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ATTORNEYS FOR PATRICK DAUGHERTY

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Reorganized Debtor.

SCOTT BYRON ELLINGTON,

Plaintiff,

v.

PATRICK DAUGHERTY,

Defendant.

Chapter 11

Case No. 19-34054 (SGJ)

Adv. No. 22-03003-sgj
*Removed from the 101st Judicial District
Court of Dallas County, Texas
Cause No. DC-22-00304*

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
MOTION FOR EXTENSION OF TIME TO RESPOND
TO PLAINTIFF’S MOTION TO ABSTAIN AND TO REMAND

Patrick Daugherty (“Daugherty”), by and through his undersigned counsel, hereby files this Motion for Extension of Time to Respond to Plaintiff Scott Ellington’s (“Ellington”) Emergency Motion to Abstain and to Remand [Adv. Dkt. No. 3] (“Remand Motion”), and respectfully shows as follows:

1. Ellington filed the Remand Motion on January 25, 2022. Daugherty’s Response to the Remand Motion is currently due today, February 15, 2022, under L.B.R. 7007-1(e).
2. The Court set a hearing on the Remand Motion for March 29, 2022, at 1:30 p.m.
3. On February 9, 2022, the Reorganized Debtor’s counsel contacted Daugherty’s counsel to advise that a letter had been received from Ellington partially objecting to the proposed settlement between Daugherty and the Reorganized Debtor (the “Proposed Settlement”). *See* Docket No. 3088 in Case No. 19-34054 (SGJ).² The objection letter asserted that Highland should “withdraw” two provisions from the Proposed Settlement based on Ellington’s allegations that Daugherty is purportedly “stalking” him.³ In a subsequent phone call with counsel for the Reorganized Debtor, Daugherty’s counsel learned Ellington was given an extension until February 14, 2022, to file his objections to the Proposed Settlement.
4. As a result of learning these developments, as well as other conflicts in counsel’s schedule that existed prior to, or arose after, the filing of the Remand Motion,⁴ Daugherty’s counsel

² The letter from Ellington’s counsel is dated January 31, 2022. However, Reorganized Debtor’s counsel did not notify Daugherty’s counsel of the partial objection, or provide a copy of the letter, until February 9.

³ As set forth in Daugherty’s answer to Ellington’s State Court Petition, Docket No. 8, Daugherty denies these allegations.

⁴ Among other things, last week counsel unexpectedly had to prepare and file a sur-reply in Civil Action No. 6:21-cv-00451-JCB, *Gunstream Land Corporation v. Hans V. Hansen and Karen M. Hansen*, pending in the United States

conferred with Ellington's counsel about a requested extension of the Response deadline. Ellington's counsel responded on the evening of February 14 that Ellington would only agree to a one-day extension.

5. On February 15, Daugherty's counsel contacted the Reorganized Debtor's counsel to confirm that Ellington had not yet filed an objection. Reorganized Debtor's counsel advised that Ellington had received a further extension until February 16 to file his objection. Thus, even with Ellington's agreed one-day extension, Daugherty's Response would be due the same day as Ellington's objection to the Proposed Settlement. Based on the position taken by Ellington in the objection letter, any settlement objection he files would be material to the issues raised in the Remand Motion. Thus, requiring Daugherty to file his Response without knowing whether, and to what extent, Ellington objects to the Proposed Settlement will prejudice Daugherty's ability to fully respond.

6. Daugherty therefore requests until February 23, 2022, to file his Response to the Remand Motion. The additional time sought will allow Defendant to adequately brief the issues raised in any objection to the Proposed Settlement filed by Ellington, as the same may relate to the Remand Motion. Given the March 29 hearing date on the Remand Motion, the Court should have adequate time to review the briefing in advance.

7. Counsel for Daugherty has conferred with counsel for Ellington by phone and email on February 14, 2022, wherein counsel for Plaintiff stated it would only give Daugherty until February 16, 2022 to file the Response. Counsel had a follow-up telephone call on February 15 concerning the Motion, and counsel for Ellington indicated they oppose this Motion.

District Court for the Eastern District of Texas. Work on that matter, as well as other matters, delayed counsel's attention to the preparation of the Response to the Remand Motion.

8. This Motion is not sought for delay, but so that justice may be done.

REQUESTED RELIEF

WHEREFORE, Defendant Patrick Daugherty prays that this Court extend the deadline for Defendant to respond to Plaintiff's Motion to Abstain and to Remand until February 23, 2022, and for other such further relief, both specific and general, at law and equity, to which Defendant may be entitled.

Respectfully submitted this 15th day of February, 2022.

GRAY REED

By: /s/ Jason S. Brookner
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CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that on February 14, 2022, he spoke with Frances Smith by phone, and then conferred by email, regarding a requested extension of the deadline to file the response to the Remand Motion. In the last email, Ms. Smith stated that Plaintiff would give Defendant until February 16, 2022, to file his response, and “[t]hat is the best that we can do.” Based on that statement, the undersigned understands that Plaintiff opposes any extension past February 16. The undersigned had a follow-up telephone call with Ms. Smith on February 15, and Ms. Smith indicated the Motion is opposed.

/s/ Andrew K. York _____

Andrew K. York

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th 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

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**ORDER GRANTING DEFENDANT'S MOTION FOR EXTENSION OF TIME TO
RESPOND TO PLAINTIFF'S MOTION TO ABSTAIN AND TO REMAND**

On this day the Court considered Defendant Patrick Daugherty's Motion for Extension of Time to Respond to Plaintiff's Motion to Abstain and to Remand [Docket No. 10]. After considering the Motion, the Court is of the opinion that the Motion should be **GRANTED**.

IT IS THEREFORE ORDERED that Defendant shall file his Response to Plaintiff's Motion to Abstain and to Remand on or before **February 23, 2022**.

End of Order

Proposed form of order prepared by:

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