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**CO-COUNSEL FOR  
PATRICK DAUGHERTY**

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

<b>In re:</b>	§	
	§	<b>CASE NO. 19-34054-SGJ-11</b>
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b>	§	
	§	<b>CHAPTER 11</b>
<b>Debtor.</b>	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b>	§	
	§	
<b>Plaintiff,</b>	§	
	§	
<b>vs.</b>	§	<b>Adversary Proceeding No. 20-03128</b>
	§	
<b>PATRICK HAGAMAN DAUGHERTY,</b>	§	
	§	
<b>Defendant.</b>	§	
	§	

**PATRICK DAUGHERTY’S MOTION TO DISMISS ADVERSARY PROCEEDING  
PURSUANT TO FED. R. CIV. P. 12(b)(6)**

TO THE HONORABLE STACEY G. C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE:

Patrick Daugherty (“**Daugherty**”), defendant in the above-referenced adversary proceeding, hereby moves to dismiss Highland Capital Management, L.P.,’s Complaint to Extend



the Automatic Stay or, in the Alternative, for Preliminary Injunctive Relief (the “**Complaint**”) for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure Rule 12(b)(6).

### **PRELIMINARY STATEMENT**

1. The Complaint is intended to shield various non-debtor affiliates of Highland Capital Management, L.P. (“**Highland**”) from defending claims against them in the Court of Chancery for the State of Delaware in an action captioned *Daugherty v. Dondero, et al.*, C.A. No 2019-0956-MTZ (the “**Delaware Affiliate Action**”). The Complaint states no claim, but instead only seeks a form of relief, extending the automatic stay to cover those non-debtor affiliates. It should be dismissed for failure to state a claim.

### **FACTUAL BACKGROUND**

2. Daugherty filed the Delaware Affiliate Action on December 1, 2019.

3. Over ten months later and in the midst of briefing on the motions to dismiss filed by defendants in the Delaware Affiliate Action, Highland filed its Complaint seeking to extend the automatic stay to enjoin the Delaware Affiliate Action on October 8, 2020. At no point in time during the last ten months did the Debtor or non-debtor affiliates seek to remove the Delaware Affiliate Action or transfer it to this Court.

4. The Complaint states no cause of action. Instead, it states as its only “Claim for Relief” a claim for injunctive relief. The Complaint does not allege that the filing of the Delaware Affiliate Action violated the automatic stay or that Highland suffered any damages from any such violation.

### **ARGUMENTS AND AUTHORITIES**

5. Highland states no claim against Daugherty.

6. Rule 12(b)(6), as incorporated by Fed. R. Bank. P. 7012, provides for dismissal of a complaint for “failure to state a claim for which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Aschroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). While detailed allegations are not required, a plaintiff must provide the grounds for his entitlement to relief, which “requires more than labels and conclusions,” and “a formulaic recitation of a cause of action’s elements will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007). “Factual allegations must be enough to raise a right to relief above the speculative level.” *Id.*

7. The complaint must allege facts sufficient to support relief under a cognizable legal theory. *Alcala v. Tex. Webb County*, 620 F. Supp. 2d 795, 801 (S.D. Tex. 2009). If a plaintiff fails to allege facts forming a substantive claim, a request for equitable relief, which must be based on a substantive underlying claim, does not state a claim. *Starrett v. City of Richardson*, 2018 WL 4627133, at \*14 (N.D. Tex., Dallas Division July 27, 2018) (“Because Plaintiff’s substantive claims under federal law are subject to dismissal for failure to state a claim, his requests for equitable relief, to the extent asserted under federal law, should be *sua sponte* dismissed for failure to state a claim.”); *Jackson v. Fed. Home Loan Mortg. Corp.*, 2011 WL 3874860, at \*3 (N.D. Tex., Fort Worth Division Sept. 1, 2011).

8. “Injunctive relief is an equitable remedy, not an independent cause of action.” *Denman v. Wells Fargo Bank, N.A.*, 2013 WL 1866580, at \*2 (W.D. Tex., San Antonio Division May 2, 2013) (citing *Puente v. CitiMortgage, Inc.*, 2012 WL 4335997, at \*7 (N.D. Tex. Aug. 29, 2012)). To obtain a preliminary injunction, a plaintiff must allege an underlying claim and demonstrate that there is a substantial likelihood of success on the merits of that underlying claim,

among other predicates necessary for injunctive relief. *DSC Comm'cns Corp. v. DGI Techs., Inc.*, 81 F.3d 597, 600 (5th Cir. 1996).

9. In the present case, Highland does not even allege a substantive claim upon which relief could be granted. It simply asserts injunctive relief as an independent cause of action, which is impermissible. *See, e.g., Denman*, 2013 WL 1866580, at \*2. Highland's only "claim" is a request for injunctive relief with no predicate cause of action upon which that relief is based. Thus, "plaintiff cannot establish any likelihood of success on the merits [of a claim that has not been alleged], thus requiring dismissal of his request for injunctive relief." *Jackson*, 2011 WL 3874860, at \*3.

### CONCLUSION

10. Since Highland fails to state an underlying claim upon which it could show a substantial likelihood of success on the merits, the Complaint should be dismissed.

*[intentionally left blank]*

Dated: November 12, 2020.

Respectfully submitted,

/s/ Jason P. Kathman

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