "Motion"), and respectfully show the following:

1. On July 14, 2014, this Court entered a *Final Judgment* (the "Judgment") that, among other things, granted Highland's motion for injunctive relief against Daugherty.

2. The Judgment was amended on March 23, and June 23, 2017.

3. On October 16, 2019, filed a petition under chapter 11 in the United States Bankruptcy Court for the District of Delaware ("Highland's Bankruptcy Case"). On October 24,

2019, as a result of the commencement of Highland's Bankruptcy Case, the Supreme Court of Texas issued an order abating a related case that Daugherty had brought in that court, Case No. 19-0758. Highland's Bankruptcy Case was subsequently transferred to the United States Bankruptcy Court for the Northern District of Texas.

4. Daugherty asserted certain claims against Highland in Highland's Bankruptcy Case. The Parties have fully and finally resolved their disputes pursuant to a settlement agreement (the "Settlement Agreement") reached in the Highland Bankruptcy Case pursuant to which, among other things, (a) all of Daugherty's known and unknown claims against each of the Highland Released Parties (as those terms are defined in the Settlement Agreement) are resolved, and (b) this Motion seeking the *vacatur* of certain provisions of the Judgment specifically set forth below is being filed.

5. Highland and Daugherty hereby agree and stipulate that the Court has plenary power to issue an order granting this Motion because the Court retained authority to enforce the permanent injunction rendered in the Judgment, and that changed circumstances have now arisen such that the Court should dissolve the permanent injunction. Highland and Daugherty further agree and stipulate that this Motion shall be treated as an agreement of the Parties pursuant to Texas Rule of Civil Procedure 11, and is fully enforceable. *See Coale v. Scott*, 331 S.W.3d 829, 831-32 (Tex. App.—Amarillo 2011, no pet.) ("Irrespective of whether a trial court lost its plenary jurisdiction over its judgment, the trial court's authority to approve a Rule 11 agreement does not depend on whether it has such jurisdiction.").

6. Highland and Daugherty agree that the following portions of the Judgment shall be vacated pursuant to their settlement in the Highland Bankruptcy:

a. The second full paragraph on Page 2 of the Judgment, which begins "The Court, after considering the jury's findings regarding Daugherty's breaches of contract and breaches of fiduciary duty . . .";

b. The permanent injunction rendered against Daugherty in the third full paragraph on Page 2 of the Judgment, which begins "It is therefore further ORDERED that Daugherty be and hereby is commanded to cease and desist from . . .";

c. The fourth and fifth full paragraphs on Page 2 of the Judgment awarding Highland a monetary judgment against Daugherty for reasonable and necessary attorney's fees, as well as post-judgment interest on that award[1]; and

d. The jury's answers to Questions 1, 2, 5, 6, 9 and 12 in the Verdict, which was attached as Exhibit 1 to the Judgment.

7. Highland and Daugherty further agree that, as a result of the vacation of the permanent injunction in the Judgment, Highland hereby withdraws any pending motions to show cause or motions for contempt against Daugherty that allege Daugherty violated or is violating the permanent injunction. Highland also agrees not to seek to enforce the permanent injunction in any manner in the future.

[1] Daugherty previously satisfied the monetary judgment awarded to Highland, and Highland filed a release of the monetary judgment. Although Highland and Daugherty have agreed to vacate the monetary judgment awarded to Highland, Daugherty waives and relinquishes any right or claim to recover any amount previously paid in satisfaction of the Judgment and Highland shall not be required to reimburse Daugherty for his prior satisfaction of the monetary judgment. To the extent Daugherty is entitled to indemnification for any liabilities, losses, and damages allegedly incurred by him for actions taken in connection with Highland's business, including the liabilities Daugherty allegedly incurred in connection with this action and the Judgment, such indemnification claims have been fully and finally satisfied and resolved under the Settlement Agreement.

8. Concurrent with the filing of this Motion, Daugherty will file a motion to dismiss his as-yet unfiled petition for review pending before the Supreme Court of Texas under Case No. 19-0758.

9. Highland and Daugherty further agree that any portions of the Judgment that are not specifically vacated pursuant to this Motion shall remain in full force and effect.

WHEREFORE, Highland and Daugherty pray that the Court grant this Motion in its entirety, and for all further relief, at law or in equity, the Court deems necessary.

Respectfully submitted,

GRAY REED & McGRAW LLP

By: */s/ Sonya D. Reddy*
ANDREW K. YORK
State Bar No. 24051554
E-mail: dyork@grayreed.com
SONYA D. REDDY
State Bar No. 24079188
E-mail: sreddy@grayreed.com

1601 Elm Street, Suite 4600
Dallas, Texas 75201
(214) 954-4135
(214) 953-1332 (Fax)

ATTORNEYS FOR PATRICK DAUGHERTY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been transmitted by electronic transmission to all counsel of record on February ___, 2021, as follows:

Marc D. Katz
Crystal J. Woods
DLA PIPER LLP (US)
1717 Main St., Suite 3700
Dallas, Texas 75201
214-743-4545 (Fax)
marc.katz@dlapiper.com
crystal.woods@dlapiper.com

Attorneys for Highland Capital Management, L.P.

Michael K. Hurst
A. Shonn Brown
Jonathan Childers
LYNN PINKER COX HURST, LLP
2100 Ross Ave., Suite 2700
Dallas, Texas 75201
(214) 981-3839 (Fax)
mhurst@lynnllp.com
sbrown@ lynnllp.com
jchilders@ lynnllp.com

Attorneys for Third-Party Defendants HERA, Patrick Boyce, and William Britain

/s/ Sonya D. Reddy
SONYA D. REDDY

APPENDIX A (signatures to follow)

1. James P. Seery, Jr.
2. Cameron Baynard
3. Nathan Burns
4. Timothy Cournoyer
5. Naomi Chisum
6. Stetson Clark
7. Sean Fox
8. Matthew Gray
9. Kristin Hendrix
10. David Klos
11. Vishal Patel
12. Thomas Surgent
13. Michael Throckmorton

EXHIBIT 7

LYNN PINKER HURST SCHWEGMANN

MICHAEL K. HURST
Partner
Board Certified – Civil Trial Law
Texas Board of Legal Specialization

D 214 981 3838
F 214 981 3839
mhurst@lynnllp.com

Lynn Pinker Hurst & Schwegmann, LLP
2100 Ross Avenue
Suite 2700
Dallas, Texas 75201
lynnllp.com

January 13, 2022

Via FedEx and E-Mail
Patrick Daugherty,
c/o Ruth Ann Daniels & Drew York
rdaniels@grayreed.com
dyork@grayreed.com
GRAY REED & MCGRAW, LLP
1601 Elm Street, Suite 4600
Dallas, Texas 75201

Re: ***Litigation Hold: Preservation of Information. Scott Byron Ellington v. Patrick Daugherty Cause No. DC-22-00304, in the 101st Judicial District, Dallas County (the "Lawsuit").***

Dear Counsel:

Our Firm represents Scott Byron Ellington in the above-referenced Lawsuit. Texas law requires Defendant Patrick Daugherty to preserve, maintain, and not destroy or delete documents and communications (whether in hard copy or electronic form) that are relevant or could be relevant to this litigation.

Please accept this letter as Mr. Ellington's formal written request that Mr. Daugherty, and any affiliated entities, employees, agents, or representatives of Mr. Daugherty, preserve documents and other evidence, including that stored in magnetic and/or electronic form ("Hold Notice").

The following definitions shall apply in this letter:

- "You" and "your" refers to Mr. Daugherty, your agents, attorneys, accountants, employees, partners or other persons occupying similar positions or performing similar functions, and their predecessors, successors or affiliates, and their respective agents, attorneys, accountants, employees, partners or other persons occupying similar positions or performing similar functions.

- "Ellington Party" refers to Plaintiff Scott Ellington, Byron Ellington, Marcia Maslow, Adam Maslow, the two minor children of Marcia and Adam Maslow, Stephanie Archer and her minor child, and any person who was then accompanying any of the aforementioned individuals.

- "Ellington Location" refers 120 Cole Street, Dallas, Texas 75207, 3825 Potomac Ave, Dallas, Texas 75205, 4432 Potomac, Dallas, Texas 75025, 430 Glenbrook Dr., Murphy, Texas 75094, 5101 Creekside Ct., Parker, Texas 75094, any other residence or place of business of any Ellington Party, and any other location Mr. Daugherty believed to be associated with any Ellington Party.

- "Ellington Recordings" shall mean all electronic recordings of any Ellington Party or Ellington Location, including any persons or vehicles at such Ellington Locations.

Litigation Hold: Preservation of Information

You are directed to immediately initiate a litigation hold for potentially relevant evidence comprised of (without limitation), documents, communications, tangible things, and as more fully defined below, electronically stored information (hereinafter "ESI") relating to:

(1) All claims and allegations contained within the Original Petition in this case;

(2) All factual, legal, affirmative, or other defenses Mr. Daugherty may assert in the Lawsuit;

(3) All counter-claims or third-party claims Mr. Daugherty may assert in the Lawsuit;

(4) All Ellington Recordings;

(5) All documents and communications evidencing the transmission of any Ellington Recording to any other party, person, or entity;

(6) All documents and communications with any other party, person, or entity regarding the Ellington Recordings and/or the observation, surveillance, or investigation of any Ellington Party or Ellington Location;

(7) All electronic or hand-written notes, memoranda, or other documents related to or evidencing Mr. Daugherty's recordation, observation, surveillance, or investigation of any Ellington Party or Ellington Location; and

(8) All documents and communications regarding any Ellington Party or Ellington Location from 1/1/2021 – present (or from the date Mr. Daugherty began his observation, surveillance, or investigation of any Ellington Party, if earlier than 1/1/2021).

You must act diligently and in good faith to secure compliance with such litigation hold and thereby preserve the aforementioned documents, tangible things, and ESI (hereinafter, the "Evidence").

You should anticipate that much of the information subject to disclosure or responsive to discovery in this matter is likely stored on current and former computer systems and other media and devices (including but not limited to personal digital assistants, voice-messaging systems, online repositories, e-mail servers, computer servers, and cellular telephones/smart phones) that belong to you or are in your possession, custody, or control. For the avoidance of doubt, this includes any documents, communications, and information exchanged with your attorneys or otherwise subject to the attorney-client, work product, or other applicable claims of privilege as such information may be the subject of a privilege log or related motion practice.

"ESI" should be afforded the broadest possible definition and includes (by way of example, only, and not as an exclusive list) potentially relevant information electronically, magnetically, or optically stored (whether in final or draft form) as:

- Digital communications (e.g., e-mail, voice mail, text messages, instant messaging, messaging apps);
- Word-processed documents (e.g., Google Docs and Word documents);
- Email, Calendar and Diary Application Data (e.g., Outlook, Yahoo, blog tools);
- Spreadsheets and tables (e.g., Excel or Google Sheets);
- Social media communications (e.g., Facebook, Snapchat, Instagram, LinkedIn)
- Image and Facsimile Files (e.g., .pdf, .tiff, .jpg, .gif images);
- Sound Recordings (e.g., .wav and .mp3 files);
- Video and Animation (e.g., .avi, .mpg, .mpeg, .mp4, .flv, .mov files);
- Databases (e.g., Access, Oracle, SQL Server data, SAP);
- Contact and Relationship Management Data (e.g., Outlook, ACT!);
- Online Access Data (e.g., Temporary Internet Files, History, Cookies);
- Presentations (e.g., PowerPoint, Corel Presentations);
- Network Access and Server Activity Logs;
- Project Management Application Data;
- Computer Aided Design/Drawing Files; and
- Back Up and Archival Files (e.g., Zip, .GHO).

Suspension of Routine Destruction

You are further directed to immediately identify and modify or suspend features of your information systems and devices that, in routine operation, operate to cause the loss of potentially relevant ESI. Examples of such features and operations include:

- Purging the contents of e-mail repositories by age, capacity, or other criteria;
- Using data or media wiping, disposal, erasure, or encryption utilities or devices;
- Overwriting, erasing, destroying, or discarding back up media;
- Re-assigning, re-imaging, or disposing of systems, servers, devices, or media;
- Running antivirus or other programs effecting wholesale metadata alteration;
- Releasing or purging online storage repositories;
- Using metadata stripper utilities;
- Disabling server or IM logging; and
- Executing drive or file defragmentation or compression programs.

Adequate preservation of potentially relevant evidence requires more than simply refraining from efforts to destroy or dispose of such evidence. You must also intervene to prevent loss due to routine operations and employ proper techniques and protocols suited to protection of the Evidence. *Be advised that sources of ESI are altered and erased by continued use of your computers and other devices.* Booting a drive, examining its contents, or running any application will irretrievably alter the information it contains and may constitute unlawful spoliation of the Evidence.

Guard Against Deletion

You should take affirmative steps to prevent anyone with access to your data, systems, and archives from seeking to modify, destroy, or hide ESI on network or local hard drives (such as by deleting or overwriting files, using data shredding and overwriting applications, defragmentation, re-imaging or replacing drives, encryption, compression, steganography, or the like). One way to protect existing data on local hard drives is by the creation and authentication of a forensically qualified image of all sectors of the drive. Such a forensically qualified duplicate may also be called a bit stream image or clone of the drive. Be advised that a conventional back up of a hard drive is not a forensically qualified image because it only captures active, unlocked data files and fails to preserve forensically significant data that may exist in such areas as unallocated space, slack space and the swap file.

Preservation in Native Form

You should anticipate that certain Evidence, including but not limited to spreadsheets and databases, may be sought in the form or forms in which it is ordinarily maintained. Accordingly, you should preserve such Evidence in such native forms, and you should not select methods to preserve the Evidence that remove or degrade the ability to search it by electronic means or make it difficult or burdensome to access or use the information efficiently in a lawsuit. You should additionally refrain from actions that shift ESI from reasonably accessible media and forms to less accessible media and forms if the effect of such actions is to make it not reasonably accessible and/or illegible.

Metadata

You should further anticipate that the need to disclose and produce system and application metadata will arise, and you should immediately act to preserve it. System metadata is information describing the history and characteristics of other ESI. This information is typically associated with tracking or managing an electronic file and often includes data reflecting a file's name, size, custodian, location, and dates of creation and last modification or access. Application metadata is information automatically included or embedded in electronic files but which may not be apparent to a user, including: deleted content, draft language, commentary, collaboration and distribution data, and dates of creation and printing. All electronically stored documents will contain metadata. You should preserve all metadata associated with any Evidence or other preserved information.

Servers

With respect to servers like those used to manage electronic mail (e.g., Microsoft Exchange, Lotus Domino) or network storage (often called a user's "network share"), the complete contents of each user's network share and e-mail account should be preserved.

Paper Preservation of ESI is Inadequate

As hard copies do not preserve electronic searchability or metadata, they are not an adequate substitute for, or cumulative of, electronically stored versions. If information exists in both electronic and paper forms, you must preserve both forms.

Agents, Attorneys and Third Parties

Your preservation obligation extends beyond Evidence in your care, possession, or custody and includes Evidence in the custody of others that is subject to your direction or control. Accordingly, you must notify any current or former agent, attorney, employee, custodian, or contractor in possession of Evidence and instruct same to preserve such

Evidence to the full extent of their obligation to do so, and you must take reasonable steps to secure their compliance.

Failure to Comply – Sanctions

Failure to preserve potentially relevant evidence resulting in the corruption, loss, or delay in production of evidence to which we are entitled would constitute spoliation of evidence and could subject you to severe court-imposed sanctions.

This preservation demand is continuing in nature and requires Mr. Daugherty's preservation of potentially relevant documents and materials that come into his possession, custody, or control after the date of this Hold Notice.

Please acknowledge receipt of this Hold Notice and promptly confirm that Mr. Daugherty will comply with this preservation demand. Please have your legal counsel contact me at the first opportunity so that we may discuss this matter.

Respectfully,

Michael K. Hurst

cc: Mary Goodrich Nix (*of the Firm*)
Nathaniel A. Plemons (*of the Firm*)
Julie Pettit Greeson (*Co-counsel*)

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)

PLAINTIFFS	**DEFENDANTS**
Scott Byron Ellington	Patrick Daugherty
ATTORNEYS (Firm Name, Address, and Telephone No.) Julie Pettit (The Pettit Lawfirm) 2101 Cedar Springs, Suite 1540, Dallas, TX 75201 (214)-329-0151 *Full contact info is in filing Michael K. Hurst (Lynn Pinker Hurst & Schwegmann, LLP) 2100 Ross Ave, Suite 2700, Dallas, TX 75201 (214)-981-3800	**ATTORNEYS** (If Known) Jason S. Brookner, Andrew K. York, Drake M. Rayshell (Gray Reed) 1601 Elm St., Suite 4600, Dallas, TX 75201 (214)-954-4135
PARTY (Check One Box Only) □ Debtor □ U.S. Trustee/Bankruptcy Admin □ Creditor ☒ Other □ Trustee	**PARTY** (Check One Box Only) □ Debtor □ U.S. Trustee/Bankruptcy Admin ☒ Creditor Other □ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

Plaintiff's action seeks injunctive relief and damages under the Texas Civil Practice and Remedies Code Ch. 85 and Texas Common Law - Invasion of Privacy by Intrusion. Defendant removes this case as it is related to the pending bankruptcy case number 19-34054 (SGJ).

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- ☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☒ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☒ Check if this case involves a substantive issue of state law	□ Check if this is asserted to be a class action under FRCP 23
□ Check if a jury trial is demanded in complaint	Demand $ Plaintiff claims to seek over $1 Million in State Court Action

Other Relief Sought

Plaintiff seeks Injunctive Relief

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Highland Capital Management, L.P.	BANKRUPTCY CASE NO. 19-34054 (SGJ)	
DISTRICT IN WHICH CASE IS PENDING Northern District of Dallas	DIVISION OFFICE Dallas Division	NAME OF JUDGE Stacey G. Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) */s/ Jason S. Brookner*		
DATE January 18, 2022	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Jason S. Brookner Gray Reed Attorney for Patrick Daugherty	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

Frances A. Smith
State Bar No. 24033084
Eric Soderlund
State Bar No. 24037525
ROSS & SMITH, PC
700 North Pearl Street, Suite 1610
Dallas, Texas 75201
Telephone: 214-377-7879
Facsimile: 214-377-9409
Email: frances.smith@judithwross.com
eric.soderlund@judithwross.com

Co-Counsel for Scott Ellington

Michelle Hartmann
State Bar No. 24032402
BAKER & McKENZIE LLP
1900 North Pearl, Suite 1500
Dallas, TX 75201
Telephone: 214-978-3000
Facsimile: 214-978-3099
Email: michelle.hartmann@bakermckenzie.com

Debra A. Dandeneau (admitted *pro hac vice*)
Frank Grese (admitted *pro hac vice*)
BAKER & McKENZIE LLP
452 Fifth Avenue
New York, NY 10018
Tel: 212-626-4100
Fax: 212 310-1600
Email: debra.dandeneau@bakermckenzie.com
frank.grese@bakermckenzie.com

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
SCOTT BYRON ELLINGTON, Petitioner, v. PATRICK DAUGHERTY, Respondent.	Adv. Pro. No. 22-03003-sgj *Removed from the 101st Judicial District Court of Dallas County, Texas Cause No. DC-22-0304*

SCOTT ELLINGTON'S EMERGENCY MOTION TO ABSTAIN AND TO REMAND

Pursuant to Federal Rule of Bankruptcy Procedure 5011 and 28 U.S.C. §§ 1334 and 1452, Scott Ellington ("***Ellington***") files this emergency opposed motion to (1) abstain from hearing issues related to the above-captioned adversary proceeding (the "***Removed Action***") and

(2) remand the Removed Action to the state court in which it originally was filed (the "***Motion***"). In support of the Motion, Ellington respectfully states as follows:

I. PRELIMINARY STATEMENT[1]

1. The gravamen of Ellington's state court claims focuses on Daugherty's personal conduct in stalking Ellington and other individuals closely associated with Ellington (including Ellington's girlfriend, father, sister, and at least three of their minor children). In the State Court Action, Ellington seeks to stop such conduct through issuance of a suit seeking damages and injunctive relief in the State Court. After the filing of the State Court Action, the State Court promptly entered a Temporary Restraining Order ("***TRO***") against Daugherty. Notably, the State Court set a temporary injunction hearing for January 26, 2022, the same date the TRO expires. Daugherty's removal of the State Court action already has prejudiced Ellington by allowing the TRO to expire without further protection for Ellington and his family.

2. Immediately after issuance of the TRO, Daugherty removed the State Court Action to this Court on the stated basis that the stalking claims against Daugherty were somehow "related to" HCMLP's chapter 11 case. Such action is nothing more than a transparent attempt to forestall the inevitable judgment of a court upon Daugherty's actions.

3. Ellington seeks to have a court of competent jurisdiction hear his stalking and invasion of privacy claims, render a final judgment, and issue a permanent injunction against Daugherty. This Court, however, must abstain from hearing disputes related to this case and remand the Removed Action to the State Court. First, abstention is mandatory under 28 U.S.C. § 1334(c)(2) as the Removed Action exclusively involves Texas state law and does not even "relate to" the chapter 11 case. Second, and in the alternative, abstention is permissive and necessary

[1] Capitalized terms used but not otherwise defined in this Preliminary Statement shall have the meaning ascribed to them in the Motion.

under 28 U.S.C. § 1334(c)(1) as no basis for federal jurisdiction over the Removed Action exists. That Daugherty and Ellington are both former employees of HCMLP who each have his own separate, and often contentious, history with HCMLP does not create "related to" jurisdiction. For these reasons, this Court must abstain from this dispute and remand the Removed Action under 28 U.S.C. § 1452(b) to the State Court.

II. FACTUAL BACKGROUND

4. Ellington was, until January of 2021, the general counsel of Highland Capital Management, L.P. ("***HCMLP***").

5. Defendant Patrick Daugherty ("***Daugherty***") previously worked for HCMLP.

6. On January 11, 2022 in the 101st Judicial District Court in Dallas County, Texas (the "***State Court***"), Ellington filed suit against Daugherty, Cause No. DC 22-00304 (the "***State Court Action***"). In the State Court Action, Ellington asserts claims against Daugherty for stalking and invasion of privacy by intrusion, and Ellington requests the State Court to issue a permanent injunction against Daugherty to protect Ellington and Ellington's friends and family. Doc. 1-1 at 5-15. The Petition filed by Ellington in the State Court Action includes declarations from a private investigator and Ellington, both of whom recount a pattern of Daugherty following Ellington and certain of Ellington's family and friends (including his father), as well as Daugherty appearing outside of locations such as Ellington's office and home and Ellington's sister's home. *Id.* at 16–21 and 45–48. Daugherty's stalking began no later than January 2021 and has been verified as recently as December 2021. *Id.* at 3–4, ¶¶ 11–13. Daugherty has been observed outside Ellington's office, or the residences of Ellington, his girlfriend, sister, and father, no less than **143 times**, often taking photographs or video recordings while either parked or driving slowly by. *Id.* On April 21, 2021 alone, the private investigator observed Daugherty driving by Ellington's office at least nine

times. *Id.* at 19, ¶ 14. As a result, in the State Court Action Ellington seeks an injunction prohibiting Daugherty from being near Ellington and his friends and family. *Id.* at 12, ¶ 35.

7. On January 12, 2022, the State Court issued a Temporary Restraining Order ("***TRO***") against Daugherty, which prohibits Daugherty from communicating with or recording Ellington and being within 500 feet of Ellington, Ellington's office, Ellington's residence, and other specified locations such as those of Ellington's family and friends. *Id.* at 57–58, ¶ 4. Because the TRO only lasts for 14 days or until the temporary order hearing, whichever is sooner, the State Court set the temporary injunction for hearing on January 26, 2022. *Id.* at 58, ¶ 5.

8. On January 18, 2022, Daugherty filed his notice of removal (the "***Notice of Removal***") [Doc. 1]. In the Notice of Removal, Daugherty asserts that the Bankruptcy Court has jurisdiction pursuant to 28 U.S.C. § 1452(a) and Bankruptcy Rule 9027 because the State Court Action somehow "relates to" HCMLP's chapter 11 case. *Id.* at 3. As a result of this barebones allegation, the Removed Action was automatically referred to the bankruptcy court upon removal.

III. ARGUMENTS AND AUTHORITY

A. This Court must abstain from hearing Ellington's State Court Action.

9. Mandatory abstention in a bankruptcy proceeding is governed by 28 U.S.C. § 1334(c)(2), which states as follows:

> Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

The Fifth Circuit has interpreted this provision to mandate federal abstention where "(1) [t]he claim has no independent basis for federal jurisdiction, other than § 1334(b); (2) the claim is a non-core proceeding," *i.e.*, it is related to a case under title 11; "(3) an action has been commenced in

state court; and (4) the action could be adjudicated timely in state court." *Edge Petroleum Operating Co. v. GPR Holdings, L.L.C. (In re TXNB Internal Case)*, 483 F.3d 292, 300 (5th Cir. 2007). "If the requirements for mandatory abstention are met, a federal court has no discretion—it must abstain." *Lain v. Watt* (*In re Dune Energy, Inc.*), 575 B.R. 716, 726 (Bankr. W.D. Tex. 2017).

10. Initially, the first and third factors are not controversial; no basis for federal jurisdiction is asserted other than § 1334(b), and the State Court Action was commenced in the State Court. At issue is whether the State Court Action is (at best) a non-core proceeding and whether it can timely be adjudicated in the State Court. Each of these factors demonstrates that the Court must abstain.

i. The State Court Action is, at best, a non-core proceeding.

11. In determining whether a proceeding is non-core, the Fifth Circuit Court of Appeals has explained that "[i]f the proceeding does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy it is not a core proceeding … [I]t is an 'otherwise related' or non-core proceeding." *Wood v. Wood (In re Wood)*, 825 F.2d 90, 97 (5th Cir. 1987). The State Court Action for claims of stalking, invasion of privacy by intrusion, temporary restraining order, temporary injunction, and permanent injunction against Daugherty all arise under Texas state law and do not invoke substantive rights in bankruptcy. The State Court Action does not make any reference to the Bankruptcy Code — nor is it applicable. Stalking Ellington and his family is not a substantive asset or right of HCMLP's estate. Nothing in the administration of the estate can or should deny Ellington of his right to personal safety under Texas

law. Neither HCMLP's confirmed plan, nor any order of this Court, permits Daugherty to stalk Ellington and his family over 143 times. In short, the State Court Action is a non-core proceeding.[2]

ii. The State Court can timely adjudicate the State Court Action.

12. Although a naked assertion that a proceeding can be timely heard in state court will not satisfy the requirement that a proceeding be "timely adjudicated" in state court, courts recognize that this requirement is a relatively low hurdle to clear. *See WRT Creditors Liquidation Tr. v. C.I.B.C. Oppenheimer Corp.*, 75 F. Supp. 2d 596, 605-06 (S.D. Tex. 1999). "The issue is not whether a matter can be adjudicated more timely in state court than in federal court. Rather, the movant need only present evidence to show that the proceeding can be heard by the state court in a timely fashion." *In re Dune Energy*, 575 B.R. at 730.

13. The record to date makes clear that the State Court Action has been and can continue to be adjudicated timely in the State Court. Ellington filed the State Court Action on January 11, 2022. One week later, on January 18, 2022, the State Court issued a TRO against Daugherty and set the temporary injunction for hearing on January 26, 2022. In fact, the removal of the action to this Court delayed Ellington's efforts to obtain a temporary injunction and risks creating an unprotected gap between the expiration of the TRO and any temporary injunctive relief preventing Daugherty's ongoing stalking. If the Removed Action is remanded back to the State Court, the State Court will continue to adjudicate the claims and relief sought by Ellington in a timely manner.

14. Because all the elements of mandatory abstention under section 1334(c)(2) are satisfied, this Court must abstain from hearing the Removed Action. *See In re Dune Energy*, 575 B.R. at 726.

[2] Under established Fifth Circuit precedent, this Court does not even have "related to" jurisdiction, but the Court need not decide that issue to determine that mandatory abstention applies here.

B. In the alternative, this Court should exercise its discretion to permissively abstain or equitably remand the State Court Action.

15. In the alternative, if mandatory abstention is not found, this Court should exercise its discretion to permissively abstain and equitably remand the Removed Action. Permissive abstention is governed by 28 U.S.C. § 1334(c)(1), which states as follows:

> Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

16. Equitable remand of a bankruptcy proceeding is likewise governed by 28 U.S.C. § 1452(b), which allows a court to remand a removed action "on any equitable ground."

17. Because the permissive abstention and equitable remand statutes are "similar in purpose," the same factors are usually weighed to determine if either is warranted. *In re Dune Energy*, 575 B.R. at 731. Courts have enumerated 14 factors to consider in determining whether to abstain or equitably remand a removed action:

> "(1) the effect or lack thereof on the efficient administration of the estate if the court decides to remand or abstain;
>
> (2) the extent to which state law issues predominate over bankruptcy issues;
>
> (3) the difficult or unsettled nature of applicable law;
>
> (4) the presence of a related proceeding commenced in state court or other nonbankruptcy proceeding;
>
> (5) the jurisdictional basis, if any, other than § 1334;
>
> (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
>
> (7) the substance rather than the form of an asserted core proceeding;
>
> (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
>
> (9) the burden on the court's docket;

(10) the likelihood that the commencement of the proceeding in the bankruptcy court involves forum shopping by one of the parties;

(11) the existence of a right to a jury trial;

(12) the presence in the proceeding of non-debtor parties;

(13) comity; and

(14) the possibility of prejudice to other parties in the action."

Cedar Park Healthcare, LLC v. Harden Healthcare, LLC (*In re Senior Care Ctrs., LLC*), 611 B.R. 791, 802 (Bankr. N.D. Tex. 2019) (Jernigan, J.).

18. Because "state law issues do not merely predominate; they overwhelm," the Court should permissibly abstain from hearing the Removed Action and remand it to the State Court. *Id.* (permissibly abstaining and granting motion to remand when removed action "based entirely on state law"). Ellington is also entitled to, and intends to demand, a jury trial of his stalking and invasion of privacy claims brought in the State Court Action under Texas law, another factor that favors permissive abstention and remand. *Id.* Additionally, all the other factors identified in *In re Senior Care Ctrs.* support permissive abstention and remand in this case: (i) both parties are non-debtors; (ii) the resolution of the State Court Action will have no impact on the efficient administration of HCMLP's estate and is unrelated to HCMLP's chapter 11 case; (iii) no bankruptcy issues are raised in the State Court Action; (iv) the State Court Action does not raise any difficult or unsettled questions of law; (v) the sole alleged basis for federal jurisdiction is section 1334, and Daugherty has not even claimed that the State Court Action implicates the Court's core jurisdiction; (vi) this Court already has a very busy docket; (vii) this case was already commenced in the State Court; and (viii) abstaining from hearing the State Court Action promotes comity with the State Court.

19. This Court should focus on the crux of Ellington's complaint: to (1) ensure the safety of himself and his family and (2) obtain damages against those that have imperiled their safety. Moreover, because the State Court was scheduled to have a hearing on January 26 to consider extending the injunction, Ellington and his family and friends will be harmed if that hearing does not go forward, and the TRO lapses before issuance of a longer injunction.

20. "Any doubts concerning removal must be resolved against removal and in favor of remanding the case back to state court." *In re Senior Care Ctrs., LLC*, 611 B.R. at 800. Here, however, no doubts exist. Not a single factor in the *Senior Care Ctrs.* analysis favors this Court presiding over the Removed Action.

21. In light of the foregoing, the Court should abstain from hearing the Removed Action entirely and instead remand the Removed Action to the State Court. *See* 28 U.S.C. § 1452(b).

WHEREFORE, Ellington respectfully requests that this Court enter an order (a) abstaining from hearing the Removed Action, (b) remanding the Removed Action to the State Court, and (c) granting Ellington such other and further relief as is just.

Dated: January 25, 2022

By: */s/ Frances A. Smith*

Frances A. Smith
State Bar No. 24033084
Eric Soderlund
State Bar No. 24037525
ROSS & SMITH, PC
700 N. Pearl Street, Suite 1610
Dallas, Texas 75201
Telephone: 214-377-7879
Facsimile: 214-377-9409
Email: frances.smith@judithwross.com
eric.soderlund@judithwross.com

Michelle Hartmann
State Bar No. 24032402
BAKER & MCKENZIE LLP
1900 North Pearl, Suite 1500
Dallas, Texas 75201
Telephone: 214-978-3000
Facsimile: 214-978-3099
Email: michelle.hartmann@bakermckenzie.com

Debra A. Dandeneau (admitted *pro hac vice*)
Frank Grese (admitted *pro hac vice*)
BAKER & MCKENZIE LLP
452 Fifth Ave
New York, NY 10018
Telephone: 212-626-4875
Email: debra.dandeneau@bakermckenzie.com
Email: frank.grese@bakermckenzie.com
(*Admitted pro hac vice*)

Co-Counsel for Scott Ellington

CERTIFICATE OF CONFERENCE

In compliance with L.B.R. 7007-1(b), I certify that a meet and confer was conducted with counsel for Patrick Daugherty on January 25, 2022 regarding the Motion. The parties were not able to resolve the issues raised in the Motion.

/s/ Debra A. Dandeneau
Debra A. Dandeneau

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of January 2022, a true and correct copy of the above and foregoing document was served on all known counsel via email as set forth below and by the Court's ECF filing system on those parties who have registered for receipt of electronic notice in this case.

/s/ Frances A. Smith
Frances A. Smith

Drew K. York <dyork@grayreed.com>, Counsel for Patrick Daugherty;

Drake Rayshell <drayshell@grayreed.com>, Counsel for Patrick Daugherty;

Ruth Ann Daniels <rdaniels@grayreed.com>; Counsel for Patrick Daugherty;

John Morris jmorris@pszjlaw.com, Counsel for the Debtor;

Jeffrey N. Pomerantz jpomerantz@pszjlaw.com, Counsel for the Debtor;

Jason S. Brookner jbrookner@grayreed.com, Counsel for Patrick Daugherty.

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
SCOTT BYRON ELLINGTON, Petitioner, v. PATRICK DAUGHERTY, Respondent.	Adv. Pro. No. 22-03003-sgj *Removed from the 101st Judicial District Court of Dallas County, Texas Cause No. DC-22-0304*

ORDER GRANTING SCOTT ELLINGTON'S
EMERGENCY MOTION TO ABSTAIN AND TO REMAND

This matter having come before the court on *Scott Ellington's Emergency Motion to Abstain and to Remand* in the above-captioned case; and this Court having considered all papers filed in support of or in opposition to the Motion, the oral argument of counsel, if any, and all other pleadings and papers on file herein, the Court finds as follows:

Scott Ellington's Emergency Motion to Abstain and to Remand is GRANTED; the Court abstains from hearing and trying this proceeding; and this action is remanded to the 101st Judicial District Court in Dallas County, Texas.

IT IS SO ORDERED

 # # # End of Order # # #

Proposed form of order prepared by:

Frances A. Smith
State Bar No. 24033084
Eric Soderlund
State Bar No. 24037525
ROSS & SMITH, PC
700 N. Pearl Street, Suite 1610
Dallas, Texas 75201
Telephone: 214-377-7879
Facsimile: 214-377-9409
Email: frances.smith@judithwross.com
eric.soderlund@judithwross.com

Michelle Hartmann
State Bar No. 24032402
BAKER & MCKENZIE LLP
1900 North Pearl, Suite 1500
Dallas, Texas 75201
Telephone: 214-978-3000
Facsimile: 214-978-3099
Email: michelle.hartmann@bakermckenzie.com

Debra A. Dandeneau
Blaire Cahn
BAKER & MCKENZIE LLP
452 Fifth Ave
New York, NY 10018
Telephone: 212-626-4875
Email: debra.dandeneau@bakermckenzie.com
Email: frank.grese@bakermckenzie.com
(*Admitted pro hac vice*)

Co-Counsel for Scott Ellington

Deborah Deitsch-Perez
Michael P. Aigen
STINSON LLP
2200 Ross Avenue, Suite 2900
Dallas, Texas 75201
Telephone: (214) 560-2201
Facsimile: (214) 560-2203
Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

Counsel for The Dugaboy Investment Trust

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

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	Case No. 19-34054 (SGJ)
Debtor.	THE DUGABOY INVESTMENT TRUST'S MOTION TO PRESERVE EVIDENCE AND COMPEL FORENSIC IMAGING OF JAMES P. SEERY, JR.'S IPHONE

THE DUGABOY INVESTMENT TRUST'S MOTION TO PRESERVE EVIDENCE AND COMPEL FORENSIC IMAGING OF JAMES P. SEERY, JR.'S IPHONE

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I. INTRODUCTION[1]

The Dugaboy Investment Trust ("Movant") files this Motion to Preserve Evidence and Compel the Forensic Imaging of James P. Seery, Jr.'s iPhone (and any other of his Apple devices sharing the same Apple ID) to preserve the ESI contained on that iPhone and to permit the recovery of text messages Mr. Seery admits to deleting.

On February 16, 2023, Mr. Morris of Pachulski Stang Ziehl & Jones wrote in his capacity as Mr. Seery's personal counsel in responding to a subpoena in another matter. With respect to Mr. Seery's iPhone, Mr. Morris stated the following:

> 1. Mr. Seery's iPhone is personal in nature. While it is backed up to iCloud, that back-up does not contain deleted items, whether deleted manually or as part of an automatic setting.
>
> 2. The automatic text deletion setting is currently set at one year; texts that are manually or automatically deleted are not retrievable.[2]

This shocking disclosure of Mr. Seery's automatic text deletion setting – made now for the first time despite years of litigation in this bankruptcy case and related adversary proceedings – triggered all that follows below.

Mr. Seery joined the board of Highland Capital Management, L.P. ("HCMLP" or the "Reorganized Debtor") on January 9, 2020, he was appointed Chief Executive Officer and Chief Restructuring Officer in July 2020, and he is a significant witness in this proceeding and various related adversary proceedings. He is in possession of, and is continuing to use, an iPhone that he asserts is "personal in nature," but which he also has testified he uses regularly for HCMLP

[1] Concurrently herewith, Movant is filing its *Appendix in Support of The Dugaboy Investment Trust's Motion to Preserve Evidence and Compel Forensic Imaging of James P. Seery, Jr.'s iPhone* (the "Appendix"). Citations to the Appendix are annotated as follows: Ex. #, App. #.

[2] Hartmann Decl., Ex. A, Email from J. Morris to M. Naudin, dated Feb. 16, 2023.

business purposes.[3] Despite having a duty to preserve evidence in this proceeding from the moment he joined the HCMLP board, despite also later becoming materially involved in other related litigation in which he also had a duty to preserve evidence, and despite specifically receiving a December 30, 2020, letter reminding him and HCMLP of their duty to preserve evidence, specifically including text messages and cellular phone voice mails, Mr. Seery deliberately, and in violation of his and HCMLP's duty to preserve evidence, activated a one-year auto-delete setting on his iPhone so text messages more than one year old were automatically deleted on a rolling basis, thus willfully destroying potentially relevant evidence.

This is not (at this time) a motion to compel Movant's *access* to the forensic image. Rather, in light of Mr. Seery's admission that he has been continuously deleting potentially relevant ESI for years, Movant seeks to prevent his further destruction of evidence and to create an image from which HCMLP's or Mr. Seery's counsel can review and produce responsive ESI, and from which the parties may attempt to recover relevant ESI Mr. Seery has already deleted, which his ongoing use of the iPhone is potentially overwriting and rendering unrecoverable.

Movant conferred with counsel for Mr. Seery, but despite the admitted destruction of ESI, Mr. Seery refused to permit the preservation of evidence on Mr. Seery's iPhone by creating a forensic image without sound justification. Thus, for the reasons set forth below, Movant respectfully requests that the Court enter an order compelling HCMLP and/or Mr. Seery to promptly submit Mr. Seery's iPhone to a neutral forensic data expert to create a forensic image of his iPhone, pursuant to the protocol set forth below. This is necessary to ensure the preservation

[3] *See, e.g.*, **Ex. 1**, App. 000001-3 text messages between Mr. Seery (via his iPhone) and HCMLP's former CEO Jim Dondero, regarding HCMLP business and litigation (attached to Mr. Seery's December 7, 2020 sworn declaration in adversary proceeding 20-03190-SGJ as a "true and correct copy" of the text messages); **Ex. 2**, App. 000004-6 text messages between Mr. Seery (via his iPhone) and HCMLP's former employee Patrick Daugherty regarding HCMLP business and litigation) (produced by Mr. Seery in litigation between Mr. Daugherty and another former HCMLP employee).

of evidence on Mr. Seery's iPhone reasonably believed to be relevant to this and various other proceedings, to assist efforts to recover already-deleted text messages before his continued use renders such efforts impossible, and to prevent Mr. Seery's further spoliation of evidence.

II. ARGUMENT AND AUTHORITIES

A. HCMLP and Mr. Seery Had a Continuing Duty to Preserve ESI on Mr. Seery's iPhone from the Time He Joined HCMLP's Board in January 2020, when HCMLP Was Already in Bankruptcy Litigation

"As a general matter, it is beyond question that a party to civil litigation has a duty to preserve relevant information, including ESI, when that party "has notice that the evidence is relevant to litigation or . . . should have known that the evidence may be relevant to future litigation.""[4] Thus, "[t]he Federal Rules of Civil Procedure require that parties take reasonable steps to preserve ESI that is relevant to litigation."[5] "Generally, the duty to preserve extends to documents or tangible things (defined by Federal Rule of Civil Procedure 34) by or to individuals 'likely to have discoverable information that the disclosing party may use to support its claims or defenses.'"[6] The "duty to preserve evidence extends to those persons likely to have relevant

[4] *John B. v. Goetz*, 531 F.3d 448, 459 (6th Cir. 2008) (cleaned up); *see also Guzman v. Jones*, 804 F.3d 707, 713 (5th Cir. 2015) ("A party's duty to preserve evidence comes into being when the party has notice that the evidence is relevant to the litigation or should have known that the evidence may be relevant."); *Paisley Park Enters., Inc. v. Boxill*, 330 F.R.D. 226, 232 (D. Minn. 2019) ("A party is obligated to preserve evidence once the party knows or should know that the evidence is relevant to future or current litigation."); *Rimkus Consulting Group, Inc. v. Cammarata*, 688 F.Supp.2d 598, 612 (S.D. Tex. 2010) ("Generally, the duty to preserve arises when a party 'has notice that the evidence is relevant to litigation or . . . should have known that the evidence may be relevant to future litigation.'"); *In re Correra*, 589 B.R. 76, 133 (N.D. Tex. Bankr. 2018) (Jernigan, J.) ("A duty to preserve arises when a party knows or should know that certain evidence is relevant to pending or future litigation.").

[5] *Paisley Park Enters.*, 330 F.R.D. at 232 (citing Fed. R. Civ. P. 37(e)); Fed. R. Civ. P. 37(e) ("If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court: (1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or (2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may: (A) presume that the lost information was unfavorable to the party; (B) instruct the jury that it may or must presume the information was unfavorable to the party; or (C) dismiss the action or enter a default judgment.").

[6] *Rimkus Consulting Group*, 688 F.Supp.2d at 612 (*quoting Zubulake v. UBS Warburg LLC (Zubulake IV)*, 220 F.R.D. 212, 217-218 (S.D.N.Y. 2003)).

information – the key players in the case, and applies to unique, relevant evidence that might be useful to the adversary."[7] Companies with a duty to preserve evidence are also required "to effectively communicate to employees who [are] likely to have possession of relevant documents and electronically stored information that they should preserve that information for purposes of ongoing and anticipated litigation."[8] The preservation duty extends to communications on employees' personal devices also used (even if infrequently) for business purposes.[9]

Specifically regarding text messages, "[i]t is well established that text messages "fit comfortably within the scope of materials that a party may request under Rule 34.""[10] Thus, the failure to suspend routine document destruction policies, resulting in the deletion of text messages, is a failure of reasonable document preservation steps.[11] Thus, courts have found the failure to turn off, or suspend, a mobile phone's text message "auto-erase" function violates the requirement

[7] *Paisley Park Enters.*, 330 F.R.D. at 233 (cleaned up); *see also Schnatter v. 247 Grp., LLC*, No. 3:20-cv-00003-BJB-CHL, 2022 WL 2402658, at *9 (W.D. Ky. Mar. 14, 2022) ("As Schnatter is the plaintiff in this case and a key witness, his personal cellphones were well within the normal scope of discovery").

[8] *Gaddy v. Blitz U.S.A., Inc.*, No. 2:09-CV-52-DF, No. 6:09–CV–283-MHS, 2010 WL 11527376, at *9 (E.D. Tex. Sept. 13, 2010), *opinion modified on denial of reconsideration on other grounds*, No. 2:09-CV-52-DF, 2011 WL 13196167 (E.D. Tex. Feb. 1, 2011).

[9] *Moore v. CITGO Refining & Chem Co., L.P.*, 735 F.3d 309, 317 (5th Cir. 2013); *Paisley Park Enters.*, 330 F.R.D. at 234-35 (rejecting as "without merit" the argument that "given the personal nature of their phones, it is unreasonable for the Court to expect them to know they should preserve information contained on those devices," when "based on text messages that other parties produced in this litigation, that Staley and Wilson used their personal cell phones to conduct the business of RMA and Deliverance."); *Schnatter*, 2022 WL 2402658, at *9 ("First, it would be unreasonable for Schnatter to have believed that his cellphones were exempt from discovery merely because they are not the primary means for his business communications. Even taking Schnatter at his word regarding his limited use of his personal cellphones for business purposes, by his own admission, Schnatter used text messaging for business at least on a limited basis. … As Schnatter is the plaintiff in this case and a key witness, his personal cellphones were well within the normal scope of discovery.").

[10] *Paisley Park Enters.*, 330 F.R.D. at 234 (cleaned up).

[11] *See, e.g., In re Skanska USA Civ. Se. Inc.*, 340 F.R.D. 180, 186-87 (N.D. Fla. 2021) ("the Court finds that Skanska did not take reasonable steps to preserve the cell phone data for these custodians," including because "Skanska also failed [to] suspend its routine document destruction policies, which allowed employees to delete text messages, and did not require cell phone data to be backed up."); *Paisley Park Enters.*, 330 F.R.D. at 233 (D. Minn. 2019) ("The principles of the 'standard reasonableness framework' require a party to suspend its routine document retention/destruction policy and put in place a 'litigation hold' to ensure the preservation of relevant documents.") (cleaned up).

to take reasonable steps to preserve evidence.[12] Failing to back up an iPhone also violates the duty to preserve ESI.[13] At least one federal court noted that "[i]t takes, at most, only a few minutes to disengage the auto-delete function on a cell phone."[14] Indeed, this Court has cited with approval to such cases,[15] including in an opinion based in part on a January 8, 2021 hearing concerning Mr. Dondero's cell phone, which Mr. Seery personally attended.

Mr. Seery's testimony confirms he knew of his retention obligation. Mr. Seery testified about how to maintain text messages on Apple phones in the context of Mr. Dondero's alleged obligations to maintain such messages on his personal phone.[16] He also testified that even a personal mobile device may have Highland information on it.[17] Most notably, he engaged in the following exchange: "Q: Do you have a Highland cell phone? A: No. Q: So do you use your personal phone for Highland business? A: Yes. Q: Do you preserve all of your text messages?

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[12] *See, e.g.*, *Paisley Park Enters.*, 330 F.R.D. at 233 ("Defendants were required to take reasonable steps to preserve Staley and Wilson's text messages. The RMA Defendants did not do so. First, Staley and Wilson did not suspend the auto-erase function on their phones."); *Youngevity Int'l v. Smith*, No. 3:16-CV-704-BTM-JLB, 2020 WL 7048687, at *2 (S.D. Cal. July 28, 2020) ("The Relevant Defendants' failure to prevent destruction by backing up their phones' contents or disabling automatic deletion functions was not reasonable because they had control over their text messages and should have taken affirmative steps to prevent their destruction when they became aware of their potential relevance."); *see also In re Skanska*, 340 F.R.D. at 189; *NuVasive, Inc. v. Kormanis*, No. 1:18CV282, 2019 WL 1171486, at *8-9 (M.D.N.C. Mar. 13, 2019), *report and recommendation adopted*, No. 1:18-CV-282, 2019 WL 1418145 (M.D.N.C. Mar. 29, 2019).

[13] *Fast v. GoDaddy.com LLC*, 340 F.R.D. 326, 344 (D. Ariz. 2022) ("By failing to back up her iPhone, Plaintiff failed to take reasonable steps to preserve the ESI contained on the phone.") (citing *Youngevity Int'l*, 2020 WL 7048687, at *2; *Laub v. Horbaczewski*, No. CV 17-6210-JAK (KS), 2020 WL 9066078, at *4 (C.D. Cal. July 22, 2020); *Paisley Park Enters.*, 330 F.R.D. at 233; *Brewer v. Leprino Foods Co., Inc.*, No. CV-1:16-1091-SMM, 2019 WL 356657, at *10 (E.D. Cal. Jan. 29, 2019); *Gaina v. Northridge Hosp. Med. Ctr.*, No. CV 18-00177, 2018 WL 6258895, at *5 (C.D. Cal. Nov. 21, 2018)).

[14] *Paisley Park Enters.*, 330 F.R.D. at 233.

[15] *In re Highland Cap. Mgmt., L.P.*, No. 19-34054-SGJ11, 2021 WL 2326350, at *22 n.165 (Bankr. N.D. Tex. June 7, 2021).

[16] **Ex. 7**, App. 000221 3/22/2021 Hearing Transcript (Adversary Proceeding No. 20-3190-sgj) at 229:19 – 21: "The phone company doesn't maintain text messages for those who use Apple products. Apple maintains them." (Seery, J.).

[17] *Id.* at 228:23 – 229:7 (testifying, in the context of Mr. Okada's phone, that a mobile phone may have Highland information even if it is a personal device).

A: I don't delete them. I believe that they're accessible, yes."[18] All of this testimony was given in the context of Mr. Seery's experience and training as "a licensed attorney [who] was formerly a partner and co-Head of the Sidley Austin LLP New York Corporate Reorganization and Bankruptcy Group."[19] It is therefore beyond doubt that Mr. Seery was acutely aware of his continuing duty to preserve text messages.

HCMLP had a duty to preserve ESI when it entered Chapter 11 Bankruptcy on October 16, 2019.[20] Mr. Seery had a duty to preserve ESI on his devices when he was appointed to HCMLP's board approximately three months later, on January 9, 2020.[21] That duty was continuing when Mr. Seery was also appointed as HCMLP's Chief Executive Officer and Chief Restructuring Officer, which became effective as of March 15, 2020.[22] Moreover, on December 30, 2020, HCMLP (through counsel) and Mr. Seery (directly) received a letter from counsel for then-current, and now-former, HCMLP employees, reminding HCMLP and Mr. Seery of their duty to preserve evidence, including text messages:

> we remind you that you must comply with the law to preserve all evidence that could be relevant to this matter, including all documents, ***text messages, voice mails***, and emails, including but not limited to all communications with our clients, including ***text messages and cellular phone voice mails*** concerning the subject matter of this letter; including ***text messages and cellular phone voice mails*** by and between ***the Independent Board*** and the Creditor's Committee; any and all documents reflecting fees paid by affiliated entities to the Debtor for work performed by and bonuses (cash, retention, and deferred) to be paid to our clients; and any and

[18] *Id.* at 233:2 – 9.

[19] **Ex. 3**, App. 000007-107 HCMLP Bankr. Dkt. 281-2.

[20] *See* Dkt. 2.

[21] *See* Dkt. 339.

[22] **Ex. 4**, App. 000108-120 *See* Dkt. 854.

> all documents reflecting ***the Independent Board***'s decision on what constitutes an "insider."[23]

In fact, in connection with these proceedings, HCMLP expressly acknowledged its duty to preserve evidence as well as its corresponding duty to notify its employees of their duty to preserve evidence, stating in the Document Production Protocol made part of its Settlement Term Sheet: "Debtor [HCMLP] acknowledges that they should take reasonable and proportional steps to preserve discoverable information in the party's possession, custody or control. This includes notifying employees possessing relevant information of their obligation to preserve such data."[24] In adversary proceeding 19-34054-sgj11, this Court emphasized HCMLP's acknowledgment of those duties, stating:

> the January 2020 Corporate Governance Settlement set forth a "Document Production Protocol," which stated that ESI was included within the documents being sought and stated that "***Debtor acknowledges that they should take reasonable and proportional steps to preserve discoverable information in the party's possession, custody or control. This includes notifying employees possessing relevant information of their obligation to preserve such data***."[25]

The Court thus concluded that "whether Mr. Dondero and inhouse counsel paid attention or not, ***they were on notice very early in this case that they had a duty to preserve ESI***."[26] This very early notice applies equally to HCMLP's new CEO, Mr. Seery.

Moreover, it is no excuse that HCMLP characterizes Mr. Seery's iPhone as "personal in nature,"[27] because the truth is that Mr. Seery has testified that he used his iPhone for business

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[23] Smith Decl., Ex. A, December 30, 2020 Letter (emphasis added).

[24] **Ex. 5**, App. 000128 and App. 000165 Dkt. 281-1, Settlement Term Sheet Ex. C, Document Production Protocol, pp. 7, 44.

[25] *In re Highland Cap. Mgmt., L.P.*, 2021 WL 2326350, at *12 (emphasis in original).

[26] *Id.* (emphasis added).

[27] Hartmann Decl., Ex. A, Email from J. Morris to M. Naudin, dated Feb. 16, 2023.

purposes,[28] including using the phone to exchange text messages with then-current, and now-former, HCMLP employees, including HCMLP's former CEO Jim Dondero, regarding HCMLP business.[29] HCMLP and Mr. Seery unquestionably had a duty to preserve the ESI, including text messages, on Mr. Seery's iPhone beginning on January 9, 2020.

Based on his position, Mr. Seery would certainly have communicated with others about (1) purchases and/or sales of HCM assets (2) costs of HCM operations, (3) claims of creditors, (4) settlement of claims of creditors, (5) claims trading, (6) duty to prepare reports, (7) provision of (or refusals to provide) information to equity and numerous other matters potentially relevant to (A) claims brought pursuant to the Motion for Leave at Dkt 3662, (B) the Valuation Adversary Proceeding at Dkt 1 in Cause No. 23-03038, (C) the so-called Vexatious Litigant Motion evidenced at Dkt 102-1 in Cause No. 3:21-cv-00881-X, (D) the Kirschner litigation, Dkt 158 in Cause no. 21-03076. and (E) Charitable DAF Fund, LP and CLO Holdco, Ltd. v. Highland Capital Management, LP, et al, at Cause No. 21-03067, among many other matters. It is beyond dispute that Mr. Seery has been the Debtor's principal witness in nearly every instance in which the Debtor has been required to give testimony.[30]

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[28] Ex. 7, App. 000225 at 233:2 – 9.

[29] *See, e.g.*, Ex. 1, App. 000001-3 text messages between Mr. Seery (via his iPhone) and HCMLP's former CEO Jim Dondero, regarding HCMLP business and litigation (attached to Mr. Seery's December 7, 2020 sworn declaration in adversary proceeding 20-03190-SGJ as a "true and correct copy" of the text messages); Ex. 2, App. 000004-6 text messages between Mr. Seery (via his iPhone) and HCMLP's former employee Patrick Daugherty regarding HCMLP business and litigation) (produced by Mr. Seery in litigation between Mr. Daugherty and another former HCMLP employee); *see also* Hartmann Decl., Ex. B, Letter from M. Hartmann to J. Morris, dated Mar. 4, 2023, p.2.

[30] For example: **Ex. 8**, App. 000263-318 3/4/2020 Hearing Transcript (Cause No. 19-34054); **Ex. 9**, App. 000319-384 7/14/2020 Hearing Transcript (Cause No. 19-34054); **Ex. 10**, App. 000385-409 9/10/2020 Hearing Transcript (Cause No. 19-34054); **Ex. 11**, App. 000410- 414 10/17/2020 Deposition Transcript (Cause No. 19-34054); **Ex. 12**, App. 000415-532 10/20/2020 Hearing Transcript (Cause No. 19-34054); **Ex. 13**, App. 000533-537 12/14/2020 Deposition Transcript (Cause No. 19-34054); **Ex. 14**, App. 000538-610 1/14/2021 Hearing Transcript (Cause No. 19-34054); **Ex. 15**, App. 000611-615 1/20/2021 Deposition Transcript (Adversary Proceeding No. 21-03000-sgj); **Ex. 16**, App. 000616-672 1/26/2021 Hearing Transcript (Cause No. 19-34054 and Adversary Proceeding No. 21-03000-sgj); **Ex. 17**, App. 000673-677 1/29/2021 Deposition Transcript (Cause No. 19-34054); **Ex. 18**, App. 000678-885 2/2/2021 Hearing Transcript (Cause No. 19-34054); **Ex. 19**, App. 000886-896 2/3/2021 Hearing Transcript (Cause No. 19-34054); **Ex. 20**, App. 000897-946 2/23/2021 Hearing Transcript (Adversary Proceeding Nos. 20-03190-sgj

B. Mr. Seery's Years-Long Use of Auto-Delete Violated His and HCMLP's Duty to Preserve ESI

Despite his ongoing duty to preserve the text messages on his iPhone, Mr. Seery deliberately set his iPhone to automatically delete ***all*** text messages more than a year old, regardless of their relevance to existing or future litigation.[31] Notably, the default text message preservation setting on an iPhone is to retain text messages forever, so to automatically delete text messages after a year (or 30 days), a user must manually change the default retention setting.[32] Thus, at some point after obtaining his iPhone, Mr. Seery actively changed (or caused to be changed) his default iPhone text message retention setting from permanent retention to a one-year auto-delete setting.[33] Mr. Seery maintained that one-year auto-delete setting until shortly before March 10, 2023, on which date he represented that the setting had been "recently suspended."[34] Mr. Seery deactivated his auto-delete setting only after use of the setting was discovered in another lawsuit and he received multiple requests to cease deleting messages from counsel for certain

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and 21-03010-sgj); Ex. 7, App. 000201-262; **Ex. 21**, App. 000947-951 5/14/2021 Deposition Transcript (Adversary Proceeding No. 21-03000-sgj); **Ex. 22**, App. 000952-1066 5/21/2021 Hearing Transcript (Cause No. 19-34054); **Ex. 23**, App. 001067-1071 5/24/2021 30(b)6 Deposition Transcript (Adversary Proceeding No. 21-03003-sgj); **Ex. 24**, App. 001072-1110 6/25/2021 Hearing Transcript (Cause No. 19-34054); **Ex. 25**, App. 001111-1129 7/19/2021 Hearing Transcript (Cause No. 19-34054); **Ex. 26**, App. 001130-1172 8/4/2021 Hearing Transcript (Cause No. 19-34054); **Ex. 27**, App. 001173-1177 10/21/2021 Deposition Transcript (Adversary Proceeding No. 21-03005-sgj); **Ex. 28**, App. 001178-1227 3/1/2022 Hearing Transcript (Adversary Proceeding No. 22-03003-sgj); **Ex. 29**, App. 001228-1231 3/11/2022 30(b)6 Deposition Transcript (Adversary Proceeding No. 21-03010-sgj); **Ex. 30**, App. 001232-1235 5/3/2022 30(b)6 Deposition Transcript (Adversary Proceeding No. 21-03082-sgj); **Ex. 31**, App. 001236-1278 8/8/2022 Hearing Transcript (Adversary Proceeding No. 21-03020-sgj).

[31] Hartmann Decl., Ex. A, Email from J. Morris to M. Naudin, dated Feb. 16, 2023.

[32] *NuVasive*, 2019 WL 1171486, at *5, n.7 (recognizing offending user's acknowledgment that an "iPhone's default setting [is] for permanent text message retention."); *see also* Dave Johnson, John Lynch, ed., *How to delete messages and conversations on your iPhone, and set them to auto-delete*, Business Insider, April 22, 2019 ("By default, the iPhone keeps all messages forever (or until you manually delete them). If you prefer, tap "30 Days" or '1 Year." If you do, the iPhone will automatically discard your messages after the selected time period.") (attached for reference, and available at https://www.businessinsider.com/guides/tech/how-to-delete-messages-on-iphone); Declaration of Erik Laykin, ¶ 6.

[33] Hartmann Decl., Ex. A, Email from J. Morris to M. Naudin, dated Feb. 16, 2023.

[34] Hartmann Decl., Ex. D, Email from J. Morris to M. Hartmann, dated Mar. 10, 2023. The one-year auto-delete setting was in place at least as long as February 16, 2023. Hartmann Decl., Ex. A, Email from J. Morris to M. Naudin, dated Feb. 16, 2023.

adversary proceeding defendants.[35] Notably, Mr. Seery, though his counsel, was queried as to when he enabled the setting, but refused to answer.[36] While Mr. Seery maintained the one-year auto-delete setting, any iCloud backup did not back up the deleted messages.[37] Thus, Mr. Seery represents that the deleted text messages "are not retrievable," and he is unable to produce any of the deleted text messages.[38] However, to the extent Mr. Seery uses other Apple devices (*e.g.*, iPad, MacBook, Apple Watch) sharing the same Apple ID as the iPhone, it is possible that the deleted text messages were replicated on the other Apple devices.

C. The Court Should Require Forensic Imaging to Preserve the Remaining ESI on Mr. Seery's iPhone and to Prevent Further Evidence Spoliation

Despite "recently suspend[ing]" his iPhone's auto-delete setting, Mr. Seery continues to use his iPhone, thereby continuing to store new data on his device, which makes the recovery of deleted texts more difficult or, eventually, potentially impossible. "When you delete a piece of data from your device — a photo, video, text or document — it doesn't vanish. Instead, your device labels that space as available to be overwritten by new information.… Once the memory on that device fills up entirely, new information is saved on top of those deleted items."[39] So, the longer one uses a device with deleted data, the bigger the risk that the deleted data will be overwritten so that it is no longer recoverable.[40]

Consequently, to mitigate Mr. Seery's destruction of evidence, and to provide the best

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[35] Hartmann Decl., Ex. B, Letter from M. Hartmann to J. Morris, dated Mar. 4, 2023; Hartmann Decl., Ex. C, Letter from M. Hartmann to R. Loigman and J. Morris, dated Mar. 7, 2023.

[36] *Id.*

[37] Hartmann Decl., Ex. A, Email from J. Morris to M. Naudin, dated Feb. 16, 2023.

[38] *Id.*

[39] Dustin Jones, *When it comes to data on your phone, deleting a text isn't the end of the story*, NPR, July 15, 2022 (attached for convenience at **Ex. 32**, App. 001279-1283 and available at https://www.npr.org/2022/07/15/1111778878); *see also* Declaration of Erik Laykin, ¶ 7.

[40] Declaration of Erik Laykin, ¶ 10.

chance for a digital forensics expert to recover Mr. Seery's deleted texts, it is essential to create a forensic image of Mr. Seery's iPhone as soon as possible.[41] Although it is likely that many of the deleted texts are currently recoverable, each day Mr. Seery uses his iPhone, he increases the risk that the deleted texts will be overwritten, and thereby rendered unrecoverable.[42] For that reason, it is also important to preserve an image of any other Apple devices Mr. Seery uses or used (*e.g.*, iPad, MacBook, Apple Watch) that share the same Apple ID as the iPhone because it is possible that the deleted text messages were replicated on the other Apple devices.

Importantly, the pressing need to create a forensic image of Mr. Seery's iPhone exists only because of Mr. Seery's deliberate destruction of ESI through activating a one-year auto-delete setting on his iPhone.

This Court has the power and discretion to order HCMLP and Mr. Seery to create a forensic (or mirror) image of his iPhone (and other connected Apple devices).[43] Indeed, this Court has already ordered forensic imaging of "cellular phones tablets, laptops, computers, or any other electronic devices that can store data," in this very case.[44] "To be sure, forensic imaging is not uncommon in the course of civil discovery,"[45] though "'courts must consider the significant interests implicated by forensic imaging before ordering such procedures,' including that they must 'account properly for the significant privacy and confidentiality concerns` of the parties."[46]

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[41] Declaration of Erik Laykin, ¶ 11.

[42] Declaration of Erik Laykin, ¶¶ 10-12.

[43] *See In re Correra*, 589 B.R. at 124 (the Court "has inherent powers and authority under section 105 of the Bankruptcy Code to address abuses of judicial process and bad faith conduct."); *see also Hamilton v. First Am. Title Ins. Co.*, No. 3:07-CV-1442-G, 2010 WL 791421, at *4 (N.D. Tex. Mar. 8, 2010) (courts have "broad discretion in discovery matters") (quoting *Winfun v. Daimler Chrysler Corp.*, 255 F. Appx 772, 773 (5th Cir. 2007) (per curiam)).

[44] **Ex. 33**, App. 001284-001286 Dkt. 2177, Order, ¶ 3.

[45] *John B. v. Goetz*, 531 F.3d 448, 459 (6th Cir. 2008).

[46] *Areizaga v. ADW Corp.*, No. 3:14-cv-2899-B, 2016 WL 9526396, at *3 (N.D. Tex. Aug. 1, 2016) (quoting *John B.*, 53 F.3d at 460).

However, with these considerations in mind, "courts have permitted restrained and orderly computer forensic examinations where the moving party has demonstrated that its opponent has defaulted in its discovery obligations by unwillingness or failure to produce relevant information by more conventional means."[47]

Those circumstances are present here, where HCMLP and Mr. Seery have admitted they failed to preserve ESI on Mr. Seery's iPhone and consider the deleted texts to be "not retrievable,"[48] and therefore not available for production. In other words, the only way a party will ever obtain relevant evidence from one of Mr. Seery's deleted texts will be through a forensic data recovery process.

Courts have also ordered forensic imaging specifically to facilitate the recovery of deleted ESI. For instance, in *Talon Transaction Technologies*, the court ordered forensic imaging when, like here, a party admitted it did not preserve all potentially relevant ESI, and that ESI was subject to being overwritten.[49]

Similarly, like here, in *Antioch Co. v. Scrapbook Boarders, Inc.*, the plaintiff sought forensic imaging "to ensure the recovery, and preservation, of [deleted] information," when "data from a computer which has been deleted remains on the hard drive, but is constantly being

[47] *Id.*; *see also Talon Trans. Tech., Inc., v. Stoneeagle Servs., Inc.*, No. 3:13-CV-902-P, 2013 WL 12172924, at *3-5 (N.D. Tex. May 1, 2013) (establishing an imaging protocol for creation and review of a forensic image); *Genworth Fin. Wealth Mgmt. v. McMullan*, 267 F.R.D. 443, 446-49 (D. Conn. 2010) (same); *Ameriwood Indus., Inc. v. Liberman*, No. 4:06-CV-524-DJS, 2006 WL 3825291, at *5-7 (E.D. Mo. Dec. 27, 2006) (same); *Antioch Co. v. Scrapbook Boarders, Inc.*, 210 F.R.D. 645, 653-54 (D. Minn. 2002) (same); *Simon Prop. Group L.P. v. mySimon, Inc.*, 194 F.R.D. 639, 640 (S.D. Ind. 2000) (same).

[48] Hartmann Decl., Ex. A, Email from J. Morris to M. Naudin, dated Feb. 16, 2023.

[49] *Talon Trans. Tech.*, 2013 WL 12172924, at *2 ("And, as Defendants have apparently represented to Plaintiffs, Defendants have not preserved all potentially relevant hard drives but rather have only 'backed up' one hard drive. Moreover, it appears that certain portions of Defendants' systems that Plaintiffs insist are relevant may be overwritten on a regular basis. The undersigned concludes that a forensic imaging of Defendants' relevant computer equipment is permissible and appropriate under the circumstances.") (internal citations omitted).

overwritten, irretrievably, by the Defendants' continued use of that equipment."[50] And also like Movant here, Antioch provided the affidavit of a forensic data expert attesting that "data which is deleted from a computer is retained on the hard drive, but is constantly being overwritten by new data, through the normal use of the computer equipment."[51] The court concluded that "the Defendants may have relevant information, on their computer equipment, which is being lost through normal use of the computer, and which might be relevant to the Plaintiff's claims, or the Defendants' defenses."[52] The court granted the motion to compel the forensic imaging because "Antioch should be able to attempt to resurrect data which has been deleted from the Defendants' computer equipment."[53]

Courts that have compelled forensic imaging of computer equipment and phones have utilized a similar protocol to balance the need to preserve or recover potentially relevant ESI with privacy and confidentiality considerations.[54] This Court should draw from those protocols and apply a similar protocol in this case, as follows:

1. The parties shall agree on a neutral expert to conduct the forensic imaging of Mr. Seery's iPhone and any other Apple devices sharing the same Apple ID as Mr. Seery's iPhone (the "Devices") within one week from the date of the order granting this Motion.[55] If the parties are unable to agree on a neutral expert, the Court will appoint one.

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[50] *Antioch*, 210 F.R.D. at 650-51.

[51] *Id.* at 651.

[52] *Id.* at 652.

[53] *Id.* at 652.

[54] *See Talon Trans. Tech*, 2013 WL 12172924, at *3-5 (N.D. Tex. May 1, 2013); *Genworth Fin. Wealth Mgmt*, 267 F.R.D. at 449; *Ameriwood Indus.*, 2006 WL 3825291, at *5-7; *Antioch*, 210 F.R.D. at 653-54; *Simon Prop. Group*, 194 F.R.D. at 640.

[55] HCMLP and Mr. Seery's culpability for the deleted text messages warrants a significant shifting of costs in their direction. *Genworth Fin. Wealth Mgmt. v*, 267 F.R.D. at 448 ("In light of the Defendants' culpability in

2. The expert will maintain all information regarding the imaging of the Devices in the strictest confidence. Within one week from the date of the order granting this Motion, the parties will agree on a confidentiality agreement to govern the expert's handling of the imaged information. The expert's inspection of Mr. Seery's Devices will not waive any applicable privilege or other doctrine, rule, or protection assuring the confidentiality of the information and data on the Devices.

3. HCMLP and Mr. Seery will make Mr. Seery's Devices available for imaging at a mutually agreeable time aimed to minimize disruption, but in any event no later than one week after expert is designated. HCMLP and Mr. Seery are to provide a detailed report and notice of all Devices produced for inspection by the same date.

4. After the expert has completed making the forensic image(s), Mr. Seery's Devices may be returned to normal use, provided that the auto-delete setting remains deactivated.

5. The expert shall use the forensic image to attempt to recover the deleted text messages in a reasonable searchable form.

6. The expert shall provide the image and the recovered data to HCMLP's and Mr. Seery's counsel and shall also provide a contemporaneous report identifying and detailing, for each Device, any recovered data to counsel for HCMLP, Mr. Seery, and Movant, by no later than 3 weeks after the Devices are imaged.

necessitating the expense of a neutral expert, the cost for the appointment of a neutral forensic expert is to be borne 80% by the Defendants and 20% by the Plaintiff."). Cost shifting further is warranted by Mr. Seery's misleading, if not outright false, testimony about his text messages that "I don't delete them. I believe they're accessible, yes." Ex. 7, App. 000225 at 233:2 – 9.

7. HCMLP's and/or Mr. Seery's counsel will maintain the image and the recovered data for future review and production of responsive documents in accordance with the Federal Rules of Civil Procedure.

8. The expert shall also maintain the image and recovered data until 60 days after the conclusion of this bankruptcy proceeding and all related adversary proceedings, or until such other later time as agreed by the parties.

The foregoing protocols adequately address any privacy or confidentiality concerns associated with the imaging of Mr. Seery's Devices, while permitting Movant to attempt to resurrect data Mr. Seery deleted from his iPhone in violation of his duty to preserve evidence.

III. CONCLUSION

Movant respectfully requests that the Court grant the Motion and enter an order compelling HCMLP and/or Mr. Seery to submit Mr. Seery's Devices for forensic imaging according to the foregoing protocol.

Dated: May 31, 2023

Respectfully submitted,

/s/Michael P. Aigen

Deborah Deitsch-Perez
State Bar No. 24036072
Michael P. Aigen
State Bar No. 24012196
STINSON LLP
2200 Ross Avenue, Suite 2900
Dallas, Texas 75201
(214) 560-2201 telephone
(214) 560-2203 facsimile
Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

Counsel for The Dugaboy Investment Trust

CERTIFICATE OF CONFERENCE

I certify that on May 30, 2023, counsel for Mr. Seery, Joshua Levy of Willkie Farr & Gallagher, and counsel for The Dugaboy Investment Trust, Michael P. Aigen, held a conference to discuss the foregoing motion and requested relief. Counsel for Mr. Seery contended that, contrary to the prior written representations from Debtor's counsel, Mr. Seery was able to recover deleted texts so that an image of Mr. Seery's devices was unnecessary. Counsel did not know, however, whether this recovered all texts that were previously deleted and would not agree to a forensic imaging of Mr. Seery's iPhone in order to determine if all deleted texts were recovered. Thus the parties could not reach an agreement regarding Movant's requested relief.

/s/ Michael P. Aigen
Michael P. Aigen

CERTIFICATE OF SERVICE

I certify that on May 31, 2023, 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 proceeding.

/s/Michael P. Aigen
Michael P. Aigen

Deborah Deitsch-Perez
Michael P. Aigen
STINSON LLP
2200 Ross Avenue, Suite 2900
Dallas, Texas 75201
Telephone: (214) 560-2201
Facsimile: (214) 560-2203
Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

Counsel for The Dugaboy Investment Trust

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

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	Case No. 19-34054 (SGJ)
Debtor.	DECLARATION OF MICHELLE HARTMANN IN SUPPORT OF THE DUGABOY INVESTMENT TRUST'S MOTION TO COMPEL FORENSIC IMAGING OF JAMES P. SEERY, JR.'S IPHONE

Declaration of Michelle Hartmann

1. I, Michelle Hartmann, under penalty of perjury pursuant to 28 U.S.C. § 1746, declare as follows:

2. I am attorney and partner with the firm of Baker & McKenzie LLP, and counsel in this matter for various former Highland Capital Management LP employees, including Scott Ellington.

3. I submit this declaration in support of The Dugaboy Investment Trust's Motion to Compel Forensic Imaging of James P. Seery Jr.'s iPhone (the "Motion").

4. This declaration is based on my personal knowledge.

5. Attached hereto as **Exhibit A** is a true and correct copy of a February 16, 2023

email from John A. Morris, counsel for James P. Seery, Jr. in his capacity as Chief Executive Officer of HCMLP, to Michele Naudin, counsel for Scott Ellington in *Ellington v. Daugherty*, Cause No. DC 22-00304 pending in the 101st Judicial District of Dallas, County, Texas. The top email in the chain was redacted for privilege. I also am counsel for Mr. Ellington in the separate proceeding of *Kirschner v. Dondero et al*., Adv. Pro. No. 21-03076 pending in the United States Bankruptcy Court for the Northern District of Texas, and obtained Ms. Naudin's communication with respect to our mutual client Mr. Ellington.

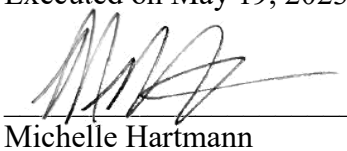
6. Attached hereto as **Exhibit B** is a true and correct copy of a March 4, 2023 Letter from me to Mr. Morris.

7. Attached hereto as **Exhibit C** is a true and correct copy of a March 7, 2023 letter from me to Mr. Morris and Robert Loigman, counsel for the Litigation Trustee for the Highland Litigation Sub-Trust in *Kirschner v. Dondero et al.*, Adv. Proc. No. 21-03076-sgj (Bankr. N.D. Tex.).

8. Attached hereto as **Exhibit D** is a true and correct copy of a March 10, 2023 email from Mr. Morris to me.

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

Executed on May 19, 2023.



Michelle Hartmann

Exhibit A

From: Michele Naudin
To: [redacted]
Cc: [redacted]
Subject: FW: Follow up from Friday"s call
Date: Thursday, February 16, 2023 1:57:42 PM
Attachments: image001.jpg

[redacted]

[redacted]

[redacted]

MICHELE NAUDIN | Attorney
LynnPinkerHurstSchwegmann
Direct 214 292 3648
Mobile 469 705 2825
mnaudin@lynnllp.com

2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
lynnllp.com

From: John A. Morris <jmorris@pszjlaw.com>
Sent: Thursday, February 16, 2023 1:54 PM
To: Michele Naudin <mnaudin@lynnllp.com>
Cc: Hayley R. Winograd <hwinograd@pszjlaw.com>; Michael K. Hurst <MHurst@lynnllp.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>
Subject: RE: Follow up from Friday's call

Michele:

The answers to your questions as follows:

1. Mr. Seery's iPhone is personal in nature. While it is backed up to iCloud, that back-up does not contain deleted items, whether deleted manually or as part of an automatic setting.
2. The automatic text deletion setting is currently set at one year; texts that are manually or automatically deleted are not retrievable; and
3. We have provided all texts and screenshots that we could locate based on a reasonable search. As I mentioned, we're glad that you had the screenshot of Goldsmith bringing documents to a storage facility because we both recalled that Jim sent that to me and I could

not locate it (and you can see from Jim's response that he told Daugherty to "knock it off"). As you know, our ability to locate documents is based on search terms. If Jim forwarded a screen shot (or anything else) without comment (which is possible), I would only be able to find it by reviewing every email received from Jim – which, after three years of daily communications, we don't believe we are required to do. To be as helpful as we can, I recall Jim sending several screenshots to me over the years including: (a) the one of Goldsmith, (b) one of Scott speaking with someone in front of a house (which I think you sent), (c) one of Thomas Surgent's car (obviously sent in 2020). Jim does currently not have any of those pictures on his iPhone. And obviously, as verified by the information produced, Jim never requested these unsolicited pictures or did anything with them (other than forward them to me).

To summarize what we also discussed:

1. Jim and I accepted service of the subpoenas despite the fact that service was improper;
2. We produced all responsive emails, pictures, and texts we located after conducting a reasonable search;
3. We immediately withdrew the objection that you challenged to make clear we were not hiding anything;
4. We've acknowledged receiving (or sharing) certain texts that you obtained elsewhere;
5. One of those texts clearly shows Jim's discomfort with the photo of Ms. Goldsmith;
6. My text with Dandeneau (Scott's lawyer for that purpose) during the remand hearing shows I was ready to "pounce" on Daugherty if he even suggested that he was working on behalf or at that direction of Jim or the Trust.

Please confirm that Jim and I have done all we need to do to comply the subpoena. Otherwise, please let me know what questions remain.

Regards,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

pszjlogo

From: Michele Naudin [mailto:mnaudin@lynnllp.com]
Sent: Monday, February 13, 2023 11:07 AM
To: John A. Morris <jmorris@pszjlaw.com>
Cc: Hayley R. Winograd <hwinograd@pszjlaw.com>; Michael K. Hurst <MHurst@lynnllp.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>
Subject: Follow up from Friday's call

Mr. Morris,

As a follow up from Friday's call, we look forward to hearing from you this week as to (1) whether Seery's data backed up to the Cloud, (2) Seery's automatic deletion settings, if any and what the setting is, and (3) confirm that you could not locate another email for any other contemporaneous screenshots of Daugherty's texts sent to Seery, which you stated that Seery screenshotted and sent to you from time to time.

Thank you,

MICHELE NAUDIN | Attorney
LynnPinkerHurstSchwegmann
Direct 214 292 3648
Mobile 469 705 2825
mnaudin@lynnllp.com

2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
lynnllp.com

Exhibit B

Baker McKenzie.

Baker & McKenzie LLP

900 North Pearl Street, Suite 1500
Dallas, Texas 75201
United States

Tel: +1 214 978 3000
Fax: +1 214 978 3099
www.bakermckenzie.com

March 04, 2023

John Morris, Esq.
Pachulski Stang Ziehl & Jones LLP
780 Third Avenue
34th Floor
New York, NY 10017-2024

By email
jmorris@pszjlaw.com

Re: *Kirschner v. Dondero, et al.*, Adv. Pro. No. 21-03076-sgj

Dear John:

I write on behalf of Scott Ellington and Isaac Leventon (collectively "***Defendants***") in the above-referenced matter. It recently has come to my attention that Highland Capital Management, L.P.'s ("***HCMLP***") President, Mr. James P. Seery, Jr., has been deleting text messages on his personal iPhone (the "***Phone***"). Via email communication in another matter, attached herein for reference, you stated:

1. Mr. Seery's iPhone is personal in nature. While it is backed up to iCloud, that back-up does not contain deleted items, whether deleted manually or as part of an automatic setting.

2. The automatic text deletion setting is currently set at one year; texts that are manually or automatically deleted are not retrievable.

From your statements, it appears that Mr. Seery has been deleting text messages on his Phone via a rolling, automatic deletion setting (the "***Deletion Setting***").

With respect to an iPhone, "you can choose to automatically delete your iMessages from your device after 30 days or a year, or to keep them on your device forever. For your convenience, iMessages are backed up in iCloud and encrypted if you have enabled either iCloud Backup or Messages in iCloud."[1] Accordingly, it appears that Mr. Seery would have had to manually change the settings on his Phone to set text messages to delete automatically after a year.

[1] https://www.apple.com/legal/privacy/data/en/messages/#:~:text=You%20can%20choose%20to%20automatically,Backup%20or%20Messages%20in%20iCloud.

Defendants know that Mr. Seery used his text messages for HCMLP's business purposes because Defendants themselves have seen such messages. Accordingly, Defendants hereby request that you: (1) take action to suspend the Deletion Setting, and (2) instruct Mr. Seery to take all steps necessary to preserve all physical and electronic documents and ESI in his possession, custody, or control that relate to the above-referenced matter, including without limitation, ensuring that potentially relevant documents are preserved intact and are not destroyed, altered, modified, or deleted. In particular, Mr. Seery must immediately suspend any document retention or destruction policies.

In addition, Defendants demand the following information regarding the Deletion Setting:

1. Is the Deletion Setting still enabled on the Phone as of your receipt of this correspondence? If not, when was it disabled?

2. When did Mr. Seery enable the Deletion Setting?

3. When did HCMLP's counsel first become aware of the Deletion Setting on the Phone?

4. What instructions, if any, were given by counsel to Mr. Seery to preserve documents that might be relevant to on-going or anticipated litigation? When were such instructions issued? Which counsel issued such instructions?

5. Prior to the date of this correspondence, was counsel to the Litigation Trustee informed of the Deletion Setting?

6. Has Mr. Seery replaced his Phone since he joined HCMLP's board on or about January 9, 2020? If so, what happened to the old phone and/or the data on the old phone?

7. Has counsel for HCMLP or for the Litigation Trustee taken any steps to ensure that other identified witnesses under their control do not have a similar Deletion Setting on their personal mobile devices? If so, please inform us of what steps were taken, when those steps were taken, by which counsel, and with respect to which potential witnesses.

Upon receipt of this correspondence, please immediately confirm the suspension of the Deletion Setting on Mr. Seery's Phone. Please respond to the remaining inquiries promptly so that we may take the appropriate next steps with respect to this matter.

Finally, we understand that the parties are discussing a potential standstill of various proceedings, including of the above-referenced matter. However, given the spoliation issues presented above, we found it necessary to promptly send this letter. We do not anticipate that this issue will or should hinder any standstill agreement being reached amongst the parties.

Best regards,

Michelle Hartmann
Partner
michelle.hartmann@bakermckenzie.com

From: Michele Naudin
To: [redacted]
Cc: [redacted]
Subject: FW: Follow up from Friday"s call
Date: Thursday, February 16, 2023 1:57:42 PM
Attachments: image001.jpg

[redacted]

[redacted]

[redacted]

MICHELE NAUDIN | Attorney
LynnPinkerHurstSchwegmann
Direct 214 292 3648
Mobile 469 705 2825
mnaudin@lynnllp.com

2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
lynnllp.com

From: John A. Morris <jmorris@pszjlaw.com>
Sent: Thursday, February 16, 2023 1:54 PM
To: Michele Naudin <mnaudin@lynnllp.com>
Cc: Hayley R. Winograd <hwinograd@pszjlaw.com>; Michael K. Hurst <MHurst@lynnllp.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>
Subject: RE: Follow up from Friday's call

Michele:

The answers to your questions as follows:

1. Mr. Seery's iPhone is personal in nature. While it is backed up to iCloud, that back-up does not contain deleted items, whether deleted manually or as part of an automatic setting.
2. The automatic text deletion setting is currently set at one year; texts that are manually or automatically deleted are not retrievable; and
3. We have provided all texts and screenshots that we could locate based on a reasonable search. As I mentioned, we're glad that you had the screenshot of Goldsmith bringing documents to a storage facility because we both recalled that Jim sent that to me and I could

not locate it (and you can see from Jim's response that he told Daugherty to "knock it off"). As you know, our ability to locate documents is based on search terms. If Jim forwarded a screen shot (or anything else) without comment (which is possible), I would only be able to find it by reviewing every email received from Jim – which, after three years of daily communications, we don't believe we are required to do. To be as helpful as we can, I recall Jim sending several screenshots to me over the years including: (a) the one of Goldsmith, (b) one of Scott speaking with someone in front of a house (which I think you sent), (c) one of Thomas Surgent's car (obviously sent in 2020). Jim does currently not have any of those pictures on his iPhone. And obviously, as verified by the information produced, Jim never requested these unsolicited pictures or did anything with them (other than forward them to me).

To summarize what we also discussed:

1. Jim and I accepted service of the subpoenas despite the fact that service was improper;
2. We produced all responsive emails, pictures, and texts we located after conducting a reasonable search;
3. We immediately withdrew the objection that you challenged to make clear we were not hiding anything;
4. We've acknowledged receiving (or sharing) certain texts that you obtained elsewhere;
5. One of those texts clearly shows Jim's discomfort with the photo of Ms. Goldsmith;
6. My text with Dandeneau (Scott's lawyer for that purpose) during the remand hearing shows I was ready to "pounce" on Daugherty if he even suggested that he was working on behalf or at that direction of Jim or the Trust.

Please confirm that Jim and I have done all we need to do to comply the subpoena. Otherwise, please let me know what questions remain.

Regards,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

pszjlogo

From: Michele Naudin [mailto:mnaudin@lynnllp.com]
Sent: Monday, February 13, 2023 11:07 AM
To: John A. Morris <jmorris@pszjlaw.com>
Cc: Hayley R. Winograd <hwinograd@pszjlaw.com>; Michael K. Hurst <MHurst@lynnllp.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>
Subject: Follow up from Friday's call

Mr. Morris,

As a follow up from Friday's call, we look forward to hearing from you this week as to (1) whether Seery's data backed up to the Cloud, (2) Seery's automatic deletion settings, if any and what the setting is, and (3) confirm that you could not locate another email for any other contemporaneous screenshots of Daugherty's texts sent to Seery, which you stated that Seery screenshotted and sent to you from time to time.

Thank you,

MICHELE NAUDIN | Attorney
LynnPinkerHurstSchwegmann
Direct 214 292 3648
Mobile 469 705 2825
mnaudin@lynnllp.com

2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
lynnllp.com

Exhibit C

Baker McKenzie.

Baker & McKenzie LLP

900 North Pearl Street, Suite 1500
Dallas, Texas 75201
United States

Tel: +1 214 978 3000
Fax: +1 214 978 3099
www.bakermckenzie.com

March 07, 2023

Robert S. Loigman
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

By email
robertloigman@quinnemanuel.com

John Morris, Esq.
Pachulski Stang Ziehl & Jones LLP
780 Third Avenue
34th Floor
New York, NY 10017-2024

By email
jmorris@pszjlaw.com

Re: *Kirschner v. Dondero, et al.*, Adv. Pro. No. 21-03076-sgj

Dear Robert:

I am writing in response to your correspondence of March 7, 2023 ("***Trustee Correspondence***") regarding my March 4, 2023 letter to John Morris of Pachsulski, Stang, Ziehl, & Jones, Debtor's counsel and counsel for Mr. Seery, regarding Mr. Seery's apparent on-going destruction of potentially relevant documents ("***Defendants' Correspondence***"). While I would appreciate clarification of the respective responsibility being assumed by Pachulski and Quinn Emanuel regarding the Deletion Setting, I will nonetheless include both firms in all future correspondence regarding this matter.

As a preliminary matter, I find it disturbing that John Morris had time to consult with you on this matter and you had the time to write me, but neither of you have taken the time to confirm that the on-going destruction of potentially responsive evidence is stopped.[1] Therefore, please confirm that Mr. Seery has suspended the Deletion Setting and has been instructed to otherwise preserve potentially relevant documents in his possession, custody, or control. If you are refusing to put a stop to the apparent on-going destruction of documents, please let me know as soon as possible so that we may determine the next appropriate steps.

With respect to Defendants' Correspondence, that the Highland Litigation Sub-Trust (the "***Trustee***") has taken interest in Mr. Seery's Deletion Setting answers the question of whether the Trustee is aware of the Deletion Setting, however, please clarify when the Trustee became

[1] There is no reasonable dispute that Mr. Seery's text messages should have been preserved as electronically stored information potentially relevant to the on-going matters. In his correspondence dated March 31, 2021 to my clients, John Morris specifically identifies that the parties must preserve all documents, including "text messages" and that my clients should "immediately suspend any document retention/destruction policies…that could result in the destruction or deletion of any potentially relevant documents in its possession, custody, or control." *See* the letters attached.

aware of the Deletion Setting. Additionally, please provide substantive answers to the remaining inquiries from Defendants' Correspondence.

With respect to the balance of your letter, you raise several points, including that (a) neither side has committed yet to production of text messages, (b) certain defendants allegedly rendered collection of their text messages impossible, and (c) the Trustee has produced millions of pages of documents and the Defendants very few. I am not aware of any case law that would consider any of these facts as justifications for, much less relevant to, a party principal's *currently on-going deletion of potentially relevant documents*. We can continue discussions regarding what should be produced in this matter, but regardless, Mr. Seery cannot continue to destroy potentially relevant evidence.

I am copying John on this correspondence as he is Mr. Seery's counsel and still has not responded to the Defendants' Correspondence. While it is unclear to me which of the various firms advising Mr. Seery have assumed responsibility for his on-going Deletion Setting, you all collectively are responsible for stopping the deletion pending a final determination of what should and will be produced in the various on-going matters. I expect that you will comply with this duty to prevent further destruction of evidence.

Best regards,

Michelle Hartmann
Partner
michelle.hartmann@bakermckenzie.com

PACHULSKI STANG ZIEHL & JONES

LAW OFFICES
LIMITED LIABILITY PARTNERSHIP

NEW YORK, NY
LOS ANGELES, CA
COSTA MESA, CA
SAN FRANCISCO, CA
WILMINGTON, DE

780 THIRD AVENUE
34th FLOOR
NEW YORK
NEW YORK 10017-2024

TELEPHONE: 212/561 7700
FACSIMILE: 212/561 7777

LOS ANGELES
10100 SANTA MONICA BLVD.
13th FLOOR
LOS ANGELES
CALIFORNIA 90067

TELEPHONE: 310/277 6910
FACSIMILE: 310/201 0760

COSTA MESA
650 TOWNE CENTER DRIVE
SUITE 1500
COSTA MESA
CALIFORNIA 92626

TELEPHONE: 714/384 4750
FACSIMILE: 714/384 4751

SAN FRANCISCO
150 CALIFORNIA STREET
15th FLOOR
SAN FRANCISCO
CALIFORNIA 94111-4500

TELEPHONE: 415/263 7000
FACSIMILE: 415/263 7010

DELAWARE
919 NORTH MARKET STREET
17th FLOOR
P.O. BOX 8705
WILMINGTON
DELAWARE 19899-8705

TELEPHONE: 302/652 4100
FACSIMILE: 302/652 4400

WEB: www.pszjlaw.com

John A. Morris
212.561.7700
jmorris@pszjlaw.com

March 31, 2021

Via Federal Express

Scott Ellington
3100 Independence Parkway
Suite 311
Plano, Texas 75075

The Ritz-Carlton, Dallas
2525 N. Pearl St.
Unit 1201
Dallas, TX 75201

Re: *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (Bankr. N.D. Tex.)

Dear Mr. Ellington:

We are counsel to Highland Capital Management, L.P. ("HCMLP"), the debtor in the above captioned Chapter 11 case (the "Bankruptcy Case"). The purpose of this document preservation notice (this "Notice") is to notify you of your obligation to preserve documents and information relating in any way to the matters referenced herein.

UBS Securities LLC and UBS AG London Branch (together, "UBS") has recently commenced an adversary proceeding against HCMLP (the "Adversary Case") in connection with the Bankruptcy Case. In the Adversary Case, UBS has alleged that HCMLP, acting through and at the direction of James Dondero and other former employees of HCMLP, fraudulently transferred hundreds of millions of dollars of assets (the "Transferred Assets") away from Highland CDO Opportunity Master Fund, L.P. ("CDO Fund") and Highland Special Opportunities Holding Company ("SOHC," and together with CDO Fund, the "Funds") and affiliated entities—in anticipation of a judgment that UBS obtained against the Funds in the UBS

Litigation[1]—to Sentinel Reinsurance, Ltd. ("Sentinel," and together with its affiliates, the "Sentinel Entities"), a Cayman Islands entity that Mr. Dondero and Scott Ellington owned and controlled.

UBS further alleges that certain of these assets were fraudulently transferred to Sentinel pursuant to a purported purchase agreement (the "Purchase Agreement"), dated as of August 7, 2017, purportedly to satisfy the premium on a legal liability insurance policy issued by Sentinel (the "Insurance Policy"), which policy was supposedly intended to insure the Funds against an adverse judgment in the UBS Litigation. Among the assets that were purportedly transferred to Sentinel are (i) an interest in Multi-Strat that was ostensibly redeemed in November 2019 (the "Sentinel Redemption") and (ii) assets held by CDO Fund related to Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd., Eastland CLO Ltd., Grayson CLO Ltd., Valhalla CLO Ltd., and Governance Re, Ltd., including cash payments related to those assets.

HCMLP will seek discovery from various parties and third parties in connection with the Adversary Case and any other legal actions that may be commenced relating to the subject matter of this Notice, potentially including from you. You are receiving this preservation demand because we believe that you have documents or other materials related to the matters referenced herein. Applicable law and the rules of discovery require the immediate preservation of all documents and electronically stored information in your possession, custody, or control that relate in any way to these matters.

Pursuant to the Notice, HCMLP demands that you retain all documents, communications (including e-mails and text messages), and other materials in its possession, custody, or control (including such documents and materials in the possession or custody of your representatives, agents, employees, subsidiaries, or affiliates) that relate, directly or indirectly, to the subject matter of this Notice, including, *but not limited to*, any of the following:

[1] "UBS Litigation" refers to the action commenced by UBS in the Supreme Court of the State of New York against HCMLP, the Funds, and Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.) ("Multi-Strat"), among other defendants, and which has been consolidated in the action captioned *UBS Securities LLC et al. v. Highland Capital Management, L.P. et al.*, No. 650097/2009 (N.Y. Sup. Ct.).

PACHULSKI STANG ZIEHL & JONES
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- The Bankruptcy Case;
- The Adversary Case and any future claims or actions that may be brought relating to the subject matter of this Notice;
- UBS or the UBS Litigation, including without limitation any actual or potential judgments entered therein;
- The Sentinel Entities, including without limitation Sentinel Reinsurance, Ltd., Sentinel Holdings, Ltd., and SS Holdings, Ltd., and all predecessors, successors, directors, officers, employees, representatives, and agents of the Sentinel Entities;
- The Insurance Policy, including without limitation any claims made on the Insurance Policy, and all related documents and agreements;
- The Purchase Agreement and all related documents and agreements;
- All assets actually or potentially transferred from HCMLP, the Funds, or any affiliated entities to the Sentinel Entities, including without limitation the value of all such assets;
- All documents and agreements relating to any accounts in which such assets are or have been transferred, deposited, or held;
- All documents and agreements reflecting any actual or potential transfer of assets from HCMLP, the Funds, or any affiliated entities to the Sentinel Entities;
- All actual or potential interests that any Sentinel Entities have had or purport to have in Multi-Strat, including without limitation any redemption interests, partnership interests, or other economic interests; and

PACHULSKI STANG ZIEHL & JONES
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- All documents and agreements relating to any subsequent transfers by the Sentinel Entities of any assets received from HCMLP, the Funds, or any affiliated entities.

For the avoidance of doubt, the foregoing topics are not intended to be exhaustive; you must retain all documents and other materials that relate in any way to the subject matter of this Notice. The terms "related to" or "relating to" should be construed as broadly as possible, and any doubts concerning the potential relevance of a document should be resolved in favor of preservation.

For purposes of this Notice, the term "documents" should be construed broadly to encompass all manner of communication and information, whether or not in physical or electronic form, and shall have the broadest meaning allowable under the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure. "Documents" expressly include, without limitation, all of the following:

- Hard copy documents, including without limitation writings (whether typed or printed, or in final or draft form), printouts, calendars, handwritten notes, notebooks, sketches, photographs, drawings, photographs, and other tangible objects; and

- Electronic files and electronically stored information ("ESI"), including without limitation emails and attachments, text messages, chat messages, instant messages, electronic calendars, schedules, social media content and communications, video or sound recordings, pictures, presentations (e.g., PowerPoint), spreadsheets, PDFs, word processing documents, presentations, voicemails, diagrams, images, databases, servers, metadata, and other electronic information, whether stored or maintained on a laptop, desktop computer, hard drive, server, network, legacy system, flash drive, internal or external hard drive, shared drive, CD, CD-ROM, DVD, PDA, tablet, iPad, iPhone, smartphone, Blackberry, computer log, or other removable media or storage device. This also includes potentially relevant documents and information stored on products HCMLP does not own,

PACHULSKI STANG ZIEHL & JONES

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such as the personal laptops or home computers of its employees, subsidiaries, or affiliates.

You must take all steps necessary to preserve all physical and electronic documents and ESI in its possession, custody, or control that relate to the subject matter of this Notice, including without limitation ensuring that potentially relevant documents are preserved intact and are not destroyed, altered, modified, or deleted. In particular, you must immediately suspend any document retention/destruction policies, including any backup tape recycling policies, that could result in the destruction or deletion of any potentially relevant documents in its possession, custody, or control, and must retain all software, hardware, or other information required to access or view potentially relevant ESI. Failure to take such actions may subject you to sanctions.

This preservation demand is continuing in nature and requires your preservation of potentially relevant documents and materials that come into its possession, custody, or control after the date of this Notice.

Please acknowledge receipt of this Notice and promptly confirm that you will comply with this preservation demand.

Very truly yours,

/s/ John A. Morris

John A. Morris

cc: Debra Dandeneau
Michelle Hartman
James P. Seery, Jr.

PACHULSKI STANG ZIEHL & JONES

LAW OFFICES
LIMITED LIABILITY PARTNERSHIP

NEW YORK, NY
LOS ANGELES, CA
COSTA MESA, CA
SAN FRANCISCO, CA
WILMINGTON, DE

780 THIRD AVENUE
34th FLOOR
NEW YORK
NEW YORK 10017-2024

TELEPHONE: 212/561 7700
FACSIMILE: 212/561 7777

LOS ANGELES
10100 SANTA MONICA BLVD.
13th FLOOR
LOS ANGELES
CALIFORNIA 90067

TELEPHONE: 310/277 6910
FACSIMILE: 310/201 0760

COSTA MESA
650 TOWNE CENTER DRIVE
SUITE 1500
COSTA MESA
CALIFORNIA 92626

TELEPHONE: 714/384 4750
FACSIMILE: 714/384 4751

SAN FRANCISCO
150 CALIFORNIA STREET
15th FLOOR
SAN FRANCISCO
CALIFORNIA 94111-4500

TELEPHONE: 415/263 7000
FACSIMILE: 415/263 7010

DELAWARE
919 NORTH MARKET STREET
17th FLOOR
P.O. BOX 8705
WILMINGTON
DELAWARE 19899-8705

TELEPHONE: 302/652 4100
FACSIMILE: 302/652 4400

WEB: www.pszjlaw.com

John A. Morris

212.561.7700
jmorris@pszjlaw.com

March 31, 2021

Via Federal Express

Isaac Leventon
409 Pleasant Valley Lane
Richardson, TX 75080

Re: *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (Bankr. N.D. Tex.)

Dear Mr. Leventon:

We are counsel to Highland Capital Management, L.P. ("HCMLP"), the debtor in the above captioned Chapter 11 case (the "Bankruptcy Case"). The purpose of this document preservation notice (this "Notice") is to notify you of your obligation to preserve documents and information relating in any way to the matters referenced herein.

UBS Securities LLC and UBS AG London Branch (together, "UBS") has recently commenced an adversary proceeding against HCMLP (the "Adversary Case") in connection with the Bankruptcy Case. In the Adversary Case, UBS has alleged that HCMLP, acting through and at the direction of James Dondero and other former employees of HCMLP, fraudulently transferred hundreds of millions of dollars of assets (the "Transferred Assets") away from Highland CDO Opportunity Master Fund, L.P. ("CDO Fund") and Highland Special Opportunities Holding Company ("SOHC," and together with CDO Fund, the "Funds") and affiliated entities—in anticipation of a judgment that UBS obtained against the Funds in the UBS Litigation[1]—to Sentinel Reinsurance, Ltd. ("Sentinel," and together

[1] "UBS Litigation" refers to the action commenced by UBS in the Supreme Court of the State of New York against HCMLP, the Funds, and Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.) ("Multi-Strat"), among other defendants, and which has been consolidated in the action captioned *UBS Securities LLC et al. v. Highland Capital Management, L.P. et al.*, No. 650097/2009 (N.Y. Sup. Ct.).

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with its affiliates, the "Sentinel Entities"), a Cayman Islands entity that Mr. Dondero and Scott Ellington owned and controlled.

UBS further alleges that certain of these assets were fraudulently transferred to Sentinel pursuant to a purported purchase agreement (the "Purchase Agreement"), dated as of August 7, 2017, purportedly to satisfy the premium on a legal liability insurance policy issued by Sentinel (the "Insurance Policy"), which policy was supposedly intended to insure the Funds against an adverse judgment in the UBS Litigation. Among the assets that were purportedly transferred to Sentinel are (i) an interest in Multi-Strat that was ostensibly redeemed in November 2019 (the "Sentinel Redemption") and (ii) assets held by CDO Fund related to Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd., Eastland CLO Ltd., Grayson CLO Ltd., Valhalla CLO Ltd., and Governance Re, Ltd., including cash payments related to those assets.

HCMLP will seek discovery from various parties and third parties in connection with the Adversary Case and any other legal actions that may be commenced relating to the subject matter of this Notice, potentially including from you. You are receiving this preservation demand because we believe that you have documents or other materials related to the matters referenced herein. Applicable law and the rules of discovery require the immediate preservation of all documents and electronically stored information in your possession, custody, or control that relate in any way to these matters.

Pursuant to the Notice, HCMLP demands that you retain all documents, communications (including e-mails and text messages), and other materials in its possession, custody, or control (including such documents and materials in the possession or custody of your representatives, agents, employees, subsidiaries, or affiliates) that relate, directly or indirectly, to the subject matter of this Notice, including, *but not limited to*, any of the following:

- The Bankruptcy Case;
- The Adversary Case and any future claims or actions that may be brought relating to the subject matter of this Notice;

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- UBS or the UBS Litigation, including without limitation any actual or potential judgments entered therein;
- The Sentinel Entities, including without limitation Sentinel Reinsurance, Ltd., Sentinel Holdings, Ltd., and SS Holdings, Ltd., and all predecessors, successors, directors, officers, employees, representatives, and agents of the Sentinel Entities;
- The Insurance Policy, including without limitation any claims made on the Insurance Policy, and all related documents and agreements;
- The Purchase Agreement and all related documents and agreements;
- All assets actually or potentially transferred from HCMLP, the Funds, or any affiliated entities to the Sentinel Entities, including without limitation the value of all such assets;
- All documents and agreements relating to any accounts in which such assets are or have been transferred, deposited, or held;
- All documents and agreements reflecting any actual or potential transfer of assets from HCMLP, the Funds, or any affiliated entities to the Sentinel Entities;
- All actual or potential interests that any Sentinel Entities have had or purport to have in Multi-Strat, including without limitation any redemption interests, partnership interests, or other economic interests; and
- All documents and agreements relating to any subsequent transfers by the Sentinel Entities of any assets received from HCMLP, the Funds, or any affiliated entities.

For the avoidance of doubt, the foregoing topics are not intended to be exhaustive; you must retain all documents and other materials that

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relate in any way to the subject matter of this Notice. The terms "related to" or "relating to" should be construed as broadly as possible, and any doubts concerning the potential relevance of a document should be resolved in favor of preservation.

For purposes of this Notice, the term "documents" should be construed broadly to encompass all manner of communication and information, whether or not in physical or electronic form, and shall have the broadest meaning allowable under the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure. "Documents" expressly include, without limitation, all of the following:

- Hard copy documents, including without limitation writings (whether typed or printed, or in final or draft form), printouts, calendars, handwritten notes, notebooks, sketches, photographs, drawings, photographs, and other tangible objects; and

- Electronic files and electronically stored information ("ESI"), including without limitation emails and attachments, text messages, chat messages, instant messages, electronic calendars, schedules, social media content and communications, video or sound recordings, pictures, presentations (e.g., PowerPoint), spreadsheets, PDFs, word processing documents, presentations, voicemails, diagrams, images, databases, servers, metadata, and other electronic information, whether stored or maintained on a laptop, desktop computer, hard drive, server, network, legacy system, flash drive, internal or external hard drive, shared drive, CD, CD-ROM, DVD, PDA, tablet, iPad, iPhone, smartphone, Blackberry, computer log, or other removable media or storage device. This also includes potentially relevant documents and information stored on products HCMLP does not own, such as the personal laptops or home computers of its employees, subsidiaries, or affiliates.

You must take all steps necessary to preserve all physical and electronic documents and ESI in its possession, custody, or control that relate to the subject matter of this Notice, including without limitation ensuring that potentially relevant documents are preserved

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intact and are not destroyed, altered, modified, or deleted. In particular, you must immediately suspend any document retention/destruction policies, including any backup tape recycling policies, that could result in the destruction or deletion of any potentially relevant documents in its possession, custody, or control, and must retain all software, hardware, or other information required to access or view potentially relevant ESI. Failure to take such actions may subject you to sanctions.

This preservation demand is continuing in nature and requires your preservation of potentially relevant documents and materials that come into its possession, custody, or control after the date of this Notice.

Please acknowledge receipt of this Notice and promptly confirm that you will comply with this preservation demand.

Sincerely,

/s/ John A. Morris

John A. Morris

cc: Debra Dandeneau
Michelle Hartman
James P. Seery, Jr.

Exhibit D

From: Giles, Courtney
[redacted]
Cc: Hartmann, Michelle; Cahn, Blaire; Zimmerman, Laura
Subject: FW: Kirschner v. Dondero et al.: Letter re text messages
Date: Friday, March 10, 2023 3:26:41 PM
Attachments: image001.png

[redacted]

[redacted]

Thanks,

Courtney Giles
Associate, Litigation
Baker & McKenzie LLP
700 Louisiana, Suite 3000
Houston, TX 77002
United States
Tel: +1 713 427 5000
Direct: +1 713 427 5086
Fax: +1 713 427 5099
courtney.giles@bakermckenzie.com

Baker McKenzie.

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From: John A. Morris <jmorris@pszjlaw.com>
Sent: Friday, March 10, 2023 3:20 PM
To: Hartmann, Michelle <Michelle.Hartmann@bakermckenzie.com>
Cc: Jeff Pomerantz <jpomerantz@pszjlaw.com>; Gregory V. Demo <GDemo@pszjlaw.com>; Hayley R. Winograd <hwinograd@pszjlaw.com>; 'Robert Loigman' <robertloigman@quinnemanuel.com>; 'Aaron Lawrence' <aaronlawrence@quinnemanuel.com>; Giles, Courtney <Courtney.Giles@bakermckenzie.com>
Subject: [EXTERNAL] Kirschner v. Dondero et al.: Letter re text messages

Michelle:

As you know, Mr. Seery is (among other things) the CEO of our client, Highland Capital Management, L.P., and we represent him in that capacity, not in his personal, individual capacity.

In response to the communication, please be advised that Mr. Seery recently suspended his deletion setting; separately, all potentially relevant documents in his possession, custody, and control have been preserved.

Regards,

John
John A. Morris

Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

Los Angeles | San Francisco | Wilmington, DE | New York | Houston

---

From: Giles, Courtney [mailto:Courtney.Giles@bakermckenzie.com]
Sent: Tuesday, March 7, 2023 10:05 PM
To: robertloigman@quinnemanuel.com; Aaron Lawrence <aaronlawrence@quinnemanuel.com>; Hartmann, Michelle <Michelle.Hartmann@bakermckenzie.com>
Cc: Dandeneau, Debra A. <Debra.Dandeneau@bakermckenzie.com>; qe-highland <qe-highland@quinnemanuel.com>; Jeff Pomerantz <jpomerantz@pszjlaw.com>; John A. Morris <jmorris@pszjlaw.com>; Gregory V. Demo <GDemo@pszjlaw.com>; Hayley R. Winograd <hwinograd@pszjlaw.com>
Subject: RE: Kirschner v. Dondero et al.: Letter re text messages

Counsel,

Please see the attached correspondence.

Best regards,

Courtney Giles
Associate, Litigation
Baker & McKenzie LLP
700 Louisiana, Suite 3000
Houston, TX 77002
United States
Tel: +1 713 427 5000
Direct: +1 713 427 5086
Fax: +1 713 427 5099
courtney.giles@bakermckenzie.com

From: Aaron Lawrence <aaronlawrence@quinnemanuel.com>

Sent: Tuesday, March 7, 2023 2:08 PM
To: Hartmann, Michelle <Michelle.Hartmann@bakermckenzie.com>
Cc: Giles, Courtney <Courtney.Giles@bakermckenzie.com>; Dandeneau, Debra A. <Debra.Dandeneau@bakermckenzie.com>; qe-highland <qe-highland@quinnemanuel.com>; 'jpomerantz@pszjlaw.com' <jpomerantz@pszjlaw.com>; John A. Morris <jmorris@pszjlaw.com>; Gregory V. Demo <GDemo@pszjlaw.com>; Hayley R. Winograd <hwinograd@pszjlaw.com>
Subject: [EXTERNAL] Kirschner v. Dondero et al.: Letter re text messages

Michelle,

Please see the attached correspondence.

Best,

Aaron Lawrence
Associate
Quinn Emanuel Urquhart & Sullivan, LLP

51 Madison Avenue, 22nd Floor
New York, NY 10010
Direct
212-849-7000 Main Office Number
212-849-7100 FAX
aaronlawrence@quinnemanuel.com
www.quinnemanuel.com

James J. Lee
State Bar No. 12074550
jimlee@velaw.com
Michael C. Lee
State Bar No. 24109461
mlee@velaw.com
VINSON & ELKINS LLP
2001 Ross Avenue, Suite 3900
Dallas, Texas 75201
Telephone: (214) 220-7700

Attorneys for Lynn Pinker Hurst & Schwegmann, LLP and The Pettit Law Firm

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	CASE NO. 19-34054-SGJ11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	CHAPTER 11
	§	
Reorganized Debtor	§	

LYNN PINKER HURST & SCHWEGMANN, LLP AND THE PETTIT LAW FIRM'S MOTION TO STRIKE AND RESPONSE SUBJECT THERETO OPPOSING THE MOVANTS' MOTION REQUESTING AN ORDER REQUIRING LYNN PINKER AND PETTIT TO SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE GATEKEEPER PROVISION AND GATEKEEPER ORDERS

TO THE HONORABLE STACEY G.C. JERNIGAN, CHIEF UNITED STATES BANKRUPTCY JUDGE:

MOVANTS' MOTION IS A LITIGATION TACTIC INTENDED TO THWART LEGITIMATE STATE COURT DISCOVERY

In their Motion for Contempt (the "Motion"), Movants[2] claim that the State Court Law Firms "pursued a claim" and violated this Court's Orders merely by serving and seeking to enforce third-party discovery subpoenas against certain Movants and others in the State Court

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

[2] Undefined capitalized terms in the introduction have the meanings set forth below. Capitalized terms not defined herein shall have the meanings set forth in the Motion.

Action. The Court should strike the Motion because Movants failed to follow the applicable bankruptcy rules of procedure and also failed to properly confer before filing it. Even if the Court accepted every inflammatory and incorrect statement in the Motion, it still would fail as a matter of law because issuing third-party discovery subpoenas does not constitute the pursuit of any claim or cause of action. The state court discovery asserts no actual or potential causes of action against Movants and seeks no monetary or equitable relief against them. Opinions from this Court and other courts provide that serving third-party discovery does not equal the pursuit of a claim. Seery's willing production of thousands of documents and agreement to appear for a deposition in the State Court Action without this Court's prior approval confirms that Movants do not believe third-party discovery constitutes pursuit of a claim.

Moreover, while there is zero evidence that the State Court Law Firms intend to file a claim against Movants or to do so without seeking this Court's permission, their intent is irrelevant because they have not engaged in any activity that would require this Court's permission under its Orders.

Knowing neither the law nor the facts support the Motion, Movants employ hardball litigation tactics by seeking to unjustifiably hold the State Court Law Firms in contempt. They offer no factual support for serious allegations of professional misconduct, other than their own self-serving, wholly uninformed, and incorrect opinions about the alleged motive of the State Court Law Firms in serving certain discovery. In truth, the State Court Action involves very serious and threatening conduct caused by Daugherty personally appearing outside Ellington's house, office, and the residences of family members at least 143 times, resulting in traumatic events such as children being afraid to play outside and women fearing for their safety and worrying about being secretly photographed in their own homes. After this Court remanded the

State Court Action, the State Court Law Firms discovered that Daugherty had provided to and discussed with Movants the photographs and information obtained during his illegal stalking activities. The State Court Law Firms appropriately pursued third-party discovery on behalf of their client to develop evidence relevant to his claims against Daugherty, as shown by the following chronology of events:

- On March 29, 2022, this Court heard Ellington's motion to remand, and counsel for Highland and the Trust appeared at the hearing. The Highland entities took no formal position regarding the motion to remand, and, despite being given an opportunity, failed to disclose Seery's contacts with Daugherty relating to the stalking. The Court thereafter granted the motion to remand.

- After remand, discovery in the State Court Action revealed extensive communications between Daugherty and Seery, among others, regarding the stalking. Indeed, Daugherty admitted in his deposition to creating an extensive dossier of materials regarding Ellington and his family and then sharing those materials with Seery, Andrew Clubock, supposedly the entire Creditors' Committee, and others.

- Following that revelation in the State Court Action, the State Court Law Firms served a series of non-party discovery subpoenas, including a subpoena directed to Seery.

- In response to the subpoena, Seery produced thousands of pages of documents without any motion practice or intervention from the state court and without arguing that prior approval from this Court was needed.

- The State Court Law Firms then served Seery a deposition subpoena.

- The State Court Law Firms and Seery's counsel reached an agreement on the scope and duration of the deposition and thereafter the deposition was scheduled for July 31, 2023.

- On July 14, 2023, Seery supplemented his production to include text messages he had with Daugherty. Despite some of those messages having been previously produced by Daugherty, many had not been produced – some of which were redacted.

- The State Court Law Firms postponed Seery's deposition to seek the redacted text messages. To that end, the State Court Law Firms filed a motion to compel Daugherty to produce the redacted messages. On September 1, 2023, the state court granted the motion and ordered any supplemental documents to be produced by September 15, 2023.

- On September 13, 2023, many weeks after the State Court Law Firms' last communication with Movants' counsel and ***without any attempt to confer with the State Court Law Firms or to seek relief in the State Court Action regarding the text messages***, Movants filed the Motion. Movants argue that the state court's order does not actually compel production of the redacted messages and then – ***incredibly*** – offer to submit the disputed messages to this Court to review *in camera* to confirm that point, an offer that was never made to the state court judge overseeing the discovery.

This Court need not delve into these factual details to reject the baseless Motion, but the chronology confirms that Movants filed the Motion for the improper purpose of preventing the state court from making a routine decision about the scope of third-party discovery. Movants motive is obvious; they seek for this Court to decide the appropriate scope of discovery in the State Court Action, as evidenced by their offer to provide the redacted text messages *in camera* to this Court without making any such offer in the State Court Action. And to accomplish this, Movants are willing to wrongfully accuse the State Court Law Firms of contempt. Here, Movants' ends do not justify their means.

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MOTION TO STRIKE

Highland Capital Management, L.P. ("Highland"), Highland Claimant Trust (the "Trust"), and James P. Seery, Jr.'s ("Seery") (collectively, "Movants") motion (the "Motion") for an order requiring Scott Byron Ellington ("Ellington") and his counsel Lynn Pinker Hurst & Schwegmann, LLP ("Lynn Pinker") and The Pettit Law Firm ("Pettit Firm") (collectively, the "State Court Law Firms") to show cause why Ellington and the State Court Law Firms should not be held in contempt for violating the Gatekeeper Provision and Gatekeeper Orders (Doc. 3910)[3] is procedurally improper and must be stricken.

Civil contempt motions in bankruptcy cases are governed by FED. R. BANKR. P. 9020 which implicates Rule 9014 governing contested matters.[4] The Motion does not even mention Rule 9020 and Movants' failed to properly serve the State Court Law Firms under Rules 7004 and 7005.[5] Rather, Movants improperly rely upon Rule 9011 in attempt to have this Court impose sanctions against the State Court Law Firms for seeking discovery in the ***State Court Action*** and not for any conduct in this Court. Rule 9011(c) provides courts a vehicle to impose sanctions if "the court determines that [Rule 9011] subdivision (b) has been violated." *See*

[3] As used herein, "Gatekeeper Provision" means the relevant portions of the Confirmation Order ¶ AA (Doc. 1943, pp. 76-77). The term "Gatekeeper Orders" mean collectively, this Court's January 9, 2020 Order (Doc. 339) and July 16, 2020 Order (Doc. 854). Herein after, the Gatekeeper Provision and the Gatekeeper Orders shall be collectively referred to as the "Orders."

[4] FED. R. BANKR. P. 9020 ("Rule 9014 governs a motion for an order of contempt made by … a party in interest."). Unless otherwise indicated, all rules referenced herein are Federal Rules of Bankruptcy Procedure.

[5] Rule 9014 requires that a "motion shall be served in the manner provided for service of a summons and complaint by Rule 7004." FED. R. BANKR. P. 9014(b). In turn, L.B.R. 9014-1 instructs that "[t]he movant shall serve the motion electronically, or by mail, in the manner provided by Bankruptcy Rule 7004. No summons is required. Following service of the motion, pursuant to Bankruptcy Rule 7005, movant shall file with the Bankruptcy Clerk a certificate of service, attached to the motion, evidencing the date and mode of service and the names and addresses of the parties served." Movants never properly served the Motion (merely emailing a copy to the State Court Law Firms) nor did they file a certificate of service with the Court.

FED. R. BANKR. P. 9011(c). Rule 9011(b) contemplates ***representations to the court*** (*i.e.*, this Court) in a "petition, pleading, written motion, or other paper." *Id.* at 9011(b). The State Court Law Firms have never appeared before, much less made any representations to, ***this Court*** in connection with seeking the discovery that Movants assert is contemptuous conduct. Thus, Rule 9011 is inapplicable.

Moreover, Movants wholly failed to comply with Rule 9011 by failing to provide the Law Firms ***at least 21 days' notice prior to filing the Motion***. *See* FED. R. BANKR. P. 9011(c)(1)(A) (a "motion for sanctions may not be filed with or presented to the court unless, within 21 days ***after service of the motion*** ... the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.") (emphasis added).

Instead, Movants' counsel made a superficial attempt to confer by sending the State Court Law Firms an email at 11:47 a.m. on September 13, 2023, mere hours before filing the Motion. *See* Exhibit A, Declaration of Julie Pettit ("Pettit Dec.") ¶ 5, Ex. A-1; Exhibit B, Declaration of Michael K. Hurst ("Hurst Dec.") ¶ 5. Before the September 13, 2023 email, Movants' counsel had not made any effort to communicate with the State Court Law Firms ***for nearly six weeks***. *See* Pettit Dec. ¶ 5, Hurst Dec. ¶ 5. Blindsided, Ms. Pettit requested a copy of the Motion that likely had been in the works for weeks – as Rule 9011 mandates – in an attempt to properly confer. *See* Pettit Dec. ¶ 5, Ex. A-1. Movants' counsel – Josh Levy – refused, erroneously citing Northern District of Texas LR 7.1 ***which does not apply in this proceeding***. *See* L.B.R. 9029-3[6]; *see id.* (Mr. Levy stated that "[t]he local rules do not require us to provide advanced copies of our motions and we do not intend to do so. *See* N.D. Tex. Local Civ. R.

[6] "Other than the District Court Local Civil Rules adopted specifically in these Local Bankruptcy Rules or adopted in a separate order of the Bankruptcy Court, and District Court Local Civil Rules 8005.1 through 8010.4 regarding bankruptcy appeals, ***the District Court Local Civil Rules do not apply in the Bankruptcy Court***." (emphasis added).

7.1(a).”). Movants indisputably failed to provide the State Court Law Firms a copy of the Motion at least 21 days before filing the same on September 13, 2023, and refused to meaningfully confer regarding the grounds of the Motion.

The Fifth Circuit has squarely addressed this issue, upholding a bankruptcy court’s denial of a Rule 9011 motion for sanctions because the movant failed to provide the respondent a copy of the motion at least 21 days before filing with the court. *See In re Pratt*, 524 F.3d 580, 588 (5th Cir. 2008) (“We hold that the bankruptcy court did not abuse its discretion by denying [movant’s] motion for Rule 9011 sanctions because [movant] failed to serve [respondent] with a copy of the motion at least twenty-one days prior to filing it with the court.”); *see also Tompkins v. Cyr*, 202 F.3d 770, 788 (5th Cir. 2000) (affirming district court’s denial of Rule 11 motion because the movants’ “failed to comply with the twenty-one-day [notice] rule.”).

Further, counsel for Movants’ unjustified threat of sanctions in emails to the State Court Law Firms (*see e.g.* Doc. 3912-12)[7] does not satisfy Rule 9011’s notice requirement. *See In re Pratt*, 524 F.3d at 586 (“[movant] urges that such informal notice is sufficient to meet the service requirement because it (1) notified [respondent] of the possibility that [movant] would seek sanctions and (2) allowed [respondent] the opportunity to change his pleadings prior to [movant’s] filing with the court. ***We disagree***.”) (emphasis added); *see also Askins v. Hagopian*, 713 Fed. Appx. 380, 381 (5th Cir. 2018) (“although Hagopian’s counsel sent an e-mail stating that the lawsuit was ‘frivolous and vexatious’ to Askins’ counsel nearly a year before filing the motion, ***this e-mail was insufficient to comply with the [21 day notice] safe harbor provision***.”) (emphasis added).

[7] On July 25, 2023, Movants’ counsel Josh Levy sent Ms. Pettit and Mr. Hurst an email advising that “Mr. Seery, Highland, and the Claimant Trust … will enforce all rights and seek appropriate sanctions.”

Irrespective of Movants' other baseless attempts to smear the State Court Law Firms' good names and reputations, the Motion should be stricken because Movants failed to proceed under Rule 9020, failed to properly serve the State Court Law Firms under Rules 7004, 7005, and 9014, and Rule 9011 is inapplicable. Regardless, Movants fail to meet their basic notice requirements. More importantly, Movants' total failure to comply with the procedural rules governing motions for contempt and sanctions reveals the Motion for what it really is – a litigation maneuver intended to thwart legitimate discovery and to move discovery disputes before a court that Movants perceive as a more favorable forum.

RESPONSE TO MOVANTS' MOTION FOR SHOW CAUSE ORDER

I. STATEMENT OF FACTS

1. The Pettit Dec. and Hurst Dec. are incorporated by reference in their entirety. The key facts therein are summarized below for the Court's convenience.

Ellington Sues Daugherty to Make Him Stop Stalking and Harassing His Family and Him

2. On January 11, 2022, Ellington, represented by the State Court Law Firms, filed an Original Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction against defendant Patrick Daugherty ("Daugherty") in the 101st Judicial District, Dallas County, Texas (the "State Court Action"). *See* Doc. 3912-2. As detailed in the State Court Action, Ellington alleged that Daugherty engaged in a campaign of dangerous harassment against his family and him seemingly as an escalation from the previous decade of litigation between Daugherty and either Ellington, personally, or parties with whom Ellington was affiliated. This included a 2019 lawsuit filed by Daugherty in Delaware Chancery Court that has been dismissed, which dismissal has been upheld. Hurst Dec. ¶ 7. Indeed, while the full extent of the harassment is unknown, Ellington documented "no less than 143 instances where Daugherty ***personally*** appeared outside his residence, his office, or the residences of his family

between February and December of 2021." Pettit Dec. ¶ 7; Hurst Dec. ¶ 7. Based on the facts either known or reasonably believed at the time the State Court Action was filed, "Ellington asserted claims ***solely*** against Daugherty for civil stalking and invasion of privacy." *Id.*

3. The state court entered a temporary restraining order prohibiting Daugherty from coming within 500 feet of Ellington and his family on January 12, 2022. Pettit Dec. ¶ 8, Ex. A-2; Hurst Dec. ¶ 8.

Daugherty's Failed Attempt to Remove the State Court Action

4. Daugherty filed a Notice of Removal of the State Court Action on January 18, 2022 (Adv. 22-03003, Doc. 1.) prompting Ellington's counsel at Baker & McKenzie LLP and Ross Smith, P.C.[8] to move to remand on January 25, 2022. *See id.*, Doc. 3.

5. Daugherty's response opposing Ellington's motion to remand alleged, among other things, that "the State Court Action is nothing more than a transparent attempt by Ellington to attempt to thwart" Daugherty's proof of claim filed against Highland. *Id.*, Doc. 15, p. 3. Daugherty further alleged that "[t]he State Court Action is also an improper attempt to obtain discovery from Daugherty and third parties that Ellington and others could use to violate the Court's gatekeeping orders." *Id.*

6. On March 30, 2022, this Court granted Ellington's motion to remand, finding no evidence that the remand action "somehow implicated the gatekeeping order – that was dangled out in the pleadings." *Id.*, Doc. 33: 21-23.

[8] Neither Lynn Pinker nor the Pettit Firm represented Ellington in the adversary proceeding initiated by Daugherty. *See* Pettit Dec. ¶ 4; Hurst Dec. ¶ 5.

After the Remand, Ellington Discovers that Daugherty Had Shared the Fruits of His Stalking

7. When the State Court Action resumed in April of 2022, the parties fought over several procedural issues. Nonetheless, Ellington's application for temporary injunction was eventually set for hearing on September 1, 2022.

8. In advance of the temporary injunction hearing, Ellington propounded written discovery requests on Daugherty, including requests for production, and then issued a deposition notice for July 14, 2022. Pettit Dec. ¶¶ 13-14; Hurst Dec. ¶¶ 13-14.

9. Ellington served his first requests for production to Daugherty on May 15, 2022. Pettit Dec. ¶ 14, Ex. A-4; Hurst Dec. ¶ 14. Ellington served eight (8) requests for production, including requests for any communications referencing the materials created by the stalking (defined in the requests as the "Ellington Recordings") as well as any communications identifying others who either knew of or were involved in the stalking. *Id.* The requests did not specifically reference Seery or any other individual involved in the Highland Bankruptcy Case because at the time of service, neither Ellington nor his State Court Law Firms had any reason to suspect that such individuals had any connection to the stalking. *Id.*

10. On July 11, 2022, in response to the requests for production, Daugherty produced text message conversations with Seery and others related to the stalking. Pettit Dec. ¶ 15, Ex. A-5; Hurst Dec. ¶ 15. This was the first time that Ellington or the State Court Law Firms learned that Daugherty had been communicating with Seery about the stalking.

11. On July 14, 2022, a few days after those messages were produced, Mr. Hurst, in his capacity as counsel for Ellington in the State Court Action, took Daugherty's deposition wherein Daugherty testified that he had "investigated" Ellington in connection with a Delaware lawsuit Daugherty filed against Ellington and others. Pettit Dec. ¶¶ 16-19, Ex. A-6; Hurst Dec.

¶¶ 16-19. Notwithstanding Daugherty's professed motivation for his tortious behavior lasting at least a year, when confronted with questioning and the text messages that he had recently produced, Daugherty admitted providing Seery, members of Highland's creditors' committee, and others information and reports about Ellington obtained during the so-called "investigation." *Id.*

Ellington Seeks Third-Party Discovery to Support Claims and Damages in State Court Action

12. Daugherty's deposition testimony and text messages prompted Ellington to serve a series of non-party discovery subpoenas on the individuals to which Daugherty stated he provided the stalking information. Pettit Dec. ¶ 23; Hurst Dec. ¶ 23. Pertinent to the Motion is the Subpoena Duces Tecum to Seery (Doc. 3912-5) served on November 2, 2022, requesting documents relating to claims, damages, and Daugherty's credibility in the State Court Action, including Daugherty's so-called "investigation."

13. Seery complied with Ellington's subpoena without court intervention and ultimately produced documents on January 3, 2023. Pettit Dec. ¶ 25; Hurst Dec. ¶ 25. Importantly, Seery did not object to the aforementioned discovery on the basis that the State Court Law Firms had failed to get prior authorization from this Court pursuant to the Orders. *Id.*

14. During the summer of 2023, Mr. Hurst and Ms. Pettit engaged in protracted dialogue with Seery's counsel regarding Seery's third-party deposition in the State Court Action. Pettit Dec. ¶ 26, Ex. A-10; Hurst Dec. ¶ 26. On July 13, 2023, Seery's counsel – Josh Levy – confirmed the parties' agreement regarding Seery's July 31, 2023 deposition and also explained that Seery would make a supplemental production of documents. *Id.*

15. On July 14, 2023, Seery produced, for the first time, redacted text messages – including several redacted in their entirety – many which appear to be responsive to the

November 2, 2022 subpoena. Pettit Dec. ¶ 28; Hurst Dec. ¶ 28. This eleventh hour production of redacted information prompted Ellington to postpone Seery's deposition until Ellington could obtain a determination regarding the validity of the redactions. *Id.*

16. Given that Seery willingly conferred with Daugherty on a regular basis and accepted the fruits of Daugherty's improper stalking activities, the State Court Law Firms reasonably wanted to discover what had been disclosed to Seery. *Id.*

17. Ultimately, Ellington and his counsel decided to seek the redacted text messages from Daugherty, the other sender/recipient and a party to the State Court Action for reasons of efficiency and economy. Pettit Dec. ¶ 29; Hurst Dec. ¶ 29. When Daugherty refused, Ellington filed a motion to compel the redacted messages in the State Court Action which the court granted. *Id.*

18. Pursuant to the order granting Ellington's motion to compel, the text messages needed to be produced no later than September 15, 2023. Pettit Dec. ¶ 30, Ex. A-12; Hurst Dec. ¶ 30. In a desperate effort to avoid having to disclose the contents of Seery's communications with Daugherty, Movants improvidently and preemptively filed the Motion on September 13, 2023.

II. THIRD-PARTY DISCOVERY REQUESTS IN THE STATE COURT ACTION DO NOT CONSTITUTE PURSUING A "CLAIM" OR "CAUSE OF ACTION" UNDER THE ORDERS

Movants' conclusory statements that certain third-party discovery requests in the State Court Action constitute pursuit of a "claim" or "cause of action" in violation of the Orders (*see e.g.* Mot. 15 - 16) is belied by the law and has no basis in fact. For example, Movants baldly allege, without any factual support, that "Ellington and [the State Court Law Firms] efforts to obtain discovery in the [State Court Action through third-party subpoenas] to develop potential claims against Highland and Seery constitutes 'pursu[ing] a claim or cause of action' under the Gatekeeper Provision as a matter of law." *Id.* 16. This is simply wrong.

A. Movants' improperly attempt to implicate the Orders to challenge the scope, not the propriety, of discovery in the State Court Action

First, Movants' assertion that the purpose of the requested discovery is "to develop potential claims against Highland and Seery" is rank speculation. The State Court Law Firms have ***never*** threatened such claims.

Next, Seery's willing participation in discovery in the State Court Action by producing "tens of thousands of pages of documents, including text messages between Seery and Daugherty" (Mot. ¶ 6) and agreeing "to testify about certain topics" identified in a deposition subpoena (Mot. ¶ 24) confirms that third-party discovery does not constitute pursuing a claim or cause of action. Had Movants thought Ellington's third-party discovery requests – that Seery willing complied with – violated the Orders, then Movants would have brought their Motion long ago.[9] They did not.

Movants now run to this Court and accuse the State Court Law Firms of Contempt in order to challenge the ***scope of discovery*** in the State Court Action. They do so by unilaterally declaring that the Daugherty Settlement negotiations and certain redacted text messages between Seery and Daugherty are irrelevant to the State Court Action. *See* Mot. ¶ 27. This is a matter for the state court judge. Movants could have sought a protective order or offered to provide the redacted messages *in camera* in the State Court Action. Instead, they chose to file the Motion in an attempt to have this Court inject itself into the State Court Action discovery matters, thereby wrestling control of that discovery from the state court judge and overturning her prior rulings.

Notably, Movants offer to provide this Court the unredacted text messages for *in camera* review, an offer they never made to the state court judge, clearly demonstrating their desire to have this Court determine the scope of discovery in the State Court Action. *See* Mot. n. 10. Thus,

[9] Ellington sought discovery from Seery in the State Court Action on November 2, 2022.

Movants are improperly weaponizing the Orders – which are intended to prevent baseless litigation against Protected Parties – in an attempt to unilaterally thwart relevant discovery in the State Court Action, which should be the sole province of the state court judge.

B. Third-party discovery does not constitute pursuit of a "claim" or "cause of action"

Movants seek to re-write the Orders by providing their own interpretation of what constitutes pursuit of a claim or cause of action. Yet Movants fail to provide any facts nor a plausible explanation demonstrating that discovery in the State Court Action equates to pursuing a claim and their early voluntary participation in discovery undermines their current argument.

Courts have held that third-party discovery does not constitute pursing a "claim" or "cause of action." In *Tetra Tech, Inc. v. NSAA Investments Group, LLC*, the court found that third-party discovery requests served on an indemnified party did not constitute a claim or cause of action and thus did not trigger the indemnifier's duty to defend against "any and all claims … [or] causes of action." No. 02-15-00297-CV, 2016 WL 3364876, at *3-5 (Tex. App.—Fort Worth June 16, 2016, no pet.). The court reasoned that a subpoena "is not the type of relief to which a prevailing litigant would be entitled at the conclusion of the lawsuit" and does not meet Black's Law Dictionary definition of "claim" – "A demand for money, property, or a legal remedy" – because "subpoenas and depositions are not legal remedies." *Id.*[10]

Similarly, in a case involving Highland Capital and Daugherty, the Dallas Court of Appeals affirmed the trial court's finding that a third-party subpoena does not constitute a "legal action" under the Texas Citizens Participation Act because "[a] third-party discovery subpoena

[10] The State Court Law Firms recognize that the terms "claim" or "cause of action" are not defined in the Orders. But, to the extent the Court intended for the Bankruptcy Code's definition of "claim" to apply, the result is the same because the third-party subpoenas in the State Court Action do not seek any right to payment and discovery is not a claim. *See* 11 U.S.C. § 101(5) ("claim means right to payment" or "equitable remedy for breach of performance if such breach gives rise to a right to payment.").

does not seek legal or equitable relief in the traditional sense" and "***subpoenas and depositions are not legal remedies***." *See Dow Jones & Co., Inc. v. Highland Capital Mgmt., L.P.*, 564 S.W.3d 852, 857 (Tex. App.—Dallas 2018, pet. denied) (emphasis added).

Here, Movants, like the movants in *Tetra* and *Dow Jones*, urge this Court to equate third-party discovery with pursuit of a legal remedy. But, the third-party subpoenas in the State Court Action, like the subpoenas in *Tetra* and *Dow Jones*, do not constitute pursuit of a "claim" or "cause of action" under the Orders because Ellington is seeking information solely to support his claims against Daugherty in the State Court Action. There is no evidence that Ellington, much less the State Court Law Firms, have made any demand for money, property, or a legal remedy against any Movant.

The State Court Law Firms' conduct here, while decisively different from this Court's prior finding that Dondero, his counsel, and others violated the Orders, finds support in *In re Highland Capital Mgmt., L.P.*, No. 19-34054-SGJ11, 2021 WL 3418657, at *12 (Bankr. N.D. Tex. Aug. 4, 2021) (Jernigan, C.J.), aff'd in part, vacated in part sub nom. *Charitable DAF Fund LP v. Highland Capital Mgmt. LP*, No. 3:21-CV-01974-X, 2022 WL 4538466 (N.D. Tex. Sept. 28, 2022). As this Court knows, the Contemnors there ***filed a complaint*** in the Northern District of Texas implicating Seery over fifty times and, a week later, filed a motion for leave to amend to add Seery as a defendant in the action. *Id.* at *2. This Court held that '[t]he Alleged Contemnors were pursuing litigation ***when they filed the Seery Motion*** in the District Court (and maybe even as early as ***when they filed the Compliant*** mentioning Mr. Seery 50 times and describing him as a 'potential party.')." *Id.* at *12 (emphasis added). The Contemnors action of filing a complaint and filing a motion for leave to add Seery is drastically different from Ellington seeking third-party discovery to support his claims against only Daugherty in the State

Court Action. And it is axiomatic that third-party subpoena practice does not seek a legal remedy and does not constitute the pursuit of a claim or cause of action. *See Tetra Tech, Inc. v. NSAA Investments Group, LLC*, 2016 WL 3364876, at *3-5; *see Dow Jones & Co., Inc. v. Highland Capital Mgmt., L.P.*, 564 S.W.3d at 857.

Movants' cite *Charitable DAF* (Mot. ¶ 37(c)) but fail to acknowledge the District Court's clarification that "[r]equesting leave to amend differs from legal research or client communications because 'a party who moves to amend usually does intend to amend.'" *Charitable DAF Fund LP v. Highland Capital Mgmt. LP*, 2022 WL 4538466, at *3 (internal citation omitted). Judge Starr indicated that investigatory actions (*i.e.* research, discovery, conferring with a client) do not constitute pursuit of a claim or cause of action. *Id.*

C. The State Court Law Firms have not and do not anticipate ever pursuing claims or causes of action against Movants on their own behalf and would never do so without first seeking this Court's permission

Movants' allegations that third-party discovery subpoenas directed to Seery and Judge Nelms in the State Court Action are vehicles to pursue claims against Protected Parties are unsupported and purely speculative. Movants have not (and cannot) present a single shred of evidence showing the State Court Law Firms contemplate pursuing a claim or cause of action against them on their own behalf. Movants well know that the State Court Law Firms have never acted in other than a representative capacity and thus they should not have been named in the Motion.

First, no Movant is a named party in the State Court Action, nor involved in any other proceeding where the State Court Law Firms are parties or otherwise involved. Movants could secure the relief they seek had they only named Ellington in the Motion; Movants' naming of the State Court Law Firms is an obvious litigation tactic designed to intimidate the State Court Law Firms from pursuing discovery which Movants wish to avoid.

Second, Movants' assertions that Ellington is using the State Court Action to aid Dondero or Dugaboy (Mot. ¶¶ 7, 23) are baseless and speculative. Notably, the proceeding wherein Movants accuse the State Court Law Firms of aiding Dugaboy occurred in this Court which clearly was not a violation of the Orders. The State Court Law Firms were also unaware of Dugaboy's motion to compel imaging of Seery's iPhone until ***Movants' filed the Motion*** and there is no allegation nor evidence that the State Court Law Firms provided any State Court Action discovery to Dugaboy or Dondero. *See* Pettit Dec. ¶ 31, Hurst Dec. ¶ 31. In fact, Ms. Pettit and Mr. Hurst have never spoken to Dondero about this matter. *See* Pettit Dec. ¶ 32, Hurst Dec. ¶ 32. The State Court Law Firms, as they are obligated to do, shared discovery in the State Court Action with Ellington only. If Seery wanted to prevent dissemination of certain discovery he produced, then he should have sought a protective order in the State Court Action. He did not. Finally, Movants' notion that Ellington seeks discovery to use in the October global mediation (Mot. ¶ 7) is objectively wrong; that mediation already occurred.

Third, Judge Nelms is not a Movant nor is he represented by Movants' counsel. Thus, Movants' repeated reliance on discovery involving Judge Nelms as evidence of contempt is suspect and has no relevance here. In any event, Movants' note that Judge Nelms' counsel indicated "that Judge Nelms 'was not involved in and has no knowledge of, the matters at issue in' the Stalking Action" and offered a declaration of Judge Nelms to that effect. Mot. ¶ 28. The State Court Law Firms consider this to be a key fact in the State Court Action, but fear a declaration would be challenged as hearsay at trial. Therefore, Ellington seeks Judge Nelms' deposition to secure his testimony in admissible form.[11]

[11] Likewise, John Dubel is not a Movant, neither Ellington nor the State Court Law Firms are pursuing claims against him, and there is a similar justification for seeking his deposition.

Finally, the State Court Law Firms represent to this Court that they have no intention of pursuing any claims or causes of action against any Movant on their own behalf or anyone else's behalf. *See* Pettit Dec. ¶ 32, Hurst Dec. ¶ 32. Should that change, the State Court Law Firms would first come to this Court. *See id.*

D. Courts, including this Court, hold that Rule 202 Petitions – which, unlike third-party discovery, contemplate potential legal relief – don't constitute pursuit of a claim or cause of action

Texas Rule of Civil Procedure 202 provides that "[a] person may petition the court for an order authorizing the taking of a deposition … to investigate a potential claim or suit." TEX. R. CIV. P. 202.1. Thus, Rule 202 contemplates a party investigating a claim (*i.e.* preparing for suit) which is decisively different from merely seeking third-party discovery to support claims against a ***different*** party.

Notwithstanding, Courts have consistently refused to find that a Rule 202 petition constitutes a "claim" or "cause of action." For instance, "[c]ourts hold consistently that a Rule 202 petition is ***a request for discovery, not a claim, demand, or cause of action***." *RJ Mach. Co., Inc. v. Canada Pipeline Accessories Co. Ltd*., No. A-13-CA-579-SS, 2015 WL 5139295, at *5 (W.D. Tex. Aug. 31, 2015) (emphasis added). A Rule 202 petition is "ultimately a petition that asserts ***no substantive claim or cause of action upon which relief can be granted.*** A successful rule 202 petitioner simply acquires the right to obtain discovery – discovery that may or may not lead to a claim or cause of action." *Id.* (internal quotation omitted) (emphasis added). Thus, the *RJ Mach.* court found that the defendant's Rule 202 petition did not violate a covenant "to refrain from making any claim(s) or demand(s) against [plaintiff]" because the defendant "[was] investigating potential causes of action through preliminary discovery." *Id.* at *5-6.

This Court has similarly held that a Rule 202 petition is not a removable "claim" or "civil action." *See In re Highland Capital Mgmt., L.P.*, No. 19-34054-SGJ11, 2022 WL 38310, at *9 (Bankr. N.D. Tex. Jan. 4, 2022) (Jernigan, C.J.).

If a Rule 202 petition – which contemplates potential legal action against a party – does not qualify as a claim, demand, or cause of action, then a discovery subpoena – which does not contemplate legal action against the third-party – cannot constitute a claim or cause of action either. Movants' assertions to the contrary are simply wrong.

E. Movants fail to present evidence – much less clear and convincing evidence – that the State Court Law Firms seek to bring claims against any Movant

Movants' recognize that a civil contempt finding requires a showing, by clear and convincing evidence, that among other things, the respondent failed to comply with the court's order. Mot. ¶ 41 (citing *In re Highland Capital Mgmt., L.P.*, 2021 WL 3418657, at *12). There is no evidence – much less clear and convincing evidence – showing that the State Court Law Firms have pursued a claim or cause of action against any Movant in violation of the Court's Orders.

The United States Supreme Court, addressing an analogous situation, held that "a court may hold a creditor in civil contempt for violating a discharge order if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct." *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1799, 204 L. Ed. 2d 129 (2019) (emphasis in original). Stated differently, "a court [may] impose civil sanctions when there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful under the discharge order." *Id.* at 1801.

Movants fail to present any evidence, let alone clear and convincing evidence, that seeking third-party discovery on behalf of Ellington in the State Court Action objectively violated the Orders. Contrarily, and for all the reasons articulated above, there is an objectively

reasonable basis for the State Court Law Firms concluding that third-party discovery in the State Court Action does not constitute pursuit of a claim or cause of action under the Orders, not the least of which is Seery's earlier voluntary production of discovery without objection or requiring this Court's prior approval. Therefore, fair ground for doubt exists as to whether the Orders prohibited state court discovery absent this Court's permission. Thus, under *Taggart*, the State Court Law Firms' seeking discovery from Movants on behalf of Ellington does not support a contempt finding.

This is especially so given the legitimate purpose of the requested discovery – to test Daugherty's credibility in light of his sworn testimony as to why he stalked Ellington and his family. Such discovery is also relevant to actual and exemplary damages as it likely will show that Daugherty's stalking was motivated by malice and potential financial reward which demonstrates bad faith. Seery chose to confer with Daugherty and readily accepted the fruits of stalking, but now wants to avoid discovery of those communications. One can only wonder what is so sensitive in the communications regarding the stalking allegations that would cause Seery to accuse the State Court Law Firms of contempt in order to avoid disclosure?

Finally, Movants' request for this Court to hold the State Court Law Firms in contempt under 11 U.S.C. § 105(a) is unwarranted. As this Court explained, "a decision to invoke the court's inherent power to sanction requires a finding that bad faith or willful abuse of the judicial process occurred [and] [t]he finding of bad faith must be supported by clear and convincing proof." *In re Correra,* 589 B.R. 76, 125 (Bankr. N.D. Tex. 2018) (Jernigan, C.J.) (imposing sanctions on the debtor and the debtor's assistant for the intentional destruction of evidence). The conduct Movants complain of here – the State Court Law Firms representing their client by seeking third-party discovery in the State Court Action – is a far cry from conduct that warrants

sanctions (*i.e.* intentional spoliation of evidence). Movants have not (and cannot) direct this Court to any evidence – much less clear and convincing evidence – remotely suggesting that the State Court Law Firms acted willfully or in bad faith to violate the Orders by seeking third-party discovery for the State Court Action.

CONCLUSION AND PRAYER

For all the foregoing reasons, the Motion should be stricken and the relief requested therein denied.

Respectfully submitted,

/s/ James J. Lee

James J. Lee
State Bar No. 12074550
jimlee@velaw.com
Michael C. Lee
State Bar No. 24109461
mlee@velaw.com
VINSON & ELKINS LLP
2001 Ross Avenue, Suite 3900
Dallas, Texas 75201
Telephone: (214) 220-7700

Attorneys for Lynn Pinker Hurst & Schwegmann, LLP and The Pettit Law Firm

CERTIFICATE OF CONFERENCE

I certify that on October 23, 2023, I emailed counsel for Movants, John A. Morris and Josh S. Levy, regarding Movants' position on the State Court Law Firms' Motion to Strike. Highland and the Trust's counsel, John A. Morris, indicated Highland and the Trust are opposed. At the time of filing, Mr. Seery's counsel has not responded or indicated a position, therefore I assume Mr. Seery will oppose the Motion to Strike.

/s/ James J. Lee
James J. Lee

CERTIFICATE OF SERVICE

I certify that on October 24, 2023, a true and correct copy of the foregoing instrument was served on all counsel of record using the Court's electronic filing system.

/s/ James J. Lee
James J. Lee

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	CASE NO. 19-34054-SGJ11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	CHAPTER 11
	§	
Reorganized Debtor	§	

ORDER GRANTING LYNN PINKER AND THE PETTIT FIRM'S MOTION TO STRIKE AND DENYING MOVANTS' MOTION FOR CONTEMPT

After considering the motion of Lynn Pinker Hurst & Schwegmann, LLP ("Lynn Pinker") and the Pettit Law Firm ("Pettit Firm") (collectively, the "State Court Law Firms") to strike ("Motion to Strike") Highland Capital Management, L.P., Highland Claimant Trust , and James P. Seery, Jr.'s (collectively, "Movants") motion (the "Motion") for an order requiring Scott Byron Ellington ("Ellington") and his counsel Lynn Pinker and the Pettit Firm to show cause why Ellington and the State Court Law Firms should not be held in contempt for violating the

Gatekeeper Provision and Gatekeeper Orders and the State Court Law Firms' response subject thereto, the Court finds that, after consideration of the pleadings, evidence, and argument of counsel, the Motion to Strike is well founded and that the Motion is unfounded and without merit and ORDERS that for all the reasons stated on the record:

1. The State Court Law Firms' Motion to Strike is **GRANTED**; and

2. The Movants' Motion is **DENIED.**

End of Order # #

Order Prepared By:

James J. Lee (Attorney Responsible for Order)
State Bar No. 12074550
jimlee@velaw.com
Michael C. Lee
State Bar No. 24109461
mlee@velaw.com
VINSON & ELKINS LLP
2001 Ross Avenue, Suite 3900
Dallas, Texas 75201
Telephone: (214) 220-7700

Attorneys for Lynn Pinker Hurst & Schwegmann, LLP and The Pettit Law Firm

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	CASE NO. 19-34054-SGJ11
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,[1]	§	CHAPTER 11
	§	
Reorganized Debtor	§	

DECLARATION OF JULIE PETTIT

I, Julie Pettit, declare under penalty of perjury as follows:

A. Introduction.

1. My name is Julie Pettit. I am over eighteen (18) years of age, I am of sound mind, I never been convicted of a felony, I am capable of making this declaration, and I am fully competent to testify unto the matters stated herein.

2. I am able to swear, and I hereby do swear, that the facts stated in this declaration are true and correct and are within my personal knowledge.

3. I am an attorney of record for Scott Byron Ellington ("Ellington") in the lawsuit styled *Scott Byron Ellington v. Patrick Daugherty*, Cause No. DC-22-00304, pending in the 101st Judicial District Court in Dallas County, Texas (the "State Court Action").

4. Though I am counsel for Ellington in the State Court Action, I have never made an appearance in any capacity in the bankruptcy matter styled *In re: Highland Capital Management, L.P.*, Case No. 19-34054-sgj11, pending in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Highland Bankruptcy").

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

5. I am in receipt of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s (collectively, the "Movants") motion for an order to show cause (Doc. 3910) (the "Motion"). I learned of Movants' intent to file the Motion on September 13, 2023, the day it was filed. Specifically, at 11:47 a.m. that day, I received an email from Joshua S. Levy, counsel for Seery, who advised of the imminent filing of the Motion. This was the first correspondence I received from Highland's or Seery's counsel since late July 2023. While the subject line of the email was "meet and confer," Levy stated that his email was merely a "courtesy," and then refused to send me a draft of the Motion so I could meaningfully confer regarding his client's complaints. A true and correct copy of the September 13, 2023 email is attached hereto as **Exhibit A-1.**

6. The Motion contains misstatements of fact, omits other important facts, and presents a misleading depiction of the journey that the State Court Action has taken to arrive at the point where Ellington is now seeking discovery from Seery, among others.

B. Ellington sues Daugherty in the State Court Action for civil stalking and invasion of privacy.

7. On January 11, 2022, Ellington filed his original petition and application for temporary restraining order in the 101st Judicial District Court in Dallas County, Texas. A true and correct copy of the petition is filed at Doc. 3912-2. As detailed in the petition, Ellington alleged that Patrick Daugherty ("Daugherty") engaged in a campaign of dangerous harassment against him and his family seemingly as an escalation from the previous decade of litigation between Daugherty and either Ellington personally or parties that Ellington was aligned with, including a 2019 lawsuit filed by Daugherty in Delaware Chancery Court. Indeed, while the full extent of the harassment is unknown, Ellington, though his security expert, documented no less than 143 instances where Daugherty ***personally*** appeared outside Ellington's residence, his office, or the

residences of his family between February and December of 2021. Based on the facts either known or reasonably believed at the time the petition was filed, Ellington asserted claims ***solely*** against Daugherty for civil stalking and invasion of privacy.

8. On January 12, 2022, the day after Ellington filed the petition, the Texas state district court signed and entered a temporary restraining order ("TRO") prohibiting Daugherty from being within 500 hundred feet of Ellington or his family. A true and correct copy of the TRO is attached hereto as **Exhibit A-2**.

C. Daugherty removed the State Court Action to this Court in an unsuccessful attempt to connect the lawsuit with the Highland Bankruptcy.

9. On January 18, 2022, Daugherty removed the State Court Action to this Court. On January 25, 2022, Ellington filed a motion to remand in this Court. Ross & Smith, PC and Baker & McKenzie LLP represented Ellington in this Court on his motion to remand. Neither The Pettit Law Firm nor Lynn Pinker Hurst Schwegmann, LLP represented Ellington in connection with the remand.

10. On March 29, 2022, the Court held a hearing on Ellington's motion to remand. As previously mentioned, I did not represent Ellington in connection with any proceedings in this Court. Accordingly, I was not present at the hearing. However, Baker & McKenzie LLP and Ross Smith, P.C. subsequently provided me a copy of the hearing transcript. A true and correct copy of the transcript given to me is attached hereto as **Exhibit A-3**.

11. On April 11, 2022, the Court signed and entered an order remanding the lawsuit back to the state court.

D. After remand of the State Court Action, the parties engaged in discovery revealing that Daugherty sent documentation of his stalking to a number of third-parties, including Seery and several members of the creditors' committee for the Highland Bankruptcy.

12. When the State Court Action resumed in April of 2022, the parties fought over several procedural issues. Nonetheless, Ellington's application for temporary injunction was eventually set for hearing on September 1, 2022.

13. In advance of the temporary injunction hearing, Ellington propounded written discovery requests on Daugherty, including requests for production, and then issued a deposition notice for July 14, 2022.

14. Ellington served his first requests for production to Daugherty on May 15, 2022. A true and correct copy of these requests are attached as **Exhibit A-4**. Ellington served eight (8) requests for production, including requests for any communications referencing the materials created by the stalking (defined in the requests as the "Ellington Recordings") as well as any communications identifying others who either knew of or were involved in the stalking. *See* Ex. A-4 at RFP Nos. 2, 8. The requests did not specifically identify Seery or any other individual involved in the Highland Bankruptcy because at the time of service, we had no reason to believe that such individuals received materials Daugherty obtained and compiled in connection with the stalking.

15. In response to the requests for production, Daugherty produced what appeared to be fragmented text message conversations with Seery and others connected to the stalking. A true and correct copy of the first text messages produced on or about July 11, 2022 by Daugherty are attached hereto as **Exhibit A-5.**

16. During his deposition, Daugherty did not deny that he appeared uninvited at Ellington's home, workplace, or the homes of Ellington's family. Instead, Daugherty claimed that he engaged in these activities to investigate Ellington's assets that was somehow connected to Daugherty's claims against Ellington in a Delaware lawsuit. A true and correct copy of pertinent excerpts from Daugherty's deposition is attached hereto as **Exhibit A-6.** The following exchange during Daugherty's deposition neatly demonstrates his stated rationale for his actions:

> Q. (By Mr. Hurst) Okay. And what you were doing, whether you agree that it was 140-something times at least or not, you're saying that what you were doing is a, quote, investigation?
>
> A. My actions were purely investigatory.
>
> Q. And investigatory for what reason?
>
> A. To inventory, identify and discover assets of Scott Ellington's.
>
> Q. Why is that important to you?
>
> A. Because he has a history of transferring assets out of entities where I owned or had an economic interest or other entities like Highland Capital.
>
> Q. Okay. And –
>
> A. And its affiliates.
>
> Q. Okay. And so what were you doing in this investigation, if you will, in the context of?
>
> A. I don't understand your question.
>
> Q. Why were you investigating his assets?
>
> A. I just told you.
>
> Q. You told me that you're concerned he was going to transfer assets. But why is that important to you?
>
> A. I had litigation against him in Delaware as a defendant.

See Ex. A-6 at 56:23-57:22.

17. However, during his deposition, Daugherty disclosed that he sent the information he gathered from the stalking activities not to individuals connected to the Delaware lawsuit – but to individuals that I understand are connected with the *Highland Bankruptcy*, including Seery:

> Q. Do you have a compilation, as you just testified to a minute ago?
>
> A. Of the data?
>
> Q. Yes.
>
> A. In various forms, yes.
>
> Q. Where is that?
>
> A. I drafted emails that included that information.
>
> Q. Have you provided those to us?
>
> A. No.
>
> Q. Have you provided the compilations?
>
> A. No.
>
> Q. To whom did you provide these emails and compilations?
>
> A. To the creditors' committee.
>
> Q. Who in particular did you address it to? Sorry.
>
> A. Can I finish? Yeah, answer your question.
>
> MS. DANIELS: Allow him to answer your questions before you interrupt him.
>
> A. ***To the creditors' committee for the Highland Capital bankruptcy***.
>
> To ***Matt Clemente***, who is counsel for the creditors' committee.
>
> To ***Andrew Clubok***, who is a representative of UBS on the creditors' committee.

> To – I can't say for sure. I might have emailed everybody on the committee. I don't know. I generally – I don't know if I included Josh Terry or not. I don't know if I included everybody.
>
> And then to ***Jim Seery***, who is the CEO of Highland.
>
> To – what's the guy's name – the litigation trustee on the Highland estate. What was his name? It's ***Marc Something, Kirshner***.
>
> So ***various members of the Quinn Emanuel legal team***.
>
> Q. (By Mr. Hurst) Who else?
>
> A. There may be more. I just don't recall off the top of my head.

See Ex. A-6 at 59:21-61:10 (emphasis added).

18. According to Daugherty, Seery and the creditors' committee "appreciated" the information:

> Q. Did anybody tell you that they approved of your investigation?
>
> A. I wouldn't use that word.
>
> Q. Is there a word that you would use instead of approved of your so-called investigation?
>
> MS. DANIELS: Objection, form.
>
> A. Appreciated.
>
> Q. (By Mr. Hurst) Who would you say appreciated your so-called investigation of Scott Ellington and perhaps others?
>
> MS. DANIELS: Objection, form.
>
> A. Of the assets, right; that's what I was doing.
>
> People, representatives of the creditors' committee, Marc Kirschner, the litigation trustee, Quinn Emanuel lawyers, the Sidley lawyers, Seery himself. There may be others.

See Ex. A-6 at 104:11-105:2.

19. Daugherty testified that he "investigated" Ellington for the Delaware litigation, but admitted to distributing the same information to the entire creditors' committee in the *Highland*

Bankruptcy. I understand that the Delaware lawsuit against Ellington and the Highland Bankruptcy are not connected, so it is unclear why Daugherty distributed this information to the creditors' committee if his investigation was to look into assets connected with the Delaware litigation. In fact, when Michael Hurst, my co-counsel in the State Court Action, attempted to ask follow-up questions about this inconsistency in the deposition, Daugherty's counsel objected and instructed Daugherty not to answer. *See* Ex. A-6 at 61:20-63:20.

E. At the hearing on Ellington's application for temporary injunction, Daugherty again referenced the Highland Bankruptcy – this time as a *defense* to Ellington's claims for stalking and invasion of privacy.

20. Ellington's application for temporary injunction hearing proceeded as noticed on September 1, 2022. During opening statements, Daugherty's counsel, the same lawyer who argued the motion to remand in the bankruptcy court, gave a lengthy presentation about a supposed scheme to hide assets from Highland and the bankruptcy court. A true and correct excerpt of opening statements is attached hereto as **Exhibit A-7**. The following excerpt illustrates Daugherty's heavy emphasis on events relating to the Highland Bankruptcy during opening statement:

> So why is that important? Well, in addition to that, as part of that lawsuit, Mr. Daugherty was engaging in discovery, and at the same time Highland had filed bankruptcy. In early 2021, Mr. Dondero testified in the Highland bankruptcy case that both he and Mr. Ellington had destroyed their cell phones. Well, that was problematic because at the time Mr. Ellington and Mr. Dondero were still parties, and are still parties, in Mr. Daugherty's Delaware action, and they were subject to discovery from those phones under the purview of a special master. So they engaged in the spoliation.
>
> ***Additionally, the information on those phones would seemingly be relevant to claims that were going on in the Highland bankruptcy that the creditor's committee was bringing, and Mr. Daugherty was a creditor of Highland at the time.*** So Mr. Daugherty at that point had determined that the information that he was trying to get in discovery wasn't coming to him, and he believed

he needed to conduct further investigation on his own of Mr. Ellington, including what Mr. Ellington's assets were that might be available to satisfy Mr. Daugherty's underlying judgment.

***

…. But why did the investigation matter? Well, based on Mr. Daugherty's surveillance of Mr. Ellington's office and his house and being able to get license plates of vehicles that were parked there, he eventually discovered a web of various entities that Mr. Ellington and Mr. Dondero were using to siphon assets from the reach of creditors, both Mr. Daugherty and then ***the Court-appointed creditor's committee*** in the Highland bankruptcy.

So let's walk through one example of this. The first is that there was a lawsuit involving a Highland affiliate and UBS in which UBS is paying a substantial judgment, nine figures initially that grew to a billion dollars, and Mr. Ellington came up with the idea of setting up a dummy entity in the Cayman Islands that was going to provide an after-the-event insurance policy that it sold to the Highland affiliate for less than the face value of the assets which the Highland affiliate actually owned. In other words, it was a fraudulent transfer, and all of this was Mr. Ellington's idea as he admitted in the Highland bankruptcy.

As part of this scheme, Mr. Ellington and Mr. Dondero set up all of these entities to run this through, including at the top you'll see there's an entity called SAS Holdings SPV Limited. That's important here because you're going to hear some testimony about it later on today that it has implications in this lawsuit itself.

Well, not only did they use these entities to create these fraudulent transfers, Mr. Ellington, Mr. Dondero, Mr. Leventon, who, by the way, is on the call listening to this hearing and is apparently Mr. Ellington's counsel, then actively concealed the existence of their scheme from ***new management of Highland that had taken over in the course of the Highland bankruptcy, and they also concealed it from the bankruptcy court, and they concealed it from UBS.*** In fact, Mr. Ellington lied about it in e-mails saying these were just ghost funds that had no assets whatsoever which actually wasn't the case.

See Ex. A-7 at 22:5-24:23 (emphasis added).

21. When the state court judge questioned the relevance of any of those allegations regarding the Highland Bankruptcy, counsel stated:

> MR YORK: Your Honor, the reason this is relevant goes to the purpose and the intent for why Mr. Daugherty engaged in the investigation activities he engaged in; not because he was attempting to intimidate, harass or threaten Mr. Ellington.

See Ex. A-7 at 26:1-5. In other words, Daugherty had interjected the parties' actions relating to the Highland Bankruptcy as a defense to Ellington's state law claims for civil stalking and invasion of privacy.

22. The state court granted Ellington's application for temporary injunction and ordered Daugherty to stay away from Ellington and his family. A true and correct copy of the Temporary Injunction order is attached hereto as **Exhibit A-8**.

F. After the state court issued the temporary injunction, Ellington refocused on discovery and served non-party discovery subpoenas to better understand the facts and circumstances of the stalking.

23. After the hearing, Ellington followed-up on the information learned during Daugherty's deposition by serving targeted discovery requests to obtain the communications Daugherty had with certain individuals, including Seery, regarding his "investigation" of Ellington. Ellington served the following discovery:

a. On September 8, 2022, Ellington served his third requests for production, which contained specific requests for Daugherty to produce his communications with lawyers at Sidley Austin, lawyers at Quinn Emanuel, lawyers at Latham & Watkins, and lawyers at Pachulski Stang Ziehl & Jones, among many others.

b. On October 6, 2022, Ellington served a notice[2] of intent to serve a non-party discovery subpoena on John Dubel.

[2] Per Texas Rule of Civil Procedure 205.2, a party must serve notice of intent to serve a non-party discovery subpoena at least ten (10) days before serving the subpoena. I am including in this declaration references to the notices as opposed to the actual subpoenas merely to create an accurate timeline of when Ellington first attempted to formally request documents from certain non-parties by use of the discovery process.

c. On October 6, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Glacier Lake Partners, LP.

d. On October 6, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on John Morris.

e. On October 6, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Matthew McGraner.

f. On October 6, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Matthew Clemente.

g. On October 6, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Paige Montgomery.

h. On October 6, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Marc Kirschner.

i. On October 7, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Andrew Clubok.

j. On October 19, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Eric Felton.

k. On October 19, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on the Honorable Russel Nelms.

l. On October 19, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Carl Moore.

m. On October 19, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Joshua Terry.

n. On October 20, 2022, Ellington served a notice of intent to serve a non-party Michael Colvin.

24. The Motion references the subpoena served on Judge Nelms. I was party to a lengthy email exchange with Judge Nelms' counsel regarding the subpoena. A true and correct copy of that email thread is attached hereto as **Exhibit A-9**. Unlike Seery, Judge Nelms disclaimed any communications with Daugherty. However, as I explained to Judge Nelms' counsel, we had a good faith basis to believe Judge Nelms had knowledge of facts and circumstances relating to the

Daugherty Settlement. Discovery is still ongoing, but based on information produced thus far, we would like to investigate Daugherty's stalking of Ellington as a possible *quid-pro-quo* in exchange for a more beneficial settlement with Highland. Judge Nelms apparent lack of knowledge regarding the stalking seems curious and raises questions regarding Daugherty's motivation behind the decision to omit a member of the creditors' committee. Indeed, the timeline as we know it would support that allegation as after Daugherty transmitted the information he gathered on Ellington to Seery and members of the creditors committee, it is my understanding that he ultimately received a settlement that was materially better than what had been previously agreed to.

G. Seery substantively responded to the discovery subpoena served on him, produced documents, and agreed to a deposition to take place on July 31, 2023.

25. Seery received and served formal responses and objections to Ellington's discovery subpoena in the State Court Action first on December 9, 2022, and then served amended responses and objections on December 23, 2022. Seery ultimately produced documents on January 3, 2023. Seery never filed or served any objections to the aforementioned discovery on the basis that Ellington (or Lynn Pinker and the Pettit Firm) failed to obtain prior authorization from the Highland Bankruptcy Court.

26. In June of 2023, I along with my co-counsel, Michael Hurst, began a dialogue with Seery's counsel to schedule his deposition. A true and correct copy of this email chain is attached hereto as **Exhibit A-10**. After several cooperative emails and phone calls, we reached agreement with Seery's counsel regarding the deposition including date and time, narrowing of the topics, attendance of third parties (*i.e.*, John Morris), and Seery's supplemental production in advance of the deposition. As a result of the agreements above, Ellington issued an amended subpoena (the negotiated deposition topics were attached thereto as Exhibit A) and served via email on Seery's

counsel. A true and correct copy of the amended subpoena is attached hereto as **Exhibit A-11**. Seery's counsel accepted service of the subpoena via email and then sent a reply email memorializing the parties' agreements:

On Thu, Jul 13, 2023 at 9:52 AM Levy, Joshua S. <JLevy@willkie.com> wrote:

> Thanks Laura, we agree to accept service. Thanks also to Michael and Julie for the productive call on Jim Seery's deposition. To summarize where we landed:
>
> - **Time Limits.** We agreed to limit the deposition to 4 hours and you'll endeavor to keep it keep it shorter if possible.
> - **Attendance.** John Morris can attend the deposition and can instruct the witness not to answer questions on privilege grounds or as he deems appropriate under the Bankruptcy Court's Gatekeeper Orders. You reserved your right to challenge those instruction in a motion after the deposition.
> - **Topics.** We agreed to limit the deposition to the topics noticed. We also agreed to exchange objections to the topics by email and you reserved the right to challenge those objections in a motion after the deposition. Here are our objections:
>   - **Topic No. 6.** We object to Topic No. 6 to the extent it seeks testimony regarding "entities affiliated with Ellington" on the grounds that it is overly broad, not relevant to the claims and defenses at issue, and violates the Bankruptcy Court's Gatekeeper Orders.
>   - **Topic No. 7.** We object to Topic No. 7 on the grounds that it is overly broad, not relevant to the claims and defenses at issue, and violates the Bankruptcy Court's Gatekeeper Orders.
>   - **Topic No. 9.** We object to Topic No. 9 to the extent it seeks testimony regarding "Mr. Daugherty's Proof of Claim in the Highland bankruptcy" on the grounds that it is overly broad, not relevant to the claims and defenses at issue, and violates the Bankruptcy Court's Gatekeeper Orders.
> - **Logistics.** We agreed to reschedule the deposition for the week of August 1 and to conduct the deposition remotely. We are checking with our client about specific days and times. Once we have the deposition scheduled, please send us links for joining the deposition, exhibit sharing, and realtime feeds.

In addition, our e-discovery vendor has run into technical issues with our supplemental production. We are pressing them to make the production this week. It's a small production, but we want to be upfront about the timing. We'll let you know if this timing changes.

Regards,

Josh

See Ex. A-10.

27. The amended subpoena's negotiated deposition topics are excerpted below:

SCHEDULE A

DEPOSITION TOPICS

1. Any documents and/or communications produced by James Seery in response to the Subpoena *Duces Tecum* served on Mr. Seery c/o Joshua S. Levy, Esq., in or around November 2022.

2. Mr. Seery's personal knowledge of the allegations asserted in the Action.

3. Mr. Seery's personal knowledge of the relationship between the Defendant in the Action, Patrick Daugherty ("Daugherty"), and the Plaintiff, Scott Byron Ellington ("Ellington").

4. Mr. Seery's receipt of photos, videos, data, or other information from Daugherty relating to Greg Brandstatter.

5. Mr. Seery's receipt of photos, videos, data, or other information from Daugherty relating to Sarah Bell (formerly Goldsmith).

6. Mr. Seery's receipt of communications, emails, photos, videos, data, or other information from Daugherty relating to Ellington or entities affiliated with Ellington.

7. Any meetings or communications between any representative of the Highland Bankruptcy estate and Mr. Daugherty and/or his representatives related in any way to Ellington.

8. Any instructions or approval, whether explicit or tacit, provided to Mr. Daugherty with respect to Mr. Daugherty's so-called "investigation" of Mr. Ellington or the stalking allegations in this case.

9. Any consideration provided to Daugherty with respect to Mr. Daugherty's so-called "investigation" of Mr. Ellington or the stalking in this case, including, but not limited to, the treatment of Mr. Daugherty's Proof of Claim in the Highland bankruptcy.

See Ex. A-11.

28. On July 14, 2023, Seery made a supplemental production that included some of Seery's text messages with Daugherty. Despite receiving some of the text messages from Daugherty previously, some of the text messages were directly responsive to the prior requests but being produced for the first time. Further, Seery redacted several messages in their entirety. These developments prompted Ellington to postpone Seery's deposition until we could either obtain the unredacted text messages or secure a ruling in the State Court Action regarding the same.

29. We believed that because Daugherty was a party to the redacted text messages, he possessed the same. Ellington believed seeking the text messages from Daugherty – a party to the State Court Action – was more logical and efficient as opposed to seeking the text messages from non-party Seery in New York. Daugherty refused to voluntarily produce the messages and Ellington sought to compel their production. On August 21, 2023, Ellington filed "Plaintiff's Fourth Motion to Compel" seeking an order in the State Court Action compelling that the text messages be disclosed. The motion was then set for hearing on September 1, 2023.

30. On September 1, 2023, the state court granted Ellington's Fourth Motion to Compel. A true and correct copy of the order is attached hereto as **Exhibit A-12**.

H. I did not pass along communications and documents to the Dugaboy Investment Trust.

31. After reviewing the Motion, I understand Movants allege that the Dugaboy Investment Trust supported its motion for a forensic examination of Seery's phone with discovery related communications involving myself and others in the State Court Action. I did not disclose those communications to Dugaboy or its counsel, nor was I even aware Dugaboy sought such relief or that those communications had been provided to Dugaboy until I reviewed the Motion.

32. I want to make the following clear—

a. I am not aware of any plans to pursue any claim in any forum against the Movants;

b. If I ever became aware of any plans to pursue any claim in any forum against the Movants, I would not be involved in any such proceeding unless the Court granted leave under the Gatekeeper Provision and Orders; and

c. I have not coordinated in any way with James Dondero as it relates to the stalking litigation or the Highland Bankruptcy. As far as I can recall, I have

never even had a conversation, exchanged an email, or exchanged a text with James Dondero.

FURTHER DECLARANT SAYETH NOT.

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

Executed on this 23 day of October, 2023.

Julie Pettit

Julie Pettit

EXHIBIT A-1

[redacted]

---------- Forwarded message ---------
From: **Stancil, Mark** <MStancil@willkie.com>
Date: Wed, Sep 13, 2023 at 3:40 PM
Subject: RE: Meet and Confer
To: Julie Pettit <jpettit@pettitfirm.com>, Levy, Joshua S. <JLevy@willkie.com>
Cc: mhurst@lynnllp.com <mhurst@lynnllp.com>, John A. Morris <jmorris@pszjlaw.com>, Brennan, John L. <JBrennan@willkie.com>

Julie,

Local Rule 7007-1(a) requires that "an attorney for the moving party shall confer with an attorney for each party affected by the requested relief to determine whether the motion is opposed." We have more than fulfilled that obligation and are not required to provide you with a copy of the motion before filing.

We agreed to a deposition of Mr. Seery only as to topics that were ***actually*** germane to the stalking claims. You will recall that we disagreed quite pointedly about many of your proposed topics, such as those suggesting that treatment of Mr. Daugherty's claim in the bankruptcy case was somehow improper. You reserved the right to ask those questions. We reserved the right to instruct Mr. Seery not to answer on the grounds*, inter alia*, that they violated the Gatekeeper provisions. You demanded that Mr. Seery produce text messages that were not germane to the stalking allegations. When we refused—again under the Gatekeeper provisions—you postponed Mr. Seery's deposition so that you could file a motion to compel. I won't speculate here why you have yet to do so, but I note the conspicuous absence in your email of any statement that you do not still claim a right to and intend to seek that information.

Even if you had abandoned your improper discovery demands against Mr. Seery (which you have not), you do not deny that you are making the same demands to former Highland personnel, such as Judge Nelms and Mr. Dubel. Seeking the same improper information from other parties is no less a violation of the Gatekeeper provisions as to Mr. Seery. You do not deny that you are seeking to develop information that Mr. Seery and Highland somehow acted improperly in the bankruptcy case. That is, as we have repeatedly explained, a clear violation of the Gatekeeper provisions and we are entitled to seek relief from the court.

If you think we are wrong about any or all of the above, you will have the opportunity to present your arguments to the court. We have more than fulfilled our obligations to meet and confer and will commence filing shortly.

Mark T. Stancil
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1133 | Fax: +1 202 303 2000
mstancil@willkie.com | vCard | www.willkie.com bio

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Wednesday, September 13, 2023 4:14 PM
To: Levy, Joshua S. <JLevy@willkie.com>
Cc: mhurst@lynnllp.com; Morris, Daniel L. <DMorris@willkie.com>; Brennan, John L. <JBrennan@willkie.com>; Stancil, Mark <MStancil@willkie.com>
Subject: Re: Meet and Confer

***** EXTERNAL EMAIL *****

Josh,

It seems ridiculous that you would need to file this motion immediately without giving us the chance to review. As you are aware, there is currently *no* pending deposition date for Mr. Seery, there are *no* additional discovery requests that have been served on Mr. Seery, and there are absolutely *no* motions or actions pending against Mr. Seery.

In fact, Mr. Seery had previously *agreed* to a deposition, which Mr. Ellington then voluntarily cancelled. And as you know, Mr. Ellington has taken no further action with respect to Mr. Seery since that deposition was cancelled and there has been no communication between you and I since July.

We obviously haven't seen your motion since you refuse to allow us to see it, but I am unable to see how whatever forthcoming motion you intend to file is even ripe at this time.

If you truly want to resolve the issues, I ask that you allow us to review the motion and then we can actually confer.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

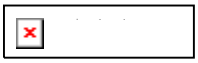
2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com



On Wed, Sep 13, 2023 at 12:57 PM Levy, Joshua S. <JLevy@willkie.com> wrote:

> Julie,
>
> Thanks for getting back to me promptly. I left a voicemail on your direct line listed in your email signature, so it's surprising that you don't see any messages. In any event, we could not disagree more with your characterization of the events that have lead us to this point. We've repeatedly explained, by phone and by email, why seeking information regarding, among other things, the treatment of Patrick Daugherty's claim in bankruptcy is neither germane to the merits of the stalking claims nor permissible in light of the Gatekeeper Provision and Gatekeeper Orders. You've also been advised repeatedly of the same by counsel for Judge Nelms and John Dubel. The local rules do not require us to provide advance copies of our motions and we do not intend to do so. *See* N.D. Tex. Local Civ. R. 7.1(a). If you're willing to immediately withdraw all of those impermissible demands, please advise by 5 PM ET. Failing that, we will mark your position on this motion as opposed when filing.
>
> Regards,
>
> Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Wednesday, September 13, 2023 1:05 PM
To: Levy, Joshua S. <JLevy@willkie.com>
Cc: mhurst@lynnllp.com; Morris, Daniel L. <DMorris@willkie.com>; Brennan, John L. <JBrennan@willkie.com>; Stancil, Mark <MStancil@willkie.com>
Subject: Re: Meet and Confer

***** EXTERNAL EMAIL *****

Hi Josh,

I do not have any messages from you on my office line or my cell phone.

In any event, please send a copy of the proposed motion prior to filing. Separately, we have been engaged in good faith negotiations with you over the potential subject matter of the deposition for months. It seems unprofessional to unilaterally end those discussions with a sanctions motion. We would at least expect the courtesy of a discussion after seeing the basis for the motion prior to its filing.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Wed, Sep 13, 2023 at 11:47 AM Levy, Joshua S. <JLevy@willkie.com> wrote:

Julie and Michael,

I called each of you earlier today and did not hear back, so I'm following up by email. As we've discussed by phone and by email, we believe that you and Scott Ellington are using discovery in the stalking litigation against Patrick Daugherty to pursue claims against Highland and Jim Seery in violation of the Gatekeeper Provision and Gatekeeper Orders entered by the Bankruptcy Court. We therefore plan to seek sanctions in the Bankruptcy Court. I expect you oppose our request but, as a courtesy, I wanted to reach out before we filed. Please let me know by 5 PM ET. I'm happy to discuss by phone if that would be helpful.

Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

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EXHIBIT A-2

CAUSE NO. DC 22-00304

SCOTT ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
	§	
	§	
v.	§	101ST **JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

TEMPORARY RESTRAINING ORDER

On this day, the Application for a Temporary Restraining Order of Scott Ellington, Plaintiff herein, was heard before this Court.

Based upon the pleadings, records, documents filed by counsel, and the arguments of counsel at the hearing, IT CLEARLY APPEARS:

1. That unless restrained Defendant Patrick Daugherty ("Defendant") will continue to harass Plaintiff Scott Ellington, his girlfriend (Stephanie Archer), his sister (Marcia Maslow), and his father (Byron Ellington) before notice and a hearing on Plaintiff's Application for Temporary Injunction, including committing the following acts:

   a. Traveling, on a near daily basis, to the personal residences of Scott Ellington, Stephanie Archer, Marcia Maslow, and Byron Ellington without invitation and parking outside or drivingly slowly past the residences;

   b. Taking pictures and video recordings of the personal residences of Scott Ellington, Stephanie Archer, Marcia Maslow, and Byron Ellington;

   c. Traveling, on a near daily basis, to Scott Ellington's office without invitation and parking outside or drivingly slowly past the building where the office is located;

and

d. Taking pictures and video recordings of the office of Scott Ellington.

2. Plaintiff will suffer irreparable harm if Defendant is not restrained immediately from continuing to harass Plaintiff and his family. Specifically, Plaintiff reasonably fears that Defendant may cause him or his family bodily harm, and the accompanying anxiety interferes with his ability to conduct his normal, daily activities.

3. Given the foregoing, there is no adequate remedy at law to grant Plaintiff complete, final and equal relief.

4. IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Patrick Daugherty and his agents, servants, and employees are ORDERED to immediately cease and desist from the following acts from the date of this Order until fourteen (14) days thereafter, or until further order of this Court:

a. Being within 500 feet of Ellington;

b. Being within 500 feet of Ellington's office located at 120 Cole Street, Dallas, Texas 75207;

c. Being within 500 feet of Ellington's residence located at 3825 Potomac Ave, Dallas, Texas 75205;

d. Being within 500 feet of Stephanie Archer;

e. Being within 500 feet of Stephanie Archer's residence located at 4432 Potomac, Dallas, Texas 75025;

f. Being within 500 feet of Marcia Maslow;

g. Being within 500 feet of Marcia's residence located at 430 Glenbrook Dr., Murphy, Texas 75094;

h. Being within 500 feet of Byron Ellington;

i. Being within 500 feet of Byron Ellington's residence located at 5101 Creekside Ct., Parker, Texas 75094;

j. Photographing, videorecording, or audio recording Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington;

k. Photographing or videorecording the residences or places of business of Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington; and

l. Directing any communications toward Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington.

5. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Application for Temporary Injunction be heard on Jan. 26th at 9:30 A M. Defendant is commanded to appear at that time and show cause, if any exist, why a temporary injunction should not be issued against said Defendant.

6. The clerk of the above-entitled court shall issue a temporary restraining order in conformity with the law and the terms of this order upon the filing by Plaintiff of the bond hereinafter set.

7. This order shall not be effective until Plaintiff deposits with the Clerk, a bond in the amount of $ 2,500.00 in conformity with the law.

SIGNED and ENTERED on 4:10 at 5 M.

January 12, 2022

PRESIDING JUDGE

EXHIBIT A-3

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Tuesday, March 29, 2022
	1:30 p.m. Docket
Reorganized Debtor.	
ELLINGTON,	**Adversary Proceeding 22-3003-sgj**
Plaintiff,	
	SCOTT ELLINGTON'S MOTION
v.	TO ABSTAIN AND REMAND [3]
DAUGHERTY,	
Defendant.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For Scott Byron Ellington, Plaintiff:	Frances Anne Smith ROSS & SMITH, PC Plaza of the Americas 700 N. Pearl Street, Suite 1610 Dallas, TX 75201 (214) 377-7879
For Scott Byron Ellington, Plaintiff:	Michelle Hartmann BAKER & MCKENZIE, LLP 1900 North Pearl Street, Suite 1500 Dallas, TX 75201 (214) 978-3421
For Patrick Daugherty, Defendant:	Drew York Jason S. Brookner GRAY REED & MCGRAW, LLP 1601 Main Street, Suite 4600 Dallas, TX 75201 (469) 320-6132

APPEARANCES, cont'd.:

For Highland Capital Management and Highland Claimant Trust:	Gregory V. Demo PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062
Transcribed by:	Kathy Rehling 311 Paradise Cove Shady Shores, TX 76208 (972) 786-3063

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

DALLAS, TEXAS - MARCH 29, 2022 - 1:37 P.M.

THE COURT: All right. We will begin our setting today in Ellington versus Daugherty, Adversary 22-3003. First, who do we have appearing for Ellington?

MS. SMITH: Good afternoon, Your Honor. Frances Smith with Ross & Smith and Michelle Hartmann with Baker & McKenzie on behalf of Mr. Ellington.

THE COURT: All right. Thank you. Who do we have appearing to Mr. Daugherty?

MR. YORK: Good afternoon, Your Honor. It's Drew York from Gray Reed. On the line with me today is Jason Brookner.

THE COURT: All right. Good afternoon. I presume those are all the formal appearances we have. Is there anyone else out there who felt the need to appear?

MR. DEMO: Your Honor, this is Greg Demo from Pachulski Stang Ziehl & Jones on behalf of Highland Capital Management and the Highland Claimant Trust. We are not a party to this adversary. We haven't filed papers. Nobody's asked our opinion prior to filing papers in this case. And honestly, Your Honor, we do believe that this is just another facet of the feud between Mr. Daugherty and Mr. Dondero and honestly want nothing to do with this hearing.

That said, Your Honor, we would like to reserve the right to reply if anything is said at this hearing that impacts our

affects Highland or if any factual assertions or implications are made that could impact or affect Highland.

THE COURT: All right. That is fine.

MR. DEMO: Thank you.

THE COURT: Any other appearances?

(No response.)

THE COURT: All right. Well, this is, of course, a removed action, and we are here today on Mr. Ellington's motion for abstention or remand. Who will be making the argument for Mr. Ellington?

MS. SMITH: Your Honor, Ms. Hartmann will be making the argument for Mr. Ellington. But as a housekeeping matter, we did have five exhibits that I believe were filed under Docket No. 22, and I would like to move for the admission of those five exhibits. It's the petition -- I'm sorry, Your Honor.

THE COURT: Okay. All right. I see -- I see the five exhibits at Docket Entry 22. Is there any objection from Daugherty's counsel?

MR. YORK: No, Your Honor. And I believe that, as a housekeeping matter, we also have exhibits which were filed at, I believe, Docket 24. And we'd move to admit those as well, PD 1 through 17.

THE COURT: All right. Any objection --

MS. SMITH: Your Honor, --

THE COURT: -- objection to those?

MS. SMITH: Your Honor, this is Frances Smith on behalf of Mr. Ellington. Actually, Mr. Daugherty's exhibits, I believe, are at Docket 23. We have no objection to Mr. Daugherty's Exhibit 10 or Exhibits 13 through 17. We object to Exhibits 1 through 9 and --

THE COURT: Okay. Okay. Slow -- slow down. Or, actually, if you could repeat yourself. The connection is a little garbly, so -- I don't know why. If you could repeat again. I'm pulling them up. You have no objection --

MS. SMITH: Yes, Your Honor.

THE COURT: You have no objection to -- and you're right, they're at 23. You have no objection to what exhibits?

MS. SMITH: To Exhibit PD 10.

THE COURT: Okay.

MS. SMITH: PD 13.

THE COURT: Okay.

MS. SMITH: PD 14.

THE COURT: Okay.

MS. SMITH: PD 15.

THE COURT: All right.

MS. SMITH: 16. And PD 17. So that's, to recap, 10, and then 13 through 17.

THE COURT: Okay. But you're objecting to all other exhibits?

MS. SMITH: Yes. On relevance. And can you hear me better now? I've moved closer to the mic.

THE COURT: I can hear you a little better.

So I am admitting 10, 13, 14, 15, 16, and 17 of Mr. Daugherty's. But you're going to ask that Mr. Daugherty move to admit the others the old-fashioned way with a prove-up?

MS. SMITH: Yes, Your Honor.

THE COURT: All right. Well, we shall see what Mr. Daugherty wants to do on that front.

(Plaintiff's five exhibits at Docket 22 are received into evidence.)

(Defendant's Exhibit 10, as well as Exhibits 13 through 17, at Docket 23 are received into evidence.)

THE COURT: All right. Ms. Hartmann, I'll hear your arguments.

MS. HARTMANN: Thank you, Your Honor. I'm going to try to share my screen.

THE COURT: Okay.

MS. HARTMANN: I think this is better. That's fine. Michelle Hartmann, Baker & McKenzie, on behalf of Scott Ellington. And may it please the Court. As Your Honor stated, we're here today on an emergency motion to abstain and remand.

Turning to the state court action on the next slide, this case relates to purely state law and involves nondebtors.

We appreciate Your Honor's comments during the status conference, and we don't want to get into the merits of this case, but it was filed by Lynn Pinker & Hurst. We do believe that the case has significant merits.

And based on Your Honor's comments, we did want to just put a couple of allegations in. Part of the reason why Mr. Ellington felt the need to file this case related to his family. And as you see in the state court petition, Mr. Daugherty has been observed clearly parking in front of his -- Mr. Ellington's sister's house -- she has two minor daughters -- filming, including them going to school. She lives in Murphy, Texas, nowhere near where Mr. Ellington lives.

Mr. Daugherty has also been observed, again, parking in front of Mr. Ellington's elderly father's house, filming and -- for long periods of time. He, again, lives in Parker, Texas.

The same action was taken as to Mr. Ellington's fiancée, who has a minor son, filming, including the minors, which is why this action was brought.

Turning to the next slide, this is brought, as Your Honor correctly noted in the status conference, under the stalking statutes and privacy common law, and it relates, really, to claimant's fear of the safety of a member of the claimant's family. That was the impetus for this, much more so than anything related to Mr. Ellington himself.

And you can see just a couple of the pictures where Mr. Daugherty is literally just parking outside family members' houses. It had escalated recently in December, which led to the filing, where packages, anonymous packages and letters are being left as well.

Turning to the next slide, one day after the case was filed, Judge Williams in the 101st Court entered a temporary restraining order. And Your Honor can see that it relates not just to Mr. Ellington but to his girlfriend, his sister, and to his elderly father.

Turning to the issue at hand, Your Honor, case timeline, we wanted to include this more than anything just to show that the removal was on January 18, 2022. That's at Docket 1. And Mr. Ellington timely filed for abstention and remand, which is what we're asking for today.

Before the Court are two questions. Assuming there is subject matter jurisdiction, whether mandatory abstention is warranted as the claims exclusively involve state law claims against two nondebtors. And we'll talk about Your Honor's precedent in that. We believe that it is warranted here. And alternatively, to fashion a permissive abstention.

Turning to Mr. Daugherty's response, as Your Honor I'm sure noted, the first 14 pages of the 25-page response are really an introduction and factual background that have nothing to do with either the state court case or the question

on abstention before the Court. There is long recitation of Daugherty's employment at Highland, his disputes with Mr. Dondero, and other actions that were pending in state court in Dallas County and in Delaware. Again, there's no relevance of that to the state court action or the question of mandatory or permissive abstention.

There's a long history of HERA, the escrow agreement, and HCMLP-related lawsuits in Texas and Delaware. Again, no relevance to the state court action or the question of mandatory or permissive abstention.

And then there's a section that -- a docket that really is just intended to cast irrelevant aspersions at Mr. Ellington in an attempt to justify the stalking.

We don't, again, want to get into the merits of this. We think that this is a question that you can answer without getting into some of these irrelevant allegations. But a couple of them we saw as material either omissions or misstatements, and we wanted to make sure that the record was accurate on this.

Mr. Daugherty represents that the jury found for him and against the Highland -- Highland and Dondero and attained a judgment against HERA of $2.6 million. That is true, but when you look at the final judgment, there's also $2.8 million against Daugherty, and all the claims against the executives were dismissed. You can see that they -- there was a

take-nothing judgment.

Another argument, turning to the next slide, that Mr. Daugherty spends quite a bit of time on is trying to argue that Mr. Ellington appears to be fraudulently transferring his own personal assets. And that'll be the next slide. And the basis for that is that Mr. Ellington purportedly signed on to his video deposition on February 16, 2021 -- the next one -- purportedly using an alias. It's perhaps the worst alias ever. It's his fiancée, and he's taking a deposition from his fiancée's house. Of course, it's a woman, Stephanie Archer, and he immediately told the court reporter who -- what his name was and why Stephane Archer was the identifier. Mr. Daugherty began stalking Ms. Archer and her minor son shortly after this.

Turning to the next slide, which I think was the previous one in your deck. There we go. And the last one, we just wanted to highlight. Again, Mr. Daugherty states, and this is at Paragraph 30, Docket 15, that Ellington swears under penalty of perjury that he feared Daugherty so much he moved residences three times in the last year. Nothing like that is said in the state court petition, and we've added for Your Honor as an exhibit SE 1, Mr. Ellington's actual declaration. He does state that he moved three times January 2021 to today. Nowhere does he say that it's because he feared Mr. Daugherty. Again, this was for his family that he brought this

litigation. What he said is that his address was not searchable and yet Mr. Daugherty continued to -- to show up at these residences.

And just finally, Your Honor, the investigator is a former Highland Park police officer. It is not Mr. Ellington's personal assistant.

There are a lot of other allegations that are completely incorrect, including storing high-end cars, when in fact Mr. Daugherty must have been filming the warehouse next to Mr. Ellington's warehouse, where there are no high-end cars but some Gold's Gym equipment that he used during COVID. But, again, we don't think it relates to the facts and the matter before Your Honor.

So, turning to the next slide and shoring up these irrelevant allegations, the legal issue before Your Honor relates to mandatory abstention and permissive abstention. Mr. Daugherty, and this is Paragraph 39 of his response, he acknowledges that the first and third factors are not in dispute. So that there's no independent basis for federal jurisdiction other than Section 1334(b), and that they had removed the state court action to this Court, leaving only Factors 2 and 4, whether the claim is a noncore proceeding and whether the action could be adjudicated timely in state court.

With regard to the noncore proceeding, and turning to the next slide, Mr. Daugherty argues under the catchall provision

of Section 157(b)(2)(A) and (O). And he really focuses on three arguments that we'll address for Your Honor.

Number one, he states that Mr. Ellington's objection to the settlement agreement somehow transforms the state court case to a core proceeding.

Number two, that a litigation hold letter again somehow transforms the state court case to a core proceeding.

And three, that Daugherty's status as a creditor does the same.

And we'd note for Your Honor the case law, which Your Honor certainly is aware of, about defining core proceedings narrowly.

But turning to the first bucket, the settlement agreement and Ellington's objection to the Daugherty settlement agreement. So, Daugherty's response states that Ellington was using the state court action in an attempt to alter the proposed settlement between Daugherty and Highland.

First, if Ellington's sole purpose was to use the state court action as a tactical advantage, he would have done so after that settlement was announced back in February 2021. Again, we thought that this would end. Instead, going into December in particular, it escalated again with the delivery of these packages and these anonymous letters.

More importantly on this point, as was stated in the objection, Ellington states he has no reason to believe that

HCMLP was aware of the alleged activities of Daugherty or the allegations raised in the Ellington action at the time that HCMLP entered into the settlement agreement. So we specifically state in this objection that Ellington didn't have reason to believe that the Debtor had anything to do with this.

Turning to the next slide, Ellington's objection -- and Your Honor knows this because you presided over the hearing -- was limited to really challenging two provisions, the observer status and then the assignment of any HERA or ERA claims.

One thing that Daugherty focuses on is a letter that was sent to the Debtor in an effort to confer on the objection before the objection was filed. In these discussions and the conferral process, it became clear that the Debtor's counsel lacked knowledge of Daugherty's conduct but also didn't believe the two provisions would contribute to any further stalking.

Conferring with the Debtor on a limited objection to two noneconomic terms before filing an objection does not transform the state court action involving nondebtor parties into a core proceeding.

On this point -- and again, Mr. Demo is here -- but neither the Debtor nor the Litigation Trustee had filed anything with this Court, notwithstanding that the responsive deadline for taking a position had passed. There may be

something that is said today, but thus far no claims have been brought against the Debtor, nor does Mr. Ellington intend to, and there hasn't been a position that has been lodged with regard to either the Debtor or the Litigation Trustee.

And finally on the settlement point -- there you go -- on the settlement point, a hearing was held on the Daugherty settlement, including Ellington's objection, March 1, 2022. The appeals are exhausted on May 23, 2022. This was not appealed. And as the Court is aware, the Court denied Ellington's objection, finding a lack of standing, without needing to resort to any issues related to the state court action.

So, on this main argument, then, that Mr. Daugherty has as to the objection to the Daugherty settlement, we see it as fully resolved and really moot to the motion before the Court on mandatory abstention.

The second bucket or argument that Mr. Daugherty makes is that a litigation hold that was sent by counsel in the state court action, Michael Hurst, to preserve communication somehow makes the state court action core. And they point to No. 6 on the litigation hold for documents and communications with any other party, person, or entity (audio gap) is requested to be preserved.

Nowhere does this litigation hold seek documents from the Debtor. And even if it had, it didn't bring claims against

the Debtor. This is merely asking to preserve communications related to the -- what we call the stalking actions.

Again, a mere litigation hold notice doesn't transform the dispute into a core proceeding.

And then the last argument that Mr. Daugherty makes as a basis for the state court proceeding being core is that Daugherty is a creditor. Again, creditor status, without more, doesn't make a dispute core. If Ellington -- Mr. Ellington were to succeed in the state court action, it wouldn't make and shouldn't make a difference to the Debtor's estate. And if somehow Mr. Daugherty would be found not liable, again, there shouldn't be a difference made to the Debtor's estate.

So there should not be any kind of financial impact, and creditor status alone should not be enough.

The next element that is challenged, Your Honor, is the timely adjudication element. Mr. Ellington put forth the pace at which Judge Williams in the 101st had already been moving, and also pled that, had they not removed the action on January 18, the state court would have continued its timely adjudication, and had already set deadlines for the preliminary injunction.

What Mr. Daugherty argues is that the impact of COVID-19 on the timely adjudication analysis makes a difference. And in particular, he cites to and focuses exclusively on jury

trials and the backlog of jury trials. But the timely adjudication here involves injunctive relief, scheduling, discovery, and other issues. And although the brief, Mr. Daugherty's brief cites to the Dallas County COVID-19 risk level as red during COVID, we note that it is now down to a yellow COVID-19 risk level.

And finally, on the existence of jury trial, we think that matters, since Mr. Daugherty has focused on these jury trial statistics. Daugherty recognizes -- and this is the Docket 15, Paragraph 53(k) -- that both Ellington and Daugherty are entitled to a jury trial and have requested a jury trial. And we cite Your Honor to your case in *In re Senior Care*. You state that if a party requests a jury trial this matter could take far longer to adjudicate in this Court than state court, because unless the parties were to agree to this Court conducting a jury trial, the case would need to be withdrawn to the district court.

We believe, based on the record before Your Honor, Ellington -- Mr. Ellington has met the low threshold for timely adjudication.

So with regard to mandatory abstention, we know Your Honor is aware that if the requirements are met the federal court has no discretion but must abstain. We feel that's what should be done here.

Alternatively, we believe that permissive abstention

should be found.

All fourteen factors here, we believe, favor permissive abstention and remand, or at least are neutral, but in any event tip in favor of Mr. Ellington.

We'd note that of these fourteen factors, seven of them related to and were the subject of arguments in Mr. Daugherty's response dealing with the settlement and the objection to the settlement. As the settlement has already been entered and the objection has been denied, we believe those are moot and tip in favor of Mr. Ellington.

Number three, the difficult or unsettled nature of the applicable law is probably neutral.

The presence of a related proceeding commenced in state court or other nonbankruptcy proceeding, frankly, neutral, although we'd note that Mr. Daugherty spends a lot of his brief making the argument that either the Delaware state action or the former Dallas County state action are somehow related.

Number eight, Mr. Daugherty admits that this factor is inapplicable.

The burden on the Court's docket, again, is neutral.

And then eleven, twelve, and fourteen we would say tip in favor of Mr. Ellington.

The existence of a jury trial, we've already discussed.

The presence in the proceeding of nondebtor parties. The

opposite is the case here. All -- Mr. Ellington and Mr. Daugherty are both nondebtor parties.

And then the possibility of prejudice to other parties in the action. There will be nonparty witnesses in the state court litigation. And of course, as Mr. Ellington is the Plaintiff here, he chose to be in state court in this matter.

I want to turn just briefly, unless Your Honor has any questions, to the case law. Mr. Daugherty's response fails to cite any factually-similar cases. Let me just focus on the ones that he does cite to.

In the response, Docket 15, Paragraph 40, he cites to *In re Directory Distributing Associates* for the proposition that the state court action is core because its state law claims concern the administration of a bankruptcy estate. That case is highly distinguishable. It involved a -- the decision involved motion to transfer Texas and California proceedings involving the debtor. These were a Fair Labor Standards Act class action, so they were going to be in federal court no matter what, which is quite different from the purely state court claims here involving two nondebtors. Again, the question in this case was not abstention; it was transfer.

The response at Docket 15, Paragraph 34, *In re Ritchey* is cited for the proposition that the matter of the state court action is core because it involves the Court's enforcement of its own gatekeeping orders. Here we have purely state law

claims brought to stop a behavior. We do not think that that implicates the Court's gatekeeping injunction. But, again, this *Ritchie* case involved a sanction motion for violating a discharge order, but, again, did not have to do with abstention.

And finally, the response, Docket 15, Paragraphs 53(a) and (d), the *Sabre* case is cited, *Sabre Technologies v. TSM Skyline*, for the proposition that Ellington's transparent purpose in filing the state court action is to thwart the Court's efficient administration of the Debtor's estate. This argument and the case citation I believe really relate to the objection to the settlement agreement, which, again, we see it's a moot point.

In any event, the *Sabre* case, the plaintiff there sued the owner of the debtor and an affiliate of the debtor, alleging fraudulent transfers from the debtor to the affiliate. So you were dealing with core matters here, not the state law claims that you have before Your Honor.

And the two last cases that are cited by Mr. Daugherty, *In re Brook Mays Music Company* -- your decision, Your Honor -- for the proposition cited that evidence favored retention where the Court has familiarity with the parties and the disputes.

What we see on this case, though, is that the plaintiff sued Chase in its capacity as the debtor's lender and TRG in

its capacity as the financial advisor to the debtor. As Your Honor noted in the decision, diversity jurisdiction existed, making mandatory abstention inapplicable. And Your Honor states that the Court agreed in that case that the debtor was likely to be a necessary party. Again, that case, to us, does not seem factually similar.

And the final case cited is *In re Doctors' Hospital*. It's cited for the proposition that plaintiff is forum shopping to escape the bankruptcy court. That's just not the case here. These are state laws claims that are brought in state court. In that case, there were clear forum shopping -- there was clear forum shopping evidence. Number one, the abstention motion was not timely filed. The state court case was removed pre-plan confirmation, and then the abstention motion was filed only after a preliminary injunction request was denied. And the plaintiff has already agreed and expressly consented to the bankruptcy court jurisdiction.

If there's any forum shopping here, we would submit to the Court that it is by Mr. Daugherty.

And Your Honor, citing to another case of Your Honor, we think that the *In re Senior Care Centers* is factually similar to the case before the Court and the question before the Court. As Your Honor will recall, the plaintiff-landlord sought to enforce a lease guaranty against the defendant-guarantor. The Court noted in the decision that the defendant

sought to characterize the matter as core on the grounds that it's going to seek reconsideration of this Court's determination that the defendant-guarantor was not released by a settlement agreement. Again, relating to a settlement agreement. Your Honor stated three points that we think are directly on point here.

Number one, the defendant-guarantor's assertions are red herrings that distract from the fact that the removed action concerns a noncore breach of contract claim made by one nondebtor against a non -- against another nondebtor. The same situation we have here, where it's a state -- state -- purely state law claim between two nondebtors.

Secondly, that state law issues do not really predominate if they overwhelm. The exact situation we have here.

And that any doubt concerning removal must be resolved against removal and in favor of remanding the case back to state court.

We believe that *In re Senior Care Center* precedent is similar or should -- should follow these in the case before the Court and the question before the Court, as the facts are similar and the Court's well-reasoned analysis applies equally in this case.

So, respectfully, Your Honor, we request that the Court grant the motion to remand on the basis of mandatory abstention, or alternatively, permissible abstention.

THE COURT: All right. Thank you, Ms. Hartmann. Mr. York?

MR. YORK: Thank you, Your Honor. Mr. Ellington may claim that this lawsuit he has filed is about stalking, but it is -- that's not what it's about at all. It's not what it has been about. It's not what it is about at the end of the day.

As we indicated in our response that we filed, you need to understand the context of the ten-plus years of litigation that's involved Mr. Daugherty with Highland, Highland-related entities, and Highland executives, to get the context for why we are at where we are at today.

As the Court is aware, Mr. Daugherty has filed a lawsuit in Delaware against Mr. Ellington as well as Mr. Dondero and some of Highland's former outside counsel, alleging constructive -- excuse me, alleging fraudulent transfers and conspiracy to commit fraud relating to the escrow agreement that had been entered into as part of the underlying first Texas state court lawsuit between Mr. Daugherty and Highland.

And Your Honor, I want to correct a couple of things that Ms. Hartmann said. You know, she mentioned that we omitted some aspects of the judgment in the Texas state court case. What she omitted as part of that discussion was that, as part of that lawsuit, Mr. Daugherty also obtained a defamation verdict against Highland and Mr. Dondero in that case.

What happened, Your Honor, after this bankruptcy was filed

and as Mr. Daugherty was proceeding in Delaware is that Mr. Dondero came to this Court and admitted during a contempt hearing that he had destroyed his phone, and it had came out in that litigation or in that hearing that apparently Mr. Ellington had as well, which piqued Mr. Daugherty's interest that perhaps there was something more nefarious going on here, which led him to conduct further investigation.

That is -- that investigation is what has led to these bogus stalking claims that Mr. Ellington has filed against Mr. Daugherty.

And I think it's important to remember several things. Number one, as Ms. Hartmann mentioned, the alleged contacts, or at least when Mr. Daugherty was driving past Mr. Ellington's home or office, began in February of 2021. It took Mr. Ellington eleven months to file his lawsuit against Mr. Daugherty, even though Mr. Ellington had been aware of and purportedly feared Mr. Daugherty driving past his home and his office during that eleven-month period.

Ms. Hartmann mentioned that there were photographs and videos being taken of minor children. If you look at Mr. Ellington's declaration, as well as the declaration of the private investigator, which were attached to Mr. Ellington's lawsuit and are exhibits, I believe it's SE 1, there was no mention of any of that. There was no mention of any of these videos. There was no mention anywhere of anonymous packages

or letters. There is no indication that any of those packages or letters have come from Mr. Daugherty.

All of this is a ruse because Mr. Ellington became unhappy when he finally realized in the fall of 2021 that the potential settlement agreement between Highland and Mr. Daugherty in this bankruptcy was not going to release Mr. Daugherty's claims against Mr. Ellington. And once that settlement agreement became public, he then filed his lawsuit against Mr. Daugherty.

So, despite having had months and months of that alleged harassment, he waited, because he wanted to use it in order to try to thwart the settlement agreement. And in fact, it was the only basis for him to go to Highland and complain that they shouldn't move forward with the settlement. And then, Your Honor, it was the only basis for his objection to the proposed settlement, and he was the only one who filed an objection.

So he has been attempting to use the lawsuit to prevent the settlement agreement from going through.

Now, Ms. Hartmann mentioned that there's been no storage of high-end cars. I was surprised to hear that. And, frankly, I have, Your Honor, if I may show the Court, I have some photographs, a photograph of a Porsche that Mr. Daugherty took outside of Mr. Ellington's office, and the license plate is tied to Mr. Ellington as the owner of the vehicle.

Now, I'm going to -- I'll only show that if the Court really believes that the issue of whether there's stalking that has occurred or not is dispositive of the Court's decision today. I don't think it is. But I can certainly show that, because I think it -- this shows the ridiculousness of the claims that have been asserted in this case.

THE COURT: I don't need to see a picture of a Porsche.

MR. YORK: All right. Thank you, Your Honor.

So let's move, then, to the issues that have been raised. First, the issue of mandatory abstention. I do agree with Ms. Hartmann that at least the settlement agreement has been approved by this Court and there was no appeal that was filed.

However, Your Honor, I am not aware of any case -- I have not found one yet -- that has held that the mere fact of a subsequent event after a removal removes a case from the core to a noncore proceeding. In other words, the fact that the settlement agreement was approved and that it has -- the appeal time has passed, that that somehow moots whether that is a core proceeding or not.

But more importantly, Your Honor, Mr. Ellington has not proved that this meets the -- all four elements for mandatory abstention, because he has not shown that the state court can timely adjudicate this case.

His only argument is that the state court entered the TRO

and set an application for temporary injunction for hearing fourteen days later, which, as the Court is well aware, that's the time period that's required under the Texas Rules of Civil Procedure.

And what Ms. Hartmann focused on in her argument was that the adjudication is, well, how long it will take to complete discovery, potentially an injunction hearing. It has nothing to do with whether a jury trial can occur timely or not.

Well, Your Honor, frankly, the definition of adjudication is to complete and decide the matter. It's not just the completion of discovery. And as we had pointed out in our response and showed the Court, there are a huge backlog of cases that were set for trial in the state court in March and April, as many as 85 in one week. Some of those cases have lasted more than three years. One's actually over four years old.

So the fact of the matter is Mr. Ellington has not proved that the state court can timely adjudicate the matter, and so there is no mandatory abstention here.

And that then turns us to the issue of permissive abstention, Your Honor. And if you look at the factors, as we pointed out in our response, the factors weigh in favor of the Court ultimately keeping this case and not deciding to remand it or abstain.

These are not difficult or unsettled issues of applicable

law. The Court can handle that.

There is no related proceeding that would be applicable here.

There would be normal burden on the Court to keep this case and adjudicate it to its full extent.

Frankly, the forum shopping here was by Mr. Ellington by filing his case originally in the state court, knowing full well that his intention was to try to thwart the settlement agreement.

As to Ms. Hartmann's argument on the right to jury trial, Mr. Ellington stated in both his motion and in his reply that he wants a jury trial. As we state in our response, Mr. Daugherty also wants a jury trial. It appears the parties agree to a jury trial. This Court could try that case. There would be no reason to have to send the case to district court for trial.

Although there are nondebtor parties involved here, both Mr. Ellington and Mr. Daugherty have participated in the bankruptcy extensively. There are no comity issues that have been raised. And certainly there's been no evidence or showing that anybody would be prejudiced by having this Court adjudicate this case.

So, because the majority of the factors weigh in favor of the Court retaining the case, we believe the Court should reject the request for abstention and deny the motion

outright.

I'm happy to -- I'm sorry. Before I finish, Your Honor, with respect to the exhibits that were objected to, the objection as I understand it was on relevance grounds. The exhibits are, we believe, relevant to understanding the context of the underlying dispute that has been raised by Mr. Ellington. They are also all documents that were filed of record in either the state court in Texas or in Delaware, so the Court could also take judicial notice of them. And therefore we move to admit Exhibits PD 2 through 9 and I believe it was 11, 12, and I think it was also 17 was the last one.

THE COURT: 17 was admitted.

MR. YORK: Okay.

THE COURT: All right. I sustain the relevance objection, and so I'm not going to admit those additional exhibits.

All right. Ms. Hartmann, you get the last word.

MS. HARTMANN: Your Honor, actually, I'd yield my time to Ms. Smith, if that's all right with Your Honor.

THE COURT: All right. Ms. Smith?

MS. SMITH: Thank you, Your Honor. Am I coming through clearly?

THE COURT: You are. Uh-huh.

MS. SMITH: Okay. Your Honor, nothing that Mr. York

stated in his argument changed the facts that mandatory abstention is required and also that permissive abstention applies.

This settlement was announced in February 2021, during plan confirmation. The lawsuit was filed not because of the settlement, but because of the escalation in the stalking behaviors.

Because Mr. Daugherty has already conceded the first and third prongs of the mandatory abstention, I just want to reiterate that, as to the second element, any small hook that Mr. Daugherty may have had has now disappeared with the Court's approval of the Daugherty settlement, the entry of that order, and the passage of the appellate deadline.

Your Honor, this is a noncore action. The action, the state court action does not alter the rights, obligations, or choices of action of the Debtor. The action does not have any effect at all on the administration of the bankruptcy estate. There is no outcome of the state court action that will bring assets into the estate, and the subject of a dispute is not property of the estate.

The fact that an individual has a dispute with a creditor of a debtor does not give rise to a core proceeding because it is the relationship of the dispute to the estate, not to -- not the party, not to the relationship of the party to the estate that establishes jurisdiction. And that is the Fifth

Circuit in *In re Bass.*

The Daugherty settlement was approved by Your Honor without adjudication of any of the issues raised in the state court action. The state court action claims for stalking, invasion of privacy, and injunction relief all rise under state law. They were asserted in the state court and could have proceeded in the state court, had the matter not been removed, without any impact on the bankruptcy.

This Court should narrowly construe core proceedings, as the Fifth Circuit has warned, against a broad interpretation of 157(b)(2) and prefers to deem a proceeding as core under more specific examples. Daugherty's broad interpretation has been repeatedly rejected by the Fifth Circuit.

Mr. Daugherty took the position that Mr. Ellington used the state court action in an attempt to alter the proposed settlement. Again, the Court resolved that settlement without reaching any of those issues. The omission in the state court action of any mention of the Daugherty settlement is not surprising, as the Daugherty settlement has no bearing on the merits of Ellington's stalking and invasion of privacy claim. And that is -- I just wanted to put that order in our exhibits, Your Honor.

Fourth, the Court should -- the fourth prong, the Court should abstain from hearing Ellington's noncore state court action because it can be timely adjudicated by the state

court. Mr. York's anecdotal recitation of the delay in the state court on a few cases being a couple of years behind, those -- those could be for any reason, including discovery disputes between the parties or other reasons besides the state court's ability to timely adjudicate.

The party moving for mandatory abstention need not show that the action can be more timely adjudicated in state court, only that the matter can be timely adjudicated in state court. The state court moved quickly on a TRO. It moved quickly to set a hearing on the preliminary injunction. And we believe that that meets the standard for the low bar that we need to show that the case can be timely adjudicated.

The action was filed January 11, 2022, the TRO was entered January 12, '22, and the application for temporary injunction was set for hearing on January 26th. So that state court was moving very quickly.

We are not jury trial ready. None of the metrics presented by Mr. Daugherty relate to non-jury trial administration of the case. So the case can go ahead and proceed under state court.

In the alternative, Your Honor, the Court should also abstain under permissive abstention. All of the factors in *Senior Care*, the *Senior Care* analysis, favor abstention, as Ms. Hartmann went through and told the Court.

The Court should reject the Daugherty settlement as a

basis for hearing the removed action, and in doing so, that tips seven of the fourteen favors in favor of abstention. Daugherty already conceded that two of the favors -- factors were neutral and, in other words, not applicable because all the claims were state law claims.

Your Honor, once this Court finds that the state court action is not core, it should immediately abstain and remand the case. Even if Your Honor has any small doubts concerning remand, it should favor remand, as doubts concerning removal must be resolved against removal and in favor of remand.

Nothing on the face of the state court action implicates the jurisdiction of the bankruptcy court. Mr. Daugherty has failed to give you a compelling reason why this Court should adjudicate issues that are prime for mandatory or at least permissive abstention.

For these reasons, we request that the Court abstain from hearing the removed action entirely and immediately remand the removed action to state court.

Thank you, Your Honor.

THE COURT: All right. Thank you. Mr. Demo, anything you wanted to add?

MR. DEMO: Nothing to add, Your Honor.

THE COURT: All right. The Court concludes it must grant the motion to abstain and to remand. I do think that the underlying action is, at most, a noncore related-to

proceeding, and frankly, probably not even noncore related-to. So I find that mandatory abstention is appropriate pursuant to 1334(c)(2).

There's no independent basis in federal law for this action other than maybe 28 U.S.C. 1334(b). It's, at most, noncore, but that's even questionable. We have an action that was already commenced in state court, and I have reason to conclude the action could be adjudicated timely in state court.

But even if mandatory abstention is not appropriate, I believe it's appropriate to abstain under 28 U.S.C. 1334(c)(1), or even equitably remand under 28 U.S.C. 1452(b) in the interests of comity with state courts and out of respect for state law. I believe state law issues do predominate here. There is a remoteness, extreme remoteness to the bankruptcy case, and there would appear to be jury trial rights, and Ellington says he would not consent to the bankruptcy court having a jury trial.

In coming into today's hearing, the only possible hook, if you will, if you want to call it a hook, for the bankruptcy court or federal court jurisdiction was if this somehow implicated the gatekeeping order -- that was dangled out in the pleadings -- or if it involved interpretation, implementation, or execution of the confirmed plan or confirmation order, or if the estate was somehow going to be

impacted. And I just didn't find, based on the evidence or argument, any of those things implicated.

So the motion is granted. If Ms. Smith or Ms. Hartmann could please upload an order to that effect electronically.

(Proceedings concluded at 2:27 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **03/30/2022**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

INDEX

EXHIBIT A-4

NO. DC-22-00304

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
	§	
v.	§	**101st JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO PATRICK DAUGHERTY

To: Defendant Patrick Daugherty by and through his counsel Ruth Ann Daniels and Drew York at **Gray Reed & McGraw, LLP**, 1601 Elm Street, Suite 4600, Dallas, Texas 75201.

REQUESTS FOR PRODUCTION OF DOCUMENTS

A. INSTRUCTIONS

1. Your responses should be complete and based on all information reasonably available to you at the time the response is made. Your responses must be preceded by the request to which they apply. These requests are ongoing in nature and you are requested to make timely amendments or supplements as new information becomes available during this case.

2. Any objections to these Requests must state the legal or factual basis for the objection and indicate the extent to which you are refusing to comply with the request. Please note that objections that are not made within the time required or which are obscured by numerous, unfounded objections, are waived unless the Court excuses the waiver for good cause. In addition, you should not object that any of the Requests calls for the production of information that is privileged. Instead, you should state that the information responsive to the request has been withheld and the privileges asserted justifying withholding that information.

3. Your responses to these Requests must be served at the agreed upon time and date, 09:00 CST on June 14, 2022, at the law offices of **LYNN PINKER HURST & SCHWEGMANN, LLP**, 2100 Ross Ave., Suite 2700, Dallas, Texas 75201.

4. With respect to any objection or assertion of privilege, you are state: (1) that production, inspection, or other requested action will be permitted as requested; (2) that the requested items are being served with the response; (3) that production, inspection, or other requested action will take place at a specified time and place (if you are objecting to the time and place of production); or (4) that no responsive items have been identified after a diligent search.

5. These Requests seek the production of electronic or magnetic data. Information that exists in electronic form is requested in its native or near-native format and should not be converted to imaged formats. Native format requires production in the same format in which the information was customarily created, used, and stored by you, with all metadata intact. The following are examples of the native or near-native forms in which specific types of electronically-stored information ("ESI") should be produced.

Microsoft Word documents	.doc, .docx
Microsoft Excel spreadsheets	.xls, .xlsx
Microsoft PowerPoint presentations	.ppt, .pptx
Microsoft Access databases	.mdb, .accdb
WordPerfect documents	.wpd
Adobe Acrobat documents	.pdf
Images	.jpg, .jpeg, .png, .tiff, .gif
Videos	.avi, .mpg, .mpeg, .mp4, .flv, .mov
Audio	.mp3
Email	Messages should be produced in a form that readily supports import into standard email client programs, such as those outlined in RFC 5322 (the internet email standard). For Microsoft Exchange or Outlook, that means .pst format. Single message production formats like .msg or .eml may be furnished, if source foldering data is preserved and produced. If your workflow requires that attachments be extracted and produced separately, those attachments should be produced in their native forms with parent/child relationships to the messages and containers preserved and produced in a delimited text file.
Databases	Unless the entire contents of a database are responsive, extract responsive content to a fielded and electronically searchable format preserving metadata values, keys and filed relationships. If doing so is not feasible, please identify and supply information concerning the schemae and query language of its export capabilities, so as to facilitate crafting a query to extract and export responsive data

Information that does not exist in native electronic formats or which require redaction of privileged content should be produced as single page .tiff images with OCR text furnished and logical unitization and family relationships preserved. Production of ESI should be made using a thumb/flash drive or, preferably, an FTP client.

6. For any documents you that you claim no longer exist or cannot be located, provide all of the following

a. A statement identifying the documents;
b. A statement of how and when the document ceased to exist or when it could no longer be located;
c. The reasons for the document's nonexistence or loss;
d. The identity, address, and job title of each person having knowledge about the nonexistence or loss of the document; and
e. The identity of any other document evidencing the nonexistence or loss of the document or any fact concerning the nonexistence or loss.

7. The date range for these Requests is from January 1, 2021 through the entry of a final, unappealable judgment or other disposition of this action (or from the date You began Your observation, surveillance, recordation, and/or investigation of any Ellington Party or Location, if earlier than January 1, 2021 through the entry of a final, unappealable judgment or other disposition of this action).

B. DEFINITIONS

1. "Defendant," "You," or "Daugherty" means Defendant Patrick Daugherty, your agents, attorneys, accountants, employees, partners or other persons occupying similar positions or performing similar functions, and their predecessors, successors or affiliates, and their respective agents, attorneys, accountants, employees, partners or other persons occupying similar positions or performing similar functions.

2. "Plaintiff" means Plaintiff Scott Byron Ellington.

3. "Ellington Party" means Scott Byron Ellington, Byron Ellington, Marcia Maslow, Adam Maslow, the two minor children of Marcia and Adam Maslow, Stephanie Archer and her minor child, and any person who was then accompanying any of the aforementioned individuals.

4. "Ellington Location" means 120 Cole Street, Dallas, Texas 75207, 3825 Potomac Ave, Dallas, Texas 75205, 4432 Potomac, Dallas, Texas 75025, 430 Glenbrook Dr., Murphy, Texas 75094, 5101 Creekside Ct., Parker, Texas 75094, any other residence or place of business of any Ellington Party, and any other location You believed to be associated with any Ellington Party.

5. "Ellington Recordings" means all electronic recordings of any Ellington Party or Ellington Location, including any persons or vehicles at such Ellington Locations.

6. "Petition" means the Plaintiff's Original Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction.

7. "Documents" should be afforded the broadest possible definition and includes (by way of example, only, and **not** as an exclusive list) any written, recorded, or graphic material of any kind or description, whether sent or received or neither, including originals, non-identical copies (whether different from the original because of marginal notes or other material inserted therein or attached thereto, or otherwise), drafts (and both sides thereof), and including, but not limited to, papers, letters, memoranda, journals, notes, telephone messages or memos, minutes, opinions, reports, contracts, agreements, correspondence, telegraphs, cables, e-mails, telex messages, text messages (SMS), multimedia messages (MMS), online access data (including GPS data and internet browser search history), social media posts and messages on platforms including but not limited to Facebook, Snapchat, Instagram, LinkedIn, and the like, messages and message attachments on messaging platforms including but not limited to Telegram, Signal, Kik, WhatsApp, Facebook Messenger and the like, reports and recordings of telephone and other conversations, or other interviews, or conferences or other meetings, photographs, negatives, Photostats, layouts, drawings, sketches, specifications, blueprints, brochures, fliers, advertisements, data sheets, data processing cards, magnetic discs, tapes and chips, usb drives, computer printouts, recordings and tapes, video recordings and tapes, purchase orders, invoices, diaries, desk calendars, appointment books, logs and things similar to any of the foregoing that are in your possessions, custody, control, agency, or known by you to exist, or that possession, custody, control, agency of your attorney.

C. REQUESTS FOR PRODUCTION

Request No. 1: All Ellington Recordings, with metadata sufficient to identify (a) the time and date the Ellington Recording was made, and (b) devices used to make each such Ellington Recording.

Request No. 2: All documents and communications containing or referencing any Ellington Recording sent to or received from any other person or entity.

Request No. 3: All documents and communications with any other person or entity regarding the Ellington Recordings and/or the observation, surveillance, recordation, or investigation of any Ellington Party or Location.

Request No. 4: All electronic or hand-written notes, memoranda, or other documents related to or evidencing Your recordation, observation, surveillance, or investigation of any Ellington Party or Ellington Location.

Request No. 5: The make, model, year, and identity of the owner of all vehicles driven by You while observing, surveilling, recording, or investigating any Ellington Party or Location, especially on the dates and times referenced in Petition paragraphs 11–13 as well as throughout Petition **Exhibits A**, **A-11**, and **B**.

Request No. 6: All documents and communications sufficient to show Your location while observing, surveilling, recording, or investigating any Ellington Party or Location, especially on

the dates and times referenced in Petition paragraphs 11–13 as well as throughout Petition **Exhibits A**, **A-11**, and **B**.

Request No. 7: All documents and communications sufficient to show the reasoning behind Your decision to record, observe, surveil, and investigate the Ellington Parties and Locations.

Request No. 8: All documents and communications sufficient to show any person or entity other than You that knew of and/or was involved in Your observation, recordation, surveillance, and investigation of the Ellington Parties.

Respectfully submitted,

/s/ Michael K. Hurst

Michael K. Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Nathaniel A. Plemons
State Bar No. 24121059
nplemons@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN, LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
David B. Urteago
State Bar No. 24079493
durteago@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record ***via electronic service*** on May 15, 2022.

/s/ Julie Pettit

Julie Pettit

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Julie Pettit on behalf of Julie Pettit
Bar No. 24065971
jpettit@pettitfirm.com
Envelope ID: 64514008
Status as of 5/15/2022 2:56 PM CST

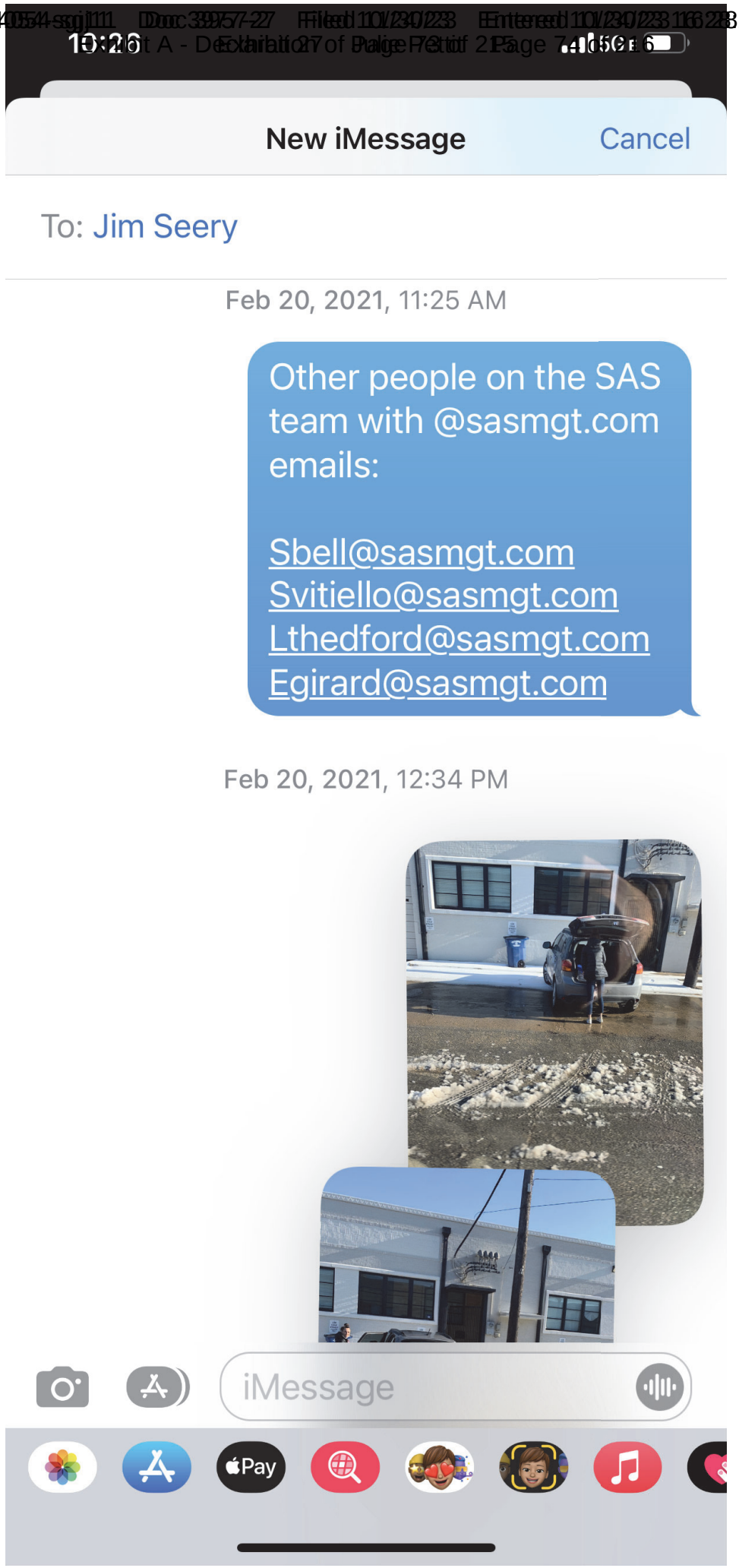
Associated Case Party: PATRICK DAUGHERTY

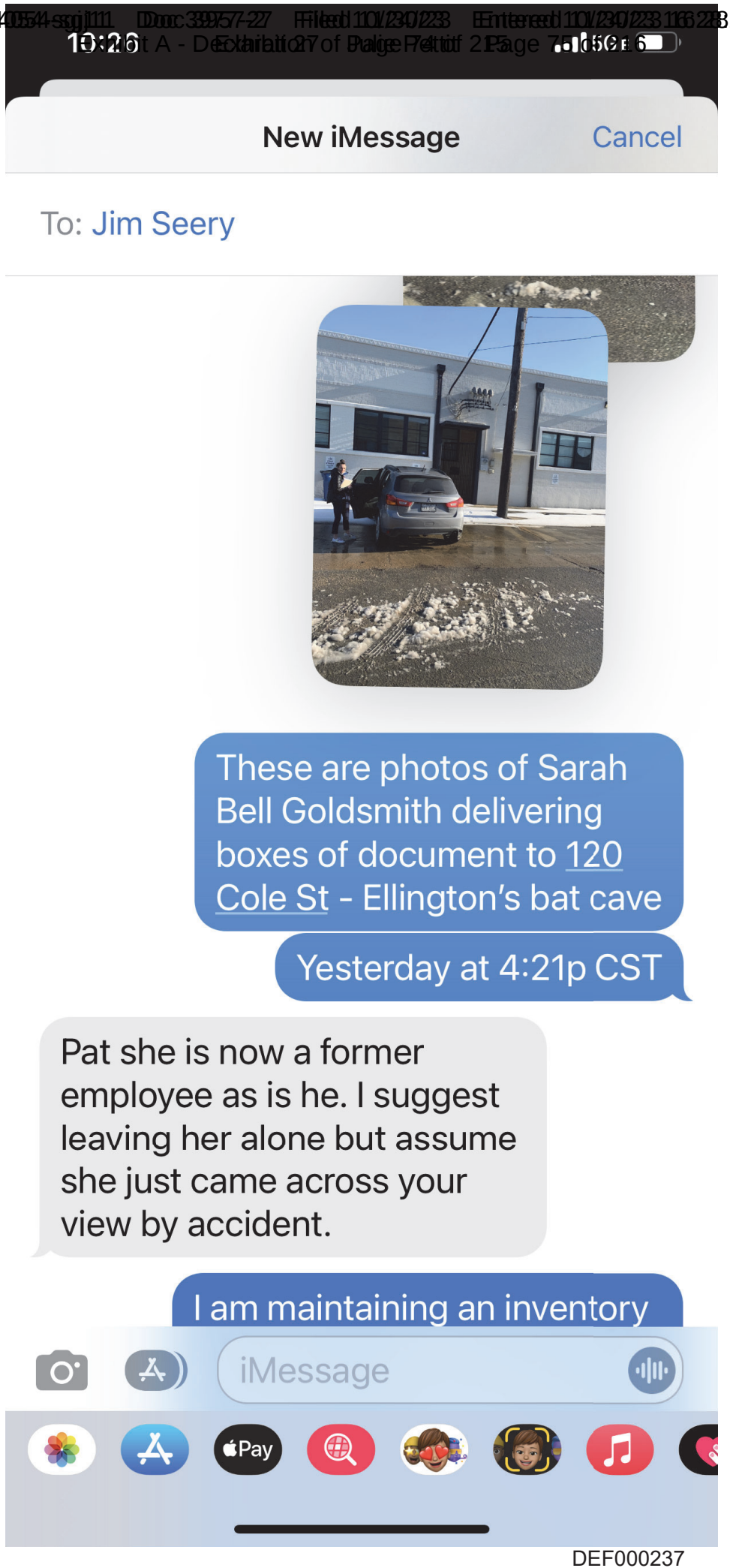
Name	BarNumber	Email	TimestampSubmitted	Status
Andrew K.York		dyork@grayreed.com	5/15/2022 2:55:35 PM	SENT
RUTH ANN DANIELS		RDANIELS@GRAYREED.COM	5/15/2022 2:55:35 PM	SENT
Drake M.Rayshell		drayshell@grayreed.com	5/15/2022 2:55:35 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Susan Langley		slangley@grayreed.com	5/15/2022 2:55:35 PM	SENT
Julie Pettit		jpettit@pettitfirm.com	5/15/2022 2:55:35 PM	SENT
Beverly Congdon		bcongdon@lynnllp.com	5/15/2022 2:55:35 PM	SENT
Patricia Perkins Mayes		pperkins@pettitfirm.com	5/15/2022 2:55:35 PM	SENT
Michael K.Hurst		mhurst@lynnllp.com	5/15/2022 2:55:35 PM	SENT
Mary GoodrichNix		mnix@lynnllp.com	5/15/2022 2:55:35 PM	SENT
Nathaniel A.Plemons		nplemons@lynnllp.com	5/15/2022 2:55:35 PM	SENT
Natalie Clark		nclark@lynnllp.com	5/15/2022 2:55:35 PM	SENT
Gina Flores		gflores@lynnllp.com	5/15/2022 2:55:35 PM	SENT
Michele Naudin		mnaudin@lynnllp.com	5/15/2022 2:55:35 PM	SENT

EXHIBIT A-5


19:26
New iMessage
Cancel
To: Jim Seery
Feb 20, 2021, 11:25 AM
Other people on the SAS team with @sasmgt.com emails:
Sbell@sasmgt.com
Svitiello@sasmgt.com
Lthedford@sasmgt.com
Egirard@sasmgt.com
Feb 20, 2021, 12:34 PM
iMessage
Pay


19:26
New iMessage
Cancel
To: Jim Seery
These are photos of Sarah Bell Goldsmith delivering boxes of document to 120 Cole St - Ellington's bat cave
Yesterday at 4:21p CST
Pat she is now a former employee as is he. I suggest leaving her alone but assume she just came across your view by accident.
I am maintaining an inventory
iMessage

9:30

Jim

Sat, Feb 20, 12:34 PM

These are photos of Sarah Bell Goldsmith delivering boxes of document to 120 Cole St - Ellington's bat cave

Yesterday at 4:21p CST

Pat she is now a former

iMessage

Jim

I'll call you back tomorrow if ok

Thx

No problem

Stephanie Archer

Feb 20, 2021, 11:25 AM

Other people on the SAS team with @sasmgt.com emails:

Sbell@sasmgt.com
Svitiello@sasmgt.com
Lthedford@sasmgt.com
Egirard@sasmgt.com

Feb 20, 2021, 12:34 PM

iMessage

Jim

Fri, Aug 20, 12:03 PM

I'm hearing that do to Pink Shrek's "retirement to spend more time with family", DC has now assumed the top role at Highgate/SkyView.

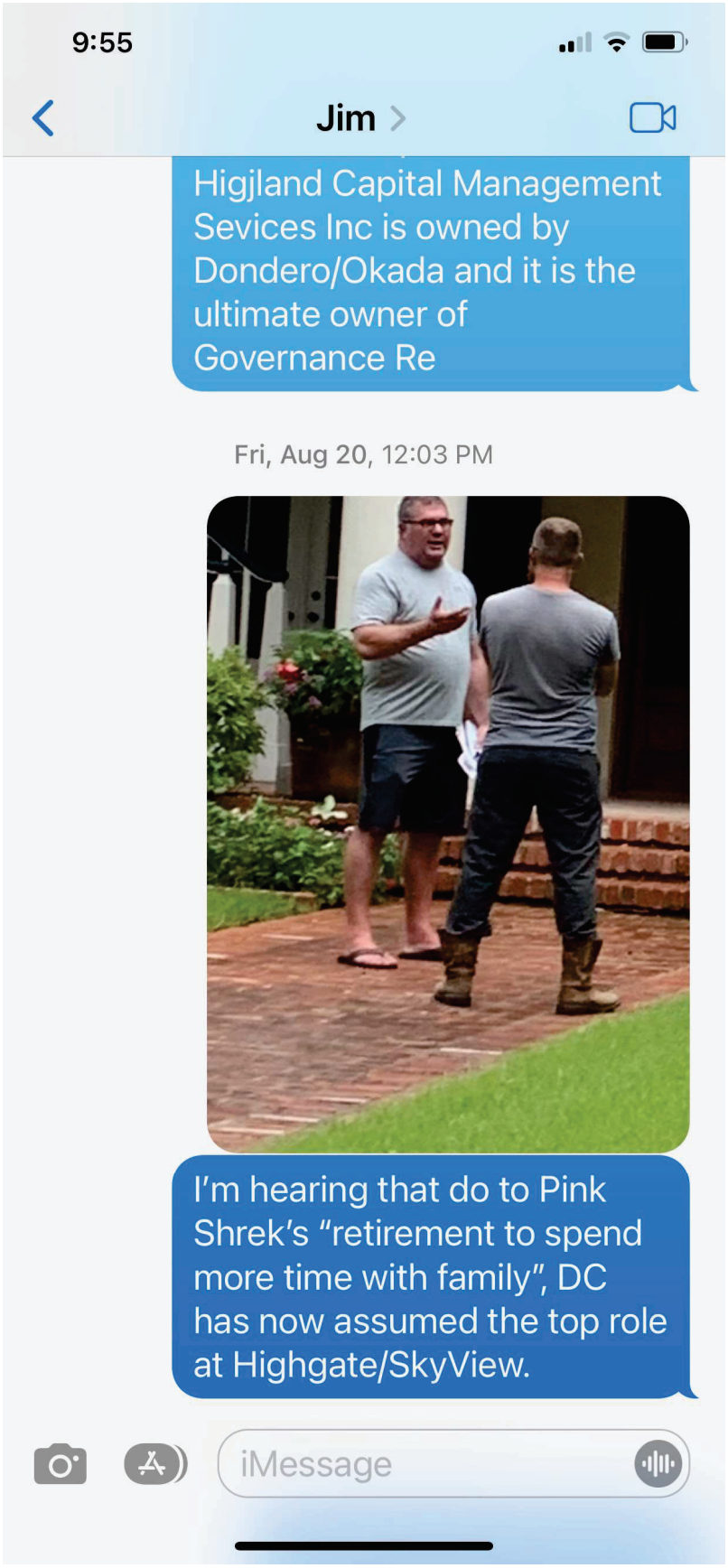
Mon, Aug 30, 2:08 PM

Called u re ur email items

iMessage


5:00
Phone
3
Paul
Mon, Aug 23, 4:08 PM
I heard you guys lost Ellington. I think I found him in my neighborhood masquerading as “Pink Shrek”
Thu, Jan 27, 4:29 PM
You are eloquent, I will give you that. It's just that you have aligned yourself with a
Text Message


9:54
John
Mon, Aug 23, 4:08 PM
I heard you guys lost Ellington. I think I found him in my neighborhood masquerading as “Pink Shrek”
Mon, Apr 4, 7:58 AM
Overview
Funds
iMessage


9:55
Jim
Higjland Capital Management Sevices Inc is owned by Dondero/Okada and it is the ultimate owner of Governance Re
Fri, Aug 20, 12:03 PM
I'm hearing that do to Pink Shrek's "retirement to spend more time with family", DC has now assumed the top role at Highgate/SkyView.
iMessage


10:11
Carl
.....meanwhile, Ellington has apparently gone AWOL and is masquerading around HP as "Pink Shrek"
Mon, Aug 30, 2:10 PM
Do u have Mauricio Chavarriaga contact info?
Uhhhhh. No. Don't have rich
iMessage
Cash


10:26
Michael
Thu, Aug 19, 6:53 PM
Dondero might have misplaced Ellington but I think I spotted him in the HP hood masquerading as "Pink Shrek".
Did you say hi
Nah. Just snapped a picture and kept driving.
iMessage
Cash

607

Jim

Feb 20, 2021, 12:34 PM

These are photos of Sarah Bell Goldsmith delivering boxes of document to 120 Cole St - Ellington's bat cave

Yesterday at 4:21p CST

Pat she is now a former

iMessage

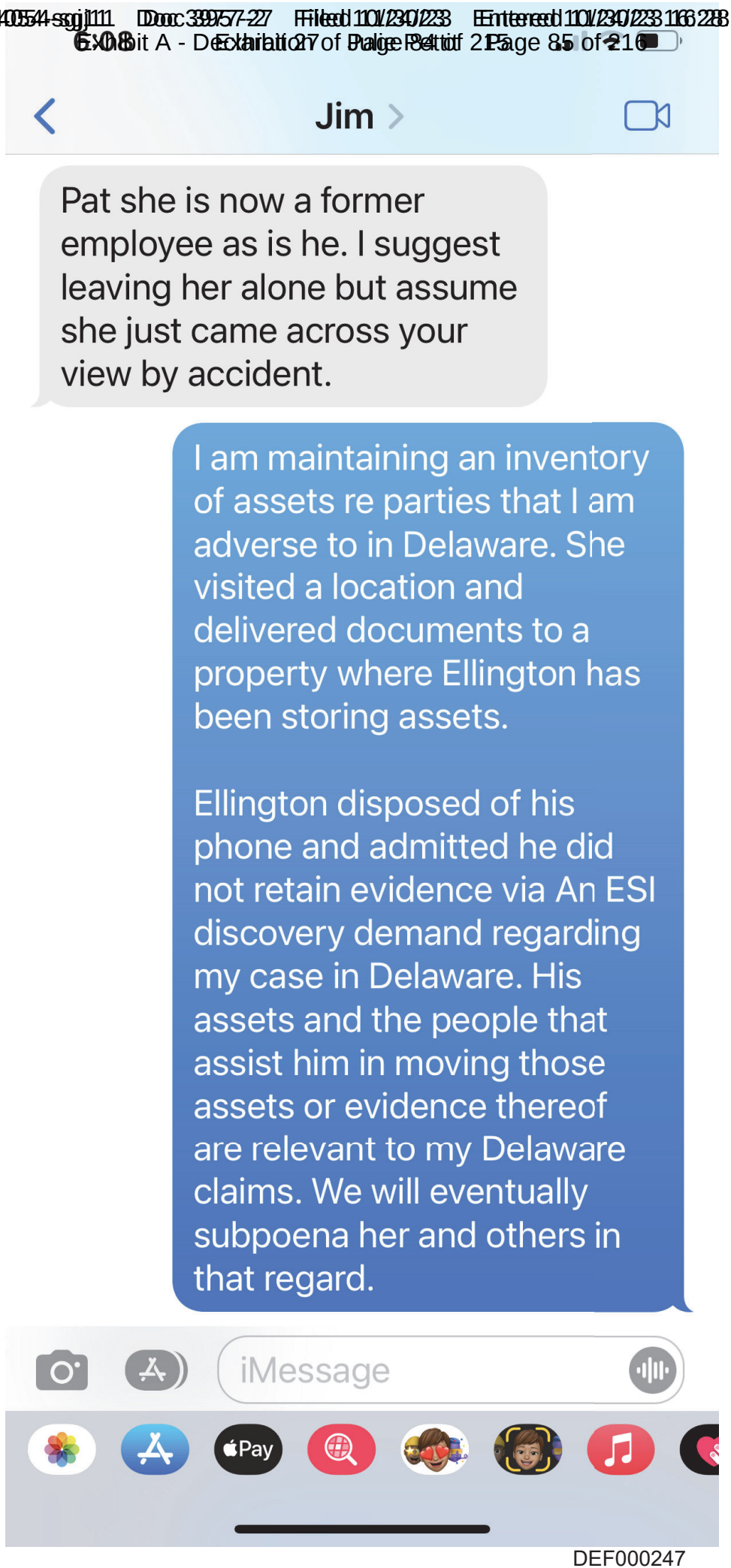

Jim
Pat she is now a former employee as is he. I suggest leaving her alone but assume she just came across your view by accident.
I am maintaining an inventory of assets re parties that I am adverse to in Delaware. She visited a location and delivered documents to a property where Ellington has been storing assets.
Ellington disposed of his phone and admitted he did not retain evidence via An ESI discovery demand regarding my case in Delaware. His assets and the people that assist him in moving those assets or evidence thereof are relevant to my Delaware claims. We will eventually subpoena her and others in that regard.
iMessage
Pay

EXHIBIT A-6

NO. DC-22-00304

SCOTT BYRON ELLINGTON	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	101ST JUDICIAL DISTRICT
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS

ORAL AND VIDEOTAPED DEPOSITION OF
PATRICK DAUGHERTY
JULY 14, 2022

ORAL AND VIDEOTAPED DEPOSITION OF PATRICK DAUGHERTY, produced as a witness at the instance of the Plaintiff, and duly sworn or affirmed, was taken in the above-styled and numbered cause on the 14th of July, 2022, from 9:20 a.m. to 3:57 p.m., before Jennifer Quick Davenport, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Gray Reed & McGraw LLP, 1601 Elm Street, Suite 4600, in the City of Dallas, County of Dallas, State of Texas, pursuant to Notice and the Texas Rules of Civil Procedure.

from a legal perspective. Now I'm asking you to speculate based upon your own perspective.

MS. DANIELS: Objection, form.

A. I've answered your question.

Q. (By Mr. Hurst) Okay. So you refuse to answer the question about how many times it would take for you to drive by Scott's residence, his office, his sister's residence, his place of work -- I'm sorry, his -- I've already said his place of work -- or his father's and late mother's house that would constitute, in your mind, an invasion of privacy or stalking?

MS. DANIELS: Objection, form.

A. I'm not going to speculate.

Q. (By Mr. Hurst) Okay. Do you believe that what we have called stalking and invasion of privacy in our lawsuit, you would define that as an investigation? Is it fair to say?

MS. DANIELS: Objection, form.

A. I have no conclusions on what you guys -- your intentions are in your lawsuit. I just know what I was doing.

Q. (By Mr. Hurst) Okay. And what you were doing, whether you agree that it was 140-something times at least or not, you're saying that what you

were doing is a, quote, investigation?

A. My actions were purely investigatory.

Q. And investigatory for what reason?

A. To inventory, identify and discover assets of Scott Ellington's.

Q. Why is that important to you?

A. Because he has a history of transferring assets out of entities where I owned or had an economic interest or other entities like Highland Capital.

Q. Okay. And --

A. And its affiliates.

Q. Okay. And so what were you doing in this investigation, if you will, in the context of?

A. I don't understand your question.

Q. Why were you investigating his assets?

A. I just told you.

Q. You told me that you're concerned he was going to transfer assets. But why is that important to you?

A. I had litigation against him in Delaware as a defendant.

Q. There's --

A. I'm still answering my question, if you don't mind.

fake, fraudulent insurance companies in the Cayman Islands created by Ellington and Dondero. That's just a few that come to mind.

But that's why I was concerned and felt I needed to identify and inventory those assets that I could.

Q. So in my reading into all of that response, that you are identifying and investigating Scott Ellington's assets because you have a claim against him?

A. No. I mentioned a litany of things.

Q. I'm sorry?

A. I mentioned a litany of things. It's more than just a claim against him.

Q. What are you planning on doing or what have you been doing with the information that you're gathering on Scott Ellington's assets?

A. Compile it.

Q. Is there a compilation of that?

A. I mean, I have -- I did research, right.

Q. Do you have a compilation, as you just testified to a minute ago?

A. Of the data?

Q. Yes.

A. In various forms, yes.

Q. Where is that?
A. I drafted emails that included that information.
Q. Have you provided those to us?
A. No.
Q. Have you provided the compilations?
A. No.
Q. To whom did you provide these emails and compilations?
A. To the creditors' committee.
Q. Who in particular did you address it to? Sorry.
A. Can I finish? Yeah, answer your question.
MS. DANIELS: Allow him to answer your questions before you interrupt him.
A. To the creditors' committee for the Highland Capital bankruptcy.
To Matt Clemente, who is counsel for the creditors' committee.
To Andrew Clubok, who is a representative of UBS on the creditors' committee.
To -- I can't say for sure. I might have emailed everybody on the committee. I don't know. I generally -- I don't know if I included Josh Terry or not. I don't know if I included everybody.

And then to Jim Seery, who is the CEO of Highland.

To -- what's the guy's name -- the litigation trustee on the Highland estate. What was his name? It's Marc something, Kirschner.

So various members of the Quinn Emanuel legal team.

Q. (By Mr. Hurst) Who else?

A. There may be more. I just don't recall off the top of my head.

Q. Did you send these emails with this information in the compilations on an ongoing basis or did you do it all at once?

A. Which compilations?

Q. The compilations of the assets or research that you've indicated you had.

A. Different, you know -- those are different things, different emails.

Q. Can you break them down for me, then?

MS. DANIELS: So I've allowed some leeway here with respect to Mr. Daugherty's explanation of what he did with the information he gathered with respect to investigating Mr. Ellington's assets and why he did it.

But now you are attempting to discover

anything beyond that goes two or three steps, for sure, past the allegations you're making in this lawsuit.

MR. HURST: Absolutely not.

MS. DANIELS: I'm going to instruct, Mr. Daugherty, that you've provided enough information with respect to the information you gathered and instruct you not to answer any further.

MR. HURST: I wholeheartedly object to the sidebar and that instruction. What you have provided to third parties, what you have discussed to third parties absolutely relates to both of our causes of action.

You have produced information regarding some of the people that you have communicated with that are outside of you and Mr. Ellington, and we are entitled to explore that. We are entitled to find out what you did with the stalking and invasion of privacy information.

So I guess I will ask you right now, are you going to instruct him not to answer what he's done with the very information that is the heart of our lawsuit?

MS. DANIELS: So I will disagree with you that the very information that is the heart of your

lawsuit, you have completely mischaracterized your lawsuit. Maybe you didn't sue for the right thing. But your lawsuit is for stalking and invasion of privacy.

MR. HURST: Correct.

MS. DANIELS: And the actions of stalking and invasion of privacy are what you're entitled to conduct discovery on, which I have not in any way attempted to affect today.

But when you start going beyond and trying to use this for other purposes, which obviously is what it's for --

MR. HURST: No, it's not. You're wrong.

MS. DANIELS: -- I am going to limit --

MR. HURST: Let's go off the record. We're going to discuss whether we go to the Court on this right now.

MS. DANIELS: Okay.

THE VIDEOGRAPHER: We're off the record. The time is 10:23.

(Recess 10:23-10:54.)

THE VIDEOGRAPHER: We're back on the record. The time is 10:54.

Q. (By Mr. Hurst) Mr. Daugherty, before I go back into what we were disputing about before break, I

to Surgent. I don't recall.

Q. So it was either Jim Seery or somebody else?

A. No. Cody Morton was a guy -- I don't know exactly who told me. I just don't know.

Q. Okay. When did they tell you his name, whoever it was?

A. I don't recall.

Q. Okay. Did anyone ask you to investigate Scott Ellington or anybody else?

A. No.

Q. Did anybody tell you that they approved of your investigation?

A. I wouldn't use that word.

Q. Is there a word that you would use instead of approved of your so-called investigation?

MS. DANIELS: Objection, form.

A. Appreciated.

Q. (By Mr. Hurst) Who would you say appreciated your so-called investigation of Scott Ellington and perhaps others?

MS. DANIELS: Objection, form.

A. Of the assets, right; that's what I was doing.

People, representatives of the creditors' committee, Marc Kirschner, the litigation trustee,

Quinn Emanuel lawyers, the Sidley lawyers, Seery himself. There may be others.

Q. (By Mr. Hurst) They all told you that they appreciated what you were doing?

A. In a sense, yeah. Some said it outright.

Q. Who said it outright?

A. I just don't recall. I think the Quinn Emanuel people were very appreciative. Kirschner. Seery said it before. I mean, there might be others. Like I said, I didn't take notes on that.

Q. What representatives of the creditors' committee?

A. The UBS representatives, Matt Clemente, the lawyer for the credit committee at large. Oh, Eric Felton, who was on the committee on behalf of the Crusader Redeemer Committee.

Q. Anyone else?

A. That's all I can think of. There may be more.

Q. Let's go back to Exhibit Number 6, if we could, and I'm going to -- which looks like these texts just generally kind of repeat themselves and then maybe a little bit more is sometimes added to the bottom.

Is that fair?

NO. DC-22-00304

SCOTT BYRON ELLINGTON	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	101ST JUDICIAL DISTRICT
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS

REPORTER'S CERTIFICATION
DEPOSITION OF PATRICK DAUGHERTY
JULY 14, 2022

I, Jennifer Quick Davenport, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, PATRICK DAUGHERTY, was duly sworn or affirmed by the officer and that the transcript of oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on July 18, 2022, to the witness or to the attorney for the witness for examination, signature and return to me by August 8, 2022;

That the amount of time used by each party at the deposition is as follows:

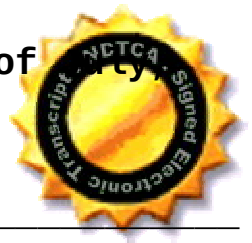
Mr. Hurst - 4:05
Ms. Daniels - 0:00

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:
Mr. Hurst, Ms. Pettit, Attorneys for Plaintiff
Ms. Daniels, Attorney for Defendant

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this 17th day of [illegible], 2022.



Jennifer Quick Davenport, Certified Shorthand Reporter No. 1683
Dickman Davenport, Inc.
Firm Registration #312
Suite 101
4228 North Central Expressway
Dallas, Texas 75206
214.855.5100 800.445.9548
email: jqd@dickmandavenport.com
Commission expires 10-31-23

EXHIBIT A-7

REPORTER'S RECORD
VOLUME 2 OF 3
TRIAL COURT CAUSE NO. DC-22-00304
COURT OF APPEALS CAUSE NO. 05-22-00991-CV

SCOTT BYRON ELLINGTON	)	IN THE DISTRICT COURT
	)	
Plaintiff,	)	
	)	
VS.	)	DALLAS COUNTY, TEXAS
	)	
PATRICK DAUGHERTY,	)	
	)	
Defendant.	)	101ST DISTRICT COURT

TEMPORARY INJUNCTION

which was heard on

THURSDAY, SEPTEMBER 1, 2022

On the 1st of September, 2022, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable STACI WILLIAMS, Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand utilizing computer-assisted realtime transcription. Proceedings

multiple lawsuits in Delaware, including a lawsuit against Mr. Ellington and others that's still pending for, among other things, fraud and fraudulent transfer claims.

So why is that important? Well, in addition to that, as part of that lawsuit, Mr. Daugherty was engaging in discovery, and at the same time Highland had filed for bankruptcy. In early 2021, Mr. Dondero testified in the Highland bankruptcy case that both he and Mr. Ellington had destroyed their cell phones. Well, that was problematic because at the time Mr. Ellington and Mr. Dondero were still parties, and are still parties, in Mr. Daugherty's Delaware action, and they were subject to discovery from those phones under the purview of a special master. So they engaged in the spoliation.

Additionally, the information on those phones would seemingly be relevant to claims that were going on in the Highland bankruptcy that the creditor's committee was bringing, and Mr. Daugherty was a creditor of Highland at the time. So Mr. Daugherty at that point had determined that the information that he was trying to get in discovery wasn't coming to him, and he believed he needed to conduct further investigation on his own of Mr. Ellington, including what Mr. Ellington's

assets were that might be available to satisfy Mr. Daugherty's underlying judgment.

Well, as part of Mr. Daugherty's investigation -- let me back up.

First, it's undisputed, as I said, Mr. Daugherty has not been to any Ellington location for any investigatory purposes since December of 2021. That is important to the imminent harm issue. But why did the investigation matter? Well, based on Mr. Daugherty's surveillance of Mr. Ellington's office and his house and being able to get license plates of vehicles that were parked there, he eventually discovered a web of various entities that Mr. Ellington and Mr. Dondero were using to siphon assets from the reach of creditors, both Mr. Daugherty and then the Court-appointed creditor's committee in the Highland bankruptcy.

So let's walk through one example of this. The first is that there was a lawsuit involving a Highland affiliate and UBS in which UBS is paying a substantial judgment, nine figures initially that grew to a billion dollars, and Mr. Ellington came up with the idea of setting up a dummy entity in the Cayman Islands that was going to provide an after-the-event insurance policy that it sold to the Highland affiliate for less

than the face value of the assets which the Highland affiliate actually owned. In other words, it was a fraudulent transfer, and all of this was Mr. Ellington's idea as he admitted in the Highland bankruptcy.

As part of this scheme, Mr. Ellington and Mr. Dondero set up all of these entities to run this through, including at the top you'll see there's an entity called SAS Holdings SPV Limited. That's important here because you're going to hear some testimony about it later on today that it has implications in this lawsuit itself.

Well, not only did they use these entities to create these fraudulent transfers, Mr. Ellington, Mr. Dondero, Mr. Leventon, who, by the way, is on the call listening to this hearing and is apparently Mr. Ellington's counsel, then actively concealed the existence of their scheme from new management of Highland that had taken over in the course of the Highland bankruptcy, and they also concealed it from the bankruptcy court, and they concealed it from UBS. In fact, Mr. Ellington lied about it in e-mails saying these were just ghost funds that had no assets whatsoever which actually wasn't the case.

So what actually happened? Well, they were using these entities, Mr. Ellington and others were

using these entities to continue to try to operate for Highland for various personal expenses, including a trip to London and Paris, and another 40 plus thousand dollars that was spent in Las Vegas, a trip to Toronto. The one to Vegas, Your Honor, is really kind of interesting because those expenses included expenses spent at the Sapphire Gentleman's Club in Las Vegas.

So why did the investigation matter? Well, there was a hearing about a month ago and Judge Jernigan said that the referrals would likely be made to the State Bar Disciplinary Agency regarding the attorneys' activities I've heard about which would particularly include Mr. Ellington.

MS. PETTIT: Your Honor --

MR. YORK: I'm sorry, Your Honor?

THE COURT: No, that wasn't me. I think Ms. Pettit was trying to make an objection.

MS. PETTIT: Yes, Your Honor. All of this is hearsay what some other bankruptcy court has said, and we're not sure about the relevance of this.

THE COURT: Yeah, I've let all you guys go off. I mean, we're supposed to be in Dallas. It looks like we're on a ranch in East Texas. I'm going to give them a couple more minutes and hopefully we'll get to the issue at hand.

MR. YORK: Your Honor, the reason this is relevant goes to the purpose and the intent for why Mr. Daugherty engaged in the investigation activities he engaged in; not because he was attempting to intimidate, harass or threaten Mr. Ellington.

But let me move forward because Mr. Ellington's lawsuit is actually a vendetta against Mr. Daugherty. He's seeking retribution. Here's the timeline: In December 2021, Highland filed a motion to settle Mr. Daugherty's creditor claim. The settlement agreement was finally unveiled, and in the settlement agreement it expressly provided that Mr. Ellington and others were excluded from the released parties because Mr. Daugherty was continuing his claims in Delaware against them.

So what happened a month later? Mr. Ellington filed this lawsuit against Mr. Daugherty. Then a month after that Mr. Ellington filed an objection to the proposed settlement in the bankruptcy proceeding based upon the claims that he asserted in this case against Mr. Daugherty. The bankruptcy court fortunately overruled the objection and approved the settlement which included a vacatur of the judgment against Mr. Daugherty as I mentioned earlier. So this lawsuit was nothing but an attempt to thwart Mr. Daugherty's

STATE OF TEXAS)

COUNTY OF DALLAS)

I, Terri Etekochay, Official Court Reporter in and for the 101st District Court of Dallas County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested orally by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open court and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

WITNESS MY HAND this 22nd day of September, 2022.

T. Etekochay

Terri Etekochay, Texas CSR #8283
Certificate Expires: 1-31-2023
Email: terri.etekochay@dallascounty.org
Official Reporter, 101st District Court
George Allen Sr. Courts Building
600 Commerce Street, 6th Floor
Dallas, Texas 75202-4631

EXHIBIT A-8

CAUSE NO. DC 22-00304

SCOTT ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
	§	
v.	§	**101st JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

TEMPORARY INJUNCTION

On September 1, 2022, this Court heard Plaintiff Scott Ellington's Application for Temporary Injunction, requesting that the Court grant injunctive relief against Defendant Patrick Daugherty. The Court, having considered the application and the evidence and arguments of counsel presented at or in connection with the temporary injunction hearing, finds that Plaintiff has met his burden to establish that he has a probable right of recovery as to both causes of action against Defendant, based on a finding of the facts as set for below. The Court further finds that, absent injunctive relief, there will be immediate and irreparable injury to Plaintiff, as explained further below.

1. The evidence presented at the temporary injunction hearing supports the following findings by the Court as to invasion of privacy:

   a. Defendant intentionally intruded upon the seclusion, solitude, and private affairs of Plaintiff by regularly appearing at this office, residence, his wife's residence, his father's residence, and his sister's residence.

   b. Defendant took photographs and other recordings of Plaintiff's residences and the residences of Plaintiff's family members.

c. Defendant also appeared at these locations associated with Plaintiff on more than one occasion and these appearances were unsolicited, unwanted, and highly offensive to a reasonable person.

d. Defendant's continued behavior increasingly caused Plaintiff to be upset, agitated, depressed, and fearful for the safety of himself and his family.

e. Defendant's behavior constituted an intentional intrusion of privacy and Plaintiff suffered injury as a result of intrusions.

2. The evidence presented at the temporary injunction hearing supports the following findings by the Court as to stalking:

a. On more than one occasion, the Defendant engaged in harassing behavior;

b. As a result of the harassing behavior, Plaintiff reasonably feared for his safety or the safety of a member of his family; and

c. the defendant, while engaged in harassing behavior, by acts or words threatened to inflict bodily injury on the claimant or to commit an offense against the claimant, a member of the claimant's family, or the claimant's property;

d. Defendant had the apparent ability to carry out the threat, and Defendant's apparent ability to carry out the threat caused Plaintiff to fear for the safety of himself or a member of his family.

e. Plaintiff had at least once clearly demanded that the Defendant stop the harassing behavior and after the demand, Defendant continued.

f. Plaintiff also reported the harassing behavior to the police as a stalking offense.

3. The Court further finds that unless restrained Defendant Patrick Daugherty will continue to harass Plaintiff Scott Ellington, his wife (Stephanie Archer), his sister (Marcia Maslow),

and his father (Byron Ellington), including committing the following acts:

a. Traveling, on a near daily basis, to the personal residences of Plaintiff, Stephanie Archer, Marcia Maslow, and Byron Ellington without invitation and parking outside or drivingly slowly past the residences;

b. Taking pictures and video recordings of the personal residences of Plaintiff, Stephanie Archer, Marcia Maslow, and Byron Ellington;

c. Traveling, on a near daily basis, to Plaintiff's office without invitation and parking outside or drivingly slowly past the building where the office is located;

d. Taking pictures or other recordings of Plaintiff, his family members, and his office, residence, or his family's residences.

e. The Court finds that even if those activities have since slowed, or ceased, due to this pending hearing on this temporary injunction, the issuance of a temporary injunction is still necessary to maintain the status quo.

4. Plaintiff will suffer irreparable harm if Defendant is not restrained immediately from continuing to harass Plaintiff and his family. Specifically, Plaintiff reasonably fears that Defendant may cause him or his family bodily harm, and the accompanying anxiety interferes with his ability to conduct his normal, daily activities. Plaintiff has also already suffered irreparable harm due to the harassment and invasions of privacy already suffered.

5. Given the foregoing, there is no adequate remedy at law to grant Plaintiff complete, final and equal relief.

6. **IT IS ORDERED** that, from the date of this order through final trial on the merits, Patrick Daugherty, his agents, servants, employees, attorneys, and any persons in active concert or participation with him and who receives actual notice of this order,

to refrain from the following:

a. Being within 500 feet of Plaintiff's;

b. Being within 500 feet of Plaintiff's office located at 120 Cole Street, Dallas, Texas 75207;

c. Being within 500 feet of Plaintiff's residence located at 3825 Potomac Ave, Dallas, Texas 75205;

d. Being within 500 feet of Stephanie Archer;

e. Being within 500 feet of Stephanie Archer's residence located at 4432 Potomac, Dallas, Texas 75025;

f. Being within 500 feet of Marcia Maslow;

g. Being within 500 feet of Marcia's residence located at 430 Glenbrook Dr., Murphy, Texas 75094;

h. Being within 500 feet of Byron Ellington

i. Being within 500 feet of Byron Ellington's residence located at 5101 Creekside Ct., Parker, Texas 75094;

j. Photographing, videorecording, or audio recording Plaintiff, Stephanie Archer, Marcia Maslow, or Byron Ellington;

k. Photographing or videorecording the vehicles, residences or places of business of Plaintiff, Stephanie Archer, Marcia Maslow, or Byron Ellington; and

l. Directing any communications toward Plaintiff, Stephanie Archer, Marcia Maslow, or Byron Ellington.

7. Issuance of this temporary injunction will not disserve the public interest.

8. Plaintiff's injury outweighs any injury that will be caused to Defendant by issuance of this temporary injunction.

9. **IT IS FURTHER ORDERED THAT** bond shall be set at $25,000.00 (Twenty-five dollars and xx/100) On entry of this Order, the clerk of the Court shall issue a new writ of injunction conforming with the law and the terms of this Order.

10. **IT IS FURTHER ORDERED THAT** this case shall be set for trial on the merits beginning on September 2, 2023 at 9:00 a.m. in the 101st Judicial District Court, Dallas County, Texas. This temporary injunction shall remain in effect through trial, except upon further order of this Court. 9am - 2 week trial docket

11. Daugherty is hereby notified that violation of this Order by him, his officers, agents, attorneys, servants, employees and/or by any person acting in active concert of participation with him and who receives actual notice of this Order, may be subject to contempt proceedings.

SIGNED and ENTERED on Sept. 1, 2022 at 11:00 P. M.

PRESIDING JUDGE

EXHIBIT A-9

[redacted]

---------- Forwarded message ---------
From: **Julie Pettit** <jpettit@pettitfirm.com>
Date: Fri, Aug 25, 2023 at 8:13 PM
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas
To: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: mhurst@lynnllp.com <mhurst@lynnllp.com>, McNeilly, Edward <edward.mcneilly@hoganlovells.com>, Wynne, Rick <richard.wynne@hoganlovells.com>, John A. Morris <jmorris@pszjlaw.com>

Blayne,

For reasons that we are not obligated to disclose, we believe Judge Nelms' testimony is important to Mr. Ellington's damages and motivations. Are you available for a call early next week to discuss?

Best Regards,

Julie Pettit Greeson
The Pettit Law Firm
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Direct: 214-329-1846

Fax: 214-329-4076
jpettit@pettitfirm.com

On Fri, Aug 25, 2023 at 1:32 PM Thompson, Blayne R. <blayne.thompson@hoganlovells.com> wrote:

Thank you, Julie. Please let us know this afternoon, if possible.

If we do not hear back from you by 4:00 CT, we'll need to file our motion.

Sincerely,

Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Friday, August 25, 2023 1:22 PM
To: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: mhurst@lynnllp.com; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; John A. Morris <jmorris@pszjlaw.com>
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Hi Blayne,

We have not yet had an opportunity to discuss this with our client. I will respond as soon as I have had an opportunity to discuss with him.

Thank you.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Fri, Aug 25, 2023 at 10:01 AM Thompson, Blayne R. <blayne.thompson@hoganlovells.com> wrote:

> Julie,
>
> Following up on the message below. Please confirm that you are withdrawing the subpoena.

If we do not receive a response from you by 2:00 pm today, we will have to file our motion to quash.

Sincerely,

Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

From: Thompson, Blayne R.
Sent: Wednesday, August 23, 2023 11:02 PM
To: Julie Pettit <jpettit@pettitfirm.com>
Cc: mhurst@lynnllp.com; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; John A. Morris <jmorris@pszjlaw.com>
Subject: RE: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

Julie,

It has been nearly a month now, and we still have not received any response to our below email.

Instead, and much to our surprise, Judge Nelms has informed us that he was again personally served by a process server with another subpoena from your office yesterday. Not only does this come unannounced as we continue to await a response from you to our latest correspondence below, but it also comes despite (1) our making it clear that we represent Judge Nelms and (2) our agreement to accept service of a new subpoena for a mutually agreeable time

and location, in the event that such a deposition would be relevant and necessary. This behavior is unnecessary and harassing. Let's not let it happen again.

We have indicated to you repeatedly that we are willing to work with you to the extent that there is relevant information that you need from Judge Nelms. To that end, as you have agreed below, it is clear that Judge Nelms has no information relevant to the stalking claims you have asserted, making a deposition both unnecessary and inappropriate. Further, we provided a detailed timeline below showing that the November 2021 settlement agreement you complain about happened *after* Judge Nelms left the role of being an independent director—which you never responded to. Nonetheless, in an effort to compromise and eliminate any further waste of time and expense, if desired, we have offered to provide a declaration attesting to his lack of knowledge. We have also invited you to send us a draft declaration for Judge Nelms to review. Please respond to that email.

In the meantime, please confirm that you are withdrawing the most recent subpoena, in which you again inappropriately and unilaterally scheduled a deposition for a date that does not work for us. If you do not agree to do so by noon on Friday, we will have to file a motion to quash.

Sincerely,

Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

From: McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Sent: Thursday, July 27, 2023 12:57 PM
To: Julie Pettit <jpettit@pettitfirm.com>
Cc: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C.

<michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; mhurst@lynnllp.com; John A. Morris <jmorris@pszjlaw.com>

Subject: RE: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

Julie:

Thank you for your email. It highlights for us why deposing Judge Nelms is unnecessary, irrelevant and appears designed for the improper purpose of fishing for evidence to bolster claims in the bankruptcy case.

- First, you acknowledge that Judge Nelms did not have knowledge of Mr. Daugherty's alleged actions.
- Second, the timeline outlined in your email reinforces this point. Highland's chapter 11 plan was confirmed on February 22, 2021. The effective date of the plan was August 11, 2021. Judge Nelms is not, and has never been, a board member of the Highland Claimant Trust or any other post-confirmation entity. Indeed, the chapter 11 plan contemplated no role post-effective date for Judge Nelms, who ceased to have any official role with the Highland estate on August 11, 2021. In light of that, it is unsurprising that Judge Nelms involvement with the Highland estate post-confirmation (i.e., post-February 22, 2021) was minimal and certainly unrelated to any claims asserted by your client. Moreover, and critically, the allegedly improper additional settlement consideration that you assert Daugherty obtained relates to a settlement agreement executed on November 22, 2021, over three months after the effective date of the plan and thus over three months after Judge Nelms ceased to have any official role with the Highland estate. You also offer no basis for why the claim that "Seery and Clubok kept [Judge Nelms] in the dark regarding the stalking" is either factually accurate or relevant to the stalking complaint, as Judge Nelms in any event had no role in approving any such settlement agreement.
- Third, we agree entirely with the email sent by Joshua Levy at approximately 2:28 p.m. (CT) on July 25, 2023. The discovery efforts in this litigation (which Mr. Ellington had remanded to state court on the basis that the litigation was not connected to the bankruptcy) clearly implicate the Gatekeeper Order. We are copying John Morris on this response and, like Mr. Levy, request that you copy Mr. Morris on all correspondence with us, as the Gatekeeper Order and Mr. Morris's clients are clearly implicated.

As the ostensible purpose of the deposition is to confirm that Judge Nelms knows nothing about the stalking allegations, he is willing to make that statement in a declaration, which will save everyone time and money and will obviate the myriad problems with a deposition outlined above. Please draft a declaration for us and Judge Nelms to review.

Sincerely,

Edward McNeilly

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Tuesday, July 25, 2023 1:46 PM
To: McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Cc: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Edward and Blayne,

Thank you for your email. Please allow me to provide some context to why we are seeking the deposition of Judge Nelms.

- We have evidence in this case that Daugherty—with the assistance of at least one other individual—stalked Mr. Ellington, his assistant, his fiancé, his father, his sister, and his counsel.

- We have evidence in this case that Daugherty—with the assistance of at least one other—stalked Mr. Ellington's home, Mr. Ellington's office, Mr. Ellington's assistant, Mr. Ellington's sister's home, and Mr. Ellington's father's home. **(See attached Exhibit A for photos taken by Daugherty of each)**

- We have evidence that during the same time period, the same make/model of Daugherty's car was found to have been following Mr. Ellington's fiancé for miles and miles while she was alone in her vehicle. **(See attached Exhibit B, for video of black Yukon following Stephanie Archer for miles)**

- We have testimony that Mr. Daugherty took photos and possibly videos of Mr. Ellington's minor nieces playing basketball, which we believe he has since deleted.

- We believe Mr. Daugherty attempted to run Mr. Ellington's elderly father off the road while his father was taking a walk.

- We have evidence that Daugherty would do things such as hide behind dumpsters in attempts to obtain photos of Mr. Ellington and his family **(See attached Exhibit C, photo of Daugherty behind dumpster)**

Following a full evidentiary hearing, an injunction was put into place that required Daugherty to cease the stalking and invasion of privacy (**See Exhibit D, injunction**)

Based on what we have discovered so far, we agree that Judge Nelms did *not* have knowledge of Mr. Daugherty's actions. We also believe he would *not* have condoned Mr. Daugherty's actions if he had known about these actions. We would like to confirm these facts in the deposition of Judge Nelms.

While we do believe Daugherty left Judge Nelms was left in the dark regarding Daugherty's stalking, what is significant is that all of this happened during the time Judge Nelms was on the board and Jim Seery and Andy Clubok *did know about Mr. Daugherty's inappropriate investigation*. **(See attached Exhibit E, for communications during the relevant time period with Seery and Clubok in which Judge Nelms is not included)** In fact, not only were Seery and Clubok aware—but according to Daugherty, Seery himself told Daugherty that he "appreciated" the investigation. **(See attached Exhibit F, deposition of Daugherty, pages 104-105)**. We want to depose Judge Nelms on whether, as we expect, Seery and Clubok kept him in the dark regarding the stalking.

Additionally, please take note of the following:

- Seery has produced over 18,000 pages of emails and texts in response to our subpoena for communications from Daugherty regarding his investigation into Ellington;

- To date, Clubok has refused to produce his responsive documents and has been dodging service attempts for his deposition. However, Daugherty testified that he did provide documentation regarding his investigation directly to Clubok **(See Exhibit G, deposition of Daugherty, pages 5-60)**

At the Plan Confirmation hearing on February 2, 2021, the Debtor and Daugherty announced a settlement of Daugherty's proof of claim in the Highland Bankruptcy. Nine months later in November 2021, the Debtor and Daugherty executed a settlement agreement that, in addition to the material terms announced in February 2021, gave Daugherty an additional $1m in Class 9, part of Highland's investment track record to claim as his own, ownership of two Highland affiliates he could use to pursue litigation claims, and a prospective observer role on the Claimant Oversight Board. The Debtor agreed to all of this additional settlement consideration subsequent to receiving Mr. Daugherty's cooperation in investigating Ellington. Given the Board's role in approving settlement of material proofs of claim in the bankruptcy, Ellington believes that Judge Nelms should have been made aware of Daugherty's actions—if not by Daugherty, then certainly by Jim Seery and Andy Clubok.

It does not seem to be a coincidence that Judge Nelms was excluded from all communications relating to the stalking and investigation. It does not seem to be a coincidence that Mr. Daugherty's settlement in the bankruptcy became materially better for Mr. Daugherty after Judge Nelms was seemingly cut out of communications and only after Mr. Daugherty had provided Seery and Clubok with thousands upon thousands of pages of his investigatory work regarding Ellington. And it does not seem to be a coincidence that Judge Nelms participated in the *legitimate* negotiations with Daugherty, but that Judge Nelms was purposefully excluded from what Mr. Ellington believes were the illegitimate negotiations.

For these reasons, we believe the deposition of Judge Nelms is relevant and critical. As we have reiterated multiple times, we are willing to work with Jude Nelms with respect to his scheduling. We will endeavor to be as efficient as possible and respect his time. Please advise regarding his availability.

Thanks,

Julie

On Fri, Jul 21, 2023 at 4:27 PM McNeilly, Edward <edward.mcneilly@hoganlovells.com> wrote:

Julie:

We should have responded sooner that Blayne is on vacation. As we assess the current situation, we think that the basis for taking the deposition of Judge Nelms is seriously less compelling than we originally thought, which was baseless from the outset. We now understand that, in his deposition testimony, Daugherty testified that he did not recall ever speaking with Judge Nelms. In light of this testimony, what is your basis for thinking that Judge Nelms has any relevant information to the stalking allegations? As you know Judge Nelms has declared that he has none. In that vein, can you show us a single document that has been produced by the parties in the case, or any third party, that might provide a justification for the deposition. We doubt that you can, especially given that Judge Nelms has none. But if you think there is something that you would like us to look at, please provide it as soon as you can.

Given the clear evidence that Judge Nelms was not involved in, and has no knowledge of, the matters that are at issue in this litigation, we invite you to reconsider your plan to depose him. Judge Nelms has compelling reasons to seek and obtain a protective order should your client persist in seeking his deposition. In the meantime, when the Judge returns from his vacation, we will seek his availability after July 27, to the extent the Court were to determine that his deposition is required under the Texas Rules of Civil Procedure.

Edward

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Friday, July 21, 2023 11:06 AM
To: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Hi Blayne,

Can you let us know what dates work? We are trying to accommodate his schedule.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Thu, Jul 20, 2023 at 2:07 PM Julie Pettit <jpettit@pettitfirm.com> wrote:

> Hi Blayne,
>
> We are trying to work with you on dates. Please advise.
>
> Best Regards,
>
> Julie Pettit Greeson
>
> The Pettit Law Firm
>
> 2101 Cedar Springs, Suite 1540
>
> Dallas, Texas 75201
>
> Direct: 214-329-1846
>
> Fax: 214-329-4076

jpettit@pettitfirm.com

On Wed, Jul 19, 2023 at 8:23 AM Julie Pettit <jpettit@pettitfirm.com> wrote:

> Hi Blayne,
>
> Just following up on this. Please advise regarding dates.
>
> Best Regards,
>
> Julie Pettit Greeson
>
> The Pettit Law Firm
>
> 2101 Cedar Springs, Suite 1540
>
> Dallas, Texas 75201
>
> Direct: 214-329-1846
>
> Fax: 214-329-4076
>
> jpettit@pettitfirm.com
>
> 
>
> On Sun, Jul 9, 2023 at 10:41 PM Julie Pettit <jpettit@pettitfirm.com> wrote:
>
> > Hi Blayne,

We are still working through some issues and hoping to reach an agreement on the items discussed below. Daugherty's counsel is taking a deposition of one of our witnesses tomorrow, but may Michael and I call you after that exposition tomorrow?

The 11th seems too tight to work through these issues, so are there any other days in July that Judge Nelms is available for a deposition? I know you said he is available on the 27th, but are there any other days you are available? We want to make sure we can accommodate everyone's schedules.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Fri, Jun 30, 2023 at 4:48 PM Thompson, Blayne R. <blayne.thompson@hoganlovells.com> wrote:

Julie,

Thank you for sending the petition. It confirms our understanding that the claims in this case are quite narrow, and that Judge Nelms has no connection to the relevant issues.

Given that, and your refusal to agree that the scope of the deposition will be limited to the claims & defenses in this case, as required by the Rules, it appears that a motion for protection may be necessary. To that end, your vague representation that the questions will be "appropriate" to not only the claims & defenses, but also "the documents produced in the case," is insufficient and does not represent the permissible scope of discovery in Texas. See Tex. R. Civ. P. 192.3. And we do have the right to instruct the witness not to answer in the event that questions clearly exceed the permissible scope of discovery. See Tex. R. Civ. P. 199.5(f); *id.* 199 cmt. 4. We asked for the Rule 11 Agreement given that it seems that you plainly intend to go beyond the permissible scope of discovery, and we do not want there to be any confusion when the witness refuses to answer such questions. We understand your position, so as of now, unless we hear otherwise from you on this point, in the event you decide to proceed with a deposition of Judge Nelms, we will seek a motion for protection and move to quash the deposition in the interim, and will mark you down as opposed.

That said, we remain open to reaching agreement on the scope to avoid the need for a protective order. We understand that Jim Seery's counsel has reached out to set up a joint call with you, John Morris, and us next week in an effort to reach agreement on a shared scope for the depositions. We also understand that you have provided Mr. Seery with topics for his deposition. If we can come to an agreement on scope in a similar fashion—by agreement on a list of topics—that may ameliorate the need for a protective order.

Also, as Mr. Seery's counsel notified you in his email earlier today, please note that there is a Gatekeeper order in place in the bankruptcy court that prohibits, among other things, any conduct that could be considered the "pursuit of a claim" against Judge Nelms. We have reattached that order, and the related orders you received, for your reference. Pursuant to Rule 199.5, we will instruct the witness not to answer any questions that would violate this order.

As to Mr. Morris, he does not intend to appear on the record. With that, please take notice that he intends to attend any deposition of Judge Nelms, if one goes forward.

Finally, should a deposition of Judge Nelms proceed, Michael Hefter and/or Rick Wynne (copied) intend to seek *pro hac vice* admission to defend the deposition. Please confirm that you are unopposed to this.

Sincerely,

Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Thursday, June 29, 2023 4:27 PM
To: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Thanks, Blayne. Please let me know.

We would likely take it on the 11th, which is the other date you offered.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Thu, Jun 29, 2023 at 3:48 PM Thompson, Blayne R. <blayne.thompson@hoganlovells.com> wrote:

> Julie,
>
> We are discussing internally and expect to be able to get back to you by tomorrow.
>
> In the meantime, please note that we misspoke on Judge Nelms' availability. He is not available on July 26, but can be available on July 27, subject to reaching an agreement on the terms of the deposition as discussed below.
>
> Thank you,
>
> Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Thursday, June 29, 2023 9:55 AM
To: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Hi Blayne,

Following up on my email below. Please advise.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Mon, Jun 26, 2023 at 2:51 PM Julie Pettit <jpettit@pettitfirm.com> wrote:

Blayne,

1. Please see attached a copy of our live petition. As previously stated, the questions in the deposition will be appropriate to the allegations, defenses, and documents produced in the case. I am not aware of any rule that permits you to instruct the witness not to answer because you unilaterally deem it to be irrelevant to the case, in particular a case where your client is a third party and you are not familiar with the claims, defenses, underlying factual allegations, and document production. As stated below, we expect your objections will be limited to form, non-responsive, and leading.

2. With respect to Mr. Morris' attendance, we will consider this request. At a minimum, Mr. Morris is not counsel of record, has not made an appearance, and does not represent a party or witness, so he will not be permitted to speak during on the record during the deposition. If this minimal condition cannot be met, then please let me know so we can consider appropriate court relief.

Please let me know if either of these two items will be an issue.

We are working to schedule various depositions in this case, but I believe that July 11 or 26 will likely work subject to availability of Daugherty's counsel.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Fri, Jun 23, 2023 at 5:36 PM Thompson, Blayne R. <blayne.thompson@hoganlovells.com> wrote:

> Counsel:
>
> We are following up on your deposition subpoena issued to Judge Nelms, your refusal to agree on our inherently reasonable parameters, and our motion. In your responses, you have provided no information suggesting that Judge Nelms has information relevant to the claims asserted in the *Ellington v Daugherty* litigation. The notion that you think that he has material information to your case is baseless and refuted by his lack of any documents. But if you think that you want to burden and harass him, we are willing to make him available for a limited deposition.
>
> Based on Judge Nelms' schedule and summer travel, and our schedules, we are prepared to make Judge Nelms available on July 11, subject to your agreement on the limitation on scope. Otherwise we are available to proceed on July 26, subject to the same conditions. That scope shall be embodied in a Rule 11 agreement containing the following terms:
>
> 1. The topics for questioning at the deposition will be strictly limited to those relevant to the claims and defenses in the operative pleadings (as of today, you have still not sent us the operative petition, which you promised to send in your email of June 20, 2023 at 2:00 p.m. CT), as required by TRCP 192.3, and we will instruct the witness not to answer in the event that questions exceed this scope; and
> 2. John Morris of Pachulski Stang Ziehl & Jones, counsel to Highland Capital Management, L.P. and the Highland Claimant Trust, will attend the deposition.
>
> Should you refuse to agree to these reasonable terms, we promptly seek a protective order, and move to quash any deposition notice that would otherwise require proceeding before a protective order can be obtained.
>
> Sincerely,
>
> Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Friday, June 23, 2023 3:32 PM
To: McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Edward,

Following up. Can you please provide us with a new date for deposition?

Thank you.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Tue, Jun 20, 2023 at 6:06 PM McNeilly, Edward <edward.mcneilly@hoganlovells.com> wrote:

> Julie,
>
> Thank you for withdrawing the subpoena. We agree to accept service for a new subpoena that is issued for a mutually agreeable time and location.
>
> We will confer with Judge Nelms and get back to you shortly with available dates. In the meantime, for clarity, by virtue of both the motion to quash and your agreement to withdraw the subpoena, we understand that the currently noticed deposition will not proceed as scheduled.
>
> Please note that we reserve all rights, including the right to move to quash or move for protection in the event that new deposition is again noticed for a date or otherwise under terms that are not mutually agreeable.
>
> Sincerely,
>
> Edward

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Tuesday, June 20, 2023 3:15 PM
To: McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Edward,

As I stated, we will withdraw the subpoena subject to you agreeing to accept service for a new subpoena issued for a mutually agreeable time and location.

Can you provide us with a new date?

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Tue, Jun 20, 2023 at 5:03 PM McNeilly, Edward <edward.mcneilly@hoganlovells.com> wrote:

> Counsel:
>
> Based on timing, we were compelled to file our Motion to Quash. We are prepared to withdraw the Motion to Quash if you withdraw the subpoena. If you withdraw the subpoena, we are also prepared to accept service.

Sincerely,

Edward McNeilly

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Tuesday, June 20, 2023 2:47 PM
To: McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Counsel,

We have signed a Rule 11 Agreement with Defendant Daugherty extending the discovery deadline to July 25, 2023. Plaintiff agrees to withdraw the subpoena subject to you agreeing to accept service for a new subpoena issued for a mutually agreeable time and location.

Thank you.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Tue, Jun 20, 2023 at 3:06 PM McNeilly, Edward <edward.mcneilly@hoganlovells.com> wrote:

> Ms. Pettit:
>
> Your response did not confirm that you are withdrawing the present subpoena. Please confirm that you are withdrawing the current subpoena immediately, otherwise we will be forced to file the Motion to Quash by 5:00 p.m. CT today. We will confer with our client regarding times for the deposition where he is available and will get back to you. Judge Nelms reserves all rights with respect to the reissued subpoena, including, without limitation, to file a Motion to Quash or Modify or for Protective Order, if an appropriate scope for the deposition cannot be mutually agreed.
>
> Sincerely,
>
> Edward McNeilly
>
> **From:** Julie Pettit <jpettit@pettitfirm.com>
> **Sent:** Tuesday, June 20, 2023 11:59 AM
> **To:** McNeilly, Edward <edward.mcneilly@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
> **Cc:** mhurst@lynnllp.com
> **Subject:** Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas
>
> **[EXTERNAL]**
>
> Mr. Hefter:

In response to your correspondence dated June 16, 2023 regarding the deposition subpoena of former Judge Russel Nelms, you included four proposed limitations on the deposition. I address each of those in turn:

- the deposition will take place at a mutually convenient time that counsel and the witness are available (at this time, we are not available next week);

  Response: We will work with you and your client regarding a convenient time and place for the deposition. Please let us know a few dates when the witness is available and we will re-issue the subpoena.

- the deposition will not exceed one hour in time;

  Response: Tex. R. Civ. P. 199.5(c) provides six hours of questioning for a deposition. While we do not have any intention of arbitrarily using all six hours, we cannot agree to an artificial time limit that waives our procedural rights.

- the topics for questioning at the deposition will be strictly limited to the allegations in the operative complaint as of the date of this letter (as to which, please send us a copy of such complaint); and

  Response: The questions in the deposition will be appropriate to the allegations, defenses, and documents produced in the case. However, please be advised that Tex. R. Civ. P. 199.5(e) provides that all objections shall be limited to "form," "leading," or "non-responsive." Unless specifically requested, we do not invite your explanations or argument regarding any form objection. Argumentative or suggestive objections or explanations waive objection and may be grounds for terminating the oral deposition or assessing costs or other sanctions. We expect you will follow this rule. With respect to your request for a copy of the live complaint, we will provide you a copy as requested.

- John Morris of Pachulski Stang Ziehl & Jones, counsel to Highland Capital Management, L.P. and the Highland Claimant Trust, is permitted to attend the deposition.

  Response: Mr. Morris is neither counsel of record in this matter nor counsel for the witness. As far as we are aware, he is not barred in the State of Texas, nor admitted to practice *pro hac vice* in the

courts of the State of Texas. Accordingly, we do not see any valid reason for him to attend the deposition.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Tue, Jun 20, 2023 at 1:32 PM McNeilly, Edward <edward.mcneilly@hoganlovells.com> wrote:

Counsel:

I write further to my email of June 16, 2023 below (which attached a letter from Michael Hefter), to the telephone message that I left with Ms. Pettit's receptionist at or around 12:13 CT today (as Ms. Pettit was unavailable) and to the voice message that I left with Mr. Hurst on his office line at or around 12:20 CT today (as Mr. Hurst was not available). Due to the timing requirements of Dallas County Local Civil Rule 2.12, absent written agreement from you by **1:30 p.m. (PT) / 3:30 p.m. (CT) today** that you will withdraw the subpoena and deposition notice and agree to meet and confer regarding the time, place and scope of the deposition, we will file a motion to quash by 5:00 p.m. (CT) today.

Sincerely,

Edward McNeilly

Edward McNeilly
Senior Associate

Hogan Lovells US LLP
1999 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067
Tel: +1 310 785 4600
Direct: +1 310 785 4671
Mobile: +1 310 435 5749
Fax: +1 310 785 4601
Email: edward.mcneilly@hoganlovells.com
www.hoganlovells.com

From: McNeilly, Edward
Sent: Friday, June 16, 2023 1:18 PM
To: 'jpettit@pettitfirm.com' <jpettit@pettitfirm.com>; 'mhurst@lynnllp.com' <mhurst@lynnllp.com>
Cc: Wynne, Rick <richard.wynne@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; 'John A. Morris' <jmorris@pszjlaw.com>
Subject: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

Counsel:

Please see the attached letter sent on behalf of Michael Hefter.

Sincerely,

Edward McNeilly

Edward McNeilly
Senior Associate

Hogan Lovells US LLP
1999 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067
Tel: +1 310 785 4600
Direct: +1 310 785 4671
Mobile: +1 310 435 5749
Fax: +1 310 785 4601
Email: edward.mcneilly@hoganlovells.com
www.hoganlovells.com

EXHIBIT A-10

Gmail

Julie Pettit <jpettit@pettitfirm.com>

Re: J. Seery - Deposition Subpoena

1 message

Julie Pettit <jpettit@pettitfirm.com> Thu, Jul 27, 2023 at 3:41 PM
To: "Levy, Joshua S." <JLevy@willkie.com>
Cc: "Laura M. Garcia" <lgarcia@weinsteinklein.com>, "Stancil, Mark" <MStancil@willkie.com>, "John A. Morris" <jmorris@pszjlaw.com>, Shirley Xu <sxu@lynnllp.com>, Beverly Congdon <BCongdon@lynnllp.com>, "Michael K. Hurst" <MHurst@lynnllp.com>, Patricia Perkins <pperkins@pettitfirm.com>, Michele Naudin <mnaudin@lynnllp.com>, "Damien H. Weinstein" <dweinstein@weinsteinklein.com>, "Alexis C. Wyckoff" <awyckoff@weinsteinklein.com>, "Brennan, John L." <JBrennan@willkie.com>, "Thompson, Blayne R." <blayne.thompson@hoganlovells.com>, "Hefter, Michael C." <michael.hefter@hoganlovells.com>, "Wynne, Rick" <richard.wynne@hoganlovells.com>, "McNeilly, Edward" <edward.mcneilly@hoganlovells.com>

Josh,

We are going to file a Motion to Compel the redacted text messages. We will postpone Mr. Seery's deposition and take it after the issue of the redactions is resolved by the Court.

For purposes of our certificate of conference, we will assume you are opposed to our motion. If that is not the case, please let us know.

Thank you.

Best Regards,

Julie Pettit Greeson
The Pettit Law Firm
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Direct: 214-329-1846
Fax: 214-329-4076
jpettit@pettitfirm.com
THE PETTIT LAW FIRM

On Thu, Jul 27, 2023 at 11:27 AM Levy, Joshua S. <JLevy@willkie.com> wrote:

> Hi Julie,
>
> Please send links for Mr. Seery's deposition on Monday, including for Zoom, exhibit share, and real time. Apologies if you already sent this and I missed it.
>
> Regards,
>
> Josh
>
> **Joshua S. Levy**
> **Willkie Farr & Gallagher LLP**
> 1875 K Street, N.W. | Washington, DC 20006-1238

Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Levy, Joshua S. <JLevy@willkie.com>
Sent: Friday, July 14, 2023 3:30 PM
To: Julie Pettit <jpettit@pettitfirm.com>
Cc: Laura M. Garcia <lgarcia@weinsteinklein.com>; Stancil, Mark <MStancil@willkie.com>; John A. Morris <jmorris@pszjlaw.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Subject: RE: J. Seery - Deposition Subpoena

Hi Julie. July 31 at 9:30 AM ET works for us.

Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Levy, Joshua S. <JLevy@willkie.com>
Sent: Thursday, July 13, 2023 8:13 PM
To: Julie Pettit <jpettit@pettitfirm.com>
Cc: Laura M. Garcia <lgarcia@weinsteinklein.com>; Stancil, Mark <MStancil@willkie.com>; John A. Morris <jmorris@pszjlaw.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Subject: Re: J. Seery - Deposition Subpoena

Thanks Julie, we'll check that date. I'm sure all counsel will be able to raise objections and instructions in a professional manner.

Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

On Jul 13, 2023, at 7:55 PM, Julie Pettit <jpettit@pettitfirm.com> wrote:

***** EXTERNAL EMAIL *****

Sorry, my email below should have said **July 31** as the date of the deposition.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

THE PETTIT LAW FIRM

On Thu, Jul 13, 2023 at 6:49 PM Julie Pettit <jpettit@pettitfirm.com> wrote:

> Hi Josh,
>
> The amended subpoena you were served with indicates a deposition date of May 31. If that does not work for your side, please promptly let us know, as we were under the impression that day worked for you.
>
> Also note that as we discussed, if anyone is disruptive during the deposition, we reserve all rights to seek court intervention, including but not limited to seeking court intervention during the deposition.
>
> Thank you.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

THE PETTIT LAW FIRM

On Thu, Jul 13, 2023 at 9:52 AM Levy, Joshua S. <JLevy@willkie.com> wrote:

> Thanks Laura, we agree to accept service. Thanks also to Michael and Julie for the productive call on Jim Seery's deposition. To summarize where we landed:
>
> - **Time Limits.** We agreed to limit the deposition to 4 hours and you'll endeavor to keep it keep it shorter if possible.
>
> - **Attendance.** John Morris can attend the deposition and can instruct the witness not to answer questions on privilege grounds or as he deems appropriate under the Bankruptcy Court's Gatekeeper Orders. You reserved your right to challenge those instruction in a motion after the deposition.
>
> - **Topics.** We agreed to limit the deposition to the topics noticed. We also agreed to exchange objections to the topics by email and you reserved the right to challenge those objections in a motion after the deposition. Here are our objections:
>
> - **Topic No. 6.** We object to Topic No. 6 to the extent it seeks testimony regarding "entities affiliated with Ellington" on the grounds that it is overly broad, not relevant to the claims and defenses at issue, and violates the Bankruptcy Court's Gatekeeper Orders.
>
> - **Topic No. 7.** We object to Topic No. 7 on the grounds that it is overly broad, not relevant to the claims and defenses at issue, and violates the Bankruptcy Court's Gatekeeper Orders.
>
> - **Topic No. 9.** We object to Topic No. 9 to the extent it seeks testimony regarding "Mr. Daugherty's Proof of Claim in the Highland bankruptcy" on the grounds that it is overly broad, not relevant to the claims and defenses at issue, and violates the Bankruptcy Court's Gatekeeper Orders.
>
> - **Logistics.** We agreed to reschedule the deposition for the week of August 1 and to conduct the deposition remotely. We are checking with our client about specific days and times. Once we have the deposition scheduled, please send us links for joining the deposition, exhibit sharing, and realtime feeds.

In addition, our e-discovery vendor has run into technical issues with our supplemental production. We are pressing them to make the production this week. It's a small production, but we want to be upfront about the timing. We'll let you know if this timing changes.

Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Laura M. Garcia <lgarcia@weinsteinklein.com>
Sent: Thursday, July 13, 2023 10:15 AM
To: Levy, Joshua S. <JLevy@willkie.com>
Cc: Stancil, Mark <MStancil@willkie.com>; John A. Morris <jmorris@pszjlaw.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>; 'Julie Pettit' <jpettit@pettitfirm.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Subject: RE: J. Seery - Deposition Subpoena

***** EXTERNAL EMAIL *****

Good morning Josh,

Please see the attached amended subpoena, reflecting the new deposition date and revised topics. Please confirm that you'll accept service via email.

Thank you,

Laura

<image002.jpg> Laura M. Garcia

D: 347.919.8422

M: 732.850.2201

lgarcia@weinsteinklein.com

www.weinsteinklein.com

From: Levy, Joshua S. <JLevy@willkie.com>
Sent: Monday, July 10, 2023 3:36 PM
To: 'Julie Pettit' <jpettit@pettitfirm.com>
Cc: Stancil, Mark <MStancil@willkie.com>; John A. Morris <jmorris@pszjlaw.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Subject: RE: J. Seery - Deposition Subpoena

External Email

Thanks Julie. As I've noted, the whole group would like to participate so we'll keep the call scheduled for 4:30 PM ET. As to the three issues:

1. **Scope of Deposition.** We have concerns about the scope of the revised topics, particularly "entities affiliated with Ellington" in Topic 6, Topic 7, and "Mr. Daugherty's

Proof of Claim in the Highland bankruptcy" in topic 9. We'd like to discuss the topics in light of the Bankruptcy Court's Gatekeeper Orders and procedures for raising objections.

2. **Time Limits.** We're disappointed that you are insisting on a six-hour deposition for a third-party witness and will not agree to any reasonable time limits. As a professional courtesy and out of respect for the burden on Mr. Seery's time, we hope you'll reconsider.
3. **Deposition Attendance.** We are agreed that Mr. Morris will attend Mr. Seery's deposition.

Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Monday, July 10, 2023 3:07 PM
To: Levy, Joshua S. <JLevy@willkie.com>
Cc: Stancil, Mark <MStancil@willkie.com>; John A. Morris <jmorris@pszjlaw.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Subject: Re: J. Seery - Deposition Subpoena

***** EXTERNAL EMAIL *****

Josh,

Michael and I just left you a voicemail about 30 minutes ago.

Regarding your three issues below:

1. We have sent you the revised topics. Please let me know if you have any questions.

2. With respect to time limits, we will certainly be sensitive to the witness' time, but without knowing how the witness will answer, we cannot agree to a particular time limit other than what is permitted by the Texas rules.

3. With respect to Mr. Morris' attendance, we do not see any legitimate reason why he would have a right to attend the deposition. We do not agree with your interpretation of the bankruptcy order. That said, if we can agree on everything else, then as a courtesy, we will agree to allow him to attend so long as he is silent and non obstructive. We reserve the right to seek immediate relief from the Court and/or have Mr. Morris removed from the deposition if he obstructs the deposition in any way.

Please confirm if these terms are agreeable.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Mon, Jul 10, 2023 at 10:06 AM Levy, Joshua S. <JLevy@willkie.com> wrote:

> Thanks Julie. We want to make sure everyone is able to participate in the call today, so we'll push it back to 4:30 PM ET.
>
> Regards,
>
> Josh
>
> **Joshua S. Levy**
> **Willkie Farr & Gallagher LLP**
> 1875 K Street, N.W. | Washington, DC 20006-1238
> Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
> jlevy@willkie.com | vCard | www.willkie.com bio
>
> **From:** Julie Pettit <jpettit@pettitfirm.com>
> **Sent:** Sunday, July 9, 2023 11:31 PM

To: Levy, Joshua S. <JLevy@willkie.com>
Cc: Stancil, Mark <MStancil@willkie.com>; John A. Morris <jmorris@pszjlaw.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Subject: Re: J. Seery - Deposition Subpoena

***** EXTERNAL EMAIL *****

Hi Josh,

Daugherty's counsel is taking a deposition of one of our witnesses tomorrow. We are unsure what time that will conclude, but Michael and I can call you once it is over.

In the meantime, attached is a slightly revised list of topics.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

<image012.jpg>

On Fri, Jul 7, 2023 at 3:44 PM Levy, Joshua S. <JLevy@willkie.com> wrote:

> Thanks Julie. Just to get a time on the calendar, I'm going to send a dial in for 12 PM ET on Monday.

As an update, we expect to make the supplemental production on Monday. We'll let you know if that timing changes.

Have a good weekend,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Wednesday, July 5, 2023 3:55 PM
To: Levy, Joshua S. <JLevy@willkie.com>
Cc: Stancil, Mark <MStancil@willkie.com>; John A. Morris <jmorris@pszjlaw.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Subject: Re: J. Seery - Deposition Subpoena

***** EXTERNAL EMAIL *****

Hi Josh,

Lots of folks on our side are traveling, but we will get back with you by early next week.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

<image012.jpg>

On Wed, Jul 5, 2023 at 10:14 AM Levy, Joshua S. <JLevy@willkie.com> wrote:

> Hi Julie. Following up about this.
>
> Regards,
>
> Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

> On Jun 30, 2023, at 5:02 PM, Levy, Joshua S. <JLevy@willkie.com> wrote:
>
> Julie,
>
> We'd like to schedule a call next Wednesday to discuss Jim Seery's upcoming deposition. Specifically, we'd like to discuss:
>
> 1. **Scope of Deposition.** We appreciate that you appended a list of deposition topics to the subpoena to Mr. Seery. We'd like to discuss the topics, how they affect the scope of the deposition, and the procedure for raising objections to questions that exceed that scope.
> 2. **Time Limits.** Because Mr. Seery is a third-party witness, we'd like to discuss the appropriate length of his deposition.
> 3. **Deposition Attendance.** We understand that John Morris, counsel for Highland (copied here), wants to attend the deposition and potentially raise objections under the Gatekeeper Orders entered by the Bankruptcy Court (which I've attached) to ensure discovery in the *Ellington* litigation is not used in connection with the *Highland* bankruptcy in violation of the Gatekeeper Orders.
>
> Please let us know your availability on Wednesday for a call. I've copied counsel for Russell Nelms who plans to participate in our call because many of these same issues are relevant for Mr. Nelms' depositions.
>
> Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Levy, Joshua S. <JLevy@willkie.com>
Sent: Tuesday, June 27, 2023 12:53 PM
To: 'Julie Pettit' <jpettit@pettitfirm.com>; Stancil, Mark <MStancil@willkie.com>
Cc: John A. Morris <jmorris@pszjlaw.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Brennan, John L. <JBrennan@willkie.com>
Subject: RE: J. Seery - Deposition Subpoena

Thanks Julie. We're aiming to make a supplemental production next week and will let you know if that timing changes.

Regards,

Josh

Joshua S. Levy
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: +1 202 303 1147 | Mobile: +1 516 680 5751
jlevy@willkie.com | vCard | www.willkie.com bio

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Tuesday, June 27, 2023 12:44 PM
To: Stancil, Mark <MStancil@willkie.com>
Cc: John A. Morris <jmorris@pszjlaw.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Levy, Joshua S. <JLevy@willkie.com>; Brennan, John L. <JBrennan@willkie.com>
Subject: Re: J. Seery - Deposition Subpoena

***** EXTERNAL EMAIL *****

Hi Mark,

I will be back in touch with you to confirm for sure, but it looks like July 17 will work.

Also, is there any update on the supplemental production?

Thank you.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Fri, Jun 23, 2023 at 11:44 AM Julie Pettit <jpettit@pettitfirm.com> wrote:

> Hi Mark,
>
> Thank you for your email. We are working to coordinate dates with counsel with Daugherty. I will be in touch shortly, but I'm hopeful that week will work.
>
> Best Regards,
>
> Julie Pettit Greeson
>
> The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

<image001.jpg>

On Thu, Jun 22, 2023 at 5:39 PM Stancil, Mark <MStancil@willkie.com> wrote:

> Ms. Garcia,
>
> I am authorized to accept service on behalf of Mr. Seery, on the understanding that we can figure out a mutually agreeable date. Mr. Seery has some international travel scheduled, but the week of July 17 is probably workable. Also, I expect we will make a small supplemental production to you shortly -- I should know by the end of next week whether/when that will be available, but I'm confident it will be modest.
>
> I'm also copying my colleagues, Josh Levy and John Brennan, who are working with me on this matter.
>
> Best,
>
> Mark
>
> **Mark T. Stancil**
> **Willkie Farr & Gallagher LLP**
> 1875 K Street, N.W. | Washington, DC 20006-1238
> Direct: +1 202 303 1133 | Fax: +1 202 303 2000
> mstancil@willkie.com | vCard | www.willkie.com bio
>
> -----Original Message-----
> From: John A. Morris <jmorris@pszjlaw.com>
> Sent: Monday, June 19, 2023 7:52 PM
> To: Laura M. Garcia <lgarcia@weinsteinklein.com>
> Cc: Julie Pettit <jpettit@pettitfirm.com>; Shirley Xu <sxu@lynnllp.com>; Beverly Congdon <BCongdon@lynnllp.com>; Michael K. Hurst <MHurst@lynnllp.com>; Patricia Perkins <pperkins@pettitfirm.com>; Michele Naudin <mnaudin@lynnllp.com>; Damien H. Weinstein <dweinstein@weinsteinklein.com>; Alexis C. Wyckoff <awyckoff@weinsteinklein.com>; Stancil, Mark <MStancil@willkie.com>
> Subject: Re: J. Seery - Deposition Subpoena
>
> *** EXTERNAL EMAIL ***
>
> Adding Mark Stancil, Mr. Seery's personal counsel.
>
> We'll be in touch shortly.
>
> Regards,
>
> John

Sent from my iPhone

On Jun 19, 2023, at 3:36 PM, Laura M. Garcia <lgarcia@weinsteinklein.com> wrote:

John,

Please see the attached subpoena ad testificandum. Let us know if you'll accept electronic service of the attached on behalf of your client. We will send you a hard copy of the attached, as well as the witness fee for Mr. Seery, under separate cover.

Thank you,
Laura

Laura M. Garcia

D: 347.919.8422
M: 732.850.2201
lgarcia@weinsteinklein.com<mailto:lgarcia@weinsteinklein.com>
https://urldefense.com/v3/__http://www.weinsteinklein.com_;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw90-x6sTw$
<https://urldefense.com/v3/__http://www.weinsteinklein.com_;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw90-x6sTw$ >

<https://urldefense.com/v3/__https://www.facebook.com/WeinsteinKlein__;!!O6UFbZt64g!NGJThqYTkPQFUep0j1Lp1qd7yuYG5oFXXejY39q-DhLmZbMqx1NfWrWTzPVPlTn9EL2KW7v3Qw_5DM4TqQ$ >

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<Highland - Confirmation Order.pdf>

<Highland - Seery Retention Order.pdf>

<Highland - January Settlement Order.pdf>

<Highland - Confirmation Order (5th Cir).pdf>

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EXHIBIT A-11

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SCOTT BRYON ELLINGTON Plaintiff, v. PATRICK DAUGHERTY, Defendant.	***AMENDED SUBPOENA AD TESTIFICANDUM PURSUANT TO THE UNIFORM INTERSTATE DEPOSITION AND DISCOVERY ACT AND CPLR § 3119*** **Originating State: Texas** **Originating County: Dallas** **Originating Court: 101st Judicial District Court** **Originating Case No.: DC-22-00304**

THE PEOPLE OF THE STATE OF NEW YORK

TO: James Seery
c/o Joshua S. Levy
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019

WE COMMAND YOU, that all business and excuses being laid aside, to appear virtually, via a Zoom or Teams meeting, at the offices of Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 on the 31st day of July 2023, at 9:30 a.m., or at a date and time mutually agreed to between the parties, but no less than twenty (20) days from the date of service of this Amended Subpoena, or as ordered by the Court, to be examined and give deposition testimony on the topics set forth in Schedule A.

PLEASE BE FURTHER ADVISED that the meeting link and/or login credentials will be provided to you in advance of the deposition.

PLEASE BE FURTHER ADVISED that the deposition will be videotaped by Cindy Afanador Court Reporting, Inc., with a business address at P.O. Box 984, Suite 1120, Kings Park, New York 11754.

PLEASE BE FURTHER ADVISED that you have the right to move to quash or modify this Amended Subpoena or otherwise move under CPLR § 2304 or any other rule governing the courts of the State of New York that are applicable to discovery.

PLEASE BE FURTHER ADVISED that this matter is pending in the State of Texas, County of Dallas, 101st Judicial District, captioned as *Scott Byron Ellington v. Patrick Daugherty*, Cause No. DC-22-00304 (the "Action"), the Original Petition of which, dated January 11, 2022, is attached hereto as Exhibit 1.

PLEASE BE FURTHER ADVISED that counsel of record in this matter, and their contact information, are:

Julie Pettit, Esq.
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
(214) 329-0151

Michael K. Hurst, Esq.
Mary Goodrich Nix, Esq.
Michele Naudin, Esq.
LYNN PINKER HURST & SCHWEGMANN
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
(214) 292-3636
Attorneys for Plaintiff Scott Byron Ellington

Ruth Ann Daniels, Esq.
Andrew K. York, Esq.
Drake M. Rayshell, Esq.
GRAY REED
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Attorneys for Defendant Patrick Daugherty

PLEASE BE FURTHER ADVISED that the terms of the Texas Amended Subpoena *Ad Testificandum* attached hereto as Exhibit 2 are also incorporated herein to the extent that those terms do not conflict with the rules governing the courts of the State of New York that are applicable to discovery.

FAILURE TO APPEAR OR COMPLY with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed one hundred and fifty dollars ($150.00) and all damages sustained by reason of your failure to comply.

Dated: July 13, 2023

/s/ Damien H. Weinstein
Damien H. Weinstein
Laura M. Garcia
WEINSTEIN & KLEIN P.C.
1 High Street Court, Suite 5
Morristown, New Jersey 07960
(347) 502-6464

Exhibit 27 Page 161 of 215

cc (via email): Julie Pettit (jpettit@pettitfirm.com)
Mary Goodrich Nix (mnix@lynnllp.com)
Michael K. Hurst (mhurst@lynnllp.com)
Michele Naudin (mnaudin@lynnllp.com)
Ruth Ann Daniels (rdaniels@grayreed.com)
Andrew K. York (dyork@grayreed.com)
Drake M. Rayshell (drayshell@grayreed.com)

4872-0806-8208, v. 1

SCHEDULE A

DEPOSITION TOPICS

1. Any documents and/or communications produced by James Seery in response to the Subpoena *Duces Tecum* served on Mr. Seery c/o Joshua S. Levy, Esq., in or around November 2022.

2. Mr. Seery's personal knowledge of the allegations asserted in the Action.

3. Mr. Seery's personal knowledge of the relationship between the Defendant in the Action, Patrick Daugherty ("Daugherty"), and the Plaintiff, Scott Byron Ellington ("Ellington").

4. Mr. Seery's receipt of photos, videos, data, or other information from Daugherty relating to Greg Brandstatter.

5. Mr. Seery's receipt of photos, videos, data, or other information from Daugherty relating to Sarah Bell (formerly Goldsmith).

6. Mr. Seery's receipt of communications, emails, photos, videos, data, or other information from Daugherty relating to Ellington or entities affiliated with Ellington.

7. Any meetings or communications between any representative of the Highland Bankruptcy estate and Mr. Daugherty and/or his representatives related in any way to Ellington.

8. Any instructions or approval, whether explicit or tacit, provided to Mr. Daugherty with respect to Mr. Daugherty's so-called "investigation" of Mr. Ellington or the stalking allegations in this case.

9. Any consideration provided to Daugherty with respect to Mr. Daugherty's so-called "investigation" of Mr. Ellington or the stalking in this case, including, but not limited to, the treatment of Mr. Daugherty's Proof of Claim in the Highland bankruptcy.

EXHIBIT 1

DC-22-00304

NO. _____

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
	§	101st
v.	§	**_____ JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

Comes Now, Scott Byron Ellington, Plaintiff herein, and files this *Plaintiff's Original Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction* against Defendant Patrick Daugherty, and in support thereof, would respectfully show the Court the following:

Dallas County LR 1.08 Disclosure

> Dallas County Local Rule 1.08 provides that the attorneys of record for the parties in any case within the categories of Local Rule 1.07 must notify the judges of the respective courts in which the earlier and later cases are assigned of the pendency of the latter case. The attorney filing a case that is so related to another previously filed case shall disclose in the original pleading or in a separate simultaneous filing that the case is so related and identify by style, cause number, and court of the related case. Accordingly, and pursuant to L.R. 1.08, the undersigned hereby notifies the Court that this case, in part, arises out of the same transaction or occurrence which is the subject of *Highland Capital Management, L.P. v. Patrick Daugherty*, Cause No. 12-04005, in the 68th Judicial District Court of Dallas County, Texas. Hence, the undersigned believes that this case is subject to transfer under L.R. 1.07(a) or otherwise pursuant to L.R. 106 because the transfer would "facilitate orderly and efficient disposition of the litigation."

I. Discovery Control Plan

1. Pursuant to TEXAS RULE OF CIVIL PROCEDURE 190.3, Plaintiff requests a Level 2 discovery control plan.

II. Parties & Service

2. Plaintiff Scott Byron Ellington, an individual, is a resident of the state of Texas.

3. Defendant Patrick Daugherty is an individual and resident of Dallas County, Texas. Defendant may be served at his residence located at 3621 Cornell Ave, Dallas, Texas 75205, or wherever he may be found.

III. Rule 47(c) Disclosure

4. Plaintiff seeks damages within the jurisdictional limits of the Court. Specifically, Plaintiff seeks monetary relief over $1,000,000 and non-monetary relief.

IV. Jurisdiction & Venue

5. The Court has jurisdiction over Defendant because he resides in Texas, has done business in Texas, committed torts, in whole or in part, in Texas, has continuing contacts with Texas, and is amenable to service by a Texas Court.

6. Venue in Dallas County is proper in this case under Sections 15.002(a)(1) and (a)(3) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE because this is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred and it is the county where Defendant resides.

V. Facts

7. Plaintiff Scott Ellington ("Plaintiff" or "Ellington") was, until January of 2021, the general counsel of Highland Capital Management ("Highland").

8. Defendant Daugherty ("Defendant" or "Daugherty") previously worked for Highland.

9. In 2012, Highland sued Daugherty. In response, Daugherty filed counterclaims against Highland then sued its affiliate, Highland Employee Retention Assets LLC ("HERA"), and three Highland executives. A jury ultimately determined that Daugherty breached his employment agreement and fiduciary duties. It also found that HERA breached the implied duty of good faith and fair dealing, but also found that the executives subject to the counter-claim were not liable to Daugherty. The jury awarded Highland $2,800,000 in attorney's fees and injunctive relief; and awarded Daugherty $2,600,000 in damages against HERA.

10. Since the 2012 lawsuit's filing, Daugherty and Highland—or Highland related entities and individuals—engaged in protracted litigation in several different forums across the country. Daugherty's expressed goal is to "get" the founder and former CEO of Highland, Jim Dondero, and its former general counsel, Ellington. As part of this campaign, Daugherty personally sued Ellington in December 2019 in Delaware Chancery Court. Ellington's motion to dismiss currently pends in that matter.

11. While Daugherty's previously limited his vendetta to the courtroom, he began a campaign of harassment against Ellington and his family starting in January 2021 that continues to this day. *See* **Exhibit A** (Declaration of Gregory Allen Brandstatter, the personal security guard of Scott Ellington) (detailing Daugherty's harassment and stalking of Ellington, his family, and loved ones); **Exhibit B** (Declaration of Scott Byron Ellington).

12. Specifically, Daugherty has been observed outside Ellington's office, his residence, the residence of his long-time girlfriend, Stephanie Archer, his sister's residence, and his father's residence no less than **143 times**, often taking photographs and video recordings while either

parked or driving slowly by. Indeed, on April 21, 2021, Daugherty was observed driving by Ellington's office nine (9) times that day alone.

13. Daugherty most recently was confirmed taking video or photo recordings outside of Ellington's residence on December 11, 2021. For reasons set forth in the Brandstatter Declaration, attached herein at **Exhibit A**, Daugherty likely stalked Ellington and his loved ones more recently than the latest confirmed date.

14. Daugherty's harassing conduct is "textbook" behavior that precedes a physical attack that a reasonable person would consider a threat to their safety as well as that of their family and property. Indeed, Ellington has been forced to hire personal security, and his family are in fear for their personal and physical safety.

15. As evidenced by the over 143 times Daugherty has been observed stalking Ellington and his family, he has the apparent ability to carry out this threat of continued harassment and violence.

16. Both Mr. Ellington's sister and girlfriend have both demanded to Mr. Daugherty that he stop his harassment. Despite this clear demand for Daugherty to stop engaging in this harassing behavior, he refuses to stop and continues to harass Ellington and his family.

17. Daugherty's constant stalking and harassment of Ellington and his family reasonably cause them to fear for their safety.

18. Ellington reported Daugherty's harassing and disturbing behavior to the police.

VI. Causes of Action

A. Count One: Stalking.

19. All facts alleged above, herein, and below are hereby incorporated by reference.

20. Pursuant to TEXAS CIVIL PRACTICE & REMEDIES CODE § 85.002, a defendant is liable to a claimant for damages arising from stalking of the claimant by the defendant.

21. A claimant proves stalking against a defendant by showing:

> (1) on more than one occasion the defendant engaged in harassing behavior;
> (2) as a result of the harassing behavior, the claimant reasonably feared for the claimant's safety or the safety of a member of the claimant's family; and
> (3) the defendant violated a restraining order prohibiting harassing behavior or:
>
> (A) the defendant, while engaged in harassing behavior, by acts or words threatened to inflict bodily injury on the claimant or to commit an offense against the claimant, a member of the claimant's family, or the claimant's property;
>
> (B) the defendant had the apparent ability to carry out the threat;
>
> (C) the defendant's apparent ability to carry out the threat caused the claimant to reasonably fear for the claimant's safety or the safety of a family member;
>
> (D) the claimant at least once clearly demanded that the defendant stop the defendant's harassing behavior;
>
> (E) after the demand to stop by the claimant, the defendant continued the harassing behavior; and
>
> (F) the harassing behavior has been reported to the police as a stalking offense.

22. "Harassing behavior" is defined by the statute as "conduct by the defendant directed specifically toward the claimant, including following the claimant, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the claimant." TEX. CIV. PRAC. & REM. CODE § 85.001(4).

23. First, Defendant has engaged in harassing behavior toward the Plaintiff and his family in the above-described manner. Second, because of the harassing behavior, Plaintiff reasonably feared for his safety and the safety of his family. Third, Defendant, while engaging in the harassing behavior, by acts or words threatened to inflict bodily injury on the Plaintiff or to commit an offense against the Plaintiff, his family, or his property. Specifically, Defendant's

conduct is consistent with behavior leading up to a physical attack and is, therefore, an inherent threat of physical violence. Defendant had the apparent ability to carry out the threat, the Defendant's apparent ability to carry out the threat caused Plaintiff to reasonably fear for his safety or the safety of a family member, the Plaintiff (or his representative) at least once clearly demanded that the Defendant stop his harassing behavior, after the demand to stop by the Plaintiff, the Defendant continued the harassing behavior, and the harassing behavior has been reported to the police as a stalking offense.

24. Plaintiff seeks recovery of his actual damages caused by Defendant's stalking, exemplary damages, and injunctive relief.

B. Count Two: Invasion of Privacy by Intrusion.

25. All facts alleged above, herein, and below are hereby incorporated by reference.

26. A claim of invasion of privacy by intrusion has the following elements: (1) an intentional intrusion, (2) upon the seclusion, solitude, or private affairs of another, (3) that would be highly offensive to a reasonable person.

27. Here, Defendant has intentionally intruded upon the seclusion, solitude, and private affairs of Plaintiff by regularly appearing at his office, his residence, his girlfriend's residence, his father's residence, and his sister's residence, and taking photographs and other recordings of Ellington and his loved ones at these residences. The appearances are unsolicited, uninvited, and constant. These unwanted "visits" by Defendant are highly offensive to a reasonable person.

28. Plaintiff seeks recovery of his actual damages caused by Defendant's conduct alleged herein, exemplary damages, and injunctive relief.

VII. Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction

A. Elements for Injunctive Relief.

29. All facts alleged above, herein, and below are hereby incorporated by reference.

30. In light of the above-described facts, Plaintiff seeks recovery from Defendant.

31. Plaintiff is likely to succeed on the merits of this lawsuit because Defendant has been stalking Plaintiff and his family and has been engaged in otherwise harassing conduct.

32. Unless this Honorable Court immediately restrains the Defendant and his agents the Plaintiff and his family will suffer immediate and irreparable injury, for which there is no adequate remedy at law to give Plaintiff complete, final and equal relief. More specifically, Plaintiff will show the court the following:

a. The harm to Plaintiff and his family is imminent and ongoing as Defendant has harassed and stalked Plaintiff and his family, including his father, his sister, and girlfriend, almost constantly this entire year.

b. The imminent harm will cause Plaintiff irreparable injury as the harassment will continue if not restrained. Further, Plaintiff reasonably fears that Defendant may cause him or his family bodily harm, and the accompanying anxiety interferes with his ability to conduct his normal, daily activities. *See, e.g., Quinn v. Harris*, 03-98-00117-CV, 1999 WL 125470, at *11 (Tex. App.—Austin Mar. 11, 1999, pet. denied) ("[I]njunctions designed to prevent harassment are permissible."); *Kramer v. Downey*, 680 S.W.2d 524, 525 (Tex. App.—Dallas 1984, writ ref'd n.r.e.) ("Further, this right to be left alone from unwanted attention may be protected, in a proper case, by injunctive relief."); and

c. There is no adequate remedy at law which will give Plaintiff complete, final and equal relief because the imminent harm is irreparable. *See e.g., Wright v. Sport Supply Group, Inc.*, 137 S.W.3d 289, 294 (Tex. App.—Beaumont 2004, no pet.) ("Issues one (no evidence of inadequate remedy at law) and two (no evidence of irreparable injury) are intertwined under Texas case law.").

B. Bond.

33. Plaintiff is willing to post a reasonable temporary restraining order and temporary injunction bond and requests the Court to set such bond.

C. Remedy.

34. Plaintiff met his burden by establishing each element which must be present before injunctive relief can be granted by this Court. Thus, Plaintiff is entitled to the requested temporary injunction, and upon a successful trial on the merits, for the temporary injunction to be made permanent.

35. Plaintiff requests that, while the temporary injunction is in effect, the Court to restrain Defendant and his agents from:

a. Being within 500 feet of Ellington;

b. Being within 500 feet of Ellington's office located at 120 Cole Street, Dallas, Texas 75207;

c. Being within 500 feet of Ellington's residence located at 3825 Potomac Ave, Dallas, Texas 75205;

d. Being within 500 feet of Stephanie Archer;

e. Being within 500 feet of Stephanie Archer's residence located at 4432 Potomac, Dallas, Texas 75025;

f. Being within 500 feet of Marcia Maslow;

g. Being within 500 feet of Marcia's residence located at 430 Glenbrook Dr., Murphy, Texas 75094;

h. Being within 500 feet of Byron Ellington;

i. Being within 500 feet of Byron Ellington's residence located at 5101 Creekside Ct., Parker, Texas 75094;

j. Photographing, videorecording, or audio recording Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington;

k. Photographing or videorecording the residences or places of business of Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington; and

l. Directing any communications toward Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington.

VIII. Exemplary Damages

36. The conduct of Defendant described above constitutes malice and, therefore, Plaintiff is entitled to, and hereby seeks, an award of exemplary damages. *See* TEX. CIV. PRAC. & REM. CODE § 41.003(1).

IX. Conditions Precedent

37. All conditions precedent to Plaintiff's suit have occurred or have been performed.

X. Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that:

a. Defendant be cited to appear and answer;

b. The Court determine any issue of fact and, upon final hearing of this cause, the Court award to Plaintiff:

i. Actual damages;

ii. Exemplary damages;

iii. A temporary restraining order;

iv. A temporary injunction;

v. A permanent injunction; and

vi. Court costs;

c. The Court grant any other relief to which Plaintiff may be entitled.

Respectfully submitted,

/s/ Julie Pettit

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
David B. Urteago
State Bar No. 24079493
durteago@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

Michael K. Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Nathaniel A. Plemons
State Bar No. 24121059
nplemons@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN, LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

ATTORNEYS FOR PLAINTIFF

EXHIBIT
A

DECLARATION OF GREGORY ALLEN BRANDSTATTER

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Gregory Allen Brandstatter declares as follows:

1. My name is Gregory Allen Brandstatter. I am over 21 years of age, have never been convicted of a felony or other crime involving moral turpitude, and suffer from no mental or physical disability that would render me incompetent to make this declaration.

2. I am able to swear, and hereby do swear under penalty of perjury, that the facts stated in this declaration are true and correct and within my personal knowledge.

3. I am a Licensed Texas Master Peace Officer with fifteen (15) years of experience, a U.S. Government Contractor with over twelve (12) years of experience in the areas of high threat protection, counterterrorism, and counternarcotics, and I am also a licensed private investigator and security consultant.

4. On Feb 3, 2021, Scott Ellington ("Scott") called, advising me that he believed someone was stalking himself and his girlfriend Stephanie Archer ("Stephanie"). The day prior to his calling me (Feb 2, 2021), Stephanie had been followed to 120 Cole Street, Dallas, Texas, where Scott has an office. Stephanie stated that for the past month or so she had noticed a large Black SUV possibly following her. On Feb 2, 2021, she noticed that the person in the Black SUV was actively taking pictures of her, and she attempted to confront the individual while she simultaneously took pictures of the Black SUV and its driver. Her picture shows the vehicle Make and License Number, BX9K764. In Stephanie's photo you can also see the person driving holding

up a cell phone as if taking pictures. A true and correct copy of this photograph is attached hereto as **Exhibit A-1**.

5. The following day Scott was in his office on Cole Street, when he noticed a vehicle resembling a "Toyota 4 Runner, Tan in color, stop in front of his office. He observed the driver of the taking pictures and or video of his officer and the vehicles parked in front. Scott was able to obtain the License Number of the Vehicle, GPF9512, he also noted that vehicle had a "WMR sticker on the rear window. Scott stated the driver of the vehicle looked like Pat Daugherty ("Daugherty"). Scott and Daugherty both previously worked at an investment firm in Dallas and are currently opponents in financial litigation. Scott believes that Daugherty is attempting to harass him, his friends and coworkers due to the litigation. It should be noted that Daugherty has a history of anger issues and he believes Daugherty may be trying to intimidate him.

6. Scott asked if I could assist him in determining who the person(s) were taking the photos/videos. I advised Scott that I could check some open sources intelligence ("OSINT") sites and see what I could come up with in reference to the vehicle registrations. I also suggested that we set up a counter surveillance program to determine if these were random acts or an organized surveillance effort.

7. On Feb 4, 2021, an investigation was opened along with a counter surveillance operation. OSINT sources showed Daugherty to be the registered owner of the Black SUV BX9K764 and that Daugherty currently is listed on the vehicle registration of the Infiniti QX4 GPF9512. The Infiniti QX4 closely resembles a Toyota 4 Runner (as observed by Scott above). We believe that Daugherty sold the Infiniti to one of his domestic employees and "borrowed" the vehicle to avoid detection.

8. On February 4, 2021, at approximately 11:20 A.M., I observed the Infiniti GPF9512 driven by a while male with sandy blonde hair drive by west bound on Cole slow when passing Scott's office (120 Cole St.) and then proceed west on Cole, south on Levee, east on Alley (rear of 120 Cole), U-turn, south on Levee and east on Leslie. I viewed the driver of this vehicle as he was exiting Alley and can verify, after comparing photos, that Daugherty was the driver of the Infiniti.

9. At approximately 1:22 P.M. on Feb 4, 2021, Scott advised that Daugherty had followed him to 120 Cole, I was parked on Cole and Levee. As Scott parked, I observed the Infiniti driving west on Cole towards me. I observed Daugherty driving Infiniti GPF9512. Daugherty turned south on Levee, U-turn, north on Levee then east on Cole. I kept my distance as the Infiniti slowed and then stopped in front of Scott's office. While stopped in front of Scott's office, Daugherty verbally engaged Stephanie and Joe (friend of Scott). Daugherty proceeds east on Cole, I followed, Daugherty turned left on Rivers Edge, I am unable to follow due to traffic conditions. Stephanie and Joe identified the driver as Daugherty after comparing to photos. A true and correct copy of a photograph of the back of the Infiniti taken on February 4, 2021, on Cole St. is attached hereto as **Exhibit A-2**.

10. At approximately 5:15 P.M. on February 4, 2021, Reese Morgan ("Reese"), a private investigator with whom I regularly work, drove by Daugherty's residence and confirmed two vehicles parked in the carport. One is a white Lincoln Navigator LPG9001 and the other is a Black GMC Yukon BX9K764, which is the same vehicle that followed Stephanie on February 3, 2021. The Infiniti GPF9512 (with a "WMR" sticker on the back window) is parked on the street across the street from Daugherty's carport. Attached as **Exhibit A-3** is a true and correct copy of a photograph of the Yukon parked at Daugherty's residence, attached as **Exhibit A-4** is a true and

correct copy of a photograph of the Navigator parked at Daugherty's residence, and attached as **Exhibit A-5** is a true and correct coy of a photograph of the Infiniti parked across the street from Daugherty's residence.

11. February 5, 2021, approximately 1:40 P.M., Reese drove by Daugherty's Residence and verified the Infiniti GPF9512 parked across street from carport.

12. February 8, 2021, at approximately 10:10 A.M., I drove by Daugherty's Residence and verified that the Infiniti GPF9512 was parked across street from carport.

13. Additional screen captures clearly identify Daugherty as the driver videoing and/or photographing Scott's office. *See* **Exhibit A-6** (March 29, 21, three passes by Daugherty in the Infiniti), **Exhibit A-7** (April 16, 2021, Daugherty in the Yukon); **Exhibit A-8** (April 23, 2021, Daugherty in the Yukon). Daugherty also is clearly identifiable outside of Scott's sister's home. *See* **Exhibit A-9** (April 25, 2021, Daugherty in the Infiniti). It is clear that he is recording Scott, his family, and friends. *See* **Exhibit A-10** (May 3, 2021, Daugherty in the Navigator).

14. Attached hereto as **Exhibit A-11** is a true and correct copy of a report that I wrote that contains my counter-surveillance log. As documented by the report, following verification that Daugherty was the individual in the Black Yukon with license plate BX9K764 and the Infiniti QX4 with license plate GPF9512, Daugherty was observed an additional 143 times outside Scott's office or the homes of his family or girlfriend between February 19, 2021, and November 23, 2021. In fact, there were many instances where Daugherty would drive by Scott's office several times in a single day. For example, Daugherty was observed driving by Scott's office at least nine (9) times on April 21, 2021. During many of these visits, Daugherty was observed taking photographs or video recordings from the inside of his vehicle.

15. Additionally, Daugherty was observed at least eight (8) times outside of the home of Marcia Maslow, Scott's sister. Mrs. Maslow resides with her husband and two minor daughters. Mrs. Maslow resides in Murphy, Texas, approximately a thirty minute drive (without traffic) from the residences of both Scott and Daugherty. Mrs. Maslow sent me a written message after she observed Daugherty at her residence in which she describes the emotional trauma experienced by both her and her family.

16. Finally, Daugherty has been observed at least seven (7) times outside the home of Scott's widower father Byron Ellington. Mr. Byron Ellington lives in Parker, Texas, approximately a thirty-five minute drive (without traffic) from the residences of both Scott and Daugherty.

17. While the verified instances whereby Daugherty was visited Scott's office or the home of his friends and family are extensive, Daugherty's harassment is almost certainly more extensive. The following factors lead to this conclusion:

a. Daugherty was only first spotted because of Stephanie's lay person observations, so the stalking likely started earlier;

b. Each photograph and video clip must be manually extracted from manual review of hours of raw video taken during daytime hours, so there is likely to be more encounters unidentified or unrecorded;

c. It is difficult to record Daugherty when his vehicle is following Scott's or those of his family;

d. There may be other locations associated with Scott that Daugherty stalked where I did not conduct counter-surveillance.

18. In my experience on the United States Department of State High Threat Protection Team, the sort of conduct exhibited by Daugherty is a precursor to a physical attack. I therefore called the Dallas Police Department to report the stalking, but could not find anyone to take the report. I was told that Scott needed to call 911 instead and report situation.

[*Remainder of Page Intentionally Left Blank; Signature Page Follows*]

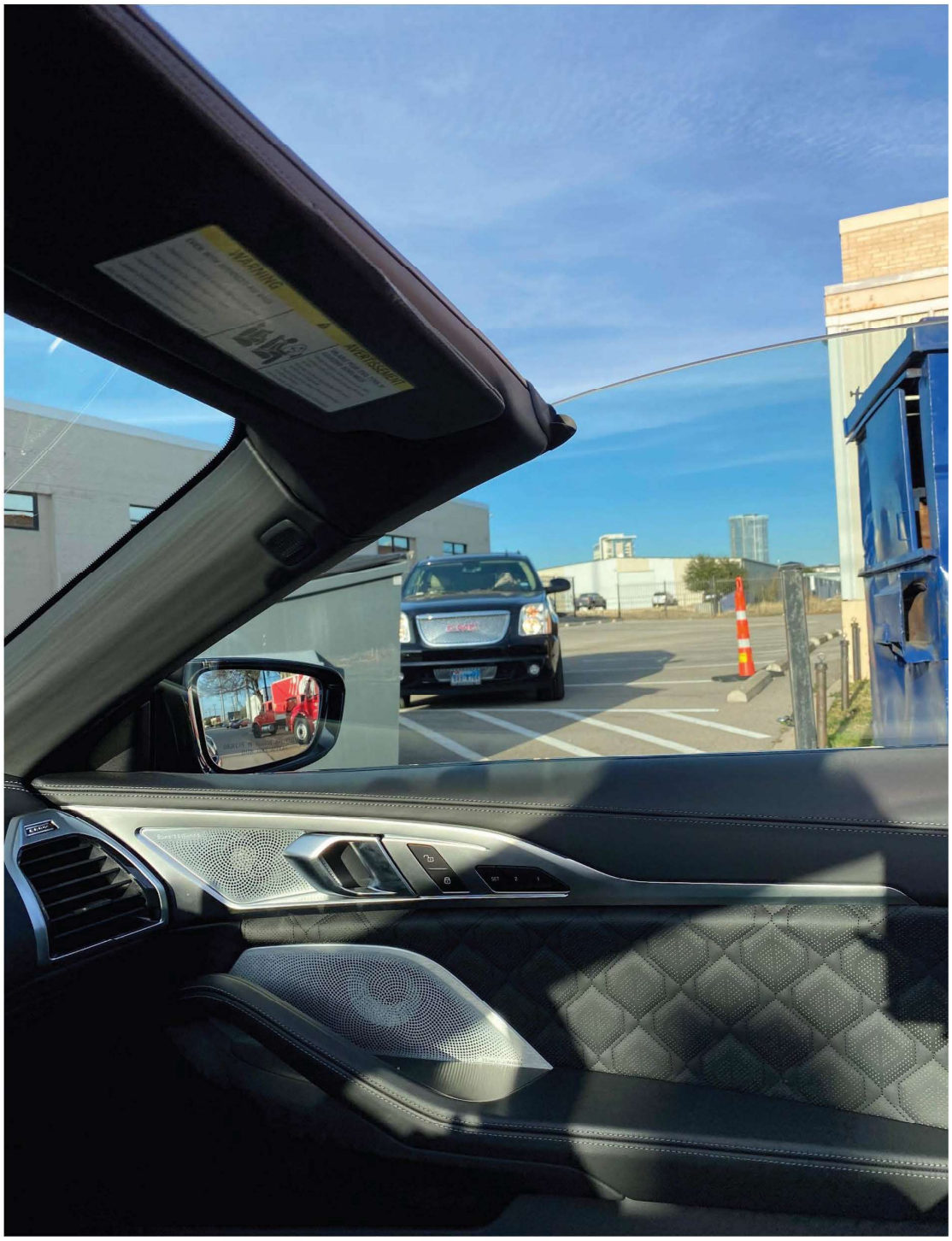
FURTHER DECLARANT SAYETH NOT.

My name is Gregory Allen Brandstatter. My date of birth is May 4, 1954. My address is 1001 County Road 26100, Roxton, Texas 75477. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas, on the 28th day of December, 2021.

Gregory Allen Brandstatter

Gregory Allen Brandstatter



EXHIBIT

A-1

exhibitsticker.com

EXHIBIT

A-2

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EXHIBIT

A-3

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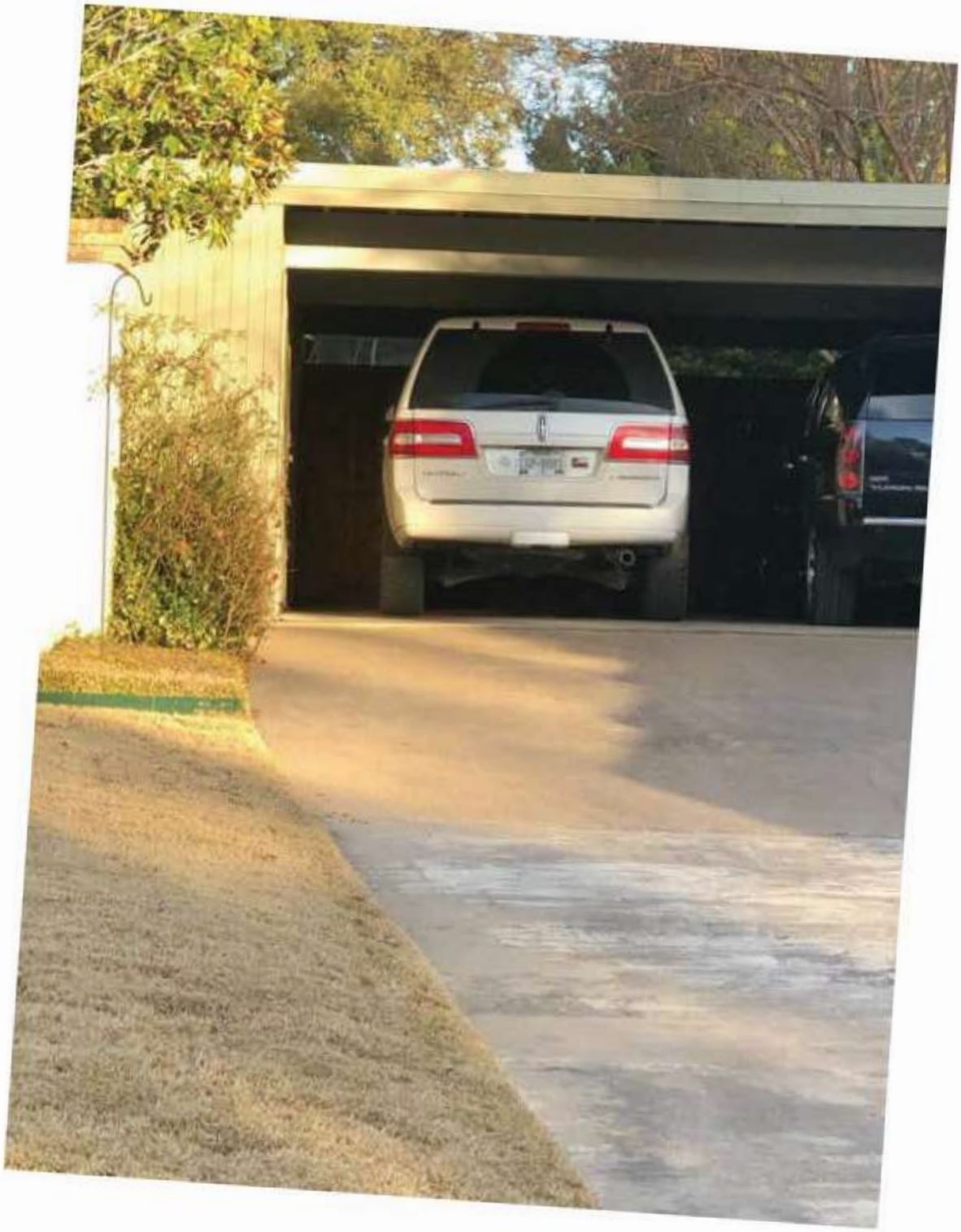

EXHIBIT

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EXHIBIT

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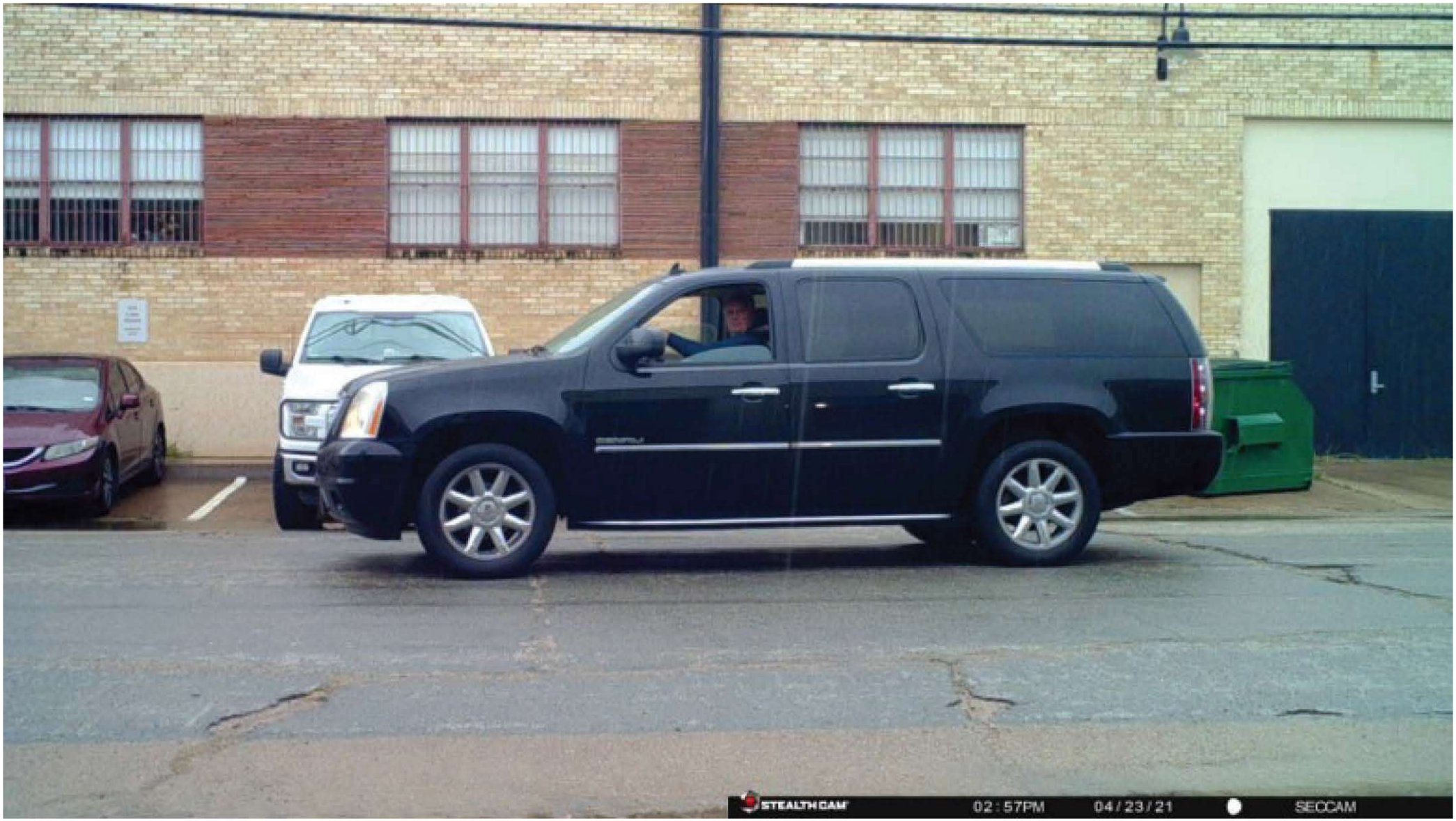

EXHIBIT

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EXHIBIT

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EXHIBIT

A-10

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STRATHEAM
03:08PM 08/03/21
SEDAN

111521

Greg Brandstatter, Pat D Investigation / Counter Surveillance log

On Feb 3 2021, Scott Ellington (Scott) called, advising me that he believed someone was stalking himself and his girlfriend Stephanie Archer (Stephanie). The day prior, Feb 2 2021 to his calling me Stephanie had been followed to 120 Cole Street, Dallas, Texas, where Scott has an office. Stephanie stated that she had noticed that for the past month or so she had noticed a large Black SUV possibly following her. On Feb 2 2021 she noticed that the person in a Black SUV actively taking pictures, she had, had enough and attempted to confront the individual while taking a picture of the vehicle. Her picture shows the vehicle Make and License Number, BX9K764. In Stephanie's photo you can also see the person driving holding up a cell phone as if taking pictures. See Stephanie's photo.

The following day Scott was in his office on Cole Street, when he noticed a vehicle resembling a "Toyota 4 Runner, Tan in color, stop in front of his office. He observed the driver of the taking pictures and or video of his officer and the vehicles parked in front. Scott was able to obtain the License Number of the Vehicle, GPF9512, he also noted that vehicle had a "WMR sticker on the rear window. Scott stated the driver of the vehicle looked like Pat Daugherty (Pat). Scott and Pat both previously worked at an investment firm in Dallas, and are currently opponents in financial litigation. Scott believes that Pat is attempting to harass him, his friends and coworkers due to the litigation. It should be noted that Pat has a history of anger issues and he believes Pat may be trying to intimidate him.

Scott asked if I could assist him in determining who the person(s) were taking the photos/videos. I advised Scott that I could check some Open Sources Intelligence sites and see what I could come up with in reference to the vehicle registrations. I also suggested that we set up a counter surveillance program to determine if these were random acts of an organized surveillance effort.

On Feb 4 2021 an investigation was opened along with a counter surveillance operation. OSINT sources showed Pat to be the registered owner of the Black SUV BX9K764 and that Pat was the previous owner of the Infinity QX4 GPF9512. The Infinity QX4 closely resembles a Toyota 4 Runner (as observed by Scott above). We believe that Pat sold the Infinity to one of his domestic employees and "borrowed" the vehicle to avoid detection.

At approx. 1120 on Feb 4th the Infinity GPF9512 driven by a W/M Sandy Blonde hair drives by WB on Cole slows when passing 120 proceeds W on Cole, S on Levee, E on Alley (rear of 120 Cole), U-turn, S on Levee and E on Leslie. I viewed the driver of this vehicle as he was exiting alley and can verify after comparing Photos, that Pat was the driver of the infinity.

At approx 1322 on Feb 4th Scott advises that the Pat had followed him to 120 Cole, I was parked on at Cole and Levee as Scott parked I observe the Infinity drives W on Cole towards me, I observe Pat driving infinity GPF9512. Pat turns south on Levee, U-turn, N on Levee then E on Cole. I keep my distance as Infinity slows and then stops in front of 120, While stopped in front of 120, Pat verbally engages Stephanie and Joe (friend of Scott). Pat proceeds E on Cole, I follow, Pat turns left on Rivers Edge, I am

unable to follow due to traffic conditions. Stephanie and Joe are able to Identify the Driver as Pat after comparing to photos. See photos for rear of Infinity, on Cole Street, Note Sticker (WMR).

At Approx 1715 on Feb 4, Reese Morgan (Reese) PI drives by Pat's residence and is able to confirm two vehicles parked in carport, White Lincoln Navigator LPG9001 and Black GMC Yukon BX9L764, same vehicle that followed Stephanie on Feb 3, The Infinity GPF9512 is parked on the street across the street from Pat's carport, see photos

Feb 5 2021, approx 1340, Reese drive by Pat's Residence verify Infinity GPF9512 parked across street from carport.

Feb 8 2021, approx. 1010, Drive by Pats Residence verify Infinity GPF9512 parked across street from carport

Feb 19 2021 approx 1700 Sarah Goldsmith, moving files to 120 Cole St, confronted my W/M Sandy Blonde, Graying hair, driving a "Silver Toyota 4 Runner" (Infinity). Driver ask "Do you know if Scott is back in town?" She ignored him and went into office space until he left. She did not feel safe, she departed and had her husband accompany her back to Cole St. After viewing a picture of Pat, Sarah was able to verify the driver who confronted her was Pat.

Feb 23 2021 approx 1707 Black GMC Yukon BX9K764, Driven by Pat (visual), business attire blue shirt, E-W on Cole, slows at 120, proceeds N on Levee, E on Oaklawn. (Day in Court)

March 4 2021 approx 1113, Black GMC Yukon BX9K764, drives by E-W on Cole slows when passing 120, S on Levee, pulls over appears to be taking notes, continues S on Levee, turns E on Leslie at.

March 9 2021 approx 1110, Black GMC Yukon BX9K764, drives by E-W on Cole, slows, then N on Levee.

approx 1340, Black GMC Yukon BX9K764, drives by E-W on Cole, slows, then N on Levee.

March 23 2021 approx 1450, Black GMC Yukon BX9K764, driven by Pat, drives by E-W on Cole, Stops in front of 120, (note Scott's Vic out front with door open), S on Levee, U-turn, N on Levee. Visually confirm Pat driving.

approx 1700, Black GMC Yukon BX9K764, driven by Pat, drives by E-W on Cole, Stops in front of 120, Scott is in office and observes Pat taking pictures or video of building and vehicles, Pat proceeds W on Cole , N on Levee

March 25 2021 approx 1414, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole Stops short of 120, I observed Pat, dressed in business attire, exit vehicle and put trash in trash container, then proceed W on Cole where he stopped in front of 120 for an extend period of time, before proceeding W on Cole

Approx. 1417, Black GMC Yukon BX9K764, driven by Pat, drives by E-W on Cole, Stops in front of 120, another extended stop at 120 before proceeding W on Cole.

March 26 2021, approx 1414, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole. I pass in opposite direction. Pat is wearing business attire, talking on cell phone

March 29 2021, approx 1430, Infinity QX4 GPF9512, with "WMR sticker on the rear window, driven by Pat, drives by E-W Stops front of 120, peers into building.

Approx 1433, Infinity QX4 GPF9512, driven by Pat, drives by E-W Stops front of 120, appears to be taking pictures of building and vehicles.

Approx 1450, Infinity QX4 GPF9512, driven by Pat, drives by E-W Slows front of 120

March 31 2021, approx 1508, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole, opens door slightly

Approx 1511, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole stops front of 120, takes pictures

Approx 1518, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole stops front of 120, takes video

Approx 1522, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole stops front of 120, takes extensive video of inside garage door and vehicles out front

April 13 2021, approx 1428, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole

Approx 1430, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole, slows at 120, takes video of building and vehicles

Approx 1433, Black GMC Yukon BX9K764, driven by Pat, driving W-E on Cole

April 14 2021 Scott's Sister Marcia Reports, Black GMC Yukon Denali, stopped in front of her house and was taking pictures of her home, family and vehicles, she reports this is the second instance. First instance was 3 25 2021, She provides Video of second instance, See Marcia's report. Stealthcam deployed.

April 16 2021, approx 1453, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole, slows takes pics/video of vehicles

Approx 1455, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole,I nterested in Scott' new assistant Charleigh.

Approx 1456, Black GMC Yukon BX9K764, driven by Pat, driving W-E on Cole, Passenger in vehicle, New Player

April 19 2021, approx 1423, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole, Stops takes Video

Approx 1426, Black GMC Yukon BX9K764, driven by Pat, driving W-E on Cole

April 20 2021, approx 1335, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1338, Black GMC Yukon BX9K764, driven by Pat drives by, E-W on Cole slows takes pictures

Approx 1340, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

April 21 2021, approx 1028, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1038, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1040, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1043, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, stops for extended period looking inside garage door, car behind him honks

Approx 1055, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, fast

Approx 1058, Black GMC Yukon BX9K764, driven by Pat drives by W-E on Cole

Approx 1215, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, stops and takes pictures of vehicles

Approx 1217, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, slows at 120 and takes video

Approx 1448, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, Stops and takes video of vehicles, Scott confirms he saw, Black GMC Yukon

April 22 2021, approx 1010, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, talking on phone or into voice recorder

Approx 1013, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, talking on phone or into voice recorder

Approx 1220, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, takes picture of Charleigh Vehicle

Approx 1325, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1547, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

April 23 2021, approx 1027, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1321, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, Pics of Ryan’s and Trevor Vehicles

Approx 1324, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1457, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, Good Facial Picture

Approx 1500, Black GMC Yukon BX9K764, driven by Pat drives by W-E on Cole

Infinity QX4 GPF9512, driven by Pat, drives by E-W, E-W on Cole

Approx 1432, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

April 24 2021, (Sat) approx 1158, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

approx 1432, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

approx 1605 Black GMC Yukon, driven by Pat drives by Marcia's House

April 25 2021, (Sun) approx 1608, Infinity QX4 GPF9512, driven by Pat drives by Marcia's House

April 26 2021, approx 1533, Infinity QX4 GPF9512, driven by Pat drives by Byron's House

approx 1534, Infinity QX4 GPF9512, driven by Pat drives by Byron's House

April 27 2021 Infinity QX4 GPF9512, drives by E-W on Cole, Video only, Not typical behavior, cannot confirm.

April 28 2021, approx 1030, Infinity QX4 GPF9512, driven by Pat, drives by E-W, slows takes Video, Faster than normal, visual only

approx 1510, Infinity QX4 GPF9512, driven by Pat, drives by E-W, slows but behavior atypical

approx. 1650, Infinity QX4 GPF9512, driven by Pat, drives by E-W, Video confirmation

approx 1745, Black Yukon drives by, Cam Only no Confirmation, (note change vehicle)

April 30 2021, approx. 1634 Infinity QX4 GPF9512, driven by Pat, drives by E-W, Cam only **Atypical**

May 3 2021, approx. 1506 Lincoln Navigator XXXXXX, driven by Pat, drives by E-W, note vehicle change

approx. 1546 Lincoln Navigator XXXXXX, driven by Pat, drives by W-E

May 4 20212 approx 1642 Infinity QX4 GPF9512, driven by Pat, drives by E-W

approx 1651 Infinity QX4 GPF9512, driven by Pat, drives by W-E, License Plate

approx 1652 Infinity QX4 GPF9512, driven by Pat, drives by E-W

May 5 2021 approx 1123 Infinity QX4 GPF9512, driven by Pat, drives by E-W, Video on site

approx 1254 Infinity QX4 GPF9512, driven by Pat, drives by E-W

approx 1040 Infinity QX4 GPF9512, driven by Pat, drives by Marcia's house

May 12 2021 Approx 0955 Infinity QX4 GPF9512, drives by E-W, License Plate

approx 1308 Infinity QX4 GPF9512, driven by Pat, drives by E-W, takes video, sticker

approx 1311 Infinity QX4 GPF9512, drives by E-W, License Plate, sticker

May 13 2021 approx 1055 Infinity QX4, drives by, E-W

approx 1213 Infinity QX4, drives by, E-W, License Plate

May 14 2021 approx 1523 Infinity QX4, drives by, E-W

May 18 2021 approx 1416 Infinity QW4, drives by E-W

May 19 2021	approx	1411 Infinity QW4, drives by E-W, License Plate
May 18 2021	approx	1436 Infinity QW4, drives by 4432 Potomac
May 21 2021	approx	1147 Infinity QW4, drives by E-W, License Plate
May 22 2021	approx	1345 Infinity QW4, drives by E-W, License plate
May 24 2021	approx	1132 Infinity QW4, drives by E-W
	approx	1436 Infinity QW4, drives by W-E, License Plate
	approx	1526 Infinity QW4, drives by Marcia's house
May 26 2021	approx	1035 Infinity QW4, drives by E-W
	approx	1329 Infinity QW4, drives by E-W
	approx	1330 Infinity QW4, drives by W-E
	approx	1333 Infinity QW4, drives by E-W, License Plate
	approx	1334 Infinity QW4, drives by W-E, License Plate, Sticker
	approx	1428 Infinity QW4, drives by Byron's house
	approx	1430 Infinity QW4, drives by Byron's house, Sticker
May 27 2021	approx	1336 Infinity QW4, drives by E-W
May 28 2021	approx	1043 Black GMC Yukon, drives by E-W, reverts to GMC, Baseball cap
May 29 2021	approx	1126 Black GMC Yukon, drives by E-W, License Plate
	approx	1430 Black GMC Yukon, drives by E-W, License Plate
	approx	1432 Black GMC Yukon, drives by W-E
	approx	1432 Black GMC Yukon, drives by E-W, License Plate
	approx	1433 Black GMC Yukon, drives by W-E, License Plate
	approx	1506 Black GMC Yukon, drives by W-E, License Plate
June 1 2021	approx	1325 Black GMC Yukon, drives by W-E, License Plate
June 2 2021	approx	1012 Black GMC Yukon, drives by W-E, License Plate, Stop
	approx	1012 Black GMC Yukon, drives by W-E, License Plate, Stop
June 4 2021	approx	1406 Black GMC Yukon, drives by E-W, License Plate
	approx	1411 Black GMC Yukon, drives by W-E, License Plate
June 5 2021	approx	0959 Black GMC Yukon, drives by E-W, driven by Pat Blue Shirt
	approx	1007 Black GMC Yukon, drives by E-W, License Plate

June 7 2021	approx 1504 Black GMC Yukon, drives by E-W gb Visual from office BX9
June 9 2021	approx 1022 Black GMC Yukon, drives by E-W taking Pics, Trevor
	approx 1023 Black GMC Yukon, drives by W-E, stopped
	approx 1023 Black GMC Yukon, drives by W-E, stopped
	approx 1024 Black GMC Yukon, drives by E-W, License Plate, Video
	approx 1423 Black GMC Yukon, drives by E-W License Plate Red Shirt
	approx 1524 Black GMC Yukon, drives by E-W, License Plate + Visual Red Shirt
July 7 2021	approx 1037 Black GMC Yukon, drives by E-W, License Plate, visual id
Aug 9 2021	approx 1017 Black GMC Yukon, drives by E-W, License Plate
Aug 11 2021	approx 1141 Black GMC Yukon, drives by E-W, License Plate
Aug 21 2021	approx 1658 Black GMC Yukon, drives by Byron house in
Aug 21 2021	approx 1500 Black GMC Yukon , drives by Byron house out
Aug 21 2021	approx 1509 Black GMC Yukon, drives by Byron house out
Aug 22 2021	approx 1230 Black GMC Yukon, drives by Cole E-W
Aug 22 2021	approx 1316 Black GMC Yukon, drives by Marcia house L-R
Aug 24 2021	approx 1331 Infinity, drives by Cole E-W
Aug 26 2021	approx 1458 Black GMC Yukon, drives by Cole W-E
Sept 18 2021	approx 1720 Black GMC Yukon, drives by Cole E-W
Sept 21 2021	approx 1419 Black GMC Yukon, drives by Cole E-W
Oct 16 2021	approx 1235 Black GMC Yukon, drives by Cole E-W ?? enhance LP
Oct 23 2021	approx 1245 Black GMC Yukon, drives by 3825 Potomac W-E, ID by LP
	approx 1635 Black GMC Yukon, drives by 3825 Potomac W-E, ?? enhance LP
	approx 1635 Black GMC Yukon, drives by 3825 Potomac E-W, ?? enhance LP
Oct 30 2021	approx 0953 Black GMC Yukon, drives by 3825 Potomac E-W
	approx 0956 Black GMC Yukon, drives by 3825 Potomac E-W
Nov 3 2021	approx 1555 Black GMC Yukon, drives by 3825 Marcia' house W-E Profile ID
	approx 1557 Black GMC Yukon, drives by 3825 Marcia' house W-E Profile ID, either stopped for 2 mins or returned after 2 mins

Nov 6 2021	approx 1004 Black GMC Yukon, drives by Cole E-W, D clearly visible – driver
Nov 8 2021	approx 1027 Black GMC Yukon, drives by Cole E-W, got in behind PI visual on LP and Driver, Nest Cam Confirm
Nov 10 2021	approx 0747 Black GMC Yukon, drives by Cole W-E, lengthy stop Nest cam confirm
Nov 20 2021	approx 1128 Black GMC Yukon, drives by Cole W-E, Driver Visual
Nov 21 2021	approx 1410 Black GMC Yukon, drives by 3825 W-E, Passenger female? LP
Nov 22 2021	approx 1109 Black GMC Yukon, drives by Cole E-W, Driver visual
Nov 23 2021	approx 1803 Black GMC Yukon, drives by Cole E-W, Driver visual, taking pictures
	Note SE on Cole earlier
	approx 1806 Black GMC Yukon, drives by Cole W-E
	approx 1810 Black GMC Yukon, drives by Cole E-W, Driver visual, taking pictures

EXHIBIT
B

DECLARATION OF SCOTT BYRON ELLINGTON

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Scott Byron Ellington declares as follows:

1. My name is Scott Byron Ellington. I am over 21 years of age, have never been convicted of a felony or other crime involving moral turpitude, and suffer from no mental or physical disability that would render me incompetent to make this declaration.

2. I am able to swear, and hereby do swear under penalty of perjury, that the facts stated in this declaration are true and correct and within my personal knowledge.

3. Starting in January of 2021, my longtime girlfriend, Stephanie Archer ("Stephanie"), noticed a large, Black SUV possibly following her. On February 2, 2021, she was followed by the SUV to my office located at 120 Cole Street, Dallas, Texas. She noticed that the driver in the SUV was taking pictures from inside the vehicle. She confronted the individual while simultaneously taking pictures of the SUV and the driver. The license plate number of the black SUV was BX9K764.

4. The next day, on February 3, 2021, I was at my office when I noticed a vehicle resembling a tan Toyota 4 Runner stopped in front of my office with the driver either taking photographs or making a videorecording, or both. The license plate number of the vehicle was GPF9512. The driver of the vehicle appeared to be Patrick Daugherty ("Daugherty").

5. Until January of 2021, I was the general counsel for Highland Capital Management, L.P. ("Highland"). Daugherty is a former employee of Highland. In 2012, Highland sued Daugherty and Daugherty counterclaimed. The lawsuit was ultimately resolved by a jury trial, with

a jury determining that Daugherty breached his employment agreement and his fiduciary duties and awarding Highland $2,800,000 in attorney's fees and injunctive relief. The jury likewise found that a Highland affiliate, Highland Employee Retention Assets LLC ("HERA") breached the implied duty of good faith and fair dealing and awarded Daugherty $2,600,000 in damages.

6. Since the filing of the original lawsuit in 2012, Daugherty and Highland—or Highland related entities and individuals—have engaged in protracted litigation in several different forums across the country. Daugherty's expressed goal in his campaign is to "get" me and the founder and former CEO of Highland, Jim Dondero.

7. Daugherty has a history of anger issues and I believed that his "drive by" of my office and following Stephanie was his attempt to intimidate me.

8. I hired a private investigator, Greg Brandstatter ("Brandstatter"), to assist in confirming the identity of the driver of the black SUV with license plate BX9K764 and the tan SUV with the license plate GPF9512.

9. Brandstatter's investigation found that Daugherty was the individual following Stephanie and driving by my office. Further, I have reviewed photographs and video recordings of Daugherty outside my home located at 3825 Potomac Ave, Dallas, Texas 75205, my office, the house of my sister, Marcia, and the house of my father, Byron Ellington.

10. Daugherty has been documented outside my office, my home, and the homes of my family 143 times since January of 2021. Both Marcia and Stephanie have confronted Daugherty at times and demanded that he stop his harassment, but he has continued to visit my office and home, and the homes of my family members, despite these demands.

11. I have moved residences three times from January 2021 to today. Daugherty has been recorded outside of the second and third residences to which I moved. The second residence

was Stephanie's house and was not under my name. For the third residence, my address was not searchable under my name on the Dallas County Central Appraisal District website. Nonetheless, Daugherty was recorded outside of that address within two months of me moving. On information and belief, Daugherty could not have located me at either residence without physically following me or others to those locations.

12. I believe that Daugherty's actions are leading up to a physical attack by him on either myself, Stephanie, or members of my family. I understand that Brandstatter has reported Daugherty's harassment and stalking to the Dallas Police Department. I also called the Dallas Police Department to report the harassment and stalking. The harassment has caused me fear and anxiety and will continue to cause me fear and anxiety.

13. Daugherty's harassment further interferes with my daily activities. I am constantly looking out for him when I am at my home or at my office. I had to hire Brandstatter to confirm that Daugherty was the individual stalking me and my family and then document the extent of the harassment. I have had security devices, such as cameras, installed at my personal home and office in response to the harassment. I have had to hire personal security. I have also had to change my daily routine to try and avoid being followed by Daugherty.

[*Remainder of Page Intentionally Left Blank; Signature Page Follows*]

FURTHER DECLARANT SAYETH NOT.

My name is Scott Byron Ellington. My date of birth is 10.24.1971. My address is 3825 Potomac Ave., Dallas, Texas 75205. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas, on the 11th Day of January, 2022.

Scott Ellington

Automated Certificate of eService

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Patricia Perkins Mayes on behalf of Julie Pettit
Bar No. 24065971
pperkins@pettitfirm.com
Envelope ID: 60728974
Status as of 1/12/2022 8:55 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Julie Pettit		jpettit@pettitfirm.com	1/11/2022 6:09:57 PM	SENT
Beverly Congdon		bcongdon@lynnllp.com	1/11/2022 6:09:57 PM	SENT
Patricia Perkins Mayes		pperkins@pettitfirm.com	1/11/2022 6:09:57 PM	SENT
Michael K.Hurst		mhurst@lynnllp.com	1/11/2022 6:09:57 PM	SENT
Mary GoodrichNix		mnix@lynnllp.com	1/11/2022 6:09:57 PM	SENT
Nathaniel A.Plemons		nplemons@lynnllp.com	1/11/2022 6:09:57 PM	SENT

EXHIBIT 2

For the Issuance of a New York Subpoena Under CPLR § 3119

CAUSE NO. DC-22-00304

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
	§	
v.	§	**101st JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

AMENDED SUBPOENA FOR THE DEPOSITION OF NON-PARTY JAMES SEERY

TO: Any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Texas Rule of Civil Procedure 176.5.

YOU ARE COMMANDED to summon:

Deponent:	James Seery
Address:	c/o Joshua S. Levy Willkie Farr & Gallagher LLP 787 Seventh Avenue New York, New York 10019-6099

TO APPEAR VIRTUALLY AT:

Location:	Willkie Farr & Gallagher LLP 787 Seventh Avenue New York, New York 10019-6099
Date:	Monday, July 31, 2023
Time:	9:30 AM

The above-named Deponent is hereby commanded to appear at the time, date, and place set forth above for deposition in the above-captioned case, and to remain in attendance from day to day until lawfully discharged.

Warning: Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued

or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both

This amended subpoena is issued at the request of Plaintiff, whose attorney of record is Julie Pettit.

DATE OF ISSUANCE: July 13, 2023

AMENDED SUBPOENA ISSUED BY:

/s/ Julie Pettit

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

Michael Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Michele Naudin
State Bar No. 24118898
mnaudin@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

ATTORNEYS FOR PLAINTIFF

RETURN OF AMENDED SUBPOENA

I, _____, delivered a copy of this subpoena to _____, in person at _____, in _____ County, Texas, on _____, 2023, at _____ o'clock _____.m., and tendered to the witness a fee of $_____ in cash.

I, _____, was unable to deliver a copy of this subpoena to _____ _____ for the following reasons:

_____

_____

_____

_____

By: _____
Signature of person authorized by law or written order of trial court who has no interest in the lawsuit and is at least 18 years old.

Name: _____

Title: _____

ACCEPTANCE OF SERVICE OF AMENDED SUBPOENA BY WITNESS UNDER TEXAS RULE OF CIVIL PROCEDURE 176

I accept service of this amended subpoena.

_____

Witness: James Seery, c/o Joshua S. Levy, Esq.

_____

Date:

FEE FOR SERVICE OF SUBPOENA: $_____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record ***via electronic service*** on July 13, 2023:

/s/ Julie Pettit
Julie Pettit
Counsel for Plaintiff

EXHIBIT A-12

CAUSE NO. DC-22-00304

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
	§	
v.	§	**101ST JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

ORDER GRANTING PLAINTIFF'S FOURTH MOTION TO COMPEL

Before the Court is "Plaintiff's Fourth Motion to Compel" filed on August 21, 2023 (the "Motion"). After considering the Motion, the Response, the arguments of counsel, and all evidence properly before the Court, the Court finds that the Motion should be GRANTED.

IT IS THEREFORE ORDERED that the Motion is GRANTED.

IT IS FURTHER ORDERRED THAT Defendant shall produce all text messages with James Seery regarding Plaintiff, including the unredacted versions of the text messages already produced by James Seery within 15 (fifteen) days of the date of this Order. (and the stalking issues)

SIGNED this 1st day of September, 2023.

JUDGE STACI WILLIAMS

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	CASE NO. 19-34054-SGJ11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	
	§	CHAPTER 11
	§	
Reorganized Debtor	§	

DECLARATION OF MICHAEL K. HURST

I, Michael K. Hurst, declare under penalty of perjury as follows:

A. Introduction.

1. My name is Michael K. Hurst. I am over eighteen (18) years of age, I am of sound mind, I never been convicted of a felony, I am capable of making this declaration, and I am fully competent to testify unto the matters stated herein.

2. I am able to swear, and I hereby do swear, that the facts stated in this declaration are true and correct and are within my personal knowledge.

3. I am an attorney of record for Scott Byron Ellington ("Ellington") in the lawsuit styled *Scott Byron Ellington v. Patrick Daugherty*, Cause No. DC-22-00304, pending in the 101st Judicial District Court in Dallas County, Texas (the "State Court Action").

4. Though I am counsel for Ellington in the State Court Action, I have not made an appearance on behalf of Ellington in the bankruptcy matter styled *In re: Highland Capital Management, L.P.*, Case No. 19-34054-sgj11, pending in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Highland Bankruptcy").

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

5. I received Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s (collectively, the "Movants") motion for an order to show cause (Doc. 3910) (the "Motion"). I learned of Movants' intent to file the Motion on September 13, 2023, the day it was filed. Specifically, at 11:47 a.m. that day, I received an email from Joshua S. Levy, counsel for Seery, who advised of the imminent filing of the Motion. This was the first correspondence I received from Highland's or Seery's counsel since late July 2023. While the subject line of the email was "meet and confer," Levy stated that his email was merely a "courtesy," and then refused to send my co-counsel in the State Court Action (Julie Pettit) a draft of the Motion or otherwise provide advance time to discuss the Motion so I could meaningfully confer regarding his client's allegations. A true and correct copy of the September 13, 2023 email is attached to the Declaration of Julie Pettit ("Pettit Dec.") as **Exhibit A-1.**

6. The Motion contains misstatements of fact, omits other important facts, and presents a misleading depiction of the journey that the State Court Action has taken to arrive at the point where Ellington is now seeking discovery from Seery, among others.

B. Ellington sues Daugherty in the State Court Action for civil stalking and invasion of privacy.

7. On January 11, 2022, Ellington filed his original petition and application for temporary restraining order in the 101st Judicial District Court in Dallas County, Texas. A true and correct copy of the petition is filed at Doc. 3912-2. As detailed in the petition, Ellington alleged that Patrick Daugherty ("Daugherty") engaged in a campaign of dangerous harassment against him and his family seemingly as an escalation from the previous decade of litigation between Daugherty and either Ellington personally or parties that Ellington was aligned with, including a 2019 lawsuit filed by Daugherty in Delaware Chancery Court that I understand has been dismissed. Indeed, while the full extent of the harassment is unknown, Ellington and a retired law enforcement

investigator documented no less than 143 instances where Daugherty ***personally*** appeared outside his residence, his office, or the residences of his family between February and December of 2021. Based on the facts either known or reasonably believed at the time the petition was filed, Ellington asserted claims ***solely*** against Daugherty for civil stalking and invasion of privacy.

8. On January 12, 2022, the day after Ellington filed the petition, the Texas state district court signed and entered a temporary restraining order ("TRO") prohibiting Daugherty from being within 500 hundred feet of Ellington or his family. A true and correct copy of the TRO is attached to the Pettit Dec. as **Exhibit A-2**.

C. Daugherty removed the State Court Action to this Court in an unsuccessful attempt to connect the lawsuit with the Highland Bankruptcy.

9. On January 18, 2022, Daugherty removed the State Court Action to this Court. On January 25, 2022, Ellington filed a motion to remand in this Court. Ross & Smith, PC and Baker & McKenzie LLP represented Ellington in this Court on his motion to remand. Neither The Pettit Law Firm nor Lynn Pinker Hurst Schwegmann, LLP represented Ellington in connection with the remand.

10. On March 29, 2022, the Court held a hearing on Ellington's motion to remand. As previously mentioned, I did not represent Ellington in connection with the remand proceedings in this Court. Accordingly, I was not present at the hearing.

11. On April 11, 2022, the Court signed and entered a written order remanding the lawsuit back to the state court.

D. After remand of the State Court Action, the parties engaged in discovery revealing that Daugherty sent documentation of his stalking to a number of third-parties, including Seery and several members of the creditors' committee for the Highland Bankruptcy.

12. When the State Court Action resumed in April of 2022, the parties fought over several procedural issues. Nonetheless, Ellington's application for temporary injunction was eventually set for hearing on September 1, 2022.

13. After the remand and in advance of the hearing on the temporary injunction, Ellington propounded written discovery requests on Daugherty, including requests for production, and then issued a notice of deposition for July 14, 2022.

14. Ellington served his first requests for production to Daugherty on May 15, 2022. A true and correct copy of these requests are attached to the Pettit Dec. as **Exhibit A-4**. Ellington served eight (8) requests for production, including requests for any communications referencing the materials created by the stalking (defined in the requests as the "Ellington Recordings") as well as any communications identifying others who either knew of or were involved in the stalking. *See id.*, Ex. A-4 at RFP Nos. 2, 8. The requests did not specifically identify Seery or any other individual involved in the Highland Bankruptcy because at the time of service, we had no reason to believe that such individuals received materials Daugherty obtained and compiled in connection with the stalking.

15. In response to the requests for production, Daugherty produced what appeared to be fragmented and incomplete text message conversations with Seery and others connected to the stalking. A true and correct copy of the first text messages produced on or about July 11, 2022 by Daugherty are attached to the Pettit Dec as **Exhibit A-5**.

16. During his deposition, Daugherty admitted that he appeared uninvited at Ellington's home, workplace, and the homes of Ellington's family. Daugherty claimed that he

engaged in these activities to investigate Ellington's assets in connection with Daugherty's claims against Ellington in a Delaware lawsuit. A true and correct copy of pertinent excerpts from Daugherty's deposition is attached to the Pettit Dec. as **Exhibit A-6.** The following exchange during Daugherty's deposition neatly demonstrates his stated rationale for his actions:

> Q. (By Mr. Hurst) Okay. And what you were doing, whether you agree that it was 140-something times at least or not, you're saying that what you were doing is a, quote, investigation?
>
> A. My actions were purely investigatory.
>
> Q. And investigatory for what reason?
>
> A. To inventory, identify and discover assets of Scott Ellington's.
>
> Q. Why is that important to you?
>
> A. Because he has a history of transferring assets out of entities where I owned or had an economic interest or other entities like Highland Capital.
>
> Q. Okay. And –
>
> A. And its affiliates.
>
> Q. Okay. And so what were you doing in this investigation, if you will, in the context of?
>
> A. I don't understand your question.
>
> Q. Why were you investigating his assets?
>
> A. I just told you.
>
> Q. You told me that you're concerned he was going to transfer assets. But why is that important to you?
>
> A. I had litigation against him in Delaware as a defendant.

See id., Ex. A-6 at 56:23-57:22.

17. However, during his deposition, Daugherty disclosed that he sent the information he gathered from the stalking activities not to individuals connected to the now-dismissed Delaware lawsuit – but to individuals connected with the *Highland Bankruptcy*, including Seery:

> Q. Do you have a compilation, as you just testified to a minute ago?
>
> A. Of the data?
>
> Q. Yes.
>
> A. In various forms, yes.
>
> Q. Where is that?
>
> A. I drafted emails that included that information.
>
> Q. Have you provided those to us?
>
> A. No.
>
> Q. Have you provided the compilations?
>
> A. No.
>
> Q. To whom did you provide these emails and compilations?
>
> A. To the creditors' committee.
>
> Q. Who in particular did you address it to? Sorry.
>
> A. Can I finish? Yeah, answer your question.
>
> MS. DANIELS: Allow him to answer your questions before you interrupt him.
>
> A. ***To the creditors' committee for the Highland Capital bankruptcy***.
>
> To ***Matt Clemente***, who is counsel for the creditors' committee.
>
> To ***Andrew Clubok***, who is a representative of UBS on the creditors' committee.
>
> To – I can't say for sure. I might have emailed everybody on the committee. I don't know. I generally – I don't know if I included Josh Terry or not. I don't know if I included everybody.

> And then to ***Jim Seery***, who is the CEO of Highland.
>
> To – what's the guy's name – the litigation trustee on the Highland estate. What was his name? It's ***Marc Something, Kirshner***.
>
> So ***various members of the Quinn Emanuel legal team***.
>
> Q. (By Mr. Hurst) Who else?
>
> A. There may be more. I just don't recall off the top of my head.

See id., Ex. A-6 at 59:21-61:10 (emphasis added).

18. According to Daugherty, Seery and the creditors' committee "appreciated" the information:

> Q. Did anybody tell you that they approved of your investigation?
>
> A. I wouldn't use that word.
>
> Q. Is there a word that you would use instead of approved of your so-called investigation?
>
> MS. DANIELS: Objection, form.
>
> A. Appreciated.
>
> Q. (By Mr. Hurst) Who would you say appreciated your so-called investigation of Scott Ellington and perhaps others?
>
> MS. DANIELS: Objection, form.
>
> A. Of the assets, right; that's what I was doing.
>
> People, representatives of the creditors' committee, Marc Kirschner, the litigation trustee, Quinn Emanuel lawyers, the Sidley lawyers, Seery himself. There may be others.

See id., Ex. A-6 at 104:11-105:2.

19. Daugherty testified that he "investigated" Ellington for the Delaware litigation but admitted to distributing the same information to members of the creditors' committee in the *Highland Bankruptcy*. I understand that the Delaware lawsuit against Ellington, which has been dismissed and upheld on appeal, and the Highland Bankruptcy are not connected, so it is more

than suspicious why Daugherty distributed this information to the creditors' committee if his investigation was to look into assets connected with the Delaware litigation. In fact, when I attempted to ask follow-up questions about this inconsistency in the deposition, Daugherty's counsel objected and instructed Daugherty not to answer. *See id.*, Ex. A-6 at 61:20-63:20.

E. At the hearing on Ellington's application for temporary injunction, Daugherty again referenced the Highland Bankruptcy – this time as a *defense* to Ellington's claims for stalking and invasion of privacy.

20. Ellington's application for temporary injunction hearing proceeded as noticed on September 1, 2022. During opening statements, Daugherty's counsel, the same lawyer who argued the motion to remand in the bankruptcy court, tried to rationalize Daugherty's behavior by giving a lengthy presentation about a supposed scheme to hide assets from Highland and the bankruptcy court. A true and correct excerpt of opening statements is attached to the Pettit Dec. as **Exhibit A-7**. The following excerpt illustrates Daugherty's heavy emphasis on events relating to the Highland Bankruptcy during opening statement:

> So why is that important? Well, in addition to that, as part of that lawsuit, Mr. Daugherty was engaging in discovery, and at the same time Highland had filed bankruptcy. In early 2021, Mr. Dondero testified in the Highland bankruptcy case that both he and Mr. Ellington had destroyed their cell phones. Well, that was problematic because at the time Mr. Ellington and Mr. Dondero were still parties, and are still parties, in Mr. Daugherty's Delaware action, and they were subject to discovery from those phones under the purview of a special master. So they engaged in the spoliation.
>
> ***Additionally, the information on those phones would seemingly be relevant to claims that were going on in the Highland bankruptcy that the creditor's committee was bringing, and Mr. Daugherty was a creditor of Highland at the time.*** So Mr. Daugherty at that point had determined that the information that he was trying to get in discovery wasn't coming to him, and he believed he needed to conduct further investigation on his own of Mr. Ellington, including what Mr. Ellington's assets were that might be available to satisfy Mr. Daugherty's underlying judgment.

***

…. But why did the investigation matter? Well, based on Mr. Daugherty's surveillance of Mr. Ellington's office and his house and being able to get license plates of vehicles that were parked there, he eventually discovered a web of various entities that Mr. Ellington and Mr. Dondero were using to siphon assets from the reach of creditors, both Mr. Daugherty and then ***the Court-appointed creditor's committee*** in the Highland bankruptcy.

So let's walk through one example of this. The first is that there was a lawsuit involving a Highland affiliate and UBS in which UBS is paying a substantial judgment, nine figures initially that grew to a billion dollars, and Mr. Ellington came up with the idea of setting up a dummy entity in the Cayman Islands that was going to provide an after-the-event insurance policy that it sold to the Highland affiliate for less than the face value of the assets which the Highland affiliate actually owned. In other words, it was a fraudulent transfer, and all of this was Mr. Ellington's idea as he admitted in the Highland bankruptcy.

As part of this scheme, Mr. Ellington and Mr. Dondero set up all of these entities to run this through, including at the top you'll see there's an entity called SAS Holdings SPV Limited. That's important here because you're going to hear some testimony about it later on today that it has implications in this lawsuit itself.

Well, not only did they use these entities to create these fraudulent transfers, Mr. Ellington, Mr. Dondero, Mr. Leventon, who, by the way, is on the call listening to this hearing and is apparently Mr. Ellington's counsel, then actively concealed the existence of their scheme from new management of Highland that had taken over in the course of the Highland bankruptcy, and they also concealed it from the bankruptcy court, and they concealed it from UBS. In fact, Mr. Ellington lied about it in e-mails saying these were just ghost funds that had no assets whatsoever which actually wasn't the case.

See id., Ex. A-7 at 22:5-24:23 (emphasis added).

21. When the state court judge questioned the relevance of any of those allegations regarding the Highland Bankruptcy, counsel stated:

MR YORK: Your Honor, the reason this is relevant goes to the purpose and the intent for why Mr. Daugherty engaged in the

> investigation activities he engaged in; not because he was attempting to intimidate, harass or threaten Mr. Ellington.

See id., Ex. A-7 at 26:1-5. In other words, Daugherty had interjected the parties' actions relating to the Highland Bankruptcy as a defense to Ellington's state law claims for civil stalking and invasion of privacy.

22. At the conclusion of the hearing, the state court granted Ellington's application for temporary injunction and ordered Daugherty to stay away from Ellington and his family.

F. After the state court issued the temporary injunction, Ellington refocused on discovery and served extensive non-party discovery subpoenas to better understand the facts and circumstances of the stalking.

23. After the hearing, Ellington followed-up on the information learned during Daugherty's deposition by serving targeted discovery requests to obtain the communications Daugherty had with certain individuals, including Seery, regarding his "investigation" of Ellington. Ellington served the following discovery:

a. On September 8, 2022, Ellington served his third requests for production, which contained specific requests for Daugherty to produce his communications with lawyers at Sidley Austin, lawyers at Quinn Emanuel, lawyers at Latham & Watkins, and lawyers at Pachulski Stang Ziehl & Jones, among many others.

b. On October 6, 2022, Ellington served a notice[2] of intent to serve a non-party discovery subpoena on John Dubel.

c. On October 6, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Glacier Lake Partners, LP.

d. On October 6, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on John Morris.

e. On October 6, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Matthew McGraner.

---

[2] Per Texas Rule of Civil Procedure 205.2, a party must serve notice of intent to serve a non-party discovery subpoena at least ten (10) days before serving the subpoena. I am including in this declaration references to the notices as opposed to the actual subpoenas merely to create an accurate timeline of when Ellington first attempted to formally request documents from certain non-parties by use of the discovery process.

f. On October 6, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Matthew Clemente.

g. On October 6, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Paige Montgomery.

h. On October 6, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Marc Kirschner.

i. On October 7, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Andrew Clubok.

j. On October 19, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Eric Felton.

k. On October 19, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on the Honorable Russel Nelms.

l. On October 19, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Carl Moore.

m. On October 19, 2022, Ellington served a notice of intent to serve a non-party discovery subpoena on Joshua Terry.

n. On October 20, 2022, Ellington served a notice of intent to serve a non-party Michael Colvin.

24. The Motion references the subpoena served on Judge Nelms. I was party to a lengthy email exchange with Judge Nelms' counsel regarding the subpoena. A true and correct copy of that email thread is attached to the Pettit Dec. as **Exhibit A-9**. Unlike Seery, Judge Nelms disclaimed any communications with Daugherty. However, as Julie Pettit explained to Judge Nelms' counsel, we had a good faith basis to believe Judge Nelms had knowledge of facts and circumstances relating to the Daugherty Settlement. Discovery is still ongoing, but based on information produced thus far, we have a good faith basis to investigate Daugherty's stalking of Ellington as a possible *quid-pro-quo* in exchange for a more beneficial settlement with Highland. Judge Nelms apparent lack of knowledge regarding the stalking seems curious and raises questions regarding Daugherty's motivation behind the decision to omit a member of the creditors'

committee. Indeed, the timeline as we know it would support that allegation as after Daugherty transmitted the information he gathered on Ellington to Seery and members of the creditors' committee, it is my understanding that he ultimately received a settlement that was materially better than what had been previously agreed to.

G. Seery substantively responded to the discovery subpoena served on him, produced documents, and agreed to a deposition to take place on July 31, 2023.

25. Seery received and served formal responses and objections to Ellington's discovery subpoena in the State Court Action first on December 9, 2022, and then served amended responses and objections on December 23, 2022. Seery ultimately produced documents on January 3, 2023. Seery never objected to the aforementioned discovery on the basis that Ellington (or Lynn Pinker and the Pettit Firm) failed to obtain prior authorization from the Highland Bankruptcy Court.

26. In June of 2023, I along with my co-counsel, Julie Pettit, began a dialogue with Seery's counsel to schedule his deposition. A true and correct copy of this email chain is attached to the Pettit Dec. as **Exhibit A-10**. After several cooperative emails and phone calls with numerous lawyers at Mr. Seery's law firm, along with John Morris, we reached agreements with Seery's counsel and Mr. Morris regarding the deposition including date and time, narrowing of the topics, attendance of third parties (*i.e.*, John Morris), and Seery's supplemental production in advance of the deposition. As a result of the agreements above, Ellington issued an amended subpoena (the negotiated deposition topics were attached thereto as Exhibit A) and served via email on Seery's counsel. A true and correct copy of the amended subpoena is attached to the Pettit Dec. as **Exhibit A-11**. Seery's counsel accepted services of the subpoena via email and then sent a reply email memorializing the parties' agreements:

On Thu, Jul 13, 2023 at 9:52 AM Levy, Joshua S. <JLevy@willkie.com> wrote:

> Thanks Laura, we agree to accept service. Thanks also to Michael and Julie for the productive call on Jim Seery's deposition. To summarize where we landed:
>
> - **Time Limits.** We agreed to limit the deposition to 4 hours and you'll endeavor to keep it keep it shorter if possible.
> - **Attendance.** John Morris can attend the deposition and can instruct the witness not to answer questions on privilege grounds or as he deems appropriate under the Bankruptcy Court's Gatekeeper Orders. You reserved your right to challenge those instruction in a motion after the deposition.
> - **Topics.** We agreed to limit the deposition to the topics noticed. We also agreed to exchange objections to the topics by email and you reserved the right to challenge those objections in a motion after the deposition. Here are our objections:
>   - **Topic No. 6.** We object to Topic No. 6 to the extent it seeks testimony regarding "entities affiliated with Ellington" on the grounds that it is overly broad, not relevant to the claims and defenses at issue, and violates the Bankruptcy Court's Gatekeeper Orders.
>   - **Topic No. 7.** We object to Topic No. 7 on the grounds that it is overly broad, not relevant to the claims and defenses at issue, and violates the Bankruptcy Court's Gatekeeper Orders.
>   - **Topic No. 9.** We object to Topic No. 9 to the extent it seeks testimony regarding "Mr. Daugherty's Proof of Claim in the Highland bankruptcy" on the grounds that it is overly broad, not relevant to the claims and defenses at issue, and violates the Bankruptcy Court's Gatekeeper Orders.
> - **Logistics.** We agreed to reschedule the deposition for the week of August 1 and to conduct the deposition remotely. We are checking with our client about specific days and times. Once we have the deposition scheduled, please send us links for joining the deposition, exhibit sharing, and realtime feeds.
>
> In addition, our e-discovery vendor has run into technical issues with our supplemental production. We are pressing them to make the production this week. It's a small production, but we want to be upfront about the timing. We'll let you know if this timing changes.
>
> Regards,
>
> Josh

See id., Ex. A-10.

27. The amended subpoena's negotiated deposition topics are excerpted below:

SCHEDULE A

DEPOSITION TOPICS

1. Any documents and/or communications produced by James Seery in response to the Subpoena *Duces Tecum* served on Mr. Seery c/o Joshua S. Levy, Esq., in or around November 2022.

2. Mr. Seery's personal knowledge of the allegations asserted in the Action.

3. Mr. Seery's personal knowledge of the relationship between the Defendant in the Action, Patrick Daugherty ("Daugherty"), and the Plaintiff, Scott Byron Ellington ("Ellington").

4. Mr. Seery's receipt of photos, videos, data, or other information from Daugherty relating to Greg Brandstatter.

5. Mr. Seery's receipt of photos, videos, data, or other information from Daugherty relating to Sarah Bell (formerly Goldsmith).

6. Mr. Seery's receipt of communications, emails, photos, videos, data, or other information from Daugherty relating to Ellington or entities affiliated with Ellington.

7. Any meetings or communications between any representative of the Highland Bankruptcy estate and Mr. Daugherty and/or his representatives related in any way to Ellington.

8. Any instructions or approval, whether explicit or tacit, provided to Mr. Daugherty with respect to Mr. Daugherty's so-called "investigation" of Mr. Ellington or the stalking allegations in this case.

9. Any consideration provided to Daugherty with respect to Mr. Daugherty's so-called "investigation" of Mr. Ellington or the stalking in this case, including, but not limited to, the treatment of Mr. Daugherty's Proof of Claim in the Highland bankruptcy.

See id., Ex. A-11.

28. On July 14, 2023, Seery made a supplemental production that included some of Seery's text messages with Daugherty. Despite receiving some of the text messages from Daugherty previously, many of the text messages were directly responsive to the prior requests but being produced for the first time. Further, Seery redacted several messages in their entirety. These developments prompted Ellington to postpone Seery's deposition until we could either obtain the unredacted text messages or secure a ruling in the State Court Action regarding the same.

29. We believed that because Daugherty was a party to the redacted text messages, he possessed the same. Ellington believed seeking the text messages from Daugherty – a party to the State Court Action – was more logical and efficient as opposed to seeking the text messages from non-party Seery in New York. Daugherty refused to voluntarily produce the messages and Ellington sought to compel their production. On August 21, 2023, Ellington filed "Plaintiff's Fourth Motion to Compel" seeking an order in the State Court Action compelling that the text messages be disclosed. The motion was then set for hearing on September 1, 2023.

30. On September 1, 2023, the state court issued an order granting Ellington's Fourth Motion to Compel.

H. I did not pass along communications and documents to the Dugaboy Investment Trust.

31. After reviewing the Motion, I understand Movants allege that the Dugaboy Investment Trust supported its motion for a forensic examination of Seery's phone with discovery related communications involving myself and others in the State Court Action. I did not disclose those communications to Dugaboy or its counsel, nor was I even aware Dugaboy sought such relief or that those communications had been provided to Dugaboy until I reviewed the Motion.

32. I want to make the following clear—

a. I am not aware of any plans to pursue any claim in any forum against the Movants;

b. If I ever became aware of any plans to pursue any claim in any forum against the Movants, I would not be involved in any such proceeding unless the Court granted leave under the Gatekeeper Provision and Orders; and

c. I have not coordinated in any way with James Dondero as it relates to the stalking litigation or the Highland Bankruptcy. As far as I can recall, I have never communicated with James Dondero about the State Court Action.

FURTHER DECLARANT SAYETH NOT.

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

Executed on this 24th day of October, 2023.

Michael K. Hurst

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 August 25, 2023

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.,	§	
	§	**Case No. 19-34054-sgj-11**
Reorganized Debtor.	§	

MEMORANDUM OPINION AND ORDER PURSUANT TO PLAN "GATEKEEPER PROVISION" AND PRE-CONFIRMATION "GATEKEEPER ORDERS": DENYING HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING[1]
[BANKR. DKT. NOS. 3699, 3760, 3815, and 3816]

I. INTRODUCTION

BEFORE THIS COURT is yet another post-confirmation dispute relating to the Chapter 11 bankruptcy case of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor").

[1] On August 2, 2023, this court signed an Order [Bankr. Dkt. No. 3897] that was agreed to among various parties, after the filing of a Motion to Stay and Compel Mediation [Bankr. Dkt. No. 3752] filed by James D. Dondero and related entities. Pursuant to paragraph 7 of that order, certain pending matters in the bankruptcy court are stayed pending mediation. The parties did not agree to stay the matter addressed in this Memorandum Opinion and Order.

It is now more than two and half years since the confirmation of Highland's Plan[2]—the Plan having been confirmed on February 22, 2021.[3] The Plan was never stayed; it went effective on August 11, 2021 ("Effective Date"), and it was affirmed almost in its entirety by the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit"), in late summer 2022, including an approval of the so-called Gatekeeper Provision[4] therein. The Gatekeeper Provision—and how and whether it should now be exercised or interpreted to allow a certain lawsuit to be filed—is at the heart of the current *Emergency Motion for Leave to File Verified Adversary Proceeding* [Bankr. Dkt. Nos. 3699, 3760, 3815, 3816] (collectively, the "Motion for Leave") filed by a movant known as Hunter Mountain Investment Trust ("HMIT").

A. Who is the Movant, HMIT?

Who is HMIT? It is undisputed that it is a former equity owner of Highland. It held 99.5% of Highland's Class B/C limited partnership interests and was classified in a Class 10 under the confirmed Plan, which class treatment provided it with a contingent interest in the Highland Claimant Trust ("Claimant Trust") created under the Plan, and as defined in the Claimant Trust Agreement. This means that HMIT could receive consideration under the Plan if all claims against Highland are ultimately paid in full, with interest. As later further discussed, it is undisputed that

[2] Capitalized terms not defined in this introduction shall have the meaning ascribed to them below.

[3] The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order")[Bankr. Dkt. No. 1943].

[4] In an initial opinion dated August 19, 2022, the Fifth Circuit affirmed the Confirmation Order in large part, "revers[ing] only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties from the plan's exculpation, and affirm[ing] on all remaining grounds." *In re Highland Capital Management, L.P.*, No. 21-10449, 2022 WL 3571094, at *1 (5th Cir. Aug. 19, 2022). On September 7, 2022, following a petition for limited panel rehearing filed by certain appellants on September 2, 2022, "for the limited purpose of clarifying and confirming one part of its August 19, 2022 opinion," the Fifth Circuit withdrew its original opinion and replaced it with its opinion reported at *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419, 424 (5th Cir. 2022). The substituted opinion differed from the original opinion only by the replacement of one sentence from section "IV(E)(2) – *Injunction and Gatekeeper Provisions*" of the original opinion: "The injunction and gatekeeper provisions are, on the other hand, perfectly lawful." was replaced with "We now turn to the Plan's injunction and gatekeeper provisions." In all other respects, the Fifth Circuit panel's original ruling remained unchanged. Petitions for writs of certiorari regarding the Confirmation Order have been pending at the United States Supreme Court since January 2023.

HMIT's only asset is its contingent interest in the Claimant Trust. It has no employees or revenue. HMIT's representative has testified that HMIT is liable on more than $62 million of indebtedness owed to The Dugaboy Investment Trust ("Dugaboy"), a family trust of which James Dondero ("Dondero"), the co-founder and former chief executive officer ("CEO") of Highland, and his family members are beneficiaries, and that Dugaboy also is paying HMIT's legal fees. HMIT vehemently disputes the suggestion that it is controlled by Dondero.

B. What Does the Movant HMIT Seek Leave to File?

HMIT seeks leave to file an adversary proceeding ("Proposed Complaint")[5] in the bankruptcy court to bring claims on behalf of itself and, derivatively, on behalf of the Reorganized Debtor and the Claimant Trust for alleged breach of fiduciary duties by the Reorganized Debtor's CEO and Claimant Trustee, James P. Seery, Jr. ("Seery") and conspiracy against: (1) Seery; and (2) purchasers of $365 million face amount of ***allowed*** unsecured claims in this case, who purchased their claims post-confirmation but prior to the occurrence of the Effective Date of the Plan ("Claims Purchasers,"[6] and with Seery, the "Proposed Defendants"). To be clear (and as later further explained), the claims acquired by the Claims Purchasers were acquired by them after extensive litigation, mediation, and settlements were approved by the bankruptcy court and after the original claims-holders had voted on the Plan and after Plan confirmation. As later explained,

[5] In its original Motion for Leave filed at Bankruptcy Docket No. 3699 on March 28, 2023, HMIT sought leave to file the proposed complaint ("Initial Proposed Complaint") attached as Exhibit 1 to the Motion for Leave. Nearly a month later, on April 23, 2023, HMIT filed a *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* ("Supplement") [Bankr. Dkt. No. 3760], a revised proposed complaint as Exhibit 1-A, and stating that "[t]he Supplement is not intended to supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action." Supplement, ¶ 1 and Exhibit 1-A. It is this revised proposed complaint to which this court will refer, when it uses the defined term "Proposed Complaint," even though HMIT filed redacted versions of its Motion for Leave on June 5, 2023 at Bankruptcy Docket Nos. 3815 and 3816 that attached the Initial Proposed Complaint as Exhibit 1.

[6] The Claims Purchasers identified in the Proposed Complaint are Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which is a special purpose entity created by Farallon to purchase allowed unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which is a special purpose entity created by Stonehill to purchase allowed unsecured claims against Highland.

the Claims Purchasers filed notices of their purchases as required by Bankruptcy Rule 3001(e)(2), and no objections were filed thereto. In any event, various damages or remedies are sought against the Proposed Defendants revolving around the Claims Purchasers' claims purchasing activities.

C. Why Does HMIT Need to Seek Leave?

As alluded to above, HMIT filed its Motion for Leave to comply with the provision in the Plan known as a "gatekeeper" provision ("Gatekeeper Provision") and with this court's prior gatekeeper orders entered in January and July 2020, which all require that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain (1) a finding from the bankruptcy court that its proposed claims ("Proposed Claims") are "colorable"; and (2) specific authorization by the bankruptcy court to pursue the Proposed Claims.[7] The Gatekeeper Provision was not included in the Plan *sans raison*. Indeed, as the Fifth Circuit recognized in affirming confirmation of the Plan, the Gatekeeper Provision (along with the other "protection provisions" in the Plan) had been included in the Plan to address the "continued litigiousness" of Mr. James Dondero ("Dondero"), Highland's co-founder and former chief executive officer ("CEO"), that began prepetition and escalated following the post-petition "nasty breakup" between Highland and Dondero, by "screen[ing] and prevent[ing] bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[8]

[7] To be clear, the Gatekeeper Provision in the Plan was not the first or even second injunction of its type issued in this bankruptcy case. The Gatekeeper Orders were entered by the bankruptcy court pre-confirmation: (a) in January 2020, just a few months into the case, as part of this court's order approving a corporate governance settlement between Highland and its unsecured creditors committee, in which Dondero, Highland's co-founder and former CEO, was removed from any management role at Highland and three independent directors ("Independent Directors") were appointed in lieu of a chapter 11 trustee being appointed ("January 2020 Order"); and (b) in July 2020, in this court's order authorizing the employment of Seery (one of the three Independent Directors) as the Debtor's new Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative ("July 2020 Order," together with the January 2020 Order, the "Gatekeeper Orders").

[8] *See Highland Capital*, 48 F.4th at 427, 435.

D. Some Further Context Regarding Post-Confirmation Litigation Generally.

Since confirmation of the Plan, hundreds of millions of dollars have been paid out to creditors under the Plan, and there are numerous adversary proceedings and contested matters still pending, at various stages of litigation, in the bankruptcy court, the district court, and the Fifth Circuit, almost exclusively involving Dondero and entities that he owns or controls. To be sure, the post-confirmation litigation in this case does not consist of the usual adversaries and contested matters one typically sees by and against a reorganized debtor and/or litigation trustee, such as preference or other avoidance actions and litigation over objections to claims that are still pending after confirmation of a plan. Indeed, the claims of the largest creditors in this case (with claims asserted in the aggregate of more than one billion dollars) were successfully mediated and incorporated into the Plan—a plan which was ultimately accepted by the votes of an overwhelming majority of Highland's non-insider creditors. Dondero and entities under his control were the only parties who appealed the Confirmation Order, and Dondero and entities under his control have been the appellants in virtually every appeal that has been filed regarding this bankruptcy case. Petitions for writs of mandamus (which have been denied) have been filed in the district court and in the Fifth Circuit by some of these same entities, including one by HMIT, when this court denied setting an ***emergency*** hearing on the instant Motion for Leave (HMIT had sought a setting on three-days' notice).

A recent list of active matters involving Dondero and/or entities and/or individuals affiliated or associated with him, filed in the bankruptcy case by Highland and the Claimant Trust, reveals that there were at least 30 pending and "Active Dondero-Related Litigation" matters as of July 14, 2023: six (6) proceedings in this court; six (6) active appeals or actions are pending in the District Court for the Northern District of Texas; seven (7) appeals in the Fifth Circuit; two (2)

petitions for writs of certiorari in the United States Supreme Court; and nine (9) other proceedings or actions with or affecting the Highland Parties ("Highland," the "Claimant Trust," and "Seery") in various other state, federal, and foreign jurisdictions.[9]

The above-described context is included because the Proposed Defendants assert that the Motion for Leave is just a continuation of Dondero's unrelenting barrage of meritless and harassing litigation, making good on his oft-mentioned alleged threat to "burn down the place" after not achieving the results he wanted in the Highland bankruptcy case. Indeed, the Motion for Leave was filed after two years of unsuccessful attempts by, first, Dondero personally, and then HMIT to obtain pre-suit discovery from the Proposed Defendants (i.e., the Claims Purchasers) through two different Texas state court proceedings, pursuant to Tex. R. Civ. P. 202 ("Rule 202"). In each of these Rule 202 proceedings, Dondero and HMIT espoused the same Seery/Claims

[9] *See* Bankr. Dkt. No. 3880 (filed on July 14, 2023, providing a list of "Active Dondero-Related Litigation" and noting that the list is "a summary of active pending actions only and does not include actions that were resolved by final orders, including actions finally resolved after appeals to the U.S. District Court for the Northern District of Texas and/or the U.S. Court of Appeals for the Fifth Circuit."). Just since the filing by the Highland Parties of the list, ***three*** of the appeals pending in the Fifth Circuit have been decided against the Dondero-related appellants, two of which upheld the district court's dismissal of appeals by Dondero-related entities of bankruptcy court orders based on the lack of bankruptcy appellate standing on behalf of the appellant. On July 19, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by NexPoint Advisors, L.P. ("NexPoint") of bankruptcy court orders approving professional compensation on the basis that NexPoint did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the orders. *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, 74 F.4th 361 (5th Cir. 2023). On July 31, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy—the Dondero family trust that, like the movant here in this Motion for Leave, was the holder of a limited partnership interest in Highland, and, as such, now has a contingent interest in the Claimant Trust—which had appealed a bankruptcy court order approving a Rule 9019 settlement on the same basis: Dugaboy did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the settlement order. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10960, 2023 WL 4861770 (5th Cir. July 31, 2023). The July 31, 2023 ruling followed the Fifth Circuit's ruling on February 21, 2023, affirming the district court's dismissal of an appeal by Dugaboy of yet another bankruptcy court order for lack of bankruptcy appellate standing. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023). These rulings by the Fifth Circuit are discussed in greater detail below. The third ruling by the Fifth Circuit since July 14, 2023, was issued by the Fifth Circuit in a per curium opinion not designated for publication on July 26, 2023, this one affirming the district court's affirmance of yet another Rule 9019 settlement order of the bankruptcy court that was appealed by Dugaboy, agreeing with the district court that the bankruptcy court had jurisdiction to approve a settlement among the Debtor, an entity affiliated with the Debtor but not a debtor itself, and UBS (the Debtor's largest prepetition creditor and the seller of its claims to the Claims Purchasers, which is one of the claims trading transactions HMIT complains about in the Proposed Complaint). *See The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P.*, No. 22-10983, 2023 WL 4842320 (5th Cir. July 26, 2023).

Purchasers conspiracy theory espoused in the Motion for Leave—that Seery must have provided one or more of the Claims Purchasers with material nonpublic information to induce them to want to purchase large, allowed, unsecured claims at a discount; a *quid pro quo* is suggested, such that the Claims Purchasers were allegedly told they would make a hefty profit on the claims they purchased and, in return, they would gladly "rubber stamp" Seery's "excessive compensation" as the Claimant Trustee of the Claimant Trust. In sum, HMIT alleges this constituted wrongful "insider trading" of the bankruptcy claims. In addition, certain lawyers for Dondero and Dugaboy sent letters reporting this alleged conspiracy and "insider trading" to the Texas State Securities Board ("TSSB") and the Executive Office of the United States Trustee ("EOUST").

It is against this background and in this context that the court must analyze, in the exercise of its gatekeeping function under the confirmed Plan and its prior Gatekeeping Orders, whether HMIT should be allowed to pursue the Proposed Claims (i.e., whether the Proposed Claims are "colorable" claims as contemplated under the Gatekeeper Orders and the Gatekeeper Provision of the Plan). The court held an evidentiary hearing on the Motion for Leave on June 8, 2023 ("June 8 Hearing"), during which the court admitted exhibits and heard testimony from three witnesses both in support of and in opposition to the Motion for Leave. Having considered the Motion for Leave, the response of the Proposed Defendants thereto, HMIT's reply to the response, and the arguments and evidence presented at the hearing on the Motion for Leave, the court denies HMIT's request for leave to pursue its Proposed Claims. The court's reasoning is set forth below.

II. BACKGROUND

A. Highland's Bankruptcy Case, Dondero's Removal as CEO, and the Plan

Highland was co-founded in Dallas in 1993 by Dondero and Mark Okada ("Okada"). It operated as a global investment adviser that provided investment management and advisory services and managed billions of dollars of assets, both directly and indirectly through numerous

affiliates. Highland's equity interest holders included HMIT (99.5%), Dugaboy (0.1866%), Okada, personally and through trusts (0.0627%), and Strand Advisors, Inc. ("Strand"), which was wholly owned by Dondero and was the only general partner of Highland (0.25%). On October 16, 2019 (the "Petition Date"), Highland, with Dondero in control[10] and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims – many of which had finally become or were about to be liquidated (after a decade or more of contentious litigation in multiple fora all over the world—filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019. The official committee of unsecured creditors (the "Committee") (and later, the United States Trustee) expressed a desire for the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

After many weeks under the specter of a possible appointment of a trustee, Highland and the Committee engaged in substantial and lengthy negotiations, resulting in a corporate governance settlement approved by this court on January 9, 2020.[11] As a result of this settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,[12] and three independent directors ("Independent Directors") were

[10] Mark Okada resigned from his role with Highland prior to the Petition Date.

[11] This order is hereinafter referred to as the "January 2020 Order" and was entered by the court on January 9, 2020 [Bankr. Dkt. No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Bankr. Dkt. No. 281].

[12] Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland's motion to approve the settlement. *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Bankr. Dkt. No. 338].

chosen to lead Highland through its chapter 11 case: Seery, John S. Dubel, and retired bankruptcy judge Russell Nelms. Given the Debtor's perceived culture of constant litigation while Dondero was at the helm, it was purportedly not easy to get such highly qualified persons to serve as independent board members. At the hearing on the corporate governance settlement motion, the court heard credible testimony that none of the Independent Directors would have taken on the role without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation from mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the Independent Directors without the bankruptcy court's prior authority. The gatekeeper provision approved by the court in its January 9 Order states,[13]

> No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

Dondero agreed to remain with Highland as an unpaid portfolio manager following his resignation and did so "subject at all times to the supervision, direction and authority of the Independent Directors" and to his agreement to "resign immediately" "[i]n the event the Independent Directors determine for any reason that the Debtor shall no longer retain Dondero as an employee"[14] and to "not cause any Related Entity to terminate any agreements with the Debtor."[15] The court later

[13] January 2020 Order, 3-4, ¶ 10.

[14] January 2020 Order, 3, ¶ 8.

[15] *Id.* at ¶ 9.

entered, on July 16, 2020, an order approving the appointment of Seery as Highland's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative,[16] which included essentially the same "gatekeeper" language with respect to the pursuit of claims against Seery acting in these roles. The gatekeeper provision in the July 2020 Order was essentially the same as the gatekeeper provision in the January 2020 Order:

> No entity may commence or pursue a claim or cause of action of any kind against Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

July 2020 Order, 3, ¶5. Neither the January 2020 Order nor the July 2020 Order were appealed.

Throughout the summer of 2020, Dondero informally proposed several reorganization plans, none of which were embraced by the Committee or the Independent Directors. When Dondero's plans failed to gain support, he and entities under his control engaged in substantial, costly, and time-consuming litigation for Highland.[17] As the Fifth Circuit described the situation, after Dondero's plans failed "he and other creditors began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland Capital's management, threatening employees, and canceling trades between Highland Capital and its clients."[18] On October 9, 2020, Dondero resigned from all positions with the Debtor and its

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[16] *See* the July 16, 2020 order approving the retention by Highland of Seery as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative, *nunc pro tunc*, to March 15, 2020 ("July 2020 Order") [Bankr. Dkt. No. 854].

[17] According to Seery's credible testimony during the hearing on confirmation of the Plan that had been negotiated between the Committee and the Independent Directors, Dondero had threatened to "burn the place down" if his proposed plan was not accepted. *See* Transcript of Confirmation Hearing dated February 3, 2021 at 105:10-20. Bankr. Dkt. No. #1894.

[18] *Highland Capital*, 48 F.4th at 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at *1, *26 (Bankr. N.D. Tex.

affiliates in response to a demand by the Independent Directors made after Dondero's purported threats and disruptions to the Debtor's operations.[19]

The Independent Directors and the Committee had negotiated their own plan of reorganization which culminated in the filing by Highland of its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan") [Bankr. Dkt. No. 1808] on January 22, 2021.[20] Highland had negotiated settlements with most of its major creditors following mediation and had amended its initially proposed plan to address the objections of most of its creditors, leaving only the objections of Dondero and entities under his control (the "Dondero Parties") at the time of the confirmation hearing,[21] which was held over two days in early February 2021. The Plan is essentially an "asset monetization" plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). Highland's various servicing agreements were vested in the Reorganized Debtor, which continues to manage collateralized loan obligation vehicles ("CLOs") and various other investments postconfirmation. The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down the Reorganized Debtor over a three-year period by monetizing its assets and making

June 7, 2021) where this court "h[eld] Dondero in civil contempt, sanctioning him $100,000, and comparing this case to a 'nasty divorce.'").

[19] *See* Highland Ex. 13. The court shall refer to exhibits offered and admitted at the June 8 Hearing on the Motion for Leave by the Highland Parties as "Highland Ex. ___" and to exhibits offered and admitted by HMIT as "HMIT Ex. ___."

[20] The *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* was filed on November 24, 2020 ("Disclosure Statement") [Bankr. Dkt. No. 1473].

[21] The only other objection remaining was the objection of the United States Trustee to the Plan's exculpation, injunction, and release provisions.

distributions to Class 8 and Class 9 creditors as Claimant Trust Beneficiaries. The Claimant Trust is overseen by a Claimant Trust Oversight Board ("CTOB"), and pursuant to the terms of the Plan and the Claimant Trust Agreement ("CTA"),[22] the CTOB approved Seery's compensation package as the CEO of the Reorganized Debtor and the Claimant Trustee. Following their acquisition of their unsecured claims, representatives of Claims Purchasers Muck and Jessup became members of the CTOB.[23] Seery's compensation included the same base salary that he was receiving as CEO and CRO of Highland, plus an added incentive bonus tiered to recoveries and distributions to the creditors under the Plan. The Plan provides for the cancellation of the limited partnership interests in Highland held by HMIT, Dugaboy, and Okada and his family trusts in exchange for each holder's pro rata share of a contingent interest in the Claimant Trust ("Contingent Claimant Trust Interest"), as holders of allowed interests in Class 10 (holders of Class B/C limited partnership interests) or Class 11 (holders of Class A limited partnership interests) under the Plan.

B. Dondero Communicates Alleged Material Non-Public Information ("MNPI") to Seery, and Seery Allegedly Provides the MNPI to the Claims Purchasers in Furtherance of an Alleged Fraudulent Scheme to Have the Claims Purchasers "Rubber Stamp" His Compensation as Claimant Trustee Post-Confirmation

1. The December 17, 2020 MGM Email

Between Dondero's forced resignation from Highland in October 2020 and the confirmation hearing in February 2021, Dondero engaged in what appeared to be attempts to thwart, impede, and otherwise interfere with the Plan being proposed by the Independent Directors and the Committee. In the midst of this, on December 17, 2020, Dondero sent Seery[24] an email

[22] Highland Ex. 38

[23] The CTOB had three members: a representative of Muck (Michael Linn), a representative of Jessup (Christopher Provost), and an independent member (Richard Katz). *See* Joint Opposition ¶ 79.

[24] Dondero sent the email to others as well but did not copy counsel for the Independent Directors (including Seery) in violation of the terms of an existing temporary restraining order that enjoined Dondero from, among other things, "communicating . . . with any Board member" (including Seery) without including Debtor's counsel. Morris Dec. Ex. 23 ¶ 2(a). Citations to "Morris Dec. Ex. _" are to the exhibits attached to the *Declaration of John A. Morris in Support*

(the "MGM Email") that featured prominently in HMIT's Motion for Leave. According to HMIT and Dondero, the MGM Email contained material nonpublic information ("MNPI") regarding the possibility of an imminent acquisition of Metro-Goldwyn-Mayer Studios, Inc. ("MGM"), likely by either Amazon or Apple.[25] At the time Dondero sent the MGM Email, Dondero sat on the board of directors of MGM, and the Debtor owned MGM stock directly. The Debtor also managed and partially owned a couple of other entities that owned MGM stock and managed various CLOs that owned some MGM stock as well. HMIT alleges now that Seery later misused and wrongfully disclosed to the Claims Purchasers this purported MNPI as part of a *quid pro quo* scheme, whereby the Claims Purchasers agreed to approve excessive compensation for Seery in the future (in exchange for him providing this allegedly "insider" information that inspired them to purchase unsecured claims with an alleged expectation of future large profits).[26] A timeline of events (in late 2020) in the weeks leading up to Dondero's MGM Email to Seery, following Dondero's departure from Highland, helps to put the email in full context:

- October 16: Dondero and his affiliates attempt to impede the Debtor's trading activities by demanding—with no legal basis—that Seery cease selling certain assets;[27]

- November 24: Bankruptcy Court enters an Order approving the Debtor's Disclosure Statement, scheduling the confirmation hearing on the Debtor's Plan for January 13, 2021, and granting related relief;[28]

- November 24–27: Dondero personally interferes with the Debtor's

of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding, Bankr. Dkt. No. 3784.

[25] *See* Proposed Complaint ¶ 45.

[26] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the [Claims Purchasers], with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims."); ¶ 4 ("As part of the scheme, the [Claims Purchasers] obtained a position to approve Seery's ongoing compensation – to Seery's benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT.").

[27] *See* Highland Ex. 14, Dondero-Related Entities' October 16, 2020 Letter; Highland Ex. 15, *Memorandum Opinion and Order Holding Dondero in Contempt for Violation of TRO*, 13-15.

[28] *See* Bankr. Dkt. No. 1476.

implementation of certain securities trades ordered by Seery;[29]

- November 30: The Debtor provides written notice of termination of certain shared services agreements it had with Dondero's two non-debtor affiliates, NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"; together with NexPoint, the "Advisors");[30]

- December 3: The Debtor makes written demands to Dondero and certain affiliates for payment of all amounts due under certain promissory notes they owed to the Debtor, that had an aggregate face amount of more than $60 million—this was part of creating liquidity for the Debtor's Plan;[31]

- December 3: Dondero responds with what appeared to be a threat of some sort to Seery in a text message: "***Be careful what you do -- last warning***;"[32]

- December 10: Dondero's interference and apparent threat cause the Debtor to seek and obtain a temporary restraining order ("TRO") against Dondero;[33]

- December 16: This court denies as "frivolous" a motion filed by certain affiliates of Dondero, in which they sought "temporary restrictions" on certain asset sales;[34] and

- December 17: Dondero sends the unsolicited MGM Email[35] to Seery, which violates the TRO entered just a week earlier.[36]

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[29] *See* Highland Ex. 15, 30-36.

[30] Morris Decl. Ex. 17; *see also* Transcript of June 8, 2023 Hearing on HMIT's Motion for Leave ("June 8 Hearing Transcript"), 273:23-24.

[31] Morris Decl. Exs. 18-21; *see also* June 8 Hearing Transcript, 273:23-274:1.

[32] Morris Decl. Ex. 22 (emphasis added); *see also* June 8 Hearing Transcript, 273:1-12 (where Seery testified about receiving the threat from Dondero: "A: [T]his came after he threatened me. He threatened me in writing. I'd never been threatened in my career. I've never heard of anyone else in this business who's been threatened in their career. So anything I would get from him, I was going to be highly suspicious.").

[33] *See* Morris Decl. Ex. 23, *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* entered December 10, 2020 [Adv. Pro. No. 20-3190 Dkt. No. 10].

[34] *See* Morris Decl. Ex. 24, Transcript of December 16, 2020 Hearing, 63:5-64:15.

[35] Highland Ex. 11.

[36] Seery testified at the June 8 Hearing that Dondero knowingly violated the TRO when he sent the MGM Email:

> [The MGM Email] . . . followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski [Debtor's counsel] being on it. Furthermore, Pachulski had advised Dondero's counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics. And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

June 8 Hearing Transcript, 273:13-22.

The MGM Email had the subject line "Trading Restriction re MGM – material non public information" and stated:

> Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.[37]

Seery credibly testified at the June 8 Hearing that he was "highly suspicious" when he received the MGM Email. This was because, among other reasons, Dondero sent it ***after***: (i) unsuccessful efforts to impede the Debtor's trading activities (followed by the TRO); (ii) the "be careful what you do" text to Seery by Dondero: (iii) Highland's termination of its shared service arrangements with Dondero's various affiliated entities; (iv) the bankruptcy court's approval of the disclosure statement; and (v) Highland's demand to collect on the demand notes for which Dondero and his entities were liable.[38] Highland's Chapter 11 case was fast approaching the finish line. Moreover, MGM was already on the restricted list at Highland Capital, and had been for a long time, and Dondero would know this.[39] Still further, as of December 17, 2020 (the date Dondero sent the unsolicited MGM Email to Seery), Dondero no longer owed a duty of any kind to the Debtor or any entity controlled by the Debtor, having surrendered in January 2020 direct and indirect control of the Debtor to the Independent Board as part of the corporate governance settlement[40] and having resigned from all roles at the Debtor and affiliates in October 2020. Still further, Dondero—to the extent he was sharing with Seery MNPI that he obtained as a member of the board of directors of MGM—would have been violating his own fiduciary duties to MGM.

[37] Highland Ex. 11.

[38] June 8 Hearing Transcript, 273:1-274:4.

[39] June 8 Hearing, 215:21-216:9.

[40] *See* Bankr. Dkt. Nos. 339, 354-1 (Term Sheet)).

In any event, in a declaration filed by Dondero in support of HMIT's Rule 202 petition in Texas state court for pre-suit discovery,[41] he indicated that his goal in sending the MGM E-mail was to impede the Debtor and Seery from engaging in any transactions involving MGM:

> On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple's interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. ***My purpose was to alert Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades***.

It is noteworthy that ***Dondero's labeling of the MGM Email (in the subject line) as a communication containing "material non public information" did not make it so***. In fact, it appears from the credible evidence presented at the June 8, 2023 hearing on HMIT's Motion for Leave that the MGM Email did not disclose information to Seery that was not already made available to the public at the time it was sent. Seery testified that he did not think the MGM Email contained MNPI and that he did not personally "take any steps . . . to make sure that MGM stock was placed on a restricted list at Highland Capital after [he] received [the MGM Email]" because—as earlier noted—"MGM was already on the restricted list at Highland Capital . . . before I got to Highland."[42] Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months[43] and that was officially

[41] Highland Ex. 9 ¶ 3 (emphasis added).

[42] June 8 Hearing Transcript, 215:21-216:9. Seery elaborated upon further questioning from HMIT's counsel that he did not think the indications in the MGM Email (that came from a member of the board of directors of MGM) that "it was probably a first-quarter event" and that "Amazon and Apple were actively diligencing – are diligencing in the data room, both continue to express material interest" were not MNPI. *Id.*, 217:23-218:10. He testified that "it was clear [before he received the MGM Email] from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction would have to take place very quickly. And, in fact, the transaction did not take place in the first quarter." *Id.*, 219:3-7.

[43] *See* Highland Ex. 25 ("MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.") (article dated 1/26/20); Highland Ex. 26 (describing prospects of an MGM sale, noting that, among its largest

announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[44] For example, as early as January 2020, Apple and Amazon were identified as being among a new group of "Big 6" global media companies, and MGM was identified as being a leading media acquisition target. Indeed, according to at least one media report on January 26, 2020, "MGM, in particular, seems like a logical candidate to sell this year" having already held "preliminary talks with Apple, Netflix and other larger media companies."[45] In October 2020, the Wall Street Journal reported that MGM's largest shareholder, Anchorage Capital Group ("Anchorage"), was facing mounting pressure to sell the company. Anchorage was led by Kevin Ulrich, who also served as Chairman of MGM's Board. The article reported that "[i]n recent months, Mr. Ulrich has said he is working toward a deal," and he specifically named Amazon and Apple as being among four possible buyers.[46] Thus, no one following the MGM story would have been surprised to learn in December 2020 that Apple and Amazon were conducting due diligence and had expressed "material interest" in acquiring MGM. Dondero testified during the June 8 Hearing that, at the time he sent the MGM Email, he "knew with certainty from the board level that Amazon had hit our price, and it was going to close in the next couple of months,"[47] that "as of December 17th, Amazon had made an offer that was acceptable to MGM, [and that] that's what the board meeting was. We were going into exclusive negotiations to culminate the merger with

shareholders, was "Highland Capital Management, LP") (article October 11, 2020). *See also* Highland Exs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for $8.4 billion).

[44] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid.

[45] Highland Ex. 25.

[46] Highland Ex. 26.

[47] June 8 Hearing Transcript, 127:2-4.

them."[48] Notwithstanding this testimony, Dondero eventually admitted (after a lengthy and torturous cross examination) that he did not actually communicate this supposed "inside" information to Seery in the MGM Email. He did not "say anything about Amazon hitting the price." He did not say anything about the MGM board going into exclusive negotiations with Amazon "to culminate the merger with them." Rather, he communicated information that Seery and any member of the public who cared to look could have gleaned from publicly available information as of December 17, 2020, regarding a much-written-about potential MGM transaction that involved interest from numerous companies, including, specifically, Amazon and Apple. When questioned why "[he felt] the need to mention Apple [in the MGM Email] if Amazon had already hit the price," Dondero simply answered, "The only way you generally get something done at attractive levels in business is if two people are interested," suggesting that he specifically ***did not*** communicate the purported inside information he obtained as a MGM board member—that Amazon had met MGM's strike price and that the MGM board was moving forward with exclusive negotiations with Amazon—because he wanted it to appear that there was still a competitive process going on that included both Amazon and Apple.[49]

Even if the MGM Email contained MNPI on the day it was sent (four months prior to the first of the Claim Purchases that occurred in April 2021), the information was fully and publicly disclosed to the market in the days and weeks that followed. For example, on December 21, 2020, just four days later, a Wall Street Journal article titled *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale*, reported that MGM had "tapped investment banks Morgan Stanley and LionTree LLC and begun a formal sale process," and had "a market value of around $5.5 billion, based on privately traded shares and including debt." The Wall Street Journal Article reiterated

[48] *Id.*, 161:10-14.

[49] June 8 Hearing Transcript, 162:2-6.

that (i) Anchorage "has come under pressure in recent years from weak performance and defecting clients, and its illiquid investment in MGM has become a larger percentage of its hedge fund as it shrinks," and (ii) "Mr. Ulrich has told clients in recent months he was working toward a deal for the studio and has spoken of big technology companies as logical buyers."[50] (*Id*. Ex. 27.) The Wall Street Journal's reporting was picked up and expanded upon in other publications soon after. For example:

- On December 23, 2020, Business Matters published an article specifically identifying Amazon as a potential suitor for MGM. The article, titled *The world is net enough! Amazon joins other streaming services in £4bn bidding war for Bond films as MGM considers selling back catalogue*, cited the Wall Street Journal article and further reported that MGM "hopes to spark a battle that could interest streaming services such as Amazon Prime";[51]

- On December 24, 2020, an article in iDropNews specifically identified Apple as entering the fray. In an article titled *Could Apple be Ready to Gobble Up MGM Studios Entirely?*, the author observed that "it's now become apparent that MGM is actually up on the auction block," noting that the Wall Street Journal was "reporting that the studio has begun a formal sale process" and that Apple—with a long history of exploratory interest in MGM—would be a likely bidder;[52] and

- On January 15, 2021, Bulwark published an article entitled *MGM is For Sale (Again)* that identified attributes of MGM likely to appeal to potential purchasers and handicapped the odds of seven likely buyers—with Apple and Amazon named as two of three potential buyers most likely to close on an acquisition.[53]

Finally, Highland and entities it controlled did not sell their MGM stock while the MGM-Amazon deal was under discussion and/or not made public but, instead, they tendered their MGM holdings in connection with, and as part of, the ultimate MGM-Amazon transaction after it closed in March 2022.

[50] Highland Ex. 27.

[51] Highland Ex. 28.

[52] Highland Ex. 29.

[53] Highland Ex. 30.

2. No Evidence to Support HMIT/Dondero's Assumptions that Seery Shared Alleged MNPI in the MGM Email with Claims Purchasers

One of HMIT's allegations in the Proposed Complaint it seeks leave to file—which is central to HMIT's and Dondero's conspiracy theory—is that Seery shared the alleged MNPI from the MGM Email with the Claims Purchasers (or at least Farallon—the owner/affiliate of Muck, one of the Claims Purchasers) and that the Claims Purchasers only acquired the purchased claims ("Purchased Claims") based on, and because, of their receipt of the MNPI from Seery. HMIT essentially admits in the original version of its Motion for Leave that it has no direct evidence that Seery communicated the alleged MNPI to any of the Claims Purchasers. Rather, its allegation is based on inferences it wants the court to make based on "circumstantial" evidence and on the Dondero Declarations that were attached to the Motion for Leave, which described communications Dondero purportedly had with one or two representatives of Farallon in the "late spring" of 2021 concerning Farallon's recent acquisition of certain claims in the Highland bankruptcy case.[54] Based on these communications, HMIT and Dondero only assume Seery must have provided the MNPI about MGM to Farallon, which must have caused both Farallon and the other Claims Purchaser, Stonehill, to acquire the Purchased Claims.[55]

At the June 8 Hearing, HMIT offered Dondero's testimony that he had three telephone conversations with two representatives of Farallon, Mike Linn ("Linn") and Raj Patel ("Patel"),

[54] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 1 and Ex. 3; *see also* Highland Ex. 9, *Declaration of James Dondero* (with Exhibit 1) dated February 15, 2023.

[55] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 28. HMIT subsequently filed the final version of the Motion for Leave that was revised to withdraw the Dondero Declarations and delete all references therein to the Dondero Declarations (but, notably, leaving in the allegations that were based on the Dondero Declaration(s)). This was done after the court ruled that it would allow the Proposed Defendants to examine Dondero regarding his Declarations. HMIT contended at that point that the court should consider the Motion for Leave on a no-evidence Rule 12(b)(6) type basis (but could not explain why it had attached the Dondero Declarations as evidence that "supported" the Motion for Leave, if it believed no evidence should be considered). *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 28; *see also infra* pages 45 to 47 regarding the "sideshow" litigation that occurred prior to the June 8 Hearing over whether the hearing on the Motion for Leave would be an evidentiary hearing.

who allegedly told him that they purchased the claims without conducting any due diligence and based solely on Seery's assurances that the claims were valuable. These conversations allegedly took place on May 28, 2021—two days after the MGM-Amazon deal was officially announced to the public (on May 26, 2021). Dondero also testified that a photocopy of handwritten notes ("Dondero Notes")[56] (which were partially cut off) were notes he took contemporaneously with these short telephone conversations he initiated (one with Patel and two follow-up conversations with Linn).[57] He testified that his purpose in taking these notes and in initiating the phone calls was that "[w]e'd been trying nonstop to settle the case for two-plus years. . . . [a]nd when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case . . . [s]o I reached out [to] the Farallon guys,"[58] and further, on *voir dire* from the Proposed Defendants' counsel, that the purpose of taking the notes was so that he had "a written record of the important points that [he] discussed . . . so I know how to address it the next time."[59] The handwritten notes[60] stated:

Raj Patel bought it because of Seery	*1*
50-70¢ not compelling	*2*
Class 8	*3*
Asked what would be compelling	*4*
-- No Offer	*5*
Bought in Feb/March timeframe	*6*
Bought assets w/ Claims	*7*
Offered him 40-50% premium	*8*
130% of cost; "Not Compelling"	*9*
No Counter; Told Discovery coming	*10*

[56] HMIT Ex. 4. The handwritten notes were admitted into evidence after *voir dire*, not for the truth of anything Patel or Linn allegedly said to him during the three telephone conversations, but as Dondero's "present sense impression" of the telephone conversations.

[57] June 8 Hearing Transcript, 133:1-136:3.

[58] *See id.*, 133:13-23.

[59] *See id.* (on *voir dire*), 144:1838-145:4.

[60] HMIT Ex. 4. The court has placed in a table and numbered each line for ease of reference. The table does not include the separate apparent partial date from the top left corner that Dondero testified was the date that he made the initial call to Patel: May 28, 2021.

On direct examination, Dondero testified that line 1 is what he wrote contemporaneously with the short call he initiated to Patel of Farallon in which Patel allegedly told Dondero "that he bought it because Seery told him to buy it and they had made money with Seery before"[61] and that Farallon "bought [the claim] because he was very optimistic regarding MGM"[62] before referring him to Linn, a portfolio manager at Farallon. Dondero testified that the rest of the handwritten notes (reflected in lines 2 through 10 of the table) were notes he took contemporaneously with two telephone conversations he had with Linn following his call to Patel, with lines 2-8 referring to Dondero's first call with Linn and lines 9 and 10 referring to his second call with Linn.[63] Dondero testified that the "50-70¢" in line 2 referred to his offer to Linn to pay 70 cents on the dollar to buy Farallon's[64] claims because "[w]e knew that they had – that the claims had traded around 50 cents" and "[w]e wanted to prevent the $5 million-a-month burn" (referring to attorney's fees in the Highland case) and that "not compelling Class 8" in lines 2-3 referred to Linn's response to him that the offer was not compelling.[65] Dondero testified that lines 4-5 referred to him asking Linn what amount would be compelling and to Linn's response that "he had no offer."[66] Dondero testified that lines 6-8 referred to Linn telling Dondero that Farallon bought the claims in the February, March timeframe and that Dondero told Linn that, given that the estate was spending $5 million a month on legal fees, Farallon should want to sell its claims and Linn's alleged response that "Seery told him it was worth a lot more."[67] Lastly, Dondero testified on direct examination

[61] June 8 Hearing Transcript, 134:7-10, 135:13-22.

[62] *Id.*, 139:3-11.

[63] *Id.*, 136:4-138:16.

[64] As noted above, Farallon did not acquire any of the Purchased Claims; rather, Farallon created a special purpose entity, Muck, to acquire the claims.

[65] June 8 Hearing Transcript, 136:4-16.

[66] *Id.*, 136:17-23.

[67] *Id.*, 137:6-138:7.

that the last two lines referred to a second telephone conversation he had with Linn in which Dondero offered 130 percent of cost for the claims and that Linn told him that the offer was not compelling, and he would not give a price at which he would sell.[68]

On cross-examination, Dondero acknowledged that, though he had testified that the handwritten notes were intended to be a written record of the important points from the telephone conversations he had with Patel and Linn, there was no mention in the notes of: (1) MGM: (2) or that Farallon was very optimistic about MGM; (3) the sharing of MNPI; (4) a *quid pro quo;* or (5) Seery's compensation, and that his last note—"Told Discovery coming"—was a reference to Dondero telling Linn (not Linn telling Dondero) that discovery was coming in response to Dondero's own supposition that Farallon must have traded on MNPI.[69] Cross-examination also revealed that Farallon never told Dondero that Seery gave them MNPI, and that Dondero only ***believed*** Seery ***must have*** given Farallon MNPI, because Farallon (Patel and Linn) had told him that the only reason Farallon bought their claims was because of their prior dealings with Seery, which Dondero took to mean that they had conducted no due diligence on their own prior to acquiring the claims. Dondero also testified that he did not have any personal knowledge as to how Seery's compensation package, as CEO of the Reorganized Debtor and Claimant Trustee, was determined because he was "not involved" in the setting of Seery's compensation pursuant to the Claimant Trust[70] and that he never discussed Seery's compensation with Farallon.[71]

As noted earlier, Dondero attempted to obtain discovery from the Claims Purchasers in a Texas state court pursuant to Rule 202 of the Texas Rules of Civil Procedure. The Texas state

[68] *Id.*, 138:8-22.

[69] *Id.*, 190:14-191:25. Dondero testified that he told Linn that discovery "would be coming in the next few weeks" and noted that "this has been a couple years. . . . [w]e've been trying for two years to get . . . discovery in this."

[70] *Id.*, 200:13-201:1.

[71] *Id.*, 208:23-209:8.

court denied the First Rule 202 petition on June 1, 2022, after having considered the amended petition, the responses, the record, applicable authorities and having conducted a hearing on the petition on June 1, 2022.[72]

3. Dondero Unsuccessfully Seeks Discovery and to Have Various Agencies and Courts Outside of the Bankruptcy Court Acknowledge His Insider Trading Theories

Dondero acknowledged at the June 8 Hearing that the verified petition ("First Rule 202 Petition") he signed and filed on July 22, 2021, in the first Texas Rule 202 proceeding—just weeks after his telephone calls with Linn and Patel—was true and accurate. In it, he swore under oath as to what Linn told him in the telephone call concerning Farallon's purchase of the claims, and the only reason he gave for wanting discovery was that Linn told him Farallon bought the claims "sight unseen—relying entirely on Seery's advice solely because of their prior dealings."[73] Dondero acknowledged, as well, that his sworn statement that he filed in support of an amended verified Rule 202 petition filed in the same Texas Rule 202 proceeding, but nearly ten months later (in May 2022), described the same telephone conversation he had with Linn, and it did not mention MGM at all and did not say that Linn told him that Seery gave him MNPI; rather, the sworn statement stated only that "On a telephone call between Petitioner and Michael Lin[n], a representative of Farallon, Mr. Lin[n] informed Petitioner that Farallon had purchased the claims sight unseen and with no due diligence—100% relying on Seery's say-so because they had made so much money in the past when Seery told them to purchase claims" and that Linn did not tell him that Seery gave them MNPI, but he concluded that Seery gave Farallon MNPI based on what Linn did tell him.[74]

[72] Highland Ex. 7.

[73] *Id.*, 193:8-194:16; Highland Ex. 3, *Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 21. The first Texas Rule 202 proceeding in which Dondero sought discovery regarding the Farallon acquisition of its claims was brought by Dondero, individually, in the 95th Judicial District, Dallas County, Texas.

[74] *Id.*, 195:11-197:17; Highland Ex. 4, *Amended Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 23.

Nine days later, Dondero filed a declaration in the same proceeding, in which he described the same call with Linn as follows:[75]

> Last year, I called Farallon's Michael Lin[n] about purchasing their claims in the bankruptcy. I offered them 30% more than what they paid. I was told by Michael Lin[n] of Farallon that they purchased the interests without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid. Given the value of those claims that Seery had testified in court, it made no sense to me that Mr. Lin[n] would think that the claims were worth more than what Seery testified under oath was the value of the bankruptcy claims.

Dondero further stated in his declaration that "I have an interest in ensuring that the claims purchased by [Farallon] are not used as a means to deprive the equity holders of their share of the funds," and that "[i]t has become obvious that despite the fact that the bankruptcy estate has enough money to pay all claimants 100 cents on the dollar, there is plainly a movement afoot to drain the bankrupt estate and deprive equity of their rights. Accordingly, "I commissioned an investigation by counsel who have been in communication with the Office of the United States Trustee."[76] Dondero attached as Exhibit A to his declaration a letter from Douglas Draper ("Draper"), an attorney with the law firm of Heller, Draper & Horn, L.L.C. in New Orleans, to the office of the General Counsel, Executive Office for U.S. Trustees, dated October 5, 2021, in which Draper opens the letter by stating that "[t]he purpose of this letter is to request that your office investigate the circumstances surrounding the sale of claims by members of the [Creditors' Committee] in the bankruptcy of [Highland]," and later noted that he "became involved in Highland's bankruptcy through my representation of [Dugaboy], an irrevocable trust of which Dondero is the primary beneficiary."[77] Mr. Draper laid out the same allegations of insider claims trading, breach of

[75] Highland Ex. 5, ¶ 2.

[76] *Id.*, ¶¶ 3-4.

[77] *Id.*, Ex. A, 1-2.

fiduciary duties, and conspiracy that HMIT seeks to bring in the Proposed Complaint.[78] The U.S. Trustee's office took no action. Dondero made a second and third attempt to get the U.S. Trustee's office to conduct an investigation into the same allegations laid out in Draper's letter, this time in "follow-up" letters to the Office of the U.S. Trustee on November 3, 2021, and six months later, on May 11, 2022, through another lawyer, Davor Rukavina ("Rukavina"), in which Rukavina wrote "to provide additional information regarding the systemic abuses of bankruptcy process occasioned during the [Highland] bankruptcy."[79] Again, the U.S. Trustee's office took no action.

On February 15, 2023, Dondero filed yet another sworn statement about his alleged conversation with Linn, this time in support of a Verified Rule 202 Petition ***filed by HMIT*** ("Second Rule 202 Petition"), filed in a different Texas state court (Texas District Court, 191st Judicial District, Dallas County, Texas), following Dondero's unsuccessful attempts throughout 2021 and 2022 to obtain discovery in the First Rule 202 proceeding and based on the same allegations of misconduct by Seery and Farallon.[80] In this new sworn statement, Dondero describes for the first time the "call" he had with Linn as having been "phone calls" with Patel and Linn and ***mentions MGM*** and Farallon's alleged optimism about the ***expected sale of MGM***:[81]

> In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC ("Farallon"), Raj Patel and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the Acis and HarbourVest claims, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Seery because they had made significant profits when Seery told them to purchase other claims in the past. They also stated that they were particularly optimistic because of the expected sale of MGM.

[78] *Id.*, Ex. A, 6-11.

[79] HMIT Ex. 61.

[80] Highland Ex. 9.

[81] *Id.*, ¶ 4.

The Second Rule 202 Petition was also denied by the second Texas state court on March 8, 2023.[82]

HMIT, in an apparent attempt to provide support for its argument that the Proposed Claims are "colorable," stated in its Motion for Leave that "[t]he Court also should be aware that the Texas States [sic] Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely 'colorable.'"[83] But, two days before opposition briefing was due, on May 9, 2023, the TSSB issued a letter ("TSSB Letter") to Highland, informing it that "[t]he staff of the [TSSB] has completed its review of the complaint received by the Staff against [Highland]. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time."[84] HMIT's counsel (frankly, to the astonishment of the court) objected to the admission of the TSSB Letter at the June 8 Hearing "on the grounds of relevance, 403, hearsay, and authenticity . . . [a]nd I also . . . think it's important that the decision by a regulatory body has no bearing on this cause of action or the colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry."[85] The court overruled HMIT's objection to the relevance of this exhibit—considering, among other things, that HMIT, in its Motion for Leave, specifically mentioned the allegedly open TSSB "investigation" as relevant evidence the court "should be aware" of in making its determination of whether the Proposed Claims were "colorable."[86]

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[82] Highland Ex. 10.

[83] Motion for Leave, ¶ 37.

[84] *See* Highland Ex. 33.

[85] June 8 Hearing Transcript, 323:22-324:3.

[86] *Id.*, 324:4-328:2.

C. Claims Purchasers Purchase Claims and File Notices of Transfers of Claims

To be clear about the time line here, it was after confirmation of the Plan but prior to the Effective Date of the Plan, that the Claims Purchasers: (1) purchased several large unsecured claims that had been allowed following, and as part of, Rule 9019 settlements, each of which were approved by the bankruptcy court, after notice and hearing, prior to the confirmation hearing; and (2) filed notices of the transfers of those claims pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure. The noticing of the claims transfers began on April 16, 2021, with the notice of transfer of the claim held by Acis Capital Management to Muck, and ended on August 9, 2021, with the notices of transfers of the claims held by UBS Securities to Muck and Jessup:

Claimant(s)	**Date Filed/ Claim No.**	**Asserted Amount**	**Claim Settled/Allowed? If so, Amount**	**Date Filed/ Rule 3001 Notice Dkt. No.**
Acis Capital Management LP and Acis Capital Management, GP LLC (together, "Acis")	12/31/2019 Claim No. 23	$23,000,000	Yes[87] $23,000,000	4/16/2021 Bankr. Dkt. No. 2215 (Muck)
Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee")	4/3/2020 Claim No. 72	$190,824,557	Yes[88] $137,696,610	4/30/2021 Bankr. Dkt. No. 2261 (Jessup)
HarbourVest 2017 Global Fund, LP, HarbourVest 2017 Global AIF, LP, HarbourVest Partners LP, HarbourVest Dover Street IX Investment LP, HV International VIII Secondary LP, HarbourVest Skew Base AIF LP (the "HarbourVest Parties")	4/8/2020 Claim Nos. 143, 147, 149, 150, 153, 154	Unliquidated	Yes[89] $80,000,000 in aggregate ($45,000,000 General Unsecured Claim, and $35,000,000 subordinated claim)	4/30/2021 Bankr. Dkt. No. 2263 (Muck)

[87] Bankr. Dkt. No. 1302. The Debtor's settlement with Acis was approved over the objection of Dondero. Bankr. Dkt. No. 1121.

[88] Bankr. Dkt. No. 1273.

[89] Bankr. Dkt. No. 1788. The Debtor's settlement with the HarbourVest Parties was approved over the objections of Dondero, Bankr. Dkt. No. 1697, and Dugaboy and the Get Good Trust. Bankr. Dkt. No. 1706.

UBS Securities LLC, UBS AG, London Branch (the "UBS Parties")	6/26/2020 Claim Nos. 190, 191	$1,039,957,799.40	Yes[90] $125,000,000 in aggregate ($65,000,000 General	8/9/2021 Bankr. Dkt. No. 2698 (Muck) and Bankr. Dkt. No. 2697 (Jessup)

HMIT insists that it "made no sense" for the Claims Purchasers to buy the Purchased Claims because "the publicly available information [] did not offer a sufficient potential profit to justify the publicly disclosed risk," and "their investment was projected to yield a small return with virtually no margin for error."[91] Dondero testified that it was ***his*** view that there was insufficient information in the public to justify the claims purchases.[92] But, HMIT's arguments here are contradicted by the information that was publicly available to Farallon and Stonehill at the time of their purchases and by HMIT's own allegations. In advance of Plan confirmation, Highland projected that Class 8 general unsecured creditors would recover 71.32% on their allowed claims. In the Proposed Complaint, HMIT sets forth the amounts the Claims Purchasers purportedly paid for their claims.[93] Taking into account the face amount of the allowed claims, the Claims Purchasers' projected profits (in millions of dollars) were as follows:

Creditor	Class 8	Class 9	Ascribed Value[94]	Purchaser	Purchase Price	Projected Profit
Redeemer	$137.0	$0.0	$97.71	Stonehill	$78.0	$19.71
Acis	$23.0	$0.0	$16.4	Farallon	$8.0	$8.40

[90] Bankr. Dkt. No. 2389. The Debtor's settlement with the UBS Parties was approved over the objections of Dondero, Dkt. No. 2295, and Dugaboy and the Get Good Trust. Bankr. Dkt. Nos. 2268, 2293.

[91] Proposed Complaint, ¶ 3.

[92] June 8 Hearing Transcript, 187:3-7 ("Q: And it's your testimony that there wasn't sufficient information in the public for them to buy – this is your view – that there wasn't sufficient information in the public to justify their purchases. Is that your view? A: Correct.).

[93] *Id.*, ¶ 42.

[94] "Ascribed Value" is derived by multiplying the Class 8 amount by the projected recovery of 71.32% for that class.

HarbourVest	$45.0	$35.0	$32.09	Farallon	$27.0	$5.09
UBS	$65.0	$60.0	$46.39	Stonehill & Farallon	$50.0	($3.61)

As HMIT acknowledges, by the time Dondero spoke with Farallon in the "late spring" of 2021, the Claims Purchasers had acquired the allowed claims previously held by Acis, Redeemer, and HarbourVest.[95] Based on an aggregate purchase price of $113 million for these three claims, the Claims Purchasers would have expected to net over $33 million in profits, or nearly 30% on their investment, had Highland met its projections. The Claims Purchasers would make even more money if Highland beat its projections, because they also purchased the Class 9 claims and would therefore capture any upside. In this context, HMIT's and Dondero's assertions that it did not "make any sense" for the Claims Purchasers to purchase their claims when they did does not pass muster—given the publicly available information about potential recoveries under the Plan. Dondero even acknowledged, on cross-examination, that he was prepared to pay ***30 percent more*** than Farallon had paid, even though he did not think there was sufficient public information available to justify Farallon's purchase of the claims.[96] Dondero essentially testified that he wanted to purchase Farallon's claims because he wanted to be in a position of control to force a settlement or resolution of the bankruptcy case, post-confirmation, under terms acceptable to him. He did not want to try to settle by negotiating with Farallon and Stonehill ***as creditors***, but instead he wanted to purchase the claims because "if we owned all the claims, it would settle the case."[97]

[95] *See* Complaint, ¶ 41 n.12. The UBS claims were not acquired until August 2021, long after the alleged "*quid pro quo*" was supposedly agreed upon and the MGM-Amazon deal was announced in the press in late May 2021. *See*, Highland Ex. 34, *Amazon's $8.45 Billion Deal for MGM is Historic But Feels Mundane* (dated May 26, 2021).

[96] June 8 Hearing Transcript, 187:8-11.

[97] *Id.*, 187:12-189:10.

D. Fifth Circuit's Approval of the Gatekeeper Provision in Plan, Recognition of Res Judicata Effect of the Prior Gatekeeper Orders, and the Bankruptcy Court's Order Approving Highland's Motion to Conform Plan

Harkening back to February 22, 2021, after a robust confirmation hearing, this court entered its order confirming the Plan, over the objections of Dondero and Dondero-Related Parties, specifically questioning the good faith of their objections. The court found, after noting "the remoteness of their economic interests" that "[it] has good reason to believe that [the Dondero Parties] are not objecting to protect economic interests they have in the Debtor but to be disruptors. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan."[94] The Plan became effective on August 11, 2021.

Of relevance to the Motion for Leave, the confirmed Plan included certain exculpations, releases, and injunctions designed to protect the Debtor and other bankruptcy participants from bad-faith litigation. These participants included: Highland's employees (with certain exceptions); Seery as Highland's CEO and CRO; Strand (after the appointment of the Independent Directors); the Independent Directors; the successor entities; the CTOB and its members; the Committee and its members; professionals retained in the case; and all "Related Persons." The injunction provisions contained a Gatekeeper Provision which is similar to the gatekeeper provisions in the prior Gatekeeper Orders in that it provided that the bankruptcy court will act as a "gatekeeper" to screen and prevent bad-faith litigation against the Protected Parties. The Gatekeeper Provision in the Plan states, in pertinent part:[98]

> No Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case . . . without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents ***a colorable claim of any kind***, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically

[98] Plan, 50-51 (emphasis added).

> authorizing such Enjoined Party to bring such claim or cause of action against such Protected Party.

The Plan defines Protected Parties as,

> collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the [CTOB] (in their official capacities), (xiii) [HCMLP GP LLC], (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); [but excluding Dondero and Okada and various entities including HMIT and Dugaboy].

The court notes that the Gatekeeper Provision in the Plan provides protection to a broader number of persons than the persons protected under the January 2020 Order (addressing the Independent Directors and their agents and advisors) and the July 2020 Order (addressing Seery in his role as CEO and CRO of the Debtor). But, at the same time, it is less restrictive than the gatekeeping provisions under the Gatekeeper Orders, in that the gatekeeping provisions in the prior orders shield the protected parties from any claim that is not both "colorable" ***and*** a claim for "willful misconduct or gross negligence," effectively providing the protected parties under the prior orders with a limited immunity from claims of simple negligence or breach of contract that do not rise to the level of "willful misconduct or gross negligence," whereas the Gatekeeping Provision under the Plan does not act as a release or exculpation of the Protected Parties in any way because it does not prohibit any party from bringing ***any kind of claim*** against a Protected Party, provided the proposed claimant first obtains a finding in the bankruptcy court that its proposed claims are "colorable."[99]

[99] It should be noted that--as discussed further below--there are, separately in the Plan, exculpations as to a smaller universe of persons--*e.g.,* the Debtor, the Committee and its members, and the Independent Directors.

Dondero and some of the entities under his control appealed[100] the Confirmation Order directly to the Fifth Circuit, arguing, among other issues, that the Plan's exculpation, release, and injunction provisions, including the Gatekeeper Provision (collectively, the "Protection Provisions") impermissibly provide certain non-debtor bankruptcy participants with a discharge, purportedly in contravention of the provisions of Bankruptcy Code § 524(e)'s statutory bar on non-debtor discharges. As noted above, the Fifth Circuit, "affirm[ed] the confirmation order in large part" and "reverse[d] ***only insofar as the plan exculpates*** certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties ***from the plan's exculpation***, and affirm[ed] on all remaining grounds."[101] The Fifth Circuit specifically found the "injunction and gatekeeping provisions [to be] sound" and found that it was only "the ***exculpation*** of certain non-debtors" that "exceed[ed] the bankruptcy court's authority," agreeing with the bankruptcy court's conclusions that the Protection Provisions were legal, necessary under the circumstances, and in the best interest of all parties" in part, and only disagreeing to the extent that the ***exculpation*** provision improperly extended to certain bankruptcy participants other than Highland, the Committee and its members, and the Independent Directors and "revers[ing] and strik[ing] the few unlawful parts

[100] On appeal, the appellant funds ("Funds"), whom this court found to be "owned and/or controlled" by Dondero despite their purported independence, also asked the Fifth Circuit to vacate this court's factual finding "because it threatens the Funds' compliance with federal law and damages their reputations and values" and because "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him." *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th at 434. Applying the "clear error" standard of review, the Fifth Circuit "le[ft] the bankruptcy court's factual finding undisturbed" because "nothing in this record leaves us with a firm and definite conviction that the bankruptcy court made a mistake in finding that the Funds are 'owned and/or controlled by [Dondero]." *Id.* at 434-35.

[101] *See supra* note 4. The Fifth Circuit replaced its initial opinion with its final opinion a few days after certain appellants had filed a short (four-and-one-half pages) motion for rehearing (the "Motion for Rehearing") on September 2, 2022. The movants had asked the Fifth Circuit to "narrowly amend the [initial] Opinion in order to confirm the Court's holding that the impermissibly exculpated parties are similarly struck from the protections of the injunction and gatekeeper provisions of the plan (in other words, that such parties cannot constitute 'Protected Parties')." In the final Fifth Circuit opinion, same as the initial Fifth Circuit opinion, the Fifth Circuit stated that, with regard to the Confirmation Order, the panel would "reverse only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strike those few parties from the plan's exculpation, and affirm on all remaining grounds." *Highland Capital*, 48 F.4th at 424. No findings, discussion, or rulings regarding the injunction and gatekeeper provisions that were in the initial Fifth Circuit opinion were disturbed.

of the Plan's ***exculpation provision***."[102] The Fifth Circuit then remanded to the Bankruptcy Court "for further proceedings in accordance with the opinion."[103]

In the course of analyzing the Protection Provisions under the Plan, the Fifth Circuit noted that the protection provisions in the January and July 2020 Orders appointing the Independent Directors and Seery as CEO and CRO of Highland were *res judicata* and that "*those* orders have the effect of exculpating the Independent Directors and Seery in his executive capacities" such that "[d]espite removal from the exculpation provision in the confirmation order, the Independent Directors' agents, advisors, and employees, as well as Seery in his official capacities are all exculpated to the extent provided in the January and July 2020 Orders."[104]

The Reorganized Debtor filed a motion in the bankruptcy court to conform the plan to the Fifth Circuit's mandate, proposing that only one change was needed to make the Plan compliant with the Fifth Circuit's ruling: narrow the defined term for "Exculpated Parties" to read as follows:

> "Exculpated Parties" means, collectively, (i) the Debtor, (ii) the Independent Directors, (iii) the Committee, and (iv) members of the Committee (in their official capacities).

The Reorganized Debtor proposed that this one simple revision of this defined term removed the exculpations deemed by the Fifth Circuit to violate section 524(e) of the Bankruptcy Code, and that no other changes would be required to conform the Plan and Confirmation Order to the Fifth Circuit's mandate. Some of the Dondero-related entities objected to the motion to conform, arguing that the Fifth Circuit's ruling required more surgery on the Plan than simply narrowing the defined term "Exculpated Parties." On February 27, 2023, this court entered its order granting

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[102] *Id.* at 435.

[103] *Id.* at 440. The Fifth Circuit's docket reflects that it issued its Judgment and mandate on September 12, 2022.

[104] *Highland Capital*, 48 F.4th at 438 n.15. The Fifth Circuit stated, "To the extent Appellants seek to roll back the protections in the bankruptcy court's January 2020 and July 2020 orders (which is not clear from their briefing), such a collateral attack is precluded." *Id.*

Highland's motion to conform the Plan, ordering that one change be made to the Plan – revising the definition of "Exculpated Parties" – and no more.[105] The objecting parties' direct appeal of this order has been certified to the Fifth Circuit and is one of the numerous currently active appeals by Dondero-related parties pending in the Fifth Circuit.

E. HMIT's Motion for Leave

HMIT filed its emergency Motion for Leave on March 28, 2023, which, with attachments, as first filed, was 387 pages in length, including an initial proposed complaint ("Initial Proposed Complaint") and two sworn declarations of Dondero that were attached as "objective evidence" in "support[ ]" of the Motion for Leave,[106] and with it, an application for an emergency setting on the hearing on the Motion to Leave. On April 23, 2023, HMIT filed a pleading entitled a "supplement" to its Motion to Leave ("Supplement"),[107] to which it attached a revised proposed verified complaint ("Proposed Complaint")[108] as Exhibit 1-A to the Motion for Leave and stated that "[t]he Supplement is not intended to amend or supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action."[109] The HMIT Motion for Leave was later amended to eliminate the Dondero Declarations and references to the same (but not the underlying allegations that were supposedly supported by the Dondero Declarations).[110]

[105] Bankr. Dkt. No. 3672.

[106] Bankr. Dkt. No. 3699.

[107] Bankr. Dkt. No. 3760.

[108] *See supra* note 5.

[109] Supplement ¶ 1.

[110] Bankr. Dkt. Nos. 3815 and 3816. Both of these filings had the Initial Proposed Complaint attached as Exhibit 1 to the Motion for Leave.

As earlier noted, HMIT desires leave to sue the Proposed Defendants regarding ***the post-confirmation, pre-Effective Date purchase of allowed unsecured claims***. The Proposed Defendants would be:

> **Seery,** who was a stranger to Highland until approximately four months following the Petition Date when he was brought in as one of the three Independent Directors, and now serves as the CEO of the Reorganized Debtor and the Trustee of the Claimant Trust (and also was previously Highland's CRO during the case, then CEO, and, also, an Independent Board Member of Highland's general partner during the Highland case). Seery is best understood as the man who took Dondero's place running Highland—per the request of the Committee.
>
> **Claims Purchasers,** who were strangers to Highland until the end of the bankruptcy case. They are identified as Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the "Claims Purchasers"). The Claims Purchasers purchased $240 million face value of already-allowed unsecured claims post-confirmation and pre-Effective Date in the spring of 2021 and another $125 million face value of already-allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk's docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Committee during the Highland bankruptcy case).
>
> **John Doe Defendants Nos. 1-10**, which are described to be "currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue."
>
> **Highland,** as a nominal defendant. HMIT added Highland as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.
>
> **Claimant Trust**, as a nominal defendant. HMIT added the Claimant Trust as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.

The proposed plaintiffs would be:

> **HMIT,** which, again, was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited partnership interests). HMIT is the holder of a Class 10 interest under the Plan, pursuant to which HMIT's limited partnership interest in Highland was extinguished as of the Effective Date in exchange for a pro rata share of a contingent interest in the Claimant Trust.

Highland, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

Claimant Trust, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Claimant Trust.

In the Proposed Complaint, HMIT asserts the following six counts: Count I (against Seery) for breach of fiduciary duties; Count II (against the Claims Purchasers and John Doe Defendants) for knowing participation in breach of fiduciary duties; Count III (against all Proposed Defendants) for conspiracy; Count IV (against Muck and Jessup) for equitable disallowance of their claims; Count V (against all Proposed Defendants) for unjust enrichment and constructive trust; and Count VI (against all Proposed Defendants) for declaratory relief.[111] The gist of the Proposed Complaint is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that "wrongful conduct occurred" and "improper trades" were made.[112] HMIT believes the Claims Purchasers paid around $160 million for the $365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland's Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. And, of course, Dondero purports to have concluded from the three phone conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Seery must have given these Claims Purchasers MNPI regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Seery must have shared

[111] In the Initial Proposed Complaint, HMIT proposed to bring claims against the various Proposed Defendants in seven counts, including a count for fraud by misrepresentation and material nondisclosure against all Proposed Defendants. In the Proposed Complaint, HMIT abandons its claim for fraud by misrepresentation and material nondisclosure.

[112] Motion for Leave, 7.

MNPI regarding the likely imminent sale of MGM, in which Highland had, directly and indirectly, substantial holdings. As noted earlier, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[113] In summary, while the Proposed Complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor's estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Seery, and are now happily approving Seery's allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages in the form of equitable disallowance of the Claims Purchasers' claims and disgorgement of distributions on account of those claims, the imposition of a constructive trust over all disgorged funds, and declaratory relief.

HMIT claims that, in seeking to file the Proposed Complaint, it is seeking to protect the rights and interests of the Reorganized Debtor, the Claimant Trust, and "innocent stakeholders" who were allegedly injured by Seery's and the Claims Purchasers' alleged conspiratorial and

[113] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid. Credible testimony from Seery at the June 8 Hearing revealed that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public).

fraudulent scheme to line Seery's pockets with excessive compensation for his role as Claimant Trustee. In its Motion for Leave, HMIT states that "[t]he attached Adversary Proceeding alleges claims which are substantially more than 'colorable' based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud, including a fraud upon innocent stakeholders, as well as breaches of fiduciary duties and knowing participation in (or aiding or abetting) breaches of fiduciary duty."[114]

F. Is HMIT Really Dondero by Another Name?

The Proposed Defendants argue that HMIT's Motion for Leave is nothing more than a continuation of the harassing and bad-faith litigation by Dondero and his related entities that the Gatekeeper Provisions were intended to prevent and, thus, this is one of multiple reasons that the Motion for Leave should be denied.

To be clear, HMIT asserts that it is controlled by Mark Patrick ("Patrick"), who has been HMIT's administrator since August 2022. Patrick asserts that he is not influenced or controlled by Dondero, in general, and specifically not in its efforts to pursue the Proposed Claims against Seery and the Claims Purchasers. However, the testimony elicited at the June 8 Hearing—the hearing at which HMIT had the burden of showing the court that its Proposed Claims were "colorable" such that it should be allowed to pursue them through the filing of the Proposed Complaint—paints a different picture. Somewhat tellingly, HMIT chose not to call Patrick—allegedly HMIT's only representative and control person—as a witness in support of its Motion for Leave. Rather, Dondero was HMIT's first witness called in support of its motion, and the first

[114] *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 3. HMIT notes, in a footnote 6, that "Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement."

questions on direct from HMIT's counsel were aimed at establishing that Dondero was not behind the filing of the Motion for Leave and the pursuit of the Proposed Claims.[115] Dondero testified that he did not (i) "have any current official position" with HMIT, (ii) "attempt to exercise [control] on the business affairs of [HMIT]," (iii) "have any official legal relationship with [HMIT] where [he] can attempt to exercise either direct or indirect control over [HMIT]," or (iv) "participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan."[116] After HMIT rested, Highland and the Claimant Trust called Patrick as a witness, and he testified that he was the administrator of HMIT, that HMIT does not have any employees, operations, or revenues, and, when asked if HMIT owned any assets, Patrick testified, with not a great deal of certainty, that "it's my understanding it has a contingent beneficiary interest in the Claimants [sic] Trust" and that is the only asset HMIT has.[117] Patrick testified that HMIT did not owe any money to Dondero personally, but acknowledged that in 2015, HMIT had issued a secured promissory note in favor of Dondero's family trust, Dugaboy, in the amount of approximately $62.6 million (the "Dugaboy Note") in exchange for Dugaboy transferring a portion of its limited partner interests in Highland to HMIT; the Dugaboy Note was secured in part by the Highland limited partnership interests purchased from Dugaboy.[118] Patrick admitted that, if HMIT's Class 10 interest has no value, HMIT would have no ability to pay the Dugaboy Note.[119] He further testified that neither he nor any representative of HMIT had ever spoken with any representative of Farallon or Stonehill, that he had no personal knowledge about any *quid pro quo*, the amount of due diligence Farallon or Stonehill conducted prior to buying their claims, or the terms of

[115] *See* June 8 Hearing Transcript, 113:10-25.

[116] *Id.*

[117] June 8 Hearing Transcript, 307:7-308:2.

[118] *Id.*, 303:11-305:1; Highland Ex. 51, HMIT's $62,657,647.27 *Secured Promissory Note* dated December 24, 2015, in favor of Dugaboy.

[119] *Id.*, 308:3-16.

Seery's compensation package (until the terms were disclosed to them in opposition to the Motion for Leave).[120] Patrick admitted that Dugaboy was paying HMIT's attorneys' fees pursuant to a settlement agreement between HMIT and Dugaboy.[121]

On cross-examination by HMIT's counsel, Patrick further testified that HMIT has not filed any litigation, as plaintiff, other than its efforts to be a plaintiff in the Motion for Leave and its action as a petitioner in the Texas Rule 202 proceeding filed earlier in 2023 in the Texas state court.[122] HMIT's counsel argued that the point of this questioning was that "they're just trying to draw Dondero into this and – this vexatious litigant argument, and we're just developing the fact that obviously Hunter Mountain has only filed – attempting to file this action and a Rule 202 proceeding.[123] But, Dondero and HMIT's counsel referred during the June 8 Hearing to the First Rule 202 Petition (where Dondero was the petitioner) and the Second Rule 202 Petition (where HMIT was the petitioner) as "our" Rule 202 petitions, and also to the numerous attempts at getting the discovery (that Dondero had warned Linn was coming) in the collective. For example, in objecting to the admission of Highland's Exhibit 10 – the Texas state court order denying and dismissing the Second Rule 202 Petition – on the basis of relevance, HMIT's counsel referred to the order as "an order denying ***our second"*** Rule 202 Petition.[124] And, Dondero testified that his warning to Linn in May 2021 that "discovery was coming" was "my response to I knew they had traded on material nonpublic information" and that "I thought it would be a lot easier to get

[120] *Id.*, 308:18-312:12. This testimony from Patrick came after HMIT's counsel objection to counsel's line of questioning regarding Patrick's personal knowledge of the facts supporting the allegations in the Proposed Complaint on the basis that he was invading the attorney work product privilege, which was overruled by this court; HMIT's counsel argued (311:4-19) that the line of questioning was an "invasion of attorney work product . . . [b]ecause they might – he would have knowledge from the efforts and investigation through attorneys in the case."

[121] *Id.*, 312:24-313:18.

[122] *Id.*, 315:3-9.

[123] *Id.*, 316:6-11.

[124] *Id.*, 58:11-13. The court overruled HMIT's relevance objection and admitted Highland's Exhibit 10 into evidence. *Id.*, 58:14-15.

discovery on a situation like this than it has been for the last two years" and that "***we've*** been trying for two years to get . . . discovery."[125]

Dondero's use of an entity over which he exerts influence and control to pursue his own agenda in the bankruptcy case is not new. Rather, this has been part of Dondero's *modus operandi* since the "nasty breakup" between Dondero and Highland that culminated with Dondero's ouster in October 2020, whereby Dondero, after not getting his way in the bankruptcy court, continued to lob objections and create obstacles to Highland's implementation of the Plan through entities he owns or controls. As noted above, the Fifth Circuit specifically upheld this court's finding in the Confirmation Order that Dondero owned or controlled the various entities that had objected to confirmation of the Plan and appealed the Confirmation Order, where the Dondero-related appellants made similar protestations that they are not owned or controlled by Dondero and asked the Fifth Circuit to vacate this court's factual finding because, among other reasons, "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him."[126] Based on the totality of the evidence in this proceeding, the court finds that, contrary to the protestations of HMIT's counsel and Patrick otherwise, Dondero is the driving force behind HMIT's Motion for Leave and the Proposed Complaint. The Motion for Leave is just one more attempt by Dondero to press his conspiracy theory that he has pressed for over two years now, unsuccessfully, in Texas state court through Rule 202 proceedings, with the Texas State Securities Board, and with the United States Trustee's office.

[125] *Id.*, 191:5-25.

[126] *Highland Capital*, 48 F.4th at 434-435.

G. Opposition to Motion for Leave: Arguing No Standing and No "Colorable" Claims

Highland, the Claimant Trust, and Seery (together, the "Highland Parties") filed a joint opposition ("Joint Opposition") to HMIT's Motion for Leave on May 11, 2023.[127] The Claims Purchasers filed a separate objection ("Claims Purchasers' Objection") to the Motion for Leave on May 11, 2023, as well.[128] In the Joint Opposition, the Highland Parties urge the court to deny HMIT leave to pursue the Proposed Claims because, as a threshold matter, HMIT does not have standing to bring them, directly or derivatively against the Proposed Defendants. They argue, in the alternative, that the Motion for Leave should be denied even if HMIT had standing to pursue the Proposed Claims because none of the Proposed Claims are "colorable" claims as that term is used in the Gatekeeper Provision of the Plan (and Gatekeeper Orders).[129]

The Claims Purchasers likewise argue that HMIT lacks standing to complain about claims trading in the bankruptcy which occurred between sophisticated Claims Purchasers and sophisticated sellers ("Claims Sellers"), represented by skilled bankruptcy and transactional counsel. Moreover, they argue HMIT cannot show that it or the Reorganized Debtor or the Claimant Trust were injured by the claims trading at issue because the Purchased Claims had already been adjudicated as allowed claims in the bankruptcy case—thus, distributions under the Plan on account of the Purchased Claims remain the same, the only difference being who holds the claims. Moreover, even if HMIT could succeed in equitably subordinating the validly transferred ***allowed*** claims, HMIT would still be in the same position it is today: the holder of a

[127] Bankr. Dkt. Nos. 3783. Highland, the Claimant Trust, and Seery also filed on May 11 a *Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding* ("Morris Declaration") that attached 44 Exhibits in support of the Joint Opposition. Bankr. Dkt. No. 3784.

[128] Bankr. Dkt. No. 3780.

[129] *See* Joint Opposition ¶ 139 ("Because HMIT lacks standing, this Court need not reach the merits of HMIT's proposed Adversary Complaint. As a matter of judicial economy, however, the Highland Parties respectfully request that this Court address the lack of merit as an alternative basis to deny the Motion.").

contingent, speculative Class 10 interest that would only be paid after payment, in full, with interest, of all creditors under the Plan. The Claims Purchasers argue in the alternative that the Proposed Claims are not "colorable."

Finally, the Proposed Defendants argue that the standard of review for assessing whether the Proposed Claims are "colorable" (as such term is used in the Gatekeeper Provision and Gatekeeping Orders) is a standard that is a higher than the "plausibility" standard applied to Rule 12(b)(6). They argue that HMIT should be required to meet a higher bar with respect to colorability that includes making a *prima facie* showing that the Proposed Claims have merit (and/or are not without foundation) which requires HMIT to do more than meet the liberal notice-pleading standards.

H. HMIT's Reply to the Proposed Defendants' Opposition to the Motion for Leave

In its reply brief ("Reply"), filed by HMIT on May 18, 2023,[130] it argues that it has constitutional standing as an "aggrieved party" to bring the Proposed Claims on behalf of itself.[131] HMIT also argues that it has standing under Delaware Trust law to bring a derivative action on behalf of the Claimant Trust and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to bring the claims.[132] Finally, HMIT maintains that the standard of review that the bankruptcy court should apply in assessing the "colorability" of the Proposed Claims is no greater than the standard of review applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), which would require the bankruptcy court to look only to the "four corners" of the Proposed Complaint

[130] Bankr. Dkt. No. 3785.

[131] *See* Reply ¶ 7.

[132] See, Reply ¶ 23 n.5, where HMIT argues "The nature of this injury, in addition to Seery's influence over the Claimant Trust, and the lack of prior action by the Claimant Trust to pursue the claims HMIT seeks to pursue derivatively, among other things, demonstrate that HMIT is not only a proper party to assert its derivative claims – but the best party to do so."

and "not weigh extraneous evidence,"[133] take all allegations as true, and view all allegations and inferences in a light most favorable to HMIT. As discussed in greater length below, HMIT argues that, under this standard, the bankruptcy court should not consider evidence in making its determination as to whether the Proposed Complaint presents "colorable" claims.

I. Litigation within the Litigation: The Pre- June 8 Hearing Skirmishes

Suffice it to say there was significant activity before the Motion for Leave actually was presented at the June 8 hearing. HMIT sought an emergency hearing on its Motion for Leave (wanting a hearing on three days' notice). When the bankruptcy court denied an emergency hearing, HMIT unsuccessfully pursued an interlocutory appeal of the denial of an emergency hearing to the district court. HMIT then petitioned for a writ of mandamus at the Fifth Circuit regarding the emergency hearing denial, which was denied by the Fifth Circuit on April 12, 2023.

Next, there were multiple pleadings and hearings regarding ***what kind of hearing*** the bankruptcy court should or should not hold on the Motion for Leave—particularly focusing on whether or not it would be an evidentiary hearing.[134] The resolution of this issue turned on what standard of review the court should apply in exercising its gatekeeping function and determining the colorability of the Proposed Claims. HMIT (although it had submitted two declarations of Dondero with its original Motion for Leave and approximately 350 pages of total evidentiary support) was adamant that there should be no evidence presented at the hearing on the Motion for Leave, arguing that the standard for review should be the plausibility standard under Rule 12(b)(6)

[133] *See* Reply ¶ 47.

[134] Highland, joined by Seery and the Claims Purchasers, had filed a motion asking the bankruptcy court to set a briefing schedule on the Motion for Leave and to schedule a status conference, indicating that Highland's proposed timetable for same was opposed by HMIT. HMIT subsequently filed a response unopposed to a briefing schedule and status conference, but, before the status conference, HMIT filed a brief, stating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the bankruptcy court did not need evidence to exercise its gatekeeping function and determine if HMIT has a "colorable" claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

motions to dismiss such that "the threshold inquiry is very, very low. Evidence is not allowed. . . . [S]imilar to a 12(b)(6) inquiry, [the court] is limited to the four corners of the principal pleading – in this case, the complaint, or now the revised complaint."[135] Counsel for the Proposed Defendants argued that the standard of review for colorability here, in the specific context of the court exercising its gatekeeping function under the Plan, is more akin to the standards applied under the Supreme Court's *Barton Doctrine*[136] pursuant to which that the bankruptcy court must apply a higher standard than the 12(b)(6) standard, including the consideration of evidence at the hearing on the motion for leave; if the standard of review presents no greater hurdle to the movant than the 12(b)(6) standard applied to every plaintiff in every case, then the gatekeeping provisions mean nothing and do nothing to protect the parties from the harassing, bad-faith litigation they were put in place to prevent.[137] On May 22, 2023, after receipt of post-hearing briefing on the issue, the court entered an order stating that "the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave" and "[t]herefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing [on the Motion to Leave] if they so choose."

Two days later, HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing, seeking expedited depositions of corporate

[135] Transcript of April 24, 2023 Status Conference, Bankr. Dkt. No. 3765 ("April 24 Transcript"), 14:6-11.

[136] The *Barton Doctrine* was established in the 19th century Supreme Court case of *Barton v. Barbour*, 104 U.S. 126 (1881), and states that a party wishing to sue a court-appointed trustee or receiver must first obtain leave of the appointing court by making a *prima facie* case that the claim it wishes to bring is not without foundation.

[137] *See* April 24 Transcript, 36:24-37:4 ("[W]e're exactly today where the Court had predicted in entering [the Confirmation Order], that the costs and distraction of this litigation are substantial. And if all we're doing is replicating a 12(b)(6) hearing on a motion for leave, we're actually not doing anything to reduce, as the Court made clear, the burdens, distractions, of litigation."); 37:5-13 ("The Fifth Circuit likewise cited *Barton* in its order affirming the confirmation order. Specifically, it also explained that the provisions, these gatekeeper provisions requiring advance approval were meant to 'screen and prevent bad-faith litigation.' Well that – if that means only what the Plaintiff[ ] say[s] it does, then it really doesn't do anything at all to screen. There's no gatekeeping because their version of what that means is always policed under 12(b)(6) standards.").

representatives of the Claims Purchasers and of Seery and production of documents pursuant to deposition notices and subpoenas duces tecum that HMIT had attached to the motion. On May 26, 2023, this court held yet another status conference. Following the status conference, the court granted in part and denied in part HMIT's request for expedited discovery by ordering only Seery and Dondero to be made available for depositions prior to the June 8 Hearing. The court reached what seemed like appropriate middle ground by allowing the deposition of Seery and allowing the other parties to depose Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Dondero had been seeking discovery relating to the very claims trades that are the subject of the Revised Proposed Complaint from the Claims Purchasers in Texas state court "Rule 202" proceedings for approximately two years, where their attempts were rebuffed.

Approximately 60 hours before the June 8 Hearing, HMIT filed its Witness and Exhibit List disclosing for the first time two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony). Highland, the Claimant Trust, and Seery filed a joint motion to exclude the expert testimony and documents ("Motion to Exclude"), which the court ultimately granted in a separate order.

During the full-day June 8 Hearing on the Motion to Leave, the court admitted over 50 HMIT exhibits and over 30 Highland/Claimant Trust exhibits. The court heard testimony from HMIT's witnesses Dondero and Seery (as an adverse witness) and from the Highland Parties' witness Mark Patrick, the administrator of HMIT since August 2022 (as an adverse witness). The bankruptcy court allowed HMIT to make a running objection to all evidence—as it continued to argue that evidence was not appropriate.

III. LEGAL ANALYSIS

In determining whether HMIT should be granted leave, pursuant to the Gatekeeper Provision of the Plan and the court's prior Gatekeeper Orders, to pursue the Proposed Claims, the court must address the issue of whether HMIT would have ***standing*** to bring the Proposed Claims in the first instance. If so, the next question is whether the Proposed Claims are "***colorable***." But prior to getting into the weeds on ***standing*** and "***colorability,***" some general discussion regarding the topic of claims trading in the bankruptcy world seems appropriate, given that HMIT's Proposed Claims are based, in large part, on allegations of ***improper*** claims trading.

A. Claims Trading in the Context of Bankruptcy Cases—Can It Be Tortious or Otherwise Actionable?

As noted, at the crux of HMIT's desired lawsuit is what this court will refer to as "claims trading activity" that occurred shortly after the Plan was confirmed, but before the Plan went effective. HMIT believes that the claims trading activity gave rise to various torts: breach of fiduciary duty on the part of Seery; knowing participation in breach of fiduciary duty by the other Proposed Defendants; and conspiracy by all Defendants. HMIT also believes that the following remedies should be imposed: equitable disallowance of the Purchased Claims; disgorgement of the alleged profits the Claims Purchasers made on their purchases; and disgorgement of all Seery's compensation received since the beginning of his "collusion" with the other Defendants. Without a doubt, the Motion for Leave and Proposed Complaint revolve almost entirely around the claims trading activity.

This begs the question: ***When (or under what circumstances) might claims trading activity during a bankruptcy case give rise to a cause of action that either the bankruptcy estate or an economic stakeholder in the case might have standing to bring?*** Here, the claims trading

wasn't even "during a bankruptcy case" really—it was post-confirmation and pre-effective date, and it happened to be: (a) after mediation of the claims, (b) after Rule 9019 settlement motions, (c) after objections by Dondero and certain of his family trusts were lodged, (d) after evidentiary hearings, and (e) after orders were ultimately entered ***allowing*** the claims (and in most cases, such orders were appealed). The further crux of HMIT's desired lawsuit is that Seery allegedly "wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends" by sharing ***material non-public information*** to them regarding the potential value of the claims (i.e., the potential value of the bankruptcy estate), and this is what made the claims trading activity particularly pernicious. The alleged sharing of MNPI allegedly caused the Claims Purchasers to purchase their claims without doing any due diligence and with knowledge that the claims would be worth much more than the Plan's "pessimistic" projections might have suggested, and also allowed Seery to plant friendly allies into the creditor constituency (and on the post-confirmation CTOB) that would "rubber stamp" his generous compensation. This is all referred to as "not arm's-length" and "collusive." Notably, the MNPI mostly pertained to a likely future acquisition of MGM by Amazon (which transaction, indeed, occurred in 2022, after being publicly announced in Spring of 2021); as noted earlier, Highland owned, directly and indirectly, common stock in MGM. Also notably, there had been rumors and media attention regarding a potential sale of MGM for many months.[138] In summary, to be clear, HMIT's desired lawsuit is laced with a theme of "insider trading"—although this isn't a situation of securities trading *per se* (i.e., the unsecured Purchased Claims were not securities), and, as noted earlier, the Texas State Securities Board has not seen fit to investigate the claims trading activity.

So, preliminarily, is claims trading in bankruptcy sinister *per se*? The answer is no.

[138] *E.g.,* Benjamin Mullin, *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale,* THE WALL STREET JOURNAL (Dec. 21, 2020, 6:38 p.m.).

The activity of investing in distressed debt (which frequently occurs during a bankruptcy case—sometimes referred to as "claims trading") is ubiquitous and, indeed, has been so for a very long time. As noted by one scholar:

> The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code's enactment in 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

Adam J. Levitin, *Bankruptcy* Markets*: Making Sense of Claims Trading*, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010) (hereinafter "*Bankruptcy Markets*").[139]

As a pure policy matter, some practitioners have bemoaned this claims trading phenomenon, suggesting that "distressed debt traders may sacrifice the long-term viability of a debtor for the ability to realize substantial and quick returns on their investments."[140] Others suggest that claims trading in bankruptcy is beneficial, in that it allows creditors of a debtor an early exit from a potentially long bankruptcy case, enabling them to save expense and administrative hassles, realize immediate liquidity on their claims (albeit discounted), and may

[139] *See also* Aaron Hammer & Michael Brandess, *Claims Trading: The Wild West of Chapter 11s*, AM. BANKR. INST. JOURNAL 62 (Jul./Aug. 2010); Chaim Fortgang & Thomas Mayer, *Trading Claims and Taking Control of Corporations in Chapter 11,* 12 CARDOZO L. REV. 1, 25 (1990) (noting that "the first recorded instance of American fiduciaries trading claims against insolvent debtors predates all federal bankruptcy laws and goes back to 1790" when the original 13 colonies were insolvent, owing tremendous amounts of debt to various parties in connection with the Revolutionary War; early American investors purchased these debts for approximately 25% of their par value, hoping the claims would be paid at face value by the American government).

[140] Harvey R. Miller, *Chapter 11 Reorganization Cases and the Delaware Myth*, 55 VAND. L. REV. 1987, 2016 (2002). *See also* Harvey R. Miller & Shai Y. Waisman, *Does Chapter 11 Reorganization Remain a Viable Option for Distressed Businesses for the Twenty-First Century?*, 78 AM. BANKR. L.J. 153 (2004); Harvey R. Miller & Shai Y. Waisman, *Is Chapter 11 Bankrupt?*, 47 B.C. L. REV. 129 (2005).

even permit them to take advantage of a tax loss on their own desired timetable.[141] On the flipside, "[c]aims trading permits an entrance to the bankruptcy process for those investors who want to take the time and effort to monitor the debtor and contribute expertise to the reorganization process."[142]

So, what are the "rules of the road" here? What does the Bankruptcy Code dictate regarding claims trading? The answer is nothing. The Bankruptcy Code itself has no provisions whatsoever regarding claims trading. The only thing resembling any regulation of claims trading during a bankruptcy case is found at Federal Rule of Bankruptcy Procedure 3001(e)—the current version of which went into effect in 1991—and it imposes extremely light regulation—if it could even be called that. This rule requires, in pertinent part (at subsection (2)), that "[i]f a claim other than one based on a publicly traded note, bond, or debenture" is traded during the case after a proof of claim is filed, notice/evidence of that trade must be filed with the bankruptcy clerk by the transferee. The transferor shall then be notified and given 21 days to object. If there is an objection, the bankruptcy court will hold a hearing regarding whether a transfer, in fact, took place. If there is no objection, nothing further needs to happen, and the transferee will be considered substituted for the transferor.

There are several things noteworthy about Rule 3001(e)(2). First, the only party given the opportunity to object is the ***transferor*** of the claim (presumably, in the situation of a dispute regarding whether there was truly an agreement regarding the transfer of the claim). Second, there is no need for a bankruptcy court order approving the transfer (except in the event of an objection

[141] *See Bankruptcy Markets*, at 70. *See also In re Kreisler,* 546 F.3d 863, 864 (7th Cir. 2008) ("Claims trading allows creditors to opt out of the bankruptcy system, trading an uncertain future payment for an immediate one, so long as they can find a purchaser.").

[142] *Bankruptcy Markets* at 70 (citing, among other authorities, Edith S. Hotchkiss & Robert M. Mooradian, *Vulture Investors and the Market for Control of Distressed Firms*, 43 J. FIN. ECON. 401, 401 (1997) (finding that "vulture investors add value by disciplining managers of distressed firms").

by the alleged transferor). Third, the ***economic consideration paid need not be disclosed to the court or anyone***. Fourth, there is no requirement or definition of timeliness. Finally, it explicitly does not apply with regard to publicly traded debt. This, alone, means that many claims trades are not even reported in a bankruptcy case. But it is not just publicly traded debt that will not be reflected with a Rule 3001(e) filing. For example, bank debt, in modern times, is often syndicated (i.e., fragmented into many beneficial holders of portions of the debt) and only the administrative agent for the syndicate (or the "lead bank") will file a proof of claim in the bankruptcy—thus, as the syndicated interests (participations) change hands, and they frequently do, there typically will not be a Rule 3001(e) notice filed.[143] To be clear here, this syndication-of-bank-debt fact, along with the fact that there are financial products whereby bank debt might be carved up into economic interests separate and apart from legal title to the loan, means there are many situations in which trading of claims during a bankruptcy case is not necessarily transparent or, for that matter, policed by the bankruptcy court. This is the world of modern bankruptcy. Most of the claims trading that gets reported through a Rule 3001(e) notice is the trading of small vendor claims. And this is all regarded as private sale transactions for the most part.[144]

Suffice it to say that there is not a wealth of case law dealing with claims trading in a bankruptcy context. Perhaps this is not surprising, since it is not prohibited and ***is mostly a matter of private contract between buyer and seller***. The case law that does exist seems to arise in situations of perceived bad faith of a purchaser—for example, when there was an attempt to control voting and/or ultimate control of the debtor through the plan process (not always problematic, but

[143] Anne Marrs Huber & Thomas H. Young, *The Trading of Bank Debt in and Out of Chapter 11*, 15 J. BANKR. L. & PRAC. 1, 1, 3 (2006).

[144] Note that Bankruptcy Rule 3001(e) was very different before 1991. Between 1983-1991, the rule required that parties transferring claims inform the court that a transfer of claims was taking place and also disclose the consideration paid for the transferred claims. A hearing would take place prior to the execution of a trade. Judicial involvement was required and resulted in judicial scrutiny of transactions—something that simply does not exist today.

there are outlier cases where this was found to cross a line and result in consequences such as disallowing votes on a plan or even equitable subordination of a claim).[145] Another type of case that has generated case law is where the purchaser of claims occupied a fiduciary status with the debtor.[146] Still another type of case that has generated case law is where there is an attempt to cleanse claims that might have risks because of a seller's malfeasance, by trading the claim to a new claim holder.[147]

The following is a potpourri of the more notable cases that have addressed claims trading in different contexts. Most of them imposed no adverse consequences on claims traders: *In re Kreisler*, 546 F.3d 863, 864 (7th Cir. 2008) (where a corporation named Garlin, that was owned by the individual chapter 7 debtors' sister and close friend, purchased a $900,000 bank claim for $16,500, and there was no disclosure of Garlin's connections to debtors and no Rule 3001(e)(2) notice was filed, the Seventh Circuit reversed the bankruptcy court's invocation of the doctrine of equitable subordination to the claim, stating: "Equitable subordination is generally appropriate only if a creditor is guilty of misconduct that causes injury to the interests of other creditors;" the Seventh Circuit further stated that it could "put to one side whether the court's finding of inequitable conduct was correct" because even if there was misconduct, it did not harm the other creditors, who were in the same position whether the original creditor or Garlin happened to own the claim; the Seventh Circuit did note that Garlin's decision to purchase the original bank

[145] *In re Applegate Prop. Ltd.,* 133 B.R. 827, 836 (Bankr. W.D. Tex. 1991) (designating votes of an affiliate of the debtor that purchased a blocking position to thwart a creditor's plan because it was done in bad faith); *In re Allegheny Int'l, Inc.,* 118 B.R. 282, 289–90 (Bankr. W.D. Pa. 1990) (because of bad faith activities, the court designated votes of a claims purchaser who purchased to get a blocking position on a plan). *But see In re First Humanics Corp.,* 124 B.R. 87, 92 (Bankr. W.D. Mo. 1991) (claims purchased by debtor's former management company to gain standing to file a plan to protect interest of the debtor was in good faith).

[146] *See In re Exec. Office Ctrs., Inc.*, 96 B.R. 642, 649-650 (Bankr. E.D. La. 1988) (and numerous old cites therein).

[147] *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 340 B.R. 180 (Bankr. S.D.N.Y. 2006), *vacated, Enron Corp. v. Springfield Assocs., L.L.C. (In re Enron Corp.),* 379 B.R. 425 (S.D.N.Y 2007); *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 333 B.R. 205, 211 (Bankr. S.D.N.Y. 2005).

creditor's claim might have disadvantaged the other creditors if it interfered with the trustee's own potential settlement with the original bank creditor (note that the trustee argued that she had been negotiating a deal with bank under which bank might have reduced its claims); however, the trustee presented no evidence that any deal with the bank was imminent or even likely; thus, whether such a deal could have been reached was speculation; equitable subordination was therefore improper."); *Viking Assocs., L.L.C. v. Drewes (In re Olson),* 120 F.3d 98, 102 (8th Cir. 1997) (case involved the actions of an entity known as Viking in purchasing all of the unsecured claims against the bankruptcy estate of two chapter 7 debtors, Hugo and Jeraldine Olson; Viking was a related entity, owned by the debtors' children, and purchased $525,000 of unsecured claims for $67,000; while the bankruptcy court had discounted the claims down to the purchase amount and subordinated Viking's discounted claims to the claims of the other unsecured creditors, relying on section 105 of the Bankruptcy Code, the Eighth Circuit held that the bankruptcy court lacked the authority to do this, and, thus, reversed and remanded; the Eighth Circuit noted that in 1991, Bankruptcy Rule 3001(e)(2) was amended "to restrict the bankruptcy court's power to inspect the terms of" claims transfers. *Id.* at 101 (citing *In re SPM Mfg. Corp.,* 984 F.2d 1305, 1314 n. 9 (1st Cir. 1993)); the text of the rule makes clear that the existence of a "dispute" depends upon an objection by the ***transferor***; where there is no objection by the ***transferor***, there is no longer any role for the court); *Citicorp. Venture Capital, Ltd. v. Official Committee of Unsecured Creditors (In re Papercraft Corp.),* 160 F.3d 982 (3d Cir. 1998) (large investor who held seat on board of directors of debtor and debtor's parent, and who also had nonpublic information regarding the debtor's value, anonymously purchased 40% of the unsecured claims at a steep discount during the chapter 11 case, and then, having obtained a blocking position for plan voting purposes, proposed a plan to acquire debtor; the claims purchaser's claims were equitably reduced to amount

paid for the claims since investor was a fiduciary who was deemed to have engaged in inequitable conduct); *Figter Ltd. v. Teachers Ins. & Annuity Ass'n of Am. (In re Figter),* 118 F.3d 635 (9th Cir. 1997) (Ninth Circuit affirmed bankruptcy court's ruling that a secured creditor's purchase of 21 out of 34 unsecured claims in the case was in good faith and it would not be prohibited from voting such claims on the debtor's plan, pursuant to Bankruptcy Code section 1126(e)); *In re Lorraine Castle Apartments Bldg. Corp.,* 145 F.2d 55, 57 & 58 (7th Cir. 1945) (in a case under the old Bankruptcy Act, in which there were more restrictions on claims trading, a debtor and two of its stockholders argued that the claims of purchasers of bonds should be limited to the amounts they paid for them; bankruptcy court special master found, "that, though he did not approve generally the ethics reflected by speculation in such bonds," there was no cause for limitation of the amounts of their claims, pointing out that the persons who had dealt in the bonds were not officials, directors, or stockholders of the corporation and owed no fiduciary duty to the estate or its beneficiaries—rather they were investors or speculators who thought the bonds were selling too cheaply and that they might make a legitimate profit upon them; the district court agreed, as did the Seventh Circuit, noting that "[t]o reduce the participation to the amount paid for securities, in the absence of exceptional circumstances which are not present here, would reduce the value of such bonds to those who have them and want to sell them. This would result in unearned, undeserved profit for the debtor, destroy or impair the sales value of securities by abolishing the profit motive, which inspires purchasers."); *In re Washington Mutual, Inc.*, 461 B.R. 200 (Bankr. Del. 2011), *vacated in part*, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (discussion of an equity committee's potential standing to pursue equitable subordination or equitable disallowance of the claims of certain noteholders who had allegedly traded their claims during the chapter 11

case while having material non-public information; while bankruptcy court originally indicating these were viable tools, court later vacated its ruling on this after a settlement was reached).

Suffice it to say that the courts have, more often than not, been unwilling to impose legal consequences, for an actor's involvement with claims trading. At most, in outlier-type situations during a case, courts have taken steps to disallow claims for voting purposes or to subordinate claims to other unsecured creditors for distribution purposes.[148] But the case at bar does not present facts that are typical of any of the situations in reported cases.

For one thing, unlike in the reported cases this court has located, there ***seems to have been complete symmetry of sophistication among the claim sellers and claim purchasers here—and complete symmetry with HMIT for that matter***. All persons involved are highly sophisticated financial institutions, hedge funds, or private equity funds. No one was a "mom-and-pop" type business or vendor that might be vulnerable to chicanery. The claims ranged from being worth $10's of millions of dollars to $100's of millions of dollars in face value. And, of course, the sellers/transferors of the claims have never shown up, subsequent to the claims trading

[148] Note that, while some cases suggest that outright disallowance of an unsecured claim, in the case of "inequitable conduct" might be permitted (not merely equitable subordination to unsecured creditors)—usually citing to *Pepper v. Litton*, 308 U.S. 295 (1939)—the Fifth Circuit has suggested otherwise. *In re Mobile Steel Co., Inc.,* 563 F.2d 692, 699-700 (5th Cir. 1977) (cleaned up) (noting that "equitable considerations can justify only the subordination of claims, not their disallowance" and also noting that "three conditions must be satisfied before exercise of the power of equitable subordination is appropriate[:] (i) The claimant must have engaged in some type of inequitable conduct[;] (ii) The misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant[; and] (iii) Equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Act." In *Mobile Steel*, the Fifth Circuit held that the bankruptcy judge exceeded the bounds of his equitable jurisdiction by disallowing a group of claims and also reversed the subordination of certain claims, on the grounds that the bankruptcy court had made clearly erroneous findings regarding alleged inequitable conduct and other necessary facts. *Contrast In re Lothian Oil Inc.,* 650 F.3d 539 (5th Cir. 2011) (involving the question of whether a bankruptcy court may ***recharacterize*** a claim as equity rather than debt; the court held yes, but it has nothing to do with inequitable conduct *per se*; rather section 502(b)'s language that a claim should be allowed unless it is "unenforceable against the debtor and property of the debtor, under any agreement or applicable law...." is the relevant authority; unlike equitable subordination, recharacterization is about looking at the true substance of a transaction not the conduct of a party (if it looks like a duck and quacks like a duck, it's a duck—i.e., equity); the court indicated that section 105 is not a basis to recharacterize debt as equity; it's a matter of looking at state law to determine if there is any basis and looking at the nature of the underlying transaction—as either a lending arrangement or equity infusion.

transactions, to complain about anything. Everyone involved here is, essentially, a behemoth and there is literally no sign of innocent creditors getting harmed. Second, the case at bar is unique in that the claims traded here ***had all been allowed after objections, mediation, and Rule 9019 settlements during the bankruptcy case***. Thus, the amounts that would be paid on them were "locked in," so to speak. There was no risk to a hypothetical claims-purchaser of disallowance, offset, or any "claw-back" litigation (or—one might have reasonably assumed—any type of litigation). Third, the terms for distributions on unsecured claims had been established in a confirmed plan (although the claims were purchased before the effective date of the Plan). Thus, there was a degree of certainty regarding return on investment for the Claims Purchasers here that was much higher than if the claims had been purchased early, during, or mid-way through the case.[149] ***This was post-confirmation, pre-effective date claims purchasing.*** Interestingly, all three of these facts might suggest that little due diligence would be undertaken by any hypothetical purchaser. The rules of the road had been set. The court makes this observation because HMIT has suggested there is something highly suspicious about the fact that Farallon allegedly told Dondero that it did no due diligence before purchasing its claims (leading him to conclude that the Claims Purchasers must have purchased their claims based on receiving MNPI from Seery). Not only has there been no colorable evidence suggesting that insider information was shared, but the lack of due diligence in this context does not reasonably seem suspicious. The claims purchases

[149] *See discussion* in BANKRUPTCY MARKETS, at 91:

> Some claims purchasers buy before the bankruptcy petition is filed, some at the beginning of the case, and some towards the end. For example, there are investors who look to purchase at low prices either when a business is failing or early in the bankruptcy and ride through the case until payouts are fairly certain. [Citations omitted.] These investors might be hoping to buy at 30 cents on the dollar and get a payout at 70 cents on the dollar. Perhaps if they waited another six months, the payout would be 74 cents on the dollar, but the additional 4 cents on the dollar for six months might not be a worthwhile return for the time value of the investment. Other investors might not want to assume the risk that exists in the early days of a case when the fate of the debtor is much less certain, but they would gladly purchase at 70 cents on the dollar at the end of the case to get a payout of 74 cents on the dollar six months later.

were almost like passive investments, at this point—there was no risk of a claim objection and there was a confirmed plan, with a lengthy disclosure statement that described not only plan payment terms and projections, but essentially anything that any investor might want to know.

To reiterate, here, HMIT seeks leave to assert the following causes of action:

I. Breach of Fiduciary Duties (Seery)

II. Knowing Participation in Breach of Fiduciary Duties (Claims Purchasers)

III. Conspiracy (all Proposed Defendants)

IV. Equitable Disallowance (Claims Purchasers)

V. Unjust Enrichment and Constructive Trust (all Proposed Defendants)

VI. Declaratory Judgment (all Proposed Defendants)

The court struggles to fathom how any of these proposed causes of action or remedies can be applied in the context of: (a) post-confirmation claims trading; (b) where the claims have all been litigated and allowed.

In reflecting on the case law and various Bankruptcy Code provisions, the court can fathom the following hypotheticals in which claims trading during a bankruptcy case might be somehow actionable:

> **Hypothetical #1**: The most obvious situation would be if a purchaser of a claim files a Rule 3001(e) Notice, and the seller/transferor then files an objection thereto. There would then be a contested hearing between purchaser and seller regarding the validity of the transfer with the bankruptcy court issuing an appropriate order after the hearing on the objection. ***As noted, there was no objection to the Rule 3001(e) notices here***.
>
> **Hypothetical #2:** Alternatively, there could be a breach of contract suit between purchaser and seller if one thinks the other breached the purchase-sale agreement somehow. Perhaps torts might also be alleged in such litigation. ***As noted, there is no dispute between purchasers and sellers here.***
>
> **Hypothetical #3:** If there is believed to be fraud in connection with a plan, a party in interest might, pursuant to section 1144 of the Bankruptcy Code, move for

revocation of the plan "at any time before 180 days after the date of entry of the order for confirmation" and the court "may revoke such order if and only if such order was procured by fraud." ***As noted, here HMIT has suggested that the "pessimistic" plan projections may have been fraudulent or misrepresentations somehow. The time elapsed long ago to seek revocation of the Plan.***

Hypothetical #4: As discussed above, in rare situations (bad faith), during a Chapter 11 case, before a plan is confirmed, a claims purchaser's claim might not be allowed for voting purposes. *See* Sections 1126(e) of the Bankruptcy Code ("the court may designate any entity whose acceptance or rejection of such plan was not in good faith"). ***Obviously, in this case, this is not applicable—the claims were purchased post-confirmation.***

Hypothetical #5: As discussed above, in rare situations (inequitable conduct), a court might equitably subordinate ***claims*** to ***other claims***. *See* Section 510(c) of the Bankruptcy Code. But here**,** HMIT is seeking either: (a) equitable subordination of the ***claims*** of the Claims Purchaser to HMIT's ***Class 10 former equity interest*** (in contravention of the explicit terms of section 510(c)) or, (b) ***equitable disallowance*** of the claims of the Claims Purchasers (in contravention of *Mobile Steel*).

Hypothetical #6: Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case may permit "recharacterization" of a claim from debt to equity in certain circumstances, but not in circumstances like the ones in this case. Here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). The problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). Here there was most definitely "a contest" with regard to all of these purchased claims. ***Thus, it would appear that any effort to have a court reconsider these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.***

Hypothetical #7: If a party believes "insider trading" occurred there are governmental agencies that investigate and police that. ***Here, the purchased claims (which were not based on bonds or certificated equity interests) would not be securities so as to fall under the SEC's purview. Moreover, there was evidence that HMIT or Dondero-Related entities requested that the Texas State Securities Board investigate the claims trading and the board did not find a basis to pursue anyone for wrongdoing***.

Hypothetical #8: The United States Trustee can investigate wrongdoing by a debtor or unsecured creditors committee. While the United States Trustee would naturally have concerns about members of an unsecured creditors committee (or an officer of a debtor-in-possession) adhering to fiduciary duties and not putting their

> own interests above those of the estate, here, there are a couple of points that seem noteworthy. One, the claims trading activity was post-confirmation so—while certain of the claim-sellers may have still been on the unsecured creditors committee, as the effective date of the plan had not yet occurred—the circumstances are very different than if this had all happened during the early, contentious stages of the case. It seems inconceivable that there was somehow a disparity of information that might be troubling—the Plan had been confirmed and it was available for the world to see. The whole notion of "insider information" (just after confirmation here) feels a bit off-point. Bankruptcy practitioners and judges sometimes call bankruptcy a fishbowl or use the "open kimono" metaphor for good reason. It is generally a very open process. And information-sharing on the part of a debtor-in-possession or unsecured creditors committee is intended to be robust. *See, e.g.,* Bankruptcy Code sections 521 and 1102(b)(3). In a way, HMIT here seems to be complaining about this very situation that the Code and Rules have designed.

In summary, claims trading is a highly ***unregulated*** activity in the bankruptcy world. ***HMIT is attempting to pursue causes of action here that, to this court's knowledge, have never been allowed in a context like this***.

B. Back to Standing—Would HMIT Have Standing to Bring the Proposed Claims?

The Proposed Defendants argue that HMIT lacks standing to bring the Proposed Claims, either: (a) derivatively on behalf of the Reorganized Debtor and Claimant Trust, or (b) directly on behalf of itself. Thus, they argue that this is one reason that the Motion for Leave should be denied.

In making their specific standing arguments, the parties analyze things slightly differently:

The Claims Purchasers focus primarily on HMIT's lack of ***constitutional*** standing but also argue that HMIT does not have ***prudential*** standing under Delaware trust law to bring the Proposed Claims either individually or derivatively. Why do they mention Delaware trust law? Because the Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29.[150]

The Highland Parties' standing arguments focus almost entirely on HMIT's lack of ***prudential*** standing under Delaware trust law to bring the Proposed Claims.

HMIT argues that the Proposed Defendants "play fast and loose with standing arguments" and that HMIT has ***constitutional*** standing as a "party aggrieved"[151] to bring the Proposed Claims on behalf of itself. HMIT also argues that it has standing under Delaware trust law to bring a

[150] *See* Proposed Complaint, ¶ 26.

[151] Proposed Complaint, ¶7.

derivative action on behalf of the Claimant Trust, and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to do so.

1. The Different Types of Standing: Constitutional Versus Prudential

The parties are addressing two concepts of standing that can sometimes be confused and misapplied by both attorneys and judges: ***constitutional Article III standing***, which implicates federal court subject matter jurisdiction,[152] and the narrower standing concept of ***prudential standing***, which does not implicate subject matter jurisdiction but nevertheless might prevent a party from having capacity to sue, pursuant to limitations set by courts, statutes or other law.

Article III constitutional standing works as follows: a plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing three elements: (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[153] "If the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve."[154] These elements ensure that a plaintiff has "'such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf."[155]

[152] Article III, Section 2 of the U.S. Constitution gives federal courts jurisdiction over enumerated cases and controversies.

[153] *See Thole v. U.S. Bank, N.A.*, 140 S.Ct. 1615, 1618 (2020)(citing the Supreme Court's seminal case on the tripartite test for Article III constitutional standing, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), where the Supreme Court stated that "the irreducible constitutional minimum of standing contains [the] three elements"); *see also Spokeo*, 578 U.S. at 338; *Abraugh v. Altimus*, 26 F.4th 298, 302 (5th Cir. 2022) (citing *id.*).

[154] *Transunion LLC v. Ramirez*, 141 S.Ct. 2190, 2203 (2021)(cleaned up).

[155] *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Apart from this minimal constitutional mandate, courts and statutes have set other limits on the class of persons who may seek judicial remedies—and this is the concept of prudential standing. In its recent opinion in *Abraugh v. Altimus*,[156] the Fifth Circuit set forth a detailed analysis of the two types of "standing," noting that the term "standing" is often "misused" in our legal system, which has led to confusion for both attorneys and judges.[157] The constitutional standing that is necessary for a court to exercise subject matter jurisdiction is broader than prudential standing and is only the first hurdle a party must clear before pursuing a claim in federal court.

The Fifth Circuit explained that ***in addition to*** Article III constitutional standing, "courts have occasionally articulated other 'standing' requirements that plaintiffs must satisfy under certain conditions, ***beyond those imposed by Article III***,"[158] such as the "standing" requirement that might be imposed by a statute or by jurisprudence. The *Abraugh* case was a perfect example of the latter.

Abraugh involved the civil rights statutes that provide, among other things, that "a party must have standing under the state wrongful death or survival statutes to bring [a § 1983 cause of action]" and noted that these statutes impose additional "standing" requirements that are a matter of prudential standing, not constitutional standing.[159] In *Abraugh*, the Fifth Circuit reversed and remanded a district court's dismissal of a § 1983 civil rights cause of action—noting that the district court had stated that it was dismissing based on a "lack of subject matter jurisdiction" because the plaintiff in that action lacked standing.[160] The plaintiff was the mother of a prisoner

[156] 26 F.4th 298.
[157] *Id.* at 303.
[158] *Id.* at 302 (emphasis added).
[159] *Id.* at 302-303.
[160] *Id.* at 301.

who died by suicide while in custody who brought a § 1983 action against Louisiana correctional officers and officials. After finding that the plaintiff/mother lacked standing under Louisiana's wrongful death and survival statutes (because there had been a surviving child and wife of the prisoner who were the proper parties with capacity to sue), the district court held that it was dismissing for lack of subject matter jurisdiction. The Fifth Circuit pointed out that the plaintiff/mother may have lacked standing under Louisiana's wrongful death and survival statutes to bring the claim under § 1983, but that type of standing was matter of ***prudential*** standing, and the plaintiff/mother actually ***did*** have ***Article III*** constitutional standing ("a constitutionally cognizable interest in the life of her son").[161] Thus, the district court's error was ***not*** in finding that the plaintiff/mother lacked prudential standing but in improperly conflating the two standing concepts when it held that it had lacked ***subject matter jurisdiction*** to consider any of the plaintiff's/mother's amended complaints.[162] The Fifth Circuit noted specifically that[163]

> prudential standing does not present a jurisdictional question, but "a merits question: who, according to the governing substantive law, is entitled to enforce the right?" As the Federal Rules of Civil Procedure make clear, "an action must be prosecuted in the name of the real party in interest." FED. R. CIV. P. 17(a)(1). And a violation of this rule is a failure of "prudential" standing. "Not one of our precedents holds that the inquiry is jurisdictional." It goes only to the validity of the cause of action. And "the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction."

Somewhat relevant to this prudential standing discussion is the fact that, in this bankruptcy case, there have been dozens of appeals of bankruptcy court orders by Dondero and Dondero-related entities. In connection therewith, both the district court and the Fifth Circuit, in evaluating the ***appellate standing*** of the appellants, have taken pains to distinguish between the concepts of:

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[161] *Id.*

[162] *Id.* at 301, 303-304. The Fifth Circuit opined that "the district court did not err in describing [the mother's] inability to sue under Louisiana law as a defect of 'standing[, b]ut it is a defect of prudential standing, not Article III standing" thus technically not implicating the federal court's subject matter jurisdiction. *Id.* at 303.

[163] *Id.* at 304 (cleaned up).

(a) traditional, constitutional standing, and (b) a type of prudential standing known as the "person aggrieved" test, which is applied in the Fifth Circuit in determining whether a party has ***standing to appeal a bankruptcy court order***—which it describes as a narrower and "more exacting" standard than constitutional standing. As explained in a Fifth Circuit opinion addressing the standing of a Dondero-related entity called NexPoint to appeal bankruptcy court orders allowing professional fees, the "person aggrieved" standard that is typically applied to ascertain bankruptcy ***appellate*** standing originated in a statute in the Bankruptcy Act. The Fifth Circuit continued to apply it after Congress removed the provision when it enacted the Bankruptcy Code in 1978.[164] Because it is narrower and "more exacting" than the test for Article III constitutional standing, it involves application of prudential standing considerations.[165] The Fifth Circuit describes the "person aggrieved" test for bankruptcy appellant standing as requiring that an appellant show that it was "*directly and adversely affected pecuniarily* by the order of the bankruptcy court," requiring "a higher causal nexus between act and injury than traditional standing . . . that best deals with the unique posture of bankruptcy actions."[166] In affirming the district court's dismissal of NexPoint's appeal of the bankruptcy court's fee orders, due to NexPoint's lack of prudential standing under the "person aggrieved" test, the court rejected NexPoint's argument that it had standing to appeal

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[164] *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, No. 22-10575, 2023 WL 4621466, *2 (5th Cir. July 19, 2023)(citing *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004)(cleaned up)).

[165] *Id.* at *1, **4-6 (where the Fifth Circuit repeatedly throughout its opinion refers to the "person aggrieved" test for standing in bankruptcy actions as a test for "prudential standing."); *see also Dondero v. Highland Capital Mgt., L.P.*, Civ. Act. No. 3:20-cv-3390-X, 2002 WL 837208 (N.D. Tex. Mar. 18, 2022)(where the district court, in addressing Dondero's standing to appeal a bankruptcy court order approving a Rule 9019 settlement (between Highland and Acis Capital Management GP LLC), notes that "[i]t is substantially more difficult to have standing to appeal a bankruptcy court's order than it is to pursue a typical complaint under Article III of the U.S. Constitution" and that "the Fifth Circuit has long recognized that bankruptcy cases' wide-reaching scope calls for a more stringent standing test.").

[166] *See id.* at *3 (cleaned up). The court quotes its 2018 opinion in *Matter of Technicool Sys., Inc. (In re Technicool)*, 896 F.3d 382, 385 (5th Cir. 2018), which explains why the "person aggrieved" prudential standing standard is applied in bankruptcy actions: "Bankruptcy cases often involve numerous parties with conflicting and overlapping interests. Allowing each and every party to appeal each and every order would clog up the system and bog down the courts. Given the specter of such sclerotic litigation, standing to appeal a bankruptcy court order is, of necessity, *quite limited*." *Id.* (cleaned up).

because "it meets traditional Article III standing requirements [and that the more exacting] prudential standing considerations such as the 'person aggrieved' standard" did not survive the Supreme Court's 2014 *Lexmark*[167] opinion,[168] which addressed standing issues in the context of false advertising claims under the Lanham Act and reminded that courts may not "limit a cause of action that Congress has created merely because 'prudence' dictates."[169] The Fifth Circuit held that the Supreme Court's reminder in *Lexmark* did not nullify the "person aggrieved" test for prudential standing in bankruptcy appeals, citing its own decision in *Superior MRI Services Inc. v. Alliance Healthcare Services, Inc.*[170] (rendered a year after *Lexmark* was decided), in which it held that *Lexmark* applied only to the circumstances of that case, "rather than broadly modifying—or undermining—*all* prudential standing concerns, such as the one animating the 'person aggrieved' standard in bankruptcy appeals."[171]

Similarly, in yet another appeal in this bankruptcy case involving three Dondero-related entities as appellants (NexPoint, Dugaboy, and HCMFA)—this one an appeal of a bankruptcy court order authorizing the creation of an indemnity subtrust and entry into an indemnity trust agreement—the district court noted the parties' confusion about the standing issue, as exemplified in the parties' reference to constitutional standing when they were actually arguing that they had prudential standing under the "person aggrieved" test: "Although the parties frame this issue as one of constitutional standing . . . they cite case law and present arguments about the prudential

[167] *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

[168] *Id.* at *2.

[169] *See id.* at *4 (cleaned up).

[170] 778 F.3d 502 (5th Cir. 2015).

[171] *NexPoint*, 2023 WL 4621466 at *4 (cleaned up). The Fifth Circuit explicitly stated that "*Lexmark* does not expressly reach prudential concerns in bankruptcy appeals and brought no change relevant here." *Id.* at *5 (cleaned up).

standing requirement embodied in the 'person aggrieved' test."[172] The district court noted that it had an "independent obligation to consider constitutional standing before reaching its prudential aspects."[173] The district court dismissed the appeal as to Dugaboy and HCMFA for lack of standing but, upon concluding that NexPoint did have standing, dismissed the appeal as to it on the merits. The Fifth Circuit affirmed.[174] Interestingly, the court noted that, while the parties did not contest the district court's determination that NexPoint had standing to pursue the appeal, it "may consider prudential standing issues *sua sponte*."[175] In doing so, the Fifth Circuit recognized the distinction between constitutional standing and the prudential "person aggrieved" test applied to bankruptcy appeals, which "is, of necessity, quite limited" and "an even more exacting standard than traditional constitutional standing," as it requires an appellant to show that it is "directly, adversely, and financially impacted by a bankruptcy order."[176]

In summary, in analyzing whether HMIT would have standing to bring the Proposed Claims, this court must ***first*** determine whether HMIT would have constitutional standing under Article III (which is a subject matter jurisdiction hurdle) and, assuming it does, then ***additionally*** address whether HMIT would also have prudential standing (i.e., capacity to sue) pursuant to any applicable statutes (e.g., Delaware statutes), jurisprudence, or other substantive law that might ***limit*** who may sue. Notwithstanding HMIT's argument that it has standing under the "person

[172] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2002 WL 270862, *1 (N.D. Tex. Jan. 18, 2022)(cleaned up). The district court dismissed the appeals of two of the appellants, Dugaboy and HCMFA, finding that they lacked both constitutional standing and prudential standing under the "person aggrieved" test and affirmed the bankruptcy court's order after finding the third appellant, NexPoint, to have prudential standing under the "person aggrieved" test. *Id.* at **1-3 and *4.

[173] *Id.* at *1 n.2.

[174] *Highland Capital Mgt. Fund, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 57 F.4th 494 (5th Cir. 2023).

[175] *Id.* at 501 (cleaned up).

[176] *Id.*

aggrieved" test[177]—which, as discussed above, is a matter of prudential standing—this is applied only in the context of bankruptcy ***appellate*** matters.[178] As noted in its most recent opinion discussing standing in an appeal from the Highland bankruptcy case, the Fifth Circuit reiterated that the "person aggrieved" test is a test for bankruptcy ***appellate*** standing, which is narrower than a party in interest's right to be heard in bankruptcy cases in general.[179] The court rejected an argument that Bankruptcy Code § 1109, which provides that "[a] party in interest . . . may raise and may appear and be heard on any issue in a case under this chapter" confers ***appellate*** standing, noting that "one's standing to appear and be heard before the bankruptcy court [is] a concept distinct from standing to appeal the merits of a decision" and that the "person aggrieved" test for bankruptcy appellate standing is narrower than the test for determining one's standing to appear and be heard in a bankruptcy proceeding.[180]

Thus, the court will now analyze whether HMIT would, at a minimum, have constitutional standing to bring the Proposed Claims.

2. HMIT Would Lack Article III Constitutional Standing to Bring the Proposed Claims.

As noted above, the Supreme Court and the Fifth Circuit have made clear that constitutional standing is necessary for a court to exercise subject matter jurisdiction. It is only the first hurdle a party must clear before pursuing a claim in federal court. HMIT, as plaintiff, would bear the

[177] HMIT insists that it has constitutional standing to bring claims on its individual behalf "as an aggrieved party." *See* Reply, ¶ 7.

[178] HMIT's argument in this matter that it has constitutional standing because it is a "party aggrieved" incorrectly conflates the prudential bankruptcy appellate "person aggrieved" test with the broader test that is applied to constitutional standing. The court is not being critical of this mistake. As noted at *supra* note 149, the Fifth Circuit in *Abraugh* pointed out that courts and attorneys alike have created confusion by misusing the term "standing" when they equate a lack of "standing," in all instances, with a lack of subject matter jurisdiction, even when the party is found to lack only prudential standing. Thus, HMIT is not alone in its confusion over the two different concepts of standing.

[179] *See NexPoint*, 2023 WL 4621466 at *6.

[180] *Id.* at *6 (cleaned up)("Because Section 1109(b) expands the right to be heard [in a bankruptcy proceeding] to a wider class than those who qualify under the 'person aggrieved' standard, courts considering the issue have concluded that merely being a party in interest is insufficient to confer ***appellate*** standing.")(emphasis added).

burden of establishing: (1) that it suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[181]

Concrete and Particularized; Actual or Imminent. As the Supreme Court made clear in the *Lujan* case, the injury in fact element requires a showing that the injury was "concrete and particularized" and "actual or imminent, not conjectural or hypothetical."[182] The Supreme Court in the *Spokeo* case expounded on the "concrete and particularized" requirements of the "injury in fact" element. Particularization requires a showing that the injury "must affect the plaintiff in a personal and individual way," but while particularization is necessary, it alone is "not sufficient," because an injury in fact must also be "concrete."[183] And, concreteness is "quite different from particularization."[184] A "concrete" injury must be "real," and "not abstract," though it does not mean that the injury must be "tangible," as the injury can be intangible and nevertheless be concrete.[185] In addition to the concreteness and particularization requirements, an injury in fact must be "actual or imminent" such that "allegations of injury that is merely conjectural or hypothetical do not suffice to confer standing."[186] "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly*

[181] *See supra* note 153.
[182] *Lujan*, 504 U.S. at 560 (cleaned up).
[183] *Spokeo*, 578 U.S. at 339.
[184] *Id.* at 340.
[185] *Id.*
[186] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

impending"; "allegations of *possible* future injury are not sufficient."[187]

Traceability - Causal Connection. As to the second element—that the injury was caused by the defendant—the Supreme Court in *Lujan* further described it as requiring a showing that "the injury has to be fairly traceable to the challenged action of the defendant."[188] The "fairly traceable" test requires an examination of "the causal connection between the assertedly unlawful conduct and the alleged injury."[189]

Redressability. The third element—redressability—requires the court to examine the connection "between the alleged injury and the judicial relief requested."[190] "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court."[191] "[A] court must determine that there is an available remedy which will have a 'substantial probability' of redressing the plaintiff's injury."[192]

The Claims Purchasers argue that HMIT lacks constitutional standing to pursue the claims asserted in the Proposed Complaint because: (i) neither HMIT nor the Bankruptcy Estate was injured by the Claim Purchasers' acquisition of the claims; and (ii) the Proposed Complaint lacks a theory of cognizable damages to the Reorganized Debtor, the Claimant Trust, and/or the beneficiaries of the Claimant Trust.[193]

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[187] *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409 (2013)(cleaned up); *see also Abdullah v. Paxton*, 65 F.4th 204, 208 (5th Cir. 2023)("[Injury] cannot be speculative, conjectural, or hypothetical [and] [a]llegations of only a 'possible' future injury similarly will not suffice.")(cleaned up).

[188] *Lujan*, 504 U.S. at 560-61 (cleaned up).

[189] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

[190] *Id.* (noting "it is important to keep the ['fairly traceable' and 'redressability'] inquiries separate if the 'redressability' component is to focus on the requested relief.").

[191] *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998).

[192] *City of Los Angeles v. Lyons*, 461 U.S. 95, 129 n.20 (1983)(Marshall, J., dissenting)(cleaned up); *see also Ondrusek v. U.S. Army Corps of Engineers*, Civ. Act. No. 3:22-cv-1874-N, 2023 WL 2169908, at *5 ("Plaintiffs have not demonstrated that any available remedy would be sufficiently likely to relieve their alleged economic losses. Without a showing of redressability, those harms also cannot support Plaintiff's Article III standing.").

[193] As noted earlier, certain of the Proposed Defendants—the Highland Parties—do not focus on HMIT's lack of constitutional standing to pursue the Proposed Claims against them, but on its lack of prudential standing under

The court agrees with the Claims Purchasers' argument here. What is HMIT's concrete and particularized injury—that is "real" and is not abstract? That is not conjectural or hypothetical? That is actual or imminent?

Recall that, under the Plan, HMIT holds a Class 10 contingent interest in the Claimant Trust that only realizes value if all creditors are paid in full with interest. HMIT alleges the following injury: it has suffered a devaluation of its unvested Contingent Claimant Trust Interest by virtue of the alleged over-compensation of Seery as the Claimant Trustee—Seery's alleged over-compensation depletes the assets in the Claimant Trust available for distribution to creditors under the Plan, such that there is less likely a chance that HMIT ultimately receives any distributions on account of its Class 10 Contingent Claimant Trust Interest.[194] Yet, HMIT testified, through both witnesses Dondero and Patrick, that it had no personal knowledge of what Seery's actual compensation is under the CTA at the time HMIT filed its Motion for Leave. It was clear that HMIT's allegations regarding Seery's "excessive" compensation were based entirely on Dondero's pure speculation. In reality, Seery's base salary is exactly what the bankruptcy court approved during the bankruptcy case by a court order (after negotiations between Seery and the Committee). The CTA now further governs his compensation. The CTA, which was publicly filed ***in advance of*** the Plan confirmation hearing and approved by this court as part of the Plan

applicable law. Because constitutional standing is a matter of subject matter jurisdiction, the court has an independent duty to determine whether HMIT would have constitutional standing to pursue the Proposed Claims in federal court. The issue cannot be forfeited or waived by a party. *See Abraugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)("[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Moreover, courts . . . have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.")(cleaned up); *Abraugh*, 26 F.4th at 304 ("It is our constitutional duty, of course, to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.")(cleaned up).

[194] At the June 8 Hearing, HMIT's counsel was unable to identify any other injury HMIT has alleged to have suffered. HMIT's counsel acknowledged that claims trades, in and of themselves, would not "involve injury to the Reorganized Debtor and to the Claimant Trust" and that claims trades are "normally outside the purview of the bankruptcy court" but that "[h]ere, we have alleged . . . . injury [that] takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers." June 8 Hearing Transcript, 67:16-68:8. HMIT can only point to Seery's excess compensation as injury.

(which has been affirmed by the Fifth Circuit), specifically provides that Seery's post-Effective Date compensation would include a "Base Salary" (again, same as during the bankruptcy case), a "success fee," and "severance."[195] The CTA discussed the role of the Committee and then the CTOB in setting the success fee and severance and the like. A fully executed copy of the CTA was admitted into evidence at the June 8 Hearing. HMIT is essentially arguing that its injury (i.e., diminished likelihood of realizing value on its Contingent Claimant Trust Interest) stems from a court-sanctioned and creditor-approved process for approving compensation to Seery. Moreover, HMIT has failed to plead facts sufficient to show that, even if Seery received excessive compensation and that compensation is ordered to be returned, HMIT's Contingent Claimant Trust Interest will ever vest. The district court and the Fifth Circuit in various appeals by Dugaboy, another Dondero-related entity that, similar to HMIT, was a holder of a limited partnership interest in Highland whose interests were terminated as of the Effective Date of the Plan in exchange for a Contingent Claimant Trust Interest, have repeatedly rejected Dugaboy's claims to have standing based on the ***speculative nature of its alleged injuries as a contingent beneficiary of the Claimant Trust under the Plan***. For example, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy of the bankruptcy court's order authorizing the creation of an indemnity subtrust, wherein Judge Fitzwater found that, in addition to lacking prudential standing under the

[195] The Disclosure Statement that was approved by this court, after notice and a hearing, on November 24, 2020, provided that "The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement . . . ." The CTA was part of a Plan Supplement (as amended) that was filed in advance of the confirmation hearing and provided:

> Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

See Highland Ex. 38, at § 3.13(a)(i).

"person aggrieved" test to appeal the bankruptcy court's order, Dugaboy lacked constitutional standing "because they have not identified any injury fairly traceable to the Order: ***the injuries identified are speculative at best and nonexistent at worst***."[196] HMIT's allegations of injury are, without a doubt, "merely conjectural or hypothetical" and are only speculative of possible future injury if its Contingent Claimant Trust Interest ever vests."[197] The court finds that HMIT would not meet the "concrete and particularized" or the "actual or imminent" requirements for an "injury in fact," and, thus, would lack constitutional standing to pursue the Proposed Claims.

With regard to the second requirement of constitutional standing—whether HMIT could show "traceability" with respect to the Claims Purchasers and/or Seery (i.e., a "causal connection between the assertedly unlawful conduct and the alleged injury"[198]), as noted above, there is only a speculative injury. Even if there is unlawful conduct asserted (i.e., sharing of MNPI to Claims Purchasers who then, as a *quid pro quo*, rubber stamped excessive compensation for Seery), there is nothing other than a hypothetical theory of an alleged injury (i.e., an allegedly less likelihood of a distribution on a Contingent Claimant Trust Interest).

With respect to the third requirement of constitutional standing—whether HMIT can show "redressability" (i.e., that it is likely, not speculative, that the injury can be redressed by a favorable

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[196] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2022 WL 270862, *1 n.2 (N.D. Tex. Jan. 28, 2022), *aff'd* 57 F.4th 494 (5th Cir. 2023)(emphasis added); *see also* Judge Scholer's opinion in *Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-2268-S, 2022 WL 3701720, *3 (N.D. Tex. Aug. 8, 2022)(cleaned up), *aff'd per curium*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023) (where Dugaboy had argued that "***its pecuniary interest is*** . . . ***a potential recovery under the Plan as one of Debtor's former equity holders***" and that "it ha[d] standing as a 'contingent beneficiary' under the Plan, or a beneficiary who will be entitled to payment after all creditors are paid in full," and Judge Scholer stated, "This assertion is premised on the assumption that Dugaboy's 0.1866% pre-bankruptcy limited partnership interest in Debtor—which was extinguished under the Plan—makes it a contingent beneficiary of the creditor trust created under the Plan. . . . [S]uch a 'speculative prospect of harm is far from a direct, adverse, pecuniary hit' as required to confer standing."

[197] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

[198] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

decision), there are multiple problems here.[199] The major remedy sought here is the equitable disallowance of the allowed Purchased Claims (and disgorgement and/or constructive trust of amounts paid or owed to the Claim Purchasers on account of their claims). There is no such remedy available here. As noted earlier, there is a similar concept of ***equitable subordination*** of a claim to another claim, or of an interest to another interest, pursuant to Bankruptcy Code section 510(c). But under the literal terms of section 510(c), ***claims cannot be subordinated to interests***. Moreover, the Fifth Circuit noted in the *Mobile Steel* case,[200] that ***equitable disallowance*** of a claim (as opposed to equitable subordination of a claims) is not an available remedy. Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case might permit "recharacterization" of a claim from debt to equity in certain circumstances—but not based on inequitable conduct but rather on the nature of a financial transaction. In any event, here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). As noted earlier, the problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). As further noted earlier, here there was most definitely a "contest" with regard to all of these purchased claims. ***Thus, it would appear***

[199] *See supra* notes 182-184 and accompanying text. The court will note that, as discussed *supra* note 141 and pages 71-72, the remedy of equitable subordination (as to the Claims Purchasers) would not redress HMIT's alleged injury (because equitable subordination of claims to interests is not an available remedy in the Fifth Circuit and thus subordination of the Purchased Claims to other claims would not change HMIT's distributions from the Claimant Trust, if any), and because outright disallowance of all or part of the already allowed Purchased Claims is not an available remedy either, HMIT would not be able to meet the "redressability" requirement with respect to the Claims Purchasers.

[200] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

that any effort to have a court reconsider and potentially disallow these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.

3. HMIT Would Also Lack Prudential Standing to Bring the Proposed Claims.

Even if HMIT would have constitutional standing to bring the Proposed Claims in an adversary proceeding filed in the bankruptcy court, the Proposed Claims would still be barred if HMIT would lack prudential standing to bring them under applicable state or federal law. HMIT argues that it does have prudential standing under both federal bankruptcy law and Delaware law to pursue the Proposed Claims derivatively and also to bring the Proposed Claims in its individual capacity.

With regard to "federal bankruptcy law," HMIT argues that it has standing pursuant to: (a) Rule 23.1 of the Federal Rules of Civil Procedure, pertaining to derivative actions, which "applies to this proceeding pursuant to" Rule 7023.1 of the Federal Rules of Bankruptcy Procedure, and (b) *Louisiana World Exposition v. Federal Insurance Co. ("LWE")*,[201] the Fifth Circuit's leading case addressing when a creditors committee may be granted standing to bring causes of action on behalf of a bankruptcy estate. But, federal bankruptcy law does not confer standing ***where the plaintiff otherwise lacks standing under applicable state law***. In other words, whether HMIT would have prudential standing to sue under Delaware law is dispositive of the issue, regardless of the forum. Rule 23.1 "speaks only to the adequacy of the . . . pleadings," and "cannot be understood to 'abridge, enlarge, or modify any substantive right,'"[202] including a right (or lack thereof) to bring a derivative action under the substantive law of Delaware. Additionally, HMIT's reliance on *LWE* is misplaced: *LWE* permits creditors, in certain circumstances ***during*** a bankruptcy case, to "file

[201] 858 F.2d 233 (5th Cir. 1988).

[202] *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 96 (1991)(quoting 28 U.S.C. § 2072(b)).

suit on behalf of a debtor-in-possession or a trustee"[203] and does not apply to a party's right to sue, derivatively, on behalf of the Reorganized Debtor or any entity that is the assignee of the former bankruptcy estate's assets. Upon confirmation of the Plan, the bankruptcy estate of Highland ceased to exist;[204] Highland is no longer a debtor-in-possession but a reorganized debtor, and the Claimant Trust is a new entity created under the Plan and Claimant Trust Agreement. Even if *LWE* did apply in this ***post***-confirmation context, it supports the application of Delaware law to the issue of prudential standing and does not supersede state-law requirements for standing. In *LWE*, before addressing the requirements a creditors' committee must meet to sue derivatively on behalf of a bankruptcy estate as a matter of federal bankruptcy law, the Fifth Circuit conducted a lengthy analysis to determine "as a threshold issue" whether the creditors' committee in that case could assert its claims under Louisiana law.[205] The court specifically addressed whether the creditors' committee could pursue a derivative action under Louisiana law and concluded that "there is no bar in Louisiana law to actions brought by or in the name of a corporation against the directors and officers of the corporation which benefit only the creditors of the corporation; indeed, Louisiana law specifically recognizes such actions."[206] So, even under *LWE* (which the court does not think applies in this post-confirmation context), if HMIT would be barred from bringing a derivative action on behalf the Reorganized Debtor or Claimant Trust under state law, the analysis stops there.[207] Thus, the court looks to Delaware law to determine if HMIT would have prudential standing to pursue the derivative claims on behalf the Reorganized Debtor and the Claimant Trust.

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[203] *LWE*, 858 F.2d at 247.

[204] *See In re Craig's Stores*, 266 F.3d 388, 390 (5th Cir. 2001).

[205] *LWE*, 858 F.2d at 236-45.

[206] *Id.* at 243.

[207] *See In re Dura Automotive Sys., LLC*, No. 19-123728 (Bankr. D. Del. June 10, 2020), Docket No. 1115 at 46 (where the Delaware bankruptcy court denied the creditors' committee standing to sue derivatively on behalf of a Delaware LLC because the committee lacked standing under the Delaware LLC Act, stating, "To determine that the third party

HMIT acknowledges that both the Reorganized Debtor and the Claimant Trust are organized under Delaware law, and thus the cause of action against Seery alleging breach of fiduciary duties to the Reorganized Debtor and the Claimant Trust are governed by Delaware law under the "Internal Affairs Doctrine."[208] In addition, because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting theory of liability as to the Claims Purchasers is also governed by Delaware law.[209] For the reasons set forth below, the court finds that HMIT would lack prudential standing under Delaware law to bring the claims set forth in the Proposed Complaint, derivatively, on behalf of either the Claimant Trust or the Reorganized Debtor.

a) First, HMIT Would Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Claimant Trust.

The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29,[210] and "to proceed derivatively against a Delaware statutory trust, a plaintiff has the burden of satisfying the continuous ownership requirement" such that "the plaintiff must be a beneficial owner" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[211] This requirement is "mandatory and exclusive" and only "a beneficial owner" "has standing to bring a derivative claim on behalf of the

may bring the claim under the derivative basis and, thus, step into the shoes of the debtor to pursue them, the Court must look to the law of the debtors' state of incorporation or formation.").

[208] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[209] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

[210] *See* Proposed Complaint, ¶ 26.

[211] *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *19 n.123 (Del. Ch. June 15, 2011), *aff'd* 38 A.3d 1254 (Del. 2012); 12 Del C. § 3816(b).

Trust."[212] The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, would lack standing to bring derivative claims on behalf of the Claimant Trust. HMIT argues to the contrary: that it ***is*** currently, and was at all relevant times, a "beneficial owner" of the Claimant Trust under Delaware trust law such that it would have standing to bring derivative claims on behalf of the Claimant Trust if it were allowed to proceed with the filing of the Proposed Complaint. The disagreement turns on the nature of HMIT's interest under the Plan and the Claimant Trust Agreement and whether HMIT, as a holder of such interest, would be considered a "beneficial owner" of the Claimant Trust under Delaware trust law.

As noted, pursuant to the Plan, HMIT's former limited partnership interest in Highland was cancelled as of the Effective Date in exchange for its pro rata share of a "Contingent Claimant Trust Interest," as defined under the Plan.[213] HMIT argues that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which makes it a present "beneficial owner" under Delaware trust law.

The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust; rather, the "beneficial owners" of the Claimant Trust are the "Claimant Trust Beneficiaries,"[214] which are defined in the Plan and the CTA as "the Holders of Allowed General Unsecured Claims" (which are in Class 8 under the Plan) and "Holders of Allowed Subordinated Claims" (which are in Class 9 under the Plan); [215] HMIT, a holder of a Class 10 interest under the Plan, is neither.

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[212] *In re Nat'l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 191 (Del. Ch. 2020) (citing *CML V, LLC v. Bax*, 28 A.3d 1037, 1042 (Del. 2011)). HMIT acknowledges this requirement in its Reply: "Delaware statutory trust law provides that a plaintiff in a derivative action on behalf of a trust must be a beneficial owner at the time of the action and at the time of the transaction." Reply, ¶ 19 (citing 12 Del C. § 3816).

[213] *See* Plan Art. III.H.10 and Art. I.B.44.

[214] Section 2.8 of the CTA provides, "The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust . . . ." HMIT Ex. 26, § 2.8.

[215] *See* Plan Art. I.B.44 ("'*Claimant Trust Beneficiaries*' means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the

HMIT, as the holder of a "Contingent Claimant Trust Interest," has only an ***unvested*** contingent interest in the Claimant Trust and, as such, is not a "beneficial owner" of the Claimant Trust for standing purposes under Delaware trust law. HMIT argues that it "should be treated as a vested Claimant Trust Beneficiary due to [the Proposed Defendants'] wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein."[216] The court disagrees.

HMIT's status as a "beneficiary" of the Claimant Trust is defined by the CTA itself, pure and simple. The CTA specifically provides that "Contingent Trust Interests" "shall not have any rights under this Agreement" and will not "be deemed 'Beneficiaries' under this Agreement," "unless and until" they vest in accordance with the Plan and the CTA. It is undisputed that HMIT's Contingent Trust Interest has not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT's Contingent Trust Interest to be vested based on HMIT's unsupported allegation of wrongdoing on the part of Seery, the Claimant Trustee. Thus, the court finds that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, lacks prudential standing under Delaware law to bring derivative claims on behalf of the Claimant Trust.[217]

Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests."); CTA § 1.1(h). *See also*, CTA, 1 at n.2 ("For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan."). HMIT Ex. 26.

[216] Proposed Complaint ¶ 24.

[217] *See Nat'l Coll.*, 251 A.3d at 190–92 (dismissing creditors' derivative claims because they were not "beneficial owners of the Trusts"); *Hartsel*, 2011 WL 2421003, at *19 n.123 (dismissing derivative claims by investors that "no longer own shares" because "those investors no longer have standing to pursue a derivative claim").

b) HMIT Would Likewise Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Reorganized Debtor.

HMIT acknowledges that the Reorganized Debtor, Highland Capital Management, L.P., is a Delaware limited liability partnership governed by the Delaware Limited Partnership Act, 6 Del. C. § 17-101, *et seq.*[218] To bring "a derivative action" on behalf of a limited partnership, "the plaintiff must be a partner or an assignee of a partnership interest" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[219]

HMIT is not a partner, general or limited, of the Reorganized Debtor limited partnership. HMIT ***was*** a limited partner in the original debtor (specifically, a holder of Class B/C Limited Partnership interests in Highland), but that limited partnership interest was extinguished on August 11, 2021 (the Effective Date of the Plan) per the terms of the Plan, and HMIT does not own any partnership interest in the newly created Reorganized Debtor limited partnership.[220] Because HMIT would not hold a partnership interest in the Reorganized Debtor at "the time of bringing the action," it "lacks derivative standing" to bring claims "on the partnership's behalf."[221] HMIT likewise cannot satisfy "the continuous ownership requirement"; when HMIT's limited partnership interest in the original Debtor was cancelled on the Plan's Effective Date, HMIT "los[t] standing to continue a derivative suit" on behalf of the Debtor.[222] Finally, to the extent HMIT

[218] Proposed Complaint ¶ 25.

[219] 6 Del. C. § 17-1002; *see Tow v. Amegy Bank, N.A.*, 976 F. Supp. 2d 889, 904 (S.D. Tex. 2013) ("The [Delaware] partnership act facially bars any party other than a limited partner from suing derivatively. . . . Delaware courts historically have interpreted the provisions as giving the partners exclusive rights to sue for breach of another party's fiduciary duties to them.") (quoting *CML V, LLC v. Bax*, 6 A.3d 238, 245 (Del. Ch. 2010), *aff'd* 28 A.3d 1037 (Del. 2011)); *El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1265 n.87 (Del. 2016) ("The statutory foundation for the continuous ownership requirement in the corporate realm is echoed in the limited partnership context.") (citing 6 Del. C. § 17-211(h)).

[220] *See* Plan Art. IV.A.

[221] *Tow*, 976 F. Supp. 2d at 904 (dismissing derivative claims by creditor on behalf of partnership for lack of standing).

[222] *El Paso*, 152 A.3d at 1265 (cleaned up) (dismissing derivative action for lack of standing where plaintiff's partnership interest was extinguished by a merger transaction); *see also Schmermerhorn v. CenturyTel, Inc. (In re*

seeks to bring a "double derivative" action on behalf of the Claimant Trust based on claims purportedly held by its wholly owned subsidiary, the Reorganized Debtor, HMIT lacks standing. A "double derivative" action is a suit "brought by a shareholder of a parent corporation to enforce a claim belonging to a subsidiary that is either wholly owned or majority controlled."[223] And, under Delaware law, "parent level standing is required to enforce a subsidiary's claim derivatively."[224] Because HMIT would lack derivative standing to bring claims on behalf of the parent Claimant Trust,[225] it also would lack standing to bring a double derivative action.

c) Finally, HMIT Would Also Lack Prudential Standing under Applicable Law to Bring the Proposed Claims As ***Direct*** Claims.

HMIT argues that it has "direct" standing to pursue the Proposed Claims on behalf of itself, individually.[226] But just because HMIT asserts that some or even all of the Proposed Claims are direct, not derivative claims, does not make it so: "a claim is not 'direct' simply because it is pleaded that way."[227] Rather, in determining whether claims are direct or derivative, a court must "look at the substance of the Petition, and the nature of the wrongs alleged therein, rather than the Plaintiffs' characterization."[228] And, under Delaware law, "whether a claim is solely derivative or

SkyPort Global Commcn's, Inc.), 2011 WL 111427, at *25–26 (Bankr. S.D. Tex. Jan. 13, 2011) (holding that pre-petition shareholders "lack standing to bring a derivative claim" under Delaware law because they "had their equity interests in the company extinguished pursuant to the merger under the Plan"); *In re WorldCom, Inc.*, 351 B.R. 130, 134 (Bankr. S.D.N.Y. 2006) ("[T]he cancellation of WorldCom shares under the Plan … prevents the required continuation of shareholder status through the litigation.") (cleaned up).

[223] *Lambrecht v. O'Neal*, 3 A.3d 277, 282 (Del. 2010).

[224] *Sagarra*, 34 A.3d at 1079–81 (capitalization omitted) (citing *Lambrecht*, 3 A.3d at 282).

[225] *See supra* pp. 80-82.

[226] *See e.g.*, Motion for Leave ¶ 10 ("HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time . . . ."); *id.* ¶ 67 (arguing that "HMIT has [d]irect [s]tanding"); Proposed Complaint ¶ 24 ("HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.").

[227] *Schmermerhorn*, 2011 WL 111427, at *26 (quoting *Gatz v. Ponsoldt*, 2004 WL 3029868 at *7 (Del. Ch. Nov. 5, 2004)).

[228] *See id.* (citing *Armstrong v. Capshaw, Goss & Bowers LLP*, 404 F.3d 933, 936 (5th Cir. 2005)); *see also Moore v. Simon Enters., Inc.*, 919 F.Supp. 1007, 1009 (N.D. Tex. 1995)("The determination of whether a claim is a derivative claim or a direct claim is made by reference to the nature of the wrongs alleged in the complaint, and is not limited by a [party's] characterization or stated intention.")(cleaned up).

may continue as a dual-natured claim 'must turn ***solely*** on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?'"[229] "In addition, to prove that a claim is direct, a plaintiff 'must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.'"[230] Similarly, in the bankruptcy context, whether a creditor can assert a claim directly or whether the claim belongs to the estate turns on the nature of the injury for which relief is sought: "[i]f the harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate," such that "only the bankruptcy trustee has standing to pursue the claim for the estate . . . ."[231] "To pursue a claim on its own behalf, a creditor must show this direct injury is not dependent on injury to the estate."[232]

As a reminder, HMIT argues that the injury it has suffered is a devaluation of its interests in the Claimant Trust by virtue of alleged over-compensation of Seery as the Claimant Trustee. HMIT was unable, when pressed during closing arguments, to identify any other injury. It essentially admitted that the claims trades, in and of themselves, would not have harmed the Claimant Trust, the Reorganized Debtor, or individual stakeholders, including HMIT, ***since the Claims Purchasers acquired already allowed unsecured claims, such that the distributions on those claims pursuant to the Plan would be unchanged in the hands of new holders of the claims***.

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[229] *El Paso*, 152 A.3d at 1260 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)) (emphasis in original).

[230] *Id.* (quoting *Tooley*, 845 A.2d at 1033); *see also Schmermerhorn*, 2011 WL 111427, at *24 (same).

[231] *Meridian Cap. CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019) (citing 11 U.S.C. § 541(a)(1)).

[232] *Id.*; *see also Schertz-Cibolo-Universal City Indep. Sch. Dist. v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994)("If a cause of action alleges only indirect harm to a creditor (i.e., an injury which derives from harm to the debtor), and the debtor could have raised a claim for its direct injury under the applicable law, then the cause of action belongs to the estate.")(citations omitted).

Thus, by its own concessions, any alleged harm to HMIT (through devaluation of assets in the Claimant Trust) "comes about only because of harm to the debtor," so the alleged "injury is derivative."[233] The court concludes that all of the claims set forth in the Proposed Complaint allege derivative claims only, and that none would be direct claims against the Proposed Defendants. Thus, HMIT would lack prudential standing to bring any of the Proposed Claims in the Proposed Complaint, so its Motion for Leave should be denied.

d) Some Final Points Regarding Standing.

In this standing discussion, one should not lose sight of the fact that there are both procedural safeguards in place, as well as certain independent individuals in place with fiduciary duties that might act in the event of any shenanigans regarding Claimant Trust activities. Under section 4.1 of the CTA (approved as part of the Plan process), the CTOB, which includes an independent disinterested member in addition to representatives of the Claims Purchasers,[234] oversees the Claimant Trustee's performance of his duties, approves his compensation, and may remove him for cause. Moreover, there is a separate "Litigation Trustee" in this case who was brought in, post-confirmation, as an independent fiduciary to pursue claims and causes of action. These independent persons are checks and balances in the post-confirmation wind down of Highland. This is what creditors voted on in connection with the Plan. Seery and the Claims Purchasers are not in sole control of anything. The CTA, as well as Delaware law, very clearly set forth who can bring an action in the event of some colorable claim. This is the reality of prudential

[233] *Meridian*, 912 F.3d at 293–94 ("The creditors' injury (reduced bankruptcy recovery) derived from injury to the debtor (the loss of estate assets), so only the estate could sue the third parties."); *see also El Paso,* 152 A.3d at 1260–61 & n.60 (holding that claim "claims of corporate overpayment are normally treated as causing harm solely to the corporation and, thus, are regarded as derivative") (collecting cases); *Gerber v EPE Holdings, LLC*, 2013 WL 209658, at *12 (Del. Ch. Jan. 18, 2013) (holding that claims were derivative because plaintiff had "not identified any independent harm suffered by the limited partners"; "the partnership suffered all the harm at issue—it paid too much").

[234] *See supra* note 23 and accompanying text.

standing. Just as in the *Abraugh* case, where Louisiana law dictated that a mother could not bring a wrongful death case when the deceased prisoner had a surviving wife and child, Delaware law and the CTA dictate here that a contingent beneficiary cannot bring the Proposed Claims here. This is separate and apart from whether the claims are colorable.

C. Are the Proposed Claims "Colorable"?

1. What is the Proper Standard of Review for a "Colorability" Determination?

Although the court has determined that HMIT would ***not*** have standing (constitutional or prudential) to bring the Proposed Claims, this court will nevertheless evaluate whether the claims—assuming HMIT somehow has standing—might be "colorable." This, in turn, requires the court to assess what the legal standard is to determine if a claim is "colorable." As a reminder, the Plan's Gatekeeper Provision and this court's prior Gatekeeper Orders entered in January and July 2020 each required that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain a finding from the bankruptcy court that its proposed claims are "colorable." The Gatekeeper Provision and Gatekeeper Orders did not specifically define "colorable" or what type of legal standard should apply.

HMIT argues that the standard for review to be applied by this court is the same as a simple "plausibility" standard used in connection with a Rule 12(b)(6) motions to dismiss. In other words, the court should simply assess whether the allegations of the Proposed Complaint, taken as true and with all inferences drawn in favor of the movant, state a ***plausible*** claim for relief (i.e., colorable equals plausible), and that this standard does not allow for the weighing of evidence by the court.[235] The Proposed Defendants, however, argue that the test for colorability should be more

[235] Reply, ¶ 5 ("[T]he determination of 'colorability' does not allow the 'weighing' of evidence. At most, a Rule 12(b)(6) 'plausibility' standard applies.").

akin to the test applied under the *Barton* doctrine,[236] under which a plaintiff must make a *prima facie* case that a proposed claim against a bankruptcy trustee is "not without foundation." In this regard, they argue that the court can and should consider evidence outside of the four corners of the complaint—especially since HMIT attached to its Motion for Leave, as "evidence" to support it, two declarations of Dondero (as part of a 350-page attachment) and only attempted to withdraw those declarations after the Highland Parties urged that they be permitted to cross-examine Dondero on them.

This court ultimately determined that the "colorability" standard was somewhat of a mixed question of fact and law and, therefore, the parties could put on evidence at the June 8 Hearing if they so-chose. The court would not require it. It was up to the parties. But, in any event, the Proposed Defendants should have an opportunity to cross-examine Dondero on the statements made in his declarations since the declarations had been filed on the docket and the court had reviewed them at this point. HMIT attempted to withdraw the declarations and any reference to them in the Motion for Leave, by filing redacted versions of the Motion for Leave,[237] less than 72 hours before the June 8 Hearing; however, the redacted versions did not redact any allegations in the Motion for Leave that were purportedly supported by the Dondero declarations. Also, HMIT called Dondero as a direct witness, in addition to calling Seery as an adverse witness at the June 8 Hearing, albeit subject to its running objection to the evidentiary format of the hearing.[238] HMIT also filed a witness and exhibit list attaching 80 exhibits and over 2850 pages of evidence and

[236] *Barton v. Barbour,* 104 U.S. 126 (1881).

[237] Bankr. Dkt. Nos. 3815 and 3816.

[238] *See* June 8 Hearing Transcript, 7:20-24, 112:11-13.

moved for the admission of those exhibits at the June 8 Hearing (again, subject to its running objection to the evidentiary format of the hearing).[239]

In determining what appropriate legal standard applies here in the "colorability" analysis, the context in which the Gatekeeper Provision of the Plan was approved seems very relevant. In determining that the Gatekeeper Provision was legal, necessary, and in the best interest of all of the parties, this court set forth in the Confirmation Order a lengthy discussion of the factual support for it, and made specific findings relating to Dondero's post-petition litigation and the need for inclusion of the Gatekeeper Provision in the Plan.[240] This court observed that "prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade" and that "[d]uring the last several months, Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor."[241] This court further found that: (1) Dondero's post-petition litigation "was a result of Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Seery's credible testimony, that if Dondero's plan proposal was not accepted, he would 'burn down the place,'"[242] (2) without the Gatekeeper Provision in place, "Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date" and that "the threat of continued litigation by Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result in lower distributions to creditors because of

[239] *See Hunter Mountain Investment Trust's Witness and Exhibit List in Connection with Its Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement* ("HMIT W&E List")[Bankr. Dkt. No. 3818] and n.1 thereto; *see also* June 8 Hearing Transcript, 33:7-10.

[240] *See* Confirmation Order ¶¶ 76-79.

[241] *Id.* ¶ 77.

[242] *Id.* ¶ 78. *See supra* note 12.

costs and distraction such litigation or the threats of such litigation would cause,"[243] and, (3) "unless the [court] approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance,[244] the absence of which will present unacceptable risks to parties currently willing to serve in such roles." Thus, as set forth in the Confirmation Order, the Gatekeeper Provision (and the Gatekeeper Orders as well, which were approved based on the same concerns regarding the threat of continued litigation by Dondero and his related entities) required Dondero and related entities to make a threshold showing of colorability, noting that the:

> Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC,* 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017)."[245]

The Fifth Circuit, in approving the Gatekeeper Provision on appeal, noted that that the Plan injunction and Gatekeeper Provision "screen and prevent bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[246]

Again, the court believes it is appropriate to consider the context in which—and the purpose for which—the Gatekeeper Orders and Gatekeeper Provision were entered in assessing

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[243] *Id.*

[244] Asd noted at ⁋ 79 of the Confirmation Order, the bankruptcy court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance for the post-confirmation parties implementing the Plan. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so ***without an exclusion for claims asserted by Mr. Dondero and his affiliates*** required that the Confirmation Order approve the Gatekeeper Provision.

[245] *Id.* ¶ 80.

[246] *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P.* (*In re Highland Cap. Mgmt., L.P.*), 48 F.4th 419, 435 (5th Cir. 2022).

how "colorability" should work here. It seems that applying HMIT's proposed Rule 12(b)(6) "plausibility" standard would impose no hurdle at all to litigants and would render the threshold for bringing claims under the Gatekeeper Provision and Gatekeeper Orders entirely duplicative of the motion to dismiss standard that every litigant already faces.

The authorities cited by HMIT in support of its argument for applying a Rule 12(b)(6) standard are inapposite. HMIT has cited no authority that addresses the appropriate standard for assessing the "colorability" of claims in the context of a plan gatekeeper provision—specifically, one implemented in response to a demonstrated need to screen and prevent continued bad-faith, harassing litigation against a chapter 11 debtor that would impede the debtor's implementation of a plan, which is what we have here. HMIT relies on a bevy of cases that include benefits coverage disputes under ERISA, Medicare coverage disputes, and constitutional challenges[247]—none of which implicate the *Barton* doctrine and vexatious-litigant concerns that were referenced by the court in the Plan as justifications for the gatekeeping provisions at issue here.

In affirming the Plan's Gatekeeper Provision, the Fifth Circuit stated, "Courts have long recognized bankruptcy courts can perform a gatekeeping function" and noted, by way of example, that "[u]nder the '*Barton* doctrine,' the bankruptcy court may require a party to 'obtain leave of

[247] *See Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (assessing whether an employee has "a colorable claim to vested benefits" such that the employee may be considered a "participant" under ERISA); *Abraham v. Exxon Corp.*, 85 F.3d 1126, 1129 (5th Cir. 1996) (same); *Panaras v. Liquid Carbonic Indus. Corp.*, 74 F.3d 786, 790 (7th Cir. 1996) (same); *Lake Eugenie Land & Dev., Inc. v. BP Expl. & Prods. (In re Deepwater Horizon)*, 732 F.3d 326, 340 (5th Cir. 2013) (holding that claims administrator incorrectly interpreted class settlement agreement by permitting "claimants [with] no colorable legal claim" to receive awards); *Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984) (discussing whether criminal defendant's double jeopardy claim was "colorable" such that it could be appealed before final judgments); *Trippodo v. SP Plus Corp.*, 2021 WL 2446204, at *3 (S.D. Tex. June 15, 2021) (assessing whether plaintiff stated a "colorable claim" against proposed additional defendants in determining whether plaintiff could amend complaint); *Reyes v. Vanmatre*, 2021 WL 5905557, at *3 (S.D. Tex. Dec. 13, 2021) (same); *Family Rehab., Inc. v. Azar*, 886 F.3d 496, 504 n.15 (5th Cir. 2018) (assessing whether plaintiff raised a "colorable claim" to warrant the district court's exercise of jurisdiction over a Medicare coverage dispute); *Am. Med. Hospice Care, LLC v. Azar*, 2020 WL 9814144, at *5 (W.D. Tex. Dec. 9, 2020) (same); *Harry v. Colvin*, 2013 WL 12174300, at *5 (W.D. Tex. Nov. 6, 2013) (considering whether plaintiff asserted a "colorable constitutional claim" such that the court could exercise jurisdiction); *Sabhari v. Mukasey*, 522 F.3d 842, 844 (8th Cir. 2008) (same); *Stanley v. Gonzales*, 476 F.3d 653, 657 (9th Cir. 2007) (same).

the bankruptcy court before initiating an action in district court when the action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor's official capacity."[248] As noted above, the Fifth Circuit found that the Gatekeeper Provision, which "requires that, before any lawsuit is filed, the plaintiff must seek the bankruptcy court's approval of the claim as 'colorable'"—*i.e.*, to "screen and prevent bad-faith litigation,"—is "sound."[249]

On balance, the court views jurisprudence applying the *Barton* doctrine and vexatious litigant injunctions—while not specifically addressing the "colorability" standard under gatekeeping provisions in a plan[250]—as more informative on how to approach "colorability" than any of the other authorities presented by the parties. One example is *In re VistaCare Group, LLC*.[251]

In *VistaCare*, the Third Circuit noted that, under the *Barton* doctrine, "[a] party seeking leave of court to sue a trustee must make a prima facie case against the trustee, showing that its claim is not without foundation," and emphasized that the "not without foundation" standard, while similar to the standard courts apply in evaluating Rule 12(b)(6) motions to dismiss, "involves a greater degree of flexibility" than a Rule 12(b)(6) motion to dismiss because "the bankruptcy court, which given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit," and "is also uniquely situated to determine the potential effect of a judgment against the trustee on the debtor's estate."[252] To satisfy the "*prima facie* case standard," "the movant must do more than meet the liberal notice-pleading

[248] *Id.* at 438 (cleaned up).

[249] *Id.* at 435.

[250] The court acknowledges that the *Barton* doctrine itself would not be directly applicable here because HMIT is proposing to bring the Proposed Complaint in the bankruptcy court – the "appointing" court of Seery.

[251] 678 F.3d 218 (3d Cir. 2012).

[252] *Id.* at 232-233 (cleaned up).

requirements of Rule 8."[253] "[I]f the [bankruptcy] court relied on mere notice-pleading standards rather than evaluating the merits of the allegations, the leave requirement would become meaningless."[254] This court agrees with the notion, that "[t]o apply a less stringent standard would eviscerate the protections" of the Gatekeeper Provision and Gatekeeper Orders.[255] The court notes, as well, that courts in the *Barton* doctrine context regularly hold evidentiary hearings on motions for leave to determine if the proposed complaint meets the necessary threshold for pursuing litigation. The Third Circuit in *VistaCare* noted that "[w]hether to hold a hearing [on a motion for leave to bring suit against a trustee] is within the sound discretion of the bankruptcy court,"[256] and that "the decision whether to grant leave may involve a 'balancing of the interests of all parties involved,'" which will ordinarily require an evidentiary hearing.[257] The Third Circuit applied "the deferential abuse of discretion standard" in considering whether the bankruptcy court's granting of leave should be affirmed on appeal.[258]

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[253] *In re World Mktg. Chi., LLC*, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) (cleaned up; collecting cases).

[254] *Leighton Holdings, Ltd. v. Belofsky (In re Kids Creek Partners, L.P.)*, 2000 WL 1761020, at *2 (N.D. Ill. Nov. 30, 2000).

[255] *World*, 584 B.R. at 743 (quoting *Leighton*, 2000 WL 1761020, at *2).

[256] *VistaCare*, 678 F.3d at 232 n.12.

[257] *Id.* at 233 (quoting *In re Kashani*, 190 B.R. 875, 886–87 (9th Cir. BAP 1995)). The Third Circuit noted that the bankruptcy court's holding of an evidentiary hearing on the motion for leave was appropriate (though not required in every case)). *Id.* at 232 n.12.

[258] *Id.* at 224 ("We review a bankruptcy court's decision to grant a motion for leave to sue a trustee under the deferential abuse of discretion standard.") (citing *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); *In re Beck Indus., Inc.*, 725 F.2d 880, 889 (2d Cir. 1984)). Courts of appeal routinely apply the deferential abuse of discretion standard to a bankruptcy court's decision regarding whether leave should be granted to sue a trustee. Although the Fifth Circuit has not squarely addressed this issue, all nine Circuits that have considered this issue have also adopted an abuse-of-discretion standard. *See In re Bednar*, 2021 WL 1625399, at *3 (B.A.P. 10th Cir. Apr. 27, 2021) ("[T]he Bankruptcy Court's decision to decline leave to sue the Trustee under the *Barton* doctrine is reviewed for abuse of discretion . . . .") (citing *VistaCare*); *SEC v. N. Am. Clearing, Inc.*, 656 F. App'x 969, 973–74 (11th Cir. 2016) ("Although we have never determined the standard of review for a challenge to the denial of a *Barton* motion, other Circuits that have considered the issue review a lower court's ruling on a *Barton* motion for an abuse of discretion.") (citing *VistaCare*); *In re Lupo*, 2014 WL 4653064, at *3 (B.A.P. 1st Cir. Sept. 17, 2014) ("Appellate courts review a bankruptcy court's decision to deny a motion for leave to sue under the abuse of discretion standard.") (citing *VistaCare*); *Grant, Konvalinka & Harrison, PC v. Banks (In re McKenzie)*, 716 F.3d 404, 422 (6th Cir. 2013) (holding that abuse-of-discretion standard applies to *Barton* doctrine); *Alexander v. Hedback*, 718 F.3d 762 (8th Cir. 2013) (applying abuse-of-discretion standard to *Barton* doctrine).

The Fifth Circuit has affirmed a bankruptcy court's conducting of an evidentiary hearing, in the context of applying a *Barton* doctrine analysis as to a proposed lawsuit against a trustee, without any concern that the inquiry was somehow improper.[259]

Similarly, courts in the vexatious litigant context, where there was an injunction requiring a movant to seek leave to pursue claims, have required movants to "show that the claims sought to be asserted have sufficient merit," including that "the proposed filing is both procedural and legally sound," and "that the claims are not brought for any improper purpose, such as harassment."[260] "For a prefiling injunction to have the intended impact, it must not merely require a reviewing official to apply an already existing level of review," such as the "plausibility" standard for a Rule 12(b)(6) motion.[261] Rather, courts apply "an additional layer of review," and "may appropriately deny leave to file when even part of the pleading fails to satisfy the reviewer that it warrants a federal civil action" or that the "litigant's allegations are unlikely," especially "when prior cases have shown the litigant to be untrustworthy or not credible . . . ."[262]

In summary, the court rejects HMIT's positions: (a) that it need only show, at most, that the allegations in the Proposed Complaint are "plausible" under the Rule 12(b)(6) standard for motions to dismiss; and (b) that this court improperly conducted an evidentiary hearing on the Motion for Leave (i.e., that consideration of evidence in this context is impermissible). The court notes, again, that HMIT's argument that this court is not permitted to consider evidence in making its "colorability" determination is completely contradictory to HMIT's actions in filing the Motion

[259] *See Howell v. Adler (In re Grodsky)*, 2019 WL 2006020, at *4 (Bankr. E.D. La. Apr. 11, 2019) (dismissing an action under *Barton* after "a close examination" by the bankruptcy court of the evidence regarding the trustee's actions and finding that "the plaintiffs' allegations are not based in fact"), *aff'd* 799 F. App'x 271 (5th Cir. 2020).

[260] *Silver v. City of San Antonio*, 2020 WL 3803922, at *1 (W.D. Tex. July 7, 2020) (denying leave to file lawsuit); *see also Silver v. Perez*, 2020 WL 3790489, at *1 (W.D. Tex. July 7, 2020) (same).

[261] *Silver*, 2020 WL 3803922, at *6.

[262] *Id.*

for Leave, where it attached two Dondero declarations as part of 350 pages of "objective evidence" that "supported" its motion.

The court concludes that the appropriate standard to be applied in making its "colorability" determination in ***this*** bankruptcy case, in the exercise of its gatekeeping function pursuant to the two Gatekeeper Orders and the Gatekeeper Provision in ***this*** Plan, is a broader standard than the "plausibility" standard applied to Rule 12(b)(6) motions to dismiss. It is, rather, a standard that involves ***an additional level of review***—one that places on the proposed plaintiff a burden of making a prima facie case that its proposed claims are ***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***. Additionally, this court may, and should, take into consideration its ***knowledge*** of the ***bankruptcy proceedings*** and ***the parties*** and any additional evidence presented at the hearing on the Motion for Leave. For ease of reference, the court will refer to this standard of "colorability" as the "Gatekeeper Colorability Test." The court considers this test as a sort of hybrid of what the *Barton* doctrine contemplates and what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place.

2. <u>HMIT's Proposed Complaint Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test or Even Under a Rule 12(b)(6) "Plausibility" Standard.</u>

The court finds, in the exercise of its gatekeeping function under the Gatekeeper Orders and the Gatekeeping Provision in the Plan, that the Motion for Leave should be denied as the claims set forth in the Proposed Complaint are not "colorable" claims. The court makes this determination after considering evidence admitted at the June 8 Hearing, including the testimony of Dondero, Patrick, and Seery, and the numerous exhibits offered by HMIT and the Highland Parties. HMIT's Proposed Claims lack foundation, are without merit, and appear to be motivated by the improper purposes of vexatiousness and harassment. But, even under the less stringent

"plausibility" standard under Rule 12(b)(6) motions to dismiss, where all allegations must be accepted as true, HMIT's "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," fail to "[]cross the line from conceivable to plausible."[263]

HMIT makes unsubstantiated and conclusory allegations in its Motion for Leave and Proposed Complaint that the Claims Purchasers purchased the large allowed unsecured claims only because Seery, while he was CEO of Highland prior to the Effective Date of the Plan, provided them with MNPI and assurances that the Purchased Claims were very valuable. This was allegedly in exchange for their agreement to approve, in their future capacities as members of the CTOB, excessive compensation for Seery in his capacity as the Claimant Trustee after the Effective Date of the Plan. This was an alleged *quid pro quo* that HMIT claims establishes Seery's breach of fiduciary duties and the Claims Purchasers' conspiracy to participate in that breach. As discussed below, these allegations are unsubstantiated and conclusory allegations, and they do not support the inferences that HMIT needs the court to make when it analyzes whether the Proposed Claims are "colorable"—or even merely plausible.

a) HMIT's Proposed Breach of Fiduciary Duties Claim Set Forth in Count I of the Proposed Complaint

Based on HMIT's Proposed Complaint and the evidence admitted at the June 8 Hearing, the court finds that HMIT has not pleaded facts that would support a "colorable" breach of fiduciary duties claim against Seery, under this court's Gatekeeper Colorability Test, nor a plausible claim pursuant to the Rule 12(b) standard. HMIT alleges that Seery breached his fiduciary duties (i) "[b]y disclosing material non-public information to Stonehill and Farallon"

[263] *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

before their purchase of certain Highland claims, and (ii) by receiving "compensation paid to him under the terms of the [CTA] since the Effective Date of the Plan in August 2021."[264]

As earlier noted, both the Reorganized Debtor and the Claimant Trust are organized under Delaware law and, thus, its proposed Count I against Seery for breach of fiduciary duties to these entities is governed by Delaware law under the "Internal Affairs Doctrine."[265] Under Delaware law, "[t]o bring a claim for breach of fiduciary duty, a plaintiff must allege '(1) that a fiduciary duty existed and (2) that the defendant breached that duty.'"[266] HMIT fails to plausibly or sufficiently allege either element such that its breach of fiduciary duty claims against Seery could survive.

Under Delaware law, officers and directors generally owe fiduciary duties only to the entity and its stakeholders as a whole, not to individual shareholders.[267] Because Seery did not owe any "duty" to HMIT directly and individually, the Proposed Complaint fails to state a claim for breach of fiduciary duties to HMIT. HMIT's "legal conclusion[]" that Seery "owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate"[268] "do[es] not suffice" to plausibly allege the existence of any actionable fiduciary relationship.[269] And as discussed earlier in the standing section, HMIT does not have standing to assert a breach of fiduciary claim derivatively on behalf

[264] Proposed Complaint ¶¶ 64–67.

[265] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[266] *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at *30 (N.D. Tex. Apr. 15, 2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at *8 (Del. Ch. Feb. 28, 2020)).

[267] *See Gilbert v El Paso Co.*, 1988 WL 124325, at *9 (Del. Ch. Nov. 21, 1988) ("[D]irectors' fiduciary duty runs to the corporation and to the entire body of shareholders generally, as opposed to specific shareholders or shareholder subgroups.") *aff'd,* 575 A.2d 1131 (Del. 1990); *Klaassen v Allegro Dev. Corp.*, 2013 WL 5967028, at *11 (Del. Ch. Nov. 7, 2013) (same).

[268] Proposed Complaint ¶ 63.

[269] *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

of the Claimant Trust or Reorganized Debtor. But even if HMIT had sufficiently alleged the existence of a fiduciary duty by Seery to HMIT—or to the Reorganized Debtor or Claimant Trust that HMIT would have standing to assert—Seery's alleged communications with Farallon would not have breached those duties.

HMIT alleges that Seery ""disclose[d] material non-public information to Stonehill and Farallon," and they "acted on inside information and Seery's secret assurances of great profits."[270] But the Proposed Complaint does not make any factual allegations regarding HMIT's "conclusory allegations," and its "legal conclusions" are "purely speculative, devoid of factual support," and therefore "stop[] short of the line between possibility and plausibility of entitlement to relief"[271] (and certainly stop short of being "colorable"). HMIT never alleges when any of these purported communications occurred, what material non-public information Seery provided, and what "assurances of great profits" he made to Farallon or to Stonehill. At the June 8 Hearing, Dondero could only clarify that he believed the MGM Email to have been MNPI and that he ***believed*** that Seery ***must have*** communicated that MNPI to Farallon at some point between December 17, 2020 (the date the MGM Email was sent) and May 28, 2021 (the day that Dondero alleges to have had three telephone calls with representatives of Farallon, Messrs. Patel and Linn, regarding Farallon's purchase of the bankruptcy claims). Dondero alleges that, during these phone calls, Patel and Linn gave Dondero no reason for their purchase of the claims that "made [any] sense." Dondero and Patrick also both testified that neither of them had any personal knowledge: (a) of a *quid pro quo* arrangement between Seery and the Claims Purchasers, (b) of Seery having actually communicated any information from the MGM Email to Farallon, or (c) whether Seery's post-Effective Date compensation had or had not been negotiated in an arms' length transaction. Dondero only

[270] Proposed Complaint ¶¶ 3, 64; *see also id.* ¶¶ 13–14, 40, 47, 50.

[271] *Reed v. Linehan (In re Soporex, Inc.)*, 463 B.R. 344, 367, 386 (Bankr. N.D. Tex. 2011) (cleaned up).

speculates regarding these things, because it "made no sense" to him that the Claims Purchasers would have acquired the bankruptcy claims without having received the MNPI. But HMIT admits in the Proposed Complaint that Farallon and Stonehill purchased the Highland claims at discounts of 43% to 65% to their allowed amounts. Thus, they would receive at least an 18% return based on publicly available estimates in Highland's court-approved Disclosure Statement.[272] The evidence established that, if the acquisition of the UBS claims is excluded—recall that the UBS claims were not purchased until August 2021, which was after the May 28, 2021 phones calls that Dondero made to Farallon personnel—the Claims Purchasers would have expected to net over $33 million in profits, or nearly a 30% return on their investment, had Highland met its projections (this is based on the aggregate purchase price of $113 million for the non-UBS claims purchased in the Spring 2021).

To be clear, the only purported MNPI identified in HMIT's Proposed Complaint was the MGM Email Dondero sent to Seery containing "information regarding Amazon and Apple's interest in acquiring MGM." But, the evidence showed that this information was widely reported in the financial press at the time. Thus, it could not have constituted MNPI as a matter of law.[273] Moreover, the evidence showed that Dondero ***did not*** communicate in the MGM Email the actual inside information that he claimed to have obtained as a board member of MGM–which was that Amazon had met MGM's "strike price" and that the MGM board was going into exclusive negotiations with Amazon to culminate the merger with them (and, thus, Apple was no longer considered a potential purchaser). Dondero admitted that he included Apple in the MGM Email for the purpose of making it look like there was a competitive process still ongoing. In other

[272] Proposed Complaint ¶¶ 3, 37, 42.

[273] *See, e.g.*, *SEC v. Cuban*, 2013 WL 791405, at *10–11 (N.D. Tex. Mar. 5, 2013) (holding that information is not "material, nonpublic information" and "'becomes public when disclosed to achieve a broad dissemination to the investing public'") (quoting *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997)).

words, the MGM Email, at the very least, did not include MNPI and, at worst, was deceptive regarding the status of the negotiations between MGM and potential purchasers.

As to HMIT's allegations that Seery's post-Effective Date compensation is "excessive" and that the negotiations between Seery and the CTOB "were not arm's-length,"[274] the evidence at the June 8 Hearing reflected that the allegations are completely speculative, without any foundation whatsoever, and lack merit. And they are also simply not plausible. HMIT fails to allege facts in the Proposed Complaint that would support a reasonable inference that Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty.[275]

b) HMIT's Proposed Claims Set Forth in Counts II (Knowing Participation in Breach of Fiduciaries) and III (Conspiracy)

HMIT seeks to hold the Claims Purchasers secondarily liable for Seery's alleged breach of fiduciaries duties on an aiding and abetting theory in Count II of the Proposed Complaint[276] and, along with Seery, on a civil conspiracy theory of liability in Count III of the Proposed Complaint.[277] Because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting breach of fiduciary duties claim against the Claims Purchasers (Count II) is also governed by Delaware law.[278] HMIT's conspiracy cause of action against the Claims

[274] Proposed Complaint ¶¶ 4, 13, 54, 74.

[275] *See Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (dismissing claim for breach of duty of loyalty against a director where "conclusory allegations" failed to give rise to inference that director failed to perform fiduciary duties); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 507 (Del. Ch. 2000) (dismissing claim for breach of fiduciary duty where "[a]though the complaint makes the conclusory allegation that the defendants breached their duty of disclosure in a 'bad faith and knowing manner,' no facts pled in the complaint buttress that accusation.").

[276] Proposed Complaint ¶¶ 69-74.

[277] Proposed Complaint ¶¶ 75-81.

[278] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

Purchasers and Seery (Count III), on the other hand, does not involve a matter of "internal affairs" or of corporate governance, so it is governed by Texas law under the Plan.[279]

As an initial matter, because HMIT does not present either a "colorable"—or even plausible claim—that Seery breached his fiduciary duties, it cannot show that it has alleged a "colorable" or plausible claim for secondary liability for the same alleged wrongdoing.[280] In addition, HMIT's civil conspiracy claim against the Claims Purchasers and Seery is based entirely on Dondero's speculation and unsupported inferences and, thus, HMIT has not "colorably" alleged, or even plausibly alleged, its conspiracy claim. Under Texas law, "civil conspiracy is a theory of vicarious liability and not an independent tort."[281] "[T]he elements of civil conspiracy [are] "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result."[282] While HMIT alleges that "Defendants conspired with each other to unlawfully breach fiduciary duties,"[283] it is simply a "legal conclusion" and not the kind of allegation that the court must assume to be true even for purposes of determining plausibility under a motion to dismiss.[284]

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[279] *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M)(which provides for the application of Texas law to "the rights and obligations arising under this Plan" except for "corporate governance matters.")

[280] *See English v. Narang*, 2019 WL 1300855, at *14 (Del. Ch. Mar. 20, 2019) ("As a matter of law and logic, there cannot be secondary liability for aiding and abetting an alleged harm in the absence of primary liability.") (cleaned up; collecting cases); *Hill v. Keliher*, 2022 WL 213978, at *10 (Tex. App. Jan. 25, 2022) ("[A] defendant's liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.") (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)). Because HMIT's breach of fiduciary duty claim is governed by Delaware law, its aiding and abetting theory of liability is also governed by Delaware law. *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas). By contrast, "conspiracy is not an internal affair" or a matter of corporate governance, so it is governed by Texas law under the Plan. *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M).

[281] *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019).

[282] *Id.* at 141 (cleaned up).

[283] Proposed Complaint ¶ 76.

[284] *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 555 U.S. at 565–66).

HMIT repeats four times that Seery provided MNPI to Farallon and Stonehill as a "as a *quid pro quo*" for "additional compensation,"[285] each time based upon conclusory allegations based "upon information and belief" and, frankly, pure speculation from Dondero that his imagined "scheme," "covert *quid pro quo,*" and secret "conspiracy" between Seery, on the one hand, and Farallon and Stonehill, on the other,[286] ***must have*** occurred because "[i]t made no sense for the [Claims] Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk" (i.e., "[t]he counter-intuitive nature of the purchases at issue compels the conclusion that the [Claims] Purchasers acted on inside information and Seery's assurance of great profits.")[287] Importantly, HMIT admits that the Claims Purchasers would have turned a profit based on the information available to them at the time of their acquisitions of the Purchased Claims.[288] HMIT's allegations about the level of potential profits were contradicted by their own allegations and other evidence admitted at the June 8 Hearing. But Dondero's speculation about what level of projected return would be sufficient to justify the acquisition of the claims by the Claims Purchasers, or any other third-party investor, does not give rise to a plausible inference that they acted improperly.[289] Thus, HMIT cannot meet

[285] Proposed Complaint ¶ 77; *see also id.* ¶¶ 4, 47, 74.

[286] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.").

[287] *Id.*

[288] *See, e.g.*, *id.* ¶ 3 (alleging that acquiring the claims "did not offer a ***sufficient*** potential profit to justify the publicly disclosed risk")(emphasis added); ¶ 43 ("Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment . . . ."); ¶ 49 ("Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any* ***significant*** profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.") (third emphasis added).

[289] In fact, the court did not allow Mr. Dondero to testify regarding what kind of information a hypothetical investor in bankruptcy claims would require or what level of potential profits would justify the purchase of bankruptcy claims by investors in the bankruptcy claims trading market because he was testifying as a fact witness, not an expert. Thus, the court only allowed Dondero to testify as to what data ***he*** (or entities he controls or controlled) would rely on, what ***his*** risk tolerance would have been, and what level of potential profits ***he*** would have required to purchase an allowed unsecured bankruptcy claim in a post-confirmation situation. June 8 Hearing Transcript, 129:6-130:4.

its burden, under the Gatekeeper Colorability Test, of making a prima facie showing that its allegations do not lack foundation or merit. Nor can it meet a plausibility standard.

In addition, contrary to the Proposed Complaint's statement that it would have been "***impossible*** for Stonehill and Farallon (in the absence of insider information) to forecast ***any*** significant profit at the time of their multi-million-dollar investments," the evidence showed there were already reports in the financial press that MGM was engaging with Amazon, Apple, and others in selling its media portfolio, and thus the prospect of an MGM transaction increasing the value of, and return on, the Purchased Claims, "at the time of their multi-million-dollar investments" was publicly available information.[290] HMIT's suggestion that the Claims Purchasers were in possession of inside information not publicly available when they acquired the Purchased Claims is simply not plausible. Nor is HMIT's allegation that "[u]pon information and belief" Farallon "conducted no due diligence but relied on Seery's profit guarantees" plausible. The allegations regarding Farallon not conducting any due diligence are based, again, entirely on Dondero's speculation and inferences he made from what Patel and Linn (of Farallon) allegedly told him on May 28, 2021; Dondero did not testify that either Patel or Linn ever told him specifically that they had conducted no due diligence. HMIT's allegations in the Proposed Complaint that ***Farallon*** "conducted no due diligence," are based on Dondero's speculation, unsubstantiated, and contradicted by the testimony of Seery, who testified that emails to him from Linn in June 2020 and later in January 2021 indicated to him that Farallon, at least, had been conducting some level of due diligence in that they had been following and paying attention to the

[290] The court notes, as well, that the Claim Purchasers acquired the UBS claims in August 2021—approximately two and a half months ***after*** the announcement of the MGM-Amazon transaction (which was on May 26, 2021)—a fact that HMIT makes no attempt to harmonize with its conspiracy theory that the Claims Purchasers profited from the misuse of MNPI allegedly given to them by Seery.

Highland case.[291] In addition, there are no allegations in the Proposed Complaint regarding whether Stonehill conducted due diligence or not, and Patrick testified that neither he nor HMIT had any personal knowledge of how much due diligence Farallon or Stonehill did prior to acquiring the Purchased Claims.[292] The court finds and concludes that HMIT's allegations of aiding and abetting and conspiracy in Counts II and III of the Proposed Complaint are based on unsubstantiated inferences and speculation, lack internal consistency, and lack consistency with verifiable public facts. Accordingly, HMIT has failed to show that these claims have a foundation and merit and has also failed to show that they are plausible.

c) HMIT's Proposed Claims Set Forth in Counts IV (Equitable Disallowance), V (Unjust Enrichment and Constructive Trust), and VI (Declaratory Relief) of the Proposed Complaint

i. Count IV (Equitable Disallowance).

In Count IV of its Proposed Complaint, HMIT seeks "equitable disallowance" of the claims acquired by Farallon's and Stonehill's special purpose entities Muck and Jessup, "to the extent over and above their initial investment," and, in the alternative, equitable subordination of their claims to all claims and interests, including HMIT's unvested Class 10 Contingent Claimant Trust Interest, "given [their] willful, inequitable, bad faith conduct" of allegedly "purchasing the Claims based on material non-public information" and being "unfairly advantaged" in "earning significant profits on their purchases."[293] As noted above, these remedies are not available to HMIT.[294]

First, HMIT's request to equitably subordinate the Purchased Claims to all claims and interests is not permitted because Bankruptcy Code § 510(c), by its terms, permits equitable

[291] *See* June 8 Hearing Transcript, 239:6-21.

[292] *See id.*, 310:19-312:2.

[293] Proposed Complaint ¶¶ 83-87.

[294] *See infra* pages 74-75.

subordination of a ***claim to other claims*** or an ***interest to other interests*** but does not permit equitable subordination of a ***claim to interests***.

Second, "equitable" disallowance of claims is not an available remedy in the Fifth Circuit pursuant to the *Mobile Steel* case.[295]

Third, reconsideration of an already-allowed claim in a bankruptcy case can only be accomplished through Bankruptcy Code § 502(j), which, pursuant to Federal Rule of Bankruptcy Procedure 9024, allows reconsideration of allowance of a claim that was allowed following ***a contest*** (which is certainly the case with respect to the Purchased Claims) based on the "equities of the case." But this is only if the request for reconsideration is made within the one-year limitation prescribed in Rule 60(c) of the Federal Rules of Civil Procedure. HMIT's request for disallowance of Muck and Jessup's Purchased Claims (if it could somehow be construed as a request for reconsideration of their claims), is clearly untimely, as it is being made well beyond a year since their allowance by this court following contests and approval of Rule 9019 settlements. Thus, the court finds that HMIT has not alleged a colorable or even plausible claim in Count IV of the Proposed Complaint and, therefore, the Motion for Leave should be denied.

ii. Count V (Unjust Enrichment and Constructive Trust)

In Count V of the Proposed Complaint, HMIT alleges that, "by acquiring the Claims using [MNPI], Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity" and that "[a]llowing [the Claims Purchasers] to retain their ill-gotten benefits would be unconscionable;" thus, HMIT alleges, the Claims Purchasers "should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment" and "a constructive trust should be imposed on such proceeds . . . ."[296]

[295] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

[296] Proposed Complaint ¶¶ 89-93.

HMIT alleges further that "Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or restitute all compensation he has received from the outset of his collusive activities" and "[a]lternatively he should be required to disgorge and restitute all compensation received since the Effective Date" over which a constructive trust should be imposed.[297] HMIT has not alleged a colorable or even a plausible claim for unjust enrichment or constructive trust in Count V.

Under Texas law,[298] "[u]njust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasi-contractual obligation to repay."[299] Thus, "when a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory."[300] Here, as noted above, HMIT's only alleged injury is a diminution of the value of its unvested Contingent Claimant Trust Interest by virtue of Seery's allegedly having wrongfully obtained excessive compensation, with the help of the Claims Purchasers. ***Yet Seery's compensation is governed by express agreements*** (i.e., the Plan and the CTA). Thus, HMIT's claim based on unjust enrichment is not an available theory of recovery.

iii. Count VI (Declaratory Relief)

HMIT seeks declaratory relief in Count VI of the Proposed Complaint, essentially, that Dondero's conspiracy theory is correct and that HMIT's would succeed on the merits with respect

[297] *Id.* ¶ 94.

[298] Under the Plan, Texas law governs HMIT's "claim" for unjust enrichment because it is not a "corporate governance matter." (Plan Art. XII.M.) It also governs HMIT's "claim" for constructive trust, which "is merely a remedy used to grant relief on the underlying cause of action." *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App. 2013).

[299] *Taylor v. Trevino*, 569 F. Supp. 3d 414, 435 (N.D. Tex. 2021) (cleaned up); *see also Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App. 2021) (same).

[300] *Taylor*, 569 F. Supp. 3d at 435 (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)).

to the Proposed Claims if it were permitted leave to bring them in an adversary proceeding.[301] But, a request for declaratory relief is not "an independent cause of action"[302] and "in the absence of any underlying viable claims such relief is unavailable."[303] This court has already found and concluded that HMIT would not have constitutional or prudential standing to bring the underlying causes of action in the Proposed Complaint. This court has also found and concluded that all of the Proposed Claims are without foundation or merit and are not even plausible and are all; being brought for the improper purpose of continuing Dondero's vexatious, harassing, bad-faith litigation. Thus, HMIT would not be entitled to pursue declaratory judgement relief as requested in Count VI of the Proposed Complaint.

d) HMIT Has No Basis to Seek Punitive Damages

HMIT separately alleges that the Claims Purchasers' and Seery's "misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others," thus entitling HMIT to an award of punitive damages under applicable law. But, HMIT abandoned its proposed fraud claim that was in its Original Proposed Complaint, so its sole claim for primary liability is Seery's alleged breach of his fiduciary duties. And under Delaware law, the "court cannot award punitive damages in [a] fiduciary duty action."[304]

[301] Proposed Complaint ¶¶ 96-99.

[302] *See Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 932 (5th Cir. 2023).

[303] *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at *2 (S.D. Tex. June 7, 2016) (citing *Collin Cty. v. Homeowners Ass'n for Values Essential to Neighborhoods*, 915 F.2d 167, 170–71 (5th Cir. 1990)); *see also Hopkins v. Cornerstone Am.*

[304] *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, 539 B.R. 31, 52 (S.D.N.Y. 2015) (citing *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006)), *aff'd* 682 F. App'x 24 (2d Cir. 2017).

3. HMIT Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test Because It Seeks to Bring the Proposed Complaint for Improper Purposes of Harassment and Bad-Faith, Vexatiousness.

Under this court's Gatekeeper Colorability Test, in addition to showing that its allegations and claims are not without foundation or merit, HMIT must also show that the Proposed Claims are not being brought for any improper purpose. Taking into consideration the court's knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, the court finds that HMIT is acting at the behest of, and under the control or influence of, Dondero in continuing to pursue harassing, bad faith, vexatious litigation to achieve his desired result in these bankruptcy proceedings. So, in addition to failing to show that its Proposed Claims have foundation and merit, HMIT cannot show that it is pursuing the Proposed Claims for a proper purpose and, thus, cannot meet the requirements under the Gatekeeper Colorability Test; HMIT's Motion for Leave should be denied.

IV. CONCLUSION

The court concludes, having taken into consideration both its knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, that HMIT's Motion for Leave should be denied for three independent reasons: (1) HMIT would lack constitutional standing to bring the Proposed Claims (and, thus, the federal courts would lack subject matter jurisdiction over the Proposed Claims); (2) even if HMIT would have constitutional standing to pursue the Proposed Claims, it would lack prudential standing to bring the Proposed Claims; and (3) even if HMIT would have both constitutional standing and prudential standing to bring the Proposed Claims, it has not met its burden under the Gatekeeper Colorability Test of showing that its Proposed Claims are "colorable" claims—that the Proposed Claims are not without foundation, not without merit, and not being pursued for an improper purpose. Moreover,

even if this court's Gatekeeper Colorability Test should be replaced with a Rule 12(b)(6) "plausibility" standard, the Proposed Claims are not plausible.

Accordingly,

IT IS ORDERED that HMIT's Motion for Leave be, and hereby is **DENIED**.

###End of Memorandum Opinion and Order###

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.	)	

DECLARATION OF RICHARD L. WYNNE IN SUPPORT OF HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLAIMANT TRUST, AND JAMES P. SEERY, JR.'S JOINT MOTION FOR AN ORDER REQUIRING SCOTT BYRON ELLINGTON AND HIS COUNSEL TO SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE GATEKEEPER PROVISION AND GATEKEEPER ORDERS

I, Richard L. Wynne, hereby declare under penalty of perjury as follows:

1. I make this declaration (this "Declaration") in support of *Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Motion for an Order Requiring Scott Byron Ellington and His Counsel to Show Cause Why They Should Not Be Held in Civil Contempt for Violating The Gatekeeper Provision and Gatekeeper Orders* (the "Motion"). I have personal knowledge of the facts set forth in this Declaration and, if called to testify, could and would testify competently to them. Capitalized terms used but not defined in this Declaration shall have the meanings ascribed to such terms in the Motion.

2. I am a partner at Hogan Lovells US LLP ("Hogan Lovells") and admitted to practice in California, New York and New Jersey. I am the lead partner representing Hon. Russell F. Nelms (Ret.) and John Dubel in their capacities as former Independent Directors of Strand

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Advisors, Inc., the general partner of Highland, during the Chapter 11 Case prior to the Effective Date.

3. Attached hereto as Exhibit 1 is a true and correct copy of a document subpoena served on Judge Nelms in the Stalking Action on or around November 12, 2022.

4. Attached hereto as Exhibit 2 is a true and correct copy of email correspondence from November and December 2022 from (i) John Dubel to Michael Hurst and (ii) Judge Nelms, Michael Hurst and Julie Pettit.

5. Attached hereto as Exhibit 3 is a true and correct copy of the deposition subpoena served on Judge Nelms in the Stalking Action on June 14, 2023.

6. Attached hereto as Exhibit 4 is a true and correct copy of a chain of correspondence between Hogan Lovells and Ms. Pettit from June and July 2023 (excluding attachments).

7. Attached hereto as Exhibit 5 is a true and correct copy of a deposition subpoena served on Judge Nelms in the Stalking Action on August 22, 2023.

8. Attached hereto as Exhibit 6 is a true and correct copy of an email from Julie Pettit to Hogan Lovells dated September 5, 2023, including the list of deposition topics attached to the email.

9. Attached hereto as Exhibit 7 is a true and correct copy of the Certification of John Dubel filed on February 20, 2023, in the New Jersey contempt action.

10. Attached hereto as Exhibit 8 is a true and correct copy of the Order to Show Cause and accompanying documents served on John Dubel on February 8, 2023.

11. Attached hereto as Exhibit 9 is a true and correct copy of a chain of correspondence between Hogan Lovells and Ms. Pettit between September 5, 2023 and September 13, 2023.

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

Executed on September 13, 2023 at Woodland Hills, California

/s/ Richard L. Wynne
Richard L. Wynne

CAUSE NO. DC-22-00304

SCOTT BRYON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
	§	
Plaintiff(s),	§	
vs.	§	**101ST JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY	§	
	§	
Defendant(s).	§	**DALLAS COUNTY, TEXAS**

RETURN OF SERVICE

Came to my hand on **Tuesday, November 8, 2022 at 11:25 AM,**
Executed at: **115 KAY LANE, WESTWORTH VILLAGE, TX 76114**
at **11:05 AM,** on **Saturday, November 12, 2022**, by individually and personally delivering to the within named:

HONORABLE RUSSELL NELMS

a true copy of this

SUBPOENA DUCES TECUM TO NON-PARTY HONORABLE RUSSELL NELMS with EXHIBITS A & B

And tendered a witness fee of $1.00, which was accepted, having first endorsed thereon the date of the delivery.

I am a person not less than eighteen (18) years of age and I am competent to make this oath. I am a resident of the State of Texas. I have personal knowledge of the facts and statements contained herein and aver that each is true and correct. I am not a party to nor related or affiliated with any party to this suit. I have no interest in the outcome of the suit. I have never been convicted of a felony or of a misdemeanor involving moral turpitude. I am familiar with the Texas Rules of Civil Procedure, and the Texas Civil Practice and Remedies Codes as they apply to service of process. I am certified by the Judicial Branch Certification Commission to deliver citations and other notices from any District, County and Justice Courts in and for the State of Texas in compliance with rule 103 and 501.2 of the TRCP."

My name is Adam Bridgewater, my date of birth is November 28, 1959 and my address is 5470 L.B.J. Freeway, Dallas, Texas, 75240 in the county of Dallas, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas, on Tuesday, November 15, 2022

By: _____

Adam Bridgewater PSC 237 - Exp 07/31/24
served@specialdelivery.com

CAUSE NO. DC-22-00304

SCOTT BRYON ELLINGTON,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	DALLAS COUNTY, TEXAS
PATRICK DAUGHERTY	§	
	§	
Defendant.	§	
	§	101st JUDICIAL DISTRICT
	§	

SUBPOENA DUCES TECUM TO NON-PARTY
HONORABLE RUSSELL NELMS

THE STATE OF TEXAS

TO: ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS OR OTHER PERSON AUTHORIZED TO SERVE AND EXECUTE SUBPOENAS, PURSUANT TO RULES 176 and 205 OF THE TEXAS RULES OF CIVIL PROCEDURE, GREETINGS:

YOU ARE HEREBY COMMANDED TO SUMMON:

Honorable Russell Nelms*
115 Kay Lane
Westworth Village, Texas 76114-3533
(* or wherever he may be found)

to produce and permit inspection and copying of documents or tangible things shown on the attached Exhibit A and to provide the executed and notarized business records affidavit shown on the attached Exhibit B by 10:00 a.m. on or before November 18, 2022, by sending them to the undersigned counsel by email; or by mail to the following address: Michael K. Hurst, Lynn Pinker Hurst & Schwegmann, LLP, 2100 Ross Avenue, Suite 2700, Dallas, Texas 75201; or as otherwise agreed by counsel.

CONTEMPT: **Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. TEX. R. CIV. P. 176.8(a).**

DO NOT FAIL to return this writ to the issuing attorney with either the attached officer's return showing the manner of execution or the witness's signed memorandum showing that the witness accepted the subpoena.

Issued by counsel for Scott Byron Ellington:

/s/ Michael Hurst

Michael Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Michele Naudin
State Bar No. 24118898
mnaudin@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

ATTORNEYS FOR SCOTT B. ELLINGTON

OFFICER'S RETURN

Came to hand the _____ day of _____, 2022, at _____ o'clock ___.M., and executed by delivering a copy of this subpoena to the within named witness at the following time and place, to wit:

Delivered: _____, 2022

at _____ o'clock ___.M.

or not executed as to the witness for the following reason:

I actually and necessarily traveled _____ miles in the service of this Subpoena, in addition to any this mileage I may have traveled in the service of this process in this cause during the same trip.

Summoning Witness: $_____

Mileage: $_____ _____ County, Texas

By:_____

_____
(Print Name)

_____
(Print Address)

_____

_____
(Telephone Number)

EXHIBIT A

A. INSTRUCTIONS

1. Your responses should be complete and based on all information reasonably available to you at the time the response is made. Your responses must be preceded by the request to which they apply. These requests are ongoing in nature and you are requested to make timely amendments or supplements as new information becomes available during this case.

2. Any objections to these Requests must state the legal or factual basis for the objection and indicate the extent to which you are refusing to comply with the request. Please note that objections that are not made within the time required or which are obscured by numerous, unfounded objections, are waived unless the Court excuses the waiver for good cause. In addition, you should not object that any of the Requests calls for the production of information that is privileged. Instead, you should state that the information responsive to the request has been withheld and the privileges asserted justifying withholding that information.

3. Your responses to these Requests must be served at the agreed upon time and date, 09:00 CST on November 18, 2022, at the law offices of LYNN PINKER HURST & SCHWEGMANN, LLP, 2100 Ross Ave., Suite 2700, Dallas, Texas 75201.

4. With respect to any objection or assertion of privilege, you are state: (1) that production, inspection, or other requested action will be permitted as requested; (2) that the requested items are being served with the response; (3) that production, inspection, or other requested action will take place at a specified time and place (if you are objecting to the time and place of production); or (4) that no responsive items have been identified after a diligent search.

5. These Requests seek the production of electronic or magnetic data. Information that exists in electronic form is requested in its native or near-native format and should not be converted to imaged formats. Native format requires production in the same format in which the information was customarily created, used, and stored by you, with all metadata intact. The following are examples of the native or near-native forms in which specific types of electronically-stored information ("ESI") should be produced.

Microsoft Word documents	.doc, .docx
Microsoft Excel spreadsheets	.xls, .xlsx
Microsoft PowerPoint presentations	.ppt, .pptx
Microsoft Access databases	.mdb, .accdb
WordPerfect documents	.wpd
Adobe Acrobat documents	.pdf
Images	.jpg, .jpeg, .png, .tiff, .gif

Videos	.avi, .mpg, .mpeg, .mp4, .flv, .mov
Audio	.mp3
Email	Messages should be produced in a form that readily supports import into standard email client programs, such as those outlined in RFC 5322 (the internet email standard). For Microsoft Exchange or Outlook, that means .pst format. Single message production formats like .msg or .eml may be furnished, if source foldering data is preserved and produced. If your workflow requires that attachments be extracted and produced separately, those attachments should be produced in their native forms with parent/child relationships to the messages and containers preserved and produced in a delimited text file.
Databases	Unless the entire contents of a database are responsive, extract responsive content to a fielded and electronically searchable format preserving metadata values, keys and filed relationships. If doing so is not feasible, please identify and supply information concerning the schemae and query language of its export capabilities, so as to facilitate crafting a query to extract and export responsive data

Information that does not exist in native electronic formats or which require redaction of privileged content should be produced as single page .tiff images with OCR text furnished and logical unitization and family relationships preserved. Production of ESI should be made using a thumb/flash drive or, preferably, an FTP client.

6. For any documents you that you claim no longer exist or cannot be located, provide all of the following

a. A statement identifying the documents;
b. A statement of how and when the document ceased to exist or when it could no longer be located;

c. The reasons for the document's nonexistence or loss;
d. The identity, address, and job title of each person having knowledge about the nonexistence or loss of the document; and
e. The identity of any other document evidencing the nonexistence or loss of the document or any fact concerning the nonexistence or loss.

7. For any documents that you claim are protected by privileged, pleas produce a log of any such privileged documents.

8. The date range for these Requests is from November 15, 2020 through the entry of a final, unappealable judgment or other disposition of this action.

B. DEFINITIONS

1. "You," "Your," or "Honorable Russell Nelms" means Honorable Russell Nelms, and your agents, attorneys, employees, or representatives.

2. "Defendant," or "Daugherty" means Defendant Patrick Daugherty, his agents, attorneys, accountants, employees, partners or other persons occupying similar positions or performing similar functions, and their predecessors, successors or affiliates, and their respective agents, attorneys, accountants, employees, partners or other persons occupying similar positions or performing similar functions.

3. "Plaintiff" means Plaintiff Scott Byron Ellington.

4. "Ellington Party" means Scott Byron Ellington (including any nicknames he may have been called, including but not limited to any references to "Apple Dumping Gang," "Cabal," "Buffoonery," and "Pink Shrek"), Byron Ellington, Marcia Maslow, Adam Maslow, the two minor children of Marcia and Adam Maslow, Stephanie Archer and her minor child, and any person who was then accompanying any of the aforementioned individuals.

5. "Ellington Location" means 120 Cole Street, Dallas, Texas 75207, 3825 Potomac Ave, Dallas, Texas 75205, 4432 Potomac, Dallas, Texas 75025, 430 Glenbrook Dr., Murphy, Texas 75094, 5101 Creekside Ct., Parker, Texas 75094, any other residence or place of business of any Ellington Party, and any other location You believed to be associated with any Ellington Party.

6. "Ellington Recordings" means all electronic recordings of any Ellington Party or Ellington Location, including any persons or vehicles at such Ellington Locations.

7. "Petition" means the Plaintiff's Original Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction.

8. "Documents" should be afforded the broadest possible definition and includes (by way of example, only, and **not** as an exclusive list) any written, recorded, or graphic material of any kind or description, whether sent or received or neither, including originals, non-identical copies (whether different from the original because of marginal notes or other material inserted therein or attached thereto, or otherwise), drafts (and both sides thereof), and including, but not limited to, papers, letters, memoranda, journals, notes, telephone messages or memos, minutes, opinions, reports, contracts, agreements, correspondence, telegraphs, cables, e-mails, telex messages, text messages (SMS), multimedia messages (MMS), online access data (including GPS data and internet browser search history), social media posts and messages on platforms including but not limited to Facebook, Snapchat, Instagram, LinkedIn, and the like, messages and message attachments on messaging platforms including but not limited to Telegram, Signal, Kik, WhatsApp, Facebook Messenger and the like, reports and recordings of telephone and other conversations, or other interviews, or conferences or other meetings, photographs, negatives, Photostats, layouts, drawings, sketches, specifications, blueprints, brochures, fliers, advertisements, data sheets, data processing cards, magnetic discs, tapes and chips, usb drives, computer printouts, recordings and tapes, video recordings and tapes, purchase orders, invoices, diaries, desk calendars, appointment books, logs and things similar to any of the foregoing that are in your possessions, custody, control, agency, or known by you to exist, or that possession, custody, control, agency of your attorney.

C. REQUESTS FOR PRODUCTION

Please produce the following:

1. Any and all communications and documents from or between You and Daugherty relating to Scott Byron Ellington.

2. Any and all communications and documents from or between You and Daugherty relating to any Ellington Party, Ellington Location, or Ellington Recording.

3. Any and all communications and documents relating to any investigation conducted by Daugherty relating to Scott Byron Ellington.

4. Any and all communications and documents relating to any compilation of data by Daugherty regarding Scott Byron Ellington.

5. Any assets or list(s) of assets of Scott Byron Ellington provided to you by Daugherty.

6. Any and all communications and documents relating to any Ellington Location.

7. Any photos or videos you have received from Daugherty relating to any Ellington Location.

8. Any photos or videos you have received from Daugherty relating to any Ellington Party.

9. Any photos or videos you have received from Daugherty relating to Greg Brandstatter at any Ellington Location.

10. Any photos or videos you have received from Daugherty relating to Sarah Bell (formerly Goldsmith) at any Ellington Location.

11. Any and all communications in which any party acknowledges receipt of, asks questions regarding, expressed "appreciation" for, requests additional information related to, or otherwise discusses any information Daugherty provided regarding Scott Byron Ellington, any Ellington Party, Ellington Location, or any Ellington Recording.

CAUSE NO. DC-22-00304

SCOTT BRYON ELLINGTON,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**DALLAS COUNTY, TEXAS**
PATRICK DAUGHERTY	§	
	§	
Defendant.	§	
	§	**101st JUDICIAL DISTRICT**
	§	

EXHIBIT B

AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF _____ §
§
COUNTY OF _____ §

I, _____, being first duly sworn, do hereby depose and state as follows:

1. My name is _____, I am of sound mind, capable of making this affidavit, am personally acquainted with the facts stated herein and such facts are true and correct.

2. I hold the position of _____ with _____ and am the duly authorized custodian of records. Exhibit 1 attached hereto is a true copy of all the records of _____ responsive to SCOTT BYRON ELLINGTON's subpoena duces tecum noticed and served on _____, 2022. These records are kept by _____ in the regular course of business, and it was the

regular course of business of _____, with knowledge of the act, event, condition, opinion, or diagnoses, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the originals or exact duplicates of the originals.

3. I affirm under penalty of perjury that, to the best of my knowledge and belief, the above is true and correct.

AFFIANT STATES NOTHING FURTHER.

Signature:_____

Printed Name: _____

BEFORE ME, the undersigned notary, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and, after being by me first duly sworn, declared that the statements therein contained are true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this _____ day of, _____, 2022.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF _____

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Beverly Congdon on behalf of Michael K. Hurst
Bar No. 10316310
bcongdon@lynnllp.com
Envelope ID: 69390889
Status as of 10/20/2022 8:16 AM CST

Associated Case Party: PATRICK DAUGHERTY

Name	BarNumber	Email	TimestampSubmitted	Status
RUTH ANN DANIELS		RDANIELS@GRAYREED.COM	10/19/2022 5:31:00 PM	SENT
Drake M.Rayshell		drayshell@grayreed.com	10/19/2022 5:31:00 PM	SENT
Andrew K.York		dyork@grayreed.com	10/19/2022 5:31:00 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Susan Langley		slangley@grayreed.com	10/19/2022 5:31:00 PM	SENT
Nancy Ward		nward@grayreed.com	10/19/2022 5:31:00 PM	SENT
Julie Pettit		jpettit@pettitfirm.com	10/19/2022 5:31:00 PM	SENT
Beverly Congdon		bcongdon@lynnllp.com	10/19/2022 5:31:00 PM	SENT
Patricia Perkins Mayes		pperkins@pettitfirm.com	10/19/2022 5:31:00 PM	SENT
Michael K.Hurst		mhurst@lynnllp.com	10/19/2022 5:31:00 PM	SENT
Mary GoodrichNix		mnix@lynnllp.com	10/19/2022 5:31:00 PM	SENT
Nathaniel A.Plemons		nplemons@lynnllp.com	10/19/2022 5:31:00 PM	SENT
Natalie Clark		nclark@lynnllp.com	10/19/2022 5:31:00 PM	SENT
Michele Naudin		mnaudin@lynnllp.com	10/19/2022 5:31:00 PM	SENT
Gina Flores		gflores@lynnllp.com	10/19/2022 5:31:00 PM	SENT

From:
Sent: Wednesday, December 14, 2022 6:02 PM
To: John Dubel
Subject: Fwd: Ellington v. Dougherty

-----Original Message-----
From: jdubel@aol.com
To: MHurst@lynnllp.com <MHurst@lynnllp.com>
Sent: Mon, Dec 5, 2022 9:47 pm
Subject: Ellington v. Dougherty

Dear Mr. Hurst:

Russ Nelms forwarded me the below email exchange.

I have been traveling for the last week or so and I understand that you may have tried to serve me with a similar subpoena. Assuming that it is the same as Russ', I can make a similar statement that I have no documents that are responsive to such subpoena. To clarify, I currently have no such documents, and I have no recollection of ever having received or possessed any such documents.

John S. Dubel

On Sunday, November 20, 2022, 9:58 PM, Michael K. Hurst <MHurst@lynnllp.com> wrote:

Thanks Russ

MICHAEL K. HURST, Partner
Board Certified – Civil Trial Law
Texas Board of Legal Specialization

Board Certified – Civil Trial Advocate
National Board of Trial Advocacy

Lynn Pinker Hurst & Schwegmann
Direct 214 981 3838
Main 214 981 3800
mhurst@lynnllp.com

Top 100 Lawyers in Texas and DFW – Super Lawyers
Top Commercial Litigation Lawyer in DFW – Chambers & Partners
Lawyer of the Year – Best Lawyers (2021, 2023)
Best Lawyers Hall of Fame – D Magazine (2022)

From: Russell Nelms < >
Sent: Wednesday, November 16, 2022 11:34 AM
To: Michael K. Hurst <MHurst@lynnllp.com>
Cc: Julie Pettit <jpettit@pettitfirm.com>
Subject: Ellington v. Dougherty

Dear Mr. Hurst:

I have received your subpoena duces tecum with respect to the referenced matter.

I have no documents that are responsive to the subpoena. To clarify, I currently have no such documents, and I have no recollection of ever having received or possessed any such documents.

Because my own practice was limited to federal courts, I am not certain of the correct procedure to formally respond to the subpoena. If you require an affidavit that recites in substance what I have communicated above, please let me know.

Best regards, Russell Nelms

CAUSE NO. DC-22-00304

SCOTT BYRON ELLINGTON,	§	**IN THE DISTRICT COURT**
	§	
	§	
Plaintiff(s),	§	
vs.	§	**101ST JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant(s).	§	**DALLAS COUNTY, TEXAS**

RETURN OF SERVICE

Came to my hand on **Wednesday, June 14, 2023 at 11:45 AM,**
Executed at: **115 KAY LANE, WESTWORTH VILLAGE, TX 76114**
at **3:00 PM,** on **Wednesday, June 14, 2023**, by individually and personally delivering to the within named:

RUSSELL NELMS

a true copy of this

SUBPOENA FOR THE DEPOSITION OF NON-PARTY HONORABLE RUSSELL NELMS and EXHIBIT 1- PLAINTIFF'S NOTICE OF INTENTION TO TAKE THE ORAL AND VIDEOTAPED DEPOSITION OF NON-PARTY HONORABLE RUSSELL NELMS

And tendered a witness fee of $10.00, which was accepted, having first endorsed thereon the date of the delivery.

I am a person not less than eighteen (18) years of age and I am competent to make this oath. I am a resident of the State of Texas. I have personal knowledge of the facts and statements contained herein and aver that each is true and correct. I am not a party to nor related or affiliated with any party to this suit. I have no interest in the outcome of the suit. I have never been convicted of a felony or of a misdemeanor involving moral turpitude. I am familiar with the Texas Rules of Civil Procedure, and the Texas Civil Practice and Remedies Codes as they apply to service of process. I am certified by the Judicial Branch Certification Commission to deliver citations and other notices from any District, County and Justice Courts in and for the State of Texas in compliance with rule 103 and 501.2 of the TRCP."

My name is Adam Bridgewater, my date of birth is November 28, 1959 and my business address is 5470 L.B.J. Freeway, Dallas, Texas, 75240 in the county of Dallas, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas, on Thursday, June 15, 2023

By: _____

Adam Bridgewater PSC 237 - Exp 07/31/24
served@specialdelivery.com

CAUSE NO. DC-22-00304

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
	§	
v.	§	**101st JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

SUBPOENA FOR THE DEPOSITION OF NON-PARTY HONORABLE RUSSELL NELMS

TO: Any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Texas Rule of Civil Procedure 176.5.

YOU ARE COMMANDED to summon:

Deponent:	Russell Nelms
Address:	115 Kay Lane Westworth Village, Texas 76114 *Or wherever he may be found*

TO APPEAR AT:

Location:	The Pettit Law Firm 2101 Cedar Springs, Ste. 1540 Dallas, Texas
Date:	Thursday, June 22, 2023
Time:	9:30 AM

The above named Deponent is hereby commanded to appear at the time, date, and place set forth above for deposition in the above-captioned case, and to remain in attendance from day to day until lawfully discharged. See Exhibit 1.

Warning: Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both

This subpoena is issued at the request of Plaintiff, whose attorney of record is Julie Pettit.

DATE OF ISSUANCE: June 14, 2023

SUBPOENA ISSUED BY:

/s/ Julie Pettit

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

Michael Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Michele Naudin
State Bar No. 24118898
mnaudin@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

ATTORNEYS FOR PLAINTIFF

RETURN OF SUBPOENA

I, _____, delivered a copy of this subpoena to _____, in person at _____, in _____ County, Texas, on _____, 2023, at _____ o'clock _____.m., and tendered to the witness a fee of $_____ in cash.

I, _____, was unable to deliver a copy of this subpoena to _____ _____ for the following reasons:

_____

_____

_____

_____

By: _____
Signature of person authorized by law or written order of trial court who has no interest in the lawsuit and is at least 18 years old.

Name: _____

Title: _____

ACCEPTANCE OF SERVICE OF SUBPOENA BY WITNESS UNDER TEXAS RULE OF CIVIL PROCEDURE 176

I accept service of this subpoena.

_____
Witness:

_____
Date

FEE FOR SERVICE OF SUBPOENA: $_____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record ***via electronic service*** on June 14, 2023:

/s/ Julie Pettit
Julie Pettit
Counsel for Plaintiff

EXHIBIT 1

CAUSE NO. DC-22-00304

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
	§	
v.	§	**101ST JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

PLAINTIFF'S NOTICE OF INTENTION TO TAKE THE ORAL AND VIDEOTAPED DEPOSITION OF NON-PARTY HONORABLE RUSSELL NELMS

TO: Honorable Russell Nelms, 115 Kay Lane Westworth Village, Texas 76114.

Please take notice that Scott Byron Ellington ("Plaintiff") by and through his attorneys of record, will take the oral and videotaped deposition of the Honorable Russell Nelms on **June 22, 2023 at 9:30 a.m.**, at the offices of The Pettit Law Firm, 2101 Cedar Springs, Suite 1540, Dallas, Texas 75201.

Such deposition will continue from day to day until completed before a certified court reporter. The deposition will be recorded and transcribed by a Certified Shorthand Reporter, Notary Public, or other officer duly authorized to administer oaths, and will be videotaped. Any and all of said stenographic and videotaped testimonies may be offered into evidence at the trial of the above-entitled and numbered cause and any related case.

Respectfully submitted,

/s/ Julie Pettit

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
David B. Urteago
State Bar No. 24079493
durteago@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

Michael Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Michele Naudin
State Bar No. 24118898
mnaudin@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following ***via electronic service*** on June 14, 2023:

Ruth Ann Daniels
rdaniels@grayreed.com
Andrew K. York
dyork@grayreed.com
Drake M. Rayshell
drayshell@grayreed.com
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Attorneys for Patrick Daugherty

/s/ Julie Pettit
Julie Pettit

McNeilly, Edward

From: McNeilly, Edward
Sent: Thursday, July 27, 2023 10:57 AM
To: 'Julie Pettit'
Cc: Thompson, Blayne R.; Hefter, Michael C.; Wynne, Rick; mhurst@lynnllp.com; John A. Morris
Subject: RE: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

Julie:

Thank you for your email. It highlights for us why deposing Judge Nelms is unnecessary, irrelevant and appears designed for the improper purpose of fishing for evidence to bolster claims in the bankruptcy case.

- First, you acknowledge that Judge Nelms did not have knowledge of Mr. Daugherty's alleged actions.

- Second, the timeline outlined in your email reinforces this point. Highland's chapter 11 plan was confirmed on February 22, 2021. The effective date of the plan was August 11, 2021. Judge Nelms is not, and has never been, a board member of the Highland Claimant Trust or any other post-confirmation entity. Indeed, the chapter 11 plan contemplated no role post-effective date for Judge Nelms, who ceased to have any official role with the Highland estate on August 11, 2021. In light of that, it is unsurprising that Judge Nelms involvement with the Highland estate post-confirmation (i.e., post-February 22, 2021) was minimal and certainly unrelated to any claims asserted by your client. Moreover, and critically, the allegedly improper additional settlement consideration that you assert Daugherty obtained relates to a settlement agreement executed on November 22, 2021, over three months after the effective date of the plan and thus over three months after Judge Nelms ceased to have any official role with the Highland estate. You also offer no basis for why the claim that "Seery and Clubok kept [Judge Nelms] in the dark regarding the stalking" is either factually accurate or relevant to the stalking complaint, as Judge Nelms in any event had no role in approving any such settlement agreement.

- Third, we agree entirely with the email sent by Joshua Levy at approximately 2:28 p.m. (CT) on July 25, 2023. The discovery efforts in this litigation (which Mr. Ellington had remanded to state court on the basis that the litigation was not connected to the bankruptcy) clearly implicate the Gatekeeper Order. We are copying John Morris on this response and, like Mr. Levy, request that you copy Mr. Morris on all correspondence with us, as the Gatekeeper Order and Mr. Morris's clients are clearly implicated.

As the ostensible purpose of the deposition is to confirm that Judge Nelms knows nothing about the stalking allegations, he is willing to make that statement in a declaration, which will save everyone time and money and will obviate the myriad problems with a deposition outlined above. Please draft a declaration for us and Judge Nelms to review.

Sincerely,

Edward McNeilly

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Tuesday, July 25, 2023 1:46 PM
To: McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Cc: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; mhurst@lynnllp.com

Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]
Edward and Blayne,

Thank you for your email. Please allow me to provide some context to why we are seeking the deposition of Judge Nelms.

- We have evidence in this case that Daugherty—with the assistance of at least one other individual—stalked Mr. Ellington, his assistant, his fiancé, his father, his sister, and his counsel.

- We have evidence in this case that Daugherty—with the assistance of at least one other—stalked Mr. Ellington's home, Mr. Ellington's office, Mr. Ellington's assistant, Mr. Ellington's sister's home, and Mr. Ellington's father's home. **(See attached Exhibit A for photos taken by Daugherty of each)**

- We have evidence that during the same time period, the same make/model of Daugherty's car was found to have been following Mr. Ellington's fiancé for miles and miles while she was alone in her vehicle. **(See attached Exhibit B, for video of black Yukon following Stephanie Archer for miles)**

- We have testimony that Mr. Daugherty took photos and possibly videos of Mr. Ellington's minor nieces playing basketball, which we believe he has since deleted.

- We believe Mr. Daugherty attempted to run Mr. Ellington's elderly father off the road while his father was taking a walk.

- We have evidence that Daugherty would do things such as hide behind dumpsters in attempts to obtain photos of Mr. Ellington and his family **(See attached Exhibit C, photo of Daugherty behind dumpster)**

Following a full evidentiary hearing, an injunction was put into place that required Daugherty to cease the stalking and invasion of privacy (**See Exhibit D, injunction**)

Based on what we have discovered so far, we agree that Judge Nelms did *not* have knowledge of Mr. Daugherty's actions. We also believe he would *not* have condoned Mr. Daugherty's actions if he had known about these actions. We would like to confirm these facts in the deposition of Judge Nelms.

While we do believe Daugherty left Judge Nelms was left in the dark regarding Daugherty's stalking, what is significant is that all of this happened during the time Judge Nelms was on the board and Jim Seery and Andy Clubok *did know about Mr. Daugherty's inappropriate investigation*. **(See attached Exhibit E, for communications during the relevant time period with Seery and Clubok in which Judge Nelms is not included)** In fact, not only were Seery and Clubok aware—but according to Daugherty, Seery himself told Daugherty that he "appreciated" the investigation. **(See attached Exhibit F, deposition of Daugherty, pages 104-105)**. We want to depose Judge Nelms on whether, as we expect, Seery and Clubok kept him in the dark regarding the stalking.

Additionally, please take note of the following:

- Seery has produced over 18,000 pages of emails and texts in response to our subpoena for communications from Daugherty regarding his investigation into Ellington;

- To date, Clubok has refused to produce his responsive documents and has been dodging service attempts for his deposition. However, Daugherty testified that he did provide documentation regarding his investigation directly to Clubok **(See Exhibit G, deposition of Daugherty, pages 5-60)**

At the Plan Confirmation hearing on February 2, 2021, the Debtor and Daugherty announced a settlement of Daugherty's proof of claim in the Highland Bankruptcy. Nine months later in November 2021, the Debtor and Daugherty executed a settlement agreement that, in addition to the material terms announced in February 2021, gave Daugherty an additional $1m in Class 9, part of Highland's investment track record to claim as his own, ownership of two Highland affiliates he could use to pursue litigation claims, and a prospective observer role on the Claimant Oversight Board. The Debtor agreed to all of this additional settlement consideration subsequent to receiving Mr. Daugherty's cooperation in investigating Ellington. Given the Board's role in approving settlement of material proofs of claim in the bankruptcy, Ellington believes that Judge Nelms should have been made aware of Daugherty's actions—if not by Daugherty, then certainly by Jim Seery and Andy Clubok.

It does not seem to be a coincidence that Judge Nelms was excluded from all communications relating to the stalking and investigation. It does not seem to be a coincidence that Mr. Daugherty's settlement in the bankruptcy became materially better for Mr. Daugherty after Judge Nelms was seemingly cut out of communications and only after Mr. Daugherty had provided Seery and Clubok with thousands upon thousands of pages of his investigatory work regarding Ellington. And it does not seem to be a coincidence that Judge Nelms participated in the *legitimate* negotiations with Daugherty, but that Judge Nelms was purposefully excluded from what Mr. Ellington believes were the illegitimate negotiations.

For these reasons, we believe the deposition of Judge Nelms is relevant and critical. As we have reiterated multiple times, we are willing to work with Jude Nelms with respect to his scheduling. We will endeavor to be as efficient as possible and respect his time. Please advise regarding his availability.

Thanks,

Julie

On Fri, Jul 21, 2023 at 4:27 PM McNeilly, Edward <edward.mcneilly@hoganlovells.com> wrote:

> Julie:
>
> We should have responded sooner that Blayne is on vacation. As we assess the current situation, we think that the basis for taking the deposition of Judge Nelms is seriously less compelling than we originally thought, which was baseless from the outset. We now understand that, in his deposition testimony, Daugherty testified that he did not recall ever speaking with Judge Nelms. In light of this testimony, what is your basis for thinking that Judge Nelms has any relevant information to the stalking allegations? As you know Judge Nelms has declared that he has none. In that vein, can you show us a single document that has been produced by the parties in the case, or any third party, that might provide a justification for the deposition. We doubt that you can, especially given that Judge Nelms has none. But if you think there is something that you would like us to look at, please provide it as soon as you can.
>
> Given the clear evidence that Judge Nelms was not involved in, and has no knowledge of, the matters that are at issue in this litigation, we invite you to reconsider your plan to depose him. Judge Nelms has compelling reasons to seek and obtain a protective order should your client persist in seeking his deposition. In the meantime, when the Judge returns from his vacation, we will seek his availability after July 27, to the extent the Court were to determine that his deposition is required under the Texas Rules of Civil Procedure.
>
> Edward

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Friday, July 21, 2023 11:06 AM

To: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Hi Blayne,

Can you let us know what dates work? We are trying to accommodate his schedule.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

THE PETTIT LAW FIRM

On Thu, Jul 20, 2023 at 2:07 PM Julie Pettit <jpettit@pettitfirm.com> wrote:

> Hi Blayne,

We are trying to work with you on dates. Please advise.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Wed, Jul 19, 2023 at 8:23 AM Julie Pettit <jpettit@pettitfirm.com> wrote:

> Hi Blayne,
>
> Just following up on this. Please advise regarding dates.
>
> Best Regards,
>
> Julie Pettit Greeson
>
> The Pettit Law Firm
>
> 2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Sun, Jul 9, 2023 at 10:41 PM Julie Pettit <jpettit@pettitfirm.com> wrote:

Hi Blayne,

We are still working through some issues and hoping to reach an agreement on the items discussed below. Daugherty's counsel is taking a deposition of one of our witnesses tomorrow, but may Michael and I call you after that exposition tomorrow?

The 11th seems too tight to work through these issues, so are there any other days in July that Judge Nelms is available for a deposition? I know you said he is available on the 27th, but are there any other days you are available? We want to make sure we can accommodate everyone's schedules.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

THE PETTIT LAW FIRM

On Fri, Jun 30, 2023 at 4:48 PM Thompson, Blayne R. <blayne.thompson@hoganlovells.com> wrote:

Julie,

Thank you for sending the petition. It confirms our understanding that the claims in this case are quite narrow, and that Judge Nelms has no connection to the relevant issues.

Given that, and your refusal to agree that the scope of the deposition will be limited to the claims & defenses in this case, as required by the Rules, it appears that a motion for protection may be necessary. To that end, your vague representation that the questions will be "appropriate" to not only the claims & defenses, but also "the documents produced in the case," is insufficient and does not represent the permissible scope of discovery in Texas. See Tex. R. Civ. P. 192.3. And we do have the right to instruct the witness not to answer in the event that questions clearly exceed the permissible scope of discovery. See Tex. R. Civ. P. 199.5(f); *id.* 199 cmt. 4. We asked for the Rule 11 Agreement given that it seems that you plainly intend to go beyond the permissible scope of discovery, and we do not want there to be any confusion when the witness refuses to answer such questions. We understand your position, so as of now, unless we hear otherwise from you on this point, in the event you decide to proceed with a deposition of Judge Nelms, we will seek a motion for protection and move to quash the deposition in the interim, and will mark you down as opposed.

That said, we remain open to reaching agreement on the scope to avoid the need for a protective order. We understand that Jim Seery's counsel has reached out to set up a joint call with you, John Morris, and us next week in an effort to reach agreement on a shared scope for the depositions. We also understand that you have provided Mr. Seery with topics for his deposition. If we can come to an agreement on scope in a similar fashion—by agreement on a list of topics—that may ameliorate the need for a protective order.

Also, as Mr. Seery's counsel notified you in his email earlier today, please note that there is a Gatekeeper order in place in the bankruptcy court that prohibits, among other things, any conduct that could be considered the "pursuit of a claim" against Judge Nelms. We have reattached that order, and the related orders you received, for your reference. Pursuant to Rule 199.5, we will instruct the witness not to answer any questions that would violate this order.

As to Mr. Morris, he does not intend to appear on the record. With that, please take notice that he intends to attend any deposition of Judge Nelms, if one goes forward.

Finally, should a deposition of Judge Nelms proceed, Michael Hefter and/or Rick Wynne (copied) intend to seek *pro hac vice* admission to defend the deposition. Please confirm that you are unopposed to this.

Sincerely,

Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Thursday, June 29, 2023 4:27 PM
To: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Thanks, Blayne. Please let me know.

We would likely take it on the 11th, which is the other date you offered.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

THE PETTIT LAW FIRM

On Thu, Jun 29, 2023 at 3:48 PM Thompson, Blayne R. <blayne.thompson@hoganlovells.com> wrote:

> Julie,
>
> We are discussing internally and expect to be able to get back to you by tomorrow.
>
> In the meantime, please note that we misspoke on Judge Nelms' availability. He is not available on July 26, but can be available on July 27, subject to reaching an agreement on the terms of the deposition as discussed below.
>
> Thank you,
>
> Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Thursday, June 29, 2023 9:55 AM
To: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Hi Blayne,

Following up on my email below. Please advise.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

THE PETTIT LAW FIRM

On Mon, Jun 26, 2023 at 2:51 PM Julie Pettit <jpettit@pettitfirm.com> wrote:

Blayne,

1. Please see attached a copy of our live petition. As previously stated, the questions in the deposition will be appropriate to the allegations, defenses, and documents produced in the case. I am not aware of any rule that permits you to instruct the witness not to answer because you unilaterally deem it to be irrelevant to the case, in particular a case where your client is a third party and you are not familiar with the claims, defenses, underlying factual allegations, and document production. As stated below, we expect your objections will be limited to form, non-responsive, and leading.

2. With respect to Mr. Morris' attendance, we will consider this request. At a minimum, Mr. Morris is not counsel of record, has not made an appearance, and does not represent a party or witness, so he will not be permitted to speak during on the record during the deposition. If this minimal condition cannot be met, then please let me know so we can consider appropriate court relief.

Please let me know if either of these two items will be an issue.

We are working to schedule various depositions in this case, but I believe that July 11 or 26 will likely work subject to availability of Daugherty's counsel.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

THE PETTIT LAW FIRM

On Fri, Jun 23, 2023 at 5:36 PM Thompson, Blayne R. <blayne.thompson@hoganlovells.com> wrote:

> Counsel:
>
> We are following up on your deposition subpoena issued to Judge Nelms, your refusal to agree on our inherently reasonable parameters, and our motion. In your responses, you have provided no information suggesting that Judge Nelms has information relevant to the claims asserted in the *Ellington v Daugherty* litigation. The notion that you think that he has material information to your case is baseless and refuted by his lack of any documents. But if you think that you want to burden and harass him, we are willing to make him available for a limited deposition.
>
> Based on Judge Nelms' schedule and summer travel, and our schedules, we are prepared to make Judge Nelms available on July 11, subject to your agreement on the limitation on scope. Otherwise we are available to proceed on July 26, subject to the same conditions. That scope shall be embodied in a Rule 11 agreement containing the following terms:
>
> 1. The topics for questioning at the deposition will be strictly limited to those relevant to the claims and defenses in the operative pleadings (as of today, you have still not sent us the operative petition, which you promised to send in your email of June 20, 2023 at 2:00 p.m. CT), as required by TRCP 192.3, and we will instruct the witness not to answer in the event that questions exceed this scope; and

2. John Morris of Pachulski Stang Ziehl & Jones, counsel to Highland Capital Management, L.P. and the Highland Claimant Trust, will attend the deposition.

Should you refuse to agree to these reasonable terms, we promptly seek a protective order, and move to quash any deposition notice that would otherwise require proceeding before a protective order can be obtained.

Sincerely,

Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Friday, June 23, 2023 3:32 PM
To: McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Edward,

Following up. Can you please provide us with a new date for deposition?

Thank you.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

THE PETTIT LAW FIRM

On Tue, Jun 20, 2023 at 6:06 PM McNeilly, Edward <edward.mcneilly@hoganlovells.com> wrote:

> Julie,
>
> Thank you for withdrawing the subpoena. We agree to accept service for a new subpoena that is issued for a mutually agreeable time and location.
>
> We will confer with Judge Nelms and get back to you shortly with available dates. In the meantime, for clarity, by virtue of both the motion to quash and your agreement to withdraw the subpoena, we understand that the currently noticed deposition will not proceed as scheduled.
>
> Please note that we reserve all rights, including the right to move to quash or move for protection in the event that new deposition is again noticed for a date or otherwise under terms that are not mutually agreeable.
>
> Sincerely,

Edward

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Tuesday, June 20, 2023 3:15 PM
To: McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Edward,

As I stated, we will withdraw the subpoena subject to you agreeing to accept service for a new subpoena issued for a mutually agreeable time and location.

Can you provide us with a new date?

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Tue, Jun 20, 2023 at 5:03 PM McNeilly, Edward <edward.mcneilly@hoganlovells.com> wrote:

Counsel:

Based on timing, we were compelled to file our Motion to Quash. We are prepared to withdraw the Motion to Quash if you withdraw the subpoena. If you withdraw the subpoena, we are also prepared to accept service.

Sincerely,

Edward McNeilly

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Tuesday, June 20, 2023 2:47 PM
To: McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Counsel,

We have signed a Rule 11 Agreement with Defendant Daugherty extending the discovery deadline to July 25, 2023. Plaintiff agrees to withdraw the subpoena subject to you agreeing to accept service for a new subpoena issued for a mutually agreeable time and location.

Thank you.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

THE PETTIT LAW FIRM

On Tue, Jun 20, 2023 at 3:06 PM McNeilly, Edward <edward.mcneilly@hoganlovells.com> wrote:

> Ms. Pettit:
>
> Your response did not confirm that you are withdrawing the present subpoena. Please confirm that you are withdrawing the current subpoena immediately, otherwise we will be forced to file the Motion to Quash by 5:00 p.m. CT today. We will confer with our client regarding times for the deposition where he is available and will get back to you. Judge Nelms reserves all rights with respect to the reissued subpoena, including, without limitation, to file a Motion to Quash or Modify or for Protective Order, if an appropriate scope for the deposition cannot be mutually agreed.
>
> Sincerely,
>
> Edward McNeilly

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Tuesday, June 20, 2023 11:59 AM
To: McNeilly, Edward <edward.mcneilly@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Mr. Hefter:

In response to your correspondence dated June 16, 2023 regarding the deposition subpoena of former Judge Russel Nelms, you included four proposed limitations on the deposition. I address each of those in turn:

- the deposition will take place at a mutually convenient time that counsel and the witness are available (at this time, we are not available next week);

  Response: We will work with you and your client regarding a convenient time and place for the deposition. Please let us know a few dates when the witness is available and we will re-issue the subpoena.

- the deposition will not exceed one hour in time;

  Response: Tex. R. Civ. P. 199.5(c) provides six hours of questioning for a deposition. While we do not have any intention of arbitrarily using all six hours, we cannot agree to an artificial time limit that waives our procedural rights.

- the topics for questioning at the deposition will be strictly limited to the allegations in the operative complaint as of the date of this letter (as to which, please send us a copy of such complaint); and

  Response: The questions in the deposition will be appropriate to the allegations, defenses, and documents produced in the case. However, please be advised that Tex. R. Civ. P. 199.5(e) provides that all objections shall be limited to “form,” “leading,” or “non-responsive.” Unless specifically

requested, we do not invite your explanations or argument regarding any form objection. Argumentative or suggestive objections or explanations waive objection and may be grounds for terminating the oral deposition or assessing costs or other sanctions. We expect you will follow this rule. With respect to your request for a copy of the live complaint, we will provide you a copy as requested.

- John Morris of Pachulski Stang Ziehl & Jones, counsel to Highland Capital Management, L.P. and the Highland Claimant Trust, is permitted to attend the deposition.

Response: Mr. Morris is neither counsel of record in this matter nor counsel for the witness. As far as we are aware, he is not barred in the State of Texas, nor admitted to practice *pro hac vice* in the courts of the State of Texas. Accordingly, we do not see any valid reason for him to attend the deposition.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

THE PETTIT LAW FIRM

On Tue, Jun 20, 2023 at 1:32 PM McNeilly, Edward <edward.mcneilly@hoganlovells.com> wrote:

Counsel:

I write further to my email of June 16, 2023 below (which attached a letter from Michael Hefter), to the telephone message that I left with Ms. Pettit's receptionist at or around 12:13 CT today (as Ms. Pettit was unavailable) and to the voice message that I left with Mr. Hurst on his office line at or around 12:20 CT today (as Mr. Hurst was not available). Due to the timing requirements of Dallas County Local Civil Rule 2.12, absent written agreement from you by **1:30 p.m. (PT) / 3:30 p.m. (CT) today** that you will withdraw the subpoena and deposition notice and agree to meet and confer regarding the time, place and scope of the deposition, we will file a motion to quash by 5:00 p.m. (CT) today.

Sincerely,

Edward McNeilly

Edward McNeilly
Senior Associate

Hogan Lovells US LLP
1999 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067
Tel: +1 310 785 4600
Direct: +1 310 785 4671
Mobile: +1 310 435 5749
Fax: +1 310 785 4601
Email: edward.mcneilly@hoganlovells.com
www.hoganlovells.com

From: McNeilly, Edward
Sent: Friday, June 16, 2023 1:18 PM
To: 'jpettit@pettitfirm.com' <jpettit@pettitfirm.com>; 'mhurst@lynnllp.com' <mhurst@lynnllp.com>
Cc: Wynne, Rick <richard.wynne@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; 'John A. Morris' <jmorris@pszjlaw.com>
Subject: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

Counsel:

Please see the attached letter sent on behalf of Michael Hefter.

Sincerely,

Edward McNeilly

Edward McNeilly
Senior Associate

Hogan Lovells US LLP
1999 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067
Tel: +1 310 785 4600
Direct: +1 310 785 4671
Mobile: +1 310 435 5749
Fax: +1 310 785 4601
Email: edward.mcneilly@hoganlovells.com
www.hoganlovells.com

CAUSE NO. DC-22-00304

SCOTT BYRON ELLINGTON,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff(s),	§	
vs.	§	**101ST JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant(s).	§	**DALLAS COUNTY, TEXAS**

RETURN OF SERVICE

Came to my hand on **Tuesday, August 22, 2023 at 10:45 AM,**
Executed at: **115 KAY LANE, WESTWORTH VILLAGE, TX 76114**
at **1:25 PM, on Tuesday, August 22, 2023**, by individually and personally delivering to the within named:

HONORABLE RUSSELL NELMS

a true copy of this

SECOND AMENDED SUBPOENA FOR THE DEPOSITION OF NON-PARTY HONORABLE RUSSELL NELMS with EXHIBIT 1

And tendered a $10.00 witness fee, which was accepted, having first endorsed thereon the date of the delivery.

I am a person not less than eighteen (18) years of age and I am competent to make this oath. I am a resident of the State of Texas. I have personal knowledge of the facts and statements contained herein and aver that each is true and correct. I am not a party to nor related or affiliated with any party to this suit. I have no interest in the outcome of the suit. I have never been convicted of a felony or of a misdemeanor involving moral turpitude. I am familiar with the Texas Rules of Civil Procedure, and the Texas Civil Practice and Remedies Codes as they apply to service of process. I am certified by the Judicial Branch Certification Commission to deliver citations and other notices from any District, County and Justice Courts in and for the State of Texas in compliance with rule 103 and 501.2 of the TRCP."

My name is Adam Bridgewater, my date of birth is November 28, 1959 and my business address is 5470 L.B.J. Freeway, Dallas, Texas, 75240 in the county of Dallas, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas, on Wednesday, August 23, 2023

By:_____
Adam Bridgewater PSC 237 - Exp 07/31/24
served@specialdelivery.com

CAUSE NO. DC-22-00304

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
	§	
v.	§	**101st JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

SECOND AMENDED SUBPOENA FOR THE DEPOSITION OF NON-PARTY HONORABLE RUSSELL NELMS

TO: Any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Texas Rule of Civil Procedure 176.5.

YOU ARE COMMANDED to summon:

Deponent:	Honorable Russell Nelms
Address:	115 Kay Lane Westworth Village, Texas 76114 *Or wherever he may be found*

TO APPEAR AT:

Location:	The Pettit Law Firm 2101 Cedar Springs, Ste. 1540 Dallas, Texas
Date:	Monday, September 18, 2023
Time:	9:00 AM

The above named Deponent is hereby commanded to appear at the time, date, and place set forth above for deposition in the above-captioned case, and to remain in attendance from day to day until lawfully discharged. See Exhibit 1.

Warning: Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both

This subpoena is issued at the request of Plaintiff, whose attorney of record is Julie Pettit.

DATE OF ISSUANCE: August 21, 2023

SUBPOENA ISSUED BY:

/s/ Julie Pettit
Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

Michael Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Michele Naudin
State Bar No. 24118898
mnaudin@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

ATTORNEYS FOR PLAINTIFF

RETURN OF SUBPOENA

I, _____, delivered a copy of this subpoena to _____, in person at _____, in _____ County, Texas, on _____, 2023, at _____ o'clock _____.m., and tendered to the witness a fee of $_____ in cash.

I, _____, was unable to deliver a copy of this subpoena to _____ _____ for the following reasons:

_____

_____

_____

_____

By: _____
Signature of person authorized by law or written order of trial court who has no interest in the lawsuit and is at least 18 years old.

Name: _____

Title: _____

ACCEPTANCE OF SERVICE OF SUBPOENA BY WITNESS UNDER TEXAS RULE OF CIVIL PROCEDURE 176

I accept service of this subpoena.

_____
Witness:

_____
Date

FEE FOR SERVICE OF SUBPOENA: $____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record *via electronic service* on August 21, 2023:

/s/ Julie Pettit
Julie Pettit
Counsel for Plaintiff

EXHIBIT 1

CAUSE NO. DC-22-00304

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
v.	§	**101ST JUDICIAL DISTRICT**
PATRICK DAUGHERTY,	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

PLAINTIFF'S SECOND AMENDED NOTICE OF INTENTION TO TAKE THE ORAL AND VIDEOTAPED DEPOSITION OF NON-PARTY HONORABLE RUSSELL NELMS

TO: Defendant, Patrick Daugherty by and through Defendant's attorney of record, Ruth Ann Daniels, Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201.

TO: Honorable Russell Nelms, 115 Kay Lane Westworth Village, Texas 76114.

Please take notice that Scott Byron Ellington ("Plaintiff") by and through his attorneys of record, will take the oral and videotaped deposition of the Honorable Russell Nelms on **September 18, 2023 at 9:00 a.m.**, at the office of The Pettit Law Firm, 2101 Cedar Springs, Ste. 1540, Dallas, Texas 75201.

Such deposition will continue from day to day until completed before a certified court reporter. The deposition will be recorded and transcribed by a Certified Shorthand Reporter, Notary Public, or other officer duly authorized to administer oaths, and will be videotaped. Any and all of said stenographic and videotaped testimonies may be offered into evidence at the trial of the above-entitled and numbered cause and any related case.

Respectfully submitted,

/s/ Julie Pettit

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
David B. Urteago
State Bar No. 24079493
durteago@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

Michael Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Michele Naudin
State Bar No. 24118898
mnaudin@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following ***via electronic service*** on August 21, 2023:

Ruth Ann Daniels
rdaniels@grayreed.com
Andrew K. York
dyork@grayreed.com
Drake M. Rayshell
drayshell@grayreed.com
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Attorneys for Patrick Daugherty

Blayne Thompson
Hogan Lovells US LLP
609 Main Street, Suite 4200
Houston, Tx 77002
Tel.: (713) 632-1400
Fax: (713) 632-1401

/s/ Julie Pettit
Julie Pettit

McNeilly, Edward

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Tuesday, September 5, 2023 5:39 AM
To: Thompson, Blayne R.
Cc: mhurst@lynnllp.com; McNeilly, Edward; Wynne, Rick; John A. Morris
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas
Attachments: Nelms Topics_2.docx

Follow Up Flag: Follow up
Flag Status: Completed

[EXTERNAL]
Blayne,

Per our call last week, attached please find proposed topics for Judge Nelms. As I mentioned, if we are able to reach an agreement on these topics, we would also be willing to limit the deposition to three hours.

Please let me know.

Best Regards,

Julie Pettit Greeson
The Pettit Law Firm
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Direct: 214-329-1846
Fax: 214-329-4076
jpettit@pettitfirm.com
THE PETTIT LAW FIRM

On Wed, Aug 30, 2023 at 8:32 PM Julie Pettit <jpettit@pettitfirm.com> wrote:

> Sounds good. Thanks, Blayne.
>
> Best Regards,
>
> Julie Pettit Greeson
> The Pettit Law Firm
> 2101 Cedar Springs, Suite 1540
> Dallas, Texas 75201
> Direct: 214-329-1846
> Fax: 214-329-4076
> jpettit@pettitfirm.com
> THE PETTIT LAW FIRM

Nelms Topics

1. Mr. Nelms's personal knowledge of the allegations asserted in the Action.
2. Mr. Nelms's personal knowledge of the relationship between the Defendant in the Action, Patrick Daugherty ("Daugherty"), and the Plaintiff, Scott Byron Ellington ("Ellington")
3. Mr. Nelms's receipt of photos, videos, data, or other information from Daugherty relating to Greg Brandstatter.
4. Mr. Nelms's receipt of photos, videos, data, or other information from Daugherty relating to Sarah Bell (formerly Goldsmith).
5. Mr. Nelms's receipt of communications, emails, photos, videos, data, or other information from Daugherty relating to Ellington or entities affiliated with Ellington.
6. Mr. Nelms's knowledge regarding the receipt of communications, emails, photos, videos, data, or other information from Daugherty to others relating to Ellington or entities affiliated with Ellington.
7. Any meetings or communications between any representative of the Highland Bankruptcy estate and Mr. Daugherty and/or his representatives related in any way to Ellington.
8. Any instructions or approval by Nelms or others, whether explicit or tacit, provided to Mr. Daugherty with respect to Mr. Daugherty's so-called "investigation" of Mr. Ellington or the stalking allegations in this case.
9. Any consideration provided to Daugherty with respect to Mr. Daugherty's so-called "investigation" of Mr. Ellington or the stalking in this case, including, but not limited to, the treatment of Mr. Daugherty's Proof of Claim in the Highland bankruptcy.
10. The process for approval of Mr. Daugherty's proof of claim with respect to the settlement announced on the record in the Highland bankruptcy on February 2, 2021.
11. The ordinary process for negotiation and settlement of material proofs of claim in the Highland bankruptcy.

Vincent J. Mehnert, Esq. - 004612011
Landman Corsi Ballaine & Ford P.C.
One Gateway Center – 22nd Floor
Newark, NJ 07102
Attorneys for Defendant John S. Dubel

In the Matter of the Application of SCOTT BYRON ELLINGTON, For an Order Enforcing a Subpoena Duces Tecum and Finding Defendant in Contempt, **Plaintiff,** **v.** **JOHN DUBEL,** **Defendant.**	**SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MONMOUTH COUNTY** **DOCKET NO.: MON-L-150-23** **Hearing Date: March 10, 2023** **CERTIFICATION OF JOHN S. DUBEL IN SUPPORT OF DEFENDANT JOHN S. DUBEL'S OPPOSITION TO PLAINTIFF'S ORDER TO SHOW CAUSE TO ENFORCE A SUBPOENA**

I, **JOHN S. DUBEL**, being of full age hereby certify under the penalty of perjury:

1. I am John S. Dubel, the defendant in the above-captioned action. I have personal knowledge and I am fully familiar with the matters set forth herein. I make this certification in support of my Opposition to plaintiff Scott Ellington's Order to Show Cause to Enforce a November 3, 2022 Subpoena *Duces Tecum*.

2. I am a corporate restructuring professional with over 40 years of experience in restructuring large and complex businesses and have frequently served as the chief executive officer or independent director to companies in financial distress or going through a formal chapter 11 bankruptcy process. One of these entities was Highland Capital Management, L.P. ("Highland"), a multi-billion dollar Texas-based investment-advisory firm formerly run by James Dondero ("Dondero").

3. Mr. Ellington was previously the General Counsel of Highland. Highland filed for chapter 11 relief in the United States Bankruptcy Court for the Northern District of Texas (the

"Bankruptcy Court") in 2019 in order to stay entry (and then enforcement) of substantial judgments against it. In January 2020, the Honorable Russell F. Nelms, who is a retired United States Bankruptcy Judge for the Northern District of Texas, James P. Seery Jr. and I were appointed by order of the Bankruptcy Court as independent directors of Highland's general partner, Strand Advisors Inc., in lieu of a bankruptcy trustee being appointed. We successfully developed Highland's reorganization plan and served as independent directors until the reorganization plan was confirmed in 2021.

4. In January 2021, prior to confirmation of Highland's reorganization plan, Mr. Ellington was terminated for cause as the General Counsel of Highland by the independent directors for, among other things, inappropriately communicating and coordinating with Dondero, in violation of a temporary restraining order. This conduct is detailed in the Bankruptcy Court's *Memorandum Opinion and Order Granting in Part Plaintiffs' Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO*, entered June 7, 2021 (the "First Contempt Order").[1]

5. On or about November 4, 2022, while I was out of the country on business, someone pushed the button on the gate entry post near the gate on my property in Colts Neck, New Jersey. The gate is set back off the road and is on private property.

6. After receiving the gate buzzer notice on my cell phone app, and thinking the individual who had pushed the button might be a delivery driver, I communicated through the cell phone app and asked the individual to identify themself (I could not tell if the individual was a man or a woman) and to look into the camera. I recall from the camera view that the individual's

[1] My understanding is that the First Contempt Order was upheld by the District Court on appeal from the Bankruptcy Court as to all issues, except the $100,000 per appeal additional sanctions. I understand Dondero has appealed the District Court's decision to the Fifth Circuit Court of Appeals.

vehicle was not a known delivery vehicle such as FedEx, Amazon or UPS. The individual did not clearly identify themself and refused to look into the gate camera. Instead, the individual simply mentioned something to the effect that they were a process server.

7. In connection with my career as a restructuring professional serving companies in financial distress or bankruptcy processes, I am frequently involved in litigation or legal matters. Mr. Ellington is aware that I am represented by counsel and could easily have contacted my counsel to determine whether I would have consented to service of the subpoena. I mention this to illustrate that I had no reason to expect that a process server would come to my property unannounced.

8. Unfortunately, there has been a recent uptick in armed home invasions and auto thefts in my community. Having no reason to expect a process server to stop by the property, I was concerned about whether this unidentified person's representations were genuine. Our local area police departments have issued warnings in the past about individuals coming to homes and falsely claiming to be persons that they are not. My local police department has suggested that, if there is a concern, community members should call the police department to resolve the situation.

9. Because I was not at the property at the time, and concerned that this person was not willing to properly identify themself and was in a non-descript vehicle, I politely asked the individual to leave the premises. When the individual chose to linger and not leave, I politely told them that I would call the police if they were not willing to leave, and, if they did return, I would ask the police to have them arrested for trespassing. Due to having farm animals, I also told the individual not to climb the gate or fence and go further into the property as harm could come to them. Eventually the person left the property.

10. Several weeks later, I learned from Judge Nelms that he had been served a subpoena

in the matter of *Scott Ellington v. Patrick Daugherty* based upon a Texas state-court complaint.

11. Upon learning of the Texas subpoena directed at Judge Nelms, I asked him to email a copy to me. On November 16, 2022, Judge Nelms responded to the counsel who had served the subpoena (Michael Hurst and Julie Pettit, who I understand are Mr. Ellington's counsel in the *Ellington v. Daugherty* case), that he currently had no documents that were responsive to the subpoena, and had no recollection of ever having possessed any such documents. A true and correct copy of Judge Nelms' email to Mr. Hurst and Mr. Hurst's response to Judge Nelms (which Judge Nelms forwarded to me) is attached hereto as Exhibit A.

12. After reading the subpoena to Judge Nelms and his response to Mr. Hurst, I determined that I similarly had no information responsive to a subpoena if a similar subpoena were directed to me. On December 5, 2022, I emailed Mr. Hurst, forwarding his email exchange with Judge Nelms, and confirmed that I, similarly, was not in possession of any documents responsive to any such subpoena and had no recollection of ever having received or possessed any such documents. A true and correct copy of my December 5, 2022, email to Mr. Hurst is attached hereto as Exhibit A (as part of the chain of email correspondence between Judge Nelms and Mr. Hurst).

13. For this reason, I assumed the matter was at an end. Shortly after that, I received a copy of the subpoena (the "New Jersey Subpoena") that had been left in the mailbox at my property. I do not recall the precise date that I received this copy of the New Jersey Subpoena as I was traveling frequently at that time. I also received a copy of the New Jersey Subpoena at my post office box. The New Jersey Subpoena contained nothing different from the one Judge Nelms had sent me and I had previously reviewed. As I had already responded to the lead attorney involved in the matter, I assumed this was all that needed to be done. In addition, Judge Nelms

subsequently informed me that he never received a request to do anything further. Thinking that my email to Mr. Hurst was also sufficient, I did nothing further. It is noteworthy that I have never received a reply to my December 5, 2022, email to Mr. Hurst.

14. On or about February 9, 2023, over two months after my response to Mr. Hurst, a FedEx package was left at my property, which enclosed the Verified Complaint against me by Mr. Ellington. I was surprised to see this since I had already responded to Mr. Hurst, the lead attorney in the *Ellington v. Daugherty* matter.

15. I have not been personally served with or signed an acknowledgment and waiver of personal service for the New Jersey Subpoena. Nonetheless, I have reviewed the New Jersey Subpoena and certify that I have no responsive documents or information and have sufficiently responded to same.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: February 20, 2023

John S. Dubel

Exhibit A

From:
Sent: Wednesday, December 14, 2022 6:02 PM
To: John Dubel
Subject: Fwd: Ellington v. Dougherty

-----Original Message-----
From: jdubel@aol.com
To: MHurst@lynnllp.com <MHurst@lynnllp.com>
Sent: Mon, Dec 5, 2022 9:47 pm
Subject: Ellington v. Dougherty

Dear Mr. Hurst:

Russ Nelms forwarded me the below email exchange.

I have been traveling for the last week or so and I understand that you may have tried to serve me with a similar subpoena. Assuming that it is the same as Russ', I can make a similar statement that I have no documents that are responsive to such subpoena. To clarify, I currently have no such documents, and I have no recollection of ever having received or possessed any such documents.

John S. Dubel

On Sunday, November 20, 2022, 9:58 PM, Michael K. Hurst <MHurst@lynnllp.com> wrote:

Thanks Russ

MICHAEL K. HURST, Partner
Board Certified – Civil Trial Law
Texas Board of Legal Specialization

Board Certified – Civil Trial Advocate
National Board of Trial Advocacy

Lynn Pinker Hurst & Schwegmann
Direct 214 981 3838
Main 214 981 3800
mhurst@lynnllp.com

Top 100 Lawyers in Texas and DFW – Super Lawyers
Top Commercial Litigation Lawyer in DFW – Chambers & Partners
Lawyer of the Year – Best Lawyers (2021, 2023)
Best Lawyers Hall of Fame – D Magazine (2022)

From: Russell Nelms < >
Sent: Wednesday, November 16, 2022 11:34 AM
To: Michael K. Hurst <MHurst@lynnllp.com>
Cc: Julie Pettit <jpettit@pettitfirm.com>
Subject: Ellington v. Dougherty

Dear Mr. Hurst:

I have received your subpoena duces tecum with respect to the referenced matter.

I have no documents that are responsive to the subpoena. To clarify, I currently have no such documents, and I have no recollection of ever having received or possessed any such documents.

Because my own practice was limited to federal courts, I am not certain of the correct procedure to formally respond to the subpoena. If you require an affidavit that recites in substance what I have communicated above, please let me know.

Best regards, Russell Nelms

WEINSTEIN + KLEIN

Laura M. Garcia
Direct: (347) 919-8422
lgarcia@weinsteinklein.com
Licensed in NY + NJ

February 8, 2023

VIA FEDEX OVERNIGHT
John Dubel
142 Hillsdale Road
Colts Neck, New Jersey 07722

-and-

VIA FEDEX GROUND
PO Box 535
Colts Neck, New Jersey 07722

Re: Scott Byron Ellington v. John Dubel
Docket No. MON-L-000150-23

Mr. Dubel:

As you know, our firm is local counsel to the Plaintiff in this matter, Scott Byron Ellington ("Plaintiff"). Attached are copies of the following documents which were previously filed with the Court via e-Courts, along with the Court's Executed Order to Show Cause, requiring, among other things, for you to appear at a hearing on March 10, 2023, and provide a written response to the Verified Complaint by February 20, 2023:

- Verified Complaint, with Exhibits;
- Proposed Order to Show Cause;
- Proposed Final Order;
- Letter Brief;
- Case Information Statement;
- Track Assignment Notice; and
- Executed Order to Show Cause, dated February 7, 2023.

Please contact our office should you have any questions.

Very truly yours,

WEINSTEIN & KLEIN P.C.

Laura M. Garcia

Encls.

WEINSTEIN + KLEIN

Laura M. Garcia
Direct: (347) 919-8422
lgarcia@weinsteinklein.com
Licensed in NY + NJ

February 8, 2023

VIA FEDEX OVERNIGHT
John Dubel
142 Hillsdale Road
Colts Neck, New Jersey 07722

-and-

VIA FEDEX GROUND
PO Box 535
Colts Neck, New Jersey 07722

Re: Scott Byron Ellington v. John Dubel
Docket No. MON-L-000150-23

Mr. Dubel:

As you know, our firm is local counsel to the Plaintiff in this matter, Scott Byron Ellington ("Plaintiff"). Attached are copies of the following documents which were previously filed with the Court via e-Courts, along with the Court's Executed Order to Show Cause, requiring, among other things, for you to appear at a hearing on March 10, 2023, and provide a written response to the Verified Complaint by February 20, 2023:

- Verified Complaint, with Exhibits;
- Proposed Order to Show Cause;
- Proposed Final Order;
- Letter Brief;
- Case Information Statement;
- Track Assignment Notice; and
- Executed Order to Show Cause, dated February 7, 2023.

Please contact our office should you have any questions.

Very truly yours,

WEINSTEIN & KLEIN P.C.

Laura M. Garcia

Encls.

WEINSTEIN & KLEIN P.C.
Damien H. Weinstein
Attorney ID: 033352011
dweinstein@weinsteinklein.com
Laura M. Garcia
Attorney ID: 240222017
lgarcia@weinsteinklein.com
1 High Street Court, Suite 5
Morristown, New Jersey 07960
(347) 502-6464
Attorneys for Plaintiff Scott Byron Ellington

In the Matter of the Application of SCOTT BYRON ELLINGTON, For an Order Enforcing a Subpoena *Duces Tecum* and Finding Defendant in Contempt, Plaintiff, v. JOHN DUBEL, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MONMOUTH COUNTY DOCKET NO. CIVIL ACTION **VERIFIED COMPLAINT RELATED TO A SUBPOENA DUCES TECUM ISSUED UNDER RULE 4:11-4(b)**

Plaintiff, Scott Byron Ellington ("Plaintiff") as and for his Verified Complaint against Defendant John Dubel ("Defendant") for enforcement of a subpoena *duces tecum* issued pursuant to Rule 4:11-4(b), alleges as follows:

PARTIES

1. Plaintiff, an individual, is a resident of the State of Texas.

2. Upon information and belief, Defendant is an individual residing at 142 Hillsdale Road, Colts Neck, New Jersey 07722, with a registered business address located at PO Box 535 in Colts Neck, New Jersey 07722.

GENERAL ALLEGATIONS

3. This Verified Complaint is one piece of protracted, contentious litigation that commenced as early as 2012, centering on an ongoing dispute between Highland Capital Management ("Highland"), Highland's former CEO, Jim Dondero, and Patrick Daugherty, a former Highland employee.

4. On or about January 11, 2022, Plaintiff, Highland's former general counsel, filed a verified petition and application for temporary restraining order (the "Petition") in the 101st Judicial District Court in Dallas, Texas against Daugherty, alleging, among other things, counts for stalking and invasion of privacy, styled Scott Byron Ellington v. Patrick Daugherty, Docket No. DC-22-00304 (the "Litigation"). A true and accurate copy of the Petition is attached hereto as **Exhibit 1**.

5. The Petition alleged that "[w]hile Daugherty previously limited his vendetta to the courtroom, he began a campaign of harassment against [Plaintiff] and his family starting in January 2021."

6. On or about February 4, 2022, Daugherty filed an Answer in the Litigation in which he denied the majority of the allegations in the Petition. A true and accurate copy of Daugherty's Answer is attached hereto as **Exhibit 2**.

7. Upon information and belief, Daugherty has provided Defendant with information regarding Plaintiff, Plaintiff's assets, Plaintiff's family, and Plaintiff's home, including videos and surveillance footage, and Defendant is still in possession of such information.

8. On or about October 6, 2022, Plaintiff filed a Notice of Intent to Issue Subpoena Duces Tecum to Defendant (the "Notice"), pursuant to Texas law. The Notice enclosed the proposed subpoena, which generally sought Defendant's production of certain documents related

to the investigations and transactions at issue in the Litigation (the "Texas Subpoena"). A true and accurate copy of the Notice is attached hereto as **Exhibit 3**.

9. On or about November 4, 2022, pursuant to Rule 4:11-4, the undersigned prepared and attempted to personally serve, via process server, a New Jersey subpoena *duces tecum* incorporating the terms and conditions used in the Texas Subpoena ("Subpoena"). A true and accurate copy of the Subpoena, with exhibits, is attached hereto as **Exhibit 4**.

10. The Subpoena stated the name of this Court, bore the caption and case number of the foreign case to which it relates, identified 101st Judicial District Court in Dallas, Texas as the court where the underlying case is pending, and incorporated the terms and conditions used in the Texas Subpoena to the extent those terms do not conflict with Rule 4:14-7.

11. The Subpoena further enclosed a list of the names, addresses, and telephone numbers of all counsel of record in the underlying Texas proceeding.

12. The Subpoena fully complied with the New Jersey Court Rules, including Rules 4:14-7 and 4:11-4.

13. On or about November 4, 2022, the process server attempted to personally serve Defendant with the Subpoena at his residence, and a male individual – upon the process server identifying himself and stating that he had legal documents for service upon Defendant – threatened to call the police on the process server. The male individual refused to identify himself. A true and accurate copy of the process server's Affidavit of Non-Service is attached hereto as **Exhibit 5**.

14. On or about December 1, 2022, following the process server's good faith attempt and inability to personally serve Defendant, the undersigned served Defendant with the Subpoena via certified mail, return receipt requested, and simultaneously via first class mail, at Defendant's

usual place of abode at 142 Hillsdale Road, Colts Neck, New Jersey 07722, in accordance with Rule 4:4-4(b). The Subpoena was received by Defendant on or about December 3, 2022. A true and accurate copy of the tracking information provided by United States Postal Service confirming delivery to Defendant's usual place of abode is attached hereto as **Exhibit 6**.

15. Defendant owns a New Jersey limited liability company – Dubel & Associates, LLC, and is listed as the company's registered agent. A true and accurate copy of Defendant's business's latest Change of Registered Agent Certificate filed with the New Jersey Division of Revenue setting forth Defendant's business address and listing Defendant as the company's registered agent is attached hereto as **Exhibit 7**.

16. Also on December 1, 2022, the undersigned forwarded the Subpoena to Defendant's registered business address located at located at PO Box 535 in Colts Neck, New Jersey 07722, as well as an older registered business address located at PO Box 524 in Brookside, New Jersey 07926, in the event such PO Box was still in use, via certified mail, return receipt requested, and simultaneously via first class mail, in accordance with Rule 4:4-4(b). The package delivered to the Brookside PO Box was returned as unclaimed. The post office attempted delivery of the package sent to the Colts Neck PO Box on December 3, 2022, but it was returned as "refused" by the recipient.

17. To date, the first-class mail packages to Defendant's home and business addresses have not been returned as undelivered.

18. Upon information and belief, to date, no motion to quash the Subpoena or other protective order has been filed by any party to the Litigation, nor by Defendant in this Court.

19. To date, Defendant has failed to provide any of the documents requested in the Subpoena or otherwise respond.

COUNT I: DECLARATORY JUDGMENT

20. Plaintiff repeats and realleges each of the allegations set forth in the preceding Paragraphs 1-19 as if set forth at length herein.

21. The Subpoena fully complied with the New Jersey Court Rules, including Rules 4:14-7 and 4:11-4.

22. Plaintiff made every effort to serve Defendant personally with the Subpoena, and after Defendant's repeated evasion of personal service, Plaintiff successfully served Defendant via substituted service.

23. Defendant should be required to respond to the Subpoena, and be found in contempt of court for failing to do so.

WHEREFORE, Plaintiff Scott Byron Ellington demands judgment as follows:

(1) Holding Defendant in contempt for failing to comply with the Subpoena;

(2) Requiring that Defendant comply with the Subpoena by producing the documents requested therein;

(3) Awarding Plaintiff the fees, costs, and expenses incurred in bringing this action, including attorneys' fees; and,

(4) Granting Plaintiff such other and further relief as this Court deems equitable and just.

Respectfully submitted,

WEINSTEIN & KLEIN P.C.
Attorneys for Plaintiff

/s/ *Laura M. Garcia*
Damien H. Weinstein
Laura M. Garcia

Dated: January 17, 2023

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:5-1, Laura M. Garcia, Esq. is hereby designated as trial counsel on behalf of Plaintiff in the within matter.

CERTIFICATION PURSUANT TO R:4:5-1

I hereby certify pursuant to Rule 4:5-1 that to the best of my knowledge, information and belief, the controversy which is the subject of this lawsuit is not the subject of any other action pending in any other Court, other than being related to the action pending in the 101st Judicial District Court in Dallas, Texas, styled Scott Byron Ellington v. Patrick Daugherty, Docket No. DC-22-00304. I further certify that to the best of my knowledge, information, and belief, the controversy that is the subject of this lawsuit is not the subject of any pending arbitration proceeding, and that no other action or arbitration proceeding is currently contemplated. I further certify at this time that there are no other known parties who should be joined in the instant action.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ *Laura M. Garcia*
Laura M. Garcia

Dated: January 17, 2023

VERIFICATION

I, LAURA M. GARCIA, of full age, hereby certify as follows:

I am an attorney-at-law of the State of New Jersey and a member of the law firm of Weinstein & Klein, P.C., local counsel for Plaintiff, Scott Byron Ellington. I have read the Verified Complaint and certify that the assertions therein are true to the best of my knowledge, except to those matters that are alleged upon information and belief, and as to those matters I believe them to be true.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ *Laura M. Garcia*
Laura M. Garcia

Dated: January 17, 2023

EXHIBIT 1

DC-22-00304

NO. _____

SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
	§	101st
v.	§	_____ **JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

Comes Now, Scott Byron Ellington, Plaintiff herein, and files this *Plaintiff's Original Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction* against Defendant Patrick Daugherty, and in support thereof, would respectfully show the Court the following:

Dallas County LR 1.08 Disclosure

> Dallas County Local Rule 1.08 provides that the attorneys of record for the parties in any case within the categories of Local Rule 1.07 must notify the judges of the respective courts in which the earlier and later cases are assigned of the pendency of the latter case. The attorney filing a case that is so related to another previously filed case shall disclose in the original pleading or in a separate simultaneous filing that the case is so related and identify by style, cause number, and court of the related case. Accordingly, and pursuant to L.R. 1.08, the undersigned hereby notifies the Court that this case, in part, arises out of the same transaction or occurrence which is the subject of *Highland Capital Management, L.P. v. Patrick Daugherty*, Cause No. 12-04005, in the 68th Judicial District Court of Dallas County, Texas. Hence, the undersigned believes that this case is subject to transfer under L.R. 1.07(a) or otherwise pursuant to L.R. 106 because the transfer would "facilitate orderly and efficient disposition of the litigation."

I. Discovery Control Plan

1. Pursuant to TEXAS RULE OF CIVIL PROCEDURE 190.3, Plaintiff requests a Level 2 discovery control plan.

II. Parties & Service

2. Plaintiff Scott Byron Ellington, an individual, is a resident of the state of Texas.

3. Defendant Patrick Daugherty is an individual and resident of Dallas County, Texas. Defendant may be served at his residence located at 3621 Cornell Ave, Dallas, Texas 75205, or wherever he may be found.

III. Rule 47(c) Disclosure

4. Plaintiff seeks damages within the jurisdictional limits of the Court. Specifically, Plaintiff seeks monetary relief over $1,000,000 and non-monetary relief.

IV. Jurisdiction & Venue

5. The Court has jurisdiction over Defendant because he resides in Texas, has done business in Texas, committed torts, in whole or in part, in Texas, has continuing contacts with Texas, and is amenable to service by a Texas Court.

6. Venue in Dallas County is proper in this case under Sections 15.002(a)(1) and (a)(3) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE because this is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred and it is the county where Defendant resides.

V. Facts

7. Plaintiff Scott Ellington ("Plaintiff" or "Ellington") was, until January of 2021, the general counsel of Highland Capital Management ("Highland").

8. Defendant Daugherty ("Defendant" or "Daugherty") previously worked for Highland.

9. In 2012, Highland sued Daugherty. In response, Daugherty filed counterclaims against Highland then sued its affiliate, Highland Employee Retention Assets LLC ("HERA"), and three Highland executives. A jury ultimately determined that Daugherty breached his employment agreement and fiduciary duties. It also found that HERA breached the implied duty of good faith and fair dealing, but also found that the executives subject to the counter-claim were not liable to Daugherty. The jury awarded Highland $2,800,000 in attorney's fees and injunctive relief; and awarded Daugherty $2,600,000 in damages against HERA.

10. Since the 2012 lawsuit's filing, Daugherty and Highland—or Highland related entities and individuals—engaged in protracted litigation in several different forums across the country. Daugherty's expressed goal is to "get" the founder and former CEO of Highland, Jim Dondero, and its former general counsel, Ellington. As part of this campaign, Daugherty personally sued Ellington in December 2019 in Delaware Chancery Court. Ellington's motion to dismiss currently pends in that matter.

11. While Daugherty's previously limited his vendetta to the courtroom, he began a campaign of harassment against Ellington and his family starting in January 2021 that continues to this day. *See* **Exhibit A** (Declaration of Gregory Allen Brandstatter, the personal security guard of Scott Ellington) (detailing Daugherty's harassment and stalking of Ellington, his family, and loved ones); **Exhibit B** (Declaration of Scott Byron Ellington).

12. Specifically, Daugherty has been observed outside Ellington's office, his residence, the residence of his long-time girlfriend, Stephanie Archer, his sister's residence, and his father's residence no less than **143 times**, often taking photographs and video recordings while either

parked or driving slowly by. Indeed, on April 21, 2021, Daugherty was observed driving by Ellington's office nine (9) times that day alone.

13. Daugherty most recently was confirmed taking video or photo recordings outside of Ellington's residence on December 11, 2021. For reasons set forth in the Brandstatter Declaration, attached herein at **Exhibit A**, Daugherty likely stalked Ellington and his loved ones more recently than the latest confirmed date.

14. Daugherty's harassing conduct is "textbook" behavior that precedes a physical attack that a reasonable person would consider a threat to their safety as well as that of their family and property. Indeed, Ellington has been forced to hire personal security, and his family are in fear for their personal and physical safety.

15. As evidenced by the over 143 times Daugherty has been observed stalking Ellington and his family, he has the apparent ability to carry out this threat of continued harassment and violence.

16. Both Mr. Ellington's sister and girlfriend have both demanded to Mr. Daugherty that he stop his harassment. Despite this clear demand for Daugherty to stop engaging in this harassing behavior, he refuses to stop and continues to harass Ellington and his family.

17. Daugherty's constant stalking and harassment of Ellington and his family reasonably cause them to fear for their safety.

18. Ellington reported Daugherty's harassing and disturbing behavior to the police.

VI. Causes of Action

A. Count One: Stalking.

19. All facts alleged above, herein, and below are hereby incorporated by reference.

20. Pursuant to TEXAS CIVIL PRACTICE & REMEDIES CODE § 85.002, a defendant is liable to a claimant for damages arising from stalking of the claimant by the defendant.

21. A claimant proves stalking against a defendant by showing:

> (1) on more than one occasion the defendant engaged in harassing behavior;
> (2) as a result of the harassing behavior, the claimant reasonably feared for the claimant's safety or the safety of a member of the claimant's family; and
> (3) the defendant violated a restraining order prohibiting harassing behavior or:
>
> (A) the defendant, while engaged in harassing behavior, by acts or words threatened to inflict bodily injury on the claimant or to commit an offense against the claimant, a member of the claimant's family, or the claimant's property;
>
> (B) the defendant had the apparent ability to carry out the threat;
>
> (C) the defendant's apparent ability to carry out the threat caused the claimant to reasonably fear for the claimant's safety or the safety of a family member;
>
> (D) the claimant at least once clearly demanded that the defendant stop the defendant's harassing behavior;
>
> (E) after the demand to stop by the claimant, the defendant continued the harassing behavior; and
>
> (F) the harassing behavior has been reported to the police as a stalking offense.

22. "Harassing behavior" is defined by the statute as "conduct by the defendant directed specifically toward the claimant, including following the claimant, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the claimant." TEX. CIV. PRAC. & REM. CODE § 85.001(4).

23. First, Defendant has engaged in harassing behavior toward the Plaintiff and his family in the above-described manner. Second, because of the harassing behavior, Plaintiff reasonably feared for his safety and the safety of his family. Third, Defendant, while engaging in the harassing behavior, by acts or words threatened to inflict bodily injury on the Plaintiff or to commit an offense against the Plaintiff, his family, or his property. Specifically, Defendant's

conduct is consistent with behavior leading up to a physical attack and is, therefore, an inherent threat of physical violence. Defendant had the apparent ability to carry out the threat, the Defendant's apparent ability to carry out the threat caused Plaintiff to reasonably fear for his safety or the safety of a family member, the Plaintiff (or his representative) at least once clearly demanded that the Defendant stop his harassing behavior, after the demand to stop by the Plaintiff, the Defendant continued the harassing behavior, and the harassing behavior has been reported to the police as a stalking offense.

24. Plaintiff seeks recovery of his actual damages caused by Defendant's stalking, exemplary damages, and injunctive relief.

B. Count Two: Invasion of Privacy by Intrusion.

25. All facts alleged above, herein, and below are hereby incorporated by reference.

26. A claim of invasion of privacy by intrusion has the following elements: (1) an intentional intrusion, (2) upon the seclusion, solitude, or private affairs of another, (3) that would be highly offensive to a reasonable person.

27. Here, Defendant has intentionally intruded upon the seclusion, solitude, and private affairs of Plaintiff by regularly appearing at his office, his residence, his girlfriend's residence, his father's residence, and his sister's residence, and taking photographs and other recordings of Ellington and his loved ones at these residences. The appearances are unsolicited, uninvited, and constant. These unwanted "visits" by Defendant are highly offensive to a reasonable person.

28. Plaintiff seeks recovery of his actual damages caused by Defendant's conduct alleged herein, exemplary damages, and injunctive relief.

VII. Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction

A. Elements for Injunctive Relief.

29. All facts alleged above, herein, and below are hereby incorporated by reference.

30. In light of the above-described facts, Plaintiff seeks recovery from Defendant.

31. Plaintiff is likely to succeed on the merits of this lawsuit because Defendant has been stalking Plaintiff and his family and has been engaged in otherwise harassing conduct.

32. Unless this Honorable Court immediately restrains the Defendant and his agents the Plaintiff and his family will suffer immediate and irreparable injury, for which there is no adequate remedy at law to give Plaintiff complete, final and equal relief. More specifically, Plaintiff will show the court the following:

a. The harm to Plaintiff and his family is imminent and ongoing as Defendant has harassed and stalked Plaintiff and his family, including his father, his sister, and girlfriend, almost constantly this entire year.

b. The imminent harm will cause Plaintiff irreparable injury as the harassment will continue if not restrained. Further, Plaintiff reasonably fears that Defendant may cause him or his family bodily harm, and the accompanying anxiety interferes with his ability to conduct his normal, daily activities. *See, e.g., Quinn v. Harris*, 03-98-00117-CV, 1999 WL 125470, at *11 (Tex. App.—Austin Mar. 11, 1999, pet. denied) ("[I]njunctions designed to prevent harassment are permissible."); *Kramer v. Downey*, 680 S.W.2d 524, 525 (Tex. App.—Dallas 1984, writ ref'd n.r.e.) ("Further, this right to be left alone from unwanted attention may be protected, in a proper case, by injunctive relief."); and

c. There is no adequate remedy at law which will give Plaintiff complete, final and equal relief because the imminent harm is irreparable. *See e.g., Wright v. Sport Supply Group, Inc.*, 137 S.W.3d 289, 294 (Tex. App.—Beaumont 2004, no pet.) ("Issues one (no evidence of inadequate remedy at law) and two (no evidence of irreparable injury) are intertwined under Texas case law.").

B. Bond.

33. Plaintiff is willing to post a reasonable temporary restraining order and temporary injunction bond and requests the Court to set such bond.

C. Remedy.

34. Plaintiff met his burden by establishing each element which must be present before injunctive relief can be granted by this Court. Thus, Plaintiff is entitled to the requested temporary injunction, and upon a successful trial on the merits, for the temporary injunction to be made permanent.

35. Plaintiff requests that, while the temporary injunction is in effect, the Court to restrain Defendant and his agents from:

a. Being within 500 feet of Ellington;

b. Being within 500 feet of Ellington's office located at 120 Cole Street, Dallas, Texas 75207;

c. Being within 500 feet of Ellington's residence located at 3825 Potomac Ave, Dallas, Texas 75205;

d. Being within 500 feet of Stephanie Archer;

e. Being within 500 feet of Stephanie Archer's residence located at 4432 Potomac, Dallas, Texas 75025;

f. Being within 500 feet of Marcia Maslow;

g. Being within 500 feet of Marcia's residence located at 430 Glenbrook Dr., Murphy, Texas 75094;

h. Being within 500 feet of Byron Ellington;

i. Being within 500 feet of Byron Ellington's residence located at 5101 Creekside Ct., Parker, Texas 75094;

j. Photographing, videorecording, or audio recording Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington;

k. Photographing or videorecording the residences or places of business of Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington; and

l. Directing any communications toward Ellington, Stephanie Archer, Marcia Maslow, or Byron Ellington.

VIII. Exemplary Damages

36. The conduct of Defendant described above constitutes malice and, therefore, Plaintiff is entitled to, and hereby seeks, an award of exemplary damages. *See* TEX. CIV. PRAC. & REM. CODE § 41.003(1).

IX. Conditions Precedent

37. All conditions precedent to Plaintiff's suit have occurred or have been performed.

X. Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that:

a. Defendant be cited to appear and answer;

b. The Court determine any issue of fact and, upon final hearing of this cause, the Court award to Plaintiff:

i. Actual damages;

ii. Exemplary damages;

iii. A temporary restraining order;

iv. A temporary injunction;

v. A permanent injunction; and

vi. Court costs;

c. The Court grant any other relief to which Plaintiff may be entitled.

Respectfully submitted,

/s/ Julie Pettit

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
David B. Urteago
State Bar No. 24079493
durteago@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

Michael K. Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Nathaniel A. Plemons
State Bar No. 24121059
nplemons@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN, LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

ATTORNEYS FOR PLAINTIFF

EXHIBIT
A

DECLARATION OF GREGORY ALLEN BRANDSTATTER

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Gregory Allen Brandstatter declares as follows:

1. My name is Gregory Allen Brandstatter. I am over 21 years of age, have never been convicted of a felony or other crime involving moral turpitude, and suffer from no mental or physical disability that would render me incompetent to make this declaration.

2. I am able to swear, and hereby do swear under penalty of perjury, that the facts stated in this declaration are true and correct and within my personal knowledge.

3. I am a Licensed Texas Master Peace Officer with fifteen (15) years of experience, a U.S. Government Contractor with over twelve (12) years of experience in the areas of high threat protection, counterterrorism, and counternarcotics, and I am also a licensed private investigator and security consultant.

4. On Feb 3, 2021, Scott Ellington ("Scott") called, advising me that he believed someone was stalking himself and his girlfriend Stephanie Archer ("Stephanie"). The day prior to his calling me (Feb 2, 2021), Stephanie had been followed to 120 Cole Street, Dallas, Texas, where Scott has an office. Stephanie stated that for the past month or so she had noticed a large Black SUV possibly following her. On Feb 2, 2021, she noticed that the person in the Black SUV was actively taking pictures of her, and she attempted to confront the individual while she simultaneously took pictures of the Black SUV and its driver. Her picture shows the vehicle Make and License Number, BX9K764. In Stephanie's photo you can also see the person driving holding

up a cell phone as if taking pictures. A true and correct copy of this photograph is attached hereto as **Exhibit A-1**.

5. The following day Scott was in his office on Cole Street, when he noticed a vehicle resembling a "Toyota 4 Runner, Tan in color, stop in front of his office. He observed the driver of the taking pictures and or video of his officer and the vehicles parked in front. Scott was able to obtain the License Number of the Vehicle, GPF9512, he also noted that vehicle had a "WMR sticker on the rear window. Scott stated the driver of the vehicle looked like Pat Daugherty ("Daugherty"). Scott and Daugherty both previously worked at an investment firm in Dallas and are currently opponents in financial litigation. Scott believes that Daugherty is attempting to harass him, his friends and coworkers due to the litigation. It should be noted that Daugherty has a history of anger issues and he believes Daugherty may be trying to intimidate him.

6. Scott asked if I could assist him in determining who the person(s) were taking the photos/videos. I advised Scott that I could check some open sources intelligence ("OSINT") sites and see what I could come up with in reference to the vehicle registrations. I also suggested that we set up a counter surveillance program to determine if these were random acts or an organized surveillance effort.

7. On Feb 4, 2021, an investigation was opened along with a counter surveillance operation. OSINT sources showed Daugherty to be the registered owner of the Black SUV BX9K764 and that Daugherty currently is listed on the vehicle registration of the Infiniti QX4 GPF9512. The Infiniti QX4 closely resembles a Toyota 4 Runner (as observed by Scott above). We believe that Daugherty sold the Infiniti to one of his domestic employees and "borrowed" the vehicle to avoid detection.

8. On February 4, 2021, at approximately 11:20 A.M., I observed the Infiniti GPF9512 driven by a while male with sandy blonde hair drive by west bound on Cole slow when passing Scott's office (120 Cole St.) and then proceed west on Cole, south on Levee, east on Alley (rear of 120 Cole), U-turn, south on Levee and east on Leslie. I viewed the driver of this vehicle as he was exiting Alley and can verify, after comparing photos, that Daugherty was the driver of the Infiniti.

9. At approximately 1:22 P.M. on Feb 4, 2021, Scott advised that Daugherty had followed him to 120 Cole, I was parked on Cole and Levee. As Scott parked, I observed the Infiniti driving west on Cole towards me. I observed Daugherty driving Infiniti GPF9512. Daugherty turned south on Levee, U-turn, north on Levee then east on Cole. I kept my distance as the Infiniti slowed and then stopped in front of Scott's office. While stopped in front of Scott's office, Daugherty verbally engaged Stephanie and Joe (friend of Scott). Daugherty proceeds east on Cole, I followed, Daugherty turned left on Rivers Edge, I am unable to follow due to traffic conditions. Stephanie and Joe identified the driver as Daugherty after comparing to photos. A true and correct copy of a photograph of the back of the Infiniti taken on February 4, 2021, on Cole St. is attached hereto as **Exhibit A-2**.

10. At approximately 5:15 P.M. on February 4, 2021, Reese Morgan ("Reese"), a private investigator with whom I regularly work, drove by Daugherty's residence and confirmed two vehicles parked in the carport. One is a white Lincoln Navigator LPG9001 and the other is a Black GMC Yukon BX9K764, which is the same vehicle that followed Stephanie on February 3, 2021. The Infiniti GPF9512 (with a "WMR" sticker on the back window) is parked on the street across the street from Daugherty's carport. Attached as **Exhibit A-3** is a true and correct copy of a photograph of the Yukon parked at Daugherty's residence, attached as **Exhibit A-4** is a true and

correct copy of a photograph of the Navigator parked at Daugherty's residence, and attached as **Exhibit A-5** is a true and correct coy of a photograph of the Infiniti parked across the street from Daugherty's residence.

11. February 5, 2021, approximately 1:40 P.M., Reese drove by Daugherty's Residence and verified the Infiniti GPF9512 parked across street from carport.

12. February 8, 2021, at approximately 10:10 A.M., I drove by Daugherty's Residence and verified that the Infiniti GPF9512 was parked across street from carport.

13. Additional screen captures clearly identify Daugherty as the driver videoing and/or photographing Scott's office. *See* **Exhibit A-6** (March 29, 21, three passes by Daugherty in the Infiniti), **Exhibit A-7** (April 16, 2021, Daugherty in the Yukon); **Exhibit A-8** (April 23, 2021, Daugherty in the Yukon). Daugherty also is clearly identifiable outside of Scott's sister's home. *See* **Exhibit A-9** (April 25, 2021, Daugherty in the Infiniti). It is clear that he is recording Scott, his family, and friends. *See* **Exhibit A-10** (May 3, 2021, Daugherty in the Navigator).

14. Attached hereto as **Exhibit A-11** is a true and correct copy of a report that I wrote that contains my counter-surveillance log. As documented by the report, following verification that Daugherty was the individual in the Black Yukon with license plate BX9K764 and the Infiniti QX4 with license plate GPF9512, Daugherty was observed an additional 143 times outside Scott's office or the homes of his family or girlfriend between February 19, 2021, and November 23, 2021. In fact, there were many instances where Daugherty would drive by Scott's office several times in a single day. For example, Daugherty was observed driving by Scott's office at least nine (9) times on April 21, 2021. During many of these visits, Daugherty was observed taking photographs or video recordings from the inside of his vehicle.

15. Additionally, Daugherty was observed at least eight (8) times outside of the home of Marcia Maslow, Scott's sister. Mrs. Maslow resides with her husband and two minor daughters. Mrs. Maslow resides in Murphy, Texas, approximately a thirty minute drive (without traffic) from the residences of both Scott and Daugherty. Mrs. Maslow sent me a written message after she observed Daugherty at her residence in which she describes the emotional trauma experienced by both her and her family.

16. Finally, Daugherty has been observed at least seven (7) times outside the home of Scott's widower father Byron Ellington. Mr. Byron Ellington lives in Parker, Texas, approximately a thirty-five minute drive (without traffic) from the residences of both Scott and Daugherty.

17. While the verified instances whereby Daugherty was visited Scott's office or the home of his friends and family are extensive, Daugherty's harassment is almost certainly more extensive. The following factors lead to this conclusion:

a. Daugherty was only first spotted because of Stephanie's lay person observations, so the stalking likely started earlier;

b. Each photograph and video clip must be manually extracted from manual review of hours of raw video taken during daytime hours, so there is likely to be more encounters unidentified or unrecorded;

c. It is difficult to record Daugherty when his vehicle is following Scott's or those of his family;

d. There may be other locations associated with Scott that Daugherty stalked where I did not conduct counter-surveillance.

18. In my experience on the United States Department of State High Threat Protection Team, the sort of conduct exhibited by Daugherty is a precursor to a physical attack. I therefore called the Dallas Police Department to report the stalking, but could not find anyone to take the report. I was told that Scott needed to call 911 instead and report situation.

[*Remainder of Page Intentionally Left Blank; Signature Page Follows*]

FURTHER DECLARANT SAYETH NOT.

My name is Gregory Allen Brandstatter. My date of birth is May 4, 1954. My address is 1001 County Road 26100, Roxton, Texas 75477. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas, on the 28th day of December, 2021.

Gregory Allen Brandstatter

Gregory Allen Brandstatter

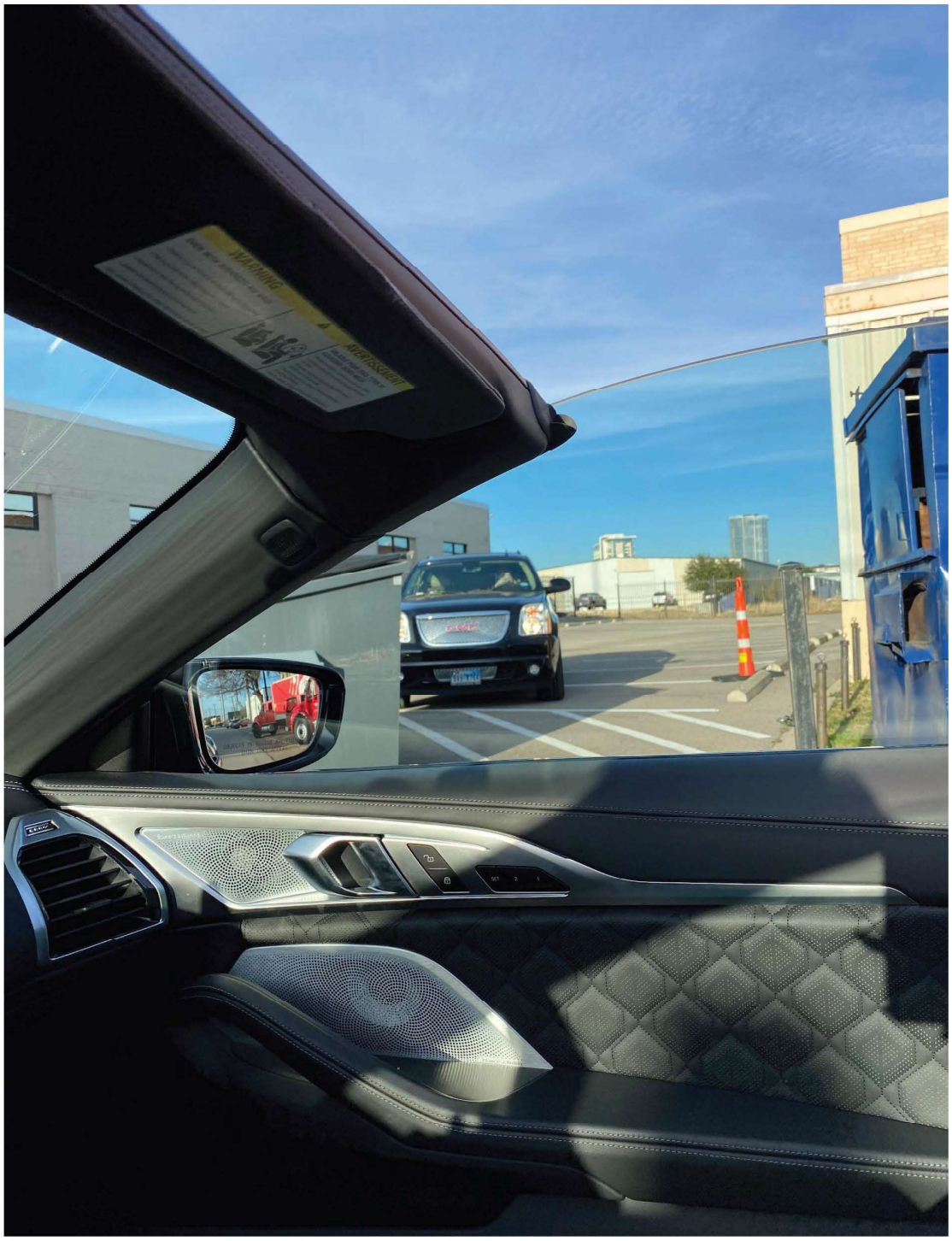

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EXHIBIT

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EXHIBIT

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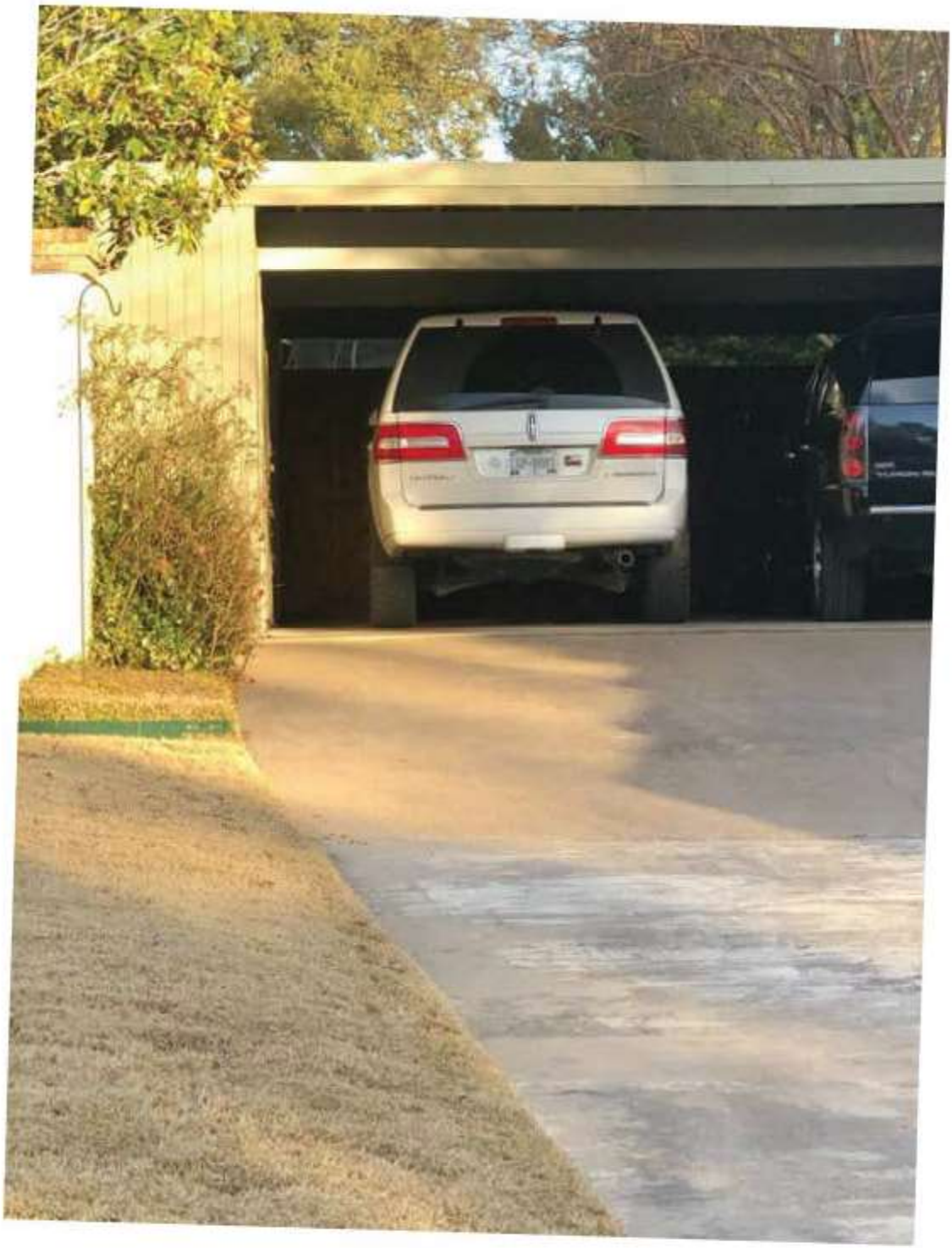

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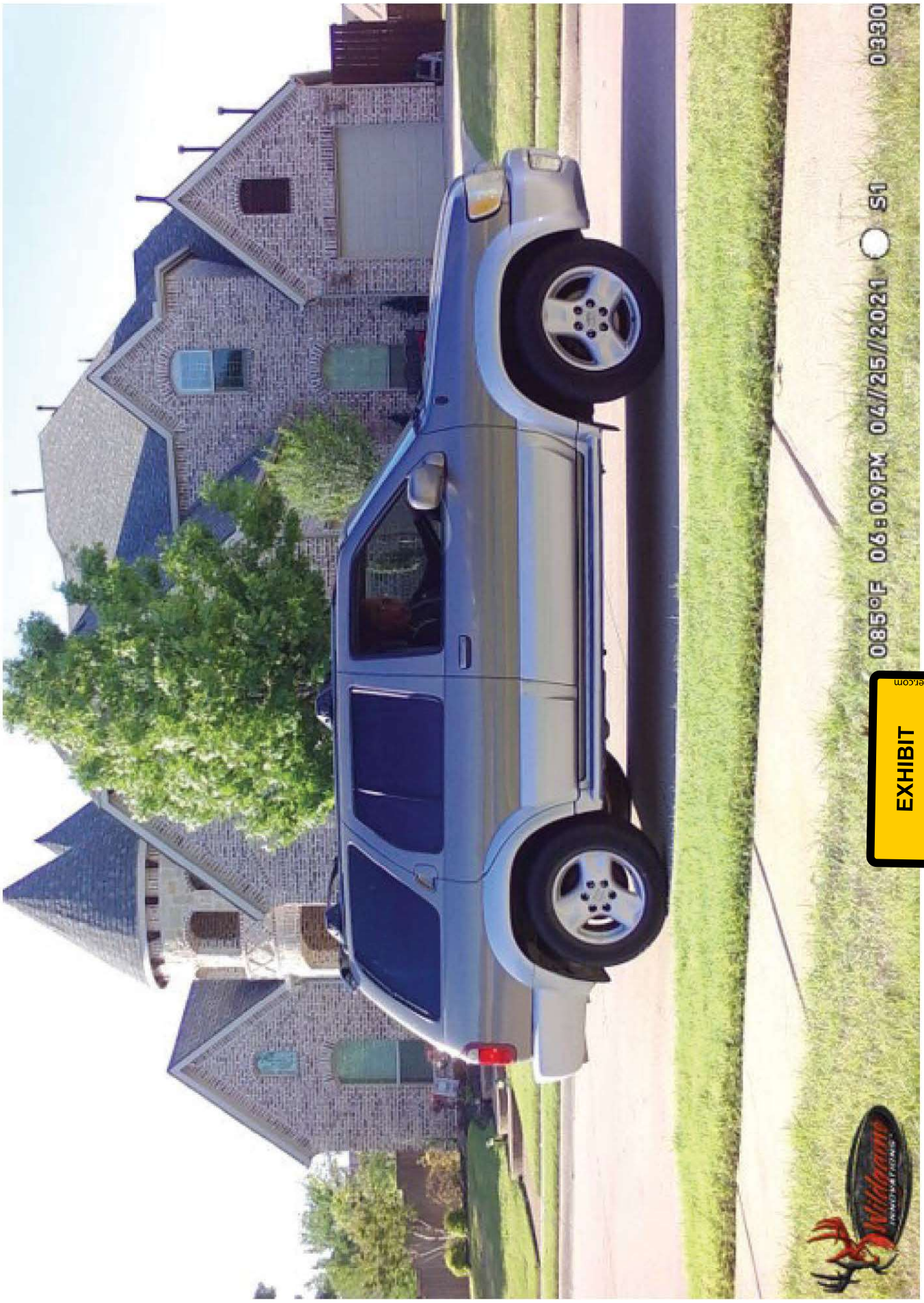
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Greg Brandstatter, Pat D Investigation / Counter Surveillance log

On Feb 3 2021, Scott Ellington (Scott) called, advising me that he believed someone was stalking himself and his girlfriend Stephanie Archer (Stephanie). The day prior, Feb 2 2021 to his calling me Stephanie had been followed to 120 Cole Street, Dallas, Texas, where Scott has an office. Stephanie stated that she had noticed that for the past month or so she had noticed a large Black SUV possibly following her. On Feb 2 2021 she noticed that the person in a Black SUV actively taking pictures, she had, had enough and attempted to confront the individual while taking a picture of the vehicle. Her picture shows the vehicle Make and License Number, BX9K764. In Stephanie's photo you can also see the person driving holding up a cell phone as if taking pictures. See Stephanie's photo.

The following day Scott was in his office on Cole Street, when he noticed a vehicle resembling a "Toyota 4 Runner, Tan in color, stop in front of his office. He observed the driver of the taking pictures and or video of his officer and the vehicles parked in front. Scott was able to obtain the License Number of the Vehicle, GPF9512, he also noted that vehicle had a "WMR sticker on the rear window. Scott stated the driver of the vehicle looked like Pat Daugherty (Pat). Scott and Pat both previously worked at an investment firm in Dallas, and are currently opponents in financial litigation. Scott believes that Pat is attempting to harass him, his friends and coworkers due to the litigation. It should be noted that Pat has a history of anger issues and he believes Pat may be trying to intimidate him.

Scott asked if I could assist him in determining who the person(s) were taking the photos/videos. I advised Scott that I could check some Open Sources Intelligence sites and see what I could come up with in reference to the vehicle registrations. I also suggested that we set up a counter surveillance program to determine if these were random acts of an organized surveillance effort.

On Feb 4 2021 an investigation was opened along with a counter surveillance operation. OSINT sources showed Pat to be the registered owner of the Black SUV BX9K764 and that Pat was the previous owner of the Infinity QX4 GPF9512. The Infinity QX4 closely resembles a Toyota 4 Runner (as observed by Scott above). We believe that Pat sold the Infinity to one of his domestic employees and "borrowed" the vehicle to avoid detection.

At approx. 1120 on Feb 4th the Infinity GPF9512 driven by a W/M Sandy Blonde hair drives by WB on Cole slows when passing 120 proceeds W on Cole, S on Levee, E on Alley (rear of 120 Cole), U-turn, S on Levee and E on Leslie. I viewed the driver of this vehicle as he was exiting alley and can verify after comparing Photos, that Pat was the driver of the infinity.

At approx 1322 on Feb 4th Scott advises that the Pat had followed him to 120 Cole, I was parked on at Cole and Levee as Scott parked I observe the Infinity drives W on Cole towards me, I observe Pat driving infinity GPF9512. Pat turns south on Levee, U-turn, N on Levee then E on Cole. I keep my distance as Infinity slows and then stops in front of 120, While stopped in front of 120, Pat verbally engages Stephanie and Joe (friend of Scott). Pat proceeds E on Cole, I follow, Pat turns left on Rivers Edge, I am

unable to follow due to traffic conditions. Stephanie and Joe are able to Identify the Driver as Pat after comparing to photos. See photos for rear of Infinity, on Cole Street, Note Sticker (WMR).

At Approx 1715 on Feb 4, Reese Morgan (Reese) PI drives by Pat's residence and is able to confirm two vehicles parked in carport, White Lincoln Navigator LPG9001 and Black GMC Yukon BX9L764, same vehicle that followed Stephanie on Feb 3, The Infinity GPF9512 is parked on the street across the street from Pat's carport, see photos

Feb 5 2021, approx 1340, Reese drive by Pat's Residence verify Infinity GPF9512 parked across street from carport.

Feb 8 2021, approx. 1010, Drive by Pats Residence verify Infinity GPF9512 parked across street from carport

Feb 19 2021 approx 1700 Sarah Goldsmith, moving files to 120 Cole St, confronted my W/M Sandy Blonde, Graying hair, driving a "Silver Toyota 4 Runner" (Infinity). Driver ask "Do you know if Scott is back in town?" She ignored him and went into office space until he left. She did not feel safe, she departed and had her husband accompany her back to Cole St. After viewing a picture of Pat, Sarah was able to verify the driver who confronted her was Pat.

Feb 23 2021 approx 1707 Black GMC Yukon BX9K764, Driven by Pat (visual), business attire blue shirt, E-W on Cole, slows at 120, proceeds N on Levee, E on Oaklawn. (Day in Court)

March 4 2021 approx 1113, Black GMC Yukon BX9K764, drives by E-W on Cole slows when passing 120, S on Levee, pulls over appears to be taking notes, continues S on Levee, turns E on Leslie at.

March 9 2021 approx 1110, Black GMC Yukon BX9K764, drives by E-W on Cole, slows, then N on Levee.

approx 1340, Black GMC Yukon BX9K764, drives by E-W on Cole, slows, then N on Levee.

March 23 2021 approx 1450, Black GMC Yukon BX9K764, driven by Pat, drives by E-W on Cole, Stops in front of 120, (note Scott's Vic out front with door open), S on Levee, U-turn, N on Levee. Visually confirm Pat driving.

approx 1700, Black GMC Yukon BX9K764, driven by Pat, drives by E-W on Cole, Stops in front of 120, Scott is in office and observes Pat taking pictures or video of building and vehicles, Pat proceeds W on Cole , N on Levee

March 25 2021 approx 1414, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole Stops short of 120, I observed Pat, dressed in business attire, exit vehicle and put trash in trash container, then proceed W on Cole where he stopped in front of 120 for an extend period of time, before proceeding W on Cole

Approx. 1417, Black GMC Yukon BX9K764, driven by Pat, drives by E-W on Cole, Stops in front of 120, another extended stop at 120 before proceeding W on Cole.

March 26 2021, approx 1414, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole. I pass in opposite direction. Pat is wearing business attire, talking on cell phone

March 29 2021, approx 1430, Infinity QX4 GPF9512, with "WMR sticker on the rear window, driven by Pat, drives by E-W Stops front of 120, peers into building.

Approx 1433, Infinity QX4 GPF9512, driven by Pat, drives by E-W Stops front of 120, appears to be taking pictures of building and vehicles.

Approx 1450, Infinity QX4 GPF9512, driven by Pat, drives by E-W Slows front of 120

March 31 2021, approx 1508, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole, opens door slightly

Approx 1511, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole stops front of 120, takes pictures

Approx 1518, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole stops front of 120, takes video

Approx 1522, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole stops front of 120, takes extensive video of inside garage door and vehicles out front

April 13 2021, approx 1428, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole

Approx 1430, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole, slows at 120, takes video of building and vehicles

Approx 1433, Black GMC Yukon BX9K764, driven by Pat, driving W-E on Cole

April 14 2021 Scott's Sister Marcia Reports, Black GMC Yukon Denali, stopped in front of her house and was taking pictures of her home, family and vehicles, she reports this is the second instance. First instance was 3 25 2021, She provides Video of second instance, See Marcia's report. Stealthcam deployed.

April 16 2021, approx 1453, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole, slows takes pics/video of vehicles

Approx 1455, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole,I nterested in Scott' new assistant Charleigh.

Approx 1456, Black GMC Yukon BX9K764, driven by Pat, driving W-E on Cole, Passenger in vehicle, New Player

April 19 2021, approx 1423, Black GMC Yukon BX9K764, driven by Pat, driving E-W on Cole, Stops takes Video

Approx 1426, Black GMC Yukon BX9K764, driven by Pat, driving W-E on Cole

April 20 2021, approx 1335, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1338, Black GMC Yukon BX9K764, driven by Pat drives by, E-W on Cole slows takes pictures

Approx 1340, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

April 21 2021, approx 1028, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1038, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1040, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1043, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, stops for extended period looking inside garage door, car behind him honks

Approx 1055, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, fast

Approx 1058, Black GMC Yukon BX9K764, driven by Pat drives by W-E on Cole

Approx 1215, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, stops and takes pictures of vehicles

Approx 1217, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, slows at 120 and takes video

Approx 1448, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, Stops and takes video of vehicles, Scott confirms he saw, Black GMC Yukon

April 22 2021, approx 1010, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, talking on phone or into voice recorder

Approx 1013, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, talking on phone or into voice recorder

Approx 1220, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, takes picture of Charleigh Vehicle

Approx 1325, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1547, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

April 23 2021, approx 1027, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1321, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, Pics of Ryan's and Trevor Vehicles

Approx 1324, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

Approx 1457, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole, Good Facial Picture

Approx 1500, Black GMC Yukon BX9K764, driven by Pat drives by W-E on Cole

Infinity QX4 GPF9512, driven by Pat, drives by E-W, E-W on Cole

Approx 1432, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

April 24 2021, (Sat) approx 1158, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

approx 1432, Black GMC Yukon BX9K764, driven by Pat drives by E-W on Cole

approx 1605 Black GMC Yukon, driven by Pat drives by Marcia's House

April 25 2021, (Sun) approx 1608, Infinity QX4 GPF9512, driven by Pat drives by Marcia's House

April 26 2021, approx 1533, Infinity QX4 GPF9512, driven by Pat drives by Byron's House

approx 1534, Infinity QX4 GPF9512, driven by Pat drives by Byron's House

April 27 2021 Infinity QX4 GPF9512, drives by E-W on Cole, Video only, Not typical behavior, cannot confirm.

April 28 2021, approx 1030, Infinity QX4 GPF9512, driven by Pat, drives by E-W, slows takes Video, Faster than normal, visual only

approx 1510, Infinity QX4 GPF9512, driven by Pat, drives by E-W, slows but behavior atypical

approx. 1650, Infinity QX4 GPF9512, driven by Pat, drives by E-W, Video confirmation

approx 1745, Black Yukon drives by, Cam Only no Confirmation, (note change vehicle)

April 30 2021, approx. 1634 Infinity QX4 GPF9512, driven by Pat, drives by E-W, Cam only **Atypical**

May 3 2021, approx. 1506 Lincoln Navigator XXXXXX, driven by Pat, drives by E-W, note vehicle change

approx. 1546 Lincoln Navigator XXXXXX, driven by Pat, drives by W-E

May 4 20212 approx 1642 Infinity QX4 GPF9512, driven by Pat, drives by E-W

approx 1651 Infinity QX4 GPF9512, driven by Pat, drives by W-E, License Plate

approx 1652 Infinity QX4 GPF9512, driven by Pat, drives by E-W

May 5 2021 approx 1123 Infinity QX4 GPF9512, driven by Pat, drives by E-W, Video on site

approx 1254 Infinity QX4 GPF9512, driven by Pat, drives by E-W

approx 1040 Infinity QX4 GPF9512, driven by Pat, drives by Marcia's house

May 12 2021 Approx 0955 Infinity QX4 GPF9512, drives by E-W, License Plate

approx 1308 Infinity QX4 GPF9512, driven by Pat, drives by E-W, takes video, sticker

approx 1311 Infinity QX4 GPF9512, drives by E-W, License Plate, sticker

May 13 2021 approx 1055 Infinity QX4, drives by, E-W

approx 1213 Infinity QX4, drives by, E-W, License Plate

May 14 2021 approx 1523 Infinity QX4, drives by, E-W

May 18 2021 approx 1416 Infinity QW4, drives by E-W

May 19 2021	approx	1411 Infinity QW4, drives by E-W, License Plate
May 18 2021	approx	1436 Infinity QW4, drives by 4432 Potomac
May 21 2021	approx	1147 Infinity QW4, drives by E-W, License Plate
May 22 2021	approx	1345 Infinity QW4, drives by E-W, License plate
May 24 2021	approx	1132 Infinity QW4, drives by E-W
	approx	1436 Infinity QW4, drives by W-E, License Plate
	approx	1526 Infinity QW4, drives by Marcia's house
May 26 2021	approx	1035 Infinity QW4, drives by E-W
	approx	1329 Infinity QW4, drives by E-W
	approx	1330 Infinity QW4, drives by W-E
	approx	1333 Infinity QW4, drives by E-W, License Plate
	approx	1334 Infinity QW4, drives by W-E, License Plate, Sticker
	approx	1428 Infinity QW4, drives by Byron's house
	approx	1430 Infinity QW4, drives by Byron's house, Sticker
May 27 2021	approx	1336 Infinity QW4, drives by E-W
May 28 2021	approx	1043 Black GMC Yukon, drives by E-W, reverts to GMC, Baseball cap
May 29 2021	approx	1126 Black GMC Yukon, drives by E-W, License Plate
	approx	1430 Black GMC Yukon, drives by E-W, License Plate
	approx	1432 Black GMC Yukon, drives by W-E
	approx	1432 Black GMC Yukon, drives by E-W, License Plate
	approx	1433 Black GMC Yukon, drives by W-E, License Plate
	approx	1506 Black GMC Yukon, drives by W-E, License Plate
June 1 2021	approx	1325 Black GMC Yukon, drives by W-E, License Plate
June 2 2021	approx	1012 Black GMC Yukon, drives by W-E, License Plate, Stop
	approx	1012 Black GMC Yukon, drives by W-E, License Plate, Stop
June 4 2021	approx	1406 Black GMC Yukon, drives by E-W, License Plate
	approx	1411 Black GMC Yukon, drives by W-E, License Plate
June 5 2021	approx	0959 Black GMC Yukon, drives by E-W, driven by Pat Blue Shirt
	approx	1007 Black GMC Yukon, drives by E-W, License Plate

June 7 2021	approx 1504 Black GMC Yukon, drives by E-W gb Visual from office BX9
June 9 2021	approx 1022 Black GMC Yukon, drives by E-W taking Pics, Trevor
	approx 1023 Black GMC Yukon, drives by W-E, stopped
	approx 1023 Black GMC Yukon, drives by W-E, stopped
	approx 1024 Black GMC Yukon, drives by E-W, License Plate, Video
	approx 1423 Black GMC Yukon, drives by E-W License Plate Red Shirt
	approx 1524 Black GMC Yukon, drives by E-W, License Plate + Visual Red Shirt
July 7 2021	approx 1037 Black GMC Yukon, drives by E-W, License Plate, visual id
Aug 9 2021	approx 1017 Black GMC Yukon, drives by E-W, License Plate
Aug 11 2021	approx 1141 Black GMC Yukon, drives by E-W, License Plate
Aug 21 2021	approx 1658 Black GMC Yukon, drives by Byron house in
Aug 21 2021	approx 1500 Black GMC Yukon , drives by Byron house out
Aug 21 2021	approx 1509 Black GMC Yukon, drives by Byron house out
Aug 22 2021	approx 1230 Black GMC Yukon, drives by Cole E-W
Aug 22 2021	approx 1316 Black GMC Yukon, drives by Marcia house L-R
Aug 24 2021	approx 1331 Infinity, drives by Cole E-W
Aug 26 2021	approx 1458 Black GMC Yukon, drives by Cole W-E
Sept 18 2021	approx 1720 Black GMC Yukon, drives by Cole E-W
Sept 21 2021	approx 1419 Black GMC Yukon, drives by Cole E-W
Oct 16 2021	approx 1235 Black GMC Yukon, drives by Cole E-W ?? enhance LP
Oct 23 2021	approx 1245 Black GMC Yukon, drives by 3825 Potomac W-E, ID by LP
	approx 1635 Black GMC Yukon, drives by 3825 Potomac W-E, ?? enhance LP
	approx 1635 Black GMC Yukon, drives by 3825 Potomac E-W, ?? enhance LP
Oct 30 2021	approx 0953 Black GMC Yukon, drives by 3825 Potomac E-W
	approx 0956 Black GMC Yukon, drives by 3825 Potomac E-W
Nov 3 2021	approx 1555 Black GMC Yukon, drives by 3825 Marcia' house W-E Profile ID
	approx 1557 Black GMC Yukon, drives by 3825 Marcia' house W-E Profile ID, either stopped for 2 mins or returned after 2 mins

Nov 6 2021	approx 1004 Black GMC Yukon, drives by Cole E-W, D clearly visible – driver
Nov 8 2021	approx 1027 Black GMC Yukon, drives by Cole E-W, got in behind PI visual on LP and Driver, Nest Cam Confirm
Nov 10 2021	approx 0747 Black GMC Yukon, drives by Cole W-E, lengthy stop Nest cam confirm
Nov 20 2021	approx 1128 Black GMC Yukon, drives by Cole W-E, Driver Visual
Nov 21 2021	approx 1410 Black GMC Yukon, drives by 3825 W-E, Passenger female? LP
Nov 22 2021	approx 1109 Black GMC Yukon, drives by Cole E-W, Driver visual
Nov 23 2021	approx 1803 Black GMC Yukon, drives by Cole E-W, Driver visual, taking pictures
	Note SE on Cole earlier
	approx 1806 Black GMC Yukon, drives by Cole W-E
	approx 1810 Black GMC Yukon, drives by Cole E-W, Driver visual, taking pictures

EXHIBIT
B

DECLARATION OF SCOTT BYRON ELLINGTON

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Scott Byron Ellington declares as follows:

1. My name is Scott Byron Ellington. I am over 21 years of age, have never been convicted of a felony or other crime involving moral turpitude, and suffer from no mental or physical disability that would render me incompetent to make this declaration.

2. I am able to swear, and hereby do swear under penalty of perjury, that the facts stated in this declaration are true and correct and within my personal knowledge.

3. Starting in January of 2021, my longtime girlfriend, Stephanie Archer ("Stephanie"), noticed a large, Black SUV possibly following her. On February 2, 2021, she was followed by the SUV to my office located at 120 Cole Street, Dallas, Texas. She noticed that the driver in the SUV was taking pictures from inside the vehicle. She confronted the individual while simultaneously taking pictures of the SUV and the driver. The license plate number of the black SUV was BX9K764.

4. The next day, on February 3, 2021, I was at my office when I noticed a vehicle resembling a tan Toyota 4 Runner stopped in front of my office with the driver either taking photographs or making a videorecording, or both. The license plate number of the vehicle was GPF9512. The driver of the vehicle appeared to be Patrick Daugherty ("Daugherty").

5. Until January of 2021, I was the general counsel for Highland Capital Management, L.P. ("Highland"). Daugherty is a former employee of Highland. In 2012, Highland sued Daugherty and Daugherty counterclaimed. The lawsuit was ultimately resolved by a jury trial, with

a jury determining that Daugherty breached his employment agreement and his fiduciary duties and awarding Highland $2,800,000 in attorney's fees and injunctive relief. The jury likewise found that a Highland affiliate, Highland Employee Retention Assets LLC ("HERA") breached the implied duty of good faith and fair dealing and awarded Daugherty $2,600,000 in damages.

6. Since the filing of the original lawsuit in 2012, Daugherty and Highland—or Highland related entities and individuals—have engaged in protracted litigation in several different forums across the country. Daugherty's expressed goal in his campaign is to "get" me and the founder and former CEO of Highland, Jim Dondero.

7. Daugherty has a history of anger issues and I believed that his "drive by" of my office and following Stephanie was his attempt to intimidate me.

8. I hired a private investigator, Greg Brandstatter ("Brandstatter"), to assist in confirming the identity of the driver of the black SUV with license plate BX9K764 and the tan SUV with the license plate GPF9512.

9. Brandstatter's investigation found that Daugherty was the individual following Stephanie and driving by my office. Further, I have reviewed photographs and video recordings of Daugherty outside my home located at 3825 Potomac Ave, Dallas, Texas 75205, my office, the house of my sister, Marcia, and the house of my father, Byron Ellington.

10. Daugherty has been documented outside my office, my home, and the homes of my family 143 times since January of 2021. Both Marcia and Stephanie have confronted Daugherty at times and demanded that he stop his harassment, but he has continued to visit my office and home, and the homes of my family members, despite these demands.

11. I have moved residences three times from January 2021 to today. Daugherty has been recorded outside of the second and third residences to which I moved. The second residence

was Stephanie's house and was not under my name. For the third residence, my address was not searchable under my name on the Dallas County Central Appraisal District website. Nonetheless, Daugherty was recorded outside of that address within two months of me moving. On information and belief, Daugherty could not have located me at either residence without physically following me or others to those locations.

12. I believe that Daugherty's actions are leading up to a physical attack by him on either myself, Stephanie, or members of my family. I understand that Brandstatter has reported Daugherty's harassment and stalking to the Dallas Police Department. I also called the Dallas Police Department to report the harassment and stalking. The harassment has caused me fear and anxiety and will continue to cause me fear and anxiety.

13. Daugherty's harassment further interferes with my daily activities. I am constantly looking out for him when I am at my home or at my office. I had to hire Brandstatter to confirm that Daugherty was the individual stalking me and my family and then document the extent of the harassment. I have had security devices, such as cameras, installed at my personal home and office in response to the harassment. I have had to hire personal security. I have also had to change my daily routine to try and avoid being followed by Daugherty.

[*Remainder of Page Intentionally Left Blank; Signature Page Follows*]

FURTHER DECLARANT SAYETH NOT.

My name is Scott Byron Ellington. My date of birth is 10.24.1971. My address is 3825 Potomac Ave., Dallas, Texas 75205. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas, on the 11th Day of January, 2022.

Scott Ellington

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Patricia Perkins Mayes on behalf of Julie Pettit
Bar No. 24065971
pperkins@pettitfirm.com
Envelope ID: 60728974
Status as of 1/12/2022 8:55 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Julie Pettit		jpettit@pettitfirm.com	1/11/2022 6:09:57 PM	SENT
Beverly Congdon		bcongdon@lynnllp.com	1/11/2022 6:09:57 PM	SENT
Patricia Perkins Mayes		pperkins@pettitfirm.com	1/11/2022 6:09:57 PM	SENT
Michael K.Hurst		mhurst@lynnllp.com	1/11/2022 6:09:57 PM	SENT
Mary GoodrichNix		mnix@lynnllp.com	1/11/2022 6:09:57 PM	SENT
Nathaniel A.Plemons		nplemons@lynnllp.com	1/11/2022 6:09:57 PM	SENT

EXHIBIT 2

Jason S. Brookner
Texas Bar No. 24033684
Andrew K. York
Texas Bar No. 24051554
Drake M. Rayshell
Texas Bar No. 24118507
GRAY REED
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
dyork@grayreed.com
drayshell@grayreed.com

ATTORNEYS FOR PATRICK DAUGHERTY

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)
Reorganized Debtor.	
SCOTT BYRON ELLINGTON,	
Plaintiff,	Adv. No. 22-03003-sgj *Removed from the 101st Judicial District Court of Dallas County, Texas* *Cause No. DC-22-00304*
v.	
PATRICK DAUGHERTY,	
Defendant.	

[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.

DEFENDANT PATRICK DAUGHERTY'S ORIGINAL ANSWER

Patrick Daugherty ("Defendant"), by and through his undersigned counsel, hereby files this Original Answer to *Plaintiff's Original Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction.* (the "State Court Petition") [Adv. Dkt. No. 1, App'x at Exhibit 1], filed by Scott Byron Ellington ("Plaintiff"), and respectfully shows as follows:

DALLAS COUNTY LR 1.08 DISCLOSURE

No response is required to these allegations because they contain legal argument which is no longer applicable since the State Court Petition was removed to this Court.

I. DISCOVERY CONTROL PLAN

1. No response is required to the allegations in paragraph 1 of the State Court Petition because it contains legal argument and concerns state court procedural rules that are not applicable since the State Court Petition was removed to this Court. To the extent a response may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

II. PARTIES & SERVICE

2. Defendant lacks sufficient information to admit or deny the allegations in paragraph 2 of the State Court Petition, which concern Plaintiff's residency status.

3. Defendant admits the allegations contained in paragraph 3 of the State Court Petition.

III. RULE 47(C) DISCLOSURE

4. No response is required to the allegations in paragraph 4 of the State Court Petition because it contains legal argument and concerns state court procedural rules that are not applicable since the State Court Petition was removed to this Court. To the extent a response may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

IV. JURISDICTION AND VENUE

5. No response is required to the allegations in paragraph 5 of the State Court Petition because they contain legal argument. To the extent a response is required, Defendant denies that he committed any torts, in whole or in part, in Texas.

6. No response is required to the allegations in paragraph 6 of the State Court Petition because they contain legal argument. To the extent a response is required, Defendant admits that he resides in Dallas County. Defendant denies the remaining allegations in paragraph 6.

V. FACTS

7. Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 7 and therefore denies the same.

8. Defendant admits that he previously worked for Highland Capital Management ("Highland").

9. Defendant admits that Highland sued Defendant in 2012. Defendant admits that he filed counterclaims against Highland and sued its affiliate, Highland Employee Retention Assets, LLC ("HERA"), and three of Highland's executives. Defendant further admits that the jury in that suit found that HERA breached its implied duty of good faith and fair dealing and awarded Defendant $2,600,000.00 in damages plus interest that continues to accrue on the unpaid judgment. The jury also found that Highland and James Dondero defamed Defendant with malice. Defendant admits that the jury found that Defendant breached his employment agreement and fiduciary duties. Defendant also admits the jury awarded Highland $0 in damages, $2,800,000.00 in attorney's fees and that Highland obtained injunctive relief; however, these awards against Defendant are to be vacated pursuant to the terms of Defendant's settlement with Highland (the Reorganized Debtor) that were disclosed in the Northern District of Texas Bankruptcy Court on

December 8, 2021 (the "Proposed Settlement"). Defendant denies any remaining allegations in paragraph 9, and Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

10. Defendant admits that he is involved in litigation in Delaware related to Highland and Highland-related individuals or entities, including Plaintiff. Defendant further admits that he filed suit in 2019 in the Delaware Chancery Court against Plaintiff and others. Defendant also admits that Plaintiff has twice attempted to dismiss that matter and the Delaware court has taken no action. In fact, on or about November 29, 2021, Plaintiff's Delaware counsel misrepresented to the Delaware court that he represented HERA, and further misrepresented that Defendant was releasing his claims against Plaintiff as part of the Proposed Settlement. Not only was this statement false, but the Proposed Settlement had not even been publicly revealed in the bankruptcy court. Under the Proposed Settlement, Defendant has expressly retained his claims against several parties in the Delaware litigation, including Plaintiff. Defendant denies the remaining allegations in paragraph 10.

11. Defendant denies the allegations contained in paragraph 11 of the State Court Petition.

12. Defendant denies the allegations contained in paragraph 12 of the State Court Petition.

13. Defendant denies the allegations contained in paragraph 13 of the State Court Petition.

14. Defendant denies the allegations in the first sentence of paragraph 14. Defendant lacks sufficient knowledge or information to form a belief as to the remaining allegations in paragraph 14 of the State Court Petition and therefore denies the same.

15. Defendant denies the allegations contained in paragraph 15 of the State Court Petition.

16. Defendant denies the allegations contained in paragraph 16 of the State Court Petition.

17. Defendant denies the allegations in the first clause of sentence one in paragraph 17 of the State Court Petition. Defendant lacks sufficient knowledge or information to form a belief as to the remaining allegations in paragraph 17 of the State Court Petition and therefore denies the same.

18. Defendant admits that Ellington filed a false police report against Defendant, however, Defendant learned of the police report only after the State Court Petition was filed against Defendant. Furthermore, Defendant denies the allegations contained within that police report.

VI. CAUSES OF ACTION

A. Count One: Stalking

19. No response is required from Defendant to paragraph 19 of the State Court Petition because it is a statement incorporating prior paragraphs, but to the extent one may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition. Defendant also incorporates his responses to the prior paragraphs.

20. No response is required from Defendant to paragraph 20 of the State Court Petition because it contains legal argument. To the extent a response may be required, Defendant denies the allegations contained in paragraph 20 of the State Court Petition.

21. No response is required from Defendant to paragraph 21 of the State Court Petition because it contains legal argument. To the extent a response may be required, Defendant denies the allegations contained in paragraph 21 of the State Court Petition.

22. No response is required from Defendant to paragraph 22 of the State Court Petition because it contains legal argument. To the extent a response may be required, Defendant denies the allegations contained in paragraph 22 of the State Court Petition.

23. Defendant denies the allegations in sentence one of paragraph 23 of the State Court Petition. Defendant lacks sufficient knowledge or information to form a belief as to the allegations in sentence two of paragraph 23 of the State Court Petition and therefore denies the same. Defendant denies the allegations in sentences three, four and five of paragraph 23 of the State Court Petition.

24. Defendant denies the allegations contained in paragraph 24 of the State Court Petition.

B. Count Two: Invasion of Privacy by Intrusion

25. No response is required from Defendant to paragraph 25 of the State Court Petition because it is a statement incorporating prior paragraphs, but to the extent one may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition. Defendant also incorporates his responses to the prior paragraphs.

26. No response is required from Defendant to paragraph 26 of the State Court Petition because it contains legal argument. To the extent a response may be required, Defendant denies the allegations contained in paragraph 26 of the State Court Petition.

27. Defendant denies the allegations contained in sentence one of paragraph 27 of the State Court Petition. Defendant lacks sufficient knowledge or information to form a belief as to the remaining allegations in paragraph 27 of the State Court Petition and therefore denies the same.

28. Defendant denies the allegations contained in paragraph 28 of the State Court Petition.

VII. APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

A. Elements for Injunctive Relief.

29. No response is required from Defendant to paragraph 29 of the State Court Petition because it is a statement incorporating prior paragraphs, but to the extent one may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition. Defendant also incorporates his responses to the prior paragraphs.

30. Defendant denies the allegations contained in paragraph 30 of the State Court Petition.

31. Defendant denies the allegations contained in paragraph 31 of the State Court Petition.

32. Defendant denies the allegations contained in paragraph 32 of the State Court Petition.

a. Defendant denies the allegations contained in paragraph 32, subpart "a," of the State Court Petition.

b. Defendant denies the allegations contained in sentence one of paragraph 32, subpart "b," of the State Court Petition. Defendant lacks sufficient knowledge or information to form a belief as to the remaining allegations in paragraph 32, subpart "b," of the State Court Petition and therefore denies the same.

c. No response is required from Defendant to paragraph 32, subpart "c," because it contains legal argument. To the extent a response is required, Defendant denies the allegations contained in paragraph 32, subpart "c," of the State Court Petition.

B. Bond.

33. The allegations in paragraph 33 do not require a response. To the extent a response is required, Defendant denies that Plaintiff is entitled to the relief sought in the State Court Petition.

C. Remedy.

34. Defendant denies the allegations in paragraph 34 of the State Court Petition.

35. No response is required from Defendant to paragraph 35 of the State Court Petition, but to the extent one is required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

a. No response is required from Defendant to paragraph 35, subpart "a," of the State Court Petition, but to the extent one may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

b. No response is required from Defendant to paragraph 35, subpart "b," of the State Court Petition, but to the extent one may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

c. No response is required from Defendant to paragraph 35, subpart "c," of the State Court Petition, but to the extent one may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

d. No response is required from Defendant to paragraph 35, subpart "d," of the State Court Petition, but to the extent one may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

e. No response is required from Defendant to paragraph 35, subpart "e," of the State Court Petition, but to the extent one may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

f. No response is required from Defendant to paragraph 35, subpart "f," of the State Court Petition, but to the extent one may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

g. No response is required from Defendant to paragraph 35, subpart "g," of the State Court Petition, but to the extent one may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

h. No response is required from Defendant to paragraph 35, subpart "h," of the State Court Petition, but to the extent one may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

i. No response is required from Defendant to paragraph 35, subpart "i," of the State Court Petition, but to the extent one may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

j. No response is required from Defendant to paragraph 35, subpart "j," of the State Court Petition, but to the extent one may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

k. No response is required from Defendant to paragraph 35, subpart "k," of the State Court Petition, but to the extent one may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

l. No response is required from Defendant to paragraph 35, subpart "l," of the State Court Petition, but to the extent one may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

VIII. EXEMPLARY DAMAGES

36. Defendant denies the allegations contained in paragraph 36 of the State Court Petition.

IX. CONDITIONS PRECEDENT

37. In response to the allegation in paragraph 37, Defendant denies that all conditions precedent to Plaintiff's suit have occurred or have been performed.

X. RESPONSE TO PLAINTIFF'S PRAYER

38. No response is required from Defendant to Plaintiff's prayer in the State Court Petition, but to the extent one may be required, Defendant denies Plaintiff is entitled to the relief sought in the State Court Petition.

XI. AFFIRMATIVE DEFENSES TO PLAINTIFF'S STATE COURT PETITION

39. Plaintiff's claims are barred, in whole or in part, because Plaintiff is unable to prove his alleged losses, damages, and/or injuries in accordance with Texas Law.

40. Some or all of Plaintiff's claims are barred due to unclean hands.

41. Some or all of Plaintiff's claims are barred by laches.

XII. RESERVATION OF RIGHTS

42. Defendant expressly reserves the right to revise, supplement, or amend his Answer to include, *inter alia*, a counterclaim for defamation against Plaintiff. Defendant received a copy of Plaintiff's false police report on January 24, 2022 (the "Report"). The Report contains a multitude of false statements that are defamatory in nature to Defendant. To maintain an action for defamation, Defendant is required to make "a timely and sufficient request for correction, clarification, or retraction." Tex. Civ. Prac. & Rem. Code § 73.055. Therefore, in compliance with Texas Civil Practice and Remedies Code, Chapter 73, Subchapter B, Defendant is in the

process of issuing a timely and sufficient request to Plaintiff for the correction, clarification, or retraction of Plaintiff's defamatory statements within the Report. *Id.* Plaintiff is then permitted thirty (30) days to respond, correct, clarify, or retract his defamatory statements before Defendant brings his claim. *Id.* at § 73.057.

43. Furthermore, Defendant reserves the right to revise, supplement, or amend his Answer to include claims or other affirmative defenses, as permitted under the Federal Rules of Bankruptcy Procedure and Federal Rules of Civil Procedure, the Bankruptcy Code, and in law or equity that may exist or become available in the future based on discovery and/or further investigation in this case.

REQUESTED RELIEF

WHEREFORE, Defendant prays that this Court enter judgment that Plaintiff take nothing on his alleged claims, that Plaintiff's claims be dismissed in their entirety and for other such further relief, both specific and general, at law and equity, to which Defendant may be entitled.

Respectfully submitted on February 4, 2022

GRAY REED

By: /s/ *Jason S. Brookner*
Jason S. Brookner
Texas Bar No. 24033684
Andrew K. York
Texas Bar No. 24051554
Drake M. Rayshell
Texas Bar No. 24118507
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
dyork@grayreed.com
drayshell@grayreed.com

ATTORNEYS FOR PATRICK DAUGHERTY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 4th day of February, 2022, he caused a true and correct copy of the foregoing pleading to be served via the Court's electronic case filing system (ECF) on all parties to this proceeding who have so-subscribed.

/s/ Jason S. Brookner
Jason S. Brookner

EXHIBIT 3

CAUSE NO. DC-22-00304

SCOTT BRYON ELLINGTON,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**DALLAS COUNTY, TEXAS**
PATRICK DAUGHERTY	§	
	§	
Defendant.	§	
	§	**101st JUDICIAL DISTRICT**
	§	

NOTICE OF INTENT TO ISSUE SUBPOENA DUCES TECUM TO NON-PARTY JOHN DUBEL

TO: Defendant Patrick Daugherty, by and through his counsel of record, Ruth Ann Daniels, Andrew York, & Drake M. Rayshell, 1601 Elm Street, Suite 4600, Dallas, Texas 75201.

John Dubel, Dubel & Associates, LLC, PO Box 524, Brookside, NJ 07926-0524

PLEASE TAKE NOTICE that ten (10) days after the service of this notice, the subpoena attached to this notice will be served upon the following individual:

John Dubel
Dubel & Associates, LLC
PO Box 524
Brookside, NJ 07926-0524

The requested documents may be used in the above cause as evidence upon trial. The subpoena, as authorized by Texas Rules of Civil Procedure 176 and 205, commands that John Dubel produce copies of designated documents or tangible things in its possession, custody, or control to counsel for Scott Bryon Ellington, as specified in the subpoena attached to this notice.

The requested documents shall be produced by email to undersigned counsel or by mail to Michael K. Hurst, Lynn Pinker Hurst & Schwegmann, 2100 Ross Avenue, Suite 2700, Dallas, Texas 75201 by 10:00 a.m. on or before November 18, 2022. A copy of the Subpoena is attached to this Notice as **Exhibit 1**. Scott Byron Ellington reserve all rights with respect to third-party discovery, including but not limited to seeking any deposition of persons with relevant knowledge or a corporate representative.

Respectfully submitted,

/s/ Michael Hurst

Michael Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Michele Naudin
State Bar No. 24118898
mnaudin@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

ATTORNEYS FOR SCOTT B. ELLINGTON

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2022 a true and correct copy of this document was served on all counsel of record, via eFile.

/s/ Michele Naudin
Michele Naudin

Exhibit 1

exhibitsticker.com

CAUSE NO. DC-22-00304

SCOTT BRYON ELLINGTON,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**DALLAS COUNTY, TEXAS**
PATRICK DAUGHERTY	§	
	§	
Defendant.	§	
	§	**101st JUDICIAL DISTRICT**
	§	

SUBPOENA DUCES TECUM TO NON-PARTY
JOHN DUBEL

THE STATE OF TEXAS

TO: ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS OR OTHER PERSON AUTHORIZED TO SERVE AND EXECUTE SUBPOENAS, PURSUANT TO RULES 176 and 205 OF THE TEXAS RULES OF CIVIL PROCEDURE, GREETINGS:

YOU ARE HEREBY COMMANDED TO SUMMON:

John Dubel*
Dubel & Associates, LLC
PO Box 524
Brookside, NJ 07926-0524
(* or wherever he may be found)

to produce and permit inspection and copying of documents or tangible things shown on the attached Exhibit A and to provide the executed and notarized business records affidavit shown on the attached Exhibit B by 10:00 a.m. on or before November 18, 2022, by sending them to the undersigned counsel by email; or by mail to the following address: Michael K. Hurst, Lynn Pinker Hurst & Schwegmann, LLP, 2100 Ross Avenue, Suite 2700, Dallas, Texas 75201; or as otherwise agreed by counsel.

CONTEMPT: **Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which**

the subpoena is served, and may be punished by fine or confinement, or both. TEX. R. CIV. P. 176.8(a).

DO NOT FAIL to return this writ to the issuing attorney with either the attached officer's return showing the manner of execution or the witness's signed memorandum showing that the witness accepted the subpoena.

Issued by counsel for Scott Byron Ellington:

/s/ Michael Hurst

Michael Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Michele Naudin
State Bar No. 24118898
mnaudin@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

ATTORNEYS FOR SCOTT B. ELLINGTON

OFFICER'S RETURN

Came to hand the _____ day of _____, 2022, at _____ o'clock ___.M., and executed by delivering a copy of this subpoena to the within named witness at the following time and place, to wit:

Delivered: _____, 2022

at _____ o'clock ___.M.

or not executed as to the witness for the following reason:

I actually and necessarily traveled _____ miles in the service of this Subpoena, in addition to any this mileage I may have traveled in the service of this process in this cause during the same trip.

Summoning Witness: $_____

Mileage: $_____ _____ County, Texas

By:_____

_____
(Print Name)

_____
(Print Address)

_____

_____
(Telephone Number)

EXHIBIT A

A. INSTRUCTIONS

1. Your responses should be complete and based on all information reasonably available to you at the time the response is made. Your responses must be preceded by the request to which they apply. These requests are ongoing in nature and you are requested to make timely amendments or supplements as new information becomes available during this case.

2. Any objections to these Requests must state the legal or factual basis for the objection and indicate the extent to which you are refusing to comply with the request. Please note that objections that are not made within the time required or which are obscured by numerous, unfounded objections, are waived unless the Court excuses the waiver for good cause. In addition, you should not object that any of the Requests calls for the production of information that is privileged. Instead, you should state that the information responsive to the request has been withheld and the privileges asserted justifying withholding that information.

3. Your responses to these Requests must be served at the agreed upon time and date, 09:00 CST on November 18, 2022, at the law offices of **LYNN PINKER HURST & SCHWEGMANN, LLP**, 2100 Ross Ave., Suite 2700, Dallas, Texas 75201.

4. With respect to any objection or assertion of privilege, you are state: (1) that production, inspection, or other requested action will be permitted as requested; (2) that the requested items are being served with the response; (3) that production, inspection, or other requested action will take place at a specified time and place (if you are objecting to the time and place of production); or (4) that no responsive items have been identified after a diligent search.

5. These Requests seek the production of electronic or magnetic data. Information that exists in electronic form is requested in its native or near-native format and should not be converted to imaged formats. Native format requires production in the same format in which the information was customarily created, used, and stored by you, with all metadata intact. The following are examples of the native or near-native forms in which specific types of electronically-stored information ("ESI") should be produced.

Microsoft Word documents	.doc, .docx
Microsoft Excel spreadsheets	.xls, .xlsx
Microsoft PowerPoint presentations	.ppt, .pptx
Microsoft Access databases	.mdb, .accdb
WordPerfect documents	.wpd
Adobe Acrobat documents	.pdf
Images	.jpg, .jpeg, .png, .tiff, .gif

Videos	.avi, .mpg, .mpeg, .mp4, .flv, .mov
Audio	.mp3
Email	Messages should be produced in a form that readily supports import into standard email client programs, such as those outlined in RFC 5322 (the internet email standard). For Microsoft Exchange or Outlook, that means .pst format. Single message production formats like .msg or .eml may be furnished, if source foldering data is preserved and produced. If your workflow requires that attachments be extracted and produced separately, those attachments should be produced in their native forms with parent/child relationships to the messages and containers preserved and produced in a delimited text file.
Databases	Unless the entire contents of a database are responsive, extract responsive content to a fielded and electronically searchable format preserving metadata values, keys and filed relationships. If doing so is not feasible, please identify and supply information concerning the schemae and query language of its export capabilities, so as to facilitate crafting a query to extract and export responsive data

Information that does not exist in native electronic formats or which require redaction of privileged content should be produced as single page .tiff images with OCR text furnished and logical unitization and family relationships preserved. Production of ESI should be made using a thumb/flash drive or, preferably, an FTP client.

6. For any documents you that you claim no longer exist or cannot be located, provide all of the following

a. A statement identifying the documents;
b. A statement of how and when the document ceased to exist or when it could no longer be located;

c. The reasons for the document's nonexistence or loss;
d. The identity, address, and job title of each person having knowledge about the nonexistence or loss of the document; and
e. The identity of any other document evidencing the nonexistence or loss of the document or any fact concerning the nonexistence or loss.

7. For any documents that you claim are protected by privileged, pleas produce a log of any such privileged documents.

8. The date range for these Requests is from November 15, 2020 through the entry of a final, unappealable judgment or other disposition of this action.

B. DEFINITIONS

1. "You," "Your," or "John Dubel" means John Dubel, and your agents, attorneys, employees, or representatives.

2. "Defendant," or "Daugherty" means Defendant Patrick Daugherty, his agents, attorneys, accountants, employees, partners or other persons occupying similar positions or performing similar functions, and their predecessors, successors or affiliates, and their respective agents, attorneys, accountants, employees, partners or other persons occupying similar positions or performing similar functions.

3. "Plaintiff" means Plaintiff Scott Byron Ellington.

4. "Ellington Party" means Scott Byron Ellington (including any nicknames he may have been called, including but not limited to any references to "Apple Dumping Gang," "Cabal," "Buffoonery," and "Pink Shrek"), Byron Ellington, Marcia Maslow, Adam Maslow, the two minor children of Marcia and Adam Maslow, Stephanie Archer and her minor child, and any person who was then accompanying any of the aforementioned individuals.

5. "Ellington Location" means 120 Cole Street, Dallas, Texas 75207, 3825 Potomac Ave, Dallas, Texas 75205, 4432 Potomac, Dallas, Texas 75025, 430 Glenbrook Dr., Murphy, Texas 75094, 5101 Creekside Ct., Parker, Texas 75094, any other residence or place of business of any Ellington Party, and any other location You believed to be associated with any Ellington Party.

6. "Ellington Recordings" means all electronic recordings of any Ellington Party or Ellington Location, including any persons or vehicles at such Ellington Locations.

7. "Petition" means the Plaintiff's Original Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction.

8. "Documents" should be afforded the broadest possible definition and includes (by way of example, only, and **not** as an exclusive list) any written, recorded, or graphic material of any kind or description, whether sent or received or neither, including originals, non-identical copies (whether different from the original because of marginal notes or other material inserted therein or attached thereto, or otherwise), drafts (and both sides thereof), and including, but not limited to, papers, letters, memoranda, journals, notes, telephone messages or memos, minutes, opinions, reports, contracts, agreements, correspondence, telegraphs, cables, e-mails, telex messages, text messages (SMS), multimedia messages (MMS), online access data (including GPS data and internet browser search history), social media posts and messages on platforms including but not limited to Facebook, Snapchat, Instagram, LinkedIn, and the like, messages and message attachments on messaging platforms including but not limited to Telegram, Signal, Kik, WhatsApp, Facebook Messenger and the like, reports and recordings of telephone and other conversations, or other interviews, or conferences or other meetings, photographs, negatives, Photostats, layouts, drawings, sketches, specifications, blueprints, brochures, fliers, advertisements, data sheets, data processing cards, magnetic discs, tapes and chips, usb drives, computer printouts, recordings and tapes, video recordings and tapes, purchase orders, invoices, diaries, desk calendars, appointment books, logs and things similar to any of the foregoing that are in your possessions, custody, control, agency, or known by you to exist, or that possession, custody, control, agency of your attorney.

C. REQUESTS FOR PRODUCTION

Please produce the following:

1. Any and all communications and documents from or between You and Daugherty relating to Scott Byron Ellington.

2. Any and all communications and documents from or between You and Daugherty relating to any Ellington Party, Ellington Location, or Ellington Recording.

3. Any and all communications and documents relating to any investigation conducted by Daugherty relating to Scott Byron Ellington.

4. Any and all communications and documents relating to any compilation of data by Daugherty regarding Scott Byron Ellington.

5. Any assets or list(s) of assets of Scott Byron Ellington provided to you by Daugherty.

6. Any and all communications and documents relating to any Ellington Location.

7. Any photos or videos you have received from Daugherty relating to any Ellington Location.

8. Any photos or videos you have received from Daugherty relating to any Ellington Party.

9. Any photos or videos you have received from Daugherty relating to Greg Brandstatter at any Ellington Location.

10. Any photos or videos you have received from Daugherty relating to Sarah Bell (formerly Goldsmith) at any Ellington Location.

11. Any and all communications in which any party acknowledges receipt of, asks questions regarding, expressed "appreciation" for, requests additional information related to, or otherwise discusses any information Daugherty provided regarding Scott Byron Ellington, any Ellington Party, Ellington Location, or any Ellington Recording.

CAUSE NO. DC-22-00304

SCOTT BRYON ELLINGTON,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**DALLAS COUNTY, TEXAS**
PATRICK DAUGHERTY	§	
	§	
Defendant.	§	
	§	**101st JUDICIAL DISTRICT**
	§	

EXHIBIT B

AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF _____ §
§
COUNTY OF _____ §

I, _____, being first duly sworn, do hereby depose and state as follows:

1. My name is _____, I am of sound mind, capable of making this affidavit, am personally acquainted with the facts stated herein and such facts are true and correct.

2. I hold the position of _____ with _____ and am the duly authorized custodian of records. Exhibit 1 attached hereto is a true copy of all the records of _____ responsive to SCOTT BYRON ELLINGTON's subpoena duces tecum noticed and served on _____, 2022. These records are kept by _____ in the regular course of business, and it was the

regular course of business of _____, with knowledge of the act, event, condition, opinion, or diagnoses, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the originals or exact duplicates of the originals.

3. I affirm under penalty of perjury that, to the best of my knowledge and belief, the above is true and correct.

AFFIANT STATES NOTHING FURTHER.

Signature:_____

Printed Name: _____

BEFORE ME, the undersigned notary, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and, after being by me first duly sworn, declared that the statements therein contained are true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this _____ day of, _____, 2022.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF _____

EXHIBIT 4

WEINSTEIN + KLEIN

Damien H. Weinstein
Direct: (347) 502-6482
dweinstein@weinsteinklein.com
Licensed in NY, NJ + PA

November 3, 2022

VIA PERSONAL SERVICE
John Dubel
Dubel & Associates, LLC
142 Hillsdale Rd
Colts Neck, New Jersey 07722

Re: Scott Bryon Ellington v. Patrick Daugherty,
Cause No. DC-22-00304 (Texas 101st Judicial District Court, Dallas County)

Dear Mr. Dubel:

On behalf of Plaintiff Scott Bryon Ellington, enclosed is a Subpoena *Duces Tecum* in the above-referenced matter.

Please do not hesitate to contact the undersigned should you have any questions regarding the enclosed subpoena.

Very truly yours,

WEINSTEIN + KLEIN P.C.

/s/ *Damien H. Weinstein*
Damien H. Weinstein

Encl.

cc: Michael K. Hurst, Esq. (via e-mail)
Michele Naudin, Esq. (via e-mail)

WEINSTEIN & KLEIN P.C.
Damien H. Weinstein
Attorney ID: 033352011
Laura M. Garcia
Attorney ID: 240222017
1 High Street Court, Suite 5
Morristown, New Jersey 07960
(347) 502-6464

SCOTT BRYON ELLINGTON

Plaintiff,

v.

PATRICK DAUGHERTY,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY

CIVIL ACTION

SUBPOENA DUCES TECUM PURSUANT TO THE UNIFORM INTERSTATE DEPOSITION AND DISCOVERY ACT AND RULE 4:11-4

Originating State: Texas
Originating County: Dallas
Originating Court: 101st Judicial District Court
Originating Case No.: DC-22-00304

STATE OF NEW JERSEY TO: John Dubel
Dubel & Associates, LLC
142 Hillsdale Rd
Colts Neck, New Jersey 07722

YOU ARE HEREBY COMMANDED, pursuant to the New Jersey Rules of Court (Rule 4:14-7 and Rule 4:11-4) to appear on November 18, 2022, at 10:00 a.m., at the law offices of Weinstein & Klein P.C., 1 High Street Court, Suite 5, Morristown, New Jersey 07940, in the above-entitled action and produce any and all books, papers, documents, and other tangible things demanded in "Exhibit A" and "Exhibit B" to the Subpoena *Duces Tecum*, issued in the above-referenced matter pending in the 101st Judicial District Court of Dallas County, Texas, captioned as *Scott Bryon Ellington v. Patrick Daugherty*, Cause No. DC-22-00304, annexed hereto as Exhibit 1.

PLEASE BE ADVISED that certified records in response to this subpoena will be accepted in lieu of an appearance on November 18, 2022.

PLEASE BE FURTHER ADVISED that you may not produce or release any of the documents requested by this subpoena before November 18, 2022. Furthermore, if you are notified that a motion to quash the subpoena has been filed, you shall not produce or release the subpoenaed evidence until ordered to do so by the court or the release is consented to by the parties.

PLEASE BE FURTHER ADVISED that you have the right to move to quash or modify this subpoena or otherwise move under Rule 4:10-4, Rule 4:14-4, Rule 4:23-1, or any other Rule governing the courts of the State of New Jersey that are applicable to discovery.

PLEASE BE FURTHER ADVISED that this matter is pending in the State of Texas, County of Dallas, 101st Judicial District, captioned as *Scott Bryon Ellington v. Patrick Daugherty*, Cause No. DC-22-00304.

PLEASE BE FURTHER ADVISED that counsel of record in this matter, and their contact information, are:

Michael K. Hurst, Esq.
Michele Naudin, Esq.
LYNN PINKER HURST & SCHWEGMANN
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
(214) 292-3636
Attorneys for Plaintiff Scott Bryon Ellington

Ruth Ann Daniels, Esq.
Andrew K. York, Esq.
Drake M. Rayshell, Esq.
GRAY REED
1601 Elm Street, Suite 4600
Dallas, Texas 75201
(214) 954-4135
Attorneys for Defendant Patrick Daugherty

PLEASE BE FURTHER ADVISED that the terms of the Subpoena *Duces Tecum* in Exhibit 1 are also incorporated herein to the extent that those terms do not conflict with Rule 4:14-7.

FAILURE TO APPEAR OR COMPLY with the command of this Subpoena will subject you to the penalties provided by law, including a penalty and damages in a civil suit and punishment for contempt of Court.

WEINSTEIN & KLEIN P.C.

/s/ Damien H. Weinstein
Damien H. Weinstein
Laura M. Garcia

/s/ Michelle M. Smith
Michelle M. Smith
Clerk, Superior Court of New Jersey

Dated: November 3, 2022

cc (via email): Michael K. Hurst (mhurst@lynnllp.com)
Michele Naudin (mnaudin@lynnllp.com)
Ruth Ann Daniels (rdaniels@grayreed.com)
Andrew K. York (dyork@grayreed.com)
Drake M. Rayshell (drayshell@grayreed.com)

EXHIBIT 1

ORIGINAL

For the Issuance of a New Jersey Subpoena Under New Jersey Rule 4:11-4 (b).

CAUSE NO. DC-22-00304

SCOTT BRYON ELLINGTON,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**DALLAS COUNTY, TEXAS**
PATRICK DAUGHERTY	§	
	§	
Defendant.	§	
	§	**101st JUDICIAL DISTRICT**
	§	

SUBPOENA DUCES TECUM TO NON-PARTY JOHN DUBEL

THE STATE OF TEXAS

TO: ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS OR OTHER PERSON AUTHORIZED TO SERVE AND EXECUTE SUBPOENAS, PURSUANT TO RULES 176 and 205 OF THE TEXAS RULES OF CIVIL PROCEDURE, GREETINGS:

YOU ARE HEREBY COMMANDED TO SUMMON:

John Dubel*
Dubel & Associates, LLC
PO Box 524
Brookside, NJ 07926-0524
(* or wherever he may be found)

to produce and permit inspection and copying of documents or tangible things shown on the attached Exhibit A and to provide the executed and notarized business records affidavit shown on the attached Exhibit B by 10:00 a.m. on or before November 18, 2022, by sending them to the undersigned counsel by email; or by mail to the following address: Michael K. Hurst, Lynn Pinker Hurst & Schwegmann, LLP, 2100 Ross Avenue, Suite 2700, Dallas, Texas 75201; or as otherwise agreed by counsel.

CONTEMPT: **Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. TEX. R. CIV. P. 176.8(a).**

DO NOT FAIL to return this writ to the issuing attorney with either the attached officer's return showing the manner of execution or the witness's signed memorandum showing that the witness accepted the subpoena.

Issued by counsel for Scott Byron Ellington:

/s/ Michael Hurst

Michael Hurst
State Bar No. 10316310
mhurst@lynnllp.com
Mary Goodrich Nix
State Bar No. 24002694
mnix@lynnllp.com
Michele Naudin
State Bar No. 24118898
mnaudin@lynnllp.com
LYNN PINKER HURST & SCHWEGMANN LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: (214) 981-3800
Facsimile: (214) 981-3839

Julie Pettit
State Bar No. 24065971
jpettit@pettitfirm.com
THE PETTIT LAW FIRM
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Telephone: (214) 329-0151
Facsimile: (214) 329-4076

ATTORNEYS FOR SCOTT B. ELLINGTON

OFFICER'S RETURN

Came to hand the _____ day of _____, 2022, at _____ o'clock ___.M., and executed by delivering a copy of this subpoena to the within named witness at the following time and place, to wit:

Delivered: _____, 2022

at _____ o'clock ___.M.

or not executed as to the witness for the following reason:

I actually and necessarily traveled _____ miles in the service of this Subpoena, in addition to any this mileage I may have traveled in the service of this process in this cause during the same trip.

Summoning Witness: $_____

Mileage: $_____ _____ County, Texas

By:_____

_____
(Print Name)

_____
(Print Address)

_____

_____
(Telephone Number)

EXHIBIT A

A. INSTRUCTIONS

1. Your responses should be complete and based on all information reasonably available to you at the time the response is made. Your responses must be preceded by the request to which they apply. These requests are ongoing in nature and you are requested to make timely amendments or supplements as new information becomes available during this case.

2. Any objections to these Requests must state the legal or factual basis for the objection and indicate the extent to which you are refusing to comply with the request. Please note that objections that are not made within the time required or which are obscured by numerous, unfounded objections, are waived unless the Court excuses the waiver for good cause. In addition, you should not object that any of the Requests calls for the production of information that is privileged. Instead, you should state that the information responsive to the request has been withheld and the privileges asserted justifying withholding that information.

3. Your responses to these Requests must be served at the agreed upon time and date, 09:00 CST on November 18, 2022, at the law offices of **LYNN PINKER HURST & SCHWEGMANN, LLP**, 2100 Ross Ave., Suite 2700, Dallas, Texas 75201.

4. With respect to any objection or assertion of privilege, you are state: (1) that production, inspection, or other requested action will be permitted as requested; (2) that the requested items are being served with the response; (3) that production, inspection, or other requested action will take place at a specified time and place (if you are objecting to the time and place of production); or (4) that no responsive items have been identified after a diligent search.

5. These Requests seek the production of electronic or magnetic data. Information that exists in electronic form is requested in its native or near-native format and should not be converted to imaged formats. Native format requires production in the same format in which the information was customarily created, used, and stored by you, with all metadata intact. The following are examples of the native or near-native forms in which specific types of electronically-stored information ("ESI") should be produced.

Microsoft Word documents	.doc, .docx
Microsoft Excel spreadsheets	.xls, .xlsx
Microsoft PowerPoint presentations	.ppt, .pptx
Microsoft Access databases	.mdb, .accdb
WordPerfect documents	.wpd
Adobe Acrobat documents	.pdf
Images	.jpg, .jpeg, .png, .tiff, .gif

Videos	.avi, .mpg, .mpeg, .mp4, .flv, .mov
Audio	.mp3
Email	Messages should be produced in a form that readily supports import into standard email client programs, such as those outlined in RFC 5322 (the internet email standard). For Microsoft Exchange or Outlook, that means .pst format. Single message production formats like .msg or .eml may be furnished, if source foldering data is preserved and produced. If your workflow requires that attachments be extracted and produced separately, those attachments should be produced in their native forms with parent/child relationships to the messages and containers preserved and produced in a delimited text file.
Databases	Unless the entire contents of a database are responsive, extract responsive content to a fielded and electronically searchable format preserving metadata values, keys and filed relationships. If doing so is not feasible, please identify and supply information concerning the schemae and query language of its export capabilities, so as to facilitate crafting a query to extract and export responsive data

Information that does not exist in native electronic formats or which require redaction of privileged content should be produced as single page .tiff images with OCR text furnished and logical unitization and family relationships preserved. Production of ESI should be made using a thumb/flash drive or, preferably, an FTP client.

6. For any documents you that you claim no longer exist or cannot be located, provide all of the following

a. A statement identifying the documents;
b. A statement of how and when the document ceased to exist or when it could no longer be located;

c. The reasons for the document's nonexistence or loss;
d. The identity, address, and job title of each person having knowledge about the nonexistence or loss of the document; and
e. The identity of any other document evidencing the nonexistence or loss of the document or any fact concerning the nonexistence or loss.

7. For any documents that you claim are protected by privileged, pleas produce a log of any such privileged documents.

8. The date range for these Requests is from November 15, 2020 through the entry of a final, unappealable judgment or other disposition of this action.

B. DEFINITIONS

1. "You," "Your," or "John Dubel" means John Dubel, and your agents, attorneys, employees, or representatives.

2. "Defendant," or "Daugherty" means Defendant Patrick Daugherty, his agents, attorneys, accountants, employees, partners or other persons occupying similar positions or performing similar functions, and their predecessors, successors or affiliates, and their respective agents, attorneys, accountants, employees, partners or other persons occupying similar positions or performing similar functions.

3. "Plaintiff" means Plaintiff Scott Byron Ellington.

4. "Ellington Party" means Scott Byron Ellington (including any nicknames he may have been called, including but not limited to any references to "Apple Dumping Gang," "Cabal," "Buffoonery," and "Pink Shrek"), Byron Ellington, Marcia Maslow, Adam Maslow, the two minor children of Marcia and Adam Maslow, Stephanie Archer and her minor child, and any person who was then accompanying any of the aforementioned individuals.

5. "Ellington Location" means 120 Cole Street, Dallas, Texas 75207, 3825 Potomac Ave, Dallas, Texas 75205, 4432 Potomac, Dallas, Texas 75025, 430 Glenbrook Dr., Murphy, Texas 75094, 5101 Creekside Ct., Parker, Texas 75094, any other residence or place of business of any Ellington Party, and any other location You believed to be associated with any Ellington Party.

6. "Ellington Recordings" means all electronic recordings of any Ellington Party or Ellington Location, including any persons or vehicles at such Ellington Locations.

7. "Petition" means the Plaintiff's Original Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction.

8. "Documents" should be afforded the broadest possible definition and includes (by way of example, only, and **not** as an exclusive list) any written, recorded, or graphic material of any kind or description, whether sent or received or neither, including originals, non-identical copies (whether different from the original because of marginal notes or other material inserted therein or attached thereto, or otherwise), drafts (and both sides thereof), and including, but not limited to, papers, letters, memoranda, journals, notes, telephone messages or memos, minutes, opinions, reports, contracts, agreements, correspondence, telegraphs, cables, e-mails, telex messages, text messages (SMS), multimedia messages (MMS), online access data (including GPS data and internet browser search history), social media posts and messages on platforms including but not limited to Facebook, Snapchat, Instagram, LinkedIn, and the like, messages and message attachments on messaging platforms including but not limited to Telegram, Signal, Kik, WhatsApp, Facebook Messenger and the like, reports and recordings of telephone and other conversations, or other interviews, or conferences or other meetings, photographs, negatives, Photostats, layouts, drawings, sketches, specifications, blueprints, brochures, fliers, advertisements, data sheets, data processing cards, magnetic discs, tapes and chips, usb drives, computer printouts, recordings and tapes, video recordings and tapes, purchase orders, invoices, diaries, desk calendars, appointment books, logs and things similar to any of the foregoing that are in your possessions, custody, control, agency, or known by you to exist, or that possession, custody, control, agency of your attorney.

C. REQUESTS FOR PRODUCTION

Please produce the following:

1. Any and all communications and documents from or between You and Daugherty relating to Scott Byron Ellington.

2. Any and all communications and documents from or between You and Daugherty relating to any Ellington Party, Ellington Location, or Ellington Recording.

3. Any and all communications and documents relating to any investigation conducted by Daugherty relating to Scott Byron Ellington.

4. Any and all communications and documents relating to any compilation of data by Daugherty regarding Scott Byron Ellington.

5. Any assets or list(s) of assets of Scott Byron Ellington provided to you by Daugherty.

6. Any and all communications and documents relating to any Ellington Location.

7. Any photos or videos you have received from Daugherty relating to any Ellington Location.

8. Any photos or videos you have received from Daugherty relating to any Ellington Party.

9. Any photos or videos you have received from Daugherty relating to Greg Brandstatter at any Ellington Location.

10. Any photos or videos you have received from Daugherty relating to Sarah Bell (formerly Goldsmith) at any Ellington Location.

11. Any and all communications in which any party acknowledges receipt of, asks questions regarding, expressed "appreciation" for, requests additional information related to, or otherwise discusses any information Daugherty provided regarding Scott Byron Ellington, any Ellington Party, Ellington Location, or any Ellington Recording.

CAUSE NO. DC-22-00304

SCOTT BRYON ELLINGTON,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**DALLAS COUNTY, TEXAS**
PATRICK DAUGHERTY	§	
	§	
Defendant.	§	
	§	**101st JUDICIAL DISTRICT**
	§	

EXHIBIT B

AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF _____ §
§
COUNTY OF _____ §

I, _____, being first duly sworn, do hereby depose and state as follows:

1. My name is _____, I am of sound mind, capable of making this affidavit, am personally acquainted with the facts stated herein and such facts are true and correct.

2. I hold the position of _____ with _____ and am the duly authorized custodian of records. Exhibit 1 attached hereto is a true copy of all the records of _____ responsive to SCOTT BYRON ELLINGTON's subpoena duces tecum noticed and served on _____, 2022. These records are kept by _____ in the regular course of business, and it was the

regular course of business of _____, with knowledge of the act, event, condition, opinion, or diagnoses, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the originals or exact duplicates of the originals.

3. I affirm under penalty of perjury that, to the best of my knowledge and belief, the above is true and correct.

AFFIANT STATES NOTHING FURTHER.

Signature:_____

Printed Name: _____

BEFORE ME, the undersigned notary, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and, after being by me first duly sworn, declared that the statements therein contained are true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this _____ day of, _____, 2022.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF _____

EXHIBIT 5

AFFIDAVIT OF NON-SERVICE

State of New Jersey **County of Monmouth** **Superior Court**

Case Number: DC-22-00304 Court Date: 11/18/2022 10:00 am

Plaintiff:
SCOTT BRYON ELLINGTON

vs.

Defendant:
PATRICK DAUGHERTY

For:
Weinstein & Klein P.C.
1 High Street Court, Suite 5
Morristown, NJ 07960

Received by Accredited Process Service, LLC to be served on **JOHN DUBEL, 142 Hillside Rd, Colts Neck, NJ 07722**.

I, Jyll Jakes, being duly sworn, depose and say that on the **4th day of November, 2022** at **4:45 pm, I:**

NON-SERVED the **COVER LETTER; SUBPOENA DUCES TECUM PURSUANT TO THE UNIFORM INTERSTATE DEPOSITION AND DISCOVERY ACT AND RULE 4:11-4; EXHIBITS** for the reason that I failed to find **JOHN DUBEL** or any information to allow further search. Read the comments below for further details.

Additional Information pertaining to this Service:
This is a large gated property with a camera phone at the gate, after ringing the bell a man who would not identify himself answered. I then proceeded to state I have legal documents for John Dubel he then got very upset and threatened to call the police for trespassing on his property he also stated if I come back he would have me arrested.

I certify that I am over the age of 18, have no interest in the above action, and am a Process Server, in good standing, in the judicial circuit in which the process was served.

Jyll Jakes
Process Server

Accredited Process Service, LLC
716 Newman Spring Rd, Ste 184
Lincroft, NJ 07738
(732) 444-2432

Our Job Serial Number: SPH-2022000339

Subscribed and Sworn to before me on the 5th day of November, 2022 by the affiant who is personally known to me.

NOTARY PUBLIC

JACQUELINE E. TESORIERO
NOTARY PUBIC OF NEW JERSEY
MY COMMISSION EXPIRES FEB. 15, 2023

EXHIBIT 6

USPS Tracking®

FAQs >

Remove ×

Tracking Number:

70220410000067174762

Copy Add to Informed Delivery (https://informeddelivery.usps.com/)

Latest Update

Your item was delivered to an individual at the address at 2:55 pm on December 3, 2022 in COLTS NECK, NJ 07722.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered

Delivered, Left with Individual

COLTS NECK, NJ 07722
December 3, 2022, 2:55 pm

See All Tracking History

Feedback

Text & Email Updates ⌄

USPS Tracking Plus® ⌄

Product Information ⌃

Postal Product:	**Features:**	**See tracking for related item: 9590940271321251891312 (/go/TrackConfirmAction?tLabels=9590940271321251891312)**
First-Class Mail®	Certified Mail™	

See Less ^

Track Another Package

Enter tracking or barcode numbers

Need More Help?

Contact USPS Tracking support for further assistance.

FAQs

EXHIBIT 7

DEPARTMENT OF THE TREASURY
DIVISION OF REVENUE AND ENTERPRISE SERVICES
CHANGE OF REGISTERED AGENT CERTIFICATE

DUBEL & ASSOCIATES, L.L.C.
0600063106

The Division of Revenue and Enterprise Services hereby affirms that the following change was submitted on 01/01/2020 for DUBEL & ASSOCIATES, L.L.C..

Previous Registered Agent and Office

JOHN DUBELL
PO BOX 524
BROOKSIDE, NJ 07926

New Registered Agent and Office

JOHN DUBEL
Box 535
Colts Neck, NJ 07722

Certificate Number : 2448870533
Verify this certificate online at
https://www1.state.nj.us/TYTR_StandingCert/JSP/Verify_Cert.jsp

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, this 1st day of January, 2020

Elizabeth Maher Muoio
State Treasurer

WEINSTEIN & KLEIN P.C.
Damien H. Weinstein
Attorney ID: 033352011
dweinstein@weinsteinklein.com
Laura M. Garcia
Attorney ID: 240222017
lgarcia@weinsteinklein.com
1 High Street Court, Suite 5
Morristown, New Jersey 07960
(347) 502-6464
Attorneys for Plaintiff Scott Byron Ellington

In the Matter of the Application of SCOTT BYRON ELLINGTON, For an Order Enforcing a Subpoena *Duces Tecum* and Finding Defendant in Contempt, Plaintiff, v. JOHN DUBEL, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MONMOUTH COUNTY DOCKET NO. CIVIL ACTION **ORDER TO SHOW CAUSE (SUMMARY ACTION)**

THIS MATTER having been opened to the Court by Weinstein & Klein, P.C., attorneys for Plaintiff, Scott Byron Ellington ("Plaintiff"), seeking relief by way of summary action pursuant to Rule 4:67-1(a), based upon the facts set forth in the Verified Complaint, with accompanying exhibits, and Letter Brief filed herewith, this Court having determined that this matter may be commenced by order to show cause as a summary proceeding, and for good cause shown:

IT IS on this ____ day of _____2023,

ORDERED that John Dubel ("Defendant") appear and show cause before this Court at the Superior Court of New Jersey, Monmouth County, 71 Monument Street, Freehold, New Jersey

07728 at _____ in the forenoon or as soon thereafter as counsel can be heard on the _____ day of _____ why judgment should not be entered:

A. Holding Defendant in contempt for failing to comply with the Subpoena issued in the matter captioned Scott Byron Ellington v. Patrick Daugherty, Docket No. DC-22-00304 (Texas D.C.) ("Subpoena");

B. Requiring that Defendant comply with the Subpoena by producing the documents requested therein within ten (10) days of this Court's entry of judgment;

C. Awarding Plaintiff the fees, costs, and expenses incurred in this action, including attorneys' fees; and,

D. Granting such other further relief as the Court deems equitable and just.

AND IT IS FURTHER ORDERED that:

1. A copy of this Order to Show Cause, Verified Complaint, and all supporting affidavits or certifications submitted in support of this application be served upon Defendant by FedEx, within ____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

2. Plaintiff must file with the court its proof of service of the pleadings on Defendant no later than three (3) days before the return date.

3. Defendant shall file and serve: a written answer, an answering affidavit, or a motion returnable on the return date to this order to show cause and the relief requested in the Verified Complaint and proof of service of the same by _____. The answer, answering affidavit or a motion, as the case may be, must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to the chambers of Judge _____.

4. Plaintiff must file and serve any written reply to Defendant's order to show cause opposition by _____. The reply papers must be filed with the Clerk of the Superior

Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge _____.

5. If Defendant does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that Plaintiff files a proof of service and a proposed form of order at least three (3) days prior to the return date.

6. If Plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date must be submitted to the court no later than three (3) days before the return date.

7. Defendant, take notice that Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer, an answering affidavit or a motion returnable on the return date to the order to show cause and proof of service before the return date of the order to show cause.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at njcourts.gov/forms/10153_deptyclerklawref.pdf. Include a $ _____ filing fee payable to the "Treasurer State of New Jersey". You must also send a copy of your answer, answering affidavit, or motion to Plaintiff's attorney whose name and address appear above, or to Plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer, answering affidavit, or motion with the fee or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at njcourts.gov/forms/10153_deptyclerklawref.pdf.

9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than __ days before the return date.

_____

J.S.C.

In the Matter of the Application of SCOTT BYRON ELLINGTON, For an Order Enforcing a Subpoena *Duces Tecum* and Finding Defendant in Contempt, Plaintiff, v. JOHN DUBEL, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MONMOUTH COUNTY DOCKET NO. CIVIL ACTION **ORDER ENFORCING SUBPOENA ISSUED UNDER RULE 4:11-4**

THIS MATTER having been opened to the Court by Weinstein & Klein P.C., attorneys for Plaintiff, Scott Byron Ellington ("Plaintiff"), seeking relief by way of summary action pursuant to Rule 4:67-1(a), based upon the facts set forth in the Verified Complaint, with accompanying exhibits, and Letter Brief in Support of Order to Show Cause to Enforce Subpoena filed herewith, and for good cause shown:

IT IS on this ____ day of _____2023,

ORDERED that Defendant John Dubel ("Defendant") is in contempt of court for failing to respond to the Subpoena issued pursuant to Rule 4:11-4 related to the matter currently pending in the 101st Judicial District Court in Dallas, Texas, captioned Scott Byron Ellington v. Patrick Daugherty, Docket No. DC-22-00304 (Texas D.C.) ("Subpoena"); and it is further

ORDERED that Defendant must respond to the Subpoena within ten (10) days of this Order; and it is further

ORDERED that Plaintiff is awarded all fees, costs, and expenses incurred in this matter, including attorneys' fees, provided Plaintiff submits the appropriate fee application in this matter; and it is further

ORDERED that a copy of this Order shall be served upon Defendant via FedEx within seven (7) days from the date hereof.

SO ORDERED:

_____

J.S.C.

[ ] Opposed
[ ] Unopposed

WEINSTEIN + KLEIN

Laura M. Garcia
Direct: (347) 919-8422
lgarcia@weinsteinklein.com
Licensed in NY + NJ

January 17, 2023

VIA ECOURTS
Superior Court of New Jersey – Monmouth County
71 Monument Street
Freehold, New Jersey 07728

Re: Scott Byron Ellington v. John Dubel

Your Honor:

Our firm is local counsel to the Plaintiff in this matter, Scott Byron Ellington ("Plaintiff"). Please accept this Letter Brief, in lieu of a more formal submission, in support of Plaintiff's Order to Show Cause to enforce a Subpoena properly issued to and served upon Defendant John Dubel ("Defendant") in accordance with Rule 4:11-4(b).

I. Background

This Order to Show Cause arises from ongoing litigation ("Litigation") between Plaintiff and Patrick Daugherty ("Daugherty") in the 101st Judicial District Court in Dallas, Texas, captioned Scott Byron Ellington v. Patrick Daugherty, Docket No. DC-22-00304. Verified Complaint at ¶¶ 3-4, Ex. 1. Daugherty filed his Answer on or about February 4, 2022. Id. at ¶ 6, Ex. 2.

Upon information and belief, Daugherty has provided Defendant with information regarding Plaintiff, Plaintiff's assets, Plaintiff's family, and Plaintiff's home, including videos and surveillance footage, and Defendant is still in possession of such information. Id. at ¶ 7.

On or about October 6, 2022, Plaintiff filed a Notice of Intent to Issue Subpoena Duces Tecum to Defendant (the "Notice"), pursuant to Texas law. The Notice enclosed the proposed subpoena, which sought Defendant's production of certain documents related to the investigations and transactions at issue in the Litigation (the "Texas Subpoena"). Id. at ¶ 8, Ex. 3.

On or about November 4, 2022, pursuant to Rule 4:11-4, this firm prepared and attempted to personally serve, via process server, a New Jersey subpoena *duces tecum* incorporating the terms and conditions used in the Texas Subpoena ("Subpoena"). Id. at ¶ 9, Ex. 4. The Subpoena stated the name of this Court, bore the caption and case number of the foreign case to which it relates, identified the 101st Judicial District Court in Dallas, Texas as the court where the underlying case is pending, and incorporated the terms and conditions used in the Texas Subpoena to the extent those terms do not conflict with Rule 4:14-7. Id. at ¶ 10. The Subpoena further enclosed a list of the names, addresses, and telephone numbers of all counsel of record in the underlying Texas proceeding. Id. at ¶ 11. The Subpoena fully complied with the New Jersey Court Rules, including Rules 4:14-7 and 4:11-4. Id. at ¶ 12.

The process server attempted to personally serve Defendant with the Subpoena at his residence, and a male individual – upon the process server identifying himself and stating that he had legal documents for service upon Defendant – threatened to call the police on the process server. The male individual refused to identify himself. Id. at ¶ 13, Ex. 5. On or about December 1, 2022, following the process server's good faith attempt and inability to serve Defendant personally, the undersigned served Defendant with the Subpoena via certified mail, return receipt requested, and simultaneously via first class mail, at Defendant's usual place of abode, in accordance with Rule 4:4-4(b). Id. at ¶ 14. The Subpoena was received by Defendant on or about December 3, 2022. Id. at ¶ 14, Ex. 6.

Defendant owns a New Jersey limited liability company – Dubel & Associates, LLC, and is listed as the company's registered agent. Id. at ¶ 15, Ex. 7. Also on December 1, 2022, this firm forwarded the Subpoena to Defendant's registered business address in Colts Neck, as well as an older registered business address located in Brookside, in the event such PO Box was still in use, via certified mail, return receipt requested, and simultaneously via first class mail, in accordance with Rule 4:4-4(b). Id. at ¶ 16. The package delivered to the Brookside PO Box was returned as unclaimed. The post office attempted delivery of the package sent to the Colts Neck PO Box on December 3, 2022, but it was returned as "refused" by the recipient. Id. To date, the first class mail packages to Defendant's home and business addresses have not been returned as undelivered. Id. at ¶ 17.

Upon information and belief, no motion to quash the Subpoena or other protective order has been filed by any party to the Litigation, nor by Defendant in this Court. Verified Complaint at ¶ 18. Furthermore, to date, Defendant has not provided any of the documents requested in the Subpoena. Verified Complaint at ¶ 19.

II. Defendant Should be Compelled to Respond to the Subpoena

The narrowly tailored Subpoena seeks documents relevant and critical to the Litigation. Defendant should be compelled to respond.

Generally, under Rule 4:10-2(a), parties are permitted "to 'obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.'" Marrero v. Feintuch, 418 N.J. Super. 48, 59 (App. Div. 2011) (internal citation omitted). The broad discovery rules apply where documents are sought by third-party subpoena. Id. at 60 ("[i]n view of the sweeping nature of our discovery rules designed to ensure, with few exceptions, the ability to obtain all relevant facts before trial, we conclude quashing the subpoena . . . was unwarranted and represented a misguided exercise of discretion"); see also Appeal of Pa. R. Co., 20 N.J. 398, 413 (1956) (holding that motion to quash was properly denied while relying upon "liberal discovery provisions" and a "more liberal standard of relevancy"). To be sure, where, as here, a party issues a subpoena to obtain material and relevant information, the subpoenaed party must respond unless "it is palpable that the evidence sought can have no possible bearing upon the issues." Appeal of Pa. R. Co., 20 N.J. at 413.

Moreover, Rule 4:11-4 adopts the Uniform Interstate Deposition and Discovery Act, permitting the testimony of in-state persons for use in foreign state proceedings. Specifically, Rule 4:11-4 generally provides that:

> [w]henever the deposition of a person is to be taken in this State pursuant to the laws of a foreign state for use in connection with proceedings there, an out-of-state attorney or party may submit a foreign subpoena along with a New Jersey subpoena which complies with subparagraph (3) to an attorney authorized to practice in this State . . . ."
>
> [Rule 4:11-4(b)(1).].

Subparagraph (3) of Rule 4:11-4 prescribes the requirements for subpoenas issued under the Rule, including, among other things, that the subpoena comply with the requirements of Rule 4:14-7, incorporate the terms and conditions used in the foreign subpoena to the extent they do not conflict with Rule 4:14-7, set forth the caption and case number of the foreign case to which it relates, contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates, and be served in compliance with Rule 1:9-3 and Rule 1:9-4. Specifically, Rule 4:14-7(c) provides that subpoenas *duces tecum* must simultaneously compel the individual's attendance at a designated time and place for the taking of a deposition.

Further, courts can hold parties who refuse to comply with a subpoena in contempt and impose sanctions for their non-compliance. See, e.g., Rule 1:9-5 ("Failure without adequate excuse to obey a subpoena served upon any person may be deemed a contempt of the court from which the subpoena issued"). Pursuant to Rule 1:10-3, "[n]otwithstanding that an act or omission may also constitute a contempt of court, a litigant may seek relief by application," and courts are empowered to "make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule."

Here, the documents requested in the Subpoena are narrowly tailored and directly relevant to the issue in the Litigation. Specifically, the Subpoena requests documents and surveillance footage and intends to elicit testimony relating to Defendant's involvement in the underlying transactions. Further, the Subpoena complies with the requirements set forth in Rule 4:11-4, including, without limitation, the necessary language incorporating the terms of the Texas Subpoena, the names and contact information of all counsel of record, the caption and name of the foreign jurisdiction and court where the case is pending. See Verified Complaint at ¶¶ 9-12, Ex. 4. The Subpoena was also properly served upon Defendant via certified mail, return receipt requested, and simultaneously via first class mail at both Defendant's home and Defendant's business addresses, following the process server's good faith attempt at personally serving Defendant. Verified Complaint at ¶¶ 13-16, Exs. 5, 6, 7.

III. Conclusion

For the reasons set forth herein, this Court should enter an Order compelling Defendant to respond to the Subpoena within ten (10) calendar days, awarding Plaintiff attorney's fees incurred in bringing this action, and granting any further relief as this Court deems just and proper.

Respectfully submitted,

WEINSTEIN & KLEIN P.C.

/s/ *Laura M. Garcia*
Laura M. Garcia

Civil Case Information Statement

Case Details: MONMOUTH | Civil Part Docket# L-000150-23

Case Caption: ELLINGTON SCOTT VS DUBEL JOHN
Case Initiation Date: 01/17/2023
Attorney Name: LAURA M GARCIA
Firm Name: WEINSTEIN & KLEIN P.C.
Address: 1 HIGH ST COURT STE 5
MORRISTOWN NJ 07960
Phone: 3475026464
Name of Party: PLAINTIFF : Ellington, Scott, B
Name of Defendant's Primary Insurance Company (if known): None

Case Type: SUMMARY ACTION
Document Type: Verified Complaint
Jury Demand: NONE
Is this a professional malpractice case? NO
Related cases pending: YES
If yes, list docket numbers: 101st Judicial District, Court of Dallas County, Texas, Docket No. DC-22-00304
Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO
Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: Scott B Ellington? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Business

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO
If yes, please identify the requested accommodation:

Will an interpreter be needed? NO
If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

01/17/2023
Dated

/s/ LAURA M GARCIA
Signed

MONMOUTH COUNTY
SUPERIOR COURT
PO BOX 1270
FREEHOLD NJ 07728

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (732) 358-8700
COURT HOURS 8:30 AM - 4:30 PM

DATE: JANUARY 17, 2023
RE: ELLINGTON SCOTT VS DUBEL JOHN
DOCKET: MON L -000150 23

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 1.

DISCOVERY IS 150 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON LINDA G. JONES

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 003 AT: (732) 358-8700 EXT 87871.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:
ATT: LAURA M. GARCIA
WEINSTEIN & KLEIN P.C.
1 HIGH ST COURT
STE 5
MORRISTOWN NJ 07960

ECOURTS

WEINSTEIN & KLEIN P.C.
Damien H. Weinstein
Attorney ID: 033352011
dweinstein@weinsteinklein.com
Laura M. Garcia
Attorney ID: 240222017
lgarcia@weinsteinklein.com
1 High Street Court, Suite 5
Morristown, New Jersey 07960
(347) 502-6464
Attorneys for Plaintiff Scott Byron Ellington

In the Matter of the Application of SCOTT BYRON ELLINGTON, For an Order Enforcing a Subpoena *Duces Tecum* and Finding Defendant in Contempt, Plaintiff, v. JOHN DUBEL, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MONMOUTH COUNTY DOCKET NO. CIVIL ACTION **ORDER TO SHOW CAUSE (SUMMARY ACTION)**

THIS MATTER having been opened to the Court by Weinstein & Klein, P.C., attorneys for Plaintiff, Scott Byron Ellington ("Plaintiff"), seeking relief by way of summary action pursuant to Rule 4:67-1(a), based upon the facts set forth in the Verified Complaint, with accompanying exhibits, and Letter Brief filed herewith, this Court having determined that this matter may be commenced by order to show cause as a summary proceeding, and for good cause shown:

IT IS on this 7th day of February 2023,

ORDERED that John Dubel ("Defendant") appear and show cause before this Court at the Superior Court of New Jersey, Monmouth County, 71 Monument Street, Freehold, New Jersey

07728 at 2:30 P.M. in the ~~forenoon~~ afternoon or as soon thereafter as counsel can be heard on the 10th day of March, 2023 why judgment should not be entered:

A. Holding Defendant in contempt for failing to comply with the Subpoena issued in the matter captioned Scott Byron Ellington v. Patrick Daugherty, Docket No. DC-22-00304 (Texas D.C.) ("Subpoena");

B. Requiring that Defendant comply with the Subpoena by producing the documents requested therein within ten (10) days of this Court's entry of judgment;

C. Awarding Plaintiff the fees, costs, and expenses incurred in this action, including attorneys' fees; and,

D. Granting such other further relief as the Court deems equitable and just.

AND IT IS FURTHER ORDERED that:

1. A copy of this Order to Show Cause, Verified Complaint, and all supporting affidavits or certifications submitted in support of this application be served upon Defendant by FedEx, within 3 days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

2. Plaintiff must file with the court its proof of service of the pleadings on Defendant no later than three (3) days before the return date.

3. Defendant shall file and serve: a written answer, an answering affidavit, or a motion returnable on the return date to this order to show cause and the relief requested in the Verified Complaint and proof of service of the same by February 20, 2023. The answer, answering affidavit or a motion, as the case may be, must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to the chambers of Judge Linda Grasso Jones, J.S.C.

4. Plaintiff must file and serve any written reply to Defendant's order to show cause opposition by March 6, 2023. The reply papers must be filed with the Clerk of the Superior

Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge Linda Grasso Jones, J.S.C. .

5. If Defendant does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that Plaintiff files a proof of service and a proposed form of order at least three (3) days prior to the return date.

6. If Plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date must be submitted to the court no later than three (3) days before the return date.

7. Defendant, take notice that Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer, an answering affidavit or a motion returnable on the return date to the order to show cause and proof of service before the return date of the order to show cause.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at njcourts.gov/forms/10153_deptyclerklawref.pdf. Include a $ _____ filing fee payable to the "Treasurer State of New Jersey". You must also send a copy of your answer, answering affidavit, or motion to Plaintiff's attorney whose name and address appear above, or to Plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer, answering affidavit, or motion with the fee or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at njcourts.gov/forms/10153_deptyclerklawref.pdf.

9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than 3 days before the return date.

/s/ Linda Grasso Jones, J.S.C.
LINDA GRASSO JONES, J.S.C.

From: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Sent: Wednesday, September 13, 2023 12:38 PM
To: Julie Pettit
Cc: mhurst@lynnllp.com; McNeilly, Edward; Wynne, Rick; John A. Morris
Subject: RE: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

Julie,

We appreciate you sending us this list of topics that you intend to cover if you were to depose Judge Nelms.

Unfortunately, your proposed topics, particularly topics 7, 10, and 11, are plainly overbroad, have no relevance to the lawsuit, and violate the Gatekeeper Order from the Highland bankruptcy proceedings. As to the remainder of the topics, as we have repeatedly stated, Judge Nelms has no knowledge.

You have brought claims against Mr. Daugherty alleging stalking and invasion of privacy. The elements for these claims are outlined in paragraphs 21 and 26 of Plaintiffs' Original Petition and focus on whether Mr. Daugherty's actions, including in particular allegedly taking certain photographs and video recordings of Mr. Ellington and/or his family, constituted "harassing" or "offensive" behavior that intruded on Mr. Ellington's private affairs and/or posed a threat of bodily injury. Nothing about these claims has anything to do with the propriety of any settlement or proof of claim in the Highland Bankruptcy case.

From our prior discussions and these proposed topics, it continues to be clear that your interest is not in obtaining information relevant to the alleged stalking claims in this lawsuit—of which Judge Nelms has none—but rather is in improperly pursuing claims related to the propriety of the Highland bankruptcy proceedings. As we have reminded you several times now, not only does this have no relevance to the lawsuit at hand, it is a clear violation of the Gatekeeper Order.

You have definitively stated that you do not intend to back down from seeking Judge Nelms's deposition, despite it being indisputable—and confirmed both by deposition testimony and documentary discovery—that he has no relevant knowledge, and you have refused our offer to provide a declaration attesting to his lack of relevant knowledge. Given this, we intend to go ahead and raise the issue with the Court and seek a protective order. If you change your mind and agree to cease your continued improper efforts to depose Judge Nelms, or to take us up on our offer to provide a declaration attesting to Judge Nelms's lack of any relevant knowledge, please let us now by noon on Friday. Otherwise, we will proceed with filing a motion for protection.

Thank you,
Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200
Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com

www.hoganlovells.com

From: Thompson, Blayne R.
Sent: Monday, September 11, 2023 9:48 PM
To: 'Julie Pettit' <jpettit@pettitfirm.com>
Cc: mhurst@lynnllp.com; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; John A. Morris <jmorris@pszjlaw.com>
Subject: RE: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

Hi Julie,

We are still evaluating. We'll get back to you in the next few days.

Thanks,
Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200
Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Monday, September 11, 2023 8:03 AM
To: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: mhurst@lynnllp.com; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; John A. Morris <jmorris@pszjlaw.com>
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]
Hi Blayne,

Have you all had a chance to review the topics?

Thank you.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm
2101 Cedar Springs, Suite 1540
Dallas, Texas 75201
Direct: 214-329-1846
Fax: 214-329-4076
jpettit@pettitfirm.com

On Wed, Sep 6, 2023 at 3:36 PM Thompson, Blayne R. <blayne.thompson@hoganlovells.com> wrote:

> Julie,
>
> Thanks. We will review and let you know our thoughts.
>
> In the meantime, following-up on our prior message: please confirm that you do not oppose my colleagues Edward McNeilly and/or Rick Wynne seeking admission pro hac vice.
>
> Sincerely,
>
> Blayne
>
> **Blayne Thompson**
> Senior Attorney
>
> **Hogan Lovells US LLP**
> 609 Main Street, Suite 4200
>
> Houston, TX 77002
>
> Tel: +1 713 632 1400
> Direct: +1 713 632 1429
> Fax: +1 713 632 1401
> Email: blayne.thompson@hoganlovells.com
> www.hoganlovells.com
>
> *Please consider the environment before printing this e-mail.*

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Tuesday, September 5, 2023 7:39 AM
To: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: mhurst@lynnllp.com; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; John A. Morris <jmorris@pszjlaw.com>
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Blayne,

Per our call last week, attached please find proposed topics for Judge Nelms. As I mentioned, if we are able to reach an agreement on these topics, we would also be willing to limit the deposition to three hours.

Please let me know.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Wed, Aug 30, 2023 at 8:32 PM Julie Pettit <jpettit@pettitfirm.com> wrote:

> Sounds good. Thanks, Blayne.
>
> Best Regards,
>
> Julie Pettit Greeson
>
> The Pettit Law Firm
>
> 2101 Cedar Springs, Suite 1540
>
> Dallas, Texas 75201
>
> Direct: 214-329-1846
>
> Fax: 214-329-4076
>
> jpettit@pettitfirm.com

On Wed, Aug 30, 2023 at 8:28 PM Thompson, Blayne R. <blayne.thompson@hoganlovells.com> wrote:

> Thanks, Julie. That still works for us. I'll circulate an invite with a dial-in.
>
> Best,
>
> Blayne
>
> **Blayne Thompson**
> Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

Please consider the environment before printing this e-mail.

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Wednesday, August 30, 2023 5:30 PM
To: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: mhurst@lynnllp.com; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; John A. Morris <jmorris@pszjlaw.com>
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Hi Blayne,

I can talk at 1pm tomorrow if that still works for you. Please let me know the best way to reach you.

Thanks,

Julie

> On Aug 29, 2023, at 9:37 AM, Thompson, Blayne R. <blayne.thompson@hoganlovells.com> wrote:
>
> Julie,

We can be available tomorrow at 1:00 pm or Thursday at 11:00 am, 1:00 pm, or 2:00 pm.

Please let us know if any of those times work.

Best,

Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Friday, August 25, 2023 8:13 PM
To: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: mhurst@lynnllp.com; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; John A. Morris <jmorris@pszjlaw.com>
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Blayne,

For reasons that we are not obligated to disclose, we believe Judge Nelms' testimony is important to Mr. Ellington's damages and motivations. Are you available for a call early next week to discuss?

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

<image001.png>

On Fri, Aug 25, 2023 at 1:32 PM Thompson, Blayne R. <blayne.thompson@hoganlovells.com> wrote:

> Thank you, Julie. Please let us know this afternoon, if possible.
>
> If we do not hear back from you by 4:00 CT, we'll need to file our motion.
>
> Sincerely,
>
> Blayne
>
> **Blayne Thompson**
> Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

Please consider the environment before printing this e-mail.

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Friday, August 25, 2023 1:22 PM
To: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: mhurst@lynnllp.com; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; John A. Morris <jmorris@pszjlaw.com>
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Hi Blayne,

We have not yet had an opportunity to discuss this with our client. I will respond as soon as I have had an opportunity to discuss with him.

Thank you.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

<image003.png>

On Fri, Aug 25, 2023 at 10:01 AM Thompson, Blayne R. <blayne.thompson@hoganlovells.com> wrote:

Julie,

Following up on the message below. Please confirm that you are withdrawing the subpoena.

If we do not receive a response from you by 2:00 pm today, we will have to file our motion to quash.

Sincerely,

Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

Please consider the environment before printing this e-mail.

From: Thompson, Blayne R.
Sent: Wednesday, August 23, 2023 11:02 PM
To: Julie Pettit <jpettit@pettitfirm.com>
Cc: mhurst@lynnllp.com; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; John A. Morris <jmorris@pszjlaw.com>
Subject: RE: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

Julie,

It has been nearly a month now, and we still have not received any response to our below email.

Instead, and much to our surprise, Judge Nelms has informed us that he was again personally served by a process server with another subpoena from your office yesterday. Not only does this come unannounced as we continue to await a response from you to our latest correspondence below, but it also comes despite (1) our making it clear that we represent Judge Nelms and (2) our agreement to accept service of a new subpoena for a mutually agreeable time and location, in the event that such a deposition would be relevant and necessary. This behavior is unnecessary and harassing. Let's not let it happen again.

We have indicated to you repeatedly that we are willing to work with you to the extent that there is relevant information that you need from Judge Nelms. To that end, as you have agreed below, it is clear that Judge Nelms has no information relevant to the stalking claims you have asserted, making a deposition both unnecessary and inappropriate. Further, we provided a detailed timeline below showing that the November 2021 settlement agreement you complain about happened *after* Judge Nelms left the role of being an independent director—which you never responded to. Nonetheless, in an effort to compromise and eliminate any further waste of time and expense, if desired, we have offered to provide a declaration attesting to his lack of knowledge. We have also invited you to send us a draft declaration for Judge Nelms to review. Please respond to that email.

In the meantime, please confirm that you are withdrawing the most recent subpoena, in which you again inappropriately and unilaterally scheduled a deposition for a date that does not work for us. If you do not agree to do so by noon on Friday, we will have to file a motion to quash.

Sincerely,

Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

From: McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Sent: Thursday, July 27, 2023 12:57 PM
To: Julie Pettit <jpettit@pettitfirm.com>
Cc: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; mhurst@lynnllp.com; John A. Morris <jmorris@pszjlaw.com>
Subject: RE: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

Julie:

Thank you for your email. It highlights for us why deposing Judge Nelms is unnecessary, irrelevant and appears designed for the improper purpose of fishing for evidence to bolster claims in the bankruptcy case.

1. First, you acknowledge that Judge Nelms did not have knowledge of Mr. Daugherty's alleged actions.

1. Second, the timeline outlined in your email reinforces this point. Highland's chapter 11 plan was confirmed on February 22, 2021. The effective date of the plan was August 11,

2021. Judge Nelms is not, and has never been, a board member of the Highland Claimant Trust or any other post-confirmation entity. Indeed, the chapter 11 plan contemplated no role post-effective date for Judge Nelms, who ceased to have any official role with the Highland estate on August 11, 2021. In light of that, it is unsurprising that Judge Nelms involvement with the Highland estate post-confirmation (i.e., post-February 22, 2021) was minimal and certainly unrelated to any claims asserted by your client. Moreover, and critically, the allegedly improper additional settlement consideration that you assert Daugherty obtained relates to a settlement agreement executed on November 22, 2021, over three months after the effective date of the plan and thus over three months after Judge Nelms ceased to have any official role with the Highland estate. You also offer no basis for why the claim that "Seery and Clubok kept [Judge Nelms] in the dark regarding the stalking" is either factually accurate or relevant to the stalking complaint, as Judge Nelms in any event had no role in approving any such settlement agreement.

1. Third, we agree entirely with the email sent by Joshua Levy at approximately 2:28 p.m. (CT) on July 25, 2023. The discovery efforts in this litigation (which Mr. Ellington had remanded to state court on the basis that the litigation was not connected to the bankruptcy) clearly implicate the Gatekeeper Order. We are copying John Morris on this response and, like Mr. Levy, request that you copy Mr. Morris on all correspondence with us, as the Gatekeeper Order and Mr. Morris's clients are clearly implicated.

As the ostensible purpose of the deposition is to confirm that Judge Nelms knows nothing about the stalking allegations, he is willing to make that statement in a declaration, which will save everyone time and money and will obviate the myriad problems with a deposition outlined above. Please draft a declaration for us and Judge Nelms to review.

Sincerely,

Edward McNeilly

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Tuesday, July 25, 2023 1:46 PM
To: McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Cc: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Edward and Blayne,

Thank you for your email. Please allow me to provide some context to why we are seeking the deposition of Judge Nelms.

- We have evidence in this case that Daugherty—with the assistance of at least one other individual—stalked Mr. Ellington, his assistant, his fiancé, his father, his sister, and his counsel.

- We have evidence in this case that Daugherty—with the assistance of at least one other—stalked Mr. Ellington's home, Mr. Ellington's office, Mr. Ellington's assistant, Mr. Ellington's sister's home, and Mr. Ellington's father's home. **(See attached Exhibit A for photos taken by Daugherty of each)**

- We have evidence that during the same time period, the same make/model of Daugherty's car was found to have been following Mr. Ellington's fiancé for miles and miles while she was alone in her vehicle. **(See attached Exhibit B, for video of black Yukon following Stephanie Archer for miles)**

- We have testimony that Mr. Daugherty took photos and possibly videos of Mr. Ellington's minor nieces playing basketball, which we believe he has since deleted.

- We believe Mr. Daugherty attempted to run Mr. Ellington's elderly father off the road while his father was taking a walk.

- We have evidence that Daugherty would do things such as hide behind dumpsters in attempts to obtain photos of Mr. Ellington and his family **(See attached Exhibit C, photo of Daugherty behind dumpster)**

Following a full evidentiary hearing, an injunction was put into place that required Daugherty to cease the stalking and invasion of privacy (**See Exhibit D, injunction**)

Based on what we have discovered so far, we agree that Judge Nelms did *not* have knowledge of Mr. Daugherty's actions. We also believe he would *not* have condoned Mr. Daugherty's actions if he had known about these actions. We would like to confirm these facts in the deposition of Judge Nelms.

While we do believe Daugherty left Judge Nelms was left in the dark regarding Daugherty's stalking, what is significant is that all of this happened during the time Judge Nelms was on the board and Jim Seery and Andy Clubok *did know about Mr. Daugherty's inappropriate investigation*. **(See attached Exhibit E, for communications during the relevant time period with Seery and Clubok in which Judge Nelms is not included)** In fact, not only were Seery and Clubok aware—but according to Daugherty, Seery himself told Daugherty that he "appreciated" the investigation. **(See**

attached Exhibit F, deposition of Daugherty, pages 104-105). We want to depose Judge Nelms on whether, as we expect, Seery and Clubok kept him in the dark regarding the stalking.

Additionally, please take note of the following:

- Seery has produced over 18,000 pages of emails and texts in response to our subpoena for communications from Daugherty regarding his investigation into Ellington;

- To date, Clubok has refused to produce his responsive documents and has been dodging service attempts for his deposition. However, Daugherty testified that he did provide documentation regarding his investigation directly to Clubok **(See Exhibit G, deposition of Daugherty, pages 5-60)**

At the Plan Confirmation hearing on February 2, 2021, the Debtor and Daugherty announced a settlement of Daugherty's proof of claim in the Highland Bankruptcy. Nine months later in November 2021, the Debtor and Daugherty executed a settlement agreement that, in addition to the material terms announced in February 2021, gave Daugherty an additional $1m in Class 9, part of Highland's investment track record to claim as his own, ownership of two Highland affiliates he could use to pursue litigation claims, and a prospective observer role on the Claimant Oversight Board. The Debtor agreed to all of this additional settlement consideration subsequent to receiving Mr. Daugherty's cooperation in investigating Ellington. Given the Board's role in approving settlement of material proofs of claim in the bankruptcy, Ellington believes that Judge Nelms should have been made aware of Daugherty's actions—if not by Daugherty, then certainly by Jim Seery and Andy Clubok.

It does not seem to be a coincidence that Judge Nelms was excluded from all communications relating to the stalking and investigation. It does not seem to be a coincidence that Mr. Daugherty's settlement in the bankruptcy became materially better for Mr. Daugherty after Judge Nelms was seemingly cut out of communications and only after Mr. Daugherty had provided Seery and Clubok with thousands upon thousands of pages of his investigatory work regarding Ellington. And it does not seem to be a coincidence that Judge Nelms participated in the *legitimate* negotiations with Daugherty, but that Judge Nelms was purposefully excluded from what Mr. Ellington believes were the illegitimate negotiations.

For these reasons, we believe the deposition of Judge Nelms is relevant and critical. As we have reiterated multiple times, we are willing to work with Jude Nelms with respect to his scheduling. We will endeavor to be as efficient as possible and respect his time. Please advise regarding his availability.

Thanks,

Julie

On Fri, Jul 21, 2023 at 4:27 PM McNeilly, Edward <edward.mcneilly@hoganlovells.com> wrote:

Julie:

We should have responded sooner that Blayne is on vacation. As we assess the current situation, we think that the basis for taking the deposition of Judge Nelms is seriously less compelling than we originally thought, which was baseless from the outset. We now understand that, in his deposition testimony, Daugherty testified that he did not recall ever speaking with Judge Nelms. In light of this testimony, what is your basis for thinking that Judge Nelms has any relevant information to the stalking allegations? As you know Judge Nelms has declared that he has none. In that vein, can you show us a single document that has been produced by the parties in the case, or any third party, that might provide a justification for the deposition. We doubt that you can, especially given that Judge Nelms has none. But if you think there is something that you would like us to look at, please provide it as soon as you can.

Given the clear evidence that Judge Nelms was not involved in, and has no knowledge of, the matters that are at issue in this litigation, we invite you to reconsider your plan to depose him. Judge Nelms has compelling reasons to seek and obtain a protective order should your client persist in seeking his deposition. In the meantime, when the Judge returns from his vacation, we will seek his availability after July 27, to the extent the Court were to determine that his deposition is required under the Texas Rules of Civil Procedure.

Edward

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Friday, July 21, 2023 11:06 AM
To: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Hi Blayne,

Can you let us know what dates work? We are trying to accommodate his schedule.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

<image004.png>

On Thu, Jul 20, 2023 at 2:07 PM Julie Pettit <jpettit@pettitfirm.com> wrote:

> Hi Blayne,
>
> We are trying to work with you on dates. Please advise.
>
> Best Regards,
>
> Julie Pettit Greeson
>
> The Pettit Law Firm
>
> 2101 Cedar Springs, Suite 1540
>
> Dallas, Texas 75201
>
> Direct: 214-329-1846
>
> Fax: 214-329-4076
>
> jpettit@pettitfirm.com
>
> <image005.png>

On Wed, Jul 19, 2023 at 8:23 AM Julie Pettit <jpettit@pettitfirm.com> wrote:

Hi Blayne,

Just following up on this. Please advise regarding dates.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

<image006.png>

On Sun, Jul 9, 2023 at 10:41 PM Julie Pettit <jpettit@pettitfirm.com> wrote:

Hi Blayne,

We are still working through some issues and hoping to reach an agreement on the items discussed below. Daugherty's counsel is taking a deposition of one of our witnesses tomorrow, but may Michael and I call you after that exposition tomorrow?

The 11th seems too tight to work through these issues, so are there any other days in July that Judge Nelms is available for a deposition? I know you said he is available on the 27th, but are there any other days you are available? We want to make sure we can accommodate everyone's schedules.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

<image007.png>

On Fri, Jun 30, 2023 at 4:48 PM Thompson, Blayne R. <blayne.thompson@hoganlovells.com> wrote:

> Julie,
>
> Thank you for sending the petition. It confirms our understanding that the claims in this case are quite narrow, and that Judge Nelms has no connection to the relevant issues.

Given that, and your refusal to agree that the scope of the deposition will be limited to the claims & defenses in this case, as required by the Rules, it appears that a motion for protection may be necessary. To that end, your vague representation that the questions will be "appropriate" to not only the claims & defenses, but also "the documents produced in the case," is insufficient and does not represent the permissible scope of discovery in Texas. See Tex. R. Civ. P. 192.3. And we do have the right to instruct the witness not to answer in the event that questions clearly exceed the permissible scope of discovery. See Tex. R. Civ. P. 199.5(f); *id.* 199 cmt. 4. We asked for the Rule 11 Agreement given that it seems that you plainly intend to go beyond the permissible scope of discovery, and we do not want there to be any confusion when the witness refuses to answer such questions. We understand your position, so as of now, unless we hear otherwise from you on this point, in the event you decide to proceed with a deposition of Judge Nelms, we will seek a motion for protection and move to quash the deposition in the interim, and will mark you down as opposed.

That said, we remain open to reaching agreement on the scope to avoid the need for a protective order. We understand that Jim Seery's counsel has reached out to set up a joint call with you, John Morris, and us next week in an effort to reach agreement on a shared scope for the depositions. We also understand that you have provided Mr. Seery with topics for his deposition. If we can come to an agreement on scope in a similar fashion—by agreement on a list of topics—that may ameliorate the need for a protective order.

Also, as Mr. Seery's counsel notified you in his email earlier today, please note that there is a Gatekeeper order in place in the bankruptcy court that prohibits, among other things, any conduct that could be considered the "pursuit of a claim" against Judge Nelms. We have reattached that order, and the related orders you received, for your reference. Pursuant to Rule 199.5, we will instruct the witness not to answer any questions that would violate this order.

As to Mr. Morris, he does not intend to appear on the record. With that, please take notice that he intends to attend any deposition of Judge Nelms, if one goes forward.

Finally, should a deposition of Judge Nelms proceed, Michael Hefter and/or Rick Wynne (copied) intend to seek *pro hac vice* admission to defend the deposition. Please confirm that you are unopposed to this.

Sincerely,

Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

Please consider the environment before printing this e-mail.

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Thursday, June 29, 2023 4:27 PM
To: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Thanks, Blayne. Please let me know.

We would likely take it on the 11th, which is the other date you offered.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

<image008.png>

On Thu, Jun 29, 2023 at 3:48 PM Thompson, Blayne R. <blayne.thompson@hoganlovells.com> wrote:

Julie,

We are discussing internally and expect to be able to get back to you by tomorrow.

In the meantime, please note that we misspoke on Judge Nelms' availability. He is not available on July 26, but can be available on July 27, subject to reaching an agreement on the terms of the deposition as discussed below.

Thank you,

Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Thursday, June 29, 2023 9:55 AM
To: Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; McNeilly, Edward <edward.mcneilly@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Hi Blayne,

Following up on my email below. Please advise.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

<image009.png>

On Mon, Jun 26, 2023 at 2:51 PM Julie Pettit <jpettit@pettitfirm.com> wrote:

Blayne,

1. Please see attached a copy of our live petition. As previously stated, the questions in the deposition will be appropriate to the allegations, defenses, and documents produced in the case. I am not aware of any rule that permits you to instruct the witness not to answer because you unilaterally deem it to be irrelevant to the case, in particular a case where your client is a third party and you are not familiar with the claims, defenses, underlying factual allegations, and document production. As stated below, we expect your objections will be limited to form, non-responsive, and leading.

1. With respect to Mr. Morris' attendance, we will consider this request. At a minimum, Mr. Morris is not counsel of record, has not made an appearance, and does not represent a party or witness, so he will not be permitted to speak during on the record during the deposition. If this minimal condition cannot be met, then please let me know so we can consider appropriate court relief.

Please let me know if either of these two items will be an issue.

We are working to schedule various depositions in this case, but I believe that July 11 or 26 will likely work subject to availability of Daugherty's counsel.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

<image010.png>

On Fri, Jun 23, 2023 at 5:36 PM Thompson, Blayne R. <blayne.thompson@hoganlovells.com> wrote:

> Counsel:
>
> We are following up on your deposition subpoena issued to Judge Nelms, your refusal to agree on our inherently reasonable parameters, and our motion. In your responses, you have provided no information suggesting that Judge Nelms has information relevant to the claims asserted in the *Ellington v Daugherty* litigation. The notion that you think that he has material information to your case is baseless and refuted by his lack of any documents. But if you think that you want to burden and harass him, we are willing to make him available for a limited deposition.
>
> Based on Judge Nelms' schedule and summer travel, and our schedules, we are prepared to make Judge Nelms available on July 11, subject to your agreement on the limitation on scope. Otherwise we are available to proceed on July 26, subject to the same conditions. That scope shall be embodied in a Rule 11 agreement containing the following terms:
>
> 1. The topics for questioning at the deposition will be strictly limited to those relevant to the claims and defenses in the operative pleadings (as of today, you have still not sent us the operative petition, which you promised to send in your email of June 20, 2023 at 2:00 p.m. CT), as required by TRCP 192.3, and we will instruct the witness not to answer in the event that questions exceed this scope; and
> 2. John Morris of Pachulski Stang Ziehl & Jones, counsel to Highland Capital Management, L.P. and the Highland Claimant Trust, will attend the deposition.
>
> Should you refuse to agree to these reasonable terms, we promptly seek a protective order, and move to quash any deposition notice that would otherwise require proceeding before a protective order can be obtained.

Sincerely,

Blayne

Blayne Thompson
Senior Attorney

Hogan Lovells US LLP
609 Main Street, Suite 4200

Houston, TX 77002

Tel: +1 713 632 1400
Direct: +1 713 632 1429
Fax: +1 713 632 1401
Email: blayne.thompson@hoganlovells.com
www.hoganlovells.com

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Friday, June 23, 2023 3:32 PM
To: McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Edward,

Following up. Can you please provide us with a new date for deposition?

Thank you.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

<image011.png>

On Tue, Jun 20, 2023 at 6:06 PM McNeilly, Edward <edward.mcneilly@hoganlovells.com> wrote:

> Julie,
>
> Thank you for withdrawing the subpoena. We agree to accept service for a new subpoena that is issued for a mutually agreeable time and location.
>
> We will confer with Judge Nelms and get back to you shortly with available dates. In the meantime, for clarity, by virtue of both the motion to quash and your agreement to withdraw the subpoena, we understand that the currently noticed deposition will not proceed as scheduled.
>
> Please note that we reserve all rights, including the right to move to quash or move for protection in the event that new deposition is again noticed for a date or otherwise under terms that are not mutually agreeable.
>
> Sincerely,
>
> Edward

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Tuesday, June 20, 2023 3:15 PM
To: McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Edward,

As I stated, we will withdraw the subpoena subject to you agreeing to accept service for a new subpoena issued for a mutually agreeable time and location.

Can you provide us with a new date?

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Tue, Jun 20, 2023 at 5:03 PM McNeilly, Edward <edward.mcneilly@hoganlovells.com> wrote:

Counsel:

Based on timing, we were compelled to file our Motion to Quash. We are prepared to withdraw the Motion to Quash if you withdraw the subpoena. If you withdraw the subpoena, we are also prepared to accept service.

Sincerely,

Edward McNeilly

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Tuesday, June 20, 2023 2:47 PM
To: McNeilly, Edward <edward.mcneilly@hoganlovells.com>
Cc: Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>; mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Counsel,

We have signed a Rule 11 Agreement with Defendant Daugherty extending the discovery deadline to July 25, 2023. Plaintiff agrees to withdraw the subpoena subject to you agreeing to accept service for a new subpoena issued for a mutually agreeable time and location.

Thank you.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

<image013.png>

On Tue, Jun 20, 2023 at 3:06 PM McNeilly, Edward <edward.mcneilly@hoganlovells.com> wrote:

> Ms. Pettit:
>
> Your response did not confirm that you are withdrawing the present subpoena. Please confirm that you are withdrawing the current subpoena immediately, otherwise we will be forced to file the Motion to Quash by 5:00 p.m. CT today. We will confer with our client regarding times for the deposition where he is available and will get back to you. Judge Nelms reserves all rights with respect to the reissued subpoena, including, without limitation, to file a Motion to Quash or Modify or for Protective Order, if an appropriate scope for the deposition cannot be mutually agreed.
>
> Sincerely,
>
> Edward McNeilly

From: Julie Pettit <jpettit@pettitfirm.com>
Sent: Tuesday, June 20, 2023 11:59 AM
To: McNeilly, Edward <edward.mcneilly@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; Wynne, Rick <richard.wynne@hoganlovells.com>; Thompson, Blayne R. <blayne.thompson@hoganlovells.com>
Cc: mhurst@lynnllp.com
Subject: Re: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

[EXTERNAL]

Mr. Hefter:

In response to your correspondence dated June 16, 2023 regarding the deposition subpoena of former Judge Russel Nelms, you included four proposed limitations on the deposition. I address each of those in turn:

1. the deposition will take place at a mutually convenient time that counsel and the witness are available (at this time, we are not available next week);

   Response: We will work with you and your client regarding a convenient time and place for the deposition. Please let us know a few dates when the witness is available and we will re-issue the subpoena.

1. the deposition will not exceed one hour in time;

   Response: Tex. R. Civ. P. 199.5(c) provides six hours of questioning for a deposition. While we do not have any intention of arbitrarily using all six hours, we cannot agree to an artificial time limit that waives our procedural rights.

1. the topics for questioning at the deposition will be strictly limited to the allegations in the operative complaint as of the date of this letter (as to which, please send us a copy of such complaint); and

Response: The questions in the deposition will be appropriate to the allegations, defenses, and documents produced in the case. However, please be advised that Tex. R. Civ. P. 199.5(e) provides that all objections shall be limited to "form," "leading," or "non-responsive." Unless specifically requested, we do not invite your explanations or argument regarding any form objection. Argumentative or suggestive objections or explanations waive objection and may be grounds for terminating the oral deposition or assessing costs or other sanctions. We expect you will follow this rule. With respect to your request for a copy of the live complaint, we will provide you a copy as requested.

1. John Morris of Pachulski Stang Ziehl & Jones, counsel to Highland Capital Management, L.P. and the Highland Claimant Trust, is permitted to attend the deposition.

Response: Mr. Morris is neither counsel of record in this matter nor counsel for the witness. As far as we are aware, he is not barred in the State of Texas, nor admitted to practice *pro hac vice* in the courts of the State of Texas. Accordingly, we do not see any valid reason for him to attend the deposition.

Best Regards,

Julie Pettit Greeson

The Pettit Law Firm

2101 Cedar Springs, Suite 1540

Dallas, Texas 75201

Direct: 214-329-1846

Fax: 214-329-4076

jpettit@pettitfirm.com

On Tue, Jun 20, 2023 at 1:32 PM McNeilly, Edward <edward.mcneilly@hoganlovells.com> wrote:

Counsel:

I write further to my email of June 16, 2023 below (which attached a letter from Michael Hefter), to the telephone message that I left with Ms. Pettit's receptionist at or around 12:13 CT today (as Ms. Pettit was unavailable) and to the voice message that I left with Mr. Hurst on his office line at or around 12:20 CT today (as Mr. Hurst was not available). Due to the timing requirements of Dallas County Local Civil Rule 2.12, absent written agreement from you by **1:30 p.m. (PT) / 3:30 p.m. (CT) today** that you will withdraw the subpoena and deposition notice and agree to meet and confer regarding the time, place and scope of the deposition, we will file a motion to quash by 5:00 p.m. (CT) today.

Sincerely,

Edward McNeilly

Edward McNeilly
Senior Associate

Hogan Lovells US LLP
1999 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067
Tel: +1 310 785 4600
Direct: +1 310 785 4671
Mobile: +1 310 435 5749
Fax: +1 310 785 4601
Email: edward.mcneilly@hoganlovells.com
www.hoganlovells.com

From: McNeilly, Edward
Sent: Friday, June 16, 2023 1:18 PM
To: 'jpettit@pettitfirm.com' <jpettit@pettitfirm.com>; 'mhurst@lynnllp.com' <mhurst@lynnllp.com>
Cc: Wynne, Rick <richard.wynne@hoganlovells.com>; Hefter, Michael C. <michael.hefter@hoganlovells.com>; 'John A. Morris' <jmorris@pszjlaw.com>

Subject: Letter re: Subpoena to Hon. Russell Nelms in Scott Byron Ellington v. Patrick Daugherty, Cause No. DC-22-00304 (101st Jud. Dist., Dallas

Counsel:

Please see the attached letter sent on behalf of Michael Hefter.

Sincerely,

Edward McNeilly

Edward McNeilly
Senior Associate

Hogan Lovells US LLP
1999 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067
Tel: +1 310 785 4600
Direct: +1 310 785 4671
Mobile: +1 310 435 5749
Fax: +1 310 785 4601
Email: edward.mcneilly@hoganlovells.com
www.hoganlovells.com