

Case No. 22-10575

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

In the Matter of Highland Capital Management, L.P.,
Debtor.

NexPoint Advisors, L.P., Appellant/Creditor/Party in Interest 11 U.S.C. § 1109(b),
Appellant,

v.

Pachulski Stang Ziehl & Jones, L.L.P., Appellee/Retained Professional; Wilmer
Cutler Pickering Hale and Dorr, L.L.P.; FTI Consulting, Incorporated; Teneo
Capital, L.L.C.; Sidley Austin, L.L.P.,
Appellees.

NexPoint Advisors, L.P.,
Appellant,

v.

Wilmer Cutler Pickering Hale and Dorr, L.L.P.,
Appellee.

NexPoint Advisors, L.P.,
Appellant,

v.

Teneo Capital, L.L.C.,
Appellee.

NexPoint Advisors, L.P.,
Appellant,

v.

Sidley Austin, L.L.P.,
Appellee.



NexPoint Advisors, L.P.,
Appellant,

v.

FTI Consulting, Incorporated,
Appellee.

Appeal from the United States District Court
for the Northern District of Texas, Dallas Division
Before the Honorable James E. Kinkeade
[Case No. 3:21-cv-03086-K, *consolidated with* Case Nos. 3:21-cv-03088-K,
3:21-cv-03094-K, 3:21-cv-03096-K, and 3:21-cv-03104-K]

**APPELLANT NEXPOINT ADVISORS, L.P.'S UNOPPOSED MOTION
FOR LEVEL 2 EXTENSION OF TIME TO FILE ITS OPENING BRIEF
AND EXCERPTS OF RECORD**

Samuel A. Schwartz, Esq.
Nevada Bar No. 10985
saschwartz@nvfirm.com
Athanasios E. Agelakopoulos, Esq.
Nevada Bar No. 14339
aagelakopoulos@nvfirm.com
SCHWARTZ LAW, PLLC
601 East Bridger Avenue
Las Vegas, Nevada 89101-5805
Telephone: (702) 385-5544
Facsimile: (702) 442-9887

Kristin H. Jain, Esq.
Texas Bar No. 24010128
khjain@jainlaw.com
JAIN LAW & ASSOCIATES PLLC
400 North Saint Paul Street, Suite 510
Dallas, Texas 75201-6829
Telephone: (214) 446-0330
Facsimile: (214) 446-0321

Counsel for NexPoint Advisors, L.P.

Appellant NexPoint Advisors, L.P. (the “**Appellant**” or “**NexPoint**”), by and through its counsel of record, the law firms of Schwartz Law, PLLC and Jain Law & Associates PLLC, pursuant to Rules 26(b) and 27 of the Federal Rules of Appellate Procedure (the “**Appellate Rules**”), and Rule 31.4 of the Fifth Circuit Rules (the “**Circuit Rules**”), respectfully moves the Court (the “**Motion**”) for entry of an order granting a Level 2 extension of time of forty (40) days, through and including September 19, 2022, for Appellant to file its Opening Brief and Excerpts of Record.

Pursuant to the Briefing Notice entered on June 30, 2022, by the Fifth Circuit Clerk, the initial due date for Appellant’s Opening Brief and Excerpts of Record is August 9, 2022. This is Appellant’s first request for an extension of the deadline, and no previous extensions have been granted or entered by the Court. Should the Court grant this Motion, Appellant does not anticipate requiring any further extensions for its briefing (although, Appellant fully reserves all rights to move for subsequent extensions, if necessary).

In addition, on July 26, 2022, Appellant’s counsel contacted Appellees’ counsel via electronic mail and circulated a prior draft of the Motion. In response, Appellees’ counsel raised concerns about the previously circulated draft Motion. Appellant agreed to revise the draft Motion to address the concerns raised by Appellees’ counsel. Based on the conversations between Appellant’s and Appellees’

respective counsel and Appellant's revisions to the prior draft of the Motion, Appellees' counsel stated that they will not oppose the instant version of the Motion and do not intend to file any opposition or response thereto. A denial of Appellant's requested extension of time would cause extreme hardships to Appellant and its counsel as detailed below.

Athanasios E. Agelakopoulos, Esq. of Schwartz Law, PLLC, one of the firm's senior attorneys with over eighteen (18) years of experience, has the primary responsibility for preparing Appellant's Opening Brief and Excerpts of Record in the instant appeal. Mr. Agelakopoulos is the attorney who is most intimately familiar with the procedural history, facts, and relevant caselaw of the matter, going all the way back to the underlying bankruptcy case of *In re: Highland Capital Management, L.P.* (Case No. 19-34054-sgj11 in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division), and he was the main drafter of *Appellant NexPoint Advisors, L.P.'s Opening Brief* [ECF No. 33] filed on April 14, 2022, in the underlying consolidated district court appeal of *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones LLC, et al.* (Lead Case No. 3:21-cv-03086-K, consolidated with Case Nos. 3:21-cv-03088-K, 3:21-cv-03094-K, 3:21-cv-03096-K, and 3:21-cv-03104-K in the United States District Court for the Northern District of Texas, Dallas Division). Schwartz Law, PLLC is a boutique commercial bankruptcy and litigation firm with only eight attorneys, and there is no other attorney associated

with this case or the firm that can reasonably prepare the brief or relieve Mr. Agelakopoulos of his other litigation and responsibilities. Besides his own caseload, Mr. Agelakopoulos serves in a supervisory position, monitoring the firm's junior associates in all cases, as well as various internal firm matters. Moreover, both Mr. Agelakopoulos and Samuel A. Schwartz, Esq., the principal of Schwartz Law, PLLC, are the primary attorneys responsible for the matters described in further detail below that conflict with the current briefing schedule in this appeal. Also, Appellant's co-counsel, Kristin H. Jain, Esq. of Jain Law & Associates PLLC, was hired by Appellant to serve as its Texas and Fifth Circuit counsel in an advisory manner only.

The current briefing schedule in this appeal, assuming no extensions and electronic service of the briefs by the parties on the deadlines for filing, is as follows:

- (a) August 9, 2022 - Appellant's Opening Brief and Excerpts of Record due;
- (b) September 8, 2022 - Appellees' Answering Brief(s) and Supplemental Excerpts of Record due; and
- (c) September 29, 2022 - Appellant's Reply Brief due.

Mr. Schwartz and Mr. Agelakopoulos are the principal attorneys assigned to prosecute a civil bench trial in the matter of *CAC Investment Ventures, LLC, et al. v. Andrew Jolley, et al.* (Case No. A-19-802088-B in the Eighth Judicial District Court of the State of Nevada), which has a firm setting of August 30, 2022, at 9:30 AM

PDT, and is estimated to last for at least five judicial days. The Pre-Trial Memorandum is due by August 1, 2022. In addition, the following pre-trial hearings are scheduled, which require the personal appearance of trial counsel: a. Status Check on August 4, 2022, at 9:30 AM PDT; b. Calendar Call on August 25, 2022, at 10:30 AM PDT; and c. Pre-Trial Conference on a date and time to be determined by trial counsel for the parties and held before Calendar Call. Based on Mr. Agelakopoulos' current caseload and calendar for all matters to which he is assigned, he estimated that he will need to begin trial preparation on August 1, 2022, in order to meet all deadlines for the pre-trial hearings and filings, as well as adequately prepare for the trial itself. While Mr. Agelakopoulos diligently started drafting Appellant's Opening Brief upon the receipt of the Clerk's Briefing Notice (and has continued to do so), given the complexity of the issues on appeal and the extensive record consisting of eighty-four (84) total volumes, he does not anticipate being able to complete the brief by August 1, 2022, in order to meet his obligations for the foregoing trial and other matters.

In addition, if no extensions of the briefing are granted in this appeal, Appellant's Reply Brief will be due by September 29, 2022. Mr. Schwartz and Mr. Agelakopoulos are also the principal attorneys assigned to handle a summary judgment hearing and three-day evidentiary hearing / trial in the extremely contentious Chapter 7 bankruptcy case of *In re: Fresh Mix LLC* (Case No. 20-12051-

GS in the United States Bankruptcy Court for the District of Nevada). The summary judgment hearing is scheduled on August 10, 2022, at 1:30 PM PDT, and the evidentiary hearing / trial is scheduled as follows: a. September 19, 2022, at 9:30 AM PDT; b. September 20, 2022, at 9:30 AM PDT; and c. September 27, 2022, at 9:30 AM PDT. Schwartz Law, PLLC represents Petitioning Creditor Get Fresh Sales, Inc. (“**Get Fresh**”), who filed an Objection [ECF No. 442] (the “**Objection**”) to the allowance of Proof of Claim No. 7-1 (the “**POC**”) in the amount of \$6,700,000.00 filed by LC Marketing Corp., which was allegedly assigned to E.I.T.E. Recovery LLC [ECF No. 463]. Get Fresh filed a Motion for Partial Summary Judgment Regarding the POC [ECF No. 616] (the “**MPSJ**”), which has a Reply in Support of the MPSJ due by August 1, 2022. Both the MPSJ and Objection have critical relevance to Get Fresh’s interests in a state court action which has been ongoing since 2018 — *Paul Lagudi, et al. v. Fresh Mix, LLC, et al.* (Case No. A-18-785391-B in the Eighth Judicial District Court of the State of Nevada). Granting an extension of time for Appellant to file its Opening Brief and Excerpts of Record would effectively “kill two birds with one stone” in that Appellant would also not run into scheduling issues for the filing of its Reply Brief.

Lastly, the requested extension of the briefing schedule by Appellant is made in good faith, not for any purpose of delay, and will not appreciably hinder resolution of the appeal. Mr. Agelakopoulos will work diligently to prepare Appellant’s briefs

in the time requested.

WHEREFORE, based on the extraordinary good cause and substantial need expressed herein, Appellant respectfully requests that the Court grant this unopposed Motion and enter an order: (1) granting a Level 2 extension of time of forty (40) days, through and including September 19, 2022, for Appellant to file its Opening Brief and Excerpts of Record; and (2) granting any and all other such other relief as the Court deems just and proper.

[Signature Page to Follow]

Dated: July 29, 2022.

By: /s/ Samuel A. Schwartz
Samuel A. Schwartz, Esq.
Nevada Bar No. 10985
saschwartz@nvfirm.com
Athanasios E. Agelakopoulos, Esq.
Nevada Bar No. 14339
aagelakopoulos@nvfirm.com
SCHWARTZ LAW, PLLC
601 East Bridger Avenue
Las Vegas, Nevada 89101
Telephone: (702) 385-5544
Facsimile: (702) 442-9887

- and -

/s/ Kristin H. Jain
Kristin H. Jain, Esq.
Texas Bar No. 24010128
khjain@jainlaw.com
JAIN LAW & ASSOCIATES PLLC
400 North Saint Paul Street, Suite 510
Dallas, Texas 75201-6829
Telephone: (214) 446-0330
Facsimile: (214) 446-0321

Counsel for NexPoint Advisors, L.P.

**CERTIFICATE OF COMPLIANCE WITH
FEDERAL RULE OF APPELLANT PROCEDURE 32(g)(1)**

The undersigned hereby certify that the foregoing *Appellant NexPoint Advisors, L.P.’s Unopposed Motion for Level 2 Extension of Time to File Its Opening Brief and Excerpts of Record* complies with the type-volume limit of Appellate Rule 27(d)(2)(A) because, excluding the parts of the document exempted by Appellate Rule 32(f), this document contains 1,325 words.

[Signature Page to Follow]

Dated: July 29, 2022.

By: /s/ Samuel A. Schwartz
Samuel A. Schwartz, Esq.
Nevada Bar No. 10985
saschwartz@nvfirm.com
Athanasios E. Agelakopoulos, Esq.
Nevada Bar No. 14339
aagelakopoulos@nvfirm.com
SCHWARTZ LAW, PLLC
601 East Bridger Avenue
Las Vegas, Nevada 89101
Telephone: (702) 385-5544
Facsimile: (702) 442-9887

- and -

/s/ Kristin H. Jain
Kristin H. Jain, Esq.
Texas Bar No. 24010128
khjain@jainlaw.com
JAIN LAW & ASSOCIATES PLLC
400 North Saint Paul Street, Suite 510
Dallas, Texas 75201-6829
Telephone: (214) 446-0330
Facsimile: (214) 446-0321

Counsel for NexPoint Advisors, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certify that on July 29, 2022, a true and correct copy of the foregoing *Appellant NexPoint Advisors, L.P.'s Unopposed Motion for Level 2 Extension of Time to File Its Opening Brief and Excerpts of Record* was served electronically via the Court's ECF system upon all parties of interest requesting or consenting to such service in this case.

By: /s/ Samuel A. Schwartz

Samuel A. Schwartz, Esq.
Nevada Bar No. 10985
saschwartz@nvfirm.com
Athanasios E. Agelakopoulos, Esq.
Nevada Bar No. 14339
aagelakopoulos@nvfirm.com
SCHWARTZ LAW, PLLC
601 East Bridger Avenue
Las Vegas, Nevada 89101
Telephone: (702) 385-5544
Facsimile: (702) 442-9887

- and -

/s/ Kristin H. Jain

Kristin H. Jain, Esq.
Texas Bar No. 24010128
khjain@jainlaw.com
JAIN LAW & ASSOCIATES PLLC
400 North Saint Paul Street, Suite 510
Dallas, Texas 75201-6829
Telephone: (214) 446-0330
Facsimile: (214) 446-0321

Counsel for NexPoint Advisors, L.P.