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

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

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

Defendants.

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

(Consolidated with 3:21-cv-00880-X,  
3:21-cv-01010-X, 3:21-cv-01378-X,  
3:21-cv-01379-X)

**HIGHLAND CAPITAL MANAGEMENT, L.P.’S RESPONSE TO COURT’S ORDER  
[D.I. 210]**



**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. PRELIMINARY STATEMENT .....	1
II. RELEVANT BACKGROUND .....	2
III. ARGUMENT .....	3
A. Summary of Argument .....	3
B. This Court Has Jurisdiction Over the Bankruptcy Case, the Note Actions, and the Motion .....	4
(i) <i>This Court’s Jurisdiction Under 28 U.S.C. §§ 157, 158, and 1334</i> .....	4
(ii) <i>This Court’s Jurisdiction Over the Note Actions and the Motion</i> .....	6
(iii) <i>The Appeal of the Note Actions Did Not Divest This Court of                 Jurisdiction to Adjudicate the Motion</i> .....	6
C. This Court Has Authority Under the All Writs Act to Grant the Motion .....	7
(i) <i>The All Writs Act Provides the Court with Broad Authority to                 Issue Orders in Aid of Its Jurisdiction</i> .....	7
(ii) <i>The All Writs Act Authorizes This Court to Sanction the Dondero                 Entities</i> .....	8
(iii) <i>The All Writs Act Authorizes Sanctioning the Non-Party                 Dondero Entities</i> .....	10
D. The Requested Relief Is Appropriately Limited .....	13
IV. CONCLUSION .....	14

**TABLE OF AUTHORITIES**

**Page**

**CASES**

*Baum v. Blue Moon Ventures, LLC*,  
513 F.3d 181 (5th Cir. 2008) ..... 8, 9, 11, 14

*Burch v. Freedom Mortg. Corp. (In re Burch)*,  
835 F. App’x 741 (5th Cir. 2021) ..... 4

*Caroll v. Abide (In re Carroll)*,  
850 F.3d 811 (5th Cir. 2017) ..... 5, 12

*Caroll v. Abide*,  
2016 U.S. Dist. LEXIS 100930 (M.D. La. Aug. 2, 2016) ..... 11

*Double Eagle Energy Servs., L.L.C. v. Markwest Utica Emg., L.L.C.*,  
936 F.3d 260 (5th Cir. 2019) ..... 12

*In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.)*,  
770 F.2d 328 (2d Cir. 1985)..... 11

*In re Carroll*,  
2016 Bankr. LEXIS 937 (Bankr. M.D. La. Mar. 16, 2016)..... 11

*Klay v. United Healthgroup, Inc.*,  
376 F.3d 1092 (11th Cir. 2004) ..... 1, 7, 14

*Newby v. Enron Corp.*,  
302 F.3d 295 (5th Cir. 2002) ..... 7, 14

*Nix v. Major League Baseball*,  
2022 U.S. Dist. LEXIS 104770 (S.D. Tex. Jun. 13, 2022)..... 13

*Rohe v. Wells Fargo Bank, N.A.*,  
988 F.3d 1256 (11th Cir. 2021) ..... 6

*Schum v. Fortress Value Recovery Fund I LLC*,  
2019 U.S. Dist. LEXIS 226679 (N.D. Tex. Dec. 2, 2019) ..... 8, 9

*Schum v. Fortress Value Recovery Fund I, L.L.C. (In re Renaissance Radio, Inc.)*,  
805 F. App’x 319 (5th Cir. 2020) ..... 9

*Stern v. Marshall*,  
564 U.S. 462 (2011)..... 4, 5

*Thomas v. Cap. Security Serv., Inc.*,  
812 F.2d 984 (5th Cir. 1987) ..... 7

*United States v. Haddad*,  
2022 U.S. Dist. LEXIS 20309 (N.D. Tex. Feb. 4, 2022)..... 11

*United States v. Int’l Bhd. of Teamsters*,  
728 F. Supp. 1032 (S.D.N.Y. 1990), *aff’d* 907 F.2d 277 (2d Cir. 1990)..... 12, 13

*United States v. Int’l Bhd. of Teamsters*,  
907 F.2d 277 (2d Cir. 1990)..... 12

*United States v. New York Tel. Co.*,  
434 U.S. 159 (1977)..... 12

*Wiltz v. Beijing New Bldg. Materials Pub. Ltd Co. No. 10-361 (In re Chinese-  
Manufactured Drywall Pods. Liab. Litig.)*, 2011 U.S. Dist. LEXIS 62222 (M.D.  
La. Jun. 9, 2011) ..... 11

*Wood v. Wood (In re Wood)*,  
825 F.2d 90 (5th Cir. 1987) ..... 4

**STATUTES**

11 U.S.C. § 362..... 6

28 U.S.C. § 1334..... passim

28 U.S.C. § 157..... 4, 5, 10

28 U.S.C. § 158..... passim

28 U.S.C. § 1651..... 7

**RULES**

FED. R. CIV. P. 65(d)(2)(B)..... 11

Highland Capital Management, L.P. (“**HCMLP**”), by and through its undersigned counsel, submits this brief (the “**Brief**”) in response to this Court’s order dated July 19, 2024 [D.I. 210] (the “**Order**”), entered in connection with *Highland Capital Management, L.P.’s Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief* [D.I. 136] (the “**Motion**”) and related memorandum of law [D.I. 137] (the “**Memorandum**”).<sup>1</sup>

## I. PRELIMINARY STATEMENT

1. This Court’s jurisdiction to decide the Motion derives from its original jurisdiction over HCMLP’s Bankruptcy Case pursuant to 28 U.S.C. § 1334, including the Note Actions following the withdrawal of the Order of Reference. This Court exercised its original jurisdiction when it adopted the Summary Judgment Recommendations and issued the Note Judgments. Entry of the Note Judgments did not divest this Court of jurisdiction over all aspects of the Note Actions but only over the matters now before the Fifth Circuit with respect to the Note Judgments. This Court continues to have jurisdiction to decide the Motion (which was filed well before the Note Judgments were rendered).

2. The All Writs Act is not an independent grant of jurisdiction. It simply codifies courts’ “traditional, inherent power to protect the jurisdiction they already have, derived from some other source.” *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1100 (11th Cir. 2004). Because this Court has original jurisdiction over the Bankruptcy Case and the Note Actions, the All Writs Act gives this Court broad *authority* to grant the Motion in order to protect both its *current* jurisdiction over the Note Actions and its jurisdiction over *future* appeals and matters withdrawn from the Bankruptcy Court to this Court. The All Writs Act also authorizes this Court to enjoin all vexatious parties affiliated, or acting in concert, with James Dondero regardless of whether they

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings given to them in the Memorandum.

were named defendants in the Note Actions. The extensive factual record supporting the Motion provides compelling reasons for the Court to exercise such authority to protect both its current and future jurisdiction.

## II. RELEVANT BACKGROUND

3. Beginning in early 2021, HCMLP filed a series of adversary proceedings in the Bankruptcy Case to collect more than \$60 million in promissory notes issued by certain of the Dondero Entities (collectively, the “**Note Actions**”).<sup>2</sup> As the following chronology demonstrates, (a) this Court has jurisdiction over the Note Actions, and (b) HCMLP filed the Motion before the Note Judgments were entered.

- |                           |   |
|---------------------------|---|
| <b>June 3, 2021</b>       | The defendants in the Note Actions (the “ <b>Defendants</b> ”) move to withdraw the reference to adjudicate the Note Actions in this Court.   |
| <b>July 8, 2021</b>       | The Bankruptcy Court finds the Note Actions are “non-core” and recommends withdrawal of the reference with discovery and pre-trial motions to be conducted before the Bankruptcy Court [D.I. 2] (the “ <b>Withdrawal Recommendation</b> ”). |
| <b>September 14, 2021</b> | This Court adopts the Withdrawal Recommendation [D.I. 14] (the “ <b>Withdrawal</b> ”). <sup>3</sup>   |
| <b>July 20, 2022</b>      | The Bankruptcy Court transmits its report and recommendation recommending summary judgment [D.I. 50], which it supplements on November 14, 2022 [D.I. 82-83] (together, the “ <b>Summary Judgment Recommendations</b> ”).                   |
| <b>November 2022</b>      | Defendants object to the Summary Judgment Recommendations [D.I. 78, 87].  |

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<sup>2</sup> See Adversary Proc. Nos. 21-03003-sgj; 21-03004-sgj; 21-03005-sgj; 21-03006-sgj; 21-03007-sgj. The Note Actions were later consolidated before this Court. [D.I. 24].

<sup>3</sup> The cited Withdrawal Recommendation concerned one of the Defendants, HCMFA. In response to motions filed by the other Defendants, the Bankruptcy Court made the same Withdrawal Recommendation, each of which was adopted prior to consolidation of the Note Actions. See, e.g., *HCMLP v. NexPoint*, 3:21-cv-0880-C (D.I. 10); *HCMLP v. HCMS, Inc.*, 3:21-cv-1378-N (D.I. 5); *HCMLP v. HCRE Partners, LLC*, 3:21-cv-1379-X (D.I. 14).

**February 24, 2023** HCMLP gives notice of intent to file the Motion by filing *Highland Capital Management, L.P.’s Opposed Motion to Exceed Page Limit* [D.I. 102] (the “**Motion for Leave**”).<sup>4</sup>

**July 6, 2023** This Court adopts the Summary Judgment Recommendations [D.I. 127-131, 133, 135].

**July 6, 2023** This Court grants the Motion for Leave [D.I. 132].

**July 14, 2023** HCMLP files the Motion requesting sanctions against the Dondero Entities.

**August 3, 2023** This Court enters final judgment in HCMLP’s favor in the Note Actions [D.I. 143-148] (the “**Note Judgments**”).<sup>5</sup>

**September 1, 2023** Defendants appeal the Note Judgments [D.I. 153-158] (the “**Appeal**”).

**December 16, 2023** The Dondero Entities file their Objections<sup>6</sup> to the Motion. HCMLP replies on February 9, 2024 [D.I. 189-90] (the “**Reply**”).<sup>7</sup>

**July 17, 2024** HCMLP and the Dondero Entities request oral argument on the Motion.

**July 19, 2024** This Court orders briefing on the jurisdictional scope of the All Writs Act.

### III. ARGUMENT

#### A. Summary of Argument

4. This Court has original jurisdiction over HCMLP’s Bankruptcy Case, including the Note Actions, which it exercised by adopting the Withdrawal and the Summary Judgment Recommendations after a *de novo* review. This Court retained jurisdiction to adjudicate the Motion following the Appeal of the Note Judgments to the Fifth Circuit because the Appeal only divested this Court’s jurisdiction over the matters appealed and not “collateral” matters such as the Motion.

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<sup>4</sup> The Dondero Entities objected to Motion for Leave [D.I. 104]; briefing was complete on March 7, 2023 [D.I. 106].

<sup>5</sup> On August 1, 2023, the parties sought approval of stipulations on (a) the finality of the Note Judgments [D.I. 139] and (b) a bonding schedule [D.I. 140], which were approved August 3, 2023. D.I. 142-148.

<sup>6</sup> “Objections” refers collectively to the objections filed by (a) the Funds [D.I. 166] (the “**Funds Obj.**”); (ii) DAF and CLOH [D.I. 167] (the “**DAF Obj.**”); (iii) Nancy Dondero [D.I. 168] (the “**Nancy Obj.**”); (iv) Hunter Mountain Investment Trust (“**HMIT**”) [D.I. 171] (the “**HMIT Obj.**”); and (v) Dondero, HCMFA, NPA, Highland Capital Management Services, Inc., HCRE, Dugaboy, Strand Advisors, Inc., and Get Good [D.I. 173] (the “**Dondero Obj.**”).

<sup>7</sup> The Dondero Entities moved to strike large portions of the Reply. The motions to strike are *sub judice*.

Because this Court retains its original jurisdiction, the All Writs Act provides broad authority to protect both its *current* jurisdiction over the Note Actions and its jurisdiction over *future* appeals and matters withdrawn from the Bankruptcy Court by enjoining vexatious parties that interfere with the efficient administration of justice in the Bankruptcy Court, in this Court, and in any other court, agency, or tribunal that affects the Bankruptcy Case.

**B. This Court Has Jurisdiction Over the Bankruptcy Case, the Note Actions, and the Motion**

*(i) This Court’s Jurisdiction Under 28 U.S.C. §§ 157, 158, and 1334*

5. The Dondero Entities argue the District Court lacks jurisdiction over the Motion because (a) the Motion does not arise in connection with this Court’s exercise of its appellate jurisdiction under 28 U.S.C. § 158 and (b) the Note Actions are not diversity or federal question lawsuits. The first argument is wrong because this Court has original—*not* appellate—jurisdiction over the Note Actions and the Motion, and the second ignores that this Court’s jurisdiction derives from 28 U.S.C. §§ 157 and 1334—that is laws of the United States.

6. District courts have original jurisdiction over all “cases” under the Bankruptcy Code and all “civil proceedings” arising in, arising under, or related to a bankruptcy case. 28 U.S.C. §§ 1334(a), (b);<sup>8</sup> *see also Stern v. Marshall*, 564 U.S. 462, 473 (2011). Moreover, district courts have exclusive jurisdiction over a debtor’s property. 28 U.S.C. § 1334(e).

7. District courts “may provide that ... cases under title 11 and ... proceedings arising under title 11 or arising in or related to a case under title 11 ... be referred to the bankruptcy judges for the district.” 28 U.S.C. § 157(a). Like nearly all district courts throughout the country, the U.S.

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<sup>8</sup> A case or proceeding (a) “arises under” title 11 if it is a “cause of action created or determined by a statutory provision of title 11” (*Wood v. Wood (In re Wood)*, 825 F.2d 90, 96 (5th Cir. 1987)); (b) “arises in” title 11 if it addresses “administrative matters that arise *only* in bankruptcy cases” (*id.* at 96 (emphasis in original)); and (c) “relates to” title 11 if “the outcome of ... could conceivably have any effect on the estate being administered in bankruptcy” (*Burch v. Freedom Mortg. Corp. (In re Burch)*, 835 F. App’x 741, 748 (5th Cir. 2021)). The Court has jurisdiction over the Note Actions because they “relate to” the HCMLP Bankruptcy Case.



District Court of the Northern District of Texas has a standing order that automatically refers all cases arising under title 11 (that is, the Bankruptcy Code) or arising in or related to a case under title 11 to the U.S. Bankruptcy Court for the Northern District of Texas. *See Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc, Miscellaneous Rule No. 33*, dated August 3, 1984 (the “**Order of Reference**”). Referring a case does not divest a district court of jurisdiction; rather, the district court retains jurisdiction over the bankruptcy court by overseeing a bankruptcy “case,” which “refers to the overall spectrum of legal action taken under one of the debtor relief chapters. It is the widest term functionally.” *Carroll v. Abide (In re Carroll)*, 850 F.3d 811, 816 n.3 (5th Cir. 2017).

8. Bankruptcy courts, on the other hand, are courts of limited jurisdiction. Bankruptcy courts may enter final orders with respect to “core” matters (*i.e.*, cases that *arise in* or *arise under* title 11) but may not enter final orders with respect to “non-core” matters (*i.e.*, matters that *relate to* a case under title 11) unless all parties consent. If the parties do not consent to the bankruptcy court’s entry of a final order in a “non-core” matter, the bankruptcy court must “submit proposed findings of fact and conclusions of law to the district court,” which then conducts a *de novo* review under 28 U.S.C. § 157(c)(1). *Stern*, 564 U.S. at 475 (“It is the district court that enters final judgment in [non-core] cases after reviewing *de novo* any matter to which a party objects.”).<sup>9</sup> The district court also sits as the appellate court of first review over a bankruptcy case. 28 U.S.C. § 158(a). For the foregoing reasons, among others, this Court is, and will remain, an active participant in the Bankruptcy Case.

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<sup>9</sup> Under 28 U.S.C. § 157(d), the district court may also “withdraw, in whole or in part, any case or proceeding referred to” to the bankruptcy court “for cause” or if it “determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.”

**(ii) This Court’s Jurisdiction Over the Note Actions and the Motion**

9. After HCMLP commenced the Note Actions, the Defendants moved to withdraw the Order of Reference, refusing to consent to the Bankruptcy Court’s entry of final judgments. The Bankruptcy Court found that the Note Actions were “non-core” and issued its Withdrawal Recommendation, a finding based on the uncontroverted premise that this Court maintained *original* jurisdiction over the Note Actions under 28 U.S.C. § 1334 (no party has contested this Court’s original jurisdiction). Thereafter, the Bankruptcy Court submitted its proposed findings of fact and conclusions of law in the form of the Summary Judgment Recommendations.

10. Contrary to the Dondero Entities’ arguments (Dondero Obj. at 29; HMIT Obj. ¶ 2), this Court is exercising its *original* jurisdiction under 28 U.S.C. § 1334—not its appellate jurisdiction under 28 U.S.C. § 158—because the Note Actions are non-core and the Order of Reference was withdrawn (at the Defendants’ request).

**(iii) The Appeal of the Note Actions Did Not Divest This Court of Jurisdiction to Adjudicate the Motion**

11. The Dondero Entities do not contest this Court’s jurisdiction over the Note Actions but argue the Defendants’ Appeal of the Note Judgments “divested” this Court of *all* jurisdiction, including jurisdiction over the Motion, and that jurisdiction over the Motion must be found in the All Writs Act or some other source. *Id.* at 29-30.<sup>10</sup> The Dondero Entities are wrong.

12. The Dondero Entities misstate the law regarding the effect the Appeal of the Note Judgments had on this Court’s jurisdiction. Although this Court lost jurisdiction over *the Note Judgments* under the “divestiture doctrine,” this Court retained jurisdiction to adjudicate all matters

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<sup>10</sup> The Dondero Entities rely heavily on *Rohe v. Wells Fargo Bank, N.A.*, 988 F.3d 1256 (11th Cir. 2021), for the proposition that this Court lacks jurisdiction over the Motion. Dondero Obj. at 30-31; HMIT Obj. ¶ 2 & n.1. *Rohe* dealt with whether a district court could issue a writ of mandamus compelling a bankruptcy court to enforce the automatic stay (11 U.S.C. § 362). *Rohe*, 988 F.3d at 1267; Reply ¶ 46. No one in this case is requesting a writ of mandamus, and *Rohe* is inapposite.

in the Note Actions “collateral” to the Note Judgments. *See, e.g.*, Reply ¶¶ 43-45 (citing *Thomas v. Cap. Security Serv., Inc.*, 812 F.2d 984, 987 (5th Cir. 1987) (“even though the judgment on the merits has been properly appealed ... the district court retains jurisdiction to entertain and resolve a motion requesting attorney’s fees or sanctions. The basis for this exception is that attorney’s fees/sanctions are matters *collateral* to the merits of the action.”) (emphasis added). The Motion (filed before the Note Judgments were entered) is *collateral* to the Note Judgments, and this Court has always had and retains its original jurisdiction to hear it.

**C. This Court Has Authority Under the All Writs Act to Grant the Motion**

**(i) *The All Writs Act Provides the Court with Broad Authority to Issue Orders in Aid of Its Jurisdiction***

13. The All Writs Act does “not afford independent grounds for the jurisdiction of the district court.” *Newby v. Enron Corp.*, 302 F.3d 295, 300 (5th Cir. 2002); *see also Klay*, 376 F.3d at 1099 (same). Rather, it “provides that federal courts may ‘issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law’” (*Newby*, 302 F.3d at 301 (citing 28 U.S.C. § 1651(a)), and codifies their “traditional, inherent power to protect the jurisdiction they already have, derived from some other source.” *Klay*, 376 F.3d at 1099. “[T]o obtain an All Writs Act injunction—[a movant] must simply point to some ongoing proceeding ... the integrity of which is being threatened by some action or behavior.” *Id.* at 1100. The All Writs Act is not a jurisdictional statute; it *authorizes* this Court to enjoin vexatious conduct in a case or proceeding over which this Court already has jurisdiction. Once a court has jurisdiction, its authority under the All Writs Act is broad. “Regarding pending proceedings, a court may enjoin almost any conduct, ‘which, left unchecked, would have ... the practical effect of diminishing the court’s power to bring the litigation to a natural conclusion.’” *Id.* at 1102 (cleaned up). A court can enter a vexatious litigant injunction either *sua sponte* or upon request. *See, e.g., Baum v. Blue*

*Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008) (“a district court may *sua sponte* impose a pre-filing injunction .... If such power did not exist ... [or] were somehow dependent upon the actions of another branch of government or upon the entitlement of a private party to injunctive relief, the independence and constitutional role of Article III courts would be endangered.”) (cleaned up).<sup>11</sup>

**(ii) The All Writs Act Authorizes This Court to Sanction the Dondero Entities**

14. Because this Court has original jurisdiction under 28 U.S.C. § 1334, including jurisdiction over the Note Actions and the Motion, this Court has broad authority under the All Writs Act to grant the Motion and enjoin the Dondero Entities from any conduct that implicates this Court’s (a) *current* jurisdiction over the Note Actions and (b) *future* original and appellate jurisdiction over the bankruptcy “case,” including appeals and withdrawn matters. *Schum*—which the Dondero Entities do not dispute is good law (Dondero Obj. at 30)—is instructive.

15. In *Schum*, a debtor was forced into bankruptcy and its assets were sold under a plan of reorganization. Schum, a disgruntled former shareholder (like Dondero), moved to re-open the bankruptcy case alleging fraud and newly discovered evidence. *Schum*, 2019 U.S. Dist. LEXIS 226679 at \*2-3. After the bankruptcy court denied Schum’s motion, Schum appealed to this Court, which sat as an appellate court under 28 U.S.C. § 158(a). *Id.* at \*4-7.

16. On appeal, the debtor asked this Court—not the bankruptcy court—to deem Schum vexatious and enjoin *all* filings in the bankruptcy court without this Court’s prior approval. The debtor’s motion—just like HCMLP’s Motion here—cited the totality of Schum’s conduct in the

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<sup>11</sup> This Court may grant the Motion without a hearing—evidentiary or otherwise. A hearing is only required for *sua sponte* injunctions. *Id.*; see also *Schum v. Fortress Value Recovery Fund I LLC*, 2019 U.S. Dist. LEXIS 226679, at \*13–14 (N.D. Tex. Dec. 2, 2019) (“a hearing is unnecessary in this instance given that the Court is not acting *sua sponte* and is responding to Appellees’ request. Instead, the Court can issue injunctive relief if: 1) the litigant has engaged in a lengthy and abusive history of litigation; 2) the litigant receives notice and an opportunity to oppose the court’s order before it is imposed; and 3) the court provides guidelines regarding how to obtain permission to make future filings.”) (cleaned up).

bankruptcy court and elsewhere as grounds to enjoin him. Case No. 3:19-cv-00978-M, D.I. 9 at 30-31 (N.D. Tex. Jul. 31, 2019) (“Schum has demonstrated a complete unwillingness to heed any warning given by any tribunal over the years related to his frivolous filings”). And, just like in the Motion, the debtor did not seek to enjoin matters solely related to the specific appeal; the debtor sought to enjoin *all* future filings related to the bankruptcy. In granting the debtor’s motion, Chief Judge Lynn found that (a) she had appellate jurisdiction over Schum’s appeal under 28 U.S.C. § 158 and (b) a broad injunction was justified under the All Writs Act because Schum’s vexatious conduct in the bankruptcy case implicated her *current* and *future* jurisdiction.

Appellees seek injunctive relief prohibiting Appellant from making *future* filings related to the RRI or Watch bankruptcies. Those filings, when decided and if appealed, ***will affect the Court’s future appellate jurisdiction over those bankruptcy proceedings. Accordingly, the Court has the jurisdiction to order the requested injunctive relief.***

*Schum*, 2019 U.S. Dist. LEXIS 226679 at \*13 (emphasis added). Chief Judge Lynn’s ruling cited the totality of Schum’s vexatious conduct as a basis for granting the pre-filing injunction.<sup>12</sup> After Schum appealed to the Fifth Circuit, the Fifth Circuit expressly affirmed her ruling. “[W]e find no error in the district court’s decision to enjoin Schum from further filings relating to the Watch or RRI bankruptcies. This ruling is supported by Schum’s long history of repetitive and frivolous filings pertaining to this matter in this and other federal courts.” *Schum v. Fortress Value Recovery Fund I, L.L.C. (In re Renaissance Radio, Inc.)*, 805 F. App’x 319, 322 (5th Cir. 2020).

17. In sum, in *Schum* this Court and the Fifth Circuit held that (a) a court with jurisdiction over a particular case—regardless of whether that jurisdiction is original jurisdiction

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<sup>12</sup> *Schum*, 2019 U.S. Dist. LEXIS 226679, at \*14-16 (citing Schum’s (a) filings in the bankruptcies, (b) appeals to this Court and the Fifth Circuit, (c) filings in state court, (d) filings with, and proceedings in, the FCC, and (e) appeals to the D.C. Circuit). *Schum* is no outlier. Courts routinely consider conduct in other forums. *See, e.g., Baum*, 513 F.3d at 191 (“The district court could consider Baum’s conduct in the state court proceedings in determining whether his conduct before the bankruptcy court was undertaken in bad faith or for an improper motive.”).

(as in the case here) or appellate jurisdiction (as in *Schum*)—(b) can, under the All Writs Act, protect its current and future jurisdiction through a vexatious litigant injunction. As in *Schum*, this Court should exercise its authority under the All Writs Act. This Court has original jurisdiction over the Bankruptcy Case, including the Note Actions, and the Dondero Entities’ vexatious conduct has implicated, and will continue to implicate, this Court’s current and future jurisdiction.

18. In the nearly five years since the commencement of the Bankruptcy Case, the Dondero Entities have filed, or caused to be filed, over 90 motions and adversary proceedings in the Bankruptcy Court and 30 appeals and mandamus petitions in this Court. These cases have consumed enormous time, effort, and resources of this Court<sup>13</sup> (as well as the Fifth Circuit<sup>14</sup> and other courts and agencies). This Court—acting both within its original jurisdiction under 28 U.S.C. § 1334 and in its constitutionally mandated supervisory role over the Bankruptcy Court under 28 U.S.C. §§ 157 and 158—has ample authority to implement procedures to address vexatious litigation and to police improper conduct in, or that otherwise affects, the Bankruptcy Case.

***(iii) The All Writs Act Authorizes Sanctioning the Non-Party Dondero Entities***

19. The Dondero Entities that are not Defendants in the Note Actions allege the All Writs Act does not authorize this Court to enjoin their conduct. DAF Obj. ¶ 52-57; HMIT Obj. ¶¶ 36-38. The Dondero Entities are wrong for two independent reasons.

20. *First*, as an initial matter, the “Dondero Entities” are defined simply as (a) the Defendants in the Note Actions and (b) “any entity directly or indirectly controlled by, or acting in concert with, Dondero.” Memorandum at 1 n.2. DAF, CLOH, and HMIT, among others, are included only as *examples* of entities controlled by, and acting in concert with, Dondero. The “non-

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<sup>13</sup> Approximately 8 of the 12 sitting judges in the Northern District of Texas have been assigned at least one Highland matter.

<sup>14</sup> The Dondero Entities have, so far, filed approximately 15 appeals in the Fifth Circuit.

parties” can thus be enjoined even under Rule 65’s narrower grant of authority for “traditional” injunctions, which authorizes courts to enjoin parties before it and their “agents, servants ... and attorneys; and ... other persons who are in active concert or participation with” the foregoing. FED. R. CIV. P. 65(d)(2)(B), (C). Indeed, the Fifth Circuit has extended vexatious litigant injunctions to parties under the control of, or acting in concert with, a vexatious litigant. *See, e.g., In re Carroll*, 2016 Bankr. LEXIS 937 at \*34 (Bankr. M.D. La. Mar. 16, 2016) (prohibiting litigation filed by the vexatious litigants and “anyone acting on their behalf”); *Baum*, 513 F.3d at 194 (prohibiting suits brought “directly and indirectly” by the vexatious litigants). Ultimately, the case law is clear: this Court’s authority under the All Writs Act is broad (certainly broader than Rule 65)<sup>15</sup> and allows this Court to enjoin *all* Dondero Entities.

21. For example, in *Carroll*, the trustee obtained an injunction prohibiting the Carrolls and their daughters from interfering with the bankruptcy case. *Carroll*, 2016 Bankr. LEXIS 937, at \*34. The Carrolls appealed to the district court alleging, among other things, that their daughters were not involved in the “present dispute” and were “never ‘under the jurisdiction of the [B]ankruptcy [C]ourt.’” *Carroll v. Abide*, 2016 U.S. Dist. LEXIS 100930, at \*22 (M.D. La. Aug. 2, 2016). The district court upheld the injunction, finding that the daughters were involved in an adversary proceeding before the district court and that they had “conspired to shield the debtor’s assets from creditors.” *Id.* at \*24-25. The Fifth Circuit affirmed: “the conduct by the ... Daughters in the district court occurred in the same bankruptcy case ... ‘the term “case” ... refers to the overall spectrum of legal action taken under one of the debtor relief chapters ....’ Accordingly, the

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<sup>15</sup> *In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.)*, 770 F.2d 328, 338-39 (2d Cir. 1985) (“there is a difference between the power to enjoin an unrelated non-party pursuant to the All-Writs Act and the narrower authority delineated by Rule 65(d) ... Rule 65 was [not] intended to impose such a limit on the court’s authority provided by the All-Writs Act”) (citing cases); *United States v. Haddad*, 2022 U.S. Dist. LEXIS 20309, at \*9 (N.D. Tex. Feb. 4, 2022) (same); *Wiltz v. Beijing New Bldg. Materials Pub. Ltd Co. No. 10-361 (In re Chinese-Manufactured Drywall Pods. Liab. Litig.)*, 2011 U.S. Dist. LEXIS 62222, at \*21 (M.D. La. Jun. 9, 2011) (same).

bankruptcy court could sanction the ... Daughters for their conduct [in the district court].” *Carroll*, 850 F.3d at 816 n.3.

22. As in *Carroll*, the Note Actions were brought as adversary proceedings in the broader Bankruptcy Case and this Court can enjoin the non-party Dondero Entities. While the Dondero Entities argue—like the Carrolls—that this Court is powerless because they are not before it (HMIT Obj. ¶ 38; DAF Obj. ¶ 55), the Dondero Entities—like the Carrolls—are wrong.

23. *Second*, the All Writs Act broadly authorizes a court to enjoin “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.” *United States v. New York Tel. Co.*, 434 U.S. 159, 174 (1977); *see also United States v. Int’l Bhd. of Teamsters*, 907 F.2d 277, 281 (2d Cir. 1990) (“if jurisdiction over the subject matter of and the parties to litigation is properly acquired, the All Writs Act authorizes a federal court to protect that jurisdiction even though non-parties may be subject to the terms of the injunction”); *United States v. Int’l Bhd. of Teamsters*, 728 F. Supp. 1032, 1044 (S.D.N.Y. 1990), *aff’d* 907 F.2d 277 (2d Cir. 1990) (“a federal court may invoke the All Writs Act to bring before it parties whom it otherwise does not have personal jurisdiction over”).<sup>16</sup>

24. A court’s ability to enjoin third parties is a critical feature of the All Writs Act. *See, e.g., Baldwin-United*, 770 F.2d at 338 (“An important feature of the All Writs Act is its grant of authority to enjoin and bind non-parties to an action when needed to preserve the court’s ability to reach or enforce its decision in a case over which it has proper jurisdiction.”). Injunctions under

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<sup>16</sup> The Bankruptcy Code provides for “nationwide” service of process and district courts have personal jurisdiction over anyone with “minimum contacts with the United States.” *Double Eagle Energy Servs., L.L.C. v. Markwest Utica Emg., L.L.C.*, 936 F.3d 260, 264 (5th Cir. 2019).



the All Writs Act can therefore enjoin parties that could not be enjoined by “traditional” injunctions. Because the Dondero Entities are vexatiously compounding the matters before this Court, this Court can (and should) enjoin each of them. *See, e.g., Id.* at 336-37 (enjoining vexatious conduct under the All Writs Act of non-party state agencies that threatened district court jurisdiction); *Teamsters*, 728 F. Supp. at 1048 (overruling objections on lack of subject matter and personal jurisdiction and holding district court had authority under the All Writs Act to enjoin non-parties).

25. Just as this Court did in *Schum* (and as subsequently affirmed by the Fifth Circuit), this Court has the authority to enter a vexatious litigant injunction against the Defendants *and* the other Dondero Entities for purposes of this case *and* all future cases arising in or related to the Bankruptcy Case in both the Bankruptcy Court, this Court, and any other court, agency, or tribunal that affects the Bankruptcy Case and thus this Court’s current and future jurisdiction.

#### **D. The Requested Relief Is Appropriately Limited**

26. The Dondero Entities also argue the relief requested in the Motion is overbroad and thus exceeds this Court’s authority under the All Writs Act. DAF Obj. ¶¶ 72-80; HMIT Obj. ¶¶ 39-41. Not so. The requested relief is consistent with the All Writs Act. *First*, HCMLP does not seek to enjoin any appeals or pending actions. Reply ¶ 54. *Second*, federal courts commonly require vexatious litigants to file in future actions the order entered against them. *See, e.g., Nix v. Major League Baseball*, 2022 U.S. Dist. LEXIS 104770 at \*69 (S.D. Tex. Jun. 13, 2022) (“The court also orders Nix to file a copy of this opinion with any filing that he makes in any other court.”). *Third*, the Dondero Entities have used state, federal, and foreign courts and regulatory agencies to interfere with the Bankruptcy Case. *See, e.g.,* Memorandum at 22-26; Reply ¶ 34. The

Anti-Injunction Act does not limit<sup>17</sup> injunctions against future filings in other courts or regulatory agencies. *See, e.g., Newby*, 302 F.3d at 302; *Klay*, 376 F.3d at 1104.<sup>18</sup>

#### IV. CONCLUSION

27. For the foregoing reasons, HCMLP respectfully requests that this Court (a) grant the Motion and (b) grant any additional relief the Court deems just and proper.

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<sup>17</sup> Even if the Anti-Injunction Act applied (which it does not), this Court has *in rem* jurisdiction under 28 U.S.C. § 1334(e) over HCMLP's assets and may "enjoin proceedings in any court regarding that property." *See, e.g., Klay*, 376 F.3d at 1104.

<sup>18</sup> Although *Baum* overturned an injunction that extended to "filings in state courts [and] state agencies," 513 F.3d at 192, *Baum* was limited to the facts of that case. *Id.* at 192 n.3 ("We express no opinion on whether a district court's pre-filing injunction may extend to state court or state agency filings in other factual circumstances").

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