

D. Michael Lynn  
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John Y. Bonds, III  
State Bar I.D. No. 02589100  
John T. Wilson, IV  
State Bar I.D. No. 24033344  
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

**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**  
§  
**Debtor.** §

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**HIGHLAND CAPITAL MANAGEMENT, L.P.,** §  
§  
**Plaintiff.** §  
§  
v. §  
§ **Adversary No. 20-03190**  
§  
**JAMES D. DONDERO,** §  
§  
**Defendant.** §

**JAMES DONDERO’S MOTION TO REOPEN EVIDENCE TO  
ALLOW FOR ADDITIONAL REBUTTAL WITNESS TESTIMONY**

James D. Dondero (“Defendant”), the defendant in the above-captioned adversary proceeding, hereby files this *Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony* (the “Motion”). In support thereof, Defendant respectfully represents as follows:



1. On March 22, 2021, the Court conducted a hearing on *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should not be Held in Civil Contempt for Violating the TRO* [Adv. Dkt. 48] and *Debtor's Memorandum of Law in Support of Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Adv. Dkt. 49] (collectively, the "Contempt Motion").

2. Mr. James P. Seery, Jr., the Debtor's CEO, was the last witness to testify during the hearing. At about 5:30 p.m., after Mr. Seery's testimony concluded, the Court stated that closing arguments would occur on Wednesday, March 24, 2021 starting at 9:30 a.m. since there was already a related setting scheduled for the same time.

3. As the Court is aware, at the outset of the hearing on the Contempt Motion, each side had agreed to limit their presentation to a total of three and a half hours. At the time that Seery's testimony concluded, counsel for Defendant had utilized approximately 2 hours, 45 minutes of his allotted time.

4. Based on a review of Mr. Seery's testimony, it appears that Mr. Seery may have made some inaccurate or incomplete statements regarding Defendant's cell phone, the Debtor's cell phone replacement policy, and certain other matters.

5. During the hearing, Defendant testified as to the cell phone replacement policy that had existed at the Debtor during his approximate twenty-five-year tenure as the Debtor's CEO and that he complied with that policy when he replaced his cell phone on or around December 10, 2020. Defendant also testified to certain other matters that conflicted with the testimony Mr. Seery gave during the hearing.

6. Accordingly, Defendant believes that additional witness testimony should be presented to the Court to briefly rebut the testimony of Mr. Seery regarding the Debtor's cell phone

policy, Defendant's replacement of his phone, and certain limited other matters.

7. To that end, Defendant respectfully requests that the Court allow Defendant to call additional witnesses, Jason Rothstein, Thomas Surgent, and/or Scott Ellington, to provide brief additional testimony regarding these matters and to rebut certain testimony that Mr. Seery provided. For example, Mr. Jason Rothstein would testify that he transitioned Defendant's cell phone in the same way that he had for other senior employees over the last 13 years. *See* Declaration of Jason Rothstein, attached hereto as "**Exhibit A.**"

8. Moreover, Mr. Ellington testified in his deposition to several matters addressed by Mr. Seery and Mr. Ellington's testimony directly contradicts that of Mr. Seery. *See* Excerpts of Ellington Deposition, attached hereto as "**Exhibit B.**"

9. While Defendant understands that the Court believed testimony was concluded at the end of March 22<sup>nd</sup>, Defendant's counsel has not utilized all his allotted time and briefly calling one or more additional witnesses to testify as to certain limited topics will not take much additional time or prejudice the Court or the parties. If allowed by the Court, Defendant would agree that direct examination and cross examination of such witness would be limited and that Defendant would not exceed his previously-agreed to 3.5 hours of total time. Defendant believes that justice will be served by allowing for this additional witness testimony so the Court has a complete picture as to the Debtor's cell phone policy and certain other matters.

10. Defendant therefore respectfully requests that the Court allow for the presentation of this additional witness testimony and, to the extent necessary to allow for witness availability, briefly reschedule or continue the hearing on the Contempt Motion to allow for this additional witness testimony, with closing arguments occurring thereafter.

11. At a minimum, Defendant seeks to proffer the deposition testimony of Mr.

Ellington as rebuttal evidence to Mr. Seery's testimony.

12. Alternatively, Defendant submits the Rothstein Declaration and Ellington Deposition Excerpts as an offer of proof.

**CONCLUSION**

For the foregoing reasons, Defendant respectfully requests that the Court enter an order (i) granting this Motion, (ii) allowing for limited additional witness testimony as requested herein, and continuing or rescheduling the hearing on the Contempt Motion to the extent necessary to allow for such testimony, (iii) at a minimum, allowing Defendant to proffer the Ellington deposition testimony as rebuttal evidence and allowing Defendant to submit the attached exhibits as an offer of proof, and (iv) granting Defendant such other and further relief to which he may be justly entitled.

Dated: March 24, 2021

Respectfully submitted,

/s/ D. Michael Lynn

D. Michael Lynn

State Bar I.D. No. 12736500

John Y. Bonds, III

State Bar I.D. No. 02589100

John T. Wilson, IV

State Bar I.D. No. 24033344

Bryan C. Assink

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**ATTORNEYS FOR DEFENDANT JAMES DONDERO**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on March 24, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink  
Bryan C. Assink

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State Bar I.D. No. 12736500  
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

**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**  
§  
**Debtor.** §

---

**HIGHLAND CAPITAL MANAGEMENT, L.P.,** §  
**Plaintiff.** §

v. §  
§ **Adversary No. 20-03190**  
§  
**JAMES D. DONDERO,** §  
**Defendant.** §

**DECLARATION OF JASON ROTHSTEIN**

I, Jason Rothstein, hereby declare the following under penalty of perjury:

1. I am over 18 years of age and if called upon I would competently testify to the matters set forth herein from my own personal knowledge, or my opinion based upon my experience.

**Exhibit A**

2. Although Highland's policy for replacing cell phones was not specifically referenced in the Employee Manual, for 13 years I performed the same procedures when senior executives replaced their phone or left the firm.

3. I transitioned Jim Dondero's cell phone in the same way that I have for other senior executives over the last 13 years.

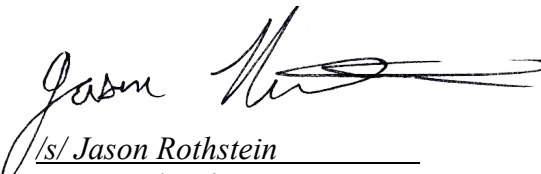
4. I wiped Mr. Dondero's old cell phone clean of all business data subject to retention policies (emails and attachments) so that the business data was not inadvertently distributed to the public.

5. I returned Mr. Dondero's cell phone to his assistant's desk.

6. I did the same procedure for transitioning cell phones for many former Highland employees when they left their employment.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Dated: March 24, 2021

  
By: /s/ Jason Rothstein  
Name: Jason Rothstein

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

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3			
4	IN RE:	)	
5	HIGHLAND CAPITAL	)	CHAPTER 11
6	MANAGEMENT, L.P.,	)	CASE NO. 19-34054-sgj11
7		)	
8	Debtor.	)	
9	-----	)	
10	HIGHLAND CAPITAL	)	
11	MANAGEMENT, L.P.,	)	
12		)	ADVERSARY PROCEEDING
13	Plaintiff,	)	
14		)	
15	vs.	)	
16		)	NO: 20-3190-sgj11
17	JAMES D. DONDERO,	)	
18		)	
19	Defendant.	)	
20		)	
21		)	
22		)	
23		)	
24		)	
25		)	

DEPOSITION OF SCOTT ELLINGTON

DALLAS, TEXAS

TUESDAY, FEBRUARY 16, 2021

(Reported Remotely)

REPORTED BY: TANYA L. VERHOVEN-PAGE,  
CCR-B-1790

JOB NO. 189884

**Exhibit B**



1 February 16, 2021

2 10:04 a.m.

3

4 Deposition of

5 SCOTT ELLINGTON, held in Dallas, Texas before

6 Tanya L. Verhoven-Page, Certified Court

7 Reporter and Notary Public of the State of

8 Texas.

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APPEARANCES OF COUNSEL

On behalf of the Debtor:

PACHULSKI STANG ZIEHL & JONES  
780 Third Avenue  
New York, New York 10017

BY: JOHN MORRIS, ESQ.

(Via Zoom)

ALSO PRESENT: La Asia Canty

On behalf of Highland CLO Funding Ltd.:

KING & SPALDING  
500 West 2nd Street  
Austin, Texas 78701

BY: REBECCA MATSUMURA, ESQ.

(Via Zoom)

On behalf of James Dondero:

BONDS ELLIS EPPICH SCHAFFER JONES  
420 Throckmorton Street  
Fort Worth, Texas 76102

BY: JOHN WILSON, IV, ESQ.

(Via Zoom)

APPEARANCES OF COUNSEL

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On behalf of Unsecured Creditors Committee:

SIDLEY AUSTIN  
2021 McKinney Avenue  
Dallas, Texas 75201

BY: PAIGE HOLDEN MONTGOMERY, ESQ.

BY: PENNY REID, ESQ.

(Via Zoom)

On behalf of CLO holdco and Grant Scott:

KANE RUSSELL COLEMAN LOGAN  
Bank of America Plaza  
901 Main street  
Dallas, Texas 75202

BY: BRIAN CLARK, ESQ.

BY: JOHN KANE, ESQ.

(Via Zoom)

On behalf of HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC):

WICK, PHILLIPS, GOULD & MARTIN  
100 Throckmorton Street  
Fort Worth, Texas 76102

BY: PAUL ELKINS, ESQ.

(Via Zoom)

APPEARANCES OF COUNSEL

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On behalf of Scott Ellington:

BAKER MCKENZIE  
1900 North Pearl Street  
Dallas, Texas 75201

BY: DEBRA DANDENEAU, ESQ.  
BY: MICHELLE HARTMANN, ESQ.  
(Via Zoom)

ROSS & SMITH  
Plaza of the Americas  
700 N. Pearl Street  
Dallas, Texas 75201

BY: FRANCES SMITH, ESQ.  
(Via Zoom)

- - -

1 S. ELLINGTON  
2 DALLAS, TEXAS; TUESDAY, FEBRUARY 16, 2021  
3 10:04 A.M.  
4

5 Thereupon --

6 SCOTT ELLINGTON,  
7 called as a witness, having been first duly sworn,  
8 was examined and testified as follows:  
9

10 MS. HARTMANN: John, are you okay  
11 with me putting a couple things on the  
12 record again?

13 MR. MORRIS: Sure. Go right ahead.

14 MS. HARTMANN: This is Michelle  
15 Hartman, Baker McKenzie, on behalf of the  
16 witness Scott Ellington, and we have  
17 agreed voluntarily to produce  
18 Mr. Ellington today. As stated  
19 yesterday, we have rolling power outages.  
20 So Mr. Ellington was unable to return  
21 from President's Day weekend and will be  
22 taking this by phone.

23 He did get the exhibits a short  
24 time ago. He's not been able to print  
25 them yet. That's going to take about 45

1 S. ELLINGTON

2 minutes. We're willing to go forward,  
3 but at a convenient time we want to take  
4 a break so he can get those, if that's  
5 okay with you, Mr. Morris.

6 MR. MORRIS: Yeah, no problem at  
7 all.

8 MS. HARTMANN: I also just want to  
9 say on the record, we sent a letter on  
10 February 11th to all the parties that we  
11 believed that there might be a privilege  
12 issue with. Mr. Ellington served as  
13 general counsel for Highland Capital  
14 Management and also provided legal advice  
15 pursuant to a shared services agreement  
16 to several Jim Dondero affiliated  
17 entities.

18 We expect and hope that counsel for  
19 those entities who are on the call, the  
20 video deposition today, will make the  
21 right privilege objections should they  
22 see fit.

23 Thanks, John.

24 MS. MATSUMURA: And, John, I'd like  
25 to again make my statement on the record,

1 S. ELLINGTON

2 if that's all right.

3 MR. MORRIS: Yeah.

4 MS. MATSUMURA: This is Rebecca  
5 Matsumura from King & Spalding,  
6 representing Highland Funding, Limited.  
7 We're one of the parties that received a  
8 letter informing us to attend this  
9 deposition to object in case our  
10 privileged information was discussed.

11 We don't think that our privileged  
12 information will be discussed and, of  
13 course, we'll object if the question  
14 calls for it, but we don't agree that the  
15 witness is released from any obligation  
16 he would otherwise have to protect the  
17 fund's privileged information.

18 Thank you.

19 MR. CLARK: And this is Brian Clark  
20 on behalf of CLO Holdco. We would echo  
21 the same thing.

22 MR. MORRIS: Are we ready to  
23 proceed?

24 So my name is John Morris. I'm an  
25 attorney with Pachulski, Stang, Ziehl &

1 S. ELLINGTON  
2 Jones. I represent the debtor, Highland  
3 Capital Management, LP in its bankruptcy.  
4 We're here today for the deposition of  
5 Scott Ellington.

6 As has been the procedure, I would  
7 ask anybody to speak up and object if any  
8 party has an objection to the use of the  
9 transcript of this deposition during any  
10 future proceeding in the bankruptcy case,  
11 notwithstanding the fact that this is  
12 being conducted -- or because this is  
13 being conducted remotely.

14 Okay. So I've heard no objection.  
15 So let's proceed. Can you please swear  
16 the witness in?

17 MS. HARTMANN: I believe she has.

18 THE REPORTER: I swore him at the  
19 beginning.

20 MR. MORRIS: Very well.

21

22 EXAMINATION

23 BY MR. MORRIS:

24 Q Good morning, Mr. Ellington.

25 Can you hear me okay?



S. ELLINGTON

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MR. WILSON: I'd like to ask a few questions.

MS. HARTMANN: Okay.

EXAMINATION

BY MR. WILSON:

Q Mr. Ellington, my name is John Wilson. I represent Mr. Dondero.

A Okay.

Q You discussed a little earlier in this deposition a phone policy, that Highland --

A Yeah.

Q -- may or may not have had a written policy on? Do you recall that?

A Yes, I do.

1 S. ELLINGTON

2 Q Okay. And can you describe for me again  
3 the basis for the treatment of old cell phones when  
4 new cell phones were acquired?

5 A Absolutely.

6 MR. MORRIS: Objection to the form  
7 of the question.

8 THE WITNESS: When a new cell phone  
9 was acquired, my understanding of the  
10 policy is that Highland's IT department  
11 would wipe -- for lack of a better  
12 term -- your existing phone, your old  
13 phone I'll call it, and they were to  
14 remove all Highland related information,  
15 debtor related information from that  
16 phone.

17 Then it was returned to you and, in  
18 the abundance of caution and prudence,  
19 the SEC was concerned with personal  
20 communication devices retaining  
21 nonpublic, private proprietary  
22 information or investor related  
23 information, and you were told to recycle  
24 or destroy the phone to make sure that  
25 information did not get into other

1 S. ELLINGTON

2 people's hands.

3 BY MR. WILSON:

4 Q And do you know when that formal or  
5 informal policy was put into place?

6 A The policy --

7 MR. MORRIS: Objection to the form  
8 of the question.

9 THE WITNESS: Sorry, John.

10 The policy, the training around  
11 that, was conducted by compliance years  
12 ago. I would say five to seven years  
13 ago.

14 BY MR. WILSON:

15 Q And are you aware of the person who made  
16 the decision to implement that policy?

17 A It would be Thomas Surgent, the chief  
18 compliance officer.

19 Q O okay. And I think you may have  
20 testified earlier that Mr. Surgent conducted some  
21 training sessions on this issue?

22 A Yes.

23 Q And you attended those training sessions?

24 A Yes.

25 Q And did Mr. Dondero attend those training

1 S. ELLINGTON

2 sessions?

3 A It would be my strong assumption, yes. I  
4 believe in those trainings everyone needs to certify  
5 they've attended compliance trainings in writing.

6 Q Okay. And I think you also testified  
7 earlier that you were not initially aware that  
8 Highland was paying for your cell phone; is that  
9 correct?

10 A That's correct. I was not aware.

11 Q And do you know when you became aware  
12 that Highland was paying for your cell phone?

13 A Yes.

14 Q When was that?

15 A Late November.

16 Q Okay. And how long had Highland been  
17 paying for your cell phone?

18 A Since --

19 Q When did you become aware of that?

20 A Since the inception of my employment.  
21 They used to pay for all employees' cell phones.

22 Q Okay. Do you know of any other current  
23 or former Highland employees who got new phones at  
24 the time that you did?

25 A I'm now aware that Mr. Dondero did.

1 S. ELLINGTON

2 Q But you're not aware of any others?

3 A I'm not aware of any others, but there  
4 were some senior people that departed during the  
5 pendency of the bankruptcy that I would assume  
6 Highland no longer pays for their phones after they  
7 resigned.

8 Q So before December of 2020, you had gone  
9 through the process of acquiring a new cell phone in  
10 the past?

11 A At least a half a dozen times.

12 Q Okay. And was there anything different  
13 about the process that was used in December of 2020  
14 than the process that had been used previously?

15 A The process was exactly the same with one  
16 exception. Jason Rothstein, the head of Highland IT,  
17 terminating Highland's financial responsibility, and  
18 myself and Ms. Goldsmith, my assistant, phoning AT&T  
19 and making myself financially responsible.

20 Q Thank you.

21 When was your employment from Highland  
22 terminated?

23 A January the 5th, 2020 -- sorry -- 2021.

24 Q Are you familiar with a term -- with the  
25 term settlement counsel?

1 S. ELLINGTON

2 A I am.

3 Q And is that a role that you were given?

4 A I was certainly tasked as being a  
5 go-between. I can see where someone would use that  
6 moniker for what I was doing.

7 Q Okay. And are you aware that Mr. Dondero  
8 would use that moniker?

9 A I am.

10 Q And when -- when were you tasked with the  
11 role as go-between?

12 A Pretty much from the inception of the  
13 board being put in place.

14 Q Okay. And tasked you with that role?

15 A The board, primarily, at the beginning  
16 asked me to carry messages and get responses from  
17 Mr. Dondero, and then specifically tasked with  
18 individual missions, for lack of a better term, to go  
19 and negotiate and elicit information and responses  
20 from Mr. Dondero by Mr. Seery.

21 Q And when you talked about a communication  
22 with Mr. Dondero on January 4th, and you believe  
23 possibly January 5th, was that related to your role  
24 as settlement counsel?

25 MR. MORRIS: Objection to the form

1 S. ELLINGTON

2 of the question.

3 THE WITNESS: On January 4th,  
4 Mr. Seery -- and I believe Pachulski, as  
5 well, I can't remember -- sent an e-mail  
6 with an attached document to myself,  
7 Frank Waterhouse -- I'm doing this out of  
8 memory -- Mr. Dondero and Mr. Lynn, maybe  
9 some others at Bonds Ellis, or yourself,  
10 John, that was a line by line item of all  
11 of the overhead, for lack of a better  
12 term, of the debtor.

13 And there was a proposal in what  
14 Mr. Seery sent the group that those costs  
15 would be shared some by the debtor and  
16 some by the affiliated entities that had  
17 been under the sub-servicing sub-advisory  
18 agreement.

19 And I notified Mr. Seery on the  
20 phone that I would be meeting with  
21 Mr. Dondero, Mr. Rothstein and  
22 Mr. Waterhouse on January 4th to go line  
23 by line through that item and get a  
24 response, which I was singularly tasked  
25 with, back from Mr. Dondero with what,

1 S. ELLINGTON

2 quote, unquote, he was willing to pay  
3 for, meaning the other registered  
4 advisors and sub-servicing sub-advisory  
5 contractual parties.

6 BY MR. WILSON:

7 Q And is it fair to say that, from the  
8 inception of the Highland bankruptcy and the  
9 institution of the independent board, that you  
10 performed this role as settlement counsel for roughly  
11 a year?

12 A Yes.

13 MR. MORRIS: Objection to the form  
14 of the question.

15 BY MR. WILSON:

16 Q And did you routinely have communications  
17 with Mr. Dondero over the course of that year related  
18 to your role as settlement counsel?

19 A Well, communications relative to the  
20 operation of the debtor while Mr. Dondero was still  
21 employed there as a portfolio manager, of the shared  
22 services and sub-advisory agreements of the  
23 contractual parties, the other RIAs, NexBank and The  
24 Daf, and on a -- Mr. Dondero's sponsored debtor  
25 accepted or not accepted, as it's been called, pot



1 S. ELLINGTON

2 plant.

3 It was that amalgamation of topics that I  
4 communicated with Mr. Dondero with at various times.

5 Q Did Mr. Seery ever tell you after the --  
6 after the TRO was issued that you needed to stop that  
7 role as settlement counsel?

8 A No. Mr. Seery's direct advice to me when  
9 I raised how often I was being contacted by  
10 Mr. Dondero, the subject matter of those contacts and  
11 the contacts I was receiving from former Judge Lynn,  
12 was that I -- because of the shared services  
13 sub-advisory agreements, I needed to answer Dondero's  
14 phone calls, Mr. Dondero's phone calls.

15 And when I spoke about how Mr. Dondero  
16 would sometimes meander in a conversation from shared  
17 services into bankruptcy specific matters,  
18 Mr. Seery's direct instruction to me was, well, you  
19 have to answer his calls but try to stay out of those  
20 kind of conversations.

21 In regards to former Judge Lynn,  
22 Mr. Seery's direct instructions were, you can talk to  
23 Judge Lynn as much as you want, he's an ethical guy.

24 Q Okay. Thank you.

25 One of the things you mentioned in your

1 S. ELLINGTON

2 list of topics that you discussed with Mr. Dondero  
3 under your role as settlement counsel was the pot  
4 plant?

5 A Correct.

6 Q And did Mr. Seery expect for you to be  
7 the go-between on the pot plant discussions between  
8 Mr. Seery and Mr. Dondero?

9 A I've been tasked with that directly --

10 MR. MORRIS: Objection to the form  
11 of the question.

12 THE WITNESS: I had been tasked  
13 with that directly by Mr. Seery and  
14 included in communications from Pachulski  
15 and Mr. Seery copying me, along with Mr.  
16 Dondero and his proposals, around pot  
17 plant proposal for months.

18 BY MR. WILSON:

19 Q Did anyone ever communicate with you  
20 after September 10th, which is the date that the TRO  
21 was entered, that you could not talk to Mr. Dondero  
22 in your role as settlement counsel.

23 A No, and not in my role as general counsel  
24 because I was being tasked directly by Mr. Seery to  
25 have conversations on specific items with

1 S. ELLINGTON

2 Mr. Dondero.

3 MR. WILSON: No further questions.

4 Thank you.

5 THE WITNESS: Thank you.

6 MS. HARTMANN: John, do you have  
7 any? I want to do just a short redirect  
8 on one issue.

9 MR. MORRIS: Why don't you do that  
10 first.

11 EXAMINATION

12 BY MS. HARTMANN:

13 Q Mr. Ellington, you were asked a few  
14 questions about your cell phone, and I just want to  
15 get the time line together.

16 Do you have a sense of when your new  
17 business phone was ordered?

18 A I asked my admin to order me the new  
19 iPhone in late October. She began the presale  
20 process in early November. The phone was charged to  
21 me on December the 4th, the new phone, and was  
22 delivered within a day or so after that. So the 5th  
23 or 6th it was in my possession.

24 Q And just for the record, can you tell me  
25 the name of your admin?

1 S. ELLINGTON

2 A Sarah Goldsmith.

3 Q And did you follow the same process with  
4 regard to her ordering a phone as you did in the  
5 past?

6 A Yes, she always handled everything with  
7 IT. I was never involved other than request, wanting  
8 a new phone, not very often. But when a new phone  
9 came out, she would just proactively order it for me.

10 Q I believe you said you worked with the  
11 head of IT for Highland when you obtained your new  
12 phone to essentially move the date onto your new  
13 phone; is that true?

14 A Correct. Well, my -- Ms. Goldsmith would  
15 have interacted and done all that process, but I had  
16 the initial call with the head of IT and  
17 Ms. Goldsmith to start the process.

18 Q Did the head of IT for Highland have your  
19 phone in his possession for a period of time?

20 A That's the way I understand it. It's  
21 always worked in the past is the head of IT, or his  
22 direct reports, need my old phone in hand to move and  
23 install Outlook on a new phone.

24 Q And if you were charged for your phone  
25 December 4th, do you know why it took the head of

1 S. ELLINGTON

2 Highland IT so long to transfer the financial  
3 responsibility? I think we saw it took until  
4 February -- excuse me. Let me start over.

5 If you were charged for your phone in  
6 early December, I think you testified December 4th,  
7 do you know why it took the head of Highland IT so  
8 long to transfer responsibility? I believe we saw  
9 December 9th.

10 A I don't --

11 MR. MORRIS: Object to the form of  
12 the question.

13 THE WITNESS: I do not know why.  
14 I'm sure it's you order something, you're  
15 charged on the 4th, it takes a day or two  
16 to arrive in the mail, is my assumption.  
17 And then I believe the financial  
18 responsibility was terminated  
19 December 8th.

20 And then December 9th is when we  
21 and my admin, Ms. Goldsmith, called AT&T  
22 and they asked me a bunch of personal  
23 questions to set up me as the responsible  
24 party. It looks like that was confirmed  
25 on the 9th.

1 S. ELLINGTON

2 BY MS. HARTMANN:

3 Q Right. And you testified that you  
4 weren't aware that Highland was paying for your  
5 phone.

6 Can you explain that to the court? Were  
7 you receiving a bill?

8 A It's a little more complex than that. My  
9 understanding is that the debtor would reimburse or  
10 pay supplement to every employee X amount of dollars  
11 a month, and then any above that goes onto their  
12 personal credit card, when they had personal  
13 financial responsibility for the phone.

14 So I was receiving a charge from AT&T,  
15 but I didn't know if I was receiving the  
16 reimbursement or not. I just didn't pay attention to  
17 what the charges were.

18 Q You didn't pay attention to the amount,  
19 but you were receiving a bill from AT&T?

20 A Yes, I was receiving a monthly charge  
21 from AT&T.

22 Q And when financial responsibility for  
23 your work phone was moved to you, did you pay down  
24 the old phone?

25 A Yes. Mr. Rothstein and Ms. Goldsmith

1 S. ELLINGTON

2 informed me that there was an installment plan on the  
3 old phone and that there was a remaining balance, and  
4 I paid off that balance.

5 Q Do you know about how much of the phone  
6 you bought?

7 A I believe it was more than 50 percent, is  
8 what I was told, that only a few payments had been  
9 made.

10 Q Did you work with the head of IT to do  
11 that?

12 A Yes. The head of IT got my credit card  
13 because he was the contact person, and from what I've  
14 been told, the only person at the debtor that could  
15 interact with AT&T around phone issues.

16 So he said there's an outstanding  
17 balance, you need to pay it off before I switch over  
18 financial responsibility. The head of Highland IT  
19 told myself and my admin that, I gave him my credit  
20 card and he paid it off.

21 Q To your knowledge, at any point during  
22 the bankruptcy case did debtor's counsel ask you to  
23 issue a litigation hold or preservation of any kind?

24 A No, no one ever asked.

25 Q As I understand it, the deputy general

1 S. ELLINGTON

2 counsel would normally issue a litigation hold; is  
3 that fair?

4 MR. MORRIS: Objection to the form  
5 of the question.

6 THE WITNESS: The litigation --

7 BY MS. HARTMANN:

8 Q I'll rephrase.

9 Do you know who formally issues the  
10 litigation hold?

11 A Yes, the litigation hold e-mails normally  
12 come from Thomas Surgent and are firm wide, and I  
13 don't remember one ever being sent.

14 Q And, to your knowledge, has the head of  
15 Highland IT worked with litigation holds in the past?

16 A Yes.

17 Q If a litigation hold or preservation hold  
18 was put in place, based on your experience with them,  
19 do you believe you would have followed it?

20 A Yes.

21 Q Mark Okada was the founder -- co-founder  
22 of the debtor, true?

23 A Yes.

24 Q Did you ever hear that his documents or  
25 his electronically stored information was the subject



1 S. ELLINGTON

2 of a motion to compel filed by the UCC?

3 A No, I've never heard of that.

4 Q When he left the company during  
5 bankruptcy, do you know what happened to his phone?

6 A I do not know for a fact, but I -- I  
7 don't think it was ever turned over to anyone in  
8 legal or HR to -- to look through or to image or  
9 document.

10 Q What position did Trey Parker hold?

11 A He was the head of private equity and was  
12 a partner.

13 Q When he left during the pendency of  
14 bankruptcy, do you know what happened to his phone?

15 A Exactly the same as Mark's, Mr. Okada's.  
16 I do not know personally what happened to it, but  
17 again, it was never given, to my knowledge, to legal,  
18 compliance or HR to look through or assess.

19 Q Did you recently, and I believe it was  
20 post termination, receive a preservation notice from  
21 the UCC?

22 A I believe I did, yes.

23 Q Do you know the date of that?

24 A I do not.

25 Q Would that have been sometime after your

1 S. ELLINGTON

2 termination, you believe?

3 A It would have been, yes.

4 Q So sometime in January of 2021?

5 A Yes.

6 Q Do you recall receiving any kind of  
7 preservation notice from the UCC before that?

8 A No.

9 Q Has anyone from debtor's counsel ever  
10 told you to preserve text messages?

11 A No.

12 MS. HARTMANN: Thank you,

13 Mr. Ellington.

14 THE WITNESS: You're welcome.

15 MR. MORRIS: I'll pass, John.

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**ERRATA SHEET**

Deposition of Scott Ellington dated February 16, 2021

*Highland Capital Management, L.P. v. James D. Dondero, Adv. Proc. No. 20-03190-sgj*

Page	Line	Change From	Change To	Reason for Change
22	23	"Not that I recall, no."	"Not that I recall, not other than compensation from Highland, and other than the shares in trusts, funds, or affiliates managed by Nexpoint that I referenced."	Clarification
113	11-12	"I received shares in funds managed by NexPoint Advisors."	"I received shares in trusts, funds, or affiliates managed by NexPoint Advisors."	Clarification
116	8	"No."	"No, not other than compensation from Highland, and other than the shares in trusts, funds, or affiliates managed by Nextpoint that I referenced."	Clarification

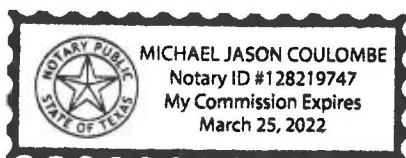


Scott Ellington

Sworn to before me this 22 day of March, 2021



Notary Public



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I, \_\_\_\_\_, do hereby certify under  
penalty of perjury that I have read the foregoing  
transcript of my deposition taken on \_\_\_\_\_ ;  
that I have made such corrections as appear noted  
herein in ink, initialed by me; that my testimony as  
contained herein, as corrected, is true and correct.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_ ,  
at \_\_\_\_\_, \_\_\_\_\_ .



\_\_\_\_\_  
SIGNATURE OF WITNESS

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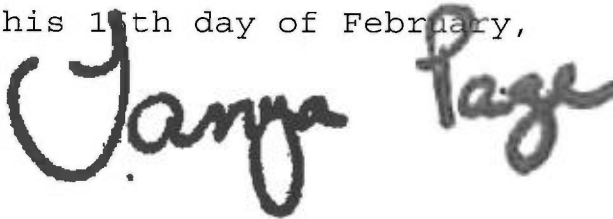
STATE OF TEXAS:

DALLAS COUNTY:

I hereby certify that the foregoing deposition was reported, as stated in the caption, and the questions and answers thereto were reduced to written page under my direction, that the preceding pages represent a true and correct transcript of the evidence given by said witness.

I further certify that I am not of kin or counsel to the parties in the case, am not in the regular employ of counsel for any of said parties, nor am I in any way financially interested in the result of said case.

Dated this 1<sup>st</sup> day of February,  
2021.



\_\_\_\_\_  
Tanya L. Verhoven-Page,  
Certified Court Reporter,  
B-1790.

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

<b>In re:</b>	§	<b>Case No. 19-34054</b>
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b>	§	<b>Chapter 11</b>
	§	
<b>Debtor.</b>	§	

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<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	
	§	
<b>Plaintiff.</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>JAMES D. DONDERO,</b>	§	<b>Adversary No. 20-03190</b>
	§	
<b>Defendant.</b>	§	

**ORDER GRANTING JAMES DONDERO’S MOTION TO REOPEN EVIDENCE TO  
ALLOW FOR ADDITIONAL REBUTTAL WITNESS TESTIMONY**

On this date, the Court considered the *Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony* (the “Motion”) filed by Defendant James Dondero (“Dondero”)

regarding the hearing on *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Dkt. 48] (the "Contempt Motion"), which is currently set for March 24, 2021 at 9:30 a.m. Upon consideration of the Motion, the Court finds that the Motion is well taken and should be granted as set forth herein. Accordingly, it is hereby ordered as follows:

1. The Motion is **GRANTED** as set forth herein.
2. The Court will reopen the evidence to allow for the additional witness testimony as requested in the Motion.
3. The hearing on the Contempt Motion will resume on March \_\_, 2021 at \_\_\_\_.

###END OF ORDER###