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Counsel for Highland Capital Management, L.P.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.,

Defendant.

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Adv. Proc. No. 21-3004

Case No. 3:21-cv-00881-X



HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

NEXPOINT ADVISORS, L.P., JAMES
DONDERO, NANCY DONDERO, AND
THE DUGABOY INVESTMENT TRUST,

Defendants.

Adv. Proc. No. 21-3005

Case No. 3:21-cv-00880-C

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT
SERVICES, INC., JAMES DONDERO,
NANCY DONDERO, AND THE DUGABOY
INVESTMENT TRUST,

Defendants.

Adv. Proc. No. 21-3006

Case No. 3:21-cv-01378-N

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

HCRE PARTNERS, LLC (n/k/a NexPoint
Real Estate Partners, LLC), JAMES
DONDERO, NANCY DONDERO, AND
THE DUGABOY INVESTMENT TRUST,

Defendants.

Adv. Proc. No. 21-3007

Case No. 3:21-cv-01379-X

**PLAINTIFF’S OMNIBUS MOTION
(A) TO STRIKE CERTAIN DOCUMENTS AND ARGUMENTS FROM THE
RECORD, (B) FOR SANCTIONS, AND (C) FOR AN ORDER OF CONTEMPT**

Highland Capital Management, L.P. (“Highland” or “Plaintiff”), the reorganized debtor in the above-captioned chapter 11 case (the “Bankruptcy Case”) and plaintiff in the above-referenced

adversary proceedings (collectively, the “Notes Actions”), hereby files this *Omnibus Motion (A) to Strike Certain Documents and Arguments from the Record, (B) for Sanctions, and (C) for an Order of Contempt* (the “Motion”).¹ In support of the Motion, Plaintiff respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 12 and 37 of the Federal Rules of Civil Procedure, made applicable herein pursuant to Rules 7012 and 7037 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

RELIEF REQUESTED

4. Plaintiff requests that this Court enter an order substantially in the form annexed hereto as **Exhibit A** (the “Proposed Order”) (a) striking (i) the Pully Report and (ii) all references to, and all arguments derived from, the Pully Report and the Barred Defense, as highlighted on **Morris Exhibits 1 and 2**,² respectively; (b) imposing sanctions on the Alleged Violators³ for

¹ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the *Brief in Support of Plaintiff’s Omnibus Motion (A) to Strike Certain Documents and Arguments from the Record, (B) for Sanctions, and (C) for an Order of Contempt* (the “Brief”) being filed contemporaneously with this Motion.

² References to “Morris Exhibit” are to the exhibits attached to the *Declaration of John A. Morris in Support of Plaintiff’s Omnibus Motion (A) to Strike Certain Documents and Arguments from the Record, (B) for Sanctions, and (C) for an Order of Contempt* (the “Morris Declaration”) being filed contemporaneously with this Motion.

³ The “Alleged Violators” include each of the corporate entities that are defendants in the Notes Actions and their counsel.

violating multiple rules; and (c) holding the Alleged Violators in civil contempt for their willful and knowing violation of three court Orders.

5. In accordance with Rule 7007-1 of the *Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas* (the “Local Rules”), the evidence and arguments supporting the Motion are set forth in Plaintiff’s Brief and the Morris Declaration being filed contemporaneously herewith and are incorporated in this Motion as if set forth fully herein.

6. Based on the exhibits annexed to the Morris Declaration and the arguments contained in the Brief, Plaintiff is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion will be provided to all parties in the Notes Actions. Plaintiff submits that no other or further notice need be provided.

WHEREFORE, Plaintiff respectfully requests that the Court (i) enter the Proposed Order substantially in the form annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant Plaintiff such other and further relief as the Court may deem proper.

Dated: February 7, 2022.

PACHULSKI STANG ZIEHL & JONES LLP

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Counsel for Highland Capital Management, L.P.

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that, between January 22 and January 26, 2022, Plaintiff's counsel corresponded with Defendants' counsel regarding the relief requested in the foregoing Motion. Based on the email exchange between Plaintiff's counsel and Defendants' counsel, the relief requested in the Motion is **OPPOSED** by Defendants.

/s/ Zachery Z. Annable
Zachery Z. Annable

EXHIBIT A

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

NEXPOINT ADVISORS, L.P., JAMES
DONDERO, NANCY DONDERO, AND
THE DUGABOY INVESTMENT TRUST,

Defendants.

Adv. Proc. No. 21-3005

Case No. 3:21-cv-00880-C

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT
SERVICES, INC., JAMES DONDERO,
NANCY DONDERO, AND THE DUGABOY
INVESTMENT TRUST,

Defendants.

Adv. Proc. No. 21-3006

Case No. 3:21-cv-01378-N

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

HCRE PARTNERS, LLC (n/k/a NexPoint
Real Estate Partners, LLC), JAMES
DONDERO, NANCY DONDERO, AND
THE DUGABOY INVESTMENT TRUST,

Defendants.

Adv. Proc. No. 21-3007

Case No. 3:21-cv-01379-X

ORDER GRANTING PLAINTIFF’S OMNIBUS MOTION (A) TO STRIKE CERTAIN DOCUMENTS AND ARGUMENTS FROM THE RECORD, (B) FOR SANCTIONS, AND (C) FOR AN ORDER OF CONTEMPT

Having considered (a) the *Omnibus Motion (A) to Strike Certain Documents and Arguments from the Record, (B) for Sanctions, and (C) for an Order of Contempt* (the “Motion”) filed by Highland Capital Management, L.P. (“Highland” or “Plaintiff”), the reorganized debtor in the above-captioned chapter 11 case (the “Bankruptcy Case”) and plaintiff in the above-referenced adversary proceedings (collectively, the “Notes Actions”); (b) the *Brief in Support of Plaintiff’s Omnibus Motion (A) to Strike Certain Documents and Arguments from the Record, (B) for Sanctions, and (C) for an Order of Contempt* (the “Brief”);¹ (c) the exhibits annexed to the *Declaration of John A. Morris in Support of Plaintiff’s Omnibus Motion (A) to Strike Certain Documents and Arguments from the Record, (B) for Sanctions, and (C) for an Order of Contempt* (the “Morris Declaration”); and (d) all prior proceedings relating to this matter; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1409; and this Court having found that Plaintiff’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 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 and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.

¹ Capitalized terms not otherwise defined in this Order have the meanings ascribed to them in the Brief.

2. The Barred Defense is hereby **STRICKEN**, and HCMFA is directed to refile its *Brief in Opposition to Plaintiff's Motion for Summary Judgment* [Adv. Proc. No. 21-3004, Dkt. 127] (the "HCMFA Brief") with all language highlighted in Morris Declaration Exhibit 2 redacted from the HCMFA Brief.

3. The Pully Report is hereby **STRICKEN** from the summary judgment record, and the Term Note Defendants are directed to refile their Appendix without the Pully Report.

4. HCMFA, the Term Note Defendants, and their counsel shall show cause before this Court on _____, _____, **2022 at _____ .m. (Central Time)** why an order should not be granted (i) finding and holding HCMFA, the Term Note Defendants, and their counsel in civil contempt of the (x) Second Motion for Leave Order, (y) the Scheduling Order, and (z) the Expert Order; (ii) directing HCMFA, the Term Note Defendants, and their counsel to pay Plaintiff an amount of money equal to Plaintiff's reasonable and necessary fees and expenses incurred in bringing this Motion; and (iii) granting Plaintiff such other and further relief as the Court deems just and proper under the circumstances.

5. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER