

KELLY HART PITRE

Louis M. Phillips (#10505)
One American Place
301 Main Street, Suite 1600
Baton Rouge, LA 70801-1916
Telephone: (225) 381-9643
Facsimile: (225) 336-9763
Email: louis.phillips@kellyhart.com
Amelia L. Hurt (LA #36817, TX #24092553)
400 Poydras Street, Suite 1812
New Orleans, LA 70130
Telephone: (504) 522-1812
Facsimile: (504) 522-1813
Email: amelia.hurt@kellyhart.com

KELLY HART & HALLMAN

Hugh G. Connor II
State Bar No. 00787272
hugh.connor@kellyhart.com
Michael D. Anderson
State Bar No. 24031699
michael.anderson@kellyhart.com
Katherine T. Hopkins
Texas Bar No. 24070737
katherine.hopkins@kellyhart.com
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Telephone: (817) 332-2500
Telecopier: (817) 878-9280

STINSON LLP

Deborah Deitsch-Perez
Texas Bar No. 24036072
Michael P. Aigen
Texas Bar No. 24012196
2200 Ross Avenue, Suite 2900
Dallas, Texas 75201
Telephone: (214) 560-2201
Facsimile: (214) 560-2203
Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

REICHMAN JORGENSEN LEHMAN & FELDBERG LLP

Amy L. Ruhland
Texas Bar No. 24043561
901 S. Mopac Expressway
Suite 300
Austin, Texas 78746
Telephone: (650) 623-1401
Email: aruhland@reichmanjorgensen.com

K&L GATES LLP

Artoush Varshosaz (TX Bar No. 24066234)
1717 Main Street, Suite 2800
Dallas, TX 75201

Telephone: (214) 939-5659
E-mail: artoush.varshosaz@klgates.com
A. Lee Hogewood, III (pro hac vice pending)
301 Hillsborough Street, Suite 1200
Raleigh, NC 27603
Telephone: (919) 743-7300
E-mail: lee.hogewood@klgates.com

PARSONS MCENTIRE MCCLEARY PLLC

Sawnie A. McEntire
Texas State Bar No. 13590100
smcentire@pmmlaw.com
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201
Telephone: (214) 237-4300
Facsimile: (214) 237-4340
Roger L. McCleary
Texas State Bar No. 13393700
rmcleary@pmmlaw.com
One Riverway, Suite 1800
Houston, Texas 77056
Telephone: (713) 960-7315
Facsimile: (713) 960-7347

GREENBERG TRAUIG, LLP

Daniel P. Elms
State Bar No. 24002049
2200 Ross Avenue, Suite 5200
Dallas, Texas 75201
Telephone: (214) 665-3600
Facsimile: (214) 665-3601
Email: elmsd@gtlaw.com

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar No. 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

HAYWARD PLLC

Melissa S. Hayward (Texas Bar No. 24044908)
Zachery Z. Annable (Texas Bar No. 24053075)
10501 N. Central Expy. Ste. 106
Dallas, Texas 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com



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

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 3:21-cv-00881-X
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al.,	§	
	§	
Respondents.	§	
	§	

**JOINT MOTION FOR ORAL ARGUMENT CONCERNING MOTION TO DEEM THE
DONDERO ENTITIES VEXATIOUS LITIGANTS AND FOR RELATED RELIEF [DKT.
NO. 136]**

Plaintiff Highland Capital Management, L.P. (“**HCMLP**”), and respondents The Charitable DAF Fund, L.P. and CLO HoldCo, Ltd. (the “**Charitable Respondents**”); James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Asset Management, L.P., NexPoint Real Estate Partners, LLC, and The Dugaboy Investment Trust, and Nancy Dondero (collectively, the “**Notes Respondents**”); Get Good Trust, and Strand Advisors, Inc., (“**Other Respondents**”); Highland Income Fund, NexPoint Strategic Opportunities Fund n/k/a NexPoint Diversified Real Estate Trust, Highland Global Allocation Fund, and NexPoint Capital, Inc. (collectively, the “**Funds**”); and Hunter Mountain Investment Trust (“**HMIT**,” along with the Charitable Respondents, Notes Respondents, Other Respondents, and the Funds, collectively, the “**Respondents**”), hereby file this *Joint Motion for Oral Argument* (the “**Joint Motion**”) requesting that this Court grant oral argument related to: (i) the captioned motion (the “**Pending Motion**”) filed by HCMLP and the objections thereto; and (ii) the Motions to Strike and Plaintiff’s Objection

thereto (as those terms are defined below). In support of this Joint Motion, HCMLP and Respondents (together, the “**Movants**”) respectfully state as follows:

RELIEF REQUESTED¹

1. The Movants have jointly filed this Motion as they agree that oral argument will aid this Court in adjudicating the Pending Motion; however, they disagree as to the substantive scope and how that oral argument should take place.

2. The Respondents move for oral argument on the threshold legal issue of whether this Court has authority under the All Writs Act to afford the relief requested in the Pending Motion (the “**Threshold Legal Issue**”); then, only after the Threshold Legal Issue is adjudicated, if the Pending Motion is not dismissed, the Respondents contend that discovery and a full evidentiary trial on the merits of the Pending Motion is necessary.²

3. HCMLP moves for oral argument on *all* issues raised in the parties’ briefs, including with respect to the Motions to Strike (as defined below) (“**All Issues**”), and contends that bifurcation, discovery, and an evidentiary hearing are unnecessary, will prolong and delay adjudication of this matter, and will waste judicial and party resources by creating piecemeal litigation.³

¹ The Respondents’ requested relief is embodied in the proposed Order attached as Exhibit A. HCMLP’s requested relief is embodied in the proposed Order attached as Exhibit B.

² Respondents respectfully request that if the Court does not limit oral argument to the Threshold Legal Issue, then the Court should modify the form of order proposed by HCMLP to provide for a discovery schedule and the nature of the “oral argument” hearing (“Hearing”) so as to outline the extent to which this Court would allow for pre-hearing discovery and use of witnesses and evidence at Hearing, and that trial be scheduled at least 60 days after the cut-off date for discovery.

³ HCMLP respectfully requests that if the Court limits oral argument to the Threshold Legal Issue, then the Court defer consideration of whether (and to what extent, if any) discovery and a full evidentiary trial is required to until the Threshold Legal Issue is determined by this Court. For the reasons set forth below, HCMLP does not believe discovery or a “full evidentiary hearing” are needed to resolve the merits of the Pending Motion.

4. Through this Joint Motion, the Movants request that this Court issue an order setting oral argument on at least (a) 21 days' notice if argument will be limited to the Threshold Legal Issue, and (b) 60 days' notice if the argument will cover All Issues. The Parties agree that they will seek from the Court available dates to avoid complication as to schedules.

FACTUAL BACKGROUND

5. On July 14, 2023, HCMLP filed the Pending Motion, along with a memorandum in support [Dkt. No. 137] and appendix in support [Dkt. No. 138].

6. On August 1, 2023, the Movants filed a *Joint Agreed Emergency Motion for Approval of Stipulation Regarding Briefing on Highland Capital Management, L.P.'s Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief* [Dkt. No. 141], which this Court approved in its *Order Approving Stipulation* [Dkt. No. 150] setting the response deadline to the Pending Motion for December 15, 2023.

7. Between December 15 and 16, 2023, each Respondent each filed an objection to the Pending Motion [Dkt. Nos. 166, 167, 168, 171, 173] (collectively, the “**Respondents’ Objections**”), and some filed appendices in support [Dkt. Nos. 170, 172, 174].

8. HCMLP filed an *Unopposed Motion to (i) Extend Reply Deadline to February 9, 2024, and (ii) Increase Reply Page Limit to 89 Pages with Respect to Reply in Further Support of Highland Capital Management, L.P.'s Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief* [Dkt. No. 181], and this Court entered an electronic order granting certain of the requested relief.

9. On February 9, 2024, HCMLP filed its *Reply to Objections to Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief* [Dkt. No. 189] (the “**Reply**”), as well as the *Supplemental Appendix and Declaration of Gregory V. Demo in Further Support of*

Highland Capital Management, L.P.’s Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief [Dkt. No. 190] (the “**Supplemental Appendix**”).

10. On February 23, 2024, several of the Respondents filed motions to strike related to the Reply and Supplemental Appendix [Dkt. Nos. 194, 195, 196, 197, 198] (collectively, the “**Motions to Strike**”).

11. On March 4, 2024, HCMLP filed its *Omnibus Objection to Motions to Strike Reply and Supporting Exhibits or, Alternatively, for Leave to File a Surreply* [Dkt. No. 199] (“**Plaintiff’s Objection**”), and a brief and appendix in support [Dkt. Nos. 200, 201].

12. On May 1, 2024, HCMLP filed its *Request to Take Judicial Notice of Certain Decisions* [Dkt. No. 205].

BASES FOR RELIEF⁴

13. This Court’s local rules provide that “[u]nless otherwise directed by the presiding judge, oral argument on a motion will not be held.” Local Rule 7.1(g). The Movants submit that there is good cause present for this Court to direct oral argument.

A. The Respondents’ Requested Hearing: The Respondents move for this Court to consider the Threshold Legal Argument before a trial on the merits.

14. HCMLP cites to the All Writs Act, 28 U.S.C. § 1651, as the authority for this Court to enjoin all Respondents. And indeed, the Fifth Circuit has recognized that “federal courts also have authority to enjoin vexatious litigants under the All Writs Act. *See Newby v. Enron Corp.*, 302 F.3d 295, 302 (5th Cir. 2002) (citing *Matter of Carroll*, 850 F.3d 811, 815 (5th Cir. 2017)).

⁴ The Movants have drafted this Joint Motion like a joint pre-trial order, stipulating to the facts set forth in the “Factual Background” but setting forth their respective contentions concerning the scope of oral argument and related matters in the “Bases for Relief.” Thus, HCMLP reserves the right to contest Respondents’ “Bases for Relief” while Respondents reserve the right to contest HCMLP’s “Bases for Relief.”

15. But the power to issue an injunction under the All Writs Act is “firmly circumscribed, its scope depending on the nature of the case before the court” and “if a court is able to effect a full and complete resolution of the issues before it without resorting to the extraordinary measures contemplated under the [All Writs Act], then such measures cannot be employed.” *ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1358 (5th Cir. 1978) (emphasis added). Here, the case before the Court is a collection action on notes (that several Respondents, such as the Charitable Respondents, HMIT, etc., have nothing to do with, and where the Notes Respondents are no longer before this Court), and not only can this Court effect a full and complete resolution of the issues before it, it already has. *See Amended Final Judgments*, Dkt. No. 143, 144, 145, 146, 147.

16. Further, as to the Respondents with no connection to the underlying Notes Cases (the “**Non-Parties**”), in *United States v. New York Tel. Co.*, the Supreme Court discussed that “[t]he power conferred by the [All Writs Act] extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice, and encompasses even those who have not taken any affirmative action to hinder justice,” when “a third party [is not] so far removed from the underlying controversy that its assistance could not be permissibly compelled.” 434 U.S. 159, 174, 98 S. Ct. 364, 373, 54 L. Ed. 2d 376 (1977) (emphasis added), *see also Matter of United States*, 256 F. Supp. 3d 246, 252 (E.D.N.Y. 2017) (where the court found “[t]he record thus shows literally no connection at all to the underlying controversy,” the All Writs Act does not authorize a court to grant relief); *In re Apple, Inc.*, 149 F. Supp. 3d 341, 344 (E.D.N.Y. 2016) (considering “the closeness of [nonparty’s] relationship to the underlying criminal conduct and government investigation”); *Ford Motor Co. v. Woods*, No. CIV.A. 04-1733,

2006 WL 1581177, at *3 (W.D. La. June 6, 2006) (recognizing the limits on the authority to enjoin third parties under the All Writs Act, citing to *New York Tel. Co.*'s requirement of a connection between the third party and the "underlying controversy"). *Here, there is no plead connection between the Non-Parties and the Notes or Notes Case.*

17. So before this Court delves into adjudicating the merits of the Pending Motion, it must first determine whether this Court has authority and jurisdiction to issue the relief requested in the Pending Motion under the All Writs Act. While the Threshold Legal Issue requires simple legal argument with no fact finding necessary, a full adjudication of the Pending Motion would require a full trial on the merits and a pre-hearing discovery process, as oral argument on unstipulated facts and incomplete appendices from other courts in other jurisdiction is also wholly improper. So, if and only if, the Court considers the merits of the Pending Motion beyond the Threshold Legal Issue, the Respondents require at least ninety (90) to accommodate a discovery process and evidentiary trial.

B. HCMLP's Requested Hearing: HCLMP moves for this Court to consider All Issues during oral argument

18. The Pending Motion was filed in July 2023. By agreement, Respondents' Objections were filed in mid-December 2023. At no time during the subsequent six months—during which this Court could have ruled on the Pending Motion—did any party seek discovery or even suggest that discovery and a full evidentiary hearing was required to resolve this matter.

Until now. Respondents' belated request for bi-furcation, discovery, and a full evidentiary hearing furthers their strategies of creating chaos and causing delay and should be rejected.⁵

19. HCMLP is confident that the Court can efficiently address jurisdictional issues simultaneously with the merits. Notably, the Fifth Circuit previously addressed the issue of vexatious litigation stating that “[n]othing in this opinion should be construed to hinder the bankruptcy court’s power to enjoin and impose sanctions on Dondero and other entities by following the procedures to designate them vexatious litigants.” *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 48 F.4th 419, 439 n.19 (5th Cir. 2022).

20. Moreover, the facts supporting HCMLP’s Pending Motion—including Respondents’ pre-petition litigation tactics that caused HCMLP’s bankruptcy filing; the dozens of meritless claims filed against HCMLP that were dismissed or abandoned; the prior judicial findings and admissions concerning Dondero’s ownership and/or control of each of the Respondents; and the Respondents’ long record of frivolous litigation best reflected in the extensive appellate record—are contained in (a) voluminous court filings, (b) judicial findings of fact, decisions, and judgments, and (c) certain of Respondents’ admissions.⁶

⁵ Notably, none of the Respondents (a) had an allowed claim in HCMLP’s bankruptcy case, (b) is a Claimant Trust Beneficiary with a vested interest in the Claimant Trust, or (c) has a contractual or other legal relationship with HCMLP, yet they want to preserve their “options” to bring actions against HCMLP and its fiduciaries

⁶ See, e.g., *Appendix in Support of Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief*, Docket No. 138, Appx. 1-16 (summary of litigation in HCMLP’s bankruptcy case in which one or more Dondero Entities was a party); *Supplemental Appendix and Declaration of Gregory V. Demo in Further Support of Highland Capital Management, L.P.’s Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief*, Docket No. 190, Appx. 1-16; *Brief in Support of Highland Capital Management, L.P.’s Omnibus Objection to Motion to Strike Reply and Supporting Exhibits or, Alternatively, for Leave to File a Surreply*, Docket No. 200 ¶ 14.

21. HCMLP urges the Court to hear oral argument on All Issues so the Pending Motion can be fairly and efficiently adjudicated without further delay.

CONCLUSION

22. As such, the Movants request oral argument pursuant to Local Rule 7.1(g), in the manner in which the Court deems proper.

DATED: July 17, 2024

Respectfully Submitted:

KELLY HART PITRE

/s/ Louis M. Phillips
Louis M. Phillips (LA #10505)
One American Place
301 Main Street, Suite 1600
Baton Rouge, LA 70801-1916
Telephone: (225) 381-9643
Facsimile: (225) 336-9763
Email: louis.phillips@kellyhart.com

Amelia L. Hurt (LA #36817, TX
#24092553)
400 Poydras Street, Suite 1812
New Orleans, LA 70130
¶Facsimile: (504) 522-1813
Email: amelia.hurt@kellyhart.com

and

KELLY HART & HALLMAN

Hugh G. Connor II
State Bar No. 00787272
hugh.connor@kellyhart.com
Michael D. Anderson
State Bar No. 24031699
michael.anderson@kellyhart.com
Katherine T. Hopkins
Texas Bar No. 24070737
katherine.hopkins@kellyhart.com
201 Main Street, Suite 2500

Fort Worth, Texas 76102
Telephone: (817) 332-2500

***Counsel for Charitable DAF Fund, L.P.
and CLO HoldCo, Ltd.***

STINSON LLP

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez
Texas Bar No. 24036072
Michael P. Aigen
Texas Bar No. 24012196
2200 Ross Avenue, Suite 2900
Dallas, Texas 75201
Telephone: (214) 560-2201
Facsimile: (214) 560-2203
Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

***Counsel for James Dondero, NexPoint
Asset Advisors, Management, L.P.,
NexPoint Advisors, L.P., Highland Capital
Management Services, Inc., NexPoint Real
Estate Partners, LLC, and The Dugaboy
Investment Trust***

**REICHMAN JORGENSEN LEHMAN &
FELDBERG LLP**

/s/ Amy L. Ruhland

Amy L. Ruhland
Texas Bar No. 24043561
901 S. Mopac Expressway
Suite 300
Austin, Texas 78746
Telephone: (650) 623-1401
Email: aruhland@reichmanjorgensen.com

***Counsel for James Dondero, The Dugaboy
Investment Trust, Get Good Trust, and
Strand Advisors, Inc.***

**PARSONS MCENTIRE MCCLEARY
PLLC**

/s/ Sawnie A. McEntire

Sawnie A. McEntire
Texas State Bar No. 13590100
smcentire@pmmlaw.com
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201
Telephone: (214) 237-4300
Facsimile: (214) 237-4340
Roger L. McCleary
Texas State Bar No. 13393700
rmcleary@pmmlaw.com
One Riverway, Suite 1800
Houston, Texas 77056
Telephone: (713) 960-7315
Facsimile: (713) 960-7347

***Attorneys for Hunter Mountain Investment
Trust***

GREENBERG TRAURIG, LLP

/s/ Daniel P. Elms

Daniel P. Elms
State Bar No. 24002049
2200 Ross Avenue, Suite 5200
Dallas, Texas 75201
Telephone: (214) 665-3600
Facsimile: (214) 665-3601
Email: elmsd@gtlaw.com

Counsel for Nancy Dondero

K&L GATES LLP

/s/ A. Lee Hogewood, III

Artoush Varshosaz (TX Bar No. 24066234)
1717 Main Street, Suite 2800
Dallas, TX 75201
Telephone: (214) 939-5659
E-mail: artoush.varshosaz@klgates.com
A. Lee Hogewood, III (pro hac vice
pending)
301 Hillsborough Street, Suite 1200

Raleigh, NC 27603
Telephone: (919) 743-7300
E-mail: lee.hogewood@klgates.com
***Counsel for Highland Income Fund,
NexPoint Strategic Opportunities Fund
n/k/a NexPoint Diversified Real Estate
Trust, Highland Global Allocation Fund,
and NexPoint Capital, Inc.***

**PACHULSKI STANG ZIEHL & JONES
LLP**

/s/ John A. Morris

Jeffrey N. Pomerantz (CA Bar No. 143717)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar No. 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

Melissa S. Hayward
Texas Bar No. 24044908
Zachery Z. Annable
Texas Bar No. 24053075
10501 N. Central Expy. Ste. 106
Dallas, Texas 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

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

EXHIBIT A

RESPONDENTS' PROPOSED ORDER

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

v.

**HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P., et al.,**

Respondents.

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

ORDER SETTING ARGUMENT

This matter having come before the Court on the *Joint Motion for Oral Argument Concerning Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief [Dkt. No. 136]* [Docket No. ___] (the “**Joint Motion**”) filed by the Movants;¹ and this Court having considered the Joint Motion and having determined that the legal and factual basis set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings and due deliration and sufficient cause appearing therefore, it is hereby **ORDERED** that:

1. The Joint Motion is **GRANTED** as set forth herein.
2. The Court has set oral argument (“**Oral Argument**”) on the Pending Motion [Dkt. No. 136] limited to the Threshold Legal Issue identified in the Joint Motion on:

_____, 2024 at ____ (CST) at

1100 Commerce Street, Courtroom 1525 Dallas, TX 75242.

3. The Oral Argument shall take place as follows:
 - A. HCMLP shall be afforded 45 minutes for its case in chief upon this identified issue
 - B. Each of the following Respondent(s) or groups thereof will then be afforded 20 minutes for their case in chief on this identified issue

¹ Capitalized terms not defined in this Order shall have the meanings ascribed to them in the Joint Motion.

- i) the Charitable Respondents,
- ii) the Notes Respondents,
- iii) N. Dondero and the Other Respondents,
- iv) the Funds, and
- v) HMIT.

HCMLP shall have 15 minutes for rebuttal argument after Respondents' arguments on their cases in chief.

Each of the above Respondent(s) or groups thereof shall have 5 minutes for rebuttal after HCMLP's rebuttal.

4. The Court will not take evidence at or in connection with the Oral Argument. No further pleadings shall be filed after entry of this Order and prior to the Oral Argument.

It so ordered this _____ day of _____, 2024

The Honorable Brantley Starr
United States District Judge

EXHIBIT B

HCMLP’S PROPOSED ORDER

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 3:21-cv-00881-X
	§	
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al.,	§	
	§	
Respondents.	§	
	§	

ORDER SETTING ARGUMENT

This matter having come before the Court on the *Joint Motion for Oral Argument Concerning Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief [Dkt. No. 136]* [Docket No. ___] (the “**Joint Motion**”) filed by the Movants;¹ and this Court having considered the Joint Motion and having determined that the legal and factual basis set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings and due deliration and sufficient cause appearing therefore, it is hereby **ORDERED** that:

1. The Joint Motion is **GRANTED** as set forth herein.
2. The Court has set oral argument (“**Oral Argument**”) on the Pending Motion [Dkt. No. 136] with respect to All Issues:

_____, 2024 at ____ (CST) at

1100 Commerce Street, Courtroom 1525 Dallas, TX 75242.

3. The Oral Argument shall take place as follows:
 - A. HCMLP shall be afforded 60 minutes for argument; as the Movant, HCMLP may reserve up to 15 minutes for rebuttal.

¹ Capitalized terms not defined in this Order shall have the meanings ascribed to them in the Joint Motion.

- B. Respondents shall be afforded 60 minutes in the aggregate for argument to be allocated among in them in any manner of their choosing.
4. The Court will not take evidence at or in connection with the Oral Argument, though parties may reference previously filed pleadings (including documents in their respective appendices) and use demonstrative exhibits; provided that, any demonstrative exhibit be provided to all counsel at least twenty-four (24) hours before the commencement time for the Oral Argument. No further pleadings shall be filed after entry of this Order and prior to the Oral Argument.

It so ordered this _____ day of _____, 2024

The Honorable Brantley Starr
United States District Judge