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*Counsel for Highland Capital Management, L.P.*

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

CHARITABLE DAF FUND, L.P., AND CLO  
HOLDCO LTD.

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
HIGHLAND HCF ADVISOR, LTD., AND  
HIGHLAND CLO FUNDING, LTD.

Defendants.

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Case No. 3:21-cv-00842-B

**DEFENDANT HIGHLAND CAPITAL MANAGEMENT, L.P.’S MOTION FOR AN  
ORDER EXTENDING THE TIME TO FILE A RESPONSIVE PLEADING**

Highland Capital Management, L.P., a defendant in the above-captioned case (the “Debtor”  
or “Highland”), hereby moves for entry of an order extending by forty-five (45) days Highland’s



time to serve a responsive pleading (the “Motion”). In support of its Motion, the Debtor states as follows:

**PRELIMINARY STATEMENT**

1. Highland is the debtor and debtor-in-possession in a bankruptcy case currently pending in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”), Case No. 19-34054-sgj11 (the “Bankruptcy Case”). The Bankruptcy Case has been pending since October 16, 2019, and each of the plaintiffs in this action, The Charitable DAF Fund, L.P. (the “DAF”) and CLO Holdco, Ltd. (“CLOH” and together with the DAF, “Plaintiffs”), have appeared and participated in the Bankruptcy Case.

2. Despite this, Plaintiffs filed the *Original Complaint* (the “Complaint”) in this Court seeking what amounts to reconsideration of an order entered by the Bankruptcy Court approving a settlement between the Debtor and HarbourVest<sup>1</sup> pursuant to 11 U.S.C. §§ 105 and 363 and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), a settlement that Plaintiff CLOH had objected to. In addition, throughout the Complaint, Plaintiffs threaten to add Mr. James P. Seery, Jr., the Debtor’s Bankruptcy Court-appointed Chief Executive Officer and Chief Restructuring Officer, as a defendant in this Case in clear violation of two final Bankruptcy Court orders.

3. On April 15, 2021, Highland agreed to accept service of the Complaint such that the deadline for serving a responsive pleading is today, May 6, 2021. Highland has asked the Plaintiffs to extend its time to serve a responsive pleading by forty-five (45) days to June 16, 2021, but Highland has not received a response. Highland therefore respectfully requests that

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<sup>1</sup> “HarbourVest” collectively refers to the following entities: HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.

the Court enter an order extending its deadline for filing a responsive pleading by forty-five (45) days to June 16, 2021 for the following reasons:

- While Highland agreed to accept service on its own behalf, it could not and did not accept service on behalf of the other defendants, Highland HCF Advisors, Ltd. and Highland CLO Funding, Ltd. (together, the “Other Defendants”);
- To the best of Highland’s knowledge, the Other Defendants have not been served with the Complaint such that the time for each of them to serve a responsive pleading has not begun to run;
- As disclosed to Plaintiff’s counsel, Highland intends to file on Monday, May 10, 2021, a *Motion for an Order to Enforce the Order of Reference* pursuant to which Highland will ask this Court to refer this matter to the Bankruptcy Court where Highland believes it properly belongs; and
- There are competing motions that will be heard in the Bankruptcy Court on June 8, 2021, that will impact the scope of these proceedings.

4. For the foregoing reasons, and for those set forth below, Highland respectfully requests that the Court grant the Motion and grant Highland such other and further relief as the Court deems just and proper under the circumstances.

#### **FACTUAL BACKGROUND**

5. On April 12, 2021, the Plaintiffs filed the Complaint against the Debtor, HCFA, and HCLOF in this Court. ECF No. 1. The Complaint seeks to challenge a settlement approved by the Bankruptcy Court and to effectively re-open the Bankruptcy Court’s factual record even though CLO Holdco and others owning and/or controlling The DAF fully litigated the issues raised in their Complaint.

6. The Plaintiffs’ choice of commencing this action in this Court is blatant forum shopping as the Bankruptcy Court clearly has subject matter jurisdiction over these matters and the automatic reference requires that the matter be referred to the Bankruptcy Court. *See Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc.*

7. On April 15, 2021, Highland's counsel agreed to accept service of the Complaint on behalf of itself. Upon information and belief, the Other Defendants have not yet been served and their time to file a responsive pleading has not begun to run.

8. On April 19, 2021, without serving Highland, Plaintiffs filed their *Motion for Leave to File First Amended Complaint* (the "Motion to Amend") pursuant to which they sought to add the Debtor's Chief Executive Officer, James P. Seery, Jr., as a defendant. ECF No. 6. Plaintiffs filed their Motion to Amend even after the Debtor informed that of the existence of two pending orders that specifically required the Plaintiffs to seek Bankruptcy Court approval before attempting to sue Mr. Seery.

9. On April 20, 2021, the Court *sua sponte* denied the Motion to Amend without prejudice, noting that "[t]o the extent a motion for leave to file an amended complaint is required, Plaintiffs may renew their motion after Defendants are served and have appeared." ECF No. 8.<sup>2</sup>

10. On April 23, 2021, the Debtor filed in the Bankruptcy Court its *Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders*. [Bank. Docket No. 2235] (the "Contempt Motion").

11. Later that night, Plaintiffs filed their *Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* in the Bankruptcy Court. [Bank. Docket No. 2241] (the "Modification Motion"). The Modification Motion belatedly sought to challenge the enforceability of one of the orders that Plaintiffs (and others) are accused of violating. *See* Contempt Motion.

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<sup>2</sup> Of course, leave to amend was not required because (a) twenty-one (21) days had not passed since Plaintiffs served the Complaint, and (b) the Defendants had not appeared or filed a responsive pleading. Fed. R. Civ. P. 15(a)(1). As set forth in the Contempt Motion (as defined below), Plaintiffs were crassly attempting an end-run around two Bankruptcy Orders.

12. On April 29, 2021, the Bankruptcy Court issued that certain *Order Requiring Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders*. [Bank. Docket No. 2255]. The Contempt Motion is scheduled to be heard on June 8, 2021, and the Bankruptcy Court has ordered the alleged Violators to appear in person.

13. Based on the foregoing, on May 5, 2021, Highland requested a 45-day extension of the deadline to file a responsive pleading. Highland explained, among other things, that it intended to file a motion on Monday, May 10, 2021 to enforce the mandatory reference.

14. As of the filing of this Motion, Plaintiffs' counsel has not responded.

### **CONCLUSION**

WHEREFORE, because (a) the Other Defendants have not been served and the time for each of them to file a responsive pleading has not even begun to run, (b) the Debtor will imminently move to have this case mandatorily referred to the Bankruptcy Court, (c) the Bankruptcy Court will hear the Contempt Motion on June 8, 2021, and address the issues raised by the Plaintiffs' Motion to Amend, and (d) the Debtor otherwise has a legitimate and reasonable need for an extension of time, the Debtor respectfully requests that the Court grant its Motion and enter an order in the form annexed to the Motion as **Exhibit A**, and grant any further relief as the Court deems just and proper.

*[Remainder of Page Intentionally Blank]*

Dated: May 6, 2021.

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-and-

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/s/ Zachery Z. Annable

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*Counsel for Highland Capital Management, L.P.*

### **CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that, on May 5, 2021, counsel for the Debtor requested of Plaintiffs' counsel via e-mail the relief requested in the foregoing Motion. As of the filing of the Motion, Plaintiffs' counsel has not responded to the Debtor's request for a 45-day extension of the deadline to file a responsive pleading to the Complaint.

/s/ Zachery Z. Annable  
Zachery Z. Annable

**CERTIFICATE OF SERVICE**

I hereby certify that, on May 6, 2021, a true and correct copy of the foregoing Motion was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

/s/ Zachery Z. Annable  
Zachery Z. Annable

**EXHIBIT A**



